



## Virginia Commission on Youth 2017 Legislative Studies and Initiatives

### REPORTING OF CHILD PROTECTIVE SERVICE CASES TO VIRGINIA’S PUBLIC SCHOOLS

(Language in red reflects Commission on Youth changes based on public comment)

Findings	Recommendations	Public Comment
<p><b><u>Finding 1</u></b> Section 63.2-1505(B)(7) of the <i>Code of Virginia</i> details one of the duties of a local department in a CPS case: “If a report of child abuse and neglect is founded, and the subject of the report is a full-time, part-time, permanent, or temporary employee of a school division located within the Commonwealth, notify the relevant school board of the founded complaint.” As the law is presently written, notification to the relevant school board would not occur if the employee subject of the founded complaint was no longer employed at the school. This code section is also reflected in 22VAC40-705-140(B)(3).</p>	<p><b><u>Recommendation 1</u></b> <b><u>Option A</u></b> Amend § 63.2-1505(B)(7) of the <i>Code of Virginia</i> to require local departments of social services to report founded cases of child abuse and neglect of former school employees. This shall apply to former school employees over a 12 month period of the last date of their employment.</p> <p>OR</p> <p><b><u>Option B</u></b> Amend § 63.2-1505(B)(7) of the <i>Code of Virginia</i> to require local departments of social services to report founded cases of child abuse and neglect of former school employees <b>if they were an employee during the course of the investigation.</b></p>	<p>The Child and Family Services Committee of the League of Social Services expressed concerns with Recommendation 1. A twelve month look-back period would be problematic for them to know if the person was employed in another school division.</p> <p>York-Poquoson Department of Social Services stated that “Local social services departments should only be responsible for notifying the last known school board of the founded disposition. LDSS agencies have no way of knowing all school districts where a school employee has worked in the past 12 months.”</p> <p>Virginia Poverty Law Center expressed concerns with Recommendation 1 stating: “If a person being investigated for abuse/neglect quit their job specifically for the purpose of not</p>

	<p>OR  <u><b>Option C</b></u>          Amend § 63.2-1505(B)(7) of the <i>Code of Virginia</i> to require local departments of social services to report founded cases of child abuse and neglect of former school employees <b>if they were an employee during the course of the investigation or at the time of the alleged conduct.</b></p>	<p>being reported to the school board, that would happen during the pendency of the investigation, not some random time perhaps as much as 12 months in the past--and not get at the issue. Also, reporting a person who no longer has any connection with the school system not only burdens the local DSS, but also the local school system. It seems to make sense that a person should be reported if they quit their job during the investigation (so long as the CPS is aware of this) without reference to a timeframe.”</p>
<p><u><b>Finding 2</b></u>          Section 63.2-1503(P) of the <i>Code of Virginia</i> states “[t]he local department shall notify the Superintendent of Public Instruction when an individual holding a license issued by the BOE is the subject of a founded complaint of child abuse or neglect and shall transmit identifying information regarding such individual if the local department knows the person holds a license issued by the BOE and after all rights to any appeal provided by § 63.2-1526 have been exhausted.” Notification to the Superintendent of Public Instruction commences several steps after notice to the local school board. DOE is not permitted to comment on ongoing investigations of a license holder and earlier notice would not change the current policy. This code section is also reflected in 22VAC40-705-140(B)(4).</p>	<p><u><b>Recommendation 2</b></u>          Amend § 63.2-1503(P) of the <i>Code of Virginia</i> to require local departments of social services to report founded cases of child abuse and neglect for an individual holding a license to the Superintendent of Public Instruction at the same time as a report is made to the local school board.</p>	

<p><b><u>Finding 3</u></b>          The appeals process in certain situations where a complaint has resulted in a founded disposition of a child abuse or neglect is outlined in § 63.2-1526 and 22VAC40-705-190. The <i>Code of Virginia</i> does not specify timing deadlines for a Department of Social Services hearing officer to schedule an appeal. A timing deadline is described in regulations in 22VAC40-705-190, but it is not definite. This regulation section states “[a] hearing officer shall schedule a hearing date within 45 days of the receipt of the appeal request unless there are delays due to subpoena requests, depositions or scheduling problems.” These delay allowances can cause an appeal to take much longer than 45 days. Regulations also state that “[w]ithin 60 days of the close of receiving evidence, the hearing officer shall render a written decision.”</p>	<p><b><u>Recommendation 3</u></b>          Amend § 63.2-1526 of the <i>Code of Virginia</i> to add language stating that an appellant may request no more than two extensions of the state administrative hearing unless compelling reasons exist, not to exceed an additional 90 days.</p>	<p>York-Poquoson Department of Social Services commented that limiting the number of request to extend the appeal does not necessary mean that the case will be heard sooner. Continuances are now at the hearing officer’s discretion.</p>
<p><b><u>Finding 4</u></b>          The standard of review for a complaint of abuse and neglect is preponderance of the evidence. 22VAC40-705-10 states that ““Founded” means that a review of the facts shows by a preponderance of the evidence that child abuse or neglect has occurred.” This standard is used in most CPS cases. However, a higher standard is</p>	<p><b><u>Recommendation 4</u></b>          Request the Virginia Commission on Youth to study the difference in standards of review to determine a founded case of abuse and neglect between school personnel and non-school personnel and to advise the Commission of its findings and recommendations by December 1, 2018.</p>	<p>Virginia Poverty Center states that “The reason for the different standards is because teachers may be accused of abuse of children when they are merely doing their jobs. I wonder if there could be a way to have the different standard be one that would involve a higher level of scrutiny of the accusations, rather than a higher level of misconduct (“gross negligence”)--ie, get at the due process issues at stake, rather than throw a</p>

<p>used in complaints of abuse and neglect against school personnel. According to § 63.2-1511, “if, [the actions or omissions of a school personnel] 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.” Section 63.2-1511 was amended to use this higher standard in 2005.</p> <p>Complaints of abuse and neglect involving school personnel have a higher overturn rate on appeal when compared to other cases because of the higher standard of review. Additionally, VDSS has a definition for preponderance of the evidence, but does not have one for gross negligence or willful misconduct, more commonly found associated with tort law.</p>		<p>tort-law standard of negligence (which is different from review)?”</p>
<p><b><u>Finding 5</u></b> The Virginia Department of Education posts on its website information regarding revocations, cancellations, suspension, denials, and reinstatements of licenses issued by the Board of Education. The information currently posted includes the name of the licensee or applicant, last known</p>	<p><b><u>Recommendation 5</u></b> Request the Superintendent of Public Instruction to post on the Virginia Department of Education’s website the basis for adverse actions taken against Board of Education licenses. The posting of such information is requested for actions taken against licenses after February 1, 2018.</p>	<p>Virginia Poverty Law Center expressed concern that “...to have (essentially) personnel records available online. What is the purpose of this? Do school hiring personnel not have access to this information unless it is published to the public? What if the information on the website is incorrect, inadvertently publicly defaming someone?”</p>

<p>employing school division in Virginia, license number, action, and date of action. The basis for adverse actions taken against Board of Education licenses is not currently posted on the Virginia Department of Education website.</p>		
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