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## A Proposal for the United States Olympic Committee to Incorporate Formal Mediation within its Grievance Process

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# A PROPOSAL FOR THE UNITED STATES OLYMPIC COMMITTEE TO INCORPORATE FORMAL MEDIATION WITHIN ITS GRIEVANCE PROCESS

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## I. INTRODUCTION

Collaborative approaches to conflict resolution are essential for athletes and other members of the United States Olympic Committee (USOC) who depend on one another for success. Within the Olympic Movement, disputes frequently arise over issues such as team selection, the rights of athletes to participate in particular events, coaching, governance of Olympic sports, compliance with and interpretation of various rules, and access to often-limited resources. The USOC's dispute resolution process should be capable of resolving disputes efficiently, cost-effectively, and in a manner that strengthens relationships among its constituents.

This paper proposes that mediation be an essential step in the USOC grievance process when dealing with complaints involving governance of amateur sports in the United States and with issues concerning athletes' opportunities and rights to participate in Olympic competition.<sup>1</sup>

Section II of this paper provides a background of current dispute resolution procedures within the USOC. Section III explains how mediation would fit within the framework of and enhance the USOC grievance process. Section IV proposes a specific plan for the USOC to include external

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1. See generally U.S. OLYMPIC COMM., BYLAWS OF THE U.S. OLYMPIC COMM. art. I, § 1.3(P) (2003), available at <http://www.usolympicteam.com/Bylaws103103.pdf>. Olympic competition refers to "protected competition" under the USOC Bylaws, which "means any amateur athletic competition between any athlete or athletes officially designated by the appropriate [National Governing Body] or [Paralympic Sports Organization] as representing the United States, either individually or as part of a team . . . '[P]rotected competition' shall also include any domestic amateur athletic competition or event organized and conducted by a NGB or PSO in its selection procedure and publicly announced in advance as a competition or event directly qualifying each successful competitor therein as an athlete representing the United States in a protected competition as defined in the immediately preceding sentence of this Subsection." *Id.*

mediation as part of its normal procedures. Section V summarizes how mediation furthers the values and goals of the Olympic Movement in the United States. It promotes a healthy environment, sets a good example for observers, fans, and supporters of Olympic endeavors, and creates an environment in which athletes and coaches maximize athletic potential and success in Olympic competition. Strong collaboration internally will lead to successful competition externally, and mediation provides the collaborative means to accomplish such goals.

## II. DISPUTE RESOLUTION WITHIN THE USOC

The two types of complaints at issue in this paper are those arising from disputes under Article VIII, Complaints Against a NGB [National Governing Body] or PSO [Paralympic Sports Organization], and Article IX, Athletes' Rights, of the USOC Bylaws. (It should be noted that illegal doping is governed by a separate and independent agency and while it may affect an athlete's eligibility or ability to compete, it is not covered within Article VIII or Article IX and thus, will not be addressed in this analysis.<sup>2</sup>)

### *A. Article VIII – Complaints Against a NGB*

Article VIII complaints allege deficiencies in operation and governance by a "national governing body," or NGB.<sup>3</sup> Each Olympic sport has its own NGB, which is officially recognized by the USOC. Each NGB serves as the coordinating body for the sport's amateur athletic activity in the U.S. and is given authority to recommend individuals and teams to represent the U.S. in the Olympic Games, Paralympic Games, Pan-American Games, and other international athletic competition.<sup>4</sup>

Prior to filing an Article VIII grievance with the USOC, a complainant must first exhaust all remedies within the NGB for correcting alleged deficiencies.<sup>5</sup> Once a formal complaint is filed, the USOC appoints a hearing panel to make a determination as to the alleged wrongdoing.<sup>6</sup> At the request of a party, the hearing panel may adjourn the proceeding to allow for

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2. *Id.* art. IX, § 9.4. Article IX does not govern exclusion of an athlete for offenses adjudicated by the United States Anti-Doping Agency (USADA), an independent agency whose decisions may affect the participation of athletes in protected competition. *Id.*

3. *See generally id.* art. VIII. This also includes complaints against a Paralympic Sports Organization (PSO). *Id.*

4. Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. § 220523(a)(3)-(7) (2000 & Supp. II 2002).

5. *Id.* § 220527(b)(1); U.S. OLYMPIC COMM., *supra* note 1, art. VIII, § 8.1(E)(1).

6. 36 U.S.C. § 220527(c); U.S. OLYMPIC COMM., *supra* note 1, art. VIII, § 8.1(B).

mediation.<sup>7</sup> If there is no mediation or no mediated settlement, the panel then has three options: 1) dismiss the complaint, 2) place the governing body on probation, or 3) revoke USOC recognition of the NGB.<sup>8</sup> There is no right to appeal within the internal structure of the USOC; however, any party aggrieved by the panel's decision may file a demand for arbitration before the American Arbitration Association (AAA),<sup>9</sup> which will render a final and binding decision.<sup>10</sup>

### *B. Article IX Complaints – Athletes' Rights*

Article IX complaints may be filed against a NGB for allegedly interfering with an athlete's right or opportunity to participate in the Olympic Games, Paralympic Games, Pan American Games, a World Championship competition, or other competition that is protected under the Olympic Bylaws.<sup>11</sup> Article IX rights apply not only to athletes, but also to "any coach, trainer, manager, administrator, or other official seeking to participate in [Olympic competition]."<sup>12</sup>

Each NGB is required to have its own internal procedures for the "prompt and equitable resolution" of grievances,<sup>13</sup> and must provide fair notice and an opportunity for a hearing to anyone prior to declaring them ineligible for competition or participation.<sup>14</sup> Many NGBs use only an administrative hearing process to resolve disputes, although some (such as U.S. Rowing) offer internal mediation through the NGB executive director prior to a hearing.<sup>15</sup> An athlete (or other individual) claiming to have been denied the opportunity to participate in protected competition and who is dissatisfied with a NGB's handling of the allegation may file an Article IX complaint with the chief executive officer (CEO) of the USOC.<sup>16</sup> Upon notification, the CEO

7. U.S. OLYMPIC COMM., *supra* note 1, art. VIII, § 8.1(C).

8. 36 U.S.C. § 220527(d)(2); U.S. OLYMPIC COMM., *supra* note 1, art. VIII, § 8.4(C)(1)-(2).

9. 36 U.S.C. § 220529(a); U.S. OLYMPIC COMM., *supra* note 1, art. VIII, § 8.6(A).

10. 36 U.S.C. § 220529(b); U.S. OLYMPIC COMM., *supra* note 1, art. VIII, § 8.6(D).

11. See generally U.S. OLYMPIC COMM., *supra* note 1, art. IX. See also *supra* note 1 for definition of "protected competition."

12. *Id.* art. IX, §9.7. "The rights granted to athletes under Sections 9.1 through 9.3 of the Bylaws shall equally apply to any coach, trainer, manager, administrator, or other official seeking to participate in the conduct of any of the international amateur athletic competitions designated, or referred to, in Section 9.1." *Id.*

13. 36 U.S.C. § 220522(a)(13).

14. *Id.* § 220522(a)(8).

15. U.S. ROWING, BYLAWS OF U.S. ROWING § 62 (2003), available at [http://www.usrowing.org/uploads/docs/bylaws0703\\_3234IV.pdf](http://www.usrowing.org/uploads/docs/bylaws0703_3234IV.pdf).

16. U.S. OLYMPIC COMM., *supra* note 1, art. IX, § 9.2.

“shall cause an investigation to be made and steps to be taken to settle the controversy without delay.”<sup>17</sup> The CEO may attempt mediation or any other method of resolution. If the CEO’s resolution is unsatisfactory, the athlete may submit the matter to binding arbitration with the AAA.<sup>18</sup> It should be noted that exhaustion of remedies in Article IX complaints are not required and an athlete may pursue the claim directly with the AAA without first waiting for resolution through the NGB or the CEO.<sup>19</sup>

Olympic disputes not resolved through internal proceedings are submitted to arbitration. Both athletes and governing bodies are required to submit unresolved controversies for arbitration<sup>20</sup> and agree to be bound by an arbitrator’s award.<sup>21</sup> The Ted Stevens Olympic and Amateur Sports Act and USOC Bylaws name the AAA as the entity that hears and renders final and binding decisions regarding disputes over the recognition of a national governing body (Article XIII complaints)<sup>22</sup> as well as selection and athlete eligibility disputes (Article IX complaints).<sup>23</sup>

### *C. Ombudsman*

One other important element to the U.S. Olympic dispute resolution process was added in 1998 when Congress passed the Ted Stevens Olympic and Amateur Sports Act,<sup>24</sup> which amended the Amateur Sports Act of 1978.<sup>25</sup> Among the purposes of this amendment was to strengthen provisions protecting the right of athletes to compete and to improve the U.S. Olympic Committee’s ability to resolve disputes.<sup>26</sup> In so doing, Congress required the USOC to hire an Athlete Ombudsman to provide free advice to athletes about rights to compete under Olympic rules, including the Ted Stevens Act, the

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17. *Id.*

18. *Id.*

19. *Id.*

20. See generally 36 U.S.C. § 220522(a)(4). NGBs are required “to submit to binding arbitration in any controversy involving A) its recognition as an [NGB] . . . and B) the opportunity of any amateur athlete, coach trainer, manager, administrator or official to participate in amateur athletic competition.” *Id.*

21. U.S. OLYMPIC COMM., *supra* note 1, art. IX, § 9.2.

22. 36 U.S.C. § 220522(a)(4)(A); U.S. OLYMPIC COMM., *supra* note 1, art. VIII, § 8.6(A).

23. 36 U.S.C. § 220522(a)(4)(B); U.S. OLYMPIC COMM., *supra* note 1, art. IX, § 9.2.

24. 36 U.S.C. §§ 220501-220529.

25. Act of Nov. 8 1978, ch. 92, 92 Stat. 3045, 3058, *repealed by* Ted Stevens Amateur Sports Act of 1998, 36 U.S.C. §§ 220502-220529 (2000 & Supp. II 2002).

26. S. REP. NO. 105-325 at 6 (1998), *available at* <http://thomas.loc.gov/cgi-bin/bdquery/z?d105:SN02119:@@@D&summ2=m&>.

Bylaws of the USOC, and each NGB's internal regulations.<sup>27</sup>

In addition to serving as an advisor, the Athlete Ombudsman also serves an important function of informally mediating disputes.<sup>28</sup> The addition of the ombudsman position has been instrumental in supporting athletes, coaches, trainers, and governing bodies, in promoting communication and collaboration, and in resolving disputes prior to escalation. Early intervention often prevents the need for formal complaints, which in turn can save time, money, energy, and divisiveness. The next sections of this paper propose the needed expansion of early intervention and mediation within the USOC.

### III. USE AND BENEFITS OF MEDIATION IN RESPONSE TO CONFLICT WITHIN THE OLYMPIC STRUCTURE

Four different types of approaches typically characterize an individual's or an organization's response to conflict: avoidance, power plays or violence, higher authority adjudication, and collaboration.<sup>29</sup>

Avoidance is simply choosing to ignore a situation.

Power plays and violence include political or physical force in order to change another's behavior.<sup>30</sup>

Higher authority adjudication occurs when a party outside of the dispute imposes a determination of right or wrong, and it frequently includes internal administrative decisions, internal or external arbitration, and/or litigation through a court of law.

Collaboration includes: self-help (where parties take individual initiative to change their own behavior to resolve differences), negotiation (agreement through discussion), and mediation.<sup>31</sup> "Mediation is an extension or elaboration of the negotiation process that involves the intervention of an acceptable third party who has limited (or no) authoritative decision-making power . . . [and who] assists the principal parties to voluntarily reach a mutually acceptable settlement of the issues in dispute."<sup>32</sup>

Each of the above four approaches has advantages and disadvantages and

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27. *Id.*; See generally 36 U.S.C. § 220509(b). In an effort to facilitate the resolution of disputes and to advise athletes related to disputes, Congress required the USOC to hire an ombudsman for athletes. *Id.*

28. *Id.* § 220509(b)(1)(B).

29. KARL A. SLAIKEU & RALPH H. HASSON, CONTROLLING THE COSTS OF CONFLICT 23-27 (1998).

30. *Id.* at 25.

31. *Id.* at 26.

32. CHRISTOPHER W. MOORE, THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT 8 (3d ed. 2003).

may be appropriate or necessary in certain situations; however, only the collaborative choice of mediation offers significant benefits in the Olympic setting.

For instance, avoidance can provide a cooling off period, but can perpetuate tension between disputants and detract focus and energy from athletes and coaches. Moreover, disputes require swift resolution because most athletes have a limited window of time and opportunity with respect to their training, which is aimed at peak performance for various events, including the four-year Olympic cycle and its qualifying events.

Power plays and violence should be avoided if at all possible. They are used in extreme cases to force a certain behavior or result. The 1980 Olympic Games serve as a painful reminder of this possibility. At that time, President Carter demanded that the Soviets cease occupation of Afghanistan and threatened to boycott the Olympics if the Soviets did not comply. The Soviets ignored President Carter's demand, and after great controversy within the U.S. and the USOC, U.S. athletes were prevented from participating in the Games.<sup>33</sup>

Higher authority adjudication may be helpful and/or necessary in some cases, as discussed below, but often does not elicit creative solutions that appropriately support the needs and goals of the USOC and its athletes.

The collaborative approach of mediation, however, is most efficient and effective, and should be encouraged for the following reasons:

1) Mediation expedites resolution and saves money. Early intervention can prevent a conflict from reaching a critical stage. Once conflict reaches the juncture where multiple persons become involved to defend positions, the time and money spent becomes significant and irretrievable.<sup>34</sup> For the USOC, those expenditures reduce resources available to support and fund athlete services and to promote the positive influence of the USOC. For athletes and coaches, time and money come at the expense of the focus necessary to train for Olympic competition.

2) Conflict can mar reputations. The USOC relies on sponsors and supporters as its sole base of revenue, and disputes can generate negative publicity and thwart good public relations, which are critical to the USOC. Confidentiality is at the core of the mediation process and thus, minimizes negative publicity. Parties can control the disclosure of information and remain under the radar of public scrutiny while they resolve their differences. On a related point, Olympic athletes unquestionably serve as role models to

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33. RICHARD W. POUND, *INSIDE THE OLYMPICS: A BEHIND-THE-SCENES LOOK AT THE POLITICS, THE SCANDAL AND THE GLORY OF THE GAMES* 96-98 (2004).

34. SLAIKEU & HASSON, *supra* note 29, at 36-37.

young people around the world and vicious protracted public disputes detract from the positive image elite athletes represent. Collaborative resolution, especially mediation, can serve as an excellent example to young athletes and fans.

3) Mediation can repair and foster critical relationships among athletes, coaches, and governing bodies. There are typically four kinds of solutions to any conflict: “[1.] acknowledgement or apology, [2.] restitution or punishment, [3.] planning for future conduct, and [4.] forgiveness.”<sup>35</sup> Mediation can and does achieve any or all of those solutions, unlike other forms of conflict resolution. For instance, avoidance offers none of the above. Power plays and violence may offer acknowledgement, but nothing else. Higher authority resolution methods offer only restitution or punishment.

Mediation, however, takes into consideration the human toll of conflict and fosters healthier communication between disputants. When athletes and coaches are in conflict, and competition is looming, apologies, forgiveness, and a plan for future conduct are likely more important than restitution or punishment. Mediation also allows for mutual satisfaction in the resolution, whereas imposed decisions leave the parties at odds because there is typically a designated winner and loser.

The ability to foster positive outcomes happens through the introduction of a third party mediator who is able bring a new dynamic to two parties who have been unsuccessful in resolving their differences directly.<sup>36</sup> Professional mediators are specifically trained in interpersonal skills, conflict analysis, and problem solving. They have a repertoire of tools for deescalating conflict, identifying interests and issues, mining for relevant information and feelings, creating options that meet the needs of parties, and bringing parties together in order to come to agreement. Through presence, tone, and style, an impartial mediator is able to change the nature of interaction from adversarial to collaborative and open to resolution. Participants experience an atmosphere that is respectful of differences, and one in which each party has a voice. Such an atmosphere encourages communication, allows people the space necessary to share concerns, and transforms destructive fighting into collaborative resolution.

It is important to recognize that mediation is not appropriate in all circumstances and an effective grievance system should include an option for higher authority resolution in addition to collaborative approaches. When mediation does not result in mutual agreement, or the nature of the dispute does not lend itself to facilitated negotiation, resolution through a higher

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35. *Id.* at 42.

36. MOORE, *supra* note 32, at 15.



authority becomes essential. For example, with illegal doping allegations, a hearing and subsequent ruling are necessary for the integrity of sport (e.g., to prevent doping), to deter others from similar behavior, and/or to create a legal or administrative precedent.<sup>37</sup> Thus, within the USOC, formal adjudication may be more appropriate than mediation in cases of illegal conduct, non-compliance with a mediated agreement, or where parties are unwilling to collaborate in good faith.

Mediation and higher authority resolutions fall within a continuum of options and a comprehensive grievance process should consist of the following progression: 1) site-based resolution in which parties take initiative to change their own behavior or work with each other to resolve disputes; 2) internal collaborative support mechanisms such as negotiation and informal mediation through an internal third party (e.g., through an ombudsman); 3) external collaboration where a third party, external to the organization, serves to facilitate a negotiation between parties through mediation; and, 4) external higher authority resolution such as arbitration or litigation when collaboration has either been unsuccessful or is not appropriate.<sup>38</sup> This progression is designed to resolve matters efficiently and at the lowest level possible. It promotes communication, builds relationships of trust and respect, addresses the rooted interests of involved parties, takes into consideration the human dynamics of conflict, and limits the unnecessary expenditure of resources.<sup>39</sup>

Many organizations and businesses have successfully implemented dispute resolution plans that progress from self-help through internal and external collaboration options to higher authority decisions, with an emphasis on early collaborative resolution.<sup>40</sup> For example, Brown and Root, a division of the Halliburton Corporation, reported an eighty percent reduction in outside litigation costs by utilizing internal and external collaboration.<sup>41</sup> Similarly, Motorola, Inc. cut its outside litigation costs by seventy-five percent over a period of six years by requiring negotiation and mediation prior to litigation.<sup>42</sup> In 2000, a working group including the Department of Justice and ten other agencies participated in an effort to promote alternative dispute resolution throughout governmental agencies.<sup>43</sup> In a report to President Clinton that

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37. SLAIKEU & HASSON, *supra* note 29, at 26.

38. See generally SLAIKEU & HASSON, *supra* note 29, at 53-74.

39. MOORE, *supra* note 32, at 3.

40. SLAIKEU & HASSON, *supra* note 29, at 73.

41. John Ford, *Workplace Conflict: Facts and Figures* (July 2000), available at <http://mediate.com/articles/ford1.cfm>. See also SLAIKEU & HASSON, *supra* note 29, at 64.

42. SLAIKEU & HASSON, *supra* note 29, at 15, 49.

43. Memorandum from Attorney General Janet Reno on The Report of the Interagency Alternative Dispute Resolution (ADR) Working Group to President Bill Clinton (Jan. 2001),

evaluated an experimental mediation program within federal agencies, Attorney General Janet Reno indicated that with the adoption of such a program within the United States Postal Service, eighty-one percent of mediated cases were resolved without a formal complaint; the average mediation took four hours; and eighty-eight percent of disputants reported satisfaction with the process.<sup>44</sup> The Postal Service also reported significantly improved communication between managers and employees. In the first full year after implementation of the mediation program, employee complaints dropped twenty-four percent.<sup>45</sup> Implementation of a model with an emphasis on mediation could produce similar outcomes for the USOC.

#### IV. SPECIFIC PROPOSAL TO INCLUDE FORMAL, EXTERNAL MEDIATION AS AN INTEGRAL PART OF THE USOC GRIEVANCE PROCESS

I propose that the USOC adopt and develop an external mediation option as a critical element of its dispute resolution process. By adding external mediation to its existing grievance procedures, the USOC would follow the previously recommended progression of options including self-help, internal collaboration (through the Athlete Ombudsman), external mediation, and arbitration. Specifically, I propose that: 1) the USOC require each NGB to incorporate formal mediation within its dispute resolution procedures, 2) the USOC incorporate formal mediation within its own procedures for resolving Article IX complaints, and 3) the USOC significantly expand its use of mediation in handling Article VIII grievances. Adoption of these recommendations would better support the directives of the Ted Stevens Olympic and Amateur Sports Act for the USOC to “provide swift resolution of conflicts and disputes”<sup>46</sup> of its members, and “protect the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official to participate in amateur athletic competition.”<sup>47</sup>

Currently, the Athlete Ombudsman informally mediates disputes between athletes and NGBs. The Ombudsman is able to facilitate immediate resolution of many disputes, and this first-line resource is critical for early intervention. The Ombudsman also serves a vital role in assisting athletes, coaches, and other participants as they negotiate with one another, or as they consider other options of resolution. This procedure can be improved upon. Providing an additional formal mediation option through a professional mediator, external

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available at <http://mediate.com/articles/reno.cfm>.

44. *Id.*

45. *Id.*

46. 36 U.S.C. § 220503(8).

47. *Id.*

to the USOC, will substantially improve the likelihood of achieving a successful, collaborative, expeditious, and cost-effective outcome.

Formal or external mediation is necessary in situations where the Ombudsman is unable to serve as a neutral party because of affiliation or perceived bias with one or both parties, or if the conflict has progressed to a stage warranting a professional mediator with specific training and experience in dispute analysis, problem solving, and complex conflict resolution. Given the complexities of the Olympic Movement and issues of elite athleticism, it is important for the mediator to also have a strong working knowledge of the Olympic structure, its rules and regulations, and its intricacies. The contexts of disputes within the USOC are unique and familiarity with this environment is critical for successful facilitation to occur.

The formal mediation option should be inserted at several critical stages in the grievance process. Under current USOC Bylaws, complainants pursuing Article VIII concerns are now required to "exhaust all remedies. . . for correcting deficiencies" within the NGB prior to filing a formal complaint with the USOC.<sup>48</sup> Once the formal complaint is filed, a hearing is held. A hearing panel may adjourn, at the request of a party, to allow for mediation. By that stage in the process, however, a conflict has usually reached a point where parties are entrenched in their positions and maintain defensive postures in anticipation of the adversarial nature of a hearing process. Even if mediation is successful at this stage, the time and cost of preparing for and taking part in a hearing has already accrued.

Mediation should be integrated well before this point and at the lowest level possible. For example, it should be incorporated within each NGB's dispute resolution process as a means of resolving complaints of alleged deficiencies. It also should be available, encouraged, or even mandated, once an Article VIII complaint has been filed with the USOC and prior to the hearing. Companies such as Motorola, which cut litigation costs by seventy-five percent, have actually required parties to attempt mediation before pursuing litigation.<sup>49</sup> Similarly, the USOC should consider requiring parties to attempt mediation prior to the stage at which significant costs are incurred. An internal assessment of costs should reveal whether the current major costs occur at the USOC hearing stage or as a result of AAA arbitrations.

Consider for example, an athlete who files an Article VIII grievance against a NGB for repeatedly failing to disseminate and distribute competition rules in a timely manner, which could hinder an athlete's opportunity to be

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48. U.S. OLYMPIC COMM., *supra* note 1, art. VIII, § 8.1(E)(1). *See also* 36 U.S.C. § 220527(b).

49. SLAIKEU & HASSON, *supra* note 29, at 49.

chosen for the Olympic team.<sup>50</sup> Under the current grievance process, the complainant would first attempt to resolve the controversy directly with the NGB. He or she may contact the Ombudsman, but is not required to do so. If the issue is not resolved, the complainant may file an Article VIII grievance with the USOC, at which point a hearing panel would be assembled. The panel can dismiss the complaint, place the NGB on probation until it corrects deficiencies, or revoke the USOC's official recognition of the NGB. The cost of such a resolution increases significantly as more people become involved and as parties prepare to defend their positions.

In the model I am proposing, the athlete would first consult with the Athlete Ombudsman. If the Ombudsman were unable to resolve the matter informally, he or she would then discuss alternatives with the athlete, one of which should be formal external mediation. The attraction of quick resolution, control over the outcome, relatively low cost, and confidentiality will likely persuade both the athlete and the NGB to attempt mediation. The mediator would dedicate time to each party to understand their underlying interests and issues and how collaboration could best occur, and ideally facilitate a mutually agreeable resolution. By facilitating communication between the parties, the mediation might even reveal a method of disseminating competition rules that is quicker and more effective in getting information to athletes in a timely manner and thus, effectuate a constructive outcome for both parties. The limited and adversarial nature of a hearing process typically does not reveal root causes of conflict thereby leaving unresolved issues, nor does it allow for such creative solutions.

Mediated settlements can result in creative solutions, but also can involve consequences. There is often a false perception that mediation has no consequences. Placing a NGB on probation or revoking its USOC recognition, or any other consequence, can be part of a mediated agreement. What sets mediated settlements apart from adjudicated decisions is the parties' ability to design their own appropriate outcomes that address root concerns, and to which all parties agree.

A similar focus on mediation should be implemented when dealing with issues regarding Article IX complaints. Consider an athlete who has been removed, pursuant to a NGB hearing, from an Olympic qualifying event for a conduct violation of engaging in sexual activity with a trainer. The coach may believe that consequences for both parties are in order, yet may want the athlete to have an opportunity to qualify for the Olympic team. The athlete might accept that a violation occurred, but also want the opportunity to compete. The athlete, however, may be unwilling to challenge the NGB's

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50. See generally 36 U.S.C. § 220524(4).

decision if arbitration is the only method of doing so because the athlete may have serious concerns about the cost, the potential publicity, and the likelihood of creating animosity among fellow team members. Mediation would be an ideal alternative. With a strong mediation program, the athlete and coach would contact the Athlete Ombudsman for confidential advice prior to any action being taken by the NGB. The Ombudsman would have the option of working through the matter informally with the disputants or referring it to an external mediator prior to the need for a NGB hearing or arbitration. Through mediation, the coach, the trainer, and the athlete could express their views on what occurred, exchange apologies, and create a plan for future conduct. This plan may include consequences such as restrictions on team participation or funding, but it might allow the athlete to still compete in an Olympic qualifying event. The outcome would remain confidential and remove the need for formal complaints, hearings, and arbitration.

In short, a mediator is able to facilitate a resolution that meets the needs of all parties, minimizes the cost of hearings and arbitrations, and is confidential. Within the USOC, the option to mediate would be most effective if it were available both before and after the NGB hearing, and required prior to arbitration.

Critical aspects of the mediation model are confidentiality and the ability of the parties to maintain control over their own outcomes. Mediation within the USOC should be administered and managed through the Athlete Ombudsman's Office, allowing it to exist outside the normal hierarchy of the USOC thereby enhancing participants' perception of confidentiality and impartiality. Complainants will access the services of the Athlete Ombudsman because of his or her independence, objectivity, and ability to assist in navigating the grievance process justly and proficiently.

There should be no data reporting requirements of the Athlete Ombudsman or the mediator to the USOC, other than generic statistical data that would help track the effectiveness of the model. In situations where particular terms of an agreement involve a party's status with the USOC or affect the operation of the USOC, such terms should be disclosed to the USOC with mutual agreement of the parties. Parties should also have the option to mutually agree to disclose the agreement to a higher authority, such as the USOC or AAA, should noncompliance with the mediated agreement occur and further adjudication becomes necessary. Otherwise, confidentiality should remain an integral part of the mediation process as it allows for people to communicate freely without fear of others' involvement or judgment.

Finally, including an additional option for mediation would minimize the potentially conflicting roles of the Athlete Ombudsman as athlete adviser and mediator, and protect the advisory capacity of that position. The Athlete

Ombudsman could continue to attempt informal mediation, but he or she would have access to additional collaborative opportunities should resolution not transpire. The Ombudsman also would preserve his or her ability to assist parties in assessing costs and risks of various options and help parties understand which option best suits their needs.<sup>51</sup>

## V. CONCLUSION

In order for a dispute resolution program to be successful, it must be linked with the organizational mission.<sup>52</sup> Peace, harmony and respectful dispute resolution are at the heart of the mission of the Olympic Movement. Mediation promotes dignity and respect for people's interests, addresses the root cause of conflict, and allows for resolutions that satisfy the interests of all parties. It is efficient, strengthens relationships of trust and respect, minimizes suffering, and controls unnecessary expenditure of resources.<sup>53</sup> Its values are in keeping with the mission of the USOC and the goals of Olympism.<sup>54</sup>

In an organization where time and money are limited resources, and positive relationships are necessary for athletes to achieve excellence and for the organization to cultivate public support, conflict can be costly. Mediation creates the opportunity for conflict to bring about productive rather than destructive outcomes, and should be an essential part of the USOC grievance process.

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51. SLAIKEU & HASSON, *supra* note 29, at 49.

52. *Id.* at 80.

53. MOORE, *supra* note 32, at 3.

54. See generally INT'L OLYMPIC COMM., THE OLYMPIC CHARTER (2004), available at [http://multimedia.Olympic.org/pdf/en\\_report\\_122.pdf](http://multimedia.Olympic.org/pdf/en_report_122.pdf). "The goal of Olympism is to place sport at the service of harmonious development of man, with a view to promoting of a peaceful society concerned with the preservation of human dignity." *Id.*

