

ADMINISTRATIVE REVIEW BOARD, PROCEDURES, HEARINGS, AND RIGHT OF APPEAL

1. **INTRODUCTION** - USA Swimming was organized as the National Governing Body for the sport of swimming under the Amateur Sports Act of 1978, a federal law. That law requires USA Swimming to establish and maintain provisions for the swift and equitable resolution of all disputes involving any of its members. Accordingly, MWS has established the Administrative Review Board to hear complaints and appeals regarding administrative matters within MWS which do not rise to the level of Code of Conduct violations and are not appeals of sanction decisions. The Administrative Review Board shall have no jurisdiction to hear complaints regarding conduct that may violate the USA Swimming Code of Conduct or otherwise violate the policies, procedures, rules and regulations adopted by USA Swimming, or conduct that may bring USA Swimming, MWS or the sport of swimming into disrepute. This Document, together with the National Board of Review procedures, pursuant to Policy 26.0 of the USA Swimming Operating Policy Manual, is intended to provide a fair hearing before a group of independent and impartial people. This Document and the National Board of Review procedures, pursuant to Policy 26.0 of the USA Swimming Operating Policy Manual shall be construed accordingly.
2. **DEFINITIONS** - The following terms shall have the meanings indicated in this Section and the definitions of such terms are equally applicable to both the singular and plural forms:
 - a. "Answer" shall mean the written response to a Protest and Notice filed in accordance with Section 6.a.iii and served in the manner prescribed in Section 10.b.
 - b. "Chairman" when standing by itself shall mean the Chairman of the Administrative Review Board.
 - c. "Notice" shall mean the writing addressed to the Respondent advising that the Respondent has been named a respondent in a Protest and served in accordance with Section 10.b. The Notice sets the hearing date and procedures and establishes the schedule to be followed leading to the hearing, among other things. See Section 6.a.ii.
 - d. "Presiding Officer" shall mean the Chairman or another member of the Administrative Review Board designated by the Chairman to preside at a particular hearing or hearings. Where applicable the term shall include an attorney so designated pursuant to Section 3.n.ii.
 - e. "Protest" shall mean a written complaint filed in accordance with Section 6.a.i by a Group Member or an applicant for such status, or an Individual Member or applicant for such status or, with regard to conduct occurring in the Territory, a member of another LSC, against a member of MWS or a constituent element, officer or agent of MWS. The Protest may relate to a member's alleged infraction against its responsibilities under Section 1 or about a decision or action by someone acting under the authority of MWS or USA Swimming or, with regard to conduct in the Territory, another LSC.
 - f. "Protestor" shall mean the Individual Member or Group Member that has filed a Protest with the Administrative Review Board.
 - g. "Rebuttal" shall mean the written response to an Answer by a Protestor filed in accordance with Section 6.a.iv and served in the manner prescribed in Section 10.b.
 - h. "Respondent" shall mean the person against whom a Protest has been filed with the Administrative Review Board or who may be affected by a decision of the Administrative Review Board regarding the Protest.
 - i. "Vice-chairman" when used by itself shall mean the Vice-chairman of the Administrative Review Board.
3. **ADMINISTRATIVE REVIEW BOARD ORGANIZATION** -
 - a. ESTABLISHMENT - The Administrative Review Board of MWS shall be independent and impartial.

- b. **MEMBERS** - The Administrative Review Board shall have at least five (5) regular members, with a sufficient number of Athlete Representatives to constitute at least twenty percent (20%) of the voting membership. At least three members of the Administrative Review Board shall hear each case, with a sufficient number of Athlete Representatives to constitute at least twenty percent (20%) of its membership. No hearing shall proceed without the required athlete representation. The House of Delegates may increase the number of regular or alternate members by resolution but subsequent to the adoption of the bylaws may only decrease the number of regular or alternate members upon the expiration of the term of office of any incumbent members.
- c. **ELECTION; TERM OF OFFICE; ELIGIBILITY** –
 - i. **Election** - The House of Delegates shall biennially elect regular and alternate members of the Administrative Review Board.
 - ii. **Term of Office** - The term of office shall be two (2) years. Each member and alternate member shall assume office upon election and shall serve until a successor takes office.
 - iii. **Eligibility** - Each regular and alternate member of the Administrative Review Board shall be an Individual Member of MWS and USA Swimming. In no case shall elected members of the Board of Directors serve on the Administrative Review Board.
- d. **CHAIRMAN ELECTED BY BOARD; OTHER OFFICERS** - The Chair of the Administrative Review Board (the “Chair”) who must be a regular member, shall be elected biennially by a majority vote of the regular members of the Administrative Review Board. The Chair shall biennially appoint a Vice-Chair and a Secretary of the Administrative Review Board, each of whom must be regular members.
- e. **MEETINGS** - The Administrative Review Board shall meet for administrative purposes as necessary, to elect the Chair, to adopt rules and procedures and to conduct other business as may be helpful or necessary to achieve the purposes of the Administrative Review Board and efficiently exercise its duties and powers. Other meetings may be called by the Chair or any two regular members. When meeting for administrative purposes, Section 7.19 of the LSC Bylaws shall apply to the Administrative Review Board.
- f. **PARTICIPATION THROUGH COMMUNICATIONS EQUIPMENT** - Members of the Administrative Review Board may participate in a meeting or hearing of the Administrative Review Board, and any hearing may be conducted, in whole or in part, through conference telephone or similar equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by these means shall constitute presence in person at such a meeting or hearing.
- g. **QUORUM** - A quorum for any administrative meeting of the Administrative Review Board shall be fifty percent (50%) of its regular members.
- h. **RESIGNATIONS** - Any regular or alternate member of the Administrative Review Board may resign by submitting a written resignation to the Chairman, the General Chairman or the Board of Directors specifying an effective date of the resignation. In the absence of a specified effective date, any such resignation shall take effect upon the appointment or election of a successor.
- i. **DETERMINATION OF VACANCY OR INCAPACITY** - The determination of when an office becomes vacant or an officer becomes incapacitated shall be in accordance with 6.9 of the LSC Bylaws.
- j. **SUBSTITUTIONS FOR MEMBERS** - In the event that a member of the Administrative Review Board is unable or unwilling to promptly act for any reason, recuses herself or himself or is disqualified in any particular circumstance, the Chair (or, if the person so unable or unwilling to act recused or disqualified is the Chair, the Vice-Chair; or failing that, the General Chair) shall appoint an alternate member to act in the regular member’s place in respect of that circumstance.

- k. **EXTENSIONS OF TIME** - The time by which any act is required to be taken may be extended or foreshortened by the Chairman, or the Presiding Officer for a particular hearing, for good cause. (A single exception to this rule is provided in Section 6.d.) A party's request for an extension of time prior to the time established without regard to the requested extension will be accorded greater deference than a request made later. The time, date and location of any hearing may be changed by the Chairman or the Presiding Officer for a particular hearing on his or her own initiative, as required by the interests of the Administrative Review Board or in the interests of justice.

- l. **ADVICE; ATTORNEY AS PRESIDING OFFICER** -
 - i. **Legal and Other Advice** - Where appropriate or helpful, the Chairman or Presiding Officer may consult the USA Swimming General Counsel, any member of the USA Swimming Counselors Committee, the Chairmen of the USA Swimming Legislation, Rules or Officials Committees or of the Bylaws Subcommittee or an attorney (who need not be a member of MWS, USA Swimming or the Administrative Review Board) retained by the Administrative Review Board or the Chairman regarding any issue raised by a proceeding.
 - ii. **Attorney as Presiding Officer** - The Administrative Review Board or the Chairman may retain an attorney (who need not be a member of MWS, USA Swimming or the Administrative Review Board) to act as Presiding Officer at any hearing where it is appropriate or helpful. A Presiding Officer who is not a Administrative Review Board member may participate in the deliberations of the Administrative Review Board or the designated panel but shall not be counted in determining the existence of a quorum and shall not have a vote.
 - iii. **Attorney's Fees and Expenses** - Prior to retaining an attorney on any basis requiring the payment of fees to the attorney (the payment of expenses to an attorney providing services at no charge (pro bono publico) shall not be considered as a payment of fees for this purpose), the Chairman or the Presiding Officer shall consult with the General Chairman and the USA Swimming General Counsel. The Treasurer is authorized and directed to pay any fee and expenses charged by the attorney and approved by the Chairman.

- m. **CODE OF CONDUCT FOR MEMBERS OF ADMINISTRATIVE REVIEW BOARD; RECUSAL** -
 - i. **Code of Conduct** - Members of the Administrative Review Board shall:
 - 1. uphold the integrity and independence of the Administrative Review Board;
 - 2. avoid any impropriety or even the appearance of impropriety in connection with service as an Administrative Review Board member and swimming-related activities generally; and
 - 3. perform the duties of Administrative Review Board membership impartially and diligently.
 - ii. **Grounds for Recusal** - Members of the Administrative Review Board shall recuse themselves from participating in any matter pending before the Administrative Review Board:
 - 1. in which their impartiality might reasonably be questioned;
 - 2. where they have a personal bias or prejudice concerning a party in the matter pending before the Administrative Review Board or have personal knowledge of disputed evidentiary facts concerning the pending matter (other than knowledge obtained as a Administrative Review Board member);
 - 3. where they or a member of their household are a party or are likely to be a material witness in the pending matter;

4. where they or a member of their household have an interest that could be substantially affected by the outcome of the proceeding; or
 5. where they or a member of their household have served or are serving as counsel in the pending matter or are members of a law firm that served or is serving as counsel in the pending matter.
- iii. Recusal by Member - Administrative Review Board members shall recuse themselves as soon as they become aware of facts that give rise to the duty to do so by giving notice to the Chairman, or in the case of the Chairman, the Vice-chairman.
 - iv. Recusal/Disqualification Requested by Party - By written notice to the Presiding Officer or the Chairman, or, in the case in which the Chairman is the subject of the notice, the Vice-chairman, any party may request that the members recuse themselves or be disqualified from serving on the pending matter stating the reasons for recusal or disqualification. Such notice shall be given at least ten (10) Business Days prior to the scheduled date of the hearing on such matter or later if the party sustains the burden of proving good cause for the lateness of the notice. The named member shall reach a decision on the matter and notify the Chairman or the Vice-chairman of that decision within five (5) Business Days of receipt of the party's notice. If the member's decision is not in favor of recusal, then the Chairman or the Vice-chairman may, but is not required to, disqualify the member from participating in the pending matter. If there is no disqualification, the hearing shall be conducted and the party giving the notice may appeal the disqualification decision, together with the hearing decision, pursuant to Section 5.b.
 - v. Substitution for Recused or Disqualified Member - In the event of a recusal or a disqualification, a substitute shall be appointed as provided in Section 3.j.

4. **GENERAL JURISDICTION** -

- a. ADMINISTRATIVE POWERS - The Administrative Review Board shall have the powers and the duty to:
 - i. administer and conduct the affairs and achieve the purposes of the Administrative Review Board,
 - ii. establish policies, procedures and guidelines,
 - iii. elect the Chairman in accordance with Section 3.d,
 - iv. call regular or special meetings of the Administrative Review Board,
 - v. retain attorneys, agents and independent contractors and employ those persons which the Administrative Review Board may determine are appropriate, necessary or helpful in the administration and conduct of its affairs and
 - vi. as may otherwise be appropriate, necessary or helpful in the administration and conduct of its affairs, the achievement of its purposes and the efficient exercise of its duties and powers.
- b. RULE MAKING POWERS - The Administrative Review Board shall have the power and the duty to promulgate rules and procedures with respect to any matter within its jurisdiction or appropriate, necessary or helpful in the administration and conduct of its affairs. The rules and procedures adopted by the Administrative Review Board shall have the same force and effect as if they had been adopted as part of the LSC Bylaws.
- c. EXERCISE OF POWERS AND DECISIONS - Except for authority and power granted to the Chairman or the Presiding Officer, the exercise of the authority and powers of the Administrative Review Board 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 regular membership of the Administrative Review Board. The views of any dissenters shall be included in the record of the proceeding if requested by the dissenters. The exercise of the Administrative Review Board's authority and power shall lie solely in its discretion and the interests of justice and the sport of swimming. However, the Administrative Review Board shall exercise its power in response to a timely Protest filed with it, subject, in appropriate circumstances, to the power and discretion of the Chairman or Presiding Officer to dismiss a Protest with permission to refile for a stated period. In connection with any preliminary investigation, the Chairman or Presiding Officer may offer the services of a Administrative Review Board member to act as a mediator or similar positions under other alternative dispute resolution mechanisms.

- d. **TIMELINESS OF PROTEST** - The Administrative Review Board need not exercise its jurisdiction with respect to a Protest the subject matter of which occurred, or concerns or is founded on events which occurred, more than ninety (90) days prior to the date the Protest is received. A determination not to exercise its jurisdiction as a result of the untimeliness of a Protest may be the subject of a request for rehearing and, thereafter, appeal to the National Board of Review pursuant to Section 9.
- e. **FILING FEES** - The Board of Directors or the House of Delegates may impose a schedule of generally applicable fees to be collected at the time a Protest, Request for a Rehearing or Request for Formal Hearing following an Emergency Hearing is filed with the Administrative Review Board. If, on its own initiative or upon written request, the Administrative Review Board determines it to be in the interest of justice and the sport of swimming, the filing fee may be waived on a case-by-case basis.
- f. **POWER OF BOARD TO DEVISE REMEDIES AND IMPOSE PENALTIES** -
 - i. **Remedies and Penalties** - The Administrative Review Board, after conducting such hearings as it may determine to be necessary or helpful, may, among other remedies:
 - 1. dismiss the Protest with or without permission to refile;
 - 2. censure or fine;
 - 3. establish a period of probation;
 - 4. prohibit or mandate future actions, inaction or conduct;
 - 5. determine the results of, or require a rerun of, any election held by MWS or any constituent element thereof;
 - 6. vacate, modify, sustain, reverse, remand or stay any decision or order of a smaller panel of the Administrative Review Board, the House of Delegates, the Board of Directors, any officer, division or committee, coordinator or official of MWS;
 - 7. interpret any provision of the AQUA rules and regulations to the extent not pre-empted by AQUA, the USA Swimming Code (except for Part One), the USA Swimming Code of Ethics, these Bylaws, other policies, rules, regulations and procedures of USA Swimming or MWS, the Amateur Sports Act of 1978, a federal law, and other applicable laws, rules and regulations and adjudicate alleged inconsistencies and claims of supremacy and invalidity;
 - 8. deny, grant, suspend or restore the eligibility or right to compete of an Athlete Member of MWS and USA Swimming;
 - 9. deny, grant, suspend or restore membership in MWS and USA Swimming for a definite or indefinite period of time, with or without terms of probation, or expel any Group Member or Individual Member of MWS and USA Swimming, including any administrator, athlete, coach, trainer, manager, meet director, official, officer, Board

Member, House of Delegates representative of a Group Member, coordinator or chairman or member of any committee or sub-committee;

10. prohibit for a definite or indefinite period of time the participation by a non-member volunteer or other person in any capacity whatsoever in the affairs of USA Swimming, MWS, its Group Members or other LSCs and their Group Members;
 11. assess costs, including any filing fee and attorneys fees and expenses, to the prevailing party or refund any filing fee paid by the prevailing party; and
 12. any combination of any of the foregoing or any other remedies deemed appropriate in the circumstances.
- ii. Preliminary Hearing and Temporary Orders - In appropriate cases, the Administrative Review Board, may make in its discretion temporary orders for the good of the sport of swimming. The temporary order may encompass any remedy or order permissible in a final decision, or may compel the parties to attempt an appropriate form of dispute resolution. These orders may be made effective pending full hearings by the Administrative Review Board or the conclusion of administrative or judicial proceedings of other bodies addressing the same or similar issues or on other terms as determined by the Administrative Review Board. Temporary orders may not be separately appealed prior to the decision being issued in the proceeding unless the Chairman or the Chairman of the National Board of Review in their discretion grant permission to an aggrieved party to appeal the temporary orders prior to the final Administrative Review Board decision in the matter.
 - iii. Grounds (Reasons) for Imposition - The Administrative Review Board may fashion remedies and orders and impose penalties with respect to any Group or Individual Member or non-member volunteer of MWS or of a Group Member who has violated any of the regulations, rules, policies or procedures of MWS, or who is found by the Administrative Review Board to have committed actions which would be the basis for a conviction, or who has acted in a manner which has brought, or may bring, into disrepute MWS, USA Swimming or the sport of swimming.
 - iv. Power to Impose Conditional Remedies and Penalties, Etc. - The Administrative Review Board may stay its decision, in whole or in part, subject to specified conditions, with the decision taking effect automatically if such conditions occur.

5. **HEARINGS AND REHEARINGS GENERALLY** -

a. HEARINGS -

- i. Hearings Conducted by Chairman or Presiding Officer - Hearings of the Administrative Review Board shall be conducted by the Chairman or a Presiding Officer designated by the Chairman.
- ii. Hearing by Panel - The Administrative Review Board may, in the discretion of the Chairman, conduct hearings either before the full Administrative Review Board or before panels of its members, provided that in any event each panel shall consist of at least three (3) members. A panel shall have all of the powers of the Administrative Review Board solely with respect to matter(s) assigned to it by the Chairman.
- iii. Quorum of Panel - At least three (3) members of a designated panel including athlete member(s) (or of the full Administrative Review Board) must be present at any initial hearing before the panel and the full regular membership must be present at any rehearing.
- iv. Permissible Hearing Formats - A hearing before the Administrative Review Board may be conducted through the receipt of the procedural articles and other written statements or a hearing at which the parties may appear in person or by means of communications equipment described in

Section 3.f and testimony may be taken and other forms of pertinent information presented in addition to oral argument by the parties or their counsel, as determined by the Chairman or Presiding Officer. In the discretion of the Chairman or the Presiding Officer, the hearing may be conducted in part through written means and in part by testimony and oral argument.

- v. Right to Counsel - The Protestor, the Respondent and any other person participating in a hearing conducted by the Administrative Review Board shall be entitled to be represented by counsel of their choice at their own expense.
- vi. Rules of Evidence - Judicial rules regarding admissibility of evidence shall not apply to the Administrative Review Board. Thus, hearsay, letters, affidavits, news media articles and reports, etc., as well as direct testimony taken from witnesses present at a hearing, are all admissible to the extent the Presiding Officer is satisfied as to the relevance and non-repetitive nature of the evidence. Similarly, claims of privilege (other than attorney-client and privileges that under applicable Federal and state laws the Administrative Review Board is required to recognize) shall not be entertained by the Administrative Review Board, except in extraordinary circumstances. Proper weight shall be given to each type of evidence considering the source and other common-sense factors.

b. REHEARINGS -

- i. Circumstances Permitting; Rehearing Body - At the request of the Protestor, the Respondent or any other interested party, any matter which was decided by a panel of less than seven (7) members may be reheard by the full Administrative Review Board (or, if the Administrative Review Board is larger than seven (7) members, by a panel of at least seven (7) members designated by the Chairman in his discretion). Members of the initial hearing panel may be members of the rehearing panel.
- ii. Right to a Rehearing; Discretion of Chairman - A rehearing shall be granted as a matter of right in instances in which the original panel consisted of less than seven members and the decision was not unanimous and at the discretion of the Chairman in all other instances.
- iii. Time within which a Rehearing may be Requested - The Protestor, each Respondent or other party may request, within ten (10) Business Days of the date of receipt of the initial written decision, that the decision of a Administrative Review Board panel be reheard.
- iv. Failure to Request a Rehearing - A person may not appeal pursuant to Section 9 a decision of a panel of less than seven members without first making a timely request for a rehearing.
- v. Decision of Chairman on Request; Notice of Rehearing -
 - 1. Discretionary Rehearings - With respect to requests for a rehearing that are discretionary, the Chairman, in the same manner in which decisions are rendered, shall either grant or deny the request within ten (10) Business Days of the receipt of the request.
 - 2. Non-Discretionary Rehearings - With respect to requests for a rehearing that are not discretionary, within ten (10) Business Days of the receipt of the request, the Chairman shall schedule a rehearing.
 - 3. Rehearing Notice; Effect of Inaction - In either case, the Chairman shall notify all parties to the initial hearing of the rehearing, its time and date and the method by which the rehearing will be conducted. If the Chairman does not take action within ten (10) Business Days, the decision of the panel shall be considered final and any of the parties may appeal the decision in accordance with Section 9.
- vi. Fresh Start Hearing or On the Record Rehearing - The rehearing panel at the discretion of the

Chairman or the Presiding Officer may conduct an entirely new hearing or may make its decision based on the record created by the initial panel supplemented by whatever written memoranda or oral argument may be requested by the Chairman or the Presiding Officer. The record shall include the Protest, the Notice of Charges, the Answer, the Rebuttal, any temporary orders or partial decisions made and the Notice of Decision, together with any additional memoranda and written evidence filed by the parties. To the extent applicable, the procedures for a formal hearing shall apply to a rehearing. See Sections 5.a and 6.a.v.

- c. **CLOSED HEARINGS** - Any hearing, or a part thereof, shall be closed to everyone except members of the Administrative Review Board, the Presiding Officer, an attorney advising the Presiding Officer, the Protestor, the Respondent, any other party, their counsel and any witnesses at the request of any of the parties and may be closed at the discretion of the Chairman or the Presiding Officer as being in the best interests of justice and the sport of swimming. If a hearing is closed, the Administrative Review Board may in its discretion direct the participants to keep the proceedings and the decision confidential and all or parts of the record of the hearing to be kept confidential by MWS and USA Swimming.
 - d. **EXTENSIONS OF TIME** - The general rule regarding extensions of time within which any act is required to be taken appears in Section 3.k.
 - e. **ACCELERATED HEARING SCHEDULE** - With the agreement of all parties to a hearing, the Chairman, or the Presiding Officer for the hearing, may order an accelerated hearing schedule in the interest of justice and the sport of swimming.
6. **HEARING PROCEDURES** - The procedures to be followed in connection with all hearings shall be as follows:
- a. **FORMAL HEARING** -
 - i. **Protest** - The Protestor shall submit to the Chairman of the Administrative Review Board (if submitted to the General Chairman the statement is not defective, but the allowable period of time for the Notice shall not commence until the statement is received by the Chairman) a written statement setting forth a description of the action, inaction or conduct that is believed to have been improper or incorrect, and the name of the person or group believed to have acted improperly or the circumstances believed to require answers, explanation or clarification. This written statement becomes the Protest under Section 2.c. The Protest shall be accompanied by any filing fee due under Section 4.e or by an application for waiver of the fee.
 - ii. **Notice** - Each Respondent shall be given a written notice of the Protest. This written notice becomes the Notice under Section 2.c. The Notice shall be sent to each Respondent's last known address (determined in accordance with the provisions of Section 10.b) by certified or express mail, return receipt requested, by Federal Express, signature required, or by personal service. If the Respondent is MWS or an officer, Board Member, committee or sub-committee chairman or coordinator or an official, the Notice shall be also given to the General Chairman, the Administrative Vice-Chairman and the Secretary at MWS's office. The Notice shall be given as soon as practical following the conclusion of any preliminary investigation made by or on behalf of the Administrative Review Board, but in no event later than fourteen (14) Business Days (twenty (20) Business Days if advice is sought under Section 3.l.i) after the receipt of the Protest by the Chairman. The form of Notice shall include:
 - 1. a statement in reasonable detail of the charges against each Respondent, or of the circumstances that are believed to require answers, explanation or clarification. A copy of the Protest received by the Administrative Review Board, if any, shall be attached to the Notice;
 - 2. a statement that the Respondent has the right to have counsel of his own choice to represent him, at his own expense, at any hearing;

3. a description of the type of hearing to be held. In the case of an in-person hearing, the Notice shall request each Respondent to appear before the Administrative Review Board with counsel and witnesses, if any;
 4. a date, time and location at which the hearing will be held. The date of the hearing shall be not less than thirty (30) days nor more than ninety (90) days after the date of transmission of the Notice;
 5. a request that each Respondent answer in writing all of the charges set forth in the Notice. The Notice shall state that this answer is to be delivered at least ten (10) Business Days prior to the date of the hearing, to the Presiding Officer designated in the Notice, at the specified address, with a copy to the Protestor and the Protestor's counsel, if any, and anyone else specified in the Notice at the addresses designated in the Notice with delivery in accordance with Section 10.b; and
 6. statement of the right of appellate review (including the right, if any, to a rehearing) in the event the decision is rendered against the Respondent.
- iii. Answer by Respondent - Each Respondent's response to the Notice and Protest shall be in writing and delivered to the Presiding Officer designated in the Notice, at least ten (10) Business Days prior to the date of the hearing, with a copy to the Protestor and his counsel and anyone else specified in the Notice at the addresses designated in the Notice. This written statement becomes the Answer under Section 2.a. The Answer shall be delivered in accordance with Section 10.b.
 - iv. Rebuttal by Protestor - The Protestor may, but is not required to, offer a rebuttal to the Respondent's Answer. Any rebuttal shall be in writing and delivered to the Presiding Officer designated in the Notice, at least five (5) Business Days prior to the date of the hearing, with copies to each Respondent and his counsel at the addresses specified in the Answer and to anyone else specified in the Notice at the addresses designated in the Notice. This written statement becomes the Rebuttal under Section 2.g. The Rebuttal shall be delivered in accordance with Section 10.b.
 - v. Conduct of Hearing -
 1. Generally - Hearings shall be conducted in an orderly fashion, but without regard for the formalities of traditional court room procedures. The hearing shall be conducted in a manner conducive to the establishment of the truth and the interests of fairness, justice and the sport of swimming. The Presiding Officer is responsible for keeping the parties and their counsel, if any, focused on the issues at hand and the necessary elements of proof and for enforcing the ordinal rule that no one may speak who has not been recognized by the Presiding Officer. For hearings conducted other than entirely through the receipt of written statements, the Administrative Review Board shall cause a recording or transcription to be made of the hearing. No record of the deliberations of the Administrative Review Board need be kept and, if kept, shall not be available to anyone other than the members of the Administrative Review Board, the Presiding Officer and counsel to the Administrative Review Board.
 2. Absence of a Party - The hearing may proceed in the absence of any party who fails to be available at the appointed time and judgment shall not be reached merely because of that person's absence. If the Presiding Officer determines that in the interests of justice and the sport of swimming, the hearing cannot proceed without the absent party, the Presiding Officer may adjourn the hearing and reschedule it for such time as the absent party can be present. Any subsequent absence may be taken into account by the Administrative Review Board in reaching its decision.
 3. Sequence - The hearing shall be opened by the recording of the place, time and date of

the hearing and the presence of the members of the Administrative Review Board, the parties, counsel, if any, and any other witnesses or observers. Each party (Protestor first, Respondent second) may then present a brief opening statement setting forth the party's view of the issues in dispute, the relief sought and what they hope to prove by the presentation of evidence. The Protestor's claims, evidence and witnesses shall be presented. The Respondent's defenses, claims, evidence and witnesses shall then be presented. In the discretion of the Presiding Officer, the Protestor may then be allowed to rebut any testimony or evidence presented by the Respondent after the Respondent's initial presentation. In the discretion of the Presiding Officer, the Respondent may be permitted to rebut any testimony or evidence presented by the Protestor during the Protestor's rebuttal presentation. Finally, each party (in the same order) shall be entitled to make a brief summation of that party's case.

4. Rules of Evidence; Witnesses' Testimony - The rules of evidence governing the hearing are set forth in Section 5.a.vi. Each witness may present testimony initially either in the form of questions and answers between the witness and counsel or in uninterrupted narrative. The Presiding Officer and the members of the Administrative Review Board may question any person at any time during the hearing. Thus, for example, in an exercise of discretion, the Presiding Officer could call a witness who has not yet been called or whom no party intended to call and propound questions to, or elicit narrative testimony from, that witness. Witnesses shall be subject to cross examination by the other party and to questioning by the Presiding Officer and members of the Administrative Review Board. All parties will be expected to be available for questioning by the Administrative Review Board, whether or not they may have given other testimony at the hearing.
5. Variance of Procedures - The Presiding Officer shall have wide discretion to vary these procedures in the interests of justice, the sport of swimming and efficiency, but in doing so shall afford all parties a full and substantially equal opportunity to present any material or relevant proofs. A hearing may be adjourned by the Presiding Officer at the request of a party or on the Presiding Officer's initiative where an adjournment will serve the interests of fairness, justice and the sport of swimming. If a hearing is adjourned, the continuance shall be scheduled for any early date of mutual convenience, but in the discretion of the Presiding Officer. Justice and the sport of swimming ordinarily will be best served by an expeditious resumption and conclusion to the hearing.
- vi. Decision of Administrative Review Board - The decision of the Administrative Review Board may be rendered at the time of the hearing and, if not so rendered, as soon as possible thereafter and in no event more than ten (10) Business Days after the conclusion of the hearing. The decision shall include findings of facts and a statement of remedies ordered or penalties imposed, if any, and a statement setting forth the rights of the parties to appeal the decision. The decision shall be in writing, or in case of a decision rendered at the hearing, reduced to writing promptly, and delivered to the Protestor, each Respondent, their respective counsel, any other party to the proceeding, the General Chairman and the Secretary of MWS.

b. EMERGENCY HEARING -

- i. Reasons for Emergency Hearing - When compliance with the formal hearing procedures would be likely not to produce a sufficiently early decision to provide justice to the affected parties or to be in the best interest of the sport of swimming, the Administrative Review Board is authorized to summarily hear and decide any matter relating to a scheduled competition or other matter of similar urgency.
- ii. Notice of Emergency Hearing - Each Respondent shall be given such notice of the hearing as time and circumstances may reasonably dictate. The notice may be oral or in writing and shall substantially comply with the notice requirements set forth in Section 2.c insofar as the emergent

nature of the issue permits.

- iii. **Conduct of Emergency Hearing** - The hearing may be conducted at any location likely to contribute to expeditious resolution of the Protest, including the site of a swimming competition, but in any event under such circumstances so as to fairly protect the right of procedural due process of the Respondent. All or some of the participants in the hearing may participate by telephone conference equipment. If at least three regular or alternate members of the Administrative Review Board are not available due to time constraints, the Chairman, the Vice-chairman or the General Chairman is authorized to appoint one or more Individual Members to serve as the Administrative Review Board solely for the purpose of conducting this emergency hearing. The hearing shall substantially comply with the hearing procedures set forth in Section 6.a.v insofar as the emergent nature of the hearing permits.
 - iv. **Decision of Administrative Review Board** - The decision of the Administrative Review Board shall be rendered at the time of the hearing or as soon as possible thereafter in keeping with the emergent circumstances. The decision shall include findings of facts and a statement of remedies ordered, if any, and a statement of the right to request a subsequent formal hearing. The decision shall be in writing, or in case of a decision rendered orally at the hearing, reduced to writing within ten (10) Business Days thereafter and delivered to the Protestor, the Respondent, their counsel, any other parties to the proceeding, the Chairman, the General Chairman and the Secretary of MWS, the Chairman of the National Board of Review and the General Counsel of USA Swimming in accordance with Section 10.b.
 - v. **to a Subsequent Formal Hearing** - If either the Protestor or the Respondent shall deliver to the Chairman a written request for a further hearing within ten (10) Business Days of the date of receipt of the written decision resulting from the emergency hearing, a formal hearing shall be held as a new proceeding in accordance with Section 6.a, as though the emergency hearing had not taken place. Failure to make this request in a timely manner shall preclude the aggrieved party from making an appeal as provided in Section 9.
- c. **STAY OF DECISION PENDING APPEAL** - The Administrative Review Board shall have the authority and discretion, but not the duty, to stay its decision, in whole or in part, subject to specified conditions, during the time allowed to demand a further hearing after an emergency hearing, a rehearing or to appeal as provided in Section 9, with the decision going into effect automatically if those conditions occur or if no demand or appeal is filed during the allowable period or at such time as a perfected appeal is terminated without the decision being modified by the appellate authority.
 - d. **EXTENSIONS OF TIME** - The general rule regarding extensions of time within which any act is required to be taken appears in Section 3.k. Nevertheless, the time within which the Notice required by Section 2.c must be transmitted may not be extended without the consent of the Protestor or the USA Swimming General Counsel.
- 7. **EQUALITY OF ADMINISTRATIVE REVIEW BOARD DECISIONS** - Except as otherwise provided with regard to rehearings, appeals and emergency hearings, the decision of the Administrative Review Board shall be final in all cases.
 - 8. **FULL FAITH AND CREDIT TO ADMINISTRATIVE REVIEW BOARD DECISIONS** - Final decisions of the Administrative Review Board of another Local Swimming Committee or the National Board of Review shall, where relevant and necessary, be recognized and fully enforced by MWS. Those final decisions may not be attacked or reopened in any proceeding before the MWS Administrative Review Board other than one seeking enforcement of that decision.
 - 9. **APPEAL FROM ADMINISTRATIVE REVIEW BOARD DECISIONS** - Except to the extent that any appeal is precluded by Sections 5.b.iv or 6.b.v, any person, including the Protestor and the Respondent, having an actual, direct interest in any matter decided by the Administrative Review Board under this Document may appeal the decision to the National Board of Review. An appeal must be taken within thirty (30) Business Days from the date

of the written notice of the decision of the Administrative Review Board. The appeal to the National Board of Review must be in writing, timely filed with the USA Swimming Executive Director and accompanied by the appellate filing fee established by USA Swimming. Upon timely request to the Chairman of the National Board of Review and upon a showing of good cause, the time for appeal from the decision of the Administrative Review Board may be extended.

10. **NOTICE TO HEARING PARTICIPANTS, TRANSMISSION OF DOCUMENTS AND DETERMINATIONS OF TIMELINESS -**

a. NOTICE TO HEARING PARTICIPANTS WHO ARE MEMBERS OF MWS -

- i. MWS Members Generally - In each case, where notices or other hearing-related documents are to be delivered to a member of MWS, it shall be sufficient to deliver the notice or other document to the member's last known address.
- ii. Minors - In the case of notices directed to MWS members less than eighteen (18) years of age on the date of the alleged infraction (determined by reference to the member's latest registration application), a second copy shall be sent by registered mail with delivery restricted to the child's parent or guardian at the same address or such other address as can reasonably be ascertained.

b. METHODS OF TRANSMISSION OF HEARING RELATED DOCUMENTS - With the exception of the Notice (see Sections 2.c and 6.b.ii), all documents shall be transmitted to each of the parties, their respective counsel, if any, the Presiding Officer and anyone else specified in the Notice. Documents shall be delivered to the persons specified at the addresses specified in the Notice or later documents or as determined in accordance with Section 10. Documents may be delivered by any of the following methods of service: by personal service, by certified or express mail, return receipt requested, by Federal Express, signature required, by electronic mail or facsimile transmission with receipt of the transmission confirmed orally or by other methods of transmission permitted by this paragraph.