

VIRGINIA COMMISSION ON YOUTH

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

DRAFT RECOMMENDATIONS

Findings:

[Section 63.2.1511](#) outlines a roadmap for out-of-family investigations for public school employees.

Step 1: Is the alleged abuser a public school employee?

Step 2: Did the employee use reasonable and necessary force?

Step 3: Were the actions of the employee taken in the course or scope of her educational employment?

Step 4: If the actions were within the scope of employment, were they taken in good faith?

Step 5: If the actions were within the scope of employment and taken in good faith, does a preponderance of the evidence show that the acts or omissions constitute gross negligence or willful misconduct?

The above steps are a summary of the documentation a child protective services (CPS) worker must undertake in investigations related to a public school employee. Steps 3-5 were added in 2005.

Gross negligence and willful misconduct are not defined in the *Code of Virginia*, however the Virginia Department of Social Services Child and Family Services Manual provides definitions from the Supreme Court of Virginia. DSS notes that the definition of “willful and wanton conduct” is used in place of “willful misconduct” in their manual.

Additionally, the terms gross negligence and willful misconduct are closely tied to teacher civil immunity. In § 8.01-220.1:2, “Any teacher employed by a local school board in the Commonwealth shall not be liable for any civil damages for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such teacher's scope of employment and are taken in good faith in the course of supervision, care or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct.”

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.**

Findings:

2017 statistics from the Department of Social Services (DSS) show that out of 1200 complaints made against teachers, 30 were founded, 12 of those were appealed, and 8 of those were overturned.

Local department workers and hearing officers consider evidence differently. For example a hearing officer and a local department worker will look at and give different weight to a recanted statement made by a child.

Finally, proper documentation of gross negligence or willful misconduct has come up as an issue in overturned cases.

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.

Recommendations: Other

Provide suggestions for other recommendations not represented above thus far.