



Virginia Commission on Youth 2018 Legislative Studies and Initiatives

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

Recommendations	Public Comments
<p><u>Recommendation 1 – Training and/or guidance for hearing officers and CPS workers</u></p> <p><u>Option 1 – Hearing officer training</u></p> <p>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.</p> <p>(and/or)</p>	<p>The Department of Education supports the training recommendations.</p> <p>Families Forward Virginia indicates that training should occur before a hearing officer hears an appeal. Additionally, the extent of training as well as the person responsible for the training within the Department of Social Services should be specified.</p>

<p><u>Option 2 – CPS worker training</u></p> <p>Support DSS’s efforts in regards to training on how cases are being overturned due to documentation issues. In this training, request that CPS and DSS appeals division identify procedural and documentation errors that prevent a hearing officer from using their discretion to uphold a founded case in which abuse and neglect occurred.</p> <p>Background: The Department of Social Services is currently working on training to address this issue. This recommendation would be to support DSS’s ongoing effort.</p> <p>(and/or)</p>	<p>Families Forward Virginia states that “while hearing officers shall remain neutral in their work, a formal process and partnership between the VDSS Appeals Division and the Family Services Division, for the purpose of identifying <u>and</u> interpreting the law(s) that were not followed by a local department of social services— hence yielding an overturned disposition—and in order to enhance training and improve practice, would complement VDSS’ efforts to reengineer its training model.”</p>
<p><u>Option 3 – Update Child and Family Services Manual</u></p> <p>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.</p>	<p>Families Forward Virginia believes that “to incorporate the aforesaid into CPS Guidance and to separate guidance on conducting investigations of public school employees from other out-of-family situations would enhance overall out-of-family guidance provided to local departments of social services.”</p>

Recommendation 2 – Complaints of sexual abuse against teachers

Option 1 – Amend the Code of Virginia

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.

Potential Code language: 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 any act of sexual exploitation or any sexual act upon a child in violation of the law, then it shall never be considered in good faith or in the scope of employment.**

(and/or)

In support

The **Department of Education** supports amending the Code to exempt certain sexual abuse complaints from the higher requirement of gross negligence/willful misconduct, as acts of sexual exploitation or sexual acts upon a child in violation of law never would be within an employee's scope of employment.

Families Forward Virginia states that with regard to Option 1, “the Commission might consider a more expansive definition of sexual abuse to include acts not currently written in *Code*. Respectively, grooming behaviors are of concern. For example, if a public school employee were to kiss a child, the act may not rise to a criminal offense, but be construed as conduct of a sexual nature and that which is 1) not in good faith and 2) outside of the employment scope.”

In opposition

The **Virginia Educational Association (VEA)** stated that they would likely oppose any proposal to amend Virginia Code section 63.2-1511 even if the change is limited to accusations of “sexual abuse.”

Additionally, the VEA commented that the “numbers reviewed by Advisory Group show local social services do not handle many complaints against school employees, and the vast majority of those complaints are not founded. VEA does not believe change in statutory language will simplify analysis of these complicated situations, or enhance protection for public school students.”

Option 2 – Update guidance on sexual abuse

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 any act of sexual exploitation or any sexual act upon a child in violation of the law, 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)

Families Forward Virginia supports guidance stated in option 2 as it relates to moving forward with option 1.

Option 3 – Update guidance and analyze scenarios for application of gross negligence and willful misconduct to sexual abuse

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

The **Virginia Education Association (VEA)** would support option 3 requesting DSS to provide guidance to CPS workers detailing scenarios and analysis for considering gross negligence or willful misconduct as it applies to complaints of sexual abuse. The VEA believes that these are sensitive and complicated situations warranting guidance and training.

Families Forward Virginia supports guidance stated in option 3 as it relates to moving forward with option 1.