



Bozeman Barracuda Swim Club  
Policy/Procedure No. BSC-1013

## Board of Review

Approved by Board: 10/11/2016

Update of Previous Policies

Page 1 of 4

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This policy is intended to comply with requirements of and procedures for membership and affiliation for USA Swimming (USA-S). This establishes disciplinary requirements, procedures and responsibilities with respect to the Bozeman Barracuda Swim Club (BSC) Code of Conduct and Discipline Policy.

Under the Amateur Sports Act of 1978, National Governing Body's were required to establish and maintain provisions for a prompt and equitable resolution of disputes involving any of its members. The Board of Review is the independent and impartial "judiciary" for USA Swimming, LSC's and teams to hear and decide disputes. This policy covers the BSC compliance with this act.

### **ARTICLE 1 – BOARD OF REVIEW POLICY**

#### **1. OVERVIEW**

If the athlete, parent or guardian has concern over the action they can submit documentation for the Board of Review (see Discipline Policy).

The mission statement for this policy is to act as a hearing body to resolve matters, questions and disputes involving the membership.

#### **2. MEMBERSHIP**

The BSC Board of Review shall be comprised of the following people designated by the President of the Board of Directors; a) a USA swimming non athlete member, b) an athlete, and c) an elected position.

#### **3. AUTHORITY**

The BSC Board of Review has the authority to:

1. Impose and enforce penalties for any violation of the rules and regulations, administrative or technical, of BSC.
2. Determine the eligibility and right to compete of any athlete.
3. Vacate, modify, sustain, reverse, or stay any decision or order properly submitted for review, or remand the matter for further action.
4. Investigate any election impropriety or cause for removal of a BSC committee member or officer and take corrective action.
5. Review any revocation, suspension, or reinstatement of membership to assure due process.
6. Issue such interim orders, prohibitory or mandatory in nature, as may be necessary pending a final decision of the Board of Directors.



Bozeman Barracuda Swim Club  
Policy/Procedure No. BSC-1013

## Board of Review

Approved by Board: 10/11/2016

Update of Previous Policies

Page 2 of 4

---

### 4. ADMINISTRATIVE AND RULE MAKING POWERS

#### Administrative Powers:

- a) Administer and conduct the affairs and achieve the purposes of the Board of Review
- b) Recommendations for policies, procedures and guidelines
- c) Select or provide for the appointment of other officers, agents, committees or coordinators to hold office for terms, and to have the powers and duties, specified
- d) Call regular or special meetings of the Board of Review,
- e) Retain and employ those persons, which the Board of Review may determine are appropriate, necessary or helpful in the administration and conduct of its affairs, and as may otherwise be appropriate, necessary or helpful in the administration and conduct of its affairs, the achievement of its purposes and the efficient exercise of its duties and powers.

#### Rule Making Powers:

The Board of Review shall have the power and the duty to promulgate rules and procedures with respect to any matter within its jurisdiction or appropriate, necessary or helpful in the administration and conduct of its affairs.

### 5. INVESTIGATIVE AND JUDICIAL POWERS

The Board of Review may investigate and conduct hearings, make and publish decisions and orders with regard to any matter affecting the BSC, its status or conduct as a swim club or the administration of the sport of swimming within the BSC boundaries (the "Territory") which involves:

- a) The BSC and (1) a member or members of the BSC, or (2) a member or members of another swim club solely with respect to conduct or events occurring within the Territory or a combination of persons described in clauses (1) and (2);
- b) Only a member or members of the BSC; or
- c) With respect to conduct or events occurring outside the Territory, (1) the BSC and a member or members of the BSC or (2) only a member or members of the BSC

### 6. EXERCISE AND DECISIONMAKING

Except for authority and power granted to the Board of Review Chair, the exercise of the authority and powers of the Board of Review and the decision of matters which are the subject of a hearing shall be decided by a majority vote of the panel, the rehearing panel or the full membership of the Board of Review. The views of any dissenters shall be included in the record of the proceeding if requested by the



Bozeman Barracuda Swim Club  
Policy/Procedure No. BSC-1013

## Board of Review

Approved by Board: 10/11/2016

Update of Previous Policies

Page 3 of 4

---

dissenters. The exercise of the Board of Review's authority and power shall lie solely in its discretion and the interests of justice and the sport of swimming. However, the Board of Review shall exercise its power in response to a timely Protest filed with it, subject, in appropriate circumstances, to the power and discretion of the Board of Review Chair to dismiss a Protest with permission to re-file for a stated period. In connection with any preliminary investigation, the Chair may offer the services of a Board of Review member to act as a mediator or similar positions under other alternative dispute resolution mechanisms.

### 7. PENALTIES

Board of Review, after conducting such hearings as it may determine to be necessary or helpful, may, among other remedies:

- a) Dismiss the Protest, with or without permission to re-file
- b) Censure the Respondent
- c) Establish a period of probation regarding Respondent
- d) Prohibit or mandate future actions, inaction or conduct of Respondent;
- e) Determine the results of, or require a rerun of, any election held by the BSC or any constituent element thereof
- f) Vacate, modify, sustain, reverse, remand or stay any decision or order of a smaller panel of the Board of Review,, the Board of Directors, any officer, division or committee, coordinator or official of the LSC
- g) Deny, grant, suspend or restore the eligibility or right to compete of an Athlete Member of the BSC;
- h) Deny, grant, suspend or restore membership in the BSC for a definite or indefinite period of time, with or without terms of probation, or expel any Group Member or Individual Member of the BSC, including any administrator, athlete, coach, trainer, manager, meet director, official, officer, Board Member, coordinator or chair or member of any committee or subcommittee
- i) Prohibit for a definite or indefinite period of time the participation by a nonmember volunteer or other person in any capacity whatsoever in the affairs of the BSC and its Group Members
- j) Any combination of any of the foregoing or any other remedies deemed appropriate under the circumstances

### 8. REVIEW

Pre-Hearing:



Bozeman Barracuda Swim Club  
Policy/Procedure No. BSC-1013

## Board of Review

Approved by Board: 10/11/2016

Update of Previous Policies

Page 4 of 4

---

A request for a hearing is started by either other policy actions (see Discipline Policy) or a written Petition submitted to the Board of Review Chair (or the BSC Board of Directors President) that:

- a) Sets forth a description of the action, inaction or conduct that is believed to have been improper or incorrect
- b) Gives the name of the person or group believed to have acted improperly or the circumstances believed to require answers, explanations or clarifications

Review by Board of Review Chair:

- a) The Chair can accept a Petition as is, dismiss, or suggest revisions to ensure the Petition sets forth a cause of action.
- b) If Chair dismisses the Petition, the full BSC Board of Review can review it.

Notice of Hearing:

- a) Written notice must be given to each Respondent at his/her last known address (by certified or express mail, email, or personal delivery), as soon as practical but no later than 20 days after receipt by the Board of Review Chair.
- b) A sample Notice of Hearing may be found as an attachment to the BSC Policies on [www.bozemanbarracuda.org](http://www.bozemanbarracuda.org).
- c) The Notice requires
  - a. a statement in reasonable detail of the charges (include copy of petition);
  - b. a statement of Respondent's right to counsel;
  - c. a description of the type of hearing to be held (in person, conference call, etc.)
  - d. the date, time and location at which the hearing will be held (the hearing must be not less than 30 and no more than 60 days after the Notice is sent);
  - e. a request for answer by Respondent, with directions as to whom, when and where the answer should be sent; and a statement of the right to appeal (including the right, if any, to a rehearing in the event of a decision adverse to Respondent).

Respondents Answer:

Respondent shall answer the charges in a writing to be delivered to the Board of Review Chair at least 14 days prior to the hearing, with a copy to the Petitioner and his/her counsel, and anyone else specified in the Notice.

Pre-Hearing Investigations and Fact Finding:



Bozeman Barracuda Swim Club  
Policy/Procedure No. BSC-1013

## Board of Review

Approved by Board: 10/11/2016

Update of Previous Policies

Page 5 of 4

---

### Communications:

- a. BOR members and Petitioner and/or counsel;
- b. BOR members and Respondent and/or counsel;
- c. Copy everybody on everything.

### BOR must be objective and unbiased:

- a. No independent investigations;
- b. No independent visits;
- c. No independent witness interviews.
- d. The parties are masters of their own cases
- e. The parties need to marshal evidence to support their respective cases;
- f. The BOR is a hearing/adjudicative body, not an investigative body.

### Pre-Hearing Conferences:

- a. Use to streamline the hearing by:
  - i. Framing the factual issues
  - ii. Framing the legal issues
  - iii. Resolving any "witness availability" issues
  - iv. Setting deadlines (e.g., to exchange exhibits)
  - v. Considering motions, if any
- b. Make the parties figure out what witnesses they are going to use and schedule a date when they must exchange witness lists (with a brief summary of the area of testimony for each).
- c. Determine the need for any depositions or other formal discovery.
- d. Have the parties exchange copies of any documents or other evidence they will use at the hearing.
- e. Encourage the parties/counsel to prepare Stipulations of any undisputed facts and legal issues, so the number of witnesses is reduced.
- f. Discuss the standard of proof and the burden of proof in Board of Review cases. Explain that the judicial rules regarding the admissibility of evidence do not apply in Board of Review cases.

### Hearing Agenda:

- a. Call Hearing to Order (announce the name of case, the place, time and date of the hearing, the fact that the hearing is being recorded, and read the Charges against Respondent as set forth in the Notice of Hearing or Petition).
- b. Record Appearances



Bozeman Barracuda Swim Club  
Policy/Procedure No. BSC-1013

## Board of Review

Approved by Board: 10/11/2016

Update of Previous Policies

Page 6 of 4

---

- a. Board of Review panel members (20% athlete representation on panel required for a hearing)
- b. Petitioner and counsel, if any
- c. Respondent and counsel, if any
- d. Witnesses and others present, if any
- c. Brief Opening Statements -setting forth generally each party's view of the issues in dispute, the relief sought and what they hope to prove by their presentation of the evidence:
  - a. Petitioner
  - b. Respondent
  - c. Note: Opening statements are not required in a simple case, may just go into evidence.
- d. Presentation of Evidence and Witnesses (swear in each witness)
  - a. As to each of Petitioner's witnesses, the following will occur:
    - i. Petitioner's direct examination
    - ii. Respondent's cross examination
    - iii. Redirect examination by Petitioner
- e. After all of Petitioner's witnesses have testified, the following will occur with respect to each of Respondent's witnesses:
  - a. Respondent's direct examination
  - b. Protestor's cross examination
  - c. Redirect examination by Respondent
- f. Rebuttal evidence by Petitioner
- g. Questions from Board of Review Panel Members (appropriate at anytime during the hearing)
- h. Closing Statements (ask if there are any objections to the fairness of the hearing)
  - a. Petitioner
  - b. Respondent
- i. Adjournment of Hearing
- j. Closed Deliberations of Panel

### The Burden of Proof

The Petitioner has the burden of proving that Respondent committed the acts charged in the Complaint. The Respondent does not have to prove that he/she did not commit the alleged acts.



Bozeman Barracuda Swim Club  
Policy/Procedure No. BSC-1013

## Board of Review

Approved by Board: 10/11/2016

Update of Previous Policies

Page 7 of 4

---

### The Standard of Proof

The standard of proof means the degree to which the trier of fact must be convinced that the charges have been proven. There are 3 possible:

- a. Beyond a reasonable doubt (the standard in criminal cases);
- b. Clear and convincing evidence (used in special civil cases, such as fraud or termination of parental rights); and
- c. Preponderance of the evidence (used in BSC Board of Review cases and most civil cases).

### The Board of Review Written Decision

May be rendered at the time of the hearing or subsequently; in either event, it must be reduced to writing and delivered within 14 days of hearing.

The decision shall include:

- a. Findings of facts;
- b. A conclusion as to whether and what rule/code section was/was not violated;
- c. A statement of remedies ordered or penalties imposed; and
- d. A statement of the rights to appeal that should include time frame, filing fee, destination, and requirement to request rehearing.