



# California Youth Soccer Association Inc Protest, Discipline and Appeals

## 1. Basics:

### A. Definitions:

1. Hearing – formal proceeding to determine rights, including discipline
2. Appeal – the review of a hearing
3. Protest – challenge to outcome of contest
4. Grievance – informal complaint to governing authority.

### B. What triggers a hearing?

1. Anything that takes away an existing right
  - a. Once selected player has a right to be on team
  - b. Once selected coach has right to coach a team
    1. No one has a right to be selected as a coach
  - c. League official or administrator after election/appointment for term
    1. No one has a right to be a league official or administrator

### C. What triggers an appeal?

1. Any hearing may be appealed if the aggrieved party follows procedures, that is, the party who's right is adversely affected.
  - a. Complaining party cannot complain about degree of punishment imposed on others. Not a process to achieve vengeance.

### D. What triggers a protest?

1. Protest concern games or competition
  - a. Cannot question referee decision relating to occurrences of the game.
    1. Throwing money away.
  - b. Can question application of laws of game or administrative matters such as incorrectly recording score. Can be appealed.

### E. Grievance?

1. Process for complaining to governing authorities – no rights to hearing or appeal. In CYSA, grievance is an *informal process* to bring matters of concern to the attention of appropriate authorities.

## 2. Procedural Considerations

- A. Fair Procedure (not due process) requires:
  - 1. Before person is deprived of an existing right:
    - a. Adequate statement of charges sufficient to afford the accused to know the nature of the charges and to respond
    - b. meaningful opportunity to be heard
    - c. *Neutral* decision makers.
  - 2. Emergency exceptions when can temporarily deprive person of existing right before hearing:
    - a. Risk of harm to people, especially children
    - b. Financial improprieties
    - c. referee assault
    - d. litigation exception – defendant in litigation detrimental to welfare of youth players or activities (USYS Bylaw 252, § 1.)
- B. Charges
  - 1. Sufficiently specific to enable person to know nature of allegations and to defend:
    - a. make specific as *reasonably* possible
      - 1. on June 12<sup>th</sup> you violated League rule 4 by pushing one of your under-12 players on the sideline of the game between the Strikers and the Midfielders
      - 2. not –during this season you failed to act right
    - b. Include documents setting forth accusations and information you have
    - c. What about identifying complaining parties?
      - 1. Do not give out addresses and phone numbers
      - 2. Adult names – let complaining people know the accused will be told who they are
      - 3. Children – not unless absolutely necessary. Younger the child, greater the showing of necessity.
        - a. Consider using parent's name instead
    - d. Rules:
      - 1. Give when possible specific cites to rules
        - a. Reference all possibly applicable rules
          - 1. Don't want to leave one out of notice
        - b. Ability to have charges does not necessarily depend on existence of specific rule
          - 1. No rule says a person cannot steal money, but can discipline them for it.
          - 2. Use as specific as rule as possible; if have to many leagues have detriment to the league provisions.
    - e. Provide dates by which accused documents are to be *received* requiring copies to be sent to other party and dates

by which response of other parties are to be *received* requiring copies to be sent to other party.

f. In writing, **not email**, delivered return-receipt requested

C. Meaningful Opportunity to be Heard:

1. sufficient time to prepare to defend
  - a. notice of charges fine, but if insufficient time given to prepare its no good.
  - b. reasonable time and location
    1. 2 days inadequate, usually at minimum 7 days
      - a. consider circumstances – severe or “normal” problem
      - b. act reasonably in the circumstances
  - c. process that allows them to present case
    1. covered below in more detail
2. It is the *opportunity* to be heard that matters. If person has fair notice and given a meaningful opportunity to respond, but doesn't show up
  - a. Proceed with hearing – it is valid.

D. Neutral decision makers:

1. Not personally involved or have specific interest in outcome
  - a. Decision maker is coach of team in same age group in same bracket as accused – no good.
  - b. Decision maker dislikes accused or accuser personally.
    1. Does not include different philosophies unless views are so strongly held that rise to level of bias, meaning inability to objectively determine facts and apply rules.
  - c. Not disqualified if general interest in outcome, for example, not disqualified if would like to see league reputation improved.
2. If any real doubt, get another decision maker who is neutral.
3. **No *ex parte* communications.** Decision made on record.
4. Do not identify panel members, let chair do the communication
5. If people believe they received a fair hearing before fair participants they are much more likely to accept decision and process will be considered legitimate by others.

### 3. Hearing Procedures

#### A. CYSA

1. Participants
  - a. Chair and three or more panel members
    1. chair runs hearing, but votes only in case of a tie
  - b. Accusing party
  - c. Accused
2. Procedures
  - a. opening statement accusing party – 10-15 minutes
  - b. opening statement accused party – 10-15 minutes
  - c. questions from hearing panel – unlimited time
  - d. closing statement accusing party – 5 minutes
  - e. closing statement accused party – 5 minutes
  - f. deliberations
    1. does not include parties only chair and panel
      - a. if heated have parties leave separately
  - g. decision in writing mailed within 7 days
    1. states findings in summary form and rule violated plus discipline imposed
    2. can impose suspension from everything or part participation – i.e., from all CYSA related activities, probation, conditions, etc.
      - a. be specific as to dates and coverage of discipline
    3. contains notice of right to appeal to next higher level, time to appeal, and how to appeal
      - a. no such notice time for appeal never ends
3. Problems that arise:
  - a. USSF bylaw 701 provisions
    1. notice – covered
    2. reasonable time to prepare – covered
    3. reasonable time and place – covered
    4. neutral decision makers – covered
    5. “the right to be assisted in the presentation of one’s case at hearing”
      - a. attorney can be present to assist party, but cannot speak – only advise party
    6. “The right to call witnesses and present oral and written evidence and argument”
      - a. means have people there to speak on their behalf.
        1. does **not** mean right to make others attend or to ask questions of others

- a. questions go through chair of panel who decides if panel wants to ask them
  - 7. “the right to confront witnesses, including the right to be provided the identity of witnesses in advance of the hearing”
    - a. right to confront witnesses if they come; no one in soccer has subpoena power
    - b. identity of witnesses met by giving names subject to above
  - 8. “right to have a record made of hearing if desired”
    - a. can have tape recorder, but if do you take tape and have copies made at their expense.
  - 9. “a written decision, with reasons for the decision, based solely on the evidence of record, issued in a timely fashion” – covered
  - 10. “notice of any substantive and material action of the hearing panel in the course of the proceedings”
    - a. hard to know what this could mean
  - 11. “quality concerning communications, and no ex parte communication is permitted between a party and any person involved in making its decision or procedural determination except to provide explanations involving procedures to be followed”
    - a. Chair can explain procedures to parties, but nothing else.
4. Special cases
- a. Referees (US Soccer bylaw 531-9, §3)
    - 1. referee is anyone acting as a game official, licensed or not
    - 2. misconduct can occur before, during or after game
    - 3. assault
      - a. intentional act of violence at or on a referee
      - b. intentional means act intended to bring about result that will invade interests of another in socially unacceptable way (i.e., specific intent). Unintended consequences don’t count
        - 1. Spit on referee because mad versus spit on referee by accident
      - c. accused person is immediately automatically suspended until matter heard and decided
      - d. referee assault matters go directly to CYSA for hearing. No local or district hearings or decisions.
      - e. Punishment

1. minor or slight touching – at least 3 months from date of assault
  2. other assaults except on youth referee or causing serious injuries – at least 6 months from date of assault
  3. on referee under 17 – at least 3 years
  4. assault causing serious injuries – at least 5 years
4. abuse
- a. verbal statement or physical act not resulting in bodily contact which implies or threatens physical harm to referee or referee's property
    1. for example, intentionally spitting at referee or saying "see you in parking lot"
  - b. referee abuse may be heard by league
  - c. minimum punishment is 3 scheduled matches
- b. Red Cards
1. Suspended until resolved
  2. If short, that is, two to three games, usually impractical for person to request hearing because it cannot be held in time
    - a. can request hearing to "clear name" if already served and entitled to one
  3. If longer, can request hearing, but remains suspended

#### 4. Appeals

- A. An appeal is not a hearing; it is a review of a hearing.
  1. Procedures
    - a. The hearing has already been held so do not have face-to-face presentations in appeals
      1. Can be done by teleconference
      2. If a hearing was not held, you are not doing an appeal you are doing a hearing and all of the hearing rules have to be followed (exception = red cards).
    - b. Appeal reviews the *record* of the hearing.
      1. *Cannot* go outside the record of the hearing.
      2. Record should consist of everything tangible hearing panel considered, including record of proceedings if made and should include at least:
        - a. Document that started process, for example, letter of complaint to league

- b. notice of charges, date and time of hearing
  - c. Decision letter setting forth hearing panel's decision
  - d. every document, without exception, the hearing panel received or considered.
- c. Initiation Process
- 1. Send all parties by return receipt requested letter (not email) notifying them of:
    - a. approximate date when appeal will be heard
    - b. copies of everything received
    - c. time frame for arguments of appealing party to be *received*
    - d. time frame for arguments of responding party to be received
  - 2. Do not allow parties to submit new documents or arguments
- d. Appellate Panel
- 1. Almost always the chair plus 3 members
    - a. Chair does not vote unless there is a tie
  - 2. Must be neutral
    - a. Cannot have a person who participated in the hearing on the panel ever
- e. Arguments of Parties
- 1. Parties are only allowed to *argue* in writing their position based on the record
    - a. argument is a statement *based on the record* of why a party feels they should prevail. It is not a restatement of facts or a place to assert new or different facts – that time passed when the hearing ended. Argument is an assertion of what a rule provides or how it should be construed or why the hearing panel's application of the rule to the facts is incorrect.

f. Scope of Review

1. Absolutely must remember you are not the primary decision maker.
  - a. Does not matter whether you agree or disagree with hearing panel's result
2. Review hearing panel decision for
  - a. Compliance with fair procedure requirements – no deference
  - b. What applicable rule is – no deference
    1. If unsure do give deference to hearing panel's views
  - c. Must accept hearing panel's factual determinations unless they are arbitrary or capricious if they are supported by any credible evidence – very high degree of deference.

g. Remedies

1. Appeal panel has the authority to affirm, reverse, modify, or remand. (In soccer the European terminology of allow or disallow appeal is sometimes used.)
  - a. Affirm simply means uphold the hearing panel's decision
  - b. Reverse means you are completely rejecting hearing panel's decision and reaching opposite result
    1. Nothing left for hearing panel to do after a complete reversal
  - c. Modify means you are changing the hearing panel's decision in some way, for example decreasing suspension from 7 games to 3 games.
    1. You can increase punishment as well. When a party appeals they reopen the matter.
      - a. Can never increase punishment because person appealed.
      - b. Very, very rare. Don't do this without a lot of thought
    2. modifying can also mean adding to or subtracting from hearing panel's decision.
      - a. for example, add requirement person attend referee course or coaching course.



d. Remand means to return to the hearing panel to determine or redetermine something or to follow proper procedures

1. If lack of fair procedure it will be a remand

a. hearing panel on remand does not have to be the same as original panel but can be

2. Some fact critical to decision is completely unknown.

3. If appeal record lacks sufficient evidence to support hearing panel, the result in most cases is a reversal, not a remand. This is soccer's version of double jeopardy.

4. If charges are wrong, it's a reversal not a remand.

h. Appellate Decision

1. In writing citing the rules applied and setting forth the basic findings and reasoning.

2. Notification of further appeal rights and to whom appeals are made.