

VIRGINIA COMMISSION ON YOUTH

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

DRAFT RECOMMENDATIONS

Recommendation: Amend § 63.2-1511

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

CPS caseworkers would still do the analysis in current subsection A and B which includes examining the corporal punishment exceptions.

~~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.~~

and/or

Option 2. Re-title section 63.2-1511. Make the section a roadmap for all child abuse and neglect cases. Make other small fixes.

§ 63.2-1511. Complaints of abuse and neglect against **a parent or other caretaker** school personnel; interagency agreement.

A. A complaint of child abuse and neglect against a parent or other caretaker shall be founded if a review of the facts shows by a preponderance of the evidence that abuse or neglect has occurred.

~~A. B.~~ If a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth is suspected of abusing or neglecting a child in the course of his educational employment, the complaint shall be investigated in accordance with §§ [63.2-1503](#), [63.2-1505](#) and [63.2-1516.1](#). Pursuant to § [22.1-279.1](#), no teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth shall subject a student to corporal punishment. However, this prohibition of corporal punishment shall not be deemed to prevent (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. In determining whether the actions of a teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth are within the exceptions provided in this section, the local department shall examine whether the actions at the time of the event that were made by such person were reasonable. **In determining the validity of a report of suspected abuse or neglect pursuant to this section, the local department must consider whether the school employee used reasonable and necessary force. If the information to make such a determination is not available at intake, then an investigation may be initiated if the complaint is otherwise valid. During the investigation, the local department must consider whether the school employee used reasonable and necessary force.**

~~B- C.~~ For purposes of this section, "corporal punishment," "abuse," or "neglect" shall not include physical pain, injury or discomfort caused by the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control as permitted in clause (i) of subsection A **B** or the use of reasonable and necessary force as permitted by clauses (ii), (iii), (iv), and (v) of subsection A **B**, or by participation in practice or competition in an interscholastic sport, or participation in physical education or an extracurricular activity.

~~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.~~

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

~~D- F.~~ Each local department and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports. The

interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

Recommendation: Training/Guidance

Option 1. Hearing officers - Require DSS hearing officers to undergo CPS new worker guidance training as well as training on forensic interviewing, other best practices, and topics deemed essential to recognizing abuse and neglect. DSS hearing officers shall undergo training within the first 6 months of employment. Further, require continuing education training annually, biennially, or as deemed necessary. DSS shall determine the training requirements.

and/or

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

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. Child and Family Services Manual - Request the Department of Social Services update and clarify the sections on conducting investigations involving public school employees in their chapter on out-of-family investigations in the Child and Family Services Manual.

Recommendation: Sexual abuse

Option 1. Amend subsection (c) of § 63.2-1511 to exempt certain sexual abuse complaints from the use of the higher standard of gross negligence or willful misconduct.

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, if the act that gave rise to the investigation was for the purpose of sexual gratification, then it shall never be considered in good faith or in the scope of employment.**

and/or

Option 2. Request the Department of Social Services provide guidance to CPS workers that states that if the act that gave rise to the investigation of abuse and

neglect was for the purpose of sexual gratification, then it shall not be deemed to be an act or omission taken in the scope of employment. The local department worker would therefore not apply § 63.2-1511 analysis.

and/or

Option 3. Request the Department of Social Services provide guidance to CPS workers that detail the scenarios and appropriate analysis for gross negligence or willful misconduct as it applies to complaints of sexual abuse.

Recommendations: Other

Provide suggestions for other recommendations not represented above thus far.