S4A Guidelines for a Fair Fact Finding: Youth Sport Program Misconduct Complaint

These guidelines are based on principles of good investigation process as advanced in Webb, S.L. (1996) Sexual Harassment: Investigators Manual, Premiere Publishing, Ltd.

Volunteering to be Fact Finder when asked by the Club President is an important responsibility. Situations that may endanger the safety and well being of our children do arise, albeit infrequently. When they do, they must be dealt with promptly and fairly. Both the complaining party and the alleged offender need to be treated fairly. At the heart of fair treatment is an unbiased determination of the facts by an appointed Fact Finder. The following guidelines should be followed during the investigation process. First read the following club documents:

- FREQUENTLY ASKED QUESTIONS: HOW YOUR CLUB CAN CONDUCT AN OPEN AMATEUR SPORT PROGRAM THAT IS SAFE FOR ATHLETES
- MODEL POLICY: CLUB PHILOSOPHY AND POLICIES GOVERNING PROFESSIONAL COACHING CONDUCT AND THE CONDUCT OF ALL ATHLETES, EMPLOYEES AND VOLUNTEERS
- COACH, EMPLOYEE, VOLUNTEER CODE OF ETHICS AGREEMENT
- COMPLAINT FORM FOR THIS CASE
- NOTICE GIVEN TO THE PERSON ALLEGED TO HAVE ENGAGED IN MISCONDUCT OF THE SPECIFIC ALLEGATIONS

Note: If criminal conduct has potentially occurred and the situation has been reported to the police, fact-finding and an Ethics Panel hearing should move forward simultaneously and promptly. The Club should honor any police request to momentarily delay fact finding until their evidence gathering process is completed. It is assumed in such situations that the person accused of such severe misconduct was immediately suspended from employment or affiliation with the Club by the Club President in order to restore a safe environment.

The Fact Finder in consultation with the Club President should also determine whether the Club has an obligation under state law to report certain situations involving minors. This information is available online at:

http://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.cfm

STEP ONE: The "Factual Scribe" Mindset

- **Understanding the Role of the Fact Finder.** The role of the Fact Finder is two-fold: (1) to determine the facts of the situation and based on interviews with all parties, and (2) determine the credibility of those giving statements. The Fact Finder's role is to as accurately and unemotionally as possible describe what occurred through the process of interviewing all parties involved. The Fact Finder should be a good listener and recorder of facts and a good questioner to make sure that his or her understanding of what occurred is as accurate as possible.

- **Acknowledge Probable Bias.** Youth sports programs and clubs are often like close family units. Everyone has an opinion. High levels of emotion are often expressed. Rumors may abound. Everyone knows each other and may have developed feelings about individuals that are positive or negative. Even the Fact Finder may like or dislike the people involved in a complaint whether they are coaches or athletes. The Fact Finder may also be worried about the reputation of the

Club. All of these concerns must be set aside. Thus, it is important for the Fact Finder to acknowledge and be committed to overcoming his/her own preexisting bias about the people involved, duty to the Club, and to the highest possible extent, disregard emotional reactions and outbursts. Remaining calm, open-minded and impartial is essential. The Fact Finder has a duty to make his or her best effort to determine the truth.

- **Acknowledge Powerful Position of Coach or Adult Over Participants.** The hierarchy of authority in the program usually puts the coach at the top of the power pyramid. An athlete or parent might fear or at least automatically defer to the coach's judgment. Or, the coach may be so good or so respected, that parents and investigators may feel that the coach will leave the club if issues are raised about his or her misconduct. The Fact Finder should remind himself/herself that protection of the athlete and ensuring a safe environment is both a Club responsibility and an important obligation to parents. This may require the Fact Finder to remind persons interviewed that they must overcome these natural fears and inclinations and truthfully express exactly what occurred.

- **Preexisting Concepts about Coach Conduct.** The sport culture often accepts aggressive behavior by coaches as an expression of enthusiasm. So it is important to distinguish between acceptable behavior by "teachers" and media popularized versions of winning coaches who may yell at or physically abuse players. Yelling to demean or demoralize in a personal way is very different than yelling to communicate across a distance, loudly instructing to overcome the noise of a sport environment, or encouraging an athlete to produce his or her best effort. Swearing is never acceptable. Name-calling to demean is never acceptable. Yanking, pushing, constant touching, or hitting an athlete is never acceptable. These kinds of facts and descriptions cannot be ignored or accepted. They must be accurately described. Touching an athlete in a manner that makes them feel uncomfortable is never acceptable. It is good instructional practice and Club policy for a coach to ask the athlete in advance if it is "ok" to touch them in order to put a body part in the right mechanical position. "Spotting" or any protective coaching that would otherwise put an athlete at risk for injury is always acceptable but spotting techniques should always be explained to athletes. An occasional "high five" or a pat on the head or back to acknowledge a celebratory performance is generally acceptable unless the athlete feels uncomfortable for any reason. Think of acceptable behavior of a teacher in a classroom. This is the standard.

- **Preexisting Concepts about Complainant.** Remember that misconduct can never be excused because of the condition of the complainant (drinking, drug use, etc.). Neither can misconduct be excused on the basis of consent (i.e., consensual relationships between adults) or the complainant asking for or approaching a coach or other volunteer to engage in any activity defined by Club policy to be misconduct.

- **Don't Share Your Findings With Others.** Keep all information on the situation and all of your factual findings and impressions to yourself. Don't respond to other members of the Club who are curious about what you found out. The Fact Finder should only share written information with the appointed Ethics Panel.

STEP TWO: BEFORE BEGINNING INTERVIEWS

- **Review the Complaint Form.** Insist on the submission of a written complaint signed by an identified individual or the Athlete Welfare Advocate representing the individual. It is permitted

for the individual to remain anonymous to the Fact Finder and the Ethics Panel but not to the Athlete Welfare Advocate who should keep the original complaint in a confidential file.

- **Review the Notice to the Person Alleged to Have Engaged in Misconduct.** Review the notice to be sure the person alleged received full notice of the specifics that appear in Part II of the complaint form.

- **Speak to Staff Members Who Initially Received the Complaint.** Usually the complaint is submitted to a staff member, coach, or Athlete Welfare Advocate who is not the Fact Finder. Review the complaint form with that person to see if there is anything else that should be noted. This staff member should not be either the complainant or the coach/person alleged to have engaged in misconduct.

- **Get Contact Information.** Be sure to get phone numbers and emails for all the people who need to be interviewed.

- **Identify an Appropriate Interview Site.** Identify an interview location that, if possible, is away from the club and appropriate for a private conversation.

- **Schedule the Interviews.** Schedule a one-on-one meeting with (1) the complainant, (2) the person alleged to have engaged in misconduct, and, (3) individually, each person who observed the alleged misconduct.

- **Recording/Note Taking.** Accurate information is the Fact Finder's most critical responsibility. Whether the information is recorded via handwritten notes or initially via a tape recorder that is later used to make a written record, the Fact Finder needs to gather paper and pencil and/or a recorder with fresh batteries in order to be prepared. Whenever possible, try to use exact quotes and descriptions of the person interviewed. Always inform the person interviewed that the interview is being recorded.

- **Preparing Questions.** Imagine how difficult it might be for someone who has been embarrassed or sexually abused to tell his or her story. Preparing questions prior to the interview will help ensure that only one meeting is necessary. Some basic questions are:
    - What happened? Tell me about the problem.
    - Who was involved?
    - When did the incident take place?
    - Can you give me a specific example? This should be a question after any "general" statement by an interviewee, such as "He is always touching me," or, "He shows up at my house every morning when I go out for my morning run," or "She always makes me feel worthless," or "She always swears at us."
    - Where did it take place?
    - Are there any written documents, emails, text messages, Facebook messages or other social media communications that exist related to this situation. If so, ask for copies.
    - How did it make you feel?
    - Was the employee's ability to work or athlete's ability to participate affected?
    - Were there any witnesses?
    - Is there any documentation in addition to the formal complaint form?
    - Was this an isolated incident or a pattern of behavior? Did this happen to anyone else?

The complaint form may indicate other questions that should be asked. The Fact Finder should never be hesitant to ask for clarity, by saying something like, "I don't understand. Can you help me by explaining that again."

STEP THREE: CONDUCTING THE INDIVIDUAL INTERVIEWS

- **Introductory Comments for Each Interview**
  - Thank the person you are interviewing for coming.
  - Explain that you have been assigned to be the official Fact Finder for the club in a situation that might be unacceptable conduct. That your role is just to ask questions, listen and take notes. There is no other agenda.
  - Explain that you expect the person to be truthful and accurate. That it is important to focus on facts and not opinion.
  - Explain that the sports club or program treats such complaints with a commitment to fairly investigate the situation and take action if necessary to ensure that athletes and employees are participating or working in a safe environment that protects their well being.
  - Express the fact that you have not prejudged whether the formal complaint is accurate or whether any alleged conduct violated Club policy because that is the function of the Ethics Panel – not the Fact Finder. Explain that you are obligated to be impartial.
  - Explain that it is simply the Fact Finder's responsibility to accurately record what persons interviewed describe as having occurred and to assemble that information for the Ethics Panel to make a judgment.
  - Explain that it is important that the Fact Finder take notes or record the interview so notes can be prepared later that accurately express what the interviewee has said.
  - Explain that the person interviewed will be asked to review the Fact Finder's final notes about what was stated during the interview and to sign such notes indicating that comments were accurately represented.
  - Ask whether the interviewee has any questions before starting the interview.

- **Complainant Interview – should be the first meeting**
  - If the complainant is an athlete, speak to the Athlete Welfare Advocate to be sure the athlete is willing to be interviewed. In extreme cases, the interview may need to be with the Athlete Welfare Advocate alone or with the athlete's permission, his or her parent, representing the athlete. If the athlete is available for an interview, the athlete should be asked if he/she wants a parent and/or the Athlete Welfare Advocate to accompany the athlete and provide moral support. However, if the athlete is present, the parent and AWA should be instructed to allow the athlete to speak and tell his or her own story.
  - In addition to the basic questions, review all the facts that are in the written complaint and confirm that they are accurate.
  - Ask whether there is anything else the athletes wishes to say.
  - If the athlete's name is to be held in confidence, assure the athlete that his/her name will not be in any written report. However, the athlete must be informed that confidentiality cannot be honored if information received needs to be released in order to protect other athletes from being endangered, or if the athlete reveals that he/she intends to hurt himself/herself or others.
  - Restate the facts as you recorded them and ask the athlete to verify that your understanding is accurate and to sign your written summary.

- Explain to the athlete and parent the process that will occur from interview through the Ethics Panel decision.
- Confirm that the athlete or employee feels safe and has not experienced retaliation. If retaliation is reported, the Club President should be asked to address the situation immediately. Restoring a safe environment is not the Fact Finder's responsibility.
- Remind the complainant not to discuss the situation or interview with others and to allow the fair process to continue. If asked about the situation, his/her response should be "I've been asked not to discuss this situation in order to protect the rights and privacy of everyone involved."
- If you have any concerns about the credibility of the complainant, be sure to write this down along with why you have this concern.

- **Person Alleged to Have Engaged in Misconduct – should be the second meeting**
  - If the alleged abuser wants an attorney or friend to be present, this is okay, but a one-on-one private conversation is preferred.
  - If the alleged abuser or his/her attorney asks to confront the complainant, explain that this is not permitted under Club policy.
  - You may have to explain the allegation of inappropriate behavior to the employee or athlete, especially if it appears there is little question that the behavior occurred and the alleged abuser says he or she doesn't understand why it is wrong or that the complainant misconstrued his or her intentions.
  - In addition to the basic questions, review all the facts that are in the written complaint and confirm that they are accurate.
  - Ask if there were any witnesses to the situation.
  - Save your toughest questions for the end because asking them at the beginning might cause the interviewee to become defensive.
  - Ask whether there is anything else the person wishes to say.
  - Restate the facts as you recorded them and ask the person to verify that your understanding is accurate by signing your summary.
  - Explain that the alleged abuser may submit a separate written statement from the Fact Finder report of the intervie that will become part of the written record, if they wish, and that you would be happy to receive such statement by a date certain.
  - Explain the complaint process that will occur from interview through the Ethics Panel decision. If you can, give an estimate of how long the process will take.
  - Remind the alleged abuser not to discuss the situation or interview with others associated with the club and to allow the fair process to continue. If asked about the situation, his/her response should be "I've been asked not to discuss the situation in order to protect the rights and privacy of everyone involved."
  - Remind the alleged abuser not to contact the complainant, engage in any form of retaliation, or encourage others to mistreat the complainant and that there will be zero tolerance for such retaliation (i.e., termination of employment).
  - Invite the person to call the Fact Finder if they think of anything they forgot or have additional questions.
  - If you have any concerns about the credibility of the alleged abuser, be sure to write this down along with why you have this concern.

- **Witness Interviews**
  - Confirm that the person being interviewed observed the alleged misconduct.

- If the witness is anxious or fearful about being involved in the situation, ask if he or she would mind talking about why they are fearful, explaining that everyone is expected to do their part in maintaining a safe participation environment and understanding what happened is critical to treating the complainant and the person accused fairly.
- Be patient and reassuring. Remind the witness that he/she is not being asked to judge whether what happened is right or wrong, simply to clarify and accurately describe what happened.
- Ask whether there is anything else the person wishes to say.
- Restate the facts as you recorded them and ask the person to verify that your understanding is accurate and to sign your summary.
- Explain the complaint process that will occur from interview through the Ethics Panel decision. If you can, give an estimate of how long the process will take.
- Remind the witness not to discuss the situation or interview with others associated with the club and to allow the fair process to continue. If asked about the situation, his/her response should be "I've been asked not to discuss it in order to protect the rights and privacy of everyone involved."
- Invite the person to call if they think of anything they forgot or have additional questions.
- If you have any concerns about the credibility of the witness, be sure to write this down along with why you have this concern.

STEP FOUR: SUBMITTING YOUR FACT FINDING REPORT TO THE ETHICS PANEL

- **Cover Memo.** Write a short cover memo to the Hearing Panel, completing the following information:
  - Who is the complainant – name and position
  - Who is the alleged abuser – name and position
  - Short summary of the complaint – and refer to Appendix A which should be a copy of the formal complaint
  - Date you were assigned to be the Fact Finder
  - For each interview, give date and who was interviewed and a short summary of what facts you discovered – attach your actual notes from each interview as Appendices
  - If the alleged abuser submitted a separate written statement, attach the statement as an appendix

- **Recommendations**
  - Mention any concerns you have regarding the credibility of any interviewee if you feel that your position of having interviewed everyone gives you insight into determining such credibility. In other words, if there are conflicting statements, you may state who you believe and why.
  - State what you believe to have occurred.
  - Offer to meet with the panel at the beginning of the hearing process to answer any questions related to your interviews
  - If you believe the misconduct occurred, you may or may not recommend appropriate sanctions