

VIRGINIA COMMISSION ON YOUTH

August 20, 2018

1:00 p.m.

Tuckahoe Library

1901 Starling Dr.

Henrico, Virginia

Review of the Standard of Proof to Determine a Founded Case of Child Abuse and Neglect Advisory Group Meeting

MEETING MINUTES

Attending:

Carl Ayers, Tracey Bailey, Lori Battin, Jeremy Bennett, Jeanine Harper, Shannon Hartung, Billy Haun, Kimberly Irvine, Ben Kiser, Valerie L'Herrou, Rebecca Morgan, Ben Rand, Dena Rosenkrantz, Dana Schrad, Christopher Spain, Nancy Walsh

Commission on Youth Staff:

Amy Atkinson, Will Egen

Division of Legislative Services Staff:

David May

Others Present:

Amy Munn, Katie O'Connor

I. Welcome and Introductions

Amy M. Atkinson, Executive Director

Ms. Atkinson welcomed members of the Advisory Group and other attendees and asked for introductions.

II. Study Overview

Amy M. Atkinson

Ms. Atkinson reviewed the packet of documents to be discussed at the meeting. The task of the Advisory Group will be to review draft recommendations and work to find a balance to protect both children and good teachers. Ms. Atkinson stated that the draft recommendations that come out the discussion at this Advisory Group will be presented to the Commission on Youth at its September 18 meeting at 1 p.m. Afterwards, there will be a period for written public comment. Staff will work on collecting and summarizing public comment during this period. The draft recommendations will be voted on at the November 20 meeting at 1 p.m. At this meeting there will also be the opportunity for oral public comment.

III. Overview of the Standard of Proof to Determine a Founded Case of Child Abuse and Neglect

Will Egen, Senior Policy Analyst

Mr. Egen gave an overview of the difference in procedure for school employee vs non-school employee CPS abuse and neglect investigations. In order to make a founded case

for a non-school employee an investigator must determine whether a review of the facts shows by a preponderance of the evidence that child abuse or neglect has occurred.

In cases involving school employees, an investigator must still determine if abuse and neglect occurred by a preponderance of evidence but also follow a few additional steps as outlined herein. Using § 63.2-1511, an investigator must first ask: is the alleged abuser a public school employee? If that person is a public school employee, then the next inquiry is: Was the action of the employee in the course of his educational employment? If the answer to that question is yes, then the investigator must analyze the following by asking: Did the school employee engage in (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are upon the person of the student or within his control. If the answer to any of the preceding scenarios is yes, then the investigator must screen out or decide the case as unfounded. If not, then the investigator must decide does a preponderance of evidence show the employee's acts or omissions constitute gross negligence or willful misconduct? If the answer to this last question is yes, then the case shall be documented as founded.

IV. **Advisory Group Discussion**

Draft Findings and Recommendations

Mr. Egen presented the following draft recommendations for discussion at this point in the meeting. These draft recommendations were discussed for the remainder of the meeting. Based on stakeholder input at the meeting, Commission on Youth staff agreed to rewrite and edit the recommendations and will present the updated draft recommendations to the Advisory Group at the next meeting.

Recommendation: Amend § 63.2-1511

Option 1. Eliminate subsection (c) and forgo the gross negligence or willful misconduct analysis.

~~C. If, after an investigation of a complaint under this section, the local department determines that the actions or omissions of a teacher, principal, or other person employed by a local school board or employed in a school operated by the Commonwealth were within such employee's scope of employment and were taken in good faith in the course of supervision, care, or discipline of students, then the standard in determining if a report of abuse or neglect is founded is whether such acts or omissions constituted gross negligence or willful misconduct.~~

or

Option 2. Define "good faith" found in subsection c or request the State Board of Social Services to define in regulations.

Ex. Good faith, "A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation." (Black's Law Dictionary)

and/or

Option 3. Keep subsection (c) the same, but exempt sexual abuse accusations, because sexual abuse would not be in good faith in the scope of employment.

C. If, after an investigation of a complaint under this section, the local department determines that the actions or omissions of a teacher, principal, or other person employed by a local school board or employed in a school operated by the Commonwealth were within such employee's scope of employment and were taken in good faith in the course of supervision, care, or discipline of students, then the standard in determining if a report of abuse or neglect is founded is whether such acts or omissions constituted gross negligence or willful misconduct. **For purposes of this section, sexual abuse is never to be taken in good faith or in the scope of employment.**

Recommendation: Training/Guidance

Option 1. Hearing officers - Require DSS hearing officers to undergo training on forensic interviewing and other best practices.

Request DSS hearing officers undergo a certain amount of training annually or biennially.

and/or

Option 2. CPS workers - Support DSS's efforts in regards to training on how cases are being overturned due to poor documentation.

The Department of Social Services is currently working on training to address this issue. This recommendation would be to support DSS's ongoing effort.

and/or

Option 3. Sexual abuse - Request the Department of Social Services provide guidance to CPS workers that states that allegations of sexual abuse by school employees shall not be deemed to be actions or omissions taken in the scope of employment, and that a local department worker is not required to apply § 63.2-1511 analysis.

or

Option 4. Sexual abuse - Request the Department of Social Services provide guidance to CPS workers on what is gross negligence or willful misconduct with regards to sexual abuse.

Either option 3 or 4 under this recommendation could be undertaken in conjunction with/or in place of option 3 under the previous recommendation.

Recommendation: Other

Provide suggestions for other recommendations not represented above thus far.

V. Next Steps and Adjournment

The Advisory Group decided to hold one additional meeting at a time and date TBD. The meeting adjourned a few minutes after 3 p.m.