

**AMERICAN ARBITRATION ASSOCIATION**  
**Commercial Arbitration Tribunal**

---

AAA Case No. 01-19-0000-5335

In the Matter of the Arbitration between

██████████ and ██████████, Claimants

and

USA TAEKWONDO, INC., Respondent.

---

**FINAL AWARD**

I, THE UNDERSIGNED ARBITRATOR, having been designated by the American Arbitration Association ("AAA"), and in accordance with the Ted Stevens Olympic and Amateur Sports Act ("ASA") and Section 9 of the United States Olympic Committee ("USOC") Bylaws, having been duly sworn, and having fully considered the Claimants' Section 9 Demand for Arbitration, Respondent's Answer, and their respective briefs, exhibits, witness testimony, and oral arguments during a February 21, 2019 telephonic hearing (at the conclusion of which the parties and their legal counsel agreed they had a full and fair opportunity to be heard and it was closed by the Arbitrator) does hereby, AWARD, as follows:

**INTRODUCTION**

This case presents important and currently unresolved issues regarding the scope of the U.S. Center for SafeSport ("Center")'s exclusive authority over alleged sexual abuse allegations in Olympic sports; a National Governing Body ("NGB")'s authority to impose interim measures to protect the safety of its athletes, including an indefinite suspension of those accused of sexual misconduct pending final disposition of these allegations by the Center or their arbitral or judicial resolution; and the procedural rights of NGB members (e.g., athletes or coaches) accused of sexual misconduct.



as well as by subsequently modifying and retroactively applying its Safe Sport Strategy, Policies & Procedures for the purpose of indefinitely suspending [REDACTED].

USAT<sup>3</sup> asserts that it has valid authority pursuant to the ASA, the Center's SafeSport Code for the U.S. Olympic and Paralympic Movement ("SafeSport Code") and SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement ("SafeSport Practices and Procedures") and its own Safe Sport Strategy, Policies & Procedures to impose justified and appropriate interim measures, including indefinite suspensions on [REDACTED] and [REDACTED], to protect the safety of its current member athletes, which it believes will be threatened by their participation in taekwondo competitions and practices under its auspices. USAT contends that there are no other effective less restrictive means to achieve this valid objective other than the interim indefinite suspensions imposed on [REDACTED] and [REDACTED]. Given the detailed and serious allegations of sexual abuse of [REDACTED] taekwondo athletes by [REDACTED] and [REDACTED] in [REDACTED], USAT Executive Director Steve McNally believes that these interim measures are a necessary and good faith effort to protect its current athletes, which should be upheld.

During the hearing, Mr. McNally as well as [REDACTED] and [REDACTED] testified. The parties' counsel<sup>4</sup> stipulated to the admissibility of their respective exhibits. Sara Pflipsen, Sr. Counsel NGB and Athlete Affairs, United States Olympic Committee, listened to the hearing, but did not participate in it.

### **OPERATIVE DECISION AND AWARD**

On February 24, 2019, the Arbitrator issued the following Operative Decision and Award:

"The Arbitrator has jurisdiction to resolve this dispute and to grant the relief requested by [REDACTED] and [REDACTED].

As will be fully explained in the reasoned Award, pursuant to the Ted Stevens Olympic and Amateur Sports Act ("ASA"), U.S. Center for SafeSport's SafeSport Code for the U.S. Olympic and Paralympic Movement and SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement ("SafeSport

---

<sup>3</sup> It was represented by Stephen A. Hess, Sherman & Howard, LLC, Colorado Springs, Colorado.

<sup>4</sup> The Arbitrator expresses his appreciation for their excellent advocacy and professionalism during this arbitration proceeding.

Practices and Procedures”), and USA Taekwondo’s Bylaws and Safe Sport Strategy, Policies & Procedures, USA Taekwondo, Inc. (USAT) has valid authority to impose appropriate and proportionate interim measures on its members, including but not limited to athletes and coaches, to protect its current members from an imminent threat of harm to their safety or well-being. To comply with the ASA and Section 9 of the USOC Bylaws, USAT’s exercise of this authority to impose an interim suspension on one of its members, which would preclude him or her from the opportunity to participate in a “protected competition” under Section 1.3 (w) of the USOC Bylaws, must fully comply with the U.S. Center for SafeSport’s SafeSport Practices and Procedures (specifically, Part V) and its Supplementary Rules for U.S. Olympic and Paralympic Movement Arbitrations, including, but not limited to, R-40.

USAT’s December 17, 2018 interim suspension of [REDACTED] is vacated because based on the record evidence in this arbitration proceeding it is an inappropriate and disproportionate interim measure that denies him the opportunity to participate in future “protected competitions” (e.g., February 28-March 3, 2019 U.S. Open Taekwondo Championships) as an athlete without just cause in violation of the ASA and Section 9 of the United States Olympic Committee (“USOC”) Bylaws. This determination does not preclude USAT from imposing less restrictive conditions and requirements upon him to protect the safety of its current member athletes and other categories of persons listed in Section V of the SafeSport Practices and Procedures, provided that any such prophylactic measures do not effectively deny him the opportunity to participate in any future “protected competition” as an athlete.

USAT’s January 25, 2019 interim suspension of [REDACTED] is vacated because based on the record evidence in this arbitration proceeding it is an inappropriate and disproportionate interim measure that denies him the opportunity to participate in future “protected competitions” as a coach (e.g., February 28-March 3, 2019 U.S. Open Taekwondo Championships) without just cause in violation of the ASA and Section 9 of the USOC Bylaws. This determination does not preclude USAT from imposing less restrictive conditions and requirements upon him to protect the safety of its current member athletes and other categories of persons listed in Section V of the SafeSport Practices and Procedures, provided that any such prophylactic measures do not effectively deny him the opportunity to participate in any future “protected competition” as a coach.

USAT is ordered to immediately notify the World Taekwondo Federation that the Arbitrator has vacated its December 17, 2018 indefinite suspension of [REDACTED] and its January 25, 2019 indefinite suspension of [REDACTED].

If they are otherwise eligible to participate, USAT is ordered not to deny [REDACTED] or [REDACTED] the opportunity to compete in its 2019 U.S. Open Taekwondo Championships or any other future protected competitions.

USAT is responsible for the costs of the AAA filing fees and the Arbitrator's compensation for this arbitration proceeding.

Each party shall bear its own attorney's fees and costs incurred for this arbitration proceeding.

This Award fully resolves all claims and defenses submitted by the parties in connection with this arbitration proceeding, but it does not consider or resolve the merits of any allegations of past sexual misconduct by [REDACTED] that currently are pending or being investigated by the U.S. Center for SafeSport pursuant to its exclusive jurisdiction under the Stevens Act and SafeSport Code. It also does not consider or resolve the merits of any allegations of past sexual misconduct by [REDACTED] or [REDACTED] that are the subject of any pending civil or criminal judicial proceeding (including [REDACTED]) or criminal investigation. All claims and defenses not expressly granted herein are hereby denied.”

#### **UNDISPUTED AND/OR FINDINGS OF MATERIAL FACTS**

USAT is the NGB for the sport of taekwondo in the United States, which is recognized by the USOC.

[REDACTED] is an athlete who competes in the sport of taekwondo.

On April 19, 2018, a report was filed with the Center on behalf of Athlete A<sup>5</sup> alleging that [REDACTED] violated the SafeSport Code, which the Center began investigating.

On May 7, 2018, because the “[REDACTED]”  
[REDACTED]”  
the Center imposed an interim suspension on [REDACTED] prohibiting him from participating in any activity or competition authorized by, organized by, or under the auspices of the USOC and its NGBs, including USAT and its local affiliates.

---

<sup>5</sup> In an effort to ensure their anonymity and to protect their privacy, athletes alleging sexual abuse by either [REDACTED] or [REDACTED] will be referred to as “Athlete \_\_\_”, respectively, throughout this Award.

On September 6, 2018, the Center issued its “Notice of Director’s Decision” on the matter regarding Athlete A, finding that [REDACTED] violated the SafeSport Code and sanctioning him with permanent ineligibility from participating in any activity or competition authorized by, organized by, or under the auspices of the USOC and its NGBs and local affiliates.

On December 10, 2018, the JAMS SafeSport Arbitrator issued an award in favor of [REDACTED], vacating the Director’s Decision and permanent ineligibility sanction against him because the [REDACTED]

[REDACTED]

On December 11, 2018, USAT’s attorney received an email from an attorney representing Athlete C, a Canadian citizen, transmitting her notarized statement alleging that [REDACTED] and one of his friends sexually abused her at a USAT tournament in Dallas, Texas during the spring [REDACTED] when she was 19-years old. On behalf of USAT, its attorney immediately provided Athlete [REDACTED]

C's statement to the Center and the Dallas Police Department. At the time of this Section 9 arbitration, USAT and its attorney do not know whether the Center or the Dallas Police Department are investigating these allegations, and if so, the status of any pending investigation. Neither the Center nor the Dallas Police Department have provided any information to USAT about this matter.

In a December 17, 2018 letter from its attorney to his attorney, USAT informed [REDACTED]: "Pursuant to [USAT's] Safe Sport Strategy, Steve McNally had decided to exercise his discretion to suspend [him] pending final adjudication of the Safe Sport complaints, and the interim suspension has been reflected on [USAT's] website. [He] is entitled to appeal the decision directly to the [USAT's] Board of Directors." Mr. McNally testified he imposed this interim suspension on [REDACTED] based on 1) the pending Safe Sport violation allegations by Athlete B and three other female taekwondo athletes against him referenced in the December 10, 2018 JAMS SafeSport arbitration award; 2) the December 11, 2018 sexual abuse allegations against him by Athlete C that allegedly occurred in 2010; and 3) the allegations against him in [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

On February 7, 2019, without any evidentiary hearing in which any witness testimony was provided, USAT's Board of Directors denied [REDACTED] appeal of his December 17, 2018 interim suspension.

[REDACTED] is a coach for the sport of taekwondo; his brother [REDACTED] is one of the athletes he coaches.

On April 3, 2018, the Center issued its "Notice of Director's Decision" finding that [REDACTED] violated the SafeSport Code during "[REDACTED]  
[REDACTED]" specifically, [REDACTED] with Athlete B, [REDACTED] taekwondo athlete; [REDACTED] incidents with Athlete G, a [REDACTED] taekwondo athlete when

she was [REDACTED]; and [REDACTED] 3 incidents with Athlete D, an adult female taekwondo athlete. He was sanctioned with permanent ineligibility from participating in any activity or competition authorized by, organized by, or under the auspices of the USOC and its NGBs and local affiliates. Soon thereafter, USAT listed [REDACTED] as an ineligible person on its website.

On April 10, 2018, [REDACTED] filed a *Demand for SafeSport Arbitration* to challenge the April 3, 2018 Director's Decision.

On August 3, 2018, as a result of the Reporting Parties' refusal to participate in the SafeSport arbitration process, the Center stayed [REDACTED] sanction of permanent ineligibility "until such time, if any, as the Reporting Parties agree to participate in the Center's process."

On September 5, 2018, in response to an August 24, 2018 request by [REDACTED] attorney that USAT remove his name from its website's list of ineligible persons, USAT's attorney responded:

"Although SafeSport has elected to stay imposition of the sanction pending [REDACTED] appeal, [USAT] does not believe that [his] return to coaching is warranted under the circumstances. In addition, the current civil action includes allegations of sufficient severity that the interests of Taekwondo and its athletes counsel maintenance of the interim suspension. [USAT's] suspension list will be amended to read that [REDACTED] is subject to an 'interim suspension pending further adjudication.' . . . The decision to maintain the interim suspension was made administratively, and [REDACTED] may appeal the decision to the Board of Directors of USA Taekwondo."

On September 17, 2018, without an evidentiary hearing in which any witness testimony was provided, USAT's Board of Directors denied [REDACTED]s appeal of his September 5, 2018 interim suspension.

On January 7, 2019, a JAMS SafeSport Arbitration Panel issued an award in favor of [REDACTED], vacating the Director's Decision and permanent ineligibility sanction against him because regarding "[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

On January 15, 2019, [REDACTED] attorney requested the USAT remove [REDACTED] suspension because the January 7, 2019 JAMS SafeSport arbitration award vacated the Center Director’s finding that he committed SafeSport violations and permanent ineligibility sanction.

On January 24, 2019, USAT’s Safe Sport Strategy, Policies & Procedures provided:

Hearings & Outcomes

In any case submitted to or under the permanent jurisdiction of the U.S. Center for Safe Sport, the Executive Director may impose such interim restrictions (including suspensions) as may be appropriate to protect the interests of USA Taekwondo and its constituents pending adjudication by the Center.

On or about January 25, 2019, USAT amended the foregoing provision of its Safe Sport Strategy, Policies & Procedures so that it currently provides:

Hearings & Outcomes

During any Pending Judicial Action (as defined below) and in any case submitted to or under the permanent jurisdiction of the U.S. Center for Safe Sport, the Executive Director may impose such interim or temporary restrictions (including suspensions) as may be appropriate to protect the interests of USA Taekwondo and its constituents pending adjudication in the Pending Judicial Action or by the Center.

USAT amended this provision “to add a reference to ‘Pending Judicial Action’ once it became clear through the [REDACTED] arbitrations that the Center could not effectively maintain its own sanctions without the cooperation of alleged victims.” (USA Taekwondo’s Hearing Brief at p. 5).

On January 25, 2019, USAT imposed an interim suspension on [REDACTED] until final resolution of the pending [REDACTED] civil lawsuit, in which he is a defendant. The allegations against [REDACTED] include claims of sexually assaulting Athlete B, [REDACTED] taekwondo athlete during the [REDACTED] World Cup; [REDACTED] with Athlete G that began when she was [REDACTED]; [REDACTED] Athlete D during the [REDACTED] Pan American Games and during a [REDACTED] taekwondo competition in Germany (involving [REDACTED]); and [REDACTED] Athlete E in [REDACTED].

On February 7, 2019, without any evidentiary hearing in which any witness testimony was provided, USAT’s Board of Directors denied [REDACTED] appeal of his January 25, 2019 interim suspension.

Mr. McNally believes that USAT must take every alleged violation of the Safe Sport Code seriously by reporting all allegations to the Center and to law enforcement if it appears a crime has been committed. While understanding that the Center has exclusive jurisdiction to investigate and adjudicate all allegations and complaints, his duties as USAT Executive Director include imposing an interim suspension in appropriate circumstances on USAT members accused of sexual assault pending final resolution or adjudication of these allegations.

To protect USAT's current athletes from potential harm, McNally imposed an interim suspension on both [REDACTED] and [REDACTED] based on the allegations against them in [REDACTED], which he characterized as "numerous, detailed, and serious" allegations of their sexual assault of several female USAT athletes (e.g., Athletes D, F, B, E, and G) over a long period of time (i.e., several years). Although the Center was unable to prove the specific sexual abuse allegations by Athletes B, G, and D against [REDACTED] in the JAMS SafeSport arbitration because none of the accusers testified, McNally believes his interim suspension is appropriate until [REDACTED] is finally resolved or litigated (which would require the plaintiffs to testify under oath to prove their respective allegations).

In deciding to impose these interim suspensions for the sole purpose of protecting current USAT athletes from being harmed by [REDACTED] or [REDACTED], McNally considered only the "seriousness of these allegations" against them without any determination of their merits. He did not impose these suspensions for any other reasons. He did not testify that imposing an interim suspension on either [REDACTED] or [REDACTED] was necessary because the allegations of past sexual abuse or misconduct against them were sufficiently serious that their continued participation could be detrimental to the sport of taekwondo or USAT's reputation.

Mr. McNally considered less restrictive interim measures (e.g., no contact with female USAT athletes, chaperoning) to protect current USAT athletes from being harmed by [REDACTED] or [REDACTED], but he decided nothing short of interim suspensions would effectively do so. Because 24/7 chaperoning is not a realistic option, he does not believe USAT can protect its current athletes from potential sexual assault during its competitions if they compete as an athlete or coach. Because [REDACTED] and [REDACTED] associated with [REDACTED] an athlete and coach whose USAT membership had been suspended for sexually assaulting a teammate during the [REDACTED], he expressed concern that they would not adhere to any less restrictive interim measures.

There is no record evidence that Athletes D, F, B, E, G, or C are current USAT athletes.

During the hearing, the parties' counsel stipulated that [REDACTED] and [REDACTED] deny all of the allegations of sexual abuse that have been asserted against them.

USAT's December 17, 2018 interim suspension of [REDACTED] denies him the opportunity to participate as an athlete in the 2019 U.S. Open Taekwondo Championships, which is a protected competition, as well as in other future protected competitions.

USAT's January 25, 2019 interim suspension of [REDACTED] denies him the opportunity to participate as a coach in the 2019 U.S. Open Taekwondo Championships, which is a protected competition, as well as in other future protected competitions.

## LEGAL ANALYSIS

It is undisputed that the Arbitrator has *de novo* jurisdiction to resolve the parties' dispute pursuant to Section 9 of the USOC Bylaws because USAT's indefinite interim suspensions are denying [REDACTED] and [REDACTED] the opportunity to participate or qualify to participate in future "protected competitions" under Section 1.3 (w) of the USOC Bylaws as an athlete or coach, respectively, such as the February 28-March 3, 2019 U.S. Open Taekwondo Championships, 2019 Pan American Games, 2019 World Taekwondo Championships, and 2020 Olympic Games.

It also is undisputed that USAT has the burden of proving by a preponderance of evidence that it has valid authority to impose appropriate and proportionate interim measures on its members, including athletes and coaches, to protect its current athletes from an imminent threat of harm pending final disposition or adjudication of alleged Safe Sport violations against them by the Center, by arbitration, or by civil or criminal judicial proceedings, specifically that it has just cause to indefinitely suspend [REDACTED] and [REDACTED] based on the record evidence in this proceeding. *Lopez v. USA Taekwondo*, AAA 01 15 0003 4488 (Jun. 15, 2015) (Jeffrey G. Benz, Arb.) (ruling that USA Taekwondo must prove Jean Lopez violated USA Taekwondo's Code of Conduct to impose disciplinary sanctions on him).

### A. Scope of Center's Exclusive Authority Over Alleged Sexual Abuse in Olympic Sports

The ASA gives the Center "exclusive jurisdiction over the [USOC], each [NGB] and each Paralympic sports organization with regard to safeguarding amateur athletes against abuse,

including physical, emotional, and sexual abuse, in sports.” 36 U.S.C. §220541 (a) (2). The Act authorizes the Center to “utilize a neutral arbitration body and develop policies and procedures to resolve allegations of sexual abuse within its jurisdiction to determine the opportunity of any amateur athlete, coach [or others] who is the subject of such an allegation, to participate in amateur athletic competition.” 36 U.S.C. §220541 (c) (1).

Section IV(A) (“Exclusive Authority—sexual misconduct”) of the SafeSport Code provides:

The [Center] has the exclusive authority to investigate and resolve conduct involving (a) sexual misconduct; and (b) prohibited conduct under the *Code* that is reasonably related to the underlying allegation of sexual misconduct. Exclusive authority means that (a) only the Office will investigate and manage any related hearings involving sexual misconduct and (b) neither the NGB nor USOC will conduct its own investigation or arbitration with respect to possible sexual misconduct, except as otherwise provided. See Appendices A and B.

Part V of the SafeSport Practices and Procedures (Appendix A of the SafeSport Code) provides:

#### **INTERIM MEASURES**

At any point before a matter is final through these Procedures or arbitration, interim measures may be appropriate to ensure the safety or well-being of the Reporting Party, Athletes, other Non- athlete Participants or the Responding Party. Interim measures may also be appropriate where an allegation against the Responding Party is sufficiently serious that the Responding Party’s continued participation could be detrimental to sport or its reputation. Nothing in these Procedures prevents the [Center], LAO, NGB or USOC from taking appropriate interim measures upon notice of an imminent threat of harm. In such emergency circumstances, it may be appropriate to immediately remove a Covered Individual to address such a threat.

#### **A. Notice**

Unless imposed under emergency circumstances involving an imminent threat of harm, the Office will notify a Responding Party that it will impose interim measures unless the Responding Party requests an interim measures hearing as set forth in the Rules.

**B. Rules**

Any interim measures hearing will be conducted according to the [Supplementary Rules for U.S. Olympic and Paralympic SafeSport Arbitrations].

**C. Scope**

The interim measures hearing is not to be a full hearing on the merits and is limited to determining whether there exists reasonable cause to impose one or more interim measure(s).

**D. Measures**

Interim measures may include, but is not limited to, altering training schedules, providing chaperones, implementing contact limitations between the parties, and suspensions.

**B. NGB Authority to Impose Interim Measures to Protect Safety of its Athletes**

NGBs have a legal duty under federal law, the “Protecting Young Victims From Sexual Abuse and Safe Sport Authorization Act of 2017,” to implement and abide by the policies and procedures established by the Center to protect and safeguard their member athletes from “abuse, including emotional, physical, and sexual abuse in sports.” 36 U.S.C. §220541(a) and (b) and §220524. The ASA provides that nothing in the Congressional legislation creating the Center and establishing its authority “shall be construed to limit the ability of [an NGB] to impose an interim measure to prevent an individual who is the subject of an allegation of sexual abuse from interacting with an amateur athlete prior to the Center exercising its jurisdiction over a matter.” 36 U.S.C. § 220542(b). It requires that the Center facilitate an NGB’s ability to “withhold providing to an adult who is the subject of an allegation of child abuse authority to interact with an amateur athlete who is a minor until the resolution of such allegation” by providing a

mechanism for doing so. 36 U.S.C. § 220542(a)(2)(F)(ii). To protect its member athletes from sexual abuse, Part V of the SafeSport Practices and Procedures expressly authorizes an NGB to take “appropriate interim measures upon notice of an imminent threat of harm,” including “immediately remov[ing] a Covered Individual [e.g., athlete or coach] to address such a threat.”

### C. Procedural Rights of NGB Members Accused of Sexual Abuse

The ASA requires the USOC to “establish and maintain provisions in its constitution and bylaws for the swift and equitable resolution of disputes involving any of its members [i.e., an NGB] and relating to the opportunity of an amateur athlete, coach . . . to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, world championship competition, or other protected competition as defined in [its constitution and bylaws].” 36 U.S.C. §220509 (a).

As a condition of being recognized by the USOC as the NGB for a particular sport in the United States, the ASA requires USAT to agree “to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in any amateur athletic competition, upon demand of . . . any aggrieved amateur athlete . . . conducted in accordance with the Commercial Rules of the [AAA].” 36 U.S.C. §220522 (a) (4).

In accordance with this Congressional mandate, Section 9 of the USOC Bylaws creates a comprehensive and detailed procedure for resolving a dispute arising out of an NGB’s alleged denial of an athlete or coach’s “opportunity to participate in . . . [a] protected competition as defined in Section 1.3 of these Bylaws.” Section 9.1. Pursuant to Section 9.7 of the USOC Bylaws, an athlete or coach whose Section 9 Complaint is not resolved to his satisfaction “may file a claim with the AAA against the respondent [e.g., an NGB] for final and binding arbitration.” Section 9.12 of the USOC Bylaws states that “[a] decision concerning a safe sport rule violation adjudicated by the [Center] shall not be reviewable through, or the subject of, these complaint procedures.”

Consistent with the requirements of the ASA and Section 9 of the USOC’s Bylaws applicable to NGBs that deny an amateur athlete the opportunity to participate in a protected competition, if the Center imposes an interim suspension on an athlete for alleged sexual misconduct pending its investigation and final resolution of these allegations (including any

necessary adjudication), R-40 of the Supplementary *Rules* for U.S. Olympic and Paralympic SafeSport Arbitrations (“Supplementary *Rules* for SafeSport Arbitrations”) (Appendix B of the SafeSport Code), requires that the athlete be given the opportunity for an arbitration hearing:

**R-40 Interim measures**

If the Office [i.e., Center] seeks interim measures, it will offer an opportunity for a hearing. The following *Rules* govern interim measures hearings ...

**e. Standard of review**

To impose interim measures, the arbitrator must find based on the evidence presented, that: (i) the interim measure is appropriate based on the allegations and facts and circumstances of the case as they appear to the arbitrator; (ii) the interim measure is appropriate to maintain the safety or well-being of the Reporting Party, Athletes, or other Non- athlete Participants; or (iii) the allegations against the Responding Party are sufficiently serious that the Responding Party’s continued participation in the sport could be detrimental to the reputation of sport.

**f. Decision**

The arbitrator may approve, reject, or modify the interim measures imposed or proposed by the Office. The arbitrator shall issue a decision regarding the Office’s request for interim measures either orally at the conclusion of the interim measures hearing, with a written reasoned order to follow, or by a written reasoned decision issued within 24 hours of the close of the interim measures hearing. The decision shall be given no weight in the hearing of the case.

**D. Interpretation and Application of [REDACTED] and USA Diving, Inc.**

Both the Claimants and Respondent rely on [REDACTED] *and USA Diving, Inc.*, AAA 01-18-0003-8879 (November 30, 2018) (Matthew J. Mitten, Arb.) to support their respective positions regarding the scope of USAT’s authority to impose interim suspensions on its members accused



of sexual abuse. Claimants assert that USAT's interim suspensions of [REDACTED] and [REDACTED] are unauthorized under [REDACTED] because USAT did not conduct an internal evidentiary hearing before imposing these suspensions. Acknowledging that neither its Executive Director nor Board of Directors provided [REDACTED] or [REDACTED] with any evidentiary hearing, USAT contends that [REDACTED] only requires Section 9 arbitral review of an NGB's imposition of an interim suspension, which is a procedural right that its Safe Sport Strategy, Policies & Procedures expressly provides to its members.

In [REDACTED], USA Diving imposed an interim and indefinite suspension on [REDACTED], one of its member athletes, pending the Center's investigation and final resolution of sexual misconduct allegations against him. "The sole issue that [REDACTED] has asked the Arbitrator to resolve in this Section 9 proceeding is whether USA Diving's July 12, 2018 interim and effectively indefinite suspension of him without an arbitration hearing violates the ASA, USOC Bylaws, or USA Diving Bylaws. Because this suspension denied [REDACTED] the opportunity to participate in a protected competition, the Arbitrator determined that his procedural right to arbitration under the ASA and Section 9 of the USOC Bylaws was violated." (p. 11). The Arbitrator concluded that "Section 9 arbitral determination of the [appropriateness of an NGB's interim suspension pending the Center's investigation and adjudication of alleged Safe Sport allegations] does not contravene the Center's exclusive jurisdiction to investigate, resolve, and adjudicate the merits of . . . alleged sexual misconduct." (p. 12).

The Arbitrator explained: "To protect and safeguard its member athletes from sexual abuse, USA Diving may establish appropriate and reasonable conditions regarding [REDACTED] participation in practices and competitions under its auspices (e.g., chaperoning and/or contact limitations between [REDACTED] and the victim of his alleged sexual misconduct as well as other female divers), but the ASA and Section 9 of the USOC Bylaws prohibit USA Diving from denying him the opportunity to participate in a protected competition without Section 9 arbitral review of his interim and effectively indefinite suspension." (pp. 12-13).

The Arbitrator rejected USA Diving's assertion that [REDACTED] must bring a JAMS arbitration proceeding under the SafeSport Code pursuant to its Supplementary Rules for SafeSport Arbitrations rather than filing a Section 9 arbitration demand to challenge the indefinite interim

suspension it had imposed on him: “R-40 of the Supplementary Rules for SafeSport Arbitrations provides only for [JAMS] arbitration to challenge the Center’s interim suspension of an athlete pending its investigation and final resolution of alleged conduct that violates the SafeSport Code (e.g., sexual abuse), not arbitration of an NGB’s interim suspension of an athlete for such alleged misconduct.” (p. 12).

██████ does not hold that an NGB must hold an internal evidentiary hearing before imposing an interim suspension. The Arbitrator rejects Claimants’ contention that the ASA or Section 9 of the USOC’s Bylaws required USAT to do so before imposing their interim indefinite suspensions. ██████ recognized the inherent potential pitfalls if an NGB conducts an internal evidentiary hearing regarding alleged Safe Sport violations: “The Arbitrator notes (but is not asked to resolve in this proceeding) the conundrum created by the current language of Article 22.10 (b), which requires USA Diving’s decision to immediately suspend a member for ‘any violation of Safe Sport requirements’ to be based on consideration of four factors (including ‘the likelihood that the alleged act occurred and was committed by the member,’ which necessarily requires specific facts constituting confidential information the Center will not share and USA Diving is prohibited from determining in its own investigation).” (p. 12).

██████ did not “preclude an NGB . . . from taking appropriate interim measures upon notice of an imminent threat of harm, including immediately removing an athlete or other Covered Individual (as defined by Section II, E of the SafeSport Code) from an athletic event, (including a protected competition), practice, or other event under its auspices pursuant to Part V . . .” (p. 11, n. 4). But it did not determine whether the requirements of Part V of the SafeSport Code Practices and Procedures and R-40 of the Supplementary *Rules* for SafeSport Arbitrations should apply in Section 9 arbitration challenging an NGB’s imposition of an indefinite interim suspension. Because the Center’s imposition of an interim suspension on individuals accused of Safe Sport violations is subject to the “imminent threat of harm” requirement of Part V as well as arbitral review in accordance with R-40, the Arbitrator rules that these same requirements are applicable in Section 9 arbitration proceedings challenging an NGB’s authorized imposition of an interim suspension.

E. Scope of USAT Authority to Impose Interim Suspensions on Members for Alleged Sexual Abuse

Section 5.3 of USAT’s Bylaws states: “[m]embership in USAT is a privilege and creates with it certain obligations and duties.” Section 15.2 provides that all members and persons participating in USAT activities agree to be bound by “all USAT rules and regulations” as well as “all rules and regulations of . . . the U.S. Center for SafeSport.” USAT’s Ethics Committee is empowered to resolve “grievances and disciplinary matters involving ethics issues including alleged violations of USAT’s Code of Ethics, Safe Sport Policies, and any other policies regulating ethical conduct of members,” but it does not have power “to adjudicate any complaint within the exclusive jurisdiction of the [Center].” Section 9.14 (b) (2) of USAT’s Bylaws.

USAT’s current Safe Sport Strategy, Policies & Procedures, as amended on or about January 25, 2019, provide as follows:

#### Hearings & Outcomes

During any Pending Judicial Action (as defined below) and in any case submitted to or under the permanent jurisdiction of the U.S. Center for Safe Sport, the Executive Director may impose such interim or temporary restrictions (including suspensions) as may be appropriate to protect the interests of USA Taekwondo and its constituents pending adjudication in the Pending Judicial Action or by the Center.

For purposes of this section, “Pending Judicial Action” refers to any proceeding in a court of competent jurisdiction in which (a) criminal or civil claims are asserted against the member, and (b) the claims are asserted on the basis of facts that USA Taekwondo cannot or decides not to investigate internally, and (c) in which proceedings the defendant is afforded the right to defend against the claims under procedures that satisfy the constitutional requirements of due process.

In the event that the Executive Director imposes such restrictions, the Executive Director shall offer the member an opportunity to be heard within five business days of the action concerning the propriety of the restrictions. Any temporary or interim restrictions may be appealed to the Board of Directors. In the event that a temporary or interim restriction that denies a member the opportunity to

participate in an amateur athletic competition is affirmed by the Board of Directors, the member may seek review of the temporary or interim restriction by binding arbitration under the rules of the American Arbitration Association through Section 9 of the USOC Bylaws.

See <https://www.teamusa.org/usa-taekwondo/v2-resources/safe-sport> at page 20.

Consistent with R-40 of the Center’s Supplementary *Rules* for SafeSport Arbitrations, USAT’s Safe Sport Strategy, Policies & Procedures provide a member subject to interim measures imposed by USAT for alleged sexual misconduct pending the Center’s investigation and final resolution of these allegations (including by JAMS SafeSport arbitration) with the right to a Section 9 arbitration hearing if its interim suspension prevents participation in a protected competition.

1. Pending Complaint to Center But Unknown Whether It Has Exercised Jurisdiction

USAT asserts it has the authority to impose an interim suspension when it receives notice of alleged sexual abuse by one of its members, which is the subject of a pending complaint to the Center but it is unknown whether the Center has assumed jurisdiction to conduct an investigation of its allegations (e.g., AL’s December 11, 2018 allegation that ██████████ sexually assaulted her in 2010). It relies on the ASA, specifically 36 U.S.C. § 220542(b), which permits an NGB “to impose an interim measure to prevent an individual who is the subject of an allegation of sexual abuse from interacting with an amateur athlete prior to the Center exercising its jurisdiction over a matter.”

In response, Claimants acknowledge that 36 U.S.C. § 220542(b) authorizes USAT to impose interim measures, but not an indefinite suspension.

This ASA provision does not limit the authorized scope of an interim measure that an NGB may impose on a member in this situation. Section V of the Center’s SafeSport Practices and Procedures expressly permits an NGB to take “appropriate interim measures upon notice of an imminent threat of harm” (without any express limitation) “to ensure the safety or well-being of . . . Athletes,” which are defined in Section II A as individuals “recognized as an athlete by an NGB under its bylaws . . . or other governing documents.” It authorizes an NGB to take “appropriate interim measures upon notice of an imminent threat of harm,” including

“immediately remov[ing] a Covered Individual [e.g., athlete or coach] to address such a threat.” Section V D expressly states that interim measures may include “suspensions.”

USAT’s Bylaws do not define the term “athlete,” but “athletes” are listed as a group of “participants” (i.e., “minors and/or adults who participate in a sport activity through a club or organization”) protected by its Safe Sport Strategy, Policies & Procedures. See <https://www.teamusa.org/usa-taekwondo/v2-resources/safe-sport> at page 5. This language suggests that only athletes currently participating in taekwondo activities under USAT’s auspices are “Athletes” under Section V. USAT’s Safe Sport Strategy, Policies & Procedures expressly provides “in any case submitted to or under the permanent jurisdiction of the U.S. Center for Safe Sport, the Executive Director may impose such interim or temporary restrictions (including suspensions) as may be appropriate to protect the interests of USA Taekwondo and its constituents pending adjudication in the Pending Judicial Action or by the Center” (emphasis added), which may be appealed to its Board of Directors and is subject to Section 9 arbitral review if an interim suspension denies a member the opportunity to participate in a protected competition.

Based on the authority conferred by the foregoing provisions of the ASA, the Center’s SafeSport Practices and Procedures, and USAT’s Safe Sport Strategy, Policies & Procedures, the Arbitrator rules that USAT is authorized to impose an interim suspension on a member accused of sexual abuse whose participation would pose an imminent threat of harm to one or more of its current athletes until the Center has exercised jurisdiction over this allegation. The suspended member’s procedural rights are recognized and protected by the foregoing internal appeal and Section 9 arbitration provisions in USAT’s Safe Sport Strategy, Policies & Procedures.

2. Center Exercises Jurisdiction and Investigates Complaint But No Final Disposition or Adjudication

USAT asserts also 36 U.S.C. § 220542(b) authorizes its imposition of an interim suspension when the Center has exercised jurisdiction and is investigating an allegation of sexual abuse against one of its members until its final disposition or adjudication ( [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]. Acknowledging that this ASA statutory

language “may be read as intimating that an NGB may not impose interim relief after the Center exercises jurisdiction,” USAT asserts “that issue is not relevant here where there is express authority for interim relief in the case of misconduct involving minors, and there is no express exclusivity with regard to interim measures.” USAT Hearing Brief at page 8, note 2. Although its argument is somewhat unclear to the Arbitrator, USAT appears to be referring to 36 U.S.C. § 220542(a)(2)(F)(ii), an ASA provision requiring the Center to facilitate an NGB’s ability to “withhold providing to an adult who is the subject of an allegation of child abuse authority to interact with an amateur athlete who is a minor until the resolution of such allegation” by providing a mechanism for doing so.

In response, Claimants contend that even if USAT has authority to impose interim measures pending the Center’s final disposition or adjudication of allegation or complaint of sexual abuse, it is not empowered to impose an interim suspension precluding a suspended member from the opportunity to participate in a protected competition.

ASA provision 36 U.S.C. § 220542(b) does not expressly prohibit an NGB from imposing an interim measure, including a suspension, to prevent a member who is the subject of an allegation of sexual abuse from interacting with its athletes after the Center has assumed jurisdiction. Considered together, ASA provision 36 U.S.C. § 220542(a)(2)(F)(ii) and an NGB’s federal law duty under the Protecting Young Victims From Sexual Abuse and Safe Sport Authorization Act of 2017 “to implement and abide by the policies and procedures established by the Center to protect and safeguard its member athletes from sexual abuse in sports” provide a reasonable basis for concluding that an NGB has implied authority to do so. Part V of the SafeSport Practices and Procedures expressly states: “[a]t any point before a matter is final through these Procedures or arbitration, interim measures may be appropriate to ensure the safety or well-being” of athletes and others from sexual abuse. (emphasis added.) It explicitly authorizes an NGB to take “appropriate interim measures upon notice of an imminent threat of harm,” including “immediately remov[ing] a Covered Individual [e.g., athlete or coach] to address such a threat.” Section V D expressly states that interim measures may include “suspensions.”

Consistent with Part V of the SafeSport Practices and Procedures, USAT’s Safe Sport Strategy, Policies & Procedures expressly provides “in any case submitted to or under the

permanent jurisdiction of the U.S. Center for Safe Sport, the Executive Director may impose such interim or temporary restrictions (including suspensions) as may be appropriate to protect the interests of USA Taekwondo and its constituents pending adjudication in the Pending Judicial Action or by the Center” (emphasis added), which may be appealed to its Board of Directors and is subject to Section 9 arbitral review if an interim suspension denies a member the opportunity to participate in a protected competition.

Based on the foregoing reasons, the Arbitrator rules that USAT is authorized to impose an interim suspension on a member accused of sexual abuse whose participation would pose an imminent threat of harm to one or more of its current athletes pending the Center’s final disposition or adjudication of an allegation or complaint of sexual abuse. The suspended member’s procedural rights are recognized and protected by the foregoing internal appeal and Section 9 arbitration provisions in USAT’s Safe Sport Strategy, Policies & Procedures.

3. Center Final Disposition or Adjudication of Complaint But Other Unresolved Allegations in Pending Civil or Criminal Litigation

USAT asserts that the Center’s final disposition or adjudication of all pending complaints of sexual abuse against one of its members does not preclude it from imposing an interim suspension until final resolution of other allegations of sexual abuse in pending civil litigation (e.g., ██████ claims against ██████) or a criminal prosecution. USAT acknowledges there is no express or implicit ASA authorization for it to do so, while asserting that the ASA does not expressly prohibit an interim suspension under such circumstances. It relies on several provisions of the SafeSport Code (specifically, Sections II G (Criminal Disposition), III A 3 (Child Sexual Abuse) and A 4 (Criminal Disposition) as well as Sections V (Interim Measures) and VII (Related Proceedings) of the SafeSport Practices and Procedures to support its position.

Claimants contend that the foregoing provisions confer no such authority as well as that USAT’s assumption of it violates Sections 8.7, which requires an NGB, “to be considered a [USOC] member in good standing,” to comply with the Center’s policies, procedures, and resolution of SafeSport violations. They assert that an indefinite interim suspension during the pendency of civil litigation or a criminal prosecution involving allegations of sexual abuse against a USAT member is an unauthorized and potentially an effective lifetime suspension. Moreover, USAT’s imposition of an interim suspension after a final and binding JAMS

SafeSport arbitration award resolving such allegations is a “blatant bad faith” effort to disregard the Center’s exclusive jurisdiction to finally resolve and adjudicate all allegations of sexual abuse against Olympic sport athletes, coaches, and others and sanction for SafeSport violations.

The Arbitrator rules that because the Center has exclusive jurisdiction to resolve and to adjudicate allegations of SafeSport violations, including sexual abuse and misconduct, and to impose appropriate sanctions for violations, USAT has no authority to impose an interim suspension pending final judicial adjudication of a current or subsequent civil lawsuit or criminal prosecution in which the same allegations of sexual abuse against a member were finally resolved by the Center or adjudicated by JAMS SafeSport arbitration. Whether USAT has valid authority to impose an interim suspension during the pendency of a current or subsequent civil lawsuit or criminal prosecution with different allegations of sexual abuse against a member is a very different issue, which requires fuller analysis.

The ASA does not expressly or implicitly authorize or prohibit an NGB from imposing an interim suspension on a member for alleged sexual abuse by one of its members in a civil lawsuit or criminal prosecution, whether prior to the Center’s exercise of SafeSport jurisdiction or thereafter pending its final disposition or adjudication of such allegations. The three SafeSport Code provisions cited by USAT simply characterize sexual abuse convictions and pleas resulting in criminal liability and child sexual abuse as defined by federal or state laws as SafeSport violations. In relevant part, Section VII of its SafeSport Practices and Procedures states that the Center’s “resolution of [alleged SafeSport violations] will not typically be altered or precluded on the grounds that (a) a civil case or criminal charges involving the same incident or conduct has been filed.” In relevant part, Section V provides that “[a]t any point before a matter is final through these *Procedures* or arbitration, interim measures may be appropriate to ensure the safety or well-being of . . . Athletes.” It also states that “[n]othing in these *Procedures* prevents [an] NGB . . . from taking appropriate interim measures upon notice of an imminent threat of harm.” Read together, the Arbitrator concludes that these provisions of the SafeSport Practices and Procedures authorize USAT to impose an interim suspension on a member to protect its current athletes from an imminent threat of harm based on the allegations of a pending civil case or criminal prosecution (which, if true, would be a SafeSport violation) until the Center’s final



disposition or adjudication (including JAMS SafeSport arbitration) of the same allegations or their final judicial resolution, whichever is sooner.

Consistent with Part V of the SafeSport Practices and Procedures, USAT's Safe Sport Strategy, Policies & Procedures expressly provides:

“During any Pending Judicial Action [i.e., civil or criminal judicial proceedings in which “claims are asserted on the basis of facts that USA Taekwondo cannot or decides not to investigate internally” in which the accused has “the right to defend against the claims under procedures that satisfy the constitutional requirements of due process], the Executive Director may impose such interim or temporary restrictions (including suspensions) as may be appropriate to protect the interests of USA Taekwondo and its constituents pending adjudication in the Pending Judicial Action or by the Center.

It provides that an interim suspension imposed based on the allegations of civil or criminal judicial proceedings may be appealed to its Board of Directors and is subject to Section 9 arbitral review if an interim suspension denies a member the opportunity to participate in a protected competition. Thus, the suspended member's procedural rights are recognized and protected by USAT's Safe Sport Strategy, Policies & Procedures.

F. Validity of USAT Interim Suspensions Imposed on [REDACTED] and [REDACTED]

1. [REDACTED]

Based on the foregoing analysis, USAT has valid authority to impose appropriate and proportionate interim measures on [REDACTED] to protect its current members from an imminent threat of harm to their safety or well-being pending the Center's final resolution or adjudication of Athlete C's December 11, 2018 allegation that he sexually assaulted her in 2010 as well as

during its investigation of allegations made by Athlete B and three other female athletes (which also may be the basis of claims asserted against him by Athletes B, D, E, and F in the [REDACTED] litigation) until it has resulted in their final resolution or adjudication.<sup>6</sup>

The Arbitrator recognizes and is troubled by the history and seriousness of the sexual abuse and misconduct allegations against [REDACTED] by the foregoing five female former USAT athletes. However, as required by Part V of the SafeSport Practices and Procedures (**INTERIM MEASURES**) and R-40 (e) of the Supplementary *Rules* for SafeSport Arbitrations, the record evidence does not support a finding that USAT's interim suspension of him is both appropriate and proportionate to protect current female USAT athletes from an imminent threat of harm to their safety or well-being by his participation in any future protected competitions, including the 2019 U.S. Open Taekwondo Championships. All of [REDACTED] alleged sexual abuse and misconduct of USAT female athletes occurred from 2003-2013, without any more recent allegations or proof that any of these allegations are true. USAT did not prove that Athletes C, B, D, E, and F are current USAT athletes; nor did it prove that any of them are likely to participate in or attend any future USAT competitions or events.

The Arbitrator's foregoing determination does not preclude USAT from imposing less restrictive conditions and requirements upon [REDACTED] to protect the safety of its current member athletes and other categories of persons listed in Section V of the SafeSport Practices and Procedures, provided that any such prophylactic measures do not effectively deny him the opportunity to participate in any future "protected competition" as an athlete.

2. [REDACTED]

---

<sup>6</sup> Part V of the SafeSport Practices and Procedures provides that "[i]nterim measures may also be appropriate where an allegation . . . is sufficiently serious that . . . continued participation could be detrimental to sport or [an NGB's] reputation." During the hearing, USAT did not attempt to prove that imposing an interim suspension on either [REDACTED] or [REDACTED] was necessary because the allegations of past sexual abuse or misconduct against them were sufficiently serious that their continued participation could be detrimental to the sport of taekwondo or USAT's reputation (e.g., lost sponsorship, reduced membership, adverse media publicity, etc.). See also R-40 (e) of the Supplementary *Rules* for SafeSport Arbitrations, which has similar language.

Effective January 25, 2019 (the date its Safe Sport Strategy, Policies & Procedures were revised), USAT has valid authority to impose appropriate and proportionate interim measures, including an interim suspension, to protect its current members from an imminent threat of harm to their safety or well-being based on the allegations of a pending civil case or criminal prosecution, but only until the Center's final disposition or adjudication of the same allegations or their final judicial resolution, whichever is sooner. Because the January 7, 2019 JAMS SafeSport arbitration award ruled that the Center did not prove the alleged sexual abuse allegations relating to Athletes B, G, and D (which apparently are the basis of the same or substantially similar claims asserted against him by Athletes B, G, and D in the ██████ litigation), USAT's January 25, 2019 interim suspension of ██████ pending final judicial resolution of these same claims is unauthorized. Although Athlete E's sexual abuse claims asserted against ██████ in ██████ were not adjudicated in that arbitration proceeding, the Arbitrator determines that USAT cannot retroactively apply its amended Safe Sport Strategy, Policies & Procedures by imposing an interim suspension on him based on the allegations in ██████, which was a pending civil case prior to the January 25, 2019 amendment that provided USAT with this authority.

Even if USAT's interim suspension of ██████ was authorized, the record evidence does not support a finding that it is both appropriate and proportionate to protect current female USAT athletes from an imminent threat of harm to their safety or well-being by his participation in any future protected competitions, including the 2019 U.S. Open Taekwondo Championships. Compared to the allegations against ██████, the Arbitrator is even more troubled by the history and seriousness of the sexual abuse allegations against ██████ by four female former USAT athletes. As a coach, he is in a position of authority and trust who should protect athletes from sexual abuse, not to be the alleged perpetrator of such egregious misconduct.<sup>7</sup> All of ██████ alleged sexual abuse and misconduct of USAT female athletes occurred from 1997-2011, without

---

<sup>7</sup> An NGB should be given broad latitude to impose an authorized interim suspension on coaches and other members in positions of authority and trust when appropriate and proportionate to protect its athletes, particularly minors, from an imminent threat of harm to their safety or well-being.

any more recent allegations or proof that any of these allegations are true. USAT did not prove that Athletes B, G, D, or E are current USAT athletes; nor did it prove that any of them are likely to participate in or attend any future USAT competitions or events.

The Arbitrator's foregoing determination does not preclude USAT from imposing less restrictive conditions and requirements upon [REDACTED] to protect the safety of its current member athletes and other categories of persons listed in Section V of the SafeSport Practices and Procedures, provided that any such prophylactic measures do not effectively deny him the opportunity to participate in any future "protected competition" as a coach.

G. Claimants' Request for Costs and Attorney's Fees

Because Claimants are the prevailing party, the Arbitrator concludes that USAT is responsible for the costs of the AAA filing fees and his compensation for this arbitration proceeding.

Because the Arbitrator finds that Mr. McNally was primarily motivated by legitimate concern for the safety and well-being of USAT's athletes as well as that he did not blatantly violate the SafeSport Code or act in bad faith by imposing interim suspensions on [REDACTED] and [REDACTED], Claimants' request that USAT pay their attorney's fees is denied.

**CLAIMANTS' FEBRUARY 28, 2019 EMERGENCY MOTION FOR SANCTIONS  
AGAINST RESPONDENT USA TAEKWONDO**

In their emergency motion filed with the Arbitrator on February 28, 2019 at 6:13pm CT, Claimants alleged that because "on February 28, 2019, WT [World Taekwondo] stated that after consulting with USAT, it has decided to maintain its preliminary suspension, USAT has conspired and/or colluded with WT in an effort to eviscerate the Sole Arbitrator's Operative Decision and Award." Specifically, they asserted:

Given the timing of the 2019 U.S. Open Taekwondo Championships, which is scheduled to commence on February 28, 2019 (today), it is clear that WT's recent actions were taken in concert with and (admittedly) in consultation with USAT, so

that USAT could prevent [REDACTED] from competing in the last competition that will allow him to qualify for the 2020 Olympic Games. If the collusion of WT and USAT is allowed to prevent [REDACTED] and [REDACTED] from participating in the 2019 U.S. Open Taekwondo Championships, it will render the Sole Arbitrator's decision moot, and will permit USAT to continue to violate the ASA and Section 9 of the USOC Bylaws.”

Pursuant to AAA Commercial Rule R-58, Claimants requested that the Arbitrator order USAT to immediately do the following: 1) credential [REDACTED] and [REDACTED] for the 2019 U.S. Open Taekwondo Championships; 2) enter [REDACTED] in the 2019 U.S. Open Taekwondo Championships; and 3) permit [REDACTED] to serve as a coach at the 2019 U.S. Open Taekwondo Championships. They also requested that the Arbitrator order USAT to produce 1) all communications between December 10, 2018 and the present between USAT (and/or Steve McNally) and WT that references or relates to [REDACTED]; and 2) all communications between December 10, 2018 and the present between USAT (and/or Steve McNally) and WT that references or relates to [REDACTED]. In addition, they requested that the Arbitrator order any further sanctions against USAT deemed just and appropriate.

In response, USAT agreed “to preserve all communications with World Taekwondo without further order.” It stated:

[The [REDACTED] have made no effort to join WT or apparently to notify WT of the relief sought in this proceeding. The U.S. Open is a WT G2 tournament operated under WT rules, and while USA Taekwondo can be compelled to cooperate in trying to get the [REDACTED] registered, there are portions of the relief sought that USA Taekwondo does not have the power to perform.

USA Taekwondo will also seek reconsideration of the permissible prophylactic measures against the [REDACTED] based on their recent public pronouncement that anyone who mistakes their “silence for weakness . . . will be dealt with accordingly.” USA Taekwondo submits that it has no effective means of preventing the [REDACTED] from carrying out these overt, generalized threats except to keep the [REDACTED] as far away from their perceived detractors as possible.

On February 28, 2018 at 7:50pm CT, the Arbitrator ruled on the Claimants' emergency motion as follows:

In relevant part, the Operative Decision and Award provides: “USAT is ordered to immediately notify the World Taekwondo Federation that the Arbitrator has vacated its December 17, 2018 indefinite suspension of [REDACTED] and its January 25, 2019 indefinite suspension of [REDACTED]. If they are otherwise eligible to participate, USAT is ordered not to deny [REDACTED] or [REDACTED] the opportunity to compete in its 2019 U.S. Open Taekwondo Championships or any other future protected competitions. (emphasis added.)” The Arbitrator confirms that USAT must fully comply with both requirements. Pursuant to AAA Commercial Rule R-47 (b), the Arbitrator clarifies that the February 24, 2019 Operative Decision and Award requires USAT to explicitly inform WT that neither [REDACTED] nor [REDACTED] currently is suspended by USAT from participation in any athletic competitions, including the 2019 U.S. Open Taekwondo Championships, and I order USAT to do so immediately.

Because WT is not a party to this AAA arbitration proceeding, the Arbitrator has no authority to order WT to comply with the February 24, 2019 Operative Decision and Award (as clarified by today’s ruling). In order to ensure WT complies with this award and to prevent it from being mooted, Claimants may need to seek appropriate relief from the Court of Arbitration for Sport. See *Samoa NOC and Sports Federation, Inc. v. IWF*, Arbitration CAS ad hoc Division (O.G. Sydney 2000) 042 (award of September 12, 2000).

All other issues raised by Claimants’ emergency motion and USAT’s response will be considered and resolved after both sides have full briefed their respective positions.

On February 28, 2019 at 8:05pm CT, on behalf of USAT, Mr. Hess informed Corbin Min, WT’s legal counsel, by email: “In case it was not clear from our prior submissions, neither [REDACTED] nor [REDACTED] is currently suspended by USAT from participation in any athletic competitions, including the 2019 U.S. Open Taekwondo Championships.”

On February 28, 2019 at 8:15pm CT, Mr. Min responded in an email to Mr. Hess: “To quickly confirm, WT is aware of USAT’s current position. This does not change the status of WT’s ban on participation by the [REDACTED].”

On February 28, 2019 at 11:45pm CT, Claimants filed a Statement of Appeal and Request for Urgent Provisional Measures against WT with the Court of Arbitration for Sport (“CAS”).

On March 1, 2019 at 10:38am CT, the CAS advised Claimants that their Request for Urgent Provisional Measures was rejected by the President of the CAS Appeals Arbitration Division.

During a March 7, 2019 telephonic hearing, counsel for Claimants stated that their motion for sanctions against USAT was moot because of their suspension by WT. Counsel for USAT withdrew its requested for prophylactic measures against [REDACTED] and [REDACTED]. Neither side requested that the Arbitrator make any findings regarding their respective allegations, which effectively resolved all issues in connection with this arbitration proceeding.

### **DECISION AND AWARD**

Based on the foregoing undisputed and/or findings of material facts and legal analysis, the Arbitrator decides and awards as follows:

The Arbitrator has jurisdiction to resolve this dispute and to grant the relief requested by [REDACTED] and [REDACTED].

Pursuant to the Ted Stevens Olympic and Amateur Sports Act (“ASA”), U.S. Center for SafeSport’s SafeSport Code for the U.S. Olympic and Paralympic Movement, and SafeSport Practices and Procedures for the U.S. Olympic and Paralympic Movement (“SafeSport Practices and Procedures”), and USA Taekwondo’s Bylaws and Safe Sport Strategy, Policies & Procedures, USA Taekwondo, Inc. (USAT) and subject to the foregoing limits discussed in the Arbitrator’s Legal Analysis, USAT has valid authority to impose appropriate and proportionate interim measures on its members, including but not limited to athletes and coaches, to protect its current members from an imminent threat of harm to their safety or well-being.

To comply with the ASA and Section 9 of the USOC Bylaws, USAT’s exercise of this authority to impose an interim suspension on one of its members pending final disposition or adjudication of a SafeSport investigation or proceeding, civil litigation, or a criminal prosecution, which would preclude him or her from the opportunity to participate in a “protected competition” under Section 1.3 (w) of the USOC Bylaws, must fully comply with the U.S. Center for SafeSport’s SafeSport Practices and Procedures (specifically, Part V) and its Supplementary

Rules for U.S. Olympic and Paralympic Movement Arbitrations, including but not limited to R-40.

USAT's December 17, 2018 interim suspension of [REDACTED] is vacated because based on the record evidence in this arbitration proceeding it is an inappropriate and disproportionate interim measure that denies him the opportunity to participate in future "protected competitions" (e.g., February 28-March 3, 2019 U.S. Open Taekwondo Championships) as an athlete without just cause in violation of the ASA and Section 9 of the USOC Bylaws. This determination does not preclude USAT from imposing less restrictive conditions and requirements upon him to protect the safety of its current member athletes and other categories of persons listed in Section V of the SafeSport Practices and Procedures, provided that any such prophylactic measures do not effectively deny him the opportunity to participate in any future "protected competition" as an athlete.

USAT's January 25, 2019 interim suspension of [REDACTED] is vacated because based on the record evidence in this arbitration proceeding it is an unauthorized, inappropriate, and disproportionate interim measure that violates the denies him the opportunity to participate in future "protected competitions" as a coach (e.g., February 28-March 3, 2019 U.S. Open Taekwondo Championships) without just cause in violation of the ASA and Section 9 of the USOC Bylaws. This determination does not preclude USAT from imposing less restrictive conditions and requirements upon him to protect the safety of its current member athletes and other categories of persons listed in Section V of the SafeSport Practices and Procedures, provided that any such prophylactic measures do not effectively deny him the opportunity to participate in any future "protected competition" as a coach.

USAT is ordered to immediately notify the World Taekwondo Federation that the Arbitrator has vacated its December 17, 2018 interim suspension of [REDACTED] and its January 25, 2019 interim suspension of [REDACTED].

If they are otherwise eligible to participate, USAT is ordered not to deny [REDACTED] or [REDACTED] the opportunity to compete in its 2019 U.S. Open Taekwondo Championships or any other future protected competitions.



USAT is responsible for the costs of the AAA filing fees and the Arbitrator's compensation for this arbitration proceeding.

Each party shall bear its own attorney's fees and costs incurred for this arbitration proceeding.

This Award fully resolves all claims and defenses submitted by the parties in connection with this arbitration proceeding, but it does not consider or resolve the merits of any allegations of past sexual misconduct by [REDACTED] that currently are pending or being investigated by the U.S. Center for SafeSport pursuant to its exclusive jurisdiction under the Stevens Act and SafeSport Code. It also does not consider or resolve the merits of any allegations of past sexual misconduct by [REDACTED] or [REDACTED] that are the subject of any pending civil or criminal judicial proceeding (including [REDACTED]) or criminal investigation. All claims and defenses not expressly granted herein are hereby denied.

March 19, 2019

A handwritten signature in cursive script, appearing to read "Matthew J. Mitten".

Matthew J. Mitten, Arbitrator