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# Handling Misconduct Allegations in Youth Sports



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# Handling Misconduct Allegations in Youth Sports

## Introduction

Children's sports organizations have made **significant progress towards ensuring a safe, constructive medium** for participants and staff, while emphasizing key values such as performance, discipline and motivation. Most National Governing Bodies have adopted safe sport policies aimed at **protecting children and young adults** from misconduct, as well as setting the framework for responding to incidents.

However, children's sports environments are highly dynamic and sensitive, and often create a great psychological impact for children. Our investigative experience shows that this environment remains **susceptible to generating serious and frequent misconduct** towards child participants.

Some of the most common factors that underlie such occurrences are:

- While central to sport performance, **motivation, encouragement and challenge are volatile concepts**, leaving room for potential wrongdoing
- The **imbalance of power and authority** can lead to children accepting inappropriate behavior
- The **bonding and mentoring relationships** are more complex and more personal than those with teachers
- Sports activities often happen **after hours or while travelling**, when adults can exercise more control
- Various forms of misconduct can be **easily misunderstood** and thus accepted by children
- Other practices, although abusive, can **spread** through team members to the point that they are considered normal in their circle
- The digital, mobile and online realms create a whole **new layer of private interaction**

As we all struggle for better, safer environments for our children, it is extremely important that efforts are made to **understand, observe and react to any form of misconduct** that may take place in sports organizations or similar circumstances.

## SafeSport Policy

The SafeSport Policy promulgated by the United States Olympic Committee (USOC) represents one of the most **comprehensive and all-encompassing policies** governing the safety of children and young athletes in sports-related environments.

The USOC SafeSport Policy currently sets the **US standard for the management of sports-related misconduct allegations**, not only from the perspective of reach (45 National Governing Bodies<sup>1</sup> across all sport disciplines subscribe to its policies), but also as a

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<sup>1</sup> Source: <http://www.teamusa.org/us-olympic-and-paralympic-foundation/national-governing-bodies>

**procedural guideline.** It clearly defines and prohibits a wide range of possible misconduct, while setting the proper process to manage these kind of allegations if they arise.

Many of the National Governing Bodies use the USOC SafeSport Policy as a foundation for building more detailed and restrictive **internal administrative policies meant to mitigate risk and avoid inappropriate behavior**<sup>2 3 4</sup>.

Moreover, while non-binding, the Policy can easily be regarded as a **relevant reference tool** for other environments which involve out-of-school children's activities overseen and managed by adults. Its general provisions and definitions apply to virtually any such arrangement, from a boy scout group to a church organization.

**This document makes frequent and regular reference to the USOC SafeSport Policy, which can be accessed here**<sup>5</sup>.

## Application of Policy

The policy applies to USOC employees, coaches, contracted staff, volunteers, board members, committee and task force members, and other individuals working with athletes or other sport participants while at an activity, whether or not they are employees of the USOC and athletes training and/or residing at a USOC Olympic Training Center. (collectively, "constituents").

The policy has **two main objectives**:

- To clearly **define all forms of possible misconduct and strictly prohibit them.**
- To set the **guideline for preventing and managing** such misconduct when it arises.

## Definitions

The USOC regulates sports-related misconduct as defined by the following main elements:

- **The act** - misconduct is defined as a conduct which results in harm, the potential for harm or the imminent threat of harm.
- **The victim** - child, children, minor and youth (used interchangeably), as anyone under the age of 18.
- **The membership** - only minors who participate in a sport activity through a club or organization are subject to the policy (participants).
- **Constituents** - any adult person working with the sports participants, including adult athletes.

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<sup>2</sup> Source: <http://www.usfsa.org/content/safesport%20handbook.pdf>

<sup>3</sup> Source: [https://www.usef.org/documents/safety/safesportpolicyhandbook\\_v2.pdf](https://www.usef.org/documents/safety/safesportpolicyhandbook_v2.pdf)

<sup>4</sup> Source:

[http://assets.ngin.com/attachments/document/0042/3380/2.22.16\\_Revision\\_USA\\_Fencing\\_Safe\\_Sport\\_Policy.pdf](http://assets.ngin.com/attachments/document/0042/3380/2.22.16_Revision_USA_Fencing_Safe_Sport_Policy.pdf)

<sup>5</sup> Source: [http://www.teamusa.org/~media/legal/090712\\_usoc%20safe%20sport%20policy%20final.pdf](http://www.teamusa.org/~media/legal/090712_usoc%20safe%20sport%20policy%20final.pdf)

The USOC policy addresses the primary types of misconduct in sport: **emotional, physical and sexual misconduct, bullying, harassment and hazing**. Definitions, examples and exceptions are in accordance with the distinctiveness of children's sports environment. For example, hitting, punching, and kicking are well-regulated forms of contact in combat sports, and do not usually represent forms of physical misconduct in such cases, but have no place in swimming.

Each definition includes acts or conduct described as such under federal or state law.

## Provisions

The policy holds the following provisions:

- All **constituents shall refrain** from sexually, emotionally or physically abusing, bullying, harassing and hazing participants. All forms of misconduct are described in the Policy and prohibited.
- **Willfully tolerating misconduct is a violation** of this SafeSport Policy.
- USOC staff must complete an **awareness training** concerning misconduct every two years
- Every constituent **must report suspicions or allegations of child physical or sexual abuse**.
- All suspicions of child physical or sexual abuse will be **reported to the appropriate law enforcement authorities**.
- Every constituent **must report violations** of the USOC SafeSport Policy
- Where serious allegations of misconduct are at issue, the USOC *may* elect in its discretion to **undertake a full investigation** and hearing before determining the appropriate disciplinary action

## Incident Response & Investigation

Although the SafeSport Policy is designed to reduce child sexual abuse and other forms of misconduct, it can still occur. As described earlier, the policy requires all constituents (defined as any adult person working with sport participants at an Olympic Training Center, including adult athletes) to **immediately report suspicions or allegations** of misconduct towards children. The policy differentiates between allegations and suspicions of child physical and sexual abuse (criminal) and violations of the Safe Sport Policy (non-criminal).

### Incident Response

When applicable, reports are to be made to the **appropriate law enforcement authorities or decision makers in each organization**, which are clearly listed by the policy. Typically, a decision maker will be one or more of the following:

- A manager or supervisor
- A Human Resources representative
- The Legal Affairs Division
- The Director of SafeSport

Just after an incident is reported, the main responsibility for decision makers in the initial phases of misconduct allegations is to carefully **consider the right incident response** to each case.

Decision makers need to **promptly evaluate each allegation**. As children may be under significant levels of threat, sometimes imminent, it is important to quickly **differentiate between criminal acts and lesser policy violations**.

Upon the initial report, decision makers are confronted with **3 possible paths**:

- A - is it a **criminal act** and requires immediate criminal referral?
- B - is it a **violation of the SafeSport policy** and may develop into a civil action or justify disciplinary measures?
- C - it is just something that in a particular context looked **ambiguous** but it doesn't go to the extent that it is violating the policy?



## Criminal allegations

**Mandatory reporting of child abuse** is specifically regulated at both federal and state levels<sup>6</sup>. Beyond the federal and state law, most children's activity programs are governed by national bodies which also have specific conduct policies in place that add **additional reporting obligations**. It is reasonable to state that most sports organizations are obliged to report allegations of child physical or sexual abuse to law enforcement authorities.

USOC and its National Governing Bodies are reporting all suspicions or allegations of child physical or sexual abuse to the appropriate law enforcement authorities, with no exception. However, the USOC may **undertake internal investigations** to evaluate the validity of such

<sup>6</sup> Source: <https://www.childwelfare.gov/pubPDFs/manda.pdf>

allegations and to clarify the circumstances in which they occurred, that will in no way interfere with an ongoing criminal investigation or prosecution.

### Non-criminal allegations

Non-criminal violations of the SafeSport Policy will be addressed under the Disciplinary Rules and Procedure. The USOC may elect at its discretion to **undertake a full investigation and hearing** before determining the appropriate disciplinary action.

However, allegations that do not involve criminal acts also need to be managed responsibly. As facts and circumstances remain to be clarified, non-criminal allegations have the potential to **develop into civil or even criminal actions**. Any suspicion of misconduct should be cause for concern and should at least lead to an administrative investigation of the issue.

### Private investigations

Private investigations and internal investigations serve as a critical tool for sports organizations facing employee misconduct allegations. First of all, **protecting the children from further misconduct** is undoubtedly the number one priority of any such organization. Further, a poorly handled sexual or physical abuse scandal is enough to break down an entire organization, no matter how big. Aside from uncovering each case's specific circumstances, properly handling allegations correctly from the start represent a key factor in mitigating risk, avoiding additional allegations of negligent administration or willful toleration and showing good will in cooperating with ongoing investigations and prosecutions.

Often, private investigations commissioned by either the sports organization or the child victim's parents uncover facts and circumstances that lead to criminal prosecution or serious civil group actions, starting from apparently less harmful allegations. Consequently, it is recommended that sports organizations use professional investigators to address incidents that have the potential to develop into high profile cases, even path C cases (those cases that in a particular context look **ambiguous** but they don't go to the extent that it is violating the policy), when there appears to be little apparent risk.

The decision to undertake investigations in such cases and the governing policy often dictates whether an incident will be handled properly. Decision makers should attempt to determine the scope of the misconduct from the start while preserving the ability to make a future criminal or civil referral.



## Supporting management investigations - path A

In support of a criminal investigation, when sexual or physical abuse is suspected and reported, the responsible person (a parent, an organization decision maker) should **assist investigators** by taking into account the most appropriate actions in the given circumstances.

### Gathering information

Get the basic information from the person reporting the abuse. It is important that the parent, employee, or other person reporting a possible incident is clear about what it is that has caused concern. After reporting the incident to the law enforcement authorities, it is also important to consider how and when to go public with the report. It's usually advisable to ask for the authorities' advice on how to proceed further.

### Securing the child

The person responsible for the report may be asked to inform certain decision makers or, on the contrary, to keep a low profile on the case as not to disrupt significant action patterns. However, it is crucial to assess the level of threat and whether it is imminent and immediate - and safely secure the child in such conditions. Unless otherwise decided by authorities, it is advisable to take the child away from the supposed perpetrator until an investigation can be completed.

### Preserving physical evidence

The responsible person should also help preserve physical evidence. Informing parents that children's personal items could constitute physical evidence is one of the first steps. The victim's clothes, jackets, undergarments, gym bag and locker room contents shouldn't be touched or handled. Also, cleaning personnel shouldn't destroy evidence at the sport facility.

### Securing digital evidence

If misconduct occurs in the real world, there is a high probability of related digital and/or online evidence. Texting, facebooking, skypeing, snapchatting and other forms of online interactions often hold relevant information on the case. Experts agree the best practice is to secure digital evidence before confronting the child. Children may experience feelings of guilt, shame, fear, or feel like they have done something wrong and could delete evidence intentionally or unintentionally, as the perpetrator may have prepared the victim for this circumstance.

Securing electronic devices to preserve digital evidence also needs to be one of the first things to do in support of any investigation. Removing the child's electronic devices should be the first step to preserve digital evidence. With smart devices continuously connected to the internet, there is also a risk of remote access. Remote online access can be prevented by preparing a makeshift Faraday cage. A Faraday cage is an enclosure made from conductive material that can block wireless transmissions. Electronic devices are easy to secure from remote access by simply wrapping them in tinfoil - the 'do it yourself' version of a Faraday cage. Aside from

electronic devices, online media such as email or social media accounts should also be secured.

### Third party forensic expert

Most law enforcement only have the capabilities to handle physical evidence and readily available digital evidence. However, if the law enforcement doesn't have the ability to retrieve more in-depth digital forensics, third party forensics expert should be utilized. What is easily accessible on a device, things that are easily pulled off a device, like text messages, files and photos, may not be all. Many Perpetrators are technically sophisticated and may take steps to hide or conceal some of the more compromising content. A digital forensic expert can uncover many layers of relevant information on electronic media.

## Supporting management of SafeSport Policy violations and other events using private investigations - path B

While suspicions of criminal acts need to be reported to the authorities and the investigation follows legal procedures, issues can be unclear with non-criminal allegations. When a parent or another person thinks it is reasonable to believe that something has occurred that is in violation of the policy, but things are still unclear, the most responsible way of handling the incident is to start a professional investigation to determine if there is merit to the and begin documentation of the event.

Several examples of unclear behavior are:

A colleague sees another colleague coming out of the coach's apartment late at night, a parent sees a text message with some emotional content that doesn't look like it should be appropriate or a picture with the coach in a state of semi-undress or any other gray zone facts. While these kind of events are not grounds for criminal referrals, they should not be taken lightly, as they may be hiding something more. They often do, and this is when private investigations are necessary.

### Manner and means

Investigating misconduct allegations in youth sports has its challenges. First, investigators need to be able to provide **a mix of traditional investigative techniques with digital and technical investigations**. In cases that involve children in the modern age, most cases will touch both areas. Second, investigators need to have an understanding of **child psychology**, to be able to gain the child's trust while conducting forensic interviews and to understand clues that may help with the investigation.

## Securing and gathering evidence

Securing and documenting the physical and digital evidence is just as important as in criminal cases. All recommendations made previously apply just as well in the case of private investigations.

Experts agree the best practice is to **secure digital evidence even before confronting the child**, as the perpetrator may have prepared the victim for this circumstance.

Another key factor in making the evidence admissible is **maintaining a proper chain of custody for both physical and digital evidence**. Responsible persons and investigators need to make sure who owns a particular medium, who has it or handles it is documented, to rule out any possibility of tampering with the evidence. This means that electronic devices kept in insecure areas, where multiple persons could have access to them may be **declared inadmissible in court**. Private investigators should take the media only with a chain of custody document.

**Digital forensics** serves as a critical tool for private investigators. In law enforcement agencies, digital evidence is usually taken 'as-is', whereas digital forensic experts take the evidence to the forensic lab to be imaged, processed and analyzed. Even devices that are thoroughly checked and deemed 'safe' by parents are still capable of containing important evidence and likely do. The readily available data on a device, like text messages, call logs, files, photos, location, may not be all. Often, **deleted content can be recovered** by a professional forensics expert.

## Forensic interview

Forensic interviews with the child should be conducted by a forensic interviewer. The **initial disclosure and the lack of contamination of that disclosure** is very important to the investigation and the case.

Child forensic interviewing is an incredibly sensitive area requiring a deep understanding of child psychology to avoid harming the child or the investigative process. The consensus on **child forensic interviewing best practices** is that the interviewer should use open-ended questions and should allow for silence or hesitation without moving to more focused prompts too quickly<sup>7</sup>, while encouraging the child to give detailed responses and making sure he or she is as comfortable as possible. Polygraph examinations while sometimes useful can be emotionally traumatizing.

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<sup>7</sup> Source: <http://www.ojjdp.gov/pubs/248749.pdf>

## Identifying witnesses

The best practice in building a child sports misconduct case is to thoroughly explore the evidence, perform forensic interviews, and then clarify if there are additional witnesses and victims. Additional witnesses and victims take the case beyond merely a **'he said/she said' case**. This is particularly important as **the perpetrator will often try to discredit the known victim**. Abuse in the context of children's sports is often a pattern behavior. Checking current and former participants by similar profile of the current victim is usually a successful method of tracking down additional witnesses. Their **collective disclosures** contribute to a truer and more accurate representation of the perpetrator and their grooming and misconduct process. However, it is important that investigators understand the delicate nature of approaching potential witnesses while not making any misstatements about the alleged perpetrator.

## Final Report

Decision makers in sport organizations are **under a legal obligation to report any physical or sexual abuse** of children to the appropriate law enforcement authorities. Usually, they are also required to **inform governing bodies** of the sports organizations of any policy violations, as well as to **respond to any concern** that children may be unsafe.

Private investigations can help uncover misconduct towards children in such environments. At the same time, private investigations also **offer the organizations a safe and transparent method to handle such cases**, with relevant evidence consolidated into investigation reports to be brought forward to either law enforcement for criminal misconduct, the governing bodies of the sports organizations for violations of SafeSport policy or for potential civil legal remedies.

## Hearing, Findings, Sanction:

All organizations address hearings in different manner. If your organization has not conducted hearings and the associated findings, sanctions and actions it is important that you obtain proper experienced legal counsel on such matters. McCann general counsel can suggest various experienced attorneys who have addressed similar issues.

## About McCann

McCann provides a team of experienced professionals sensitive to the unique issues surrounding this topic. The McCann team utilizes a holistic approach to deal with the entire range of conduct and outcomes encountered in youth sports. Our experienced investigators use traditional investigative techniques with a specialty in handling child and adolescent witnesses. When necessary, McCann deploys assets to conduct a full scale high-tech investigation including computer and mobile forensics in combination with an in-depth online investigation targeting all applicable sources of information, including but not limited to social networking, text messaging, email retrieval and search history analysis. Our goal at McCann is to increase the safety of youth athletes leading to a safe sports environment.

## Appendix

Definitions as per the USOC's SafeSport Policy:

**Child Sexual Abuse:** Any sexual activity with a minor athlete or participant where consent is not or cannot be given. This includes sexual contact with a minor athlete or participant that is accomplished by deception, manipulation, force or threat of force, regardless of the age of the participants, and all sexual interactions between an adult and a minor athlete or participant, regardless of whether there is deception or the minor athlete or participant understands the sexual nature of the activity.

**Emotional Misconduct:** A pattern of deliberate, non-contact behavior that has the potential to cause emotional or psychological harm to an athlete or participant, regardless of age.

**Physical Misconduct:** Contact or non-contact conduct that results in, or reasonably threaten to, cause physical harm to an athlete or participants, regardless of age.

**Sexual Misconduct:** Any touching or non-touching sexual interaction that is nonconsensual or forced, coerced or manipulated, or perpetrated in an aggressive, harassing, exploitative or threatening manner; Any sexual interaction between an athlete and an individual with evaluative, direct or indirect authority. Such relationships involve an imbalance of power and are likely to impair judgment or be exploitative.

**Bullying:** An intentional, persistent and repeated pattern of committing, or willfully tolerating by another person, physical and non-physical behaviors that are intended, or have the reasonable potential, to cause fear, humiliation or physical harm in an attempt to socially exclude, diminish or isolate the targeted athlete(s), as a condition of membership.

**Harassment:** A repeated pattern of physical and/or non-physical behaviors that are intended to cause fear, humiliation or annoyance, offend or degrade, create a hostile environment or reflect discriminatory bias in an attempt to establish dominance, superiority or power over an individual athlete or group based on gender, race, ethnicity, culture, religion, sexual orientation, gender expression or mental or physical disability.

**Hazing:** Coercing, requiring, forcing or willfully tolerating any humiliating, unwelcome or dangerous activity that serves as a condition for joining a group or being socially accepted by a group's members.