

USA HOCKEY BYLAW 10

PROCEDURE FOR SUSPENSION AND DISCIPLINE OF MEMBERS

(updated version as of 1/15/16)



Background

- Ted Stevens Olympic and Amateur Sports Act provides USOC with authority to designate NGBs.
- USOC designates USA Hockey as the NGB to govern the sport of ice hockey in the United States.
- As a condition of its status, USA Hockey is required to follow the requirements to be an NGB.
- Through the USA Hockey Affiliate Agreement, USA Hockey delegates the authority to govern hockey to the respective USA Hockey Affiliates for their geographic area.
- Affiliate's authority is subject to limitations, including that they shall abide by and act in accord with the Articles of Incorporation, Bylaws, Rules and Regulations, Playing Rules and decisions of the Board of Directors of USA Hockey.



Private Association Law

- The principles of Private Association Law provide that a court will not interfere with the governance and disciplinary rulings of a private association when the Private Association follows its own Bylaws and procedures in issuing such discipline.
- Courts must defer to a voluntary association's own interpretation of its rules, regulations, bylaws or constitution.
- Courts will not review the results of such a process unless the actions of the organization are ***illegal, against some public policy, or arbitrary, or capricious.***
- However, when a party is suspended without being afforded the rights accorded to them in the Bylaws, courts may intervene and overturn the suspension for failure to follow the Bylaws.



Purpose of Bylaw 10

A. Dispute Resolution

(1) General

All claims, demands, discipline or disputes (“Disputes”) arising by and between Parties, as defined in Section 10. B below, shall be subject to the provisions of this Bylaw 10 and this Bylaw ***shall constitute the sole and exclusive remedy for dispute resolution.***

(2) Purpose

It is the specific purpose of this Bylaw 10 to provide a uniform method of resolving Disputes that is a ***full and complete substitute for any court proceedings*** and that utilizes the specific skills, expertise and background of individuals experienced in the sport of hockey and sports administration. The procedures herein are referred to collectively as the “Dispute Resolution Procedure.”



(3) Submission to Bylaw 10 and Failure to Follow Procedure

Each Party, by virtue of its membership, affiliation or participation at any time in USA Hockey or a USA Hockey sanctioned game or program, ***agrees to abide by*** this Dispute Resolution Procedure. Failure to abide by the Dispute Resolution Procedure shall, in addition to any other sanctions allowed by these Bylaws:

- (a) Make a Party and any person or entity representing, participating with or aiding such Party ***liable for any and all costs and expenses***, direct or indirect, including reasonable court costs and attorneys' fees and the value of volunteer time incurred by USA Hockey, its Affiliate Associations, directors, officers and/or agents; and
- (b) ***Subject such Party to Summary Suspension and/or disqualification from membership*** and any right to participate in USA Hockey or its Affiliate Associations' sanctioned events in the sole discretion of USA Hockey or its Affiliate Associations.



Important Definitions

- **“Discipline”** shall mean a suspension, probation, censure or other discipline of a Party.
- **“Administrative Action”** is an “action or decision by USA Hockey, an Affiliate Association or a local league, association or program (*other than “Discipline”* as defined below) that *affects*
 - *any Parties’ eligibility to participate in domestic competition* and/or
 - *their membership in any organization* within the jurisdiction of these Bylaws.”



Unified Procedure

Bylaw 10.C.(1):

*“**Except** ..., no Party may be suspended from participation or otherwise disciplined for ... unless a hearing has been held **prior to the action being taken** according to the provisions of this Unified Procedure.”*

Bylaw 10.C.(2):

*“It is the purpose of this Unified Procedure to provide Parties a **fair hearing** (a) **prior to being subject to Discipline**, which shall include reasonable notice of the grounds for the proposed Discipline, and (b) **to contest an Administrative Action**, which hearing shall include ...”*



Main Principles of USA Hockey Disciplinary Procedures

Hearings:

- In ***nearly all cases*** a suspension should not be imposed ***until after*** a party has been afforded a right to a hearing under the procedures set forth in Bylaw 10.C.
- Hearings under Bylaw 10.C. have certain requirements:
 - **Hearing Committee:** The hearing committee must be *at least 3 reasonably disinterested and impartial persons*;
 - **Offer of Hearing:** The hearing committee must hold a hearing ***within 30 days after its appointment*** unless a later date is agreed upon by the parties and approved by the hearing committee (a party may request ***expedited hearing***);



Purpose of Bylaw 10

- **Notice of Hearing:** The hearing committee must provide ***at least 7 days' notice of the hearing***, which shall include time and place of the hearing, the manner in which the hearing will be conducted, the grounds for any proposed suspension or discipline, the possible consequences of an adverse finding, and the issues to be resolved by the panel (a party may request ***expedited hearing***);
- **Suspension Remains in Effect:** Any existing suspension remains in effect until the decision of the hearing committee is rendered;
- **Location:** The hearing must be in a location that is accessible to the suspended party and the parties proposing the suspension;



Hearing Requirements

A fair hearing is required, including:

- Reasonable notice of the grounds for the proposed suspension, but any grounds supported by the evidence presented may be considered in reaching a decision;
- Notice of the possible consequences of an adverse finding;
- A reasonable opportunity to prepare and present their case and argument;
- An opportunity call witnesses and present evidence;
- Opportunity to see evidence intended to be used at hearing;
- Cross examination, subject to rules of panel?
- The ability to have counsel present (provided that, the hearing committee may set the rules for such participation); and
- The appeal procedure when a decision is rendered;



Hearing Rules

- **Hearing Rules:** The hearing committee may decide the level of formality for the hearing, may hear any evidence it believes is relevant, may place limits on time, evidence and documentation, may have witnesses and/or written statements and may establish other hearing rules so long as each party is treated substantially equal.
- **Burden of Proof:** The party proposing the suspension must establish the facts and the violation of rules or bylaws by a preponderance of evidence (i.e., *more likely true than not true*).
- **Decision Deadlines:** The hearing committee must use reasonable efforts to render a decision within 5 business days of the hearing/closing of the record, and prepare and deliver a written decision within 15 business days of the hearing.



- **Decision Contents:** The written decision must contain (i) ***findings of material facts*** (i.e., the committee finds that the following occurred), (ii) ***conclusions*** (i.e., based upon the facts above, the committee concludes that the person violated Bylaw), (iii) the ***order of the committee*** (based upon the conclusions above, the committee hereby orders the following suspension...), and (iv) statement of any ***right to appeal***.
- **Scope of Suspension:** Any suspension imposed is only valid with respect to the jurisdiction of the suspending authority (e.g., a local program may only suspend within its program and an affiliate may only suspend a party from participation within their affiliate) provided that a local association may request that the affiliate honor the suspension throughout the affiliate, and an affiliate may request that USA Hockey honor the suspension throughout USA Hockey's jurisdiction.



Suspensions Prior to a Hearing

- There are **very few situations** that allow USA Hockey, or any Affiliate, local league or organization, Council, Committee or Section, to suspend a Member without providing a hearing prior to the suspension.
- The **limited circumstances** where a suspension may be imposed prior to a hearing are:
 - **Playing Rules Suspensions** (suspensions where a playing rule expressly permits the suspension – e.g., a Match Penalty);
 - **Officiating Suspensions** (state association or USAH league or local supervisor may suspend a referee for up to 10 days, and a state association or Affiliate may suspend a referee pursuant to the summary suspension procedures below);
 - **Assault of a Game Official** (an immediate suspension w/ Match); and



Suspensions Prior to a Hearing

- **Summary Suspensions** (are permitted “. . . **only in those cases** where a person has been **arrested** for a crime alleged to have been committed, a person has **assaulted another** or **violated the USA Hockey SafeSport Policy**, including such abuse between adults, or other violations of USA Hockey Policies set forth in the Annual Guide or comparable Policies of Affiliate Associations that are in writing and have been approved by USA Hockey. . . .”).
- Although the language allowing Summary Suspensions for “violations of USA Hockey policies as set out in the Annual Guide, or comparable Policies of Affiliate Associations”, **may be interpreted broadly**, it is intended that **situations calling for suspension prior to a hearing are the exception** rather than the rule and hence they should not be overused.



Summary Suspensions

- An Affiliate or local league or organization may not issue a Summary Suspension unless USAH's or the Affiliate's bylaws, rules or regulations provide for such a suspension.
- USA Hockey Bylaw 10.C(3)(c) *requires only 7 days notice prior to a hearing. **Only extreme cases should rise to the level where a suspension cannot wait for 7 days to conduct a hearing.***
- Although a party may try to delay a hearing, a suspending party would be within their authority to impose a suspension if the notified party did not appear at a properly called hearing (they would then have a right to appeal).
- If a Summary Suspension is imposed, the suspended party must be provided a written notice of their right to request a hearing.
- In situation where legal proceedings are pending or ongoing, it may be appropriate to allow the suspended party to delay their hearing while legal proceedings are ongoing.



Other Exceptions

- Bylaw 10 does not apply to determine liability or damages arising from personal injury claims or dues and fees between Parties – but existence of debt may be grounds for Discipline or eligibility decision.
- Bylaw 10 does not apply when High School or College Club has membership or eligibility rules or procedures determined by Interscholastic Athletic Organization.
- Appeals of eligibility of a player, team or coach to participate in District or National Championships (or playoffs leading thereto) are appealed to National Championships Appeals Committee.



Appeals

- Any ***person suspended or otherwise disciplined*** may appeal that suspension after the hearing or failure to have a hearing.
- The ***Appeal Authority*** for Playing Rules Suspensions and suspensions for violations of Bylaws or rules of local, league, affiliate or district organizations ***is either*** (a) the entire Board of a state association, (b) the entire Board of an Affiliate, or (c) ***a designated committee of a state association or Affiliate***.
- The Appeal Authority for ***suspensions of referees*** by a state association or local supervisor is the Affiliate, and the Appeal Authority for suspensions of a referee by an Affiliate is a committee comprised of the National RIC, a District Director from the District to which the Affiliate belongs, and a third person named by those two people.
- The ***final Appeal Authority for “Administrative Actions”*** is the Affiliate Board of Directors;



Appeals

- The Executive Committee of USA Hockey may allow an appeal of a **suspension**, or other discipline if there is shown to be a **gross abuse of discretion**.
- Any suspension shall be in force and effect until it expires or the Appeal Authority modifies it.



Appeal Procedures

- The Appealing Party must provide a **written Statement of Appeal** to the Disciplinary Authority and Appeal Authority **within 14 days** from receipt of the decision from the hearing body or the date of the failure to have a hearing, and if the Statement of Appeal is not delivered within the ten (14) day period, the suspension is final;
- The **Statement of Appeal must describe** why the suspension should be overruled or reversed, and should include the record of the hearing panel (if any) and a copy of the decision being appealed.
- The **Disciplinary Authority shall have 14 days** from receipt of the Statement of Appeal **to provide a written response** to the Appeal Authority.



Appeal Procedures

- The Appeal Authority ***may hold a hearing*** or may choose to consider the appeal on the ***written submissions*** of the parties.
- Only the ***evidence and theories explicitly presented*** to the Suspending Authority may be presented or considered in appeal;
- The Appeal Authority must use every reasonable effort to decide the appeal within (i) 30 days from the receipt of the reply or expiration of the period for reply, or (ii) 14 days from the hearing; and
- The Appeal Authority ***may affirm, reverse or modify*** (including increase or decrease) any decision in its sole discretion and as it deems proper under the circumstances.



Application of these Principles

- Each local league, association and organization and each Affiliate ***must abide by the procedures*** set forth in Bylaw 10 when imposing suspensions or other discipline.
- ***Each local league***, association and organization and each Affiliate ***should have a committee***, or persons that could be named to serve on a committee, to ensure that there are at least 3 reasonably disinterested and impartial persons to hear each matter.
- ***Each Affiliate*** should be prepared to determine an appeal (either by holding a hearing or through written submissions) within 30 days of the date the parties have submitted their statements;
- ***Affiliates should consider appointing an appeals committee*** to hear appeals in order to meet the required timelines.



Attachments

- Sample Notice of Hearing (letter to Party advising that a hearing will be conducted);
- Sample Notice of Summary Suspension (letter to Party advising of suspension and right to a hearing);
- Sample Hearing Committee Decision;
- Sample Appeal Authority Decision.



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