

## **USA HOCKEY NATIONAL BACKGROUND SCREENING POLICY REVIEW PROCEDURE**

This USA Hockey National Background Screening Policy Review Procedure is to be used by USA Hockey to review applicants seeking participation in USA Hockey programs in positions that require a background check be conducted prior to the applicant being eligible for such position. Pursuant to the requirements of the United States Olympic & Paralympic Committee, the USA Hockey Bylaws and the USA Hockey SafeSport Program, USA Hockey, through the procedure below, may deny or place limitations on any applicant's participation in any USA Hockey sanctioned events or programs if it finds that permitting an applicant with negative background check results is inconsistent with the stated purpose of USA Hockey's bylaws, policies, and/or the USA Hockey SafeSport Program.

### **PRELIMINARY MATTERS.**

**Confidentiality.** All information and discussion related to a screening application must be kept confidential within the process of review of background screens as outlined below until a final determination is made by USA Hockey as to whether an applicant is deemed eligible or ineligible to participate.

**Email Communications.** Pursuant to USA Hockey's agreement with the national background screen vendor, National Center for Safety Initiatives ("NCSI"), and NCSI's standard protocol, communications between NCSI and applicant and/or USA Hockey and applicant will be via email at the address provided to NCSI by applicant during the screening application process.

**Previous Background Screen Determinations by USA Hockey Affiliates.** USA Hockey Affiliates shall submit all prior background screening determinations to USA Hockey for persons deemed ineligible within the Affiliate as a result of a background screen. In the event any such applicant applies for USA Hockey membership through this procedure, USA Hockey shall ratify the Affiliate determination unless the applicant can demonstrate through the procedures in Sections 3 and 4 below that circumstances have changed since the previous ineligibility determination. Previous determinations that an applicant was eligible to participate in USA Hockey sanctioned events or programs does not guarantee future determinations of eligibility.

**Screens from Other National Governing Bodies.** If given permission to review background screen results conducted on an applicant for another Olympic National Governing Body, USA Hockey shall request that NCSI apply USA Hockey criteria (set forth herein) to the screening results and make a determination of whether the applicant should be cleared or an Adverse Action Notice should be issued. If an Adverse Action Notice is issued, then the procedures in Sections 3 and 4 below shall be followed to evaluate the applicant's eligibility.

**Background Screen Results.** The procedure below outlines how determinations are made following a background screen. As set forth more fully below, determinations may be that the applicant (i) is "Clear" and eligible for membership, (ii) is Clear with restrictions or conditions imposed (e.g. no driving minors or not eligible for a certain position, etc.), which means that an applicant is eligible for membership but must adhere to certain restrictions imposed as a condition of the applicant's membership, or (iii) is "Flagged," which means the applicant has a disqualifying condition in the applicant's background screen record (as further defined below) and is not eligible for membership.

**Flagged Screens.** If an applicant's screen is Flagged, it means the applicant is ineligible, pending an appeal, to become a member of USA Hockey or serve as a volunteer because the search determined the applicant has a disposition or resolution of a criminal proceeding, other than an adjudication of not guilty, or has a pending charge for any of the following crimes, but not limited to:

- a. Any felony, defined as all crimes punishable by greater than one (1) year in jail or prison, regardless of how it's characterized by jurisdiction;
- b. Any misdemeanor involving:
  - 1. All sexual crimes, criminal offenses of a sexual nature to include but not limited to; rape, child molestation, sexual battery, lewd conduct, possession and distribution of child pornography, possession and distribution of obscene material, prostitution, indecent exposure, public indecency, and any sex offender registrant;
  - 2. Any drug related offenses;
  - 3. Harm to a minor or vulnerable person, including, but not limited to, offenses such as child abandonment, child endangerment/neglect/abuse, contributing to the delinquency of a minor, and DUI with a minor;
  - 4. Violence against a person, force, or threat of force (including crimes involving a deadly weapon and domestic violence);
  - 5. Stalking, harassment, blackmail, violation of a protection order, and/or threats;
  - 6. Destruction of property, including arson, vandalism, and criminal mischief;
  - 7. Animal abuse, cruelty, or neglect; and
  - 8. Any DUI/DWI in the last two (2) years or two (2) or more DUIs/DWIs in the last five (5) years; and/or
- c. If the applicant is currently listed, or has ever been listed, on a sex offender registry or a similar database.

**Background Screen Review Committee.** The Background Screen Review Committee ("BSRC") shall be comprised of twenty-one (21) qualified individual volunteers appointed by the President of USA Hockey. Members of the BSRC will be assigned in teams of three (3) members per panel to (i) conduct an initial review of any background screen resulting in a Flagged status (as defined below) to determine whether an applicant should be eligible, and (ii) conduct hearings and make determinations when an applicant has been denied eligibility for membership based on Flagged status. A member of the BSRC shall not serve on a hearing panel for an applicant in which the BSRC member was part of the panel that conducted the initial review. Panel members will communicate primarily via email, but may elect/agree to communicate by other means if necessary. Hearings will be held via telephone and/or video.

**Screening Appeals Committee.** The Screening Appeals Committee ("SAC") shall be composed of persons appointed by the President of USA Hockey to decide appeals of applicants that have been denied eligibility following a hearing before the BSRC.

### **BACKGROUND SCREENING REVIEW PROCEDURE.**

1. **Initial Review.** After the applicant submits to a background screen through NCSI, and as the circumstances warrant, NCSI either (i) directly notifies the applicant (via email) and USA Hockey (via direct database communication) of a Clear screen or (ii) sends the applicant a Pre-Adverse Action Notice indicating that either (a) NCSI needs more information to complete the screening process or (b) the screen results show a criminal record consistent with the Flagged Screens criteria listed above and the applicant may contest the accuracy of the screening results directly with NCSI within five (5) business days. If the applicant successfully contests the accuracy within the five (5) business day period, then NCSI through its process will issue a Clear screen. If the applicant (a) does not contest the accuracy of the screen within the 5 day period or (b) unsuccessfully contests the accuracy of the screen, NCSI will change the applicant's status to Flagged, and will notify the applicant and USA Hockey of the change in the applicant's status.

2. **Flagged Status.** If an application returns a result of Flagged (as described above), USA Hockey will promptly refer the application to designated members (at least three (3)) of the BSRC, with a copy to the applicable Affiliate representative(s). The members of the BSRC will conduct an initial review of the screen's results, consider any feedback from the Affiliate in which the applicant intends to participate, and will determine whether the applicant is eligible (Clear) or remains ineligible (Flagged). The BSRC's panel of at least three (3) members, also referred to as "the Panel" or "the BSRC Panel" hereinafter, will use its best efforts to make its determination within five (5) business days of receipt of the background screen results.

a. If the applicant is deemed eligible by the BSRC, USA Hockey will notify the applicant (via email) of the applicant's eligibility and if there are any restrictions and/or conditions to regarding the applicant's ability to participate. If the BSRC sets any restriction(s) as a condition of the applicant's eligibility to participate (e.g., not allowed to drive minors, not allowed to hold certain positions, etc.), USA Hockey will also notify the applicable Affiliate President and SafeSport Coordinator of the restriction(s) with the expectation that the applicable Affiliate and local program shall require and enforce that the restriction(s) are followed according to the BSRC's direction. The applicant will not be able to participate in any USA Hockey sanctioned events or programs until the applicant acknowledges and accepts any identified restrictions and/or conditions via return email prior to participation in USA Hockey activities. Any violations of any restrictions or conditions imposed by the BSRC will be addressed pursuant to the disciplinary process of Bylaw 10.

b. If the applicant is deemed ineligible by the BSRC, USA Hockey will cause an Adverse Action Notice to be sent to the applicant, advising that the applicant has a Flagged condition and will instruct the applicant on the procedure to request a hearing to contest the determination (as described below).

c. If the time frame for exercising the right to contest a screening determination (fourteen (14) days from receipt of the Adverse Action Notice) has passed and the applicant has not properly exercised that right, the determination by the BSRC will be deemed final and the applicant will be deemed ineligible.

3. **Procedure to Contest a Screening Determination.** The applicant will have fourteen (14) days from receipt of the Adverse Action Notice to file a Statement of Appeal to the BSRC to contest the Adverse Action Notice, c/o usahscreeningappeals@usahockey.org. USA Hockey will only accept electronic submissions.

a. The applicant may include with the Statement of Appeal any additional submissions the appellant deems necessary (including, but not limited to, letters of reference, memorandums in support of eligibility, court records, etc.). The totality of the submissions shall be no longer than ten (10) typewritten double spaced pages with a font size no smaller than twelve (12) point. Exhibits to support the Statement of Appeal may also be attached, including any relevant governing documents the applicant is relying upon to support the applicant's argument. Exhibits shall not be included in the ten (10) page limitation; however, exhibits shall only be included if they are non-duplicative (e.g., no more than three (3) personal reference letters) and necessary to explain why the applicant's appeal should be granted.

b. The BSRC will consider appeals from any applicants who receive Adverse Action Notices for any, coach, official, administrator, or volunteer screened by NCSI as a condition of their eligibility for membership or participation within USA Hockey. Screening flags of USA Hockey employees to determine their eligibility for employment with USA Hockey shall be reviewed, and a decision shall be made, by USA Hockey's Executive Director with no right of appeal.

c. The Designated BSRC Panel will review the applicant's submissions and schedule a telephonic and/or video hearing to take place no later than thirty (30) days of receipt of the Statement of Appeal by USA Hockey, although the applicant may waive a hearing and ask that the Panel make its determination solely on the applicant's submissions. At any hearing, the applicant shall be allowed up to ten (10) minutes to make a presentation to the Panel, followed by any questions from the Panel. The Rules of Evidence in judicial proceedings shall not apply in the BSRC Panel's administrative hearing. The burden of proof shall be on the applicant challenging the determination of ineligibility to prove by a preponderance of the evidence that the applicant should be eligible for participation within USA Hockey despite the existence of the reported disqualifying condition. The applicant may consult with legal counsel during the hearing, but legal counsel may not participate in the hearing itself. The Panel will make arrangements for a record of the proceedings. A copy of that record shall be provided to the applicant upon request, at the applicant's expense. All proceedings are confidential.

d. At the request of the applicant, but in the discretion of the Panel, the Panel shall use reasonable efforts to expedite the proceedings.

e. After the hearing, or upon consideration of the submissions alone at the request of the applicant, the Panel will determine eligibility by a two-thirds (2/3) majority vote.

4. **BSRC Panel Decision**. In rendering its finding, each designated BSRC Panel shall consider the following:

a. The legitimate interest of USA Hockey in providing a safe environment for all USA Hockey participants and other persons who attend USA Hockey sanctioned events;

b. The seriousness of the criminal offense of the applicant, including the age of any victim(s) at the time of the offense;

c. The time which has elapsed since the occurrence of the criminal offense or act;

d. The age of the applicant at the time of the criminal offense or act;

- e. The bearing, if any, the criminal offense or act has on the applicant's ability to perform the necessary functions of their role in USA Hockey;
- f. Any information produced by the applicant, or on behalf of the applicant, with respect to the applicant's rehabilitation and good conduct;
- g. Any voluntary restrictions on access proposed by the applicant;
- h. Any recommendation or information provided by the applicant's organization; and,
- i. Any other information, which in the determination of the designated BSRC Panel, would bear on whether or not the applicant should have access to, or supervision over minor athletes in USA Hockey.

5. **Appeals Following BSRC Determination.**

a. Upon the written appeal of any applicant whose determination of ineligibility has been upheld by the BSRC, or if the applicant wishes to appeal any restrictions imposed by the BSRC as a condition of eligibility, an appeal of such determination may be made to the SAC pursuant to the provisions of USA Hockey Bylaw 10.E. The statement of appeal must be received by the SAC by email to [usahscreeningappeals@usahockey.org](mailto:usahscreeningappeals@usahockey.org) within fourteen (14) days from email transmission of the BSRC determination that the applicant is ineligible or is eligible but subject to conditions. If a Statement of Appeal is not received by the SAC within the fourteen (14) day period, the BSRC decision shall be final.

b. Each appeal shall be heard by no less than three (3) members of the SAC and decided by majority vote of the SAC members hearing the appeal.

c. The applicant may submit another Statement of Appeal for consideration by the SAC, but other documents may only be submitted if previously considered by the BSRC. The Statement of Appeal shall be no longer than ten (10) typed double spaced pages with a font size no smaller than twelve (12) point and shall only address the issue of whether the BSRC determination was made in an arbitrary or capricious manner or was not supported by the facts.

d. The appeal to the SAC shall be decided based upon the written submissions only. There shall be no hearing. Only the evidence and theories presented to the BSRC shall be considered on appeal. The applicant shall bear the burden of proof that the BSRC determination was made in an arbitrary or capricious manner or was not supported by the facts. The SAC shall decide any appeal and deliver a written decision within thirty (30) days of receipt of applicant's Statement of Appeal.

e. The decision of the SAC shall be final within USA Hockey's screening procedures and there shall be no further appeal.

6. **Reporting of Decision.** USA Hockey staff will communicate the BSRC or SAC panel's decision to the applicant, the applicant's Affiliate President and SafeSport Coordinator, and to NCSI when applicable. If an applicant's participation is approved through their screen or by USA Hockey, then the applicant's record in the USA Hockey membership database shall signify a valid screen until the screen expires.