S4A Guidelines for the Ethics Panel: Judging a Misconduct Complaint

Being a member of the Ethics Panel if asked 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. Our Club has a complaint processing procedure which is detailed in Section 13 of "*Club Philosophy and Policies Governing Professional Coaching Conduct and the Conduct of all Athletes, Employees and Volunteers.*" You should familiarize yourself with this document.

HOW THE ETHICS PANEL IS SELECTED

- The Club President oversee the Ethics Panel appointment process.
- One current or former club member shall be appointed by the complainant and one current of former Xlub member shall be appointed by the person alleged to have engaged in misconduct.
- These two members shall agree on a third member who shall Chair the Ethics Panel and who should be as impartial as possible.
- The panel chair shall be responsible for working with the Fact Finder and other panel members to schedule the Ethics Panel meeting.

WHAT THE ETHICS PANEL DOES

- Review (1) the complaint form, (2) the Fact Finder's reports of interviews with all witnesses, the complainant, and the person alleged to have engaged in misconduct and (3) any full statement submitted by the individual alleged to have engaged in misconduct.
- Review the Fact Finder's summary report of the facts of the case and recommendations which may include an opinion on the credibility of all persons interviewed
- Determines whether the conduct occurred and whether it violated Club policy
- If policy was violated, determine the sanction to be imposed

TIPS: EXAMINING THE FACT FINDER'S REPORT

- Were there any inconsistencies or parts of the complaint, explanation of the person accused, or observations of witnesses that didn't make sense?
- Examine each person's description of the event. How did the recollection of facts differ? Were there significant differences?
- Did each person's version of events make sense? Did any description seem implausible or farfetched?
- Was there any corroborating, supporting, or confirming facts?
- Did the person accused admit anything during the interview?
- Did the person accused specifically deny anything?
- Was the alleged abuser's version of the facts different from anyone else's version?
- Did the alleged abuser's version of the situation conflict with any of the documentation collected?
- Are there other things that the alleged abuser has said or done in other situations that make you believe that more likely than not the alleged behaviors actually took place

THE ETHICS PANEL MEETING WITH THE FACT FINDER

- At the beginning of the Ethics Panel meeting to consider the complaint, the Fact Finder appears before the panel to answer any questions about his or her report
- The Ethics Panel is obligated to accept the opinion of the Fact Finder regarding the assessment of the credibility of each person interviewed as "fact" unless the Panel disagrees with the reasons for the Fact Finder's conclusions or believes that the Fact Finder has not been impartial. In such case, the Panel shall not determine the credibility of any principal or witness and shall accept the statements of all parties on their face.
- The Ethics panel is not obligated to accept the recommendations of the Fact Finder.

MAKING DECISIONS (without the Fact Finder present)

1. Did the misconduct occur?

- Remember, the panel must simply determine whether the probability of occurrence is more likely than not. This is not a court of law which requires a higher standard (i.e., beyond a reasonable doubt).
- Also remember that the perceptions of the complainant and the alleged abuser are irrelevant. The question addressed by the panel is "How would a reasonable person in the same or similar circumstances perceive the conduct and whether the conduct is addressed by Club policy?"
- Supervisors should be held to a higher standards of conduct than their employees; coaches should be held to higher standards of conduct than athletes.
- If there is a question of whether the complainant has some responsibility for communicating that the abuser's behavior is unwelcome, caution should be exercised in coming to this conclusion. The complainant's power position vis-a-vis the abuser must be considered. Also, the more severe the conduct, such as forced fondling or attempted rape, the less responsibility on the part of the complainant to object. The milder the conduct, such as jokes or teasing, the more responsibility the complainant has to speak up. The age of the complainant should also be considered.
- Caution should be exercised concerning the acceptance of misconduct explained as acceptable in the sport culture. 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 which 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.
- Caution should also be exercised regarding judgment of complainant behavior. 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.

- It may be helpful to adopt the following decision-making system. Each member of the panel, should choose from among the following alternatives for each alleged incident of misconduct:
  1. Yes, I believe the behavior did occur as reported by the complainant;
  2. No, I believe the behavior did not occur as reported by the complainant;
  3. I believe that in all probability, the behavior did occur as reported by the complainant;
  4. I believe that in all probability, the behavior did not occur as reported by the complainant;
  5. I am not able to determine whether the behavior either did or did not occur as reported by the complainant;

  Share your answer with other members of the panel and the reason why you chose it, citing as many facts as you can. Determine whether the panel can agree on <u>either</u> 1 or 3. If so, the decision should be to support the complainant's version. If the panel agrees on <u>either</u> 2, 4, or 5, the decision should be not to support the complainant's version.

Continue if the misconduct was found to have occurred….

2. How severe was the offense?

It may be helpful to adopt the following decision-making system with regard to the severity of the misconduct. If there was more than one incident of misconduct, rate each one separately. Each member of the panel should choose from among the following levels of severity of misconduct:

Severe

1. Behavior was deliberate and repeated and caused severe physical or mental trauma to the complainant; or was deliberate, not repeated, but caused severe physical or mental trauma to the complainant, or was a vicious racial or sexual slur
2. Behavior was criminal – sex with a minor, rape, sexual battery, sexual coercion
3. Sexual harassment or violence
4. Any "serious" misconduct (see below) that is repeated – second offense

Serious

1. Hazing, initiation ritual, bullying, physical punishment intending to cause harm – 1st offense
2. Physical abuse during instruction – 1st offense
3. Misconduct in violation of prohibitions against romantic or sexual relationships with a consenting adult – 1st offense
4. Any moderate misconduct (see below) that is repeated – 2nd offense
5. False complaint – 1st offense

Moderate

1. Non-repeated offensive verbal harassment or bullying committed accidentally or without intent to harm – 1st offense
2. Non-repeated verbal or emotional abuse – 1st offense

Mild

1. Unintentional, single offense, first offense, minimal harm to complainant
2. Behavior overheard or seen but not directed at victim

3. What is the appropriate sanction?

- Review the written complaint and the Fact Finder's report to determine if the complainant suggested an appropriate complaint resolution.
- Sanctions can and should be immediately applied by the Club President at the time of misconduct in the case of severe misconduct; in which case the hearing panel would review the sanction. Always remember that maintaining a safe environment for participants is the primary responsibility.
- Consider the effect of the misconduct on the complainant. Was the athlete or employee embarrassed, humiliated, physically injured, demoted, etc.?
- Consider the continuing effect of the complainant's exposure or association with the alleged abuser. If part of the solution is to separate the complainant and the alleged abuser (changing practice times or groups, etc.), the complainant should never be disadvantaged in doing so. Rather, the alleged abuser should be moved. If there is no way that the complainant can avoid continued association with the abuser and the misconduct was severe or serious, consideration must be given to expulsion of the abuser from the club or termination of employment. Continued suffering by the victim, including removal from friends in a training group, is not a fair resolution.
- Consider imposing conditions to encourage personal rehabilitation, especially in cases of athlete misconduct (i.e., giving a talk about how hurtful bullying is to a younger team, etc.)
- Sometimes, the panel might find that the complaint is false or malicious. In such cases an action against the complainant should definitely be considered.
- Consider the range of sanctions and work hard to match the penalty to the offense:
  - Warning
  - Reprimand
  - Probation with or without conditions
  - Requirements for restitution
  - Conditions intended to encourage personal rehabilitation
  - Suspension for a definite period of time
  - Potential criminal prosecution
  - Termination from employment or affiliation with the Club
- It may be helpful to consider the following system of sanctions based on the severity of the misconduct. If there was more than one incidence of misconduct, consider elevating the sanction. The following is only a sample approach to thinking about sanctions that should always be matched to severity of the offense, whether it was intentional, considering factors such as age, maturity, and position of trust of the people involved, whether there is a history of past offenses, and other appropriate considerations.

Severity of Offense (see 2.0 typology above)	Coach/Employee/Volunteer Sanction	Athlete
Severe	Termination of employment/affiliation If possibly criminal, report to police	Expulsion from membership If possibly criminal, report to police
Serious	Suspension of employment/affiliation Letter of reprimand in file Warning: 2nd offense=termination False complaint Apology to complainant	Suspension from membership Warning: 2nd offense=expulsion False complaint Apology to complainant
Moderate	Probation Letter of reprimand in file Warning: 2nd offense=suspension of Termination Apology to complainant	Probation Warning: 2nd offense=suspension or expulsion Apology to complainant
Mild	Warning – apology to victim	Warning – apology to victim