

MSCA Policy on Safe Play and Conduct

I. Purpose:

This policy recognizes the importance of maintaining a safe and hospitable environment for individuals attending MSCA events. By formalizing such guidelines in writing, the greater clarity on our policies concerning these issues, as well as the information provided about the appropriate responses in the event of behavior potentially violating such policies, may enhance the prospect of achieving our goal of optimizing safety and cordiality for all participants, spectators, organizers, and directors.

II. Scope:

These guidelines apply to all chess-related events sponsored or co-sponsored by the Minnesota State Chess Association, including the Twin Cities Chess League (TCCL). An event that has been advertised or otherwise identified on the MSCA website, the Minnesota Chess Journal, or other MSCA communication, but does not include the sponsorship or co-sponsorship of the MSCA, and does not exhibit the requisite control by the MSCA over its particular processes to establish any fiduciary responsibility related thereto (e.g. a local chess club meeting), is beyond scope of these guidelines.

Currently, the MSCA has no employees, and is therefore not subject to the statutory, regulatory, or Common Law constraints of Employment Law. In the event this changes, amendments to these guidelines, along with additional insurance coverage, will likely be required. In the meantime, MSCA's Board of Directors, which includes its executive officers, represents the primary individual positions of authority. In addition, certain Board appointed positions, such as the Scholastic Coordinator, may also be imbued with independent authority. Finally, MSCA uses independent contractors, the most frequent being Tournament Directors who, while acting within the scope of their duties, also exercise significant independent authority. Persons directly granted such MSCA authority identified in this paragraph, as well as those persons construed to have apparent authority by other MSCA actions, are responsible for reading and being familiar with these guidelines.

Alleged violations of these guidelines should be reported using the procedure outlined herein. With respect to such violations occurring at USCF-rated events, the reporting and resolving process under these guidelines is separate and distinct from the "claims" or "appeals" process used to report to U.S. Chess alleged violations of *The Code of Ethics*, the *Rules of Chess*, and so forth. Thus, it is possible to have parallel avenues of reporting and resolution occurring over the same incident. The remedies available under such multiple reporting are limited by the organizations' relative jurisdiction over the subject matter

III. **Prohibited Conduct:**

MSCA strictly prohibits unsafe conduct including, but not limited to:

- A. **Sexual Misconduct Offenses**
- B. **Harassment**
- C. **Physical Misconduct**

IV. **Reporting and Responding:**

The MSCA requests that any person who has credible information about misconduct, maltreatment, or behavior that conflicts with these guidelines to report the alleged misconduct, maltreatment, or behavior as described in this section. A person with credible information is someone who has first-hand knowledge or reliable information from a knowledgeable third party.

A. Responding On-Site to an Incident

When, during an MSCA event, any person of authority becomes aware of potential misconduct – whether reported by a victim or not – the senior authority on-site shall proceed as outlined below.

1. Control the Situation

- a. Protect the victim. When an incident occurs, the senior authority's first responsibility is to take reasonable measures to ensure that the person or persons targeted by the alleged inappropriate conduct is/are safe and protected from further possible abuse.
- b. Isolate the Alleged Perpetrator. The senior authority should also take reasonable measures to isolate the alleged perpetrator by asking the person to remain in a certain area within the venue, or to leave the venue altogether.

2. Contact Local Authorities

If criminal conduct is suspected, the senior authority may notify local law enforcement.

- a. If Local Authorities Act on the Case: The senior authority shall follow any specific instructions provided by local law enforcement, and request point-of-contact information from the investigating officer/authority.

- b. If Local Authorities Decline to Act: The senior authority shall obtain point-of-contact information for available first-hand witnesses, victim(s), and the victim's coach, parents, or guardian. The senior authority should then provide the victim (or his coach, parents or guardian) with the telephone number and/or email address of an MSCA authority for follow-up investigation and resolution.

B. How to Report Alleged Violations to MSCA after an Event

Persons who believe they have been a victim of prohibited conduct or those who have witnessed forms of prohibited conduct addressed in the guidelines may report the incident directly to the MSCA Board of Directors at msca.board@gmail.com, or otherwise contact any individual member of the Board, the tournament or league director, or any other MSCA authority.

C. False, Malicious, or "Bad Faith" Reports

Deliberately false, malicious, or vindictive reports of misconduct are also prohibited by these guidelines, and may result in sanctions imposed by the MSCA Board of Directors.

V. Investigation and Adjudication

Absent the intervention by local law enforcement when criminal conduct is suspected, or the parallel reporting of an incident to and resolution by the USCF, where that organization holds exclusive authority to issue such sanctions as suspension from USCF sponsored events, the MSCA Board of Directors assumes full control over both the investigation and adjudication of alleged violations of these guidelines.

A. Investigation process

The Board of Directors may exercise its full discretion to choose to conduct its investigation as a full body, select a committee of its members to do so, or delegate any other committee or individual to undertake the task, including non-Board members. The Board may also change the composition of this investigating body at any time. If it appears likely that the complaint will result in Board deliberations from which sanctions could be reasonably imposed, it is then imperative that the investigation be thorough, with sufficient interviews of the witnesses with relevant information.

1. Due Process

The Board of Directors may determine at any time that a complaint is frivolous or otherwise lacking in good cause, in which case it will summarily be dismissed without prejudice (An investigating entity not consisting of the full Board does not have the authority to issue such a summary dismissal; only the Board can perform that action). If, however, the complaint ultimately moves to an adjudicative process, the essential elements of due process for all parties must be fully observed. Notably, these include the right to be given notice of the charges made, the opportunity to present facts and to challenge any opposing version of the facts.

2. Emergency Temporary Sanctions

While the presumption of innocence is maintained through the adjudicative process, pending investigation it is sometimes necessary to impose a temporary sanction, usually for the maintenance of a safe environment. Similar to injunctive relief in Anglo-American Jurisprudence, a reduced standard of proof is required (typically probable cause, or possibly only a reasonable suspicion, depending on the severity of the alleged offense, as well as other circumstances). Such “emergency” sanctions are necessarily temporary, and should be designed to be the least restrictive in order to fulfill the immediate needs. A tournament director, for example, can under certain circumstances ban a player or spectator from a tournament hall, but to extend such a ban into the future would likely require Board approval. The issuance of any such temporary sanction should have no bearing on the ultimate outcome of a complaint to be later adjudicated, nor should its mere issuance be cited as evidence of wrongdoing in any future forum.

B. Adjudication

The Board of Directors is solely responsible for the adjudication of complaints brought under these guidelines. It is also free to decide the nature of the forum used for such adjudication, including whether any additional witnesses need to be summoned. The Board first needs to determine whether a violation of the guidelines has in fact occurred. If so, it needs to then determine what sanctions, if any, are warranted.

1. Standard of proof

For matters involving such potentially serious allegations as these, yet without criminal sanctions being imposed, the appropriate standard of proof to employ is that of “clear and convincing evidence.” This would apply to all elements of a charge, including the negation of an accused’s affirmative defense. In claims involving alleged harassment, both sexual and non-sexual, the objective perception test (would a reasonable person under like circumstances perceive the action/statement/etc. to be threatening/offensive/etc.?) applied under federal law and Common Law would be used. An alleged victim’s perception is a necessary element for a finding of guilt, but irrelevant to the objective test. Similarly, an accused’s perception is irrelevant to the objective test but may be used as a mitigating (or aggravating) factor when determining sanctions.

2. Sanctions

When a violation has been found, the Board will have a full range of available sanctions to impose. These could run from none, to a warning, a reprimand, a fine or forfeit of prize money, a suspension, a permanent ban, or anything in between. In its good judgement, the Board may consider the *mens rea* of the accused, the dissatisfaction expressed by the victim to the accused, or any other considerations it deems relevant to the sanctions question in its own wisdom.

For any questions about this policy, please contact MSCA Vice-President Ed Bourgeois at 612-822-0685; email address: edntuffy@gmail.com.