

Safe Sport Policy Manual - Complaints, Dispute Resolution and Discipline Policy - Speaking Notes for Town Hall, Nov. 4, 2020

This is a summary only of some aspects of the AO Safe Sport Policy Manual. All AO Members should read the Code of Conduct in its entirety and familiarize themselves with the other policies in the Manual.

Introduction

- Athletics Ontario's new Safe Sport Policy Manual was posted on the AO web site October 7 and a couple weeks ago I highlighted a few aspects of it.
- Last week I highlighted the Code of Conduct and the Children and Vulnerable Adults Policy.
- This week it is the Complaints, Dispute Resolution and Discipline Policy. I am going to address the Whistleblower Policy next week as there is just too much to cover today.
- I am happy to take any questions you may have about the policies. Questions in advance of the Town Hall are most appreciated.

Complaints, Dispute Resolution and Discipline Policy

- The title is rather a mouthful, but it tells you what the policy covers - how to make a complaint, how disputes will be handled, and how discipline will be applied.
- The substance of this Policy used to be spread over at least three different policies, including a "harassment" policy. We know that there are many other forms of inappropriate behaviours and maltreatment than harassment, and it was time to bring together the important keystones of safe sport policies in one policy.
- There is no use in having a Code of Conduct unless there is a simple and safe way for people to be able to bring breaches of the Code to the attention of people who will do something about it.
- With the Safe Sport Officers and clear yet flexible procedures, we hope we have created an understandable and useful way to address all forms of misconduct.

Structure and Application of the Policy

- There are a few definitions at the beginning that are key to understanding the scope and application of the Policy and who the players are.
- To the extent that the same terms are used in the various policies in the Safe Sport Manual, the definitions are consistent. They are repeated at the beginning of the various policies so that each policy can stand alone.
- Examples - the definitions of "Participants" and "Sport Environment" in the Policy we are talking about today are the same as the definitions of those terms in the Code of Conduct.
- As I said before, the definition of "Participants" is deliberately broad and includes more than just AO Members.

- Similarly, the application of the Policy is broad. It applies to all “Participants” and to matters that may arise in AO’s “Sport Environment”, and it also applies to a Participant’s conduct outside AO’s Sport Environment when such conduct adversely affects relationships within AO and its Sport Environment and is detrimental to the image and reputation of Athletics Ontario.
- There is a recognition that a complaint may be better handled by a club, and a complainant may be advised to submit their complaint to a club. However, the complainant may choose to continue to proceed under this Policy, provided that it otherwise applies, and there is a provision that talks about how such a situation would be handled.
- The Policy then goes on to describe:
 - The various players and their roles
 - How to report a complaint
 - What type of procedure will be followed and what types of disciplinary sanctions may be imposed
- Then there are specific provisions dealing with retaliation, false allegations, confidentiality, and records and the distribution of decisions.

The Players and their Roles

- The goal is that all the people who may be involved in the resolution of disputes under this Policy are approachable, fair-minded, knowledgeable, unbiased and not in a conflict of interest situation.
- For this Policy to play its role in fostering and maintaining a safe sport environment, Participants have to feel comfortable and safe coming forward with a complaint and have to have confidence that their concerns will be dealt with fairly. The alleged wrongdoers also have to have confidence that they will be dealt with fairly.
- **Safe Sport Officers** - The starting point is with individuals we are calling “Safe Sport Officers”.
 - They are the individuals to whom complaints are to be submitted and who are available to help a complainant in filling out a complaint form.
 - They are also the individuals who, in consultation with the CEO, will decide what procedure will be followed - what in the Policy we call the “Simplified Procedure” for the more minor incidents of misconduct or the “Full Procedure” for more significant or complex incidents of misconduct.
 - Safe Sport Officers may be employees or other representatives of AO or independent individuals volunteering or retained (that is, paid) by AO.
 - AO’s current Safe Sport Officers and their contact information is on the website.
- **Case managers** - these are the people who will administer a complaint, stick handle it through what the “Full Procedure”.
 - A Case Manager must have some expertise in dispute resolution and be independent, and they may be volunteering or retained (that is, paid) by AO.

- The reality is that volunteers for such a role are scarce, and AO expects to be paying Case Managers for their services.
- The Case Manager may also act as an investigator if an investigation is warranted, as it probably would be in most cases where the “Full Procedure” is being implemented.
- **Discipline Panel** - the individual or individuals (there could be three) who will consider the complaint and make a decision as to whether, on the balance of probabilities, an infraction occurred and, if so, what disciplinary sanctions are recommended
 - Discipline Panel members must be independent and may be volunteers or paid
- A word on independence - this is a new feature of the AO policy for dealing with complaints and dispute resolution. While there is not inherently any conflict in employees or Directors of AO filling the role of case managers or discipline panel members, it is questionable whether such individuals have the time and/or expertise to fulfil such roles in a timely fashion.

Let’s Get Started - Reporting a Complaint and the Determination of the Procedure to be Followed

- If you experience, witness or hear about behaviour that is contrary to the Code of Conduct - contact an AO Safe Sport Officer and fill out the AO complaint form - contact info and the form are on the website.
- The Safe Sport Officer is there to help you.
- The Safe Sport Officer will then, in consultation with the CEO, determine the most appropriate procedure to be followed given the nature of the complaint - what the Policy calls the “Simplified Procedure”, which will be handled by the Safe Sport Officer, or the “Full Procedure”, which will be handled by a Case Manager and ultimately decided by a Discipline Panel.

Simplified Procedure

- An easy example to illustrate -
 - An athlete comments loudly and critically on a ruling by an official - unless this has happened repeatedly, the Safe Sport Officer would handle this, reviewing submissions, which could be written and/or oral, related to the complaint, e.g. from the official, the athlete, any witnesses
 - The Safe Sport Officer decides on the appropriate discipline - e.g. an apology might be the most appropriate way of resolving such an incident
 - If either the complainant or the respondent (the person whose behaviour is the subject of the complaint) is not satisfied, they may request a reconsideration.
 - The hope is that a quick and simple resolution is found, but there is the possibility of resorting to the “Full Procedure” if either party remains unsatisfied with the Safe Sport Officer’s disciplinary decision.

Full Procedure

- An example to illustrate -

- Abusive behaviour by a coach towards athletes - the Safe Sport Officer, in consultation with the CEO, will appoint a Case Manager.
- The Case Manager will consult with the Chair of the Board in making the various determinations that need to be made in a serious and complex case - determinations as to the appointment of an investigator and a discipline panel, determinations as to the appropriate timelines for all the stages of the procedure. The Case Manager will also consult with the Discipline Panel as to the format under which the complaint will be considered and the timelines. For example, the format may be an oral in-person hearing, an oral hearing by telephone or other electronic means, a review of documentary evidence, or a combination.
- In addition to outlining the various procedural matters to be considered, the Policy does set out several “rules”. For example, one of the “rules” is that copies of any documents that any of the parties wish to have the Discipline Panel consider must be provided to all parties, through the Case Manager.
- The guiding principles are procedural fairness, the need to foster and maintain a safe sport environment and the need for a timely resolution. Consequently, subject to a few “rules”, the Policy does not set out rigid steps that must all take place or rigid timelines that must always be followed. Every case is different. It is the experience of the Case Manager, consulting with the Chair of the Board and with the Discipline Panel, and always keeping in mind the guiding principles, that will make this Policy effective.

Several Important Matters to Keep in Mind

- **Matters that must be reported in the context of an investigation**
 - If an investigator finds that there are possible instances of certain offences under the Criminal Code (for example stalking, assault, sexual exploitation) the Investigator must advise the Complainant to refer the matter to the police
 - The investigator must also inform AO of any findings of criminal activity. By law, AO is required to report such findings to the police in certain circumstances, for example trafficking of doping drugs, any sexual crime involving a minor.
- **Determinations will be made “on the balance of probabilities”**
 - A Discipline Panel will make its determination as to whether an infraction has occurred “on the balance of probabilities”. This is the same standard as is used in civil proceedings in our court system. In the criminal system, the determination has to be made “beyond a reasonable doubt”.
- **Anonymous Complaints and Complaints brought by AO**
 - Note that this Policy and the new Whistleblower Policy anticipate the possibility of making an anonymous complaint. While these complaints can be difficult to investigate and resolve, we hope that these policies demonstrate that we recognize how difficult it can be to come forward and that we do not want issues to be left unattended to or unresolved.
 - Also, AO itself may act as a Complainant and initiate the complaint process
- **Retaliation, False Allegations**
 - Conduct that amounts to retaliation against anyone who submits a complaint or who gives evidence in an investigation may constitute Harassment and be subject to disciplinary proceedings under this Policy. AO itself or the Participant facing the retaliation may act as the Complainant.

- It is the same with false allegations. They may amount to Harassment
- **Confidentiality and the Distribution of Decisions**
 - Confidentiality is very important. Complaints and the resolution of disputes are sensitive matters. Information will be provided only to those who have a need to know or as required in the course of any investigation or resolution of the matter or as required by law.
 - Breaches of the policy as regards confidentiality may amount to Harassment and be subject to disciplinary proceedings under this Policy.
 - Notwithstanding the provisions regarding confidentiality, decisions rendered under this Policy will generally be made public and other individuals and organizations may be advised of the decisions.
 - For example, if a coach is suspended as a result of a proceeding under this Policy, the decision will be posted on the AO website and Athletics Canada and any club with which the coach had an affiliation will be informed.
 - The extent to which the details in a decision will be made public or redacted will be made on a case by case basis.
- **Disciplinary Sanctions**
 - Have to be within the authority of AO
 - The most severe sanction would be suspension from AO, possibly for life
- **This Policy does not preclude accessing the dispute resolution procedures of a club or of AC**