

AYSO Dispute Resolution – Handout No. 4 B – Detailed steps to be followed if a Review Panel is formed.

Due Process Handout from Management Handbook

Special Note

The following process has been revised from the process printed in the Management Handbook. Most notably, in order to avoid confusion with a “Regional Board,” we use the word “panel” instead of “board” when referring to a disciplinary review panel (“Review Panel” for short).

Non-Executive Member Disciplinary Review Process

Regions should seek to resolve all disputes involving people in an amicable fashion. Compromise is preferable to more severe forms of resolution. Almost all problems in the Region can be addressed without the need for a formal process. However, for severe problems that cannot be resolved without implementation of formal discipline, a formalized due process procedure should be followed. That may involve the creation of a disciplinary review panel (described below).

Prior to the involvement of a disciplinary review panel, lower level remedies may bring many day-to-day problems to a happier end if they are identified early and handled fairly. These remedies include:

- Evaluation
- Additional education/training
- Additional supervision
- Mentoring
- Counseling
- Behavioral and performance contracts
- Restitution (financial and in-kind service)
- Warnings

When it is determined that a **Non-Executive Member** involved in the Region, Area or Section needs to be disciplined in excess of the above, or that his or her participation in the Region (Area or Section) should be limited, suspended or terminated, the Regional Commissioner (Area Director or Section Director) should ensure that the procedures used provide for appropriate fairness and due process. Due process requires that the person who is the subject of the potential discipline be provided with (1) notice and (2) an opportunity to be heard.

Review by RC (AD or SD). If the RC (AD or SD) determines that a person should be disciplined and notifies the person of the discipline, due process will be satisfied if the RC (AD or SD) also gives the person an opportunity to present information and documents to the RC (AD or SD) for his or her review of the matter and reconsideration of whether the discipline is warranted. If, upon reconsideration, the RC (AD or SD) decides that the discipline is warranted and appropriate, the RC (AD or SD) would give the person notice of the decision and let them know that they have the right to appeal the decision to the next level of Executive Member. In this case, due process is satisfied by giving the person notice and an opportunity to be heard. Therefore, a disciplinary review panel is not needed.

Review by Disciplinary Review Panel. Due process may also be satisfied through a review by disinterested individuals assembled for the purpose of determining or reviewing the appropriate discipline. This assembly of disinterested parties is called a “disciplinary review panel” or “Review Panel.”

This procedural guideline outlines the steps that the RC (AD or SD) takes to ensure that the actions taken are appropriate. This process is an internal administrative proceeding pursuant to California administrative law that we will refer to as a “review proceeding” in these guidelines.

The review proceeding provides an opportunity for an individual to appeal proposed disciplinary action or discipline already taken against him or her. A review proceeding may also be used to review an incident or matter to determine whether or not discipline or some other action is recommended with respect to a particular individual.

A review proceeding is not a court hearing, however, the individual has the right to bring anyone who may speak on his or her behalf.

Special Note: A person who is an attorney may be present during the review proceeding, but not in the capacity of an attorney representing the participant. They can be there for solicited support for the participant. If the attorney attempts to treat the review proceeding as a formal court trial, they should not be permitted to do so. If the attorney continues to treat the review proceeding as a formal trial, the person who is the subject of the review proceeding should be warned that the attorney’s misconduct will be treated as a waiver and the Review Panel may terminate the review proceeding and render its findings and recommendation based on the material already submitted. If a Review Panel is required by circumstances to terminate a review proceeding, the chair of the Review Panel should contact the Risk Management Coordinator at the National Office at the earliest opportunity.

The suspension or removal of an Executive Member of AYSO is a special case and must be handled in accordance with the procedures outlined in the AYSO Reference Book

Part One: Before the Disciplinary Review Panel Proceeding

1. Gather Information

When faced with a situation in your Region that requires management intervention, information regarding the incident will be a vital tool in substantiating the sanctions imposed or recommended. The RC should assign an appropriate person to help investigate and gather facts.

For example, if the individual is associated with the coaching program, typically the Coach Administrator will be the appropriate person to help investigate and gather facts. Similarly, if the individual is associated with the referee program, the Referee Administrator will typically be involved. If the individual is either a volunteer in another capacity or a player or spectator (mom, dad, grandparent, etc.) the RC could appoint any one of the Region Board Members to assist in gathering information.

Required information includes: names of those involved; witnesses of the incident; dates and locations at which it occurred; and any background history of the player, volunteer or spectator involved. The background information would include, but not be limited to, certification and training, Safe Haven certification, history of similar behavioral problems, etc.

2. Establish a Disciplinary Review Panel

The RC should identify and train persons in advance to organize and run review proceedings if and when they are needed. This means that the Chair of the Review Panel must be trained and qualified to conduct the Review Panel proceeding, and, if possible, the Review Panel (or a panel or committee of trained people from whom a Review Panel may be selected) should be constituted in advance of any need for a review proceeding, with the possible substitution of a replacement for any Review Panel or panel/committee member who may not be disinterested or maybe considered biased with respect to a particular incident. The number of people who sit on the Review Panel should be an odd number ensuring that a majority vote will prevail at the end of the Review Panel proceeding.

The Review Panel can consist of members of the Region or of other Regions within the Area that have expertise in their responsibilities on their respective boards. These would include, but are not limited to Coach and Referee Administrators, Assistant Regional Commissioners, Child and Volunteer Protection Advocates, Division Coordinators, etc. Former Regional Board Members may be excellent candidates to serve on a Review Panel. The RC should be sure that the expectations of the Review Panel are explained to each member and that each member agrees to comply with the requirements. For example, the information, such as opinions expressed and any votes taken, during the review proceeding or deliberations are confidential and should not be discussed with anyone outside of the Review Panel or the RC (AD or SD) in connection with the recommendation or the review of discipline.

It will be helpful if there is at least one member of the Review Panel with experience in due process procedures, e.g. attorney or personnel professional. The procedure is not a legal proceeding or mediation, but an opportunity for individuals involved to voice their opinion of the situation and to appeal any sanctions imposed or proposed to be imposed.

When an RC (AD or SD) decides to have a Disciplinary Review Panel administer the due process, they should not be involved once the Review Panel is formed and they should allow the Review Panel Chairperson to oversee the review proceeding process. The RC (AD or SD) will be reviewing the recommendation of the Review Panel and determining whether to accept, reject or modify that recommendation. Since the RC (AD or SD) formed a Review Panel, it was most likely done to get the perspective of others in assessing the incident and the need for discipline. Thus, the RC (AD or SD) should not be part of the Review Panel and it is best if the RC (AD or SD) is not present or part of the Review Panel proceeding itself. (Remember, the RC (AD or SD) has the right to determine discipline and to conduct their own review and reconsideration of discipline for due process purposes, so appointment of a Review Panel would not be needed if the RC (AD or SD) wanted to review the incident and consider discipline himself or herself.)

The AD (or SD) should not be a member of the Review Panel since they will potentially be required to review a final determination on appeal and they should remain neutral.

3. Share all information

All Review Panel members should have equal access to information about the incident and the people involved to ensure a fair recommendation. That includes all written material generated during the investigation and any written response given by the individual facing discipline. Great care must be exercised to keep all information that is collected and all discussions of the Review Panel confidential and should be handled and marked as such.

4. Review information and establish questions

Prior to beginning the Review Panel proceeding, the Chairperson should introduce everyone and give an overview of the events leading up to the proceeding. Opinions should be stated as such. In other words, actions in question should be preceded by the words, "it is the opinion of ...", "it was perceived that ...", or other appropriate words. The Chairperson should be ready to answer any technical or procedural questions that the Review Panel members may have prior to the proceeding.

5. Select a location and time

The review proceeding should be scheduled as soon as possible. Coordinating times that are convenient for everyone involved will be the most challenging part of the disciplinary review process. The location should be a neutral site. The time needs to be convenient for all of the key individuals involved in the disciplinary review.

6. Written Notice

Written notification of a review proceeding must be provided to the individual facing discipline. This notice must include the specific actions that may be taken and the reasons for such actions. The proceeding location and time must be included. The notice must also indicate that the individual will be given a reasonable opportunity to explain why such discipline should not be administered. The response may be made in person, in writing or by telephone if unavailable to attend the proceeding.

7. Establish an agenda

As in any meeting the need of a game plan, i.e. the agenda, is needed so that the Review Panel proceeding stays on track.

Part Two: During the Review Panel Proceeding

1. Allow sufficient time to speak

The order of presentations is not set in stone. The individual(s) who have had sanctions imposed upon them may go first, or the other member(s) of the incident may speak first. Time limits should only be imposed if participants engage in continued repetition. Allow each party sufficient time to “tell their side of the story.”

2. Ask questions

The members of the Review Panel should be prepared to ask questions regarding the event in question. They should ask “open-ended” questions in order to help the fact-finding process. All individuals should also be allowed to ask questions of the Review Panel as well.

3. Accept additional information

By the time a Review Panel is convened, all information that pertains to this incident should have been gathered and made available to the Review Panel members. If anyone involved in the proceeding wishes to present new information, he/she should be allowed to do so. Advising the individual to make copies of any written information prior to the Review Panel proceeding is recommended.

4. Ensure there is a gap between each group

The need for a Review Panel often involves conflicts between parties. To ensure that there are no further conflicts, each side should present its case separately from the other with enough time between them for the first side to have completely departed the proceeding location. The time gap also gives the Review Panel members a chance to discuss the information presented to them.

5. Take detailed notes

This is one of the most important elements of the review proceeding. The Regional Secretary can be assigned to take notes, or any other person directed by the RC or Chairperson. The minutes of the proceeding may be recorded as long as all parties involved are aware that the proceeding is being recorded. The minutes should include all party's names, volunteer positions (if any),

addresses and phone numbers of those who attended. They should also include a detailed summary of all topics discussed during the proceeding as well as the discussions of the Review Panel members afterwards regarding their determinations and recommendations as to sanctions already or to be imposed.

Part Three: After the Review proceeding

1. Discuss findings

At the end of the disciplinary review preceding the Chairperson should thank those present for taking time out of their schedules to attend this proceeding. The Chairperson should then turn the time over to the Review Panel members to discuss the information presented to the Review Panel. The Review Panel must deliberate in private. No persons other than the Review Panel members should be in attendance during the deliberations.

The Review Panel members should refer to their notes as well as the minutes of the meeting if necessary on topics discussed. The Review Panel should review what sanctions have been imposed to date (or are proposed to be imposed by the RC (AD or SD)), the term of the sanctions, and if those sanctions are deemed appropriate to the incident. If the Review Panel is conducting an initial review of an incident or matter to determine whether discipline is warranted, the Review Panel should consider the facts and circumstances when deciding whether or not to recommend discipline and, if so, what form the discipline will take, as appropriate.

2. Determine if any follow-up is required

The Review Panel should decide whether another proceeding or meeting should be convened to discuss the issue(s) further. If so, a date should be decided at the deliberations following the proceeding.

3. Establish a preliminary recommendation

After review of all information, the Review Panel needs to decide on their preliminary recommendations. They should include the reasoning behind their recommendation and should make it a “win – win” for both the individuals involved and the AYSO program.

4. Select member of the Review Panel to write recommendation

There should be one person on the Review Panel who is responsible to write the recommendation of the Review Panel. It can be the Chairperson, or a designee. The Chairperson should review the recommendation and, if it is consistent with the Review Panel’s determination, forward it to the Regional Commissioner.

5. Don’t second guess the disciplinary Review Panel’s recommendations

In most cases, the decisions and recommendations of the Review Panel should be approved and implemented by the RC and be the final outcome of the review proceeding. The purpose of the Review Panel process is to get many outside opinions together as one to keep the program healthy, vital and operating fairly. To the extent possible while exercising your fiduciary obligations as an Executive Member, try to accept the recommendations of the Review Panel without overruling them or second guessing them. In the event that you believe that the recommendation should be modified, you may want to consider first discussing the recommendation with the Chairperson of the Review Panel or with the entire Review Panel to better understand the reason for the recommendation and to discuss their thoughts regarding your possible modified discipline.

6. Submit decision to the person who is the subject of the review proceeding

Upon the review of the Review Panel's recommendation by the RC (AD or SD), and acceptance, modification or rejection of the recommendations, the RC (AD or SD) should send the individual who has been or is to be sanctioned a written notice of the decision, including a description of the incident and any sanctions that will be imposed or are upheld. The RC (AD or SD) should NOT attach the recommendation of the Review Panel.

This should be done within a 24 to 48 hours of the receipt of the Review Panel's findings and recommendations. The RC (AD or SD) should be prepared to answer any questions the individual may have regarding the review proceedings, the recommendations, and any other related issues.

Part Four: Once the Dust Settles

1. Finalize acceptance of decision or appeal rights

If the decision is agreed upon, a final letter should be sent to the individual as well as to the Review Panel. If the individual disagrees with the recommendations, an appeal to the next higher level (Area, Section or National President or designee) would be the next step. There is only one such appeal allowed. The decision should only be overturned under appeal if it can be shown that, 1) the Review Panel had one or more interested parties, 2) there was a lack of notice or unfair procedures, or 3) the sanctions are arbitrary or capricious (for example, the discipline is so excessive that it is grossly unfair under the circumstances). If the decision is upheld at the next highest level in the organization, the decision is final and binding.

On appeal, the person conducting the appeal (e.g., AD or SD) should be provided with information relating to the review proceeding, including the recommendations provided by the Review Panel to the RC.

2. Be prepared to accept a spike between friends

As in any type of discipline, the outcome may or may not be liked by your peers. Be prepared to have emotions, bad or good, raised with the recommendations imposed on the individual. This may involve just that person(s) or it may involve a whole team, Regional Board, and others.

3. Make this a "win – win" for all

AYSO has always worked to resolve disputes and other situations with the least amount of sanctions in order to retain the good volunteers and players. Understand that this a learning experience for all involved and a tool to improve the program for the players, volunteers and the spectator.