

## Reporting of Child Protective Service Cases to Virginia's Public Schools

### Draft Recommendations

#### **Notification of Founded Complaint**

##### Findings:

Section 63.2-1505(B)(7) of the *Code of Virginia* 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).

##### Recommendation #1:

**Amend § 63.2-1505(B)(7) of the *Code of Virginia* 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.**

Potential recommendation language:

**Amend § 63.2-1505(B)(7) of the *Code of Virginia* to state "If a report of child abuse and neglect is founded, and the subject of the report is or has been within the previous 12 months 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 without delay."**

##### Findings:

Section 63.2-1503(P) of the *Code of Virginia* states "[t]he local department shall notify the Superintendent of Public Instruction when an individual holding a license issued by the Board of Education 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 Board of Education 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. The 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).

##### Recommendation #2:

**Amend § 63.2-1503(P) of the *Code of Virginia* 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.**

Potential recommendation language:

**Amend § 63.2-1503(P) of the *Code of Virginia* to state “[t]he local department shall notify the Superintendent of Public Instruction when an individual holding a license issued by the Board of Education 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 Board of Education [delete after all rights to any appeal have been exhausted] without delay.”**

## **Appeals**

### **Findings:**

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 *Code of Virginia* 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.”

### **Recommendation #3:**

**Amend § 63.2-1526 of the *Code of Virginia* 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**

## **Standard of Review**

### **Findings:**

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 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.

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, the Department of Social Services has a definition for preponderance of the evidence, but does not have one for gross negligence or willful misconduct, which is more commonly found associated with tort law.

Recommendation #4:

**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.**