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OUT-OF-FAMILY INVESTIGATIONS

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OUT-OF-FAMILY INVESTIGATIONS

5.1 Introduction

If a CPS report involves a caretaker who does not reside in the victim child's home, that investigation is deemed an "out-of-family investigation." There are many types of settings and situations that are considered "out-of-family" settings. These settings include those regulated by other agencies such as state licensed and religiously exempted child day care centers, regulated family day homes, private and public schools, group residential facilities, hospitals, or institutions. Out-of-family settings may also include settings that are not externally regulated such as camps, athletic leagues, children's clubs, babysitters who are not required to be regulated, babysitting coops, and "sleepovers" at friends' or relatives' homes. Depending on the setting, there are certain regulations and policies that apply to the conduct of these CPS investigations.

This section sets forth the requirements and guidance for responding to child abuse and neglect reports in "out-of-family" settings. Complaints of abuse and neglect in out-of-family settings differ from complaints in the child's family setting because:

- The alleged abuser(s) in "out-of-family" settings may be caring for the alleged victim(s) as part of their job duties.
- The outcome of the CPS investigation may have administrative, regulatory and/or personnel implications.
- CPS is mandated by Code of Virginia [§ 63.2-1506 C](#) to respond to certain types of these valid allegations as Investigations (not Family Assessments).

There is a checklist of all requirements to conduct an out-of-family investigation in [Appendix C: Checklist for out-of-family investigations](#).

5.2 Authorities

In addition to Virginia Administrative Code [22 VAC 40-705](#) et. seq. that provides the regulatory authority for the general conduct of the CPS program, the Virginia Administrative Code [22 VAC 40-730](#) et. seq. provides additional requirements for CPS to conduct out-of-family investigations in designated settings.

[\(22 VAC 40-730-20\)](#). Complaints of child abuse or neglect involving caretakers in out of family settings are for the purpose of this (regulation) chapter complaints in state licensed and religiously exempted child day centers, regulated family day homes, private and public schools, group residential facilities, hospitals or institutions.

These complaints shall be investigated by qualified staff employed by local departments of social services or welfare.

Staff shall be determined to be qualified based on criteria identified by the department. All staff involved in investigating a complaint must be qualified.

In addition to the authorities and the responsibilities specified in department policy for all child protective services investigations, the policy for investigations in out of family settings is set out in [22 VAC 40-730-30](#) through [22 VAC 40-730-130](#).

All CPS authorities, procedures, and requirements applicable to in home investigations found in Part 4 Family Assessment and Investigation apply to the investigation of complaints in an out-of-family setting. This section sets forth the additional requirements to respond to CPS reports in these settings.

5.2.1 Minimum standards for CPS workers to conduct out-of-family investigations

[\(22 VAC 40-730-130 A\)](#). In order to be determined qualified to conduct investigations in out of family settings, local CPS *workers* shall meet minimum education standards established by the department including:

1. Documented competency in designated general knowledge and skills and specified out of family knowledge and skills; and
2. Completion of out of family policy training.

B. The department and each local *department* shall maintain a roster of personnel determined qualified to conduct these out of family investigations.

5.3 Definitions

In addition to the definitions contained in 22VAC40-705-10, the Virginia Administrative Code [22 VAC 40-730-10](#) defines the following words and terms, when used in conjunction with this chapter, to have the following meanings, unless the context clearly indicates otherwise:

[\(22 VAC 40-730-10\)](#)

“Child Placing Agency” means those privately contracted agencies responsible for the training of specialized foster families and the intensive case management of the foster child.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of children as defined in §63.2-100 of the Code of Virginia.

"Facility" means the generic term used to describe the setting in out of family abuse or neglect and for the purposes of this regulation includes schools (public and private), private or state-operated hospitals or institutions, child day *programs*, state regulated family day homes, and residential facilities.

"Facility administrator" means the on-site individual responsible for the day-to-day operation of the facility.

“Participate” means to take part in the activities of the joint investigation as per a plan for investigation developed by the CPS worker with the facility administrator or regulatory authority or both.

"Physical plant" means the physical structure/premises of the facility.

"Regulatory authority" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a facility for children.

"Residential facility" means a publicly or privately owned facility, other than a private family home, where 24-hour care, *maintenance, protection, and guidance* is provided to children separated from their *parents or* legal guardians, that is subject to licensure or certification pursuant to the provisions of the Code of Virginia and includes, but is not limited to, group homes, secure facilities, temporary care facilities, and respite care facilities.

5.3.1 Additional definitions used in CPS out-of-family investigations

The following definitions are also commonly used in the guidance and procedures to conduct out-of-family investigations:

“Licensed Child Placing Agency” means those privately contracted agencies responsible for the training of specialized foster families and the intensive case management of the foster child.

“Hospitals and Institutions,” for the purpose of this chapter, means the residential placement responsible for the care and treatment of a child for behavioral and/or psychological reasons. These include juvenile detention and residential treatment facilities.

“Locally Approved” means the process where a local agency has approved and prepared a family for placement of local foster children or a home for placement of daycare children.

“Religiously exempt day care center” means a child day center that is exempted from several licensing requirements and regular inspections due to its mission as a religious facility.

5.4 Responsibilities to conduct out-of-family investigations

5.4.1 Determine validity of report or complaint in out-of-family settings

The criteria used to determine validity of an allegation in an out-of-family setting are the same as that in an allegation of an “in-home” setting. These criteria are discussed in Section 3: Complaints and Reports. *Additional criteria for reports involving school personnel can be located in [Section 5.10](#).*

5.4.2 Determine track decision

5.4.2.1 Investigation

The Code of Virginia [§ 63.2-1506 C](#) requires CPS reports in certain out-of-family settings to be investigated. These settings include programs that are subject to state regulatory oversight and where the relationship between the alleged victim child and caretaker is more professional than familial. In addition, CPS reports in locally approved provider settings must be investigated.

5.4.2.2 Family Assessment

Some CPS reports involve a caretaker who is a relative not residing in the child’s household (e.g., grandparent, aunt/uncle, etc.) or other person who has a more familial relationship with the alleged victim child. These reports may be placed in the Family Assessment Response Track (*Refer to Section 3, Complaints and Reports*) if there are no other elements of the report that require an investigation.

5.4.3 Identify the regulatory agency

- The Department of Social Services (VDSS) licenses or certifies facilities such as child day centers, including religiously exempt child day centers, licensed and voluntarily registered family day homes, and certain child care institutions and group homes. Contact information for VDSS Regional Licensing Offices is available on the [public website](#).
- The Department of Juvenile Justice (DJJ) operates juvenile correctional centers and halfway houses throughout the state. For investigations involving state-operated facilities, contact the appropriate facility superintendent. Contact information for these facilities is available on the [DJJ website](#). Also contact the *DJJ Gang and Investigation Unit (804-588-3850) to report the child abuse/neglect allegations.*
- The Department of Juvenile Justice (DJJ) also certifies locally-operated detention homes and group homes. For investigations involving locally-operated detention homes and group homes, contact the DJJ Serious Incident Report (SIR) 24-hour hotline at (804)-212-8803, or the Certification Manager at (804) 516-9491 to notify the appropriate Certification Analyst and to coordinate assistance for the investigation.
- The Department of Behavioral Health and Developmental Services (DBHDS) operates or licenses group homes; treatment facilities for children with substance abuse issues, developmental disabilities, and brain injuries; psychiatric hospitals that provide day or residential services to children; training centers; and state mental hospitals. Contact the DBHDS Office at (804)-786-1747 to reach the appropriate licensing specialist. Contact information is also available on the [DBHDS website](#).
- The Department of Education (DOE) *licenses private schools for students with disabilities. This includes both day schools and schools within residential facilities. Contact Information and a listing of licensed private day and residential schools are available on the [DOE website](#) under Directory of Private Day and Residential Schools for Students with Disabilities. If a complaint of child abuse or neglect occurs in the school program of a residential facility or a private school for students with disabilities, contact DOE at (804) 225-2768 or ask the private school for the DOE specialist for their school and contact that person directly.*

5.4.4 Facilities with no regulatory authority

([22 VAC 40-730-50A](#)). In a facility for which there is not a state regulatory authority, such as in schools, the CPS worker shall ask the facility administrator or school superintendent to designate a person to participate in the joint investigative process.

In an out-of-family investigation with no regulatory authority, the designated staff person participating in the investigation is not considered a co-investigator with the CPS worker. The CPS worker should review the investigative process and confidentiality requirements with the facility designee, whose function is to minimize duplication of investigation efforts by CPS and the facility. The CPS worker may exclude the designee from interviews as necessary.

5.4.5 Develop joint investigative plan

([22 VAC 40-730-40 2](#)). The CPS worker assigned to investigate and the appointed regulatory staff person will discuss their preliminary joint investigation plan.

The CPS worker and the appointed regulatory staff person shall confer on the preliminary investigation plan. The CPS worker and the regulatory staff person shall plan how each will be kept informed of the progress of the investigation, and must confer at the conclusion of the investigation to inform the other of their respective findings and to discuss corrective action.

5.4.5.1 If regulatory staff is unavailable

If a designated regulatory staff person is not available to participate in the investigation process in a timely manner, the CPS worker should commence the investigation separately; however, efforts must be made to begin coordination and information-sharing as quickly as possible.

5.4.6 Notify CPS regional consultant

([22 VAC 40-730-60 B](#)). The regional consultant shall be responsible for monitoring the investigative process and shall be kept informed of developments which substantially change the original case plan.

The CPS worker shall inform the CPS regional consultant of all out-of-family investigations as soon as possible. This may be done by sending an e-mail *to the regional consultant that includes* the following information:

- Referral # and Locality
- Type of Abuse
- Daycare/Facility/School Name
- Brief case summary.

5.4.7 Notify Interstate Compact on the Placement of Children (ICPC)

If the alleged victim is in the custody of another state and has been placed in Virginia through ICPC, immediately notify the Virginia [ICPC office](#) and the state agency which has custody of the child. The CPS worker shall document this notification in the automated data system.

5.5 Conduct out-of-family investigation

5.5.1 Joint interviews and information sharing

([22 VAC 40-730-40 2a](#)). The CPS worker and the regulatory staff person shall review their respective needs for information and plan the investigation based on when these needs coincide and can be met with joint interviews or with information sharing.

The LDSS shall share the complaint information with the regulatory authority who may appoint a staff person to participate in the investigation. The CPS worker and regulatory staff person should discuss informational needs, the feasibility of joint interviews, and develop an investigative plan.

5.5.2 Joint investigation must meet requirements for LDSS and regulatory authority

([22 VAC 40-730-40 2b](#)). The investigation plan must keep in focus the policy requirements to be met by each party as well as the impact the investigation will have on the facility's staff, the victim child or children, and the other children at the facility.

5.5.3 Joint investigation with law enforcement and facility

([22 VAC 40-730-50 B](#)). When CPS and law enforcement will be conducting a joint investigation, the CPS worker shall attempt to facilitate a coordinated approach among CPS, law enforcement and the regulatory authority or facility designee.

5.5.4 Notify facility administrator

([22 VAC 40-730-70 A](#)). The CPS worker shall initiate contact with the facility administrator *or designee* at the onset of the investigation.

B. The CPS worker shall inform the facility administrator or his designee of the details of the *valid* complaint. When the administrator or designee chooses to participate in the joint investigation, he will be invited to participate in the plan for investigation, including decisions about who is to be present in the interviews. If the administrator or designee is the alleged abuser or neglecter, this contact should be initiated with the individual's superior, which may be the board of directors, etc. If there is no superior, the CPS worker may use discretion in sharing information with the administrator.

C. Arrangements are to be made for:

1. Necessary interviews;
2. Observations including the physical plant; and
3. Access to information, including review of pertinent policies and procedures.

D. The CPS worker shall keep the facility administrator *or designee* apprised of the progress of the investigation. In a joint investigation with a regulatory staff person, either party may fulfill this requirement.

The facility administrator is the on-site individual responsible for the day-to-day operation of the facility. The worker shall inform the administrator or designee of the allegations in the complaint. If there is no apparent conflict of interest in doing so, the administrator or designee should be invited to assist with the planning of the investigation. If the administrator or designee chooses not to be involved in the planning process, he shall nevertheless be informed of the progress of the investigation.

5.5.4.1 When the facility administrator or designee is the alleged abuser or neglector

If the administrator or designee is the alleged abuser or neglector, this contact should be initiated with the individual's superior, such as the chairman of the board of directors or the superintendent of schools. If there is no superior, the worker may use discretion in deciding what information to share with the administrator.

5.5.5 Interview alleged victim and notify child's parent

*The CPS worker shall conduct at least one face-to-face interview with the alleged victim child and should conduct this face-to-face contact **within the response priority level** assigned. During the interview, the CPS worker should inform the child about the investigation and what will occur during the investigation. The CPS worker shall observe the child and document the child's recollection and perception of the allegations. The CPS worker should note the child's emotional and physical condition (including any injury). The CPS worker should learn about the child's needs and capabilities for the purposes of risk assessment and service planning.*

5.5.5.1 Interview with alleged victim child

Collect following information during the alleged victim interview:

- Demographic information (date of birth, sex, grade in school, etc.).

- Child's developmental level.
- Child's description of the incident including but not limited to:
 - Child's statements about what happened. Include direct quotes of the child if appropriate.
 - Child's statements about the impact of the incident on him.
- Results of any tests or evaluation of the child's injury, behavior, or other characteristics.
- Prior history of abuse or neglect involving the child. The history of any prior abuse or neglect can be provided by any source.

5.5.5.2 Electronic recording

[\(22 VAC 40-705-80 B1\)](#). The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child and siblings. All interviews with alleged victim children must be electronically recorded ...

In 2005, the Virginia Supreme Court of Appeals issued a ruling to affirm the regulatory requirement that victim interviews in an investigation must be electronically recorded according to [22 VAC 40-705-80](#) or clearly document the specific and detailed reasons for not taping victim interviews as well as the documentation that the decision was made in consultation with a supervisor. A copy of this decision, known as the [West Decision](#), is available on the website of the Virginia Court of Appeals case #2144042.

5.5.5.2.1 Exceptions to electronically recording interviews with the alleged victim child

([22 VAC 40-705-80 B1](#)). All interviews with alleged victim children must be electronically recorded except when the child protective services worker determines that:

- a. The child's safety may be endangered by electronic recording;*
- b. The age and/or developmental capacity of the child makes electronic recording impractical;*
- c. A child refuses to participate in the interview if electronic recording occurs;*
or
- d. In the context of a team investigation with law-enforcement personnel, the team or team leader determines that audio taping is not appropriate.*
- e. The victim provided new information as part of a family assessment and it would be detrimental to re-interview the victim and the child protective services*

worker provides a detailed narrative of the interview in the investigation record.

The Virginia Administrative Code provides five exceptions to audio or other electronic recording of an interview with an alleged victim child. Before electronically recording an interview with a child, the CPS worker must assess the circumstances surrounding the allegations of abuse or neglect and determine whether any of the five exceptions precluding audio recording the interview apply. Adequately considering the circumstances may include assessing the complaint or report; speaking with the mother, father or guardians of the child; speaking with collateral witnesses; and conducting an assessment of the child.

The CPS worker shall consult with the supervisor when the decision is made not to electronically record an interview with an alleged victim child. The consultation and the specific reasons why electronic recording is not done in the specific investigation shall be documented in the automated data system.

- ***Exception: The child's safety may be endangered by electronic recording***

If the child's safety is endangered or may be endangered by electronically recording the interview, then the interview must not be electronically recorded. The CPS worker may need to conduct a brief assessment of the child to determine the risk of any harm that may occur to the child as a result of electronically recording the interview. The CPS worker may be able to assess any potential harm to the child by speaking with the child's mother, father or guardians, or collateral witnesses. If the interview is not electronically recorded, the CPS worker shall carefully document the details of the interview in writing for the case record.

- ***Exception: The age or developmental capacity of the child makes electronic recording impractical***

The CPS worker must assess the mental and physical capacities of the child. The age or development of the child may preclude electronically recording the interview. It may be appropriate to electronically record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses.

- ***Exception: The child refuses to participate in the interview if electronic recording occurs***

The interview with the child should not be jeopardized because the child refuses to be electronically recorded. If the child refuses to be electronically

recorded, the CPS worker should explore the child's reasons and discuss those reasons with the child. If the child still refuses to participate in an electronically recorded interview, then the CPS worker must not electronically record the interview. The CPS worker shall document the reasons why the child refused to be electronically recorded.

- **Exception: In the context of a team investigation, the team or team leader determines that electronic recording is not appropriate**

If a complaint or report of abuse or neglect is being investigated in conjunction with a multidisciplinary team, then the multidisciplinary team should make the decision to electronically record the interview with the alleged victim child based on the specific child and referral. A team investigation includes a joint investigation with the Commonwealth's Attorney office or law enforcement.

- **Exception: The victim provided new information as part of a family assessment**

If the victim provides new information during a family assessment resulting in an investigation and it would be detrimental to re-interview the victim, the child protective services worker shall provide a detailed narrative of the interview in the investigation record and document this exception to electronically recording the victim interview.

5.5.5.3 Each interview with the alleged victim child must be electronically recorded

Each interview with the alleged victim child must be electronically recorded unless one of the above mentioned exceptions to electronically recording the interview applies. When an interview is not electronically recorded for any reason, the CPS worker shall complete a detailed summary of the interview, including the reasons for not recording the interview and the supervisory consultation for this decision and enter the information into the automated case record.

5.5.5.4 Notify the child's parents or caretakers that interview was electronically recorded

While there is no provision in the Code of Virginia or the Virginia Administrative Code that requires an LDSS to inform the child's parents that the interview was electronically recorded, the LDSS should notify the mother, father or guardians of the alleged victim child about the interview and that the interview was electronically recorded.

The LDSS should explain to the mother, father or guardians that §63.2-1518 of the Code of Virginia allows the CPS worker to interview the alleged victim child without the consent of the parents and 22VAC40-705-80 of the Virginia Administrative Code requires the interview to be electronically recorded.¹

5.5.5.5 Parents or caretakers object to electronically recorded interview

There is no provision in the Virginia Administrative Code allowing an exception to electronic recording when the mother, father or guardians object to the LDSS electronic recording the interview of the alleged victim child. The CPS worker should explore the foundation for the parents' objection. The objection to the electronic recording may satisfy one of the enumerated exceptions to electronic recording.

5.5.5.6 Equipment malfunction

[22 VAC 40-705-80 B1](#) provides that a CPS finding may be based on the written narrative should equipment failure occur. If an interview of an alleged victim child is not electronically recorded because of equipment malfunction, then the CPS worker shall write a detailed narrative of the interview and include that narrative in the record.

5.5.5.7 Notify parents or guardian of interview with child

The mother and father, guardian or agency holding custody should be informed of their child's interview and the investigative process in advance; when this is not practical, they shall be informed as quickly as possible after the interview.

The investigative process should be explained to the child's parents, guardian, or agency holding custody. The child's mother and father, guardian or agency holding custody should be interviewed to obtain information about the child and about their knowledge of the allegations and the facility.

The child's mother and father, guardian, or agency holding custody should be kept informed of sufficient information to involve them in planning and support for the child.

5.5.6 CPS worker determines who may be present during interview with child

([22 VAC 40-730-80](#)). Contact with the alleged victim child. The CPS worker shall interview the alleged victim child and shall determine along with a regulatory staff

¹ VA Code § [63.2-1518](#) provides any person required to make a report of abuse or neglect with the authority to talk to a child suspected of being abused or neglected outside the presence of the child's parents, guardian, other person standing in loco parentis or school personnel. [22 VAC 40-705-80 B](#) requires that any interview by a CPS worker with an alleged victim child be electronically recorded.

person or facility administrator or designee who may be present in the interview. Where there is an apparent conflict of interest, the *local department* shall use discretion regarding who is to be included in the interview.

When the CPS worker is conducting an interview with the alleged victim child, the CPS worker shall determine who may be present during the interview, taking into consideration both the comfort of the child and other parties' need to have first-hand information. The CPS agency has the final authority over who may be present if there is no consensus between CPS worker, regulatory staff, and/or facility administrator or designee when issues arise such as the discomfort of the interviewee or an apparent conflict of interest.

5.5.7 Interview alleged abuser or neglector

([22 VAC 40-730-90](#)). Contact with the alleged abuser or neglector.

A. The CPS worker shall interview the alleged abuser or neglector according to a plan developed with the regulatory staff person, facility administrator, or designee. Where there is an apparent conflict of interest, the *local department* shall use discretion regarding who is to be included in the interview. At the onset of the initial interview with the alleged abuser or neglector, the CPS worker shall notify him in writing of the general nature of the complaint and the identity of the alleged victim child to avoid any confusion regarding the purpose of the contacts.

B. The alleged abuser or neglector has the right to involve a representative of his choice to be present during his interviews.

The alleged abuser or neglector shall be given written notice of the CPS report, "[Child Protective Services: A Guide to Investigative Procedures in Out of Family Settings.](#)"

5.5.7.1 Inform alleged abuser or neglector of right to electronically record interview

([22 VAC 40-705-80 B2a](#)). The CPS worker shall inform the alleged abuser and/or neglector of his right to tape record any communication pursuant to [§ 63.2-1516](#) of the Code of Virginia.

5.5.7.2 Law enforcement or Commonwealth's Attorney objects to informing the alleged abuser or neglector of his right to audio record the interview

A law-enforcement officer or the Commonwealth's Attorney may object to the LDSS informing the alleged perpetrator of his right to electronically record an interview. If a law-enforcement officer or a Commonwealth's Attorney objects,

then the LDSS shall not advise the alleged perpetrator of that right. This objection applies when the Commonwealth's Attorney or the law-enforcement officer believes that the instruction will compromise the investigation of any criminal charges.

This objection must be documented in the automated data system.

5.5.7.3 LDSS shall provide recording equipment upon request

([22 VAC 40-705-80 B2b](#)). If requested by the alleged abuser and/or neglector the local department shall provide the necessary equipment in order to tape record the interview and retain a copy of the tape for the record.

The CPS worker must be prepared to provide the equipment should the alleged abuser or neglector elect to electronically record the interview. The LDSS must provide a copy of the electronically recorded interview to the alleged abuser or neglector upon request.

5.5.7.4 Use of statements as evidence

The Code of Virginia [§ 63.2-1503 M](#) provides that statements made by the alleged abuser or neglector to the investigating CPS worker after the alleged abuser or neglector has been arrested are not admissible in any criminal proceedings unless the alleged abuser or neglector was advised of his rights against self-incrimination. If a person suspected of abuse or neglect is arrested, that person must be advised of his rights against self-incrimination or any subsequent statements made by the person cannot be used during the criminal proceedings. This section of the Code of Virginia only pertains to the admissibility in criminal proceedings of statements made by the alleged abuser or neglector after that person has been arrested. This section of the Code of Virginia does not pertain to the use of any statements made by the alleged abuser or neglector in determining whether the complaint or report is founded or unfounded. While certain statements made by the alleged abuser or neglector may not be admissible in a court of law, there is no specific exclusion to the LDSS using those statements in determining a founded or unfounded disposition.

5.5.8 Interview collateral children and parents or guardians

*([22 VAC 40-730-100](#)). Contact with collateral children. The CPS worker shall interview non-victim children as collaterals if it is determined that they may have information which would help in determining the finding in the *valid* complaint. Such contact should be made with prior consent of the *nonvictim* child's parent, guardian or agency holding custody. If the situation warrants contact with the *nonvictim* child prior to such consent*

being obtained, the parent, guardian or agency holding custody should be informed as soon as possible after the interview takes place.

5.5.9 Observe environment where the alleged abuse or neglect occurred

([22 VAC 40-705-80](#) B5). The child protective services worker shall observe the site where the alleged incident took place.

5.6 Assess safety

The Virginia Administrative Code provides regulatory authority to conduct the safety assessment in out-of-family investigations:

([22 VAC 40-730-30](#)). If the complaint information received is such that the local *department* is concerned for the child's immediate safety, contact must be initiated with the facility administrator immediately to ensure the child's safety. If, in the judgment of the child protective services/CPS worker, the situation is such that the child or children should be immediately removed from the facility, the parent or parents, guardian or agency holding custody shall be notified immediately to mutually develop a *safety* plan which addresses the child's or children's immediate safety needs.

The safety assessment focuses on the child and the child's immediate needs. Factors to consider when assessing the immediate situation of the child include:

- Whether the child has sustained a mental or physical injury warranting immediate attention or care;
- Whether an emergency or crisis situation exists meriting immediate action to protect the child;
- Whether the child is at risk of serious abuse or neglect in the near future.

5.6.1 Assess immediate needs of the family or facility

After assessing the immediate safety needs of the child, the worker must evaluate the immediate needs of the family or facility. Factors to consider include:

- If the child has been injured or harmed, whether the family or facility has the capabilities or capacity to protect the child from further harm;
- Whether an emergency or crisis situation exists and the family's or facility's ability to cope;

5.6.2 Assess immediate danger to the other children in the family or facility

After assessing the immediate safety needs of the child and family or facility, the worker must evaluate the immediate needs of any other children in the care of the family or facility. Factors to consider include:

- Whether any other child in the family or facility has sustained a mental or physical injury warranting immediate attention or care
- Whether any other children are at risk of harm or danger
- Whether an emergency or crisis situation exists meriting immediate action to protect the other child(ren) in the home or facility
- Whether the family or facility has the capability or capacity to protect other children from further harm;

5.6.3 Make safety decision

After safety and protective factors have been assessed, the CPS worker must make a decision about the safety of the child(ren) in the home or facility. The safety decision should be made on the basis of the needs of the least safe child in the home or facility, if there is more than one child. One of the following safety decisions must be determined and documented in the automated data system and shared with the family or facility.

- **SAFE.** There are no children likely to be in immediate danger of serious harm at this time. No safety plan is required.
- **CONDITIONALLY SAFE.** Protective safety interventions have been taken and have resolved the unsafe situation for the present time. A safety plan is required to document the interventions.
- **UNSAFE.** Without controlling intervention(s) a child is in immediate danger of serious harm. A court order or safety plan is required to document intervention.

5.6.4 Emergency removal of child in out-of-family investigations

If the CPS worker is concerned for the child's immediate safety and the situation is such that the child should be immediately removed from the facility, the mother, father, guardian or agency holding custody and the facility administrator shall be notified immediately to mutually develop a *safety* plan providing for the child's safety. Written notification shall be provided to the mother, father, guardian or agency holding custody and the facility at the time of the removal.

(22 VAC 40-730-40). The authority of the local *department* to investigate *valid* complaints of alleged child abuse or neglect in regulated facilities overlaps with the authority of the public agencies which have regulatory responsibilities for these facilities to investigate alleged violations of standards.

(22 VAC 40-730-40 1). For *valid* complaints in state regulated facilities and religiously exempted child day *programs*, the local *department* shall contact the regulatory authority and share the *valid* complaint information. The regulatory authority will appoint a staff person to participate in the investigation to determine if there are regulatory concerns.

5.7 Risk assessment and disposition

5.7.1 Risk assessment

The CPS worker must make a risk assessment to determine whether or not the child is in jeopardy of future abuse and/or neglect and whether or not an intervention is necessary to protect the child.

The decision on risk of future harm should be based on the assessment of individual, family, facility, and other risk factors. Any identified services for the family or caretaker should be based on the needs identified, which is documented in the automated information system. The outcome of the Risk Assessment will influence the type and intensity of services to be provided. One of these outcomes must be documented in the automated data system.

- **Low.** The assessment of risk related factors indicates that there is a low likelihood of future abuse or neglect and no further intervention is necessary.
- **Moderate.** The assessment of risk related factors indicates that there is a moderate likelihood of future abuse or neglect and minimal intervention may be needed.
- **High.** The assessment of risk related factors indicates that there is a high likelihood of future abuse or neglect without intervention.
- **Very High.** The assessment of risk-related factors indicates there is a very high likelihood of future abuse or neglect without intervention.

5.7.2 Disposition and consult with CPS Regional Consultant

The CPS worker and supervisor must consult with CPS regional consultant prior to making a finding and notifying the alleged abuser/neglector of the disposition. This shall not interfere with the requirement to complete the investigation in the

legislatively mandated time frame of 45 days. (or 60 days when an extension is documented to be necessary)

[\(22 VAC 40-705-10\)](#). "Disposition" means the determination of whether or not child abuse and/or neglect has occurred.

[\(22 VAC 40-705-110 C\)](#). In investigations the child protective services worker shall make a dispositional assessment after collecting and synthesizing information about the alleged abuse or neglect.

After collecting evidence and before expiration of the time frames for completing the investigation, the investigating service worker shall determine the disposition. The Virginia Administrative Code provides the definition of disposition.

5.7.2.1 Unfounded disposition

The definition of an unfounded disposition as defined in the Virginia Administrative Code is:

[\(22 VAC 40-705-10\)](#). "Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

However, an unfounded disposition may not mean that abuse or neglect did not occur, but rather that the evidence obtained during the investigation did not reach the preponderance level.

5.7.2.2 Founded disposition

The definition of a founded disposition as defined in the Virginia Administrative Code is:

[\(22 VAC 40-705-10\)](#). "Founded" means that a review of the facts shows by a preponderance of the evidence that child abuse and/or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

5.7.2.2.1 Preponderance of the evidence

The Virginia Administrative Code defines a preponderance of the evidence as:

[\(22 VAC 40-705-10\)](#). "Preponderance of evidence" means the evidence as a whole shows that the facts are more probable and credible than not. It is

evidence which is of greater weight or more convincing than the evidence offered in opposition.

As the standard of proof in making a founded disposition of abuse or neglect, a preponderance of the evidence means that the evidence offered in support of the allegation is of greater weight than the evidence offered in opposition. The evidence gathered should be evaluated by its credibility, knowledge offered and information provided.

5.7.2.2.2 First source evidence

First source evidence and indirect evidence are defined in the Virginia Administrative Code:

[\(22 VAC 40-705-10\)](#). "First source" means any direct evidence establishing or helping to establish the existence or nonexistence of a fact. Indirect evidence and anonymous complaints do not constitute first source evidence.

"Indirect Evidence" means any statement made outside the presence of the child protective services worker and relayed to the child protective services worker as proof of the contents of the statement.

In no instance can a founded disposition be based solely on indirect evidence or an anonymous complaint.

- **First source or direct evidence.** First source or direct evidence means evidence that proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact. First source evidence includes the parties and witnesses to the alleged abuse or neglect. First source evidence also includes: witness depositions; police reports; photographs; medical, psychiatric and psychological reports; and any electronic recordings of interviews.
- Direct evidence may include witnesses or documents. For example, first source evidence would include a witness who actually saw the alleged act or heard the words spoken. First source evidence would also include the examining physician's report establishing that the child sustained a spiral fracture.
- **Indirect evidence.** Indirect evidence, also known as circumstantial evidence, is evidence based on inference and not on personal knowledge or observation.⁶ Indirect evidence relies upon inferences and presumptions to prove an issue in question and may require

proving a chain of circumstances pointing to the existence or non-existence of certain facts.

- There is no clear distinction between the reliability and credibility of first source evidence and indirect evidence. It remains incumbent upon the LDSS to weigh the credibility of all the evidence when determining a disposition. Indirect evidence may be used in support of a founded disposition; however, indirect evidence cannot be the sole basis for the disposition.

5.7.2.3 Determine level of founded disposition

A founded disposition must be categorized into one of three levels. Categorization is dependent on the nature of the act and the seriousness of the harm or threatened harm to the child as a result of maltreatment. In all founded cases, there may be circumstances influencing the severity of the abusive or neglectful incident. The circumstances may increase or decrease the severity of harm or threatened harm.

The level for a founded disposition must be supported by a preponderance of the evidence. The evidence supporting the level must be documented in the record. The facts supporting the level will relate to the type and pattern of abuse/neglect, the vulnerability of the child, the effect or potential effect of the abuse/neglect, and the action or inaction of the caretaker.

5.7.2.3.1 Level 1

([22 VAC 40-700-20 1](#)). Level 1. This level includes those injuries/conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child.

Examples of injuries or conditions that resulted in or were likely to have resulted in serious harm include but are not limited to:

- For physical abuse, the situation requires medical attention in order to be remediated; the injury may be to the head, face, genitals, or is internal and located near a vital organ; injuries located in more than one place; the injuries were caused by the use of an instrument such as a tool or weapon; an inappropriate drug was administered or a drug was given in an inappropriate dosage; child exposed to the production or sale of methamphetamine or other drug and is not able to self-protect.
- For neglect situations, the condition would be one where the child's minimal needs are rarely met for food, clothing, shelter, supervision, or medical care; the child is frequently unsupervised or unprotected;

the child is left by the caretaker with no plan for the child's care or no information about the caretaker's whereabouts or time for return; or a young child is left alone for any period of time.

- For mental abuse or neglect, the child has engaged in self-destructive behavior, or has required psychiatric hospitalization, or required treatment for severe dysfunction or for presenting a danger to self or others, or for problems related to the caretaker behavior.
- For sexual abuse, the situation would be one where there was genital contact, or force or threat was used, or the abuse had taken place over a period of time and there were multiple incidents.
- For medical neglect, caretaker failed to provide medical care in a life threatening situation or a situation that could reasonably be expected to result in a chronic debilitating condition.
- For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, so refer to bullets 2 and 3 above.

5.7.2.3.2 Level 2

([22 VAC 40-700-20 2](#)). Level 2. This level includes those injuries/conditions, real or threatened, that result in or were likely to have resulted in moderate harm to a child.

Examples of injuries or conditions that resulted in or were likely to have resulted in moderate harm include but are not limited to:

- For physical abuse, the injury necessitates some form of minor medical attention; injury on torso, arms, or hidden place (such as arm pits); use of tool that is associated with discipline such as a switch or paddle, exposure to the production or sale of methamphetamine or other drugs and the child may not be able to self protect.
- For neglect situations, the condition would be one where the child's minimal needs are sporadically met for food, clothing, shelter, supervision, or medical care; or a pattern or one-time incident related to lack of supervision caused or could have caused moderate harm.
- For mental abuse or neglect, the situation would be one where the child's emotional needs are rarely met; the child's behavior is problematic at home or school;

- For sexual abuse, minimal or no physical touching but exposure to masturbation, exhibitionism, etc. Caretaker makes repeated sexually provocative comments to the child; child is exposed to pornographic materials.
- For medical neglect, the situation is one in which a doctor has prescribed care to eliminate pain or remedy a condition but the caretaker has not followed through with appointments or recommendations; the child's condition is not acute or life threatening but could be detrimental to the child's mental or physical health.
- For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, so refer to bullets 2 and 3 above.

5.7.2.3.3 Level 3

([22 VAC 40-700-20 3](#)). Level 3. This level includes those injuries/conditions, real or threatened, that result in minimal harm to a child.

Examples of injuries or conditions that resulted in or were likely to have resulted in minimal harm include but are not limited to:

- For physical abuse, the situation requires no medical attention for injury, including minimal exposure to the production or sale of methamphetamine or other drugs.
- In physical neglect, child's minimal needs inconsistently met for food, clothing, shelter, supervision, or medical care; supervision marginal, poses threat of danger to child.
- For mental abuse or neglect, the situation would be one where the child's emotional needs are met sporadically with evidence of some negative impact on the child's behavior.
- For sexual abuse, there was no or minimal physical touching or exposure to sexual acts such as masturbation, exhibitionism, etc. Caretaker's actions or behavior, such as making sexually suggestive comments to the child, causes or creates a threat of minimal harm to the child.
- For medical neglect, the situation may be one in which the child's life is not in danger, the child is not experiencing discomfort at this time, but the medical authority reports medical treatment is needed to avoid illness or developmental delay.

- For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, refer to bullets 2 and 3 above.

5.8 Concerns for other children in the care of the alleged abuser/neglector

In certain out-of-family investigations, the type or extent of abuse/neglect may increase the concern for other children in the care of the alleged abuser/neglector including children in the alleged abuser/neglector's household or other workplace/out-of-family setting.

If the information gathered during the investigation gives the LDSS a concern for the safety of other children in the care of the alleged abuser, then the LDSS may wish to consult with legal counsel to determine what additional actions may be needed and permitted. These could include, but are not limited to, new referrals for investigations/assessments, voluntary family service cases, notification to other out-of-family settings, referral to the regulatory agency, and consultation with law enforcement.

5.9 Notifications for out-of-family investigations

Refer to Part 4, Family Assessment and Investigation, for notification requirements for all CPS investigations. There are additional notifications required in out-of-family investigations in designated settings.

5.9.1 Release of information if complaint is jointly investigated with law enforcement

(§63.2-1516.1)B. In all cases in which an alleged act of child abuse or neglect is also being criminally investigated by a law-enforcement agency, and the local department is conducting a joint investigation with a law-enforcement officer in regard to such an alleged act, no information in the possession of the local department from such joint investigation shall be released by the local department except as authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.

5.9.2 Consult with regional consultant

(22VAC40-730-60) C. At the conclusion of the investigation the local agency shall contact the department's regional CPS coordinator to review the case prior to notifying anyone of the disposition. The regional coordinator shall review the facts gathered and policy requirements for determining whether or not abuse or neglect occurred. However, the statutory authority for the disposition rests with the local agency. This review shall

not interfere with the requirement to complete the investigation in the legislatively mandated time frame.

The CPS worker and supervisor shall consult with the regional consultant to review the investigation finding before notifying anyone of the disposition. Although the LDSS is responsible to make the investigation disposition, the regional consultant shall review the investigation and provide technical assistance if needed to ensure the LDSS has conducted the investigation according to CPS regulation and guidance. This may be done by sending an e-mail and including a brief case summary and justification for the final disposition.

5.9.3 Notification to Interstate Compact on the Placement of Children (ICPC)

When applicable, at the conclusion of all investigations, regardless of disposition, notify [Interstate Compact for the Placement of Children \(ICPC\)](#) of the results. The CPS worker shall document this notification in the state automated data system.

5.9.4 Written notification to alleged abuser or neglecter

5.9.4.1 Unfounded disposition

([22VAC40-705-140](#)). B. When the disposition is unfounded, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made of this finding. This notification shall be in writing with a copy to be maintained in the case record. The individual against whom allegations of abuse and/or neglect were made shall be informed that he may have access to the case record and that the case record shall be retained by the local department for one year unless requested in writing by such individual that the local department retain the record for up to an additional two years.

The alleged abuser or neglecter shall be notified in writing that the complaint was determined to be unfounded. A copy of the notification shall be filed in the record and documented in the automated data system. The notification shall include the length of time the CPS report will be retained in the automated data system; the individual's right to request the record be retained for an additional period; and the right to access information about himself in the investigative record.

Although verbal notification of an unfounded investigation is not required by regulation, CPS workers are encouraged to discuss the outcome of the investigation as well as any services the family may need or request.

5.9.4.2 Founded disposition

The written notification to the abuser or neglector of the founded disposition(s) must be in a letter and a copy must be included in the case record.

The letter must include:

- *Summary of the investigation and an explanation of how the information gathered supports the disposition.*
- A clear statement that the individual is the abuser and/or neglector.
- The category of abuse and/or neglect.
- The disposition, level, and retention time, including statement about effect of multiple complaints on retention.
- The name of the victim child or children.
- A statement informing the abuser of his or her right to appeal the finding and to have access to the case record.
- A statement informing the abuser that pursuant to § [63.2-1505](#) (7) of the Code of Virginia, if the abuser is a teacher in a public school division in Virginia, the local school board shall be notified of the founded disposition.

The abuser or neglector must be informed of his right to appeal the founded disposition. This must be done verbally and in writing as soon as the disposition is reached. In addition, the abuser or neglector must be given a brochure, "[Child Protective Services Appeals and Fair Hearings](#)" that outlines the administrative appeal process. The LDSS must document in the automated data system that the abuser or neglector was given the appeal brochure and was informed verbally of his or her appeal rights.

LDSS are encouraged to send the disposition letter by certified mail as further documentation of the notification to the abuser or neglector.

5.9.4.2.1 Additional notification to alleged abuser in certain founded sexual abuse investigations

The Code of Virginia § [63.2-1514](#) A requires that all records related to founded cases of child sexual abuse involving injuries or conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child shall be maintained by the LDSS for a period of 25 years from the date of the complaint. All investigation records founded on or after July 1, 2010

for sexual abuse investigations level 1 shall be maintained by the LDSS 25 years from the date of the complaint. This retention timeframe will not be reflected in the Central Registry past the purge dates set out in [22 VAC 40-700-30](#).

For all sexual abuse investigations founded level 1 on or after July 1, 2010, the written notification shall include a statement informing the alleged abuser that the investigation record shall be maintained by the LDSS for 25 years past the date of the complaint pursuant to § [63.2-1514](#) A of the Code of Virginia; however, this retention time will not be reflected in the Central Registry past the purge date of 18 years as set out in [22 VAC 40-700-30](#).

5.9.4.2.2 Notify abuser or neglector verbally

The verbal notification to the abuser or neglector of the founded disposition(s) should include the disposition, level, and retention time, including effect of multiple complaints on retention and inform the abuser of his or her right to appeal to finding and to have access to the case record. The worker must document in the automated data system, the date the verbal notification took place. If the verbal notification did not occur, the CPS worker should document the reasons in the automated data system.

5.9.5 Notification to facility administrator and regulatory staff

[\(22 VAC 40-730-110\)](#). Report the findings. Written notification of the findings shall be submitted to the facility administrator *or designee* and the regulatory staff person involved in the investigation, if applicable, at the same time the alleged abuser or neglector is notified.

If the facility administrator is the abuser or neglector, written notification of the findings shall be submitted to his superior if applicable.

The CPS worker shall provide a verbal notification of the disposition and a written report of the findings to the facility administrator and, if applicable, to the involved regulatory staff person, the local approval agent and/or the Superintendent in a public school, as soon as practicable after the disposition is made.

This report of the findings shall include:

- Identification of the alleged abuser or neglector and victim, the type of abuse or neglect, and the disposition.
- A summary of the investigation and an explanation of how the information gathered supports the disposition.

5.9.6 Notification to parent, guardian, or custodial agency of victim child

([22 VAC 40-705-140 C2](#)). When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser and/or neglector, that the complaint involving their child was determined to be founded and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.

The mother and father, guardian or custodial agency of the child shall be notified in writing of the disposition of the complaint involving their child. Verbal notification and explanation of the findings are also required. The worker may use discretion in determining the extent of investigative findings to be shared; however, sufficient detail must be provided for the child's custodian to know what happened to his child and to make plans for any needed support and services.

The Code of Virginia [§ 63.2-1515](#) requires that when the child has been abused in certain out-of-family settings the parental notification must advise the parents that the child's name will only be retained in the Central Registry if the parent or guardian grants permission within 30 days of the supervisory approval of the findings.

The notification letter to mother and father, guardian or custodial agency must include the following information:

"If you want your child's name to remain in the Central Registry for as long as the record of the investigation is retained, send a letter to the CPS Unit, Virginia Department of Social Services, 801 East Main Street, Richmond, Virginia 23219. Include your child's name, date of birth, address, and description of the relationship of the abuser to the child."

When the mother, father, guardian or custodial agency requests the child's name to be retained, the disposition level will determine the purge date for the identifying information on the child.

5.9.7 Document all notifications in the automated data system

Each written notification shall be documented in the automated information system, identifying all recipients, and identifying where a copy of each written notification can be found.

5.9.8 All other inquiries referred to facility administrator

The CPS worker must refer any inquiries about the findings to the facility administrator or his superior and, when applicable, to the regulatory authority.

5.10 Conduct investigations involving public school employees

The Code of Virginia sets out special conditions when investigating complaints of abuse and/or neglect by public school employees in their official or professional capacity.

(§ [63.2-1511](#)). A. 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.

B. 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 or the use of reasonable and necessary force as permitted by clauses (ii), (iii), (iv), and (v) of subsection A, 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.

5.10.1 Additional requirements when a public school employee is the subject of the complaint or report

CPS allegations against public school employees have additional considerations which go beyond the normal procedures and requirements for CPS investigations. See [Appendix A](#): Guide for Assessing Applicability of § 63.2-1511 in CPS Out-of-Family Investigations of School Employees for further information.

5.10.1.1 Establish additional validity requirement

In addition to the four validity criteria for all CPS complaints or reports, pursuant to Code of Virginia [§ 63.2-1511.B](#), the LDSS shall consider whether the school employee used reasonable and necessary force to maintain order and control. The use of reasonable and necessary force does not constitute a valid CPS report.

5.10.1.2 Establish “gross negligence” or “willful misconduct” for founded disposition

When the investigation is completed, the standard to make a founded disposition in addition to the preponderance of the evidence is whether such acts or omissions constituted “gross negligence” or “willful misconduct.” Otherwise, such acts should be considered within the scope of employment and taken in good faith in the course of supervision, care or discipline of students.

The Supreme Court of Virginia defines “gross negligence” as “that degree of negligence which shows indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of [another]. It must be such a degree of negligence as would shock fair minded [people] although something less than willful recklessness.”²

The term “willful misconduct” is not commonly used, rather the most common term is “willful and wanton conduct,” which the Supreme Court of Virginia defines as follows:

In order that one may be [found to have committed] willful [sic] or wanton conduct, it must be shown that he was conscious of his conduct, and conscious, from his knowledge of existing conditions, that injury would likely or probably result from his conduct, and that with reckless indifference to

² Ferguson v. Ferguson, 212 Va. 86, 92, 181 S.E.2d 648, 653 (1971); see also Meagher v. Johnson, 239 Va. 380, 383, 389S.E.2d 310, 311(1990).

consequences he consciously and intentionally did some wrongful act or omitted some known duty which produced the injurious result.³

The term “willful misconduct” is most often used in Workers’ Compensation cases. It refers to the behavior of the injured employee and usually means that the employee violated a rule or directive of the employer and that action led to the injury.

The courts have used the term “willful misconduct” in discussing cases of gross negligence. This definition of “willful and wanton conduct” is used to define “willful misconduct” in this manual. See [Appendix A: Guide for Assessing Applicability of § 63.2-1511 in CPS Out-of-Family Investigations of School Employees](#) for further information.

5.10.2 Local protocols for CPS investigations involving public school employees

(§[63.2-1511](#)) D. Each local department and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

Recommended procedures can be found in [Appendix B: Guidelines for investigations of school personnel](#).

5.10.3 Investigations involving public school employees

In addition to the investigation procedures and requirements for other out of family investigations noted in this chapter and in Chapter 4, Family Assessment and Investigation, there are additional procedures applicable to reports involving public school employees.

(§ [63.2-1516.1](#)). Investigation procedures when school employee is subject of the complaint or report

A. Except as provided in subsection B of this section, in cases where a child is alleged to have been abused or neglected by a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth, in the course of such employment in a nonresidential setting, the local department conducting the investigation shall comply with the following provisions in conducting its investigation:

³ Infant C. v. Boy Scouts of America, 239 Va. 572, 581, 391 S.E.2d 322, (1990).

1. The local department shall conduct a face-to-face interview with the person who is the subject of the complaint or report.
2. At the onset of the initial interview with the alleged abuser or neglector, the local department shall notify him in writing of the general nature of the complaint and the identity of the alleged child victim regarding the purpose of the contacts.
3. The written notification shall include the information that the alleged abuser or neglector has the right to have an attorney or other representative of his choice present during his interviews. However, the failure by a representative of the Department of Social Services to so advise the subject of the complaint shall not cause an otherwise voluntary statement to be inadmissible in a criminal proceeding.

5.10.4 Additional notifications when investigation involves public school employees

- (§ [63.2-1516.1](#)). 4. Written notification of the findings shall be submitted to the alleged abuser or neglector. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.
5. The written notification of the findings shall inform the alleged abuser or neglector of his right to appeal.
 6. The written notification of the findings shall inform the alleged abuser or neglector of his right to review information about himself in the record with the following exceptions:
 - a. The identity of the person making the report.
 - b. Information provided by any law-enforcement official.
 - c. Information that may endanger the well-being of the child.
 - d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.

5.10.4.1 Notify local school board when abuser is an employee

Pursuant to § [63.2-1505](#) of the Code of Virginia, if the abuser is a full-time, part-time, permanent, or temporary employee in a school division located within the Commonwealth, the LDSS shall notify the local school board of the founded disposition made after July 1, 2013 at the same time the subject is notified of the founded disposition. This includes in home investigations when the employee is the subject of the founded investigation involving his own children. Any information exchanged for the purposes of this subsection shall not be considered a violation of § [63.2-102](#), [63.2-104](#) or [63.2-105](#).

The LDSS may send a copy of the disposition letter to the subject of the complaint to the local school board to meet this notification requirement.

This notification/referral shall be documented in the state automated data system.

5.10.4.2 Notify Superintendent of Public Instruction, Department of Education

Pursuant to [§ 63.2-1503 P](#) of the Code of Virginia, the LDSS shall notify the [Superintendent of Public Instruction](#), Department of Education (DOE) 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 LDSS knows the person holds a license issued by the Board of Education. This notification shall be made after all rights to any appeal provided by [§ 63.2-1526](#) have been exhausted up to and including appeals to the circuit court. Any information exchanged for the purpose of this subsection shall not be considered a violation of [§ 63.2-102](#), [63.2-104](#), or [63.2-105](#).

The Board of Education issues licenses to instructional personnel including teachers and other professionals and administrators. Refer to [Licensure Regulations for School Personnel](#) in the Virginia Administrative Code.

The Board of Education does not license teacher aides, janitorial staff, and support administrative staff.

This notification requirement applies to all individuals holding a license even if that person is not currently employed by a local school board.

5.11 Services to abuser/neglector in an out-of-family investigation

Services can be provided to an abuser/neglector in a founded out-of-family investigation when the risk assessment is high or moderate for the victim child or to other children to whom the abuser/neglector may have access. Open the CPS on-going case in the name of *the abuser/neglector* in the automated data system.

5.12 Appendix A: Guide for Assessing Applicability of § 63.2-1511 in CPS Out-of-Family Investigations of School Employees

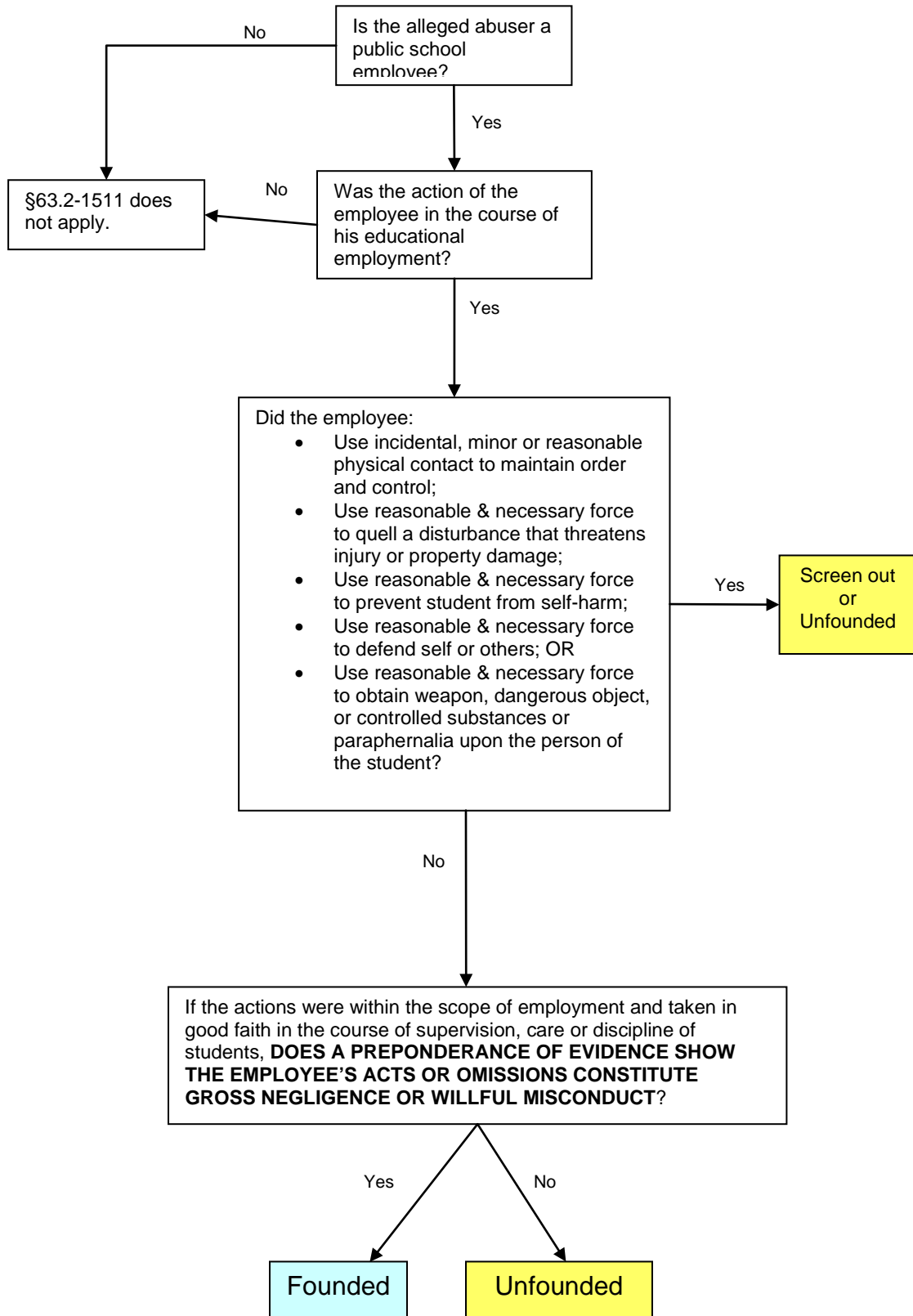
This document is intended as a guideline for CPS out-of-family investigations involving school personnel in order to review the requirements of [§ 63.2-1511](#) of the Code of Virginia which apply to screening validity and dispositional assessments. Section 5 of the CPS chapter provides additional guidance for LDSS in conducting CPS investigations in out-of-family settings including schools. Click the link for the statute and relevant regulation [22 VAC 40-730](#).

CPS allegations against public school employees have additional considerations which go beyond the normal procedures and requirements for CPS investigations. Obtaining a preponderance of evidence to support the standard of gross negligence and willful misconduct for school complaints is difficult considering that there are many players (e.g., school administrators, licensing/regulatory inspectors, law enforcement, parents, or the community) involved in the process. The statutory standard looks at the behavior of the alleged abuser/neglector which must rise to the level of gross negligence or willful misconduct. While this may not “feel” right for the parent, alleged victim, or others who may be impacted by the incident, this standard is set in statute.

In the flow chart that follows, at each decision point there is a list of corresponding discussion questions for consideration pertaining to [§ 63.2-1511](#) moving through the CPS decision process from validity through disposition for allegations against school employees. This is not an exhaustive list of questions (as there are always infinite facts/possibilities to consider in CPS), but a starting point to examine the unique circumstances of each allegation and investigation. Please note that in many circumstances, the answers to each question may not be clear until the investigation has been initiated and more information is needed to proceed through the decision tree, while the answer to other questions may become clear once the investigation comes to a close and an analysis is made.

As with any CPS report or investigation, it is critical to document the facts and evidence gathered to support assessment decisions. Dispositional documentation must address the unique requirements of [§ 63.2-1511](#) of the Code of Virginia related to public school employment, reasonable and necessary force, and gross negligence or willful misconduct.

ASSESSING APPLICABILITY OF §63.2-1511 FOR CPS INVESTIGATION



IS THE ALLEGED ABUSER/NEGLECTOR A PUBLIC SCHOOL EMPLOYEE?

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 then proceed under § 63.2-1511. § 63.2-1511 does not apply to private schools or their employees who are solely licensed by the Commonwealth and not operated by the Commonwealth. When in doubt, verify with the Monitoring Specialist, Department of Education-State Operated Programs at (804)786-0581. Listings of private schools that are solely licensed by the state can be located at <http://www.vcpe.org/>.

(IF NO, § 63.2-1511 does not apply.)

IF YES,

WAS THE ACTION OF THE EMPLOYEE IN THE COURSE OF HIS EDUCATIONAL EMPLOYMENT?

Information to gather and consider may include, but is not limited to:

- Was the alleged abuser/neglector acting within the scope of his employment regarding supervision, care or discipline of students?
- What are the job duties, role and responsibilities of the alleged abuser/neglector? (As indicated by the alleged abuser, administrator, or collaterals?)
- Where did the incident occur and under what circumstances?
- Was the alleged abuser/neglector acting on an assignment as part of his employment?

(IF NO, § 63.2-1511 does not apply.)

IF YES,

DID EMPLOYEE USE INCIDENTAL, MINOR OR REASONABLE PHYSICAL CONTACT TO MAINTAIN ORDER AND CONTROL; USE REASONABLE AND NECESSARY FORCE TO QUELL A DISTURBANCE THAT THREATENS INJURY OR PROPERTY DAMAGE; USE REASONABLE AND NECESSARY FORCE TO PREVENT STUDENT FROM SELF-HARM; USE REASONABLE AND NECESSARY FORCE TO DEFEND SELF OR OTHERS; OR USE REASONABLE AND NECESSARY FORCE TO OBTAIN WEAPON, DANGEROUS OBJECT, OR CONTROLLED SUBSTANCES OR PARAPHERNALIA UPON THE PERSON OF THE STUDENT?

(§ 63.2-1511(A) "...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.")

Information to gather and consider may include, but is not limited to:

- Was there a disturbance where the situation was out of control or going to get out of control?
- Did the alleged abuser use incidental, minor or reasonable physical contact or other actions designed to maintain order and control?
- Were there real or potential threats of physical injury to anyone or damage or potential damage to property?
- Was any student in danger of inflicting physical harm on himself? Were there any weapons, dangerous objects, controlled substances or paraphernalia involved in the incident?
- Was the level of force necessary? Were there any less restrictive or less forceful options used or available to control situation?
- If alleged abuser felt the need for self-defense, what was the perceived threat? What was said by victim, alleged abuser, or others? Were there other options available to the alleged abuser to defend himself before resorting to the use of force? Did the alleged abuser say anything to de-escalate or incite the situation? What explanation did the alleged abuser provide for behavior?
- What did victim and collaterals say about behavior of the alleged abuser/neglector?
- What are school policies regarding discipline, training, restraint, and escalating action?

IF YES, SCREEN OUT / UNFOUNDED: The use of reasonable and necessary force when acting to maintain order and control, quell a disturbance etc. does not constitute a valid report pursuant to [22 VAC 40-730-115 B1](#). Information to make this determination may not be available at initial intake; therefore, an investigation would be initiated. The investigation must be unfounded if after gathering evidence, the LDSS determines that the alleged abuser used reasonable and necessary force. **It is critical to document the facts and decision in the assessment of reasonable and necessary force.**

IF NO,

IF THE ACTIONS WERE WITHIN THE SCOPE OF EMPLOYMENT AND TAKEN IN GOOD FAITH IN THE COURSE OF SUPERVISION, CARE OR DISCIPLINE OF STUDENTS, DOES A PREPONDERANCE OF EVIDENCE SHOW THE EMPLOYEE'S ACTS OR OMISSIONS CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT?

Excerpt from CPS Manual Part V: "The Supreme Court of Virginia defines "gross negligence" as "that degree of negligence which shows indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of [another]. It must be such a degree of negligence as would shock fair minded [people] although something less than willful recklessness." In order that one may be [found to have committed] willful [sic] or wanton conduct, it must be shown that he was conscious of his conduct, and conscious, from his knowledge of existing conditions, that injury would likely or probably result from his conduct, and that with reckless

indifference to consequences he consciously and intentionally did some wrongful act or omitted some known duty which produced the injurious result.”

Information to consider may include, but is not limited to:

- Would behavior, action, or inaction of alleged abuser shock fair minded people?
- Should the alleged abuser know/suspect that outcome would occur? Was the alleged abuser aware that injury/threat of injury would likely occur based on evidence of similar incidents/history?
- Was there willful misconduct (deliberate, conscious decision to act or not act)?

IF NO = UNFOUNDED

IF YES,

FOUNDED

Analysis of preponderance of evidence clearly documents FACTS to support requirements of § 63.2-1511:

- Alleged abuser acting in good faith within the scope of employment as public school employee.
- Alleged abuser’s actions were not reasonable or necessary to quell disturbance etc.
- FACTS/EVIDENCE supports finding determination of gross negligence or willful misconduct.

It is critical to clearly document the assessment of these factors supported by evidence in the dispositional assessment.

5.13 Appendix B: Guidelines for *interagency agreement between LDSS and local school divisions to conduct investigations*

5.13.1 Responsibilities of local school divisions:

- The local school site administrator, or designee, if there is no conflict of interest, may participate in the planning of the investigation when the report names a school employee as the alleged abuser or neglector.
- If the investigation involves a school employee as the alleged abuser/neglector, the local school division shall cooperate with the needs of the CPS worker, and provide the following resources, as appropriate:
 - Room/private space for interviews of staff and children.
 - Accompaniment to the site of the alleged abuse/neglect.
 - Pertinent policies, procedures and records.
 - Names, functions, and roles of involved parties;
 - Work schedules of staff.
 - Phone numbers of collateral children's parents/guardians in order for the CPS worker to gain permission to interview them.
- Allow the local CPS worker to interview the alleged victim child and siblings in private, without the presence of school personnel, in order to protect the family's right to privacy.

5.13.2 Responsibilities of the LDSS:

- Conduct an immediate investigation upon receiving a report about suspected incidents of child abuse or neglect.
- If the investigation requires the CPS worker to go onto school premises, the local CPS worker shall inform the site administrator or designee of the allegations being investigated, the subjects named in the report [alleged abuser/neglector and alleged victim child(ren)], and the CPS role and expectations, including private space to interview the victim child.
- If the investigation involves a school employee as the alleged abuser/neglector, and if there is no conflict of interest, the CPS worker shall invite the site administrator or designee to participate in the planning of a joint investigation.

- If the investigation involves a school employee as the alleged abuser/neglector, the CPS worker must request from the administrator the following resources, as appropriate:
 - Room/private space for interviews of staff and children.
 - Accompaniment to the site of the alleged abuse/neglect.
 - Pertinent policies, procedures and records.
 - Names, functions, and roles of involved parties.
 - Work schedules of staff.
 - Phone numbers of collateral children's parents/guardians in order to gain permission for the CPS worker to interview them.
- If the investigation involves a school employee as the alleged abuser/neglector, the CPS worker shall interview the alleged abuser/neglector according to a plan developed jointly with the facility administrator or designee. Where there is an apparent conflict of interest, the CPS worker shall use discretion regarding who is to be present in the interview.
- If the investigation involves a school employee as the alleged abuser/neglector, the CPS worker shall inform the alleged abuser/neglector that he has the right to involve a representative of his choice to be present during the interviews. The CPS worker should also inform him if anyone other than the CPS worker is planning to be present.
- If the investigation involves a school employee as the alleged abuser/neglector, the CPS worker shall provide him the allegations in writing, and offer to tape record the interview, and provide a copy to the alleged abuser/neglector at the earliest convenience.
- If the investigation involves a school employee as the alleged abuser/neglector, the CPS worker shall interview collateral staff witnesses, as appropriate, according to a plan developed jointly with the facility administrator or designee. Where there is an apparent conflict of interest, the CPS worker shall use discretion regarding who is to be present in the interview.
- If the investigation involves a school employee as the alleged abuser/neglector, the CPS worker shall keep the facility administrator or designee apprised of the progress of the investigation on an ongoing basis until the investigation is completed.

- The CPS worker shall complete the investigation and make a disposition with 45 (or 60 days when an extension is documented to be necessary).
- If the investigation involves a school employee as the alleged abuser/neglector, when the investigation is completed and a disposition is made, the CPS worker shall verbally notify both the alleged abuser/neglector and the facility administrator. The alleged abuser/neglector should be informed first, or at the same time as the administrator or designee.
- If the investigation involves a school employee as the alleged abuser/neglector, a written report of the findings shall be submitted to the facility administrator, with a copy to the school's Superintendent, and with a copy to the alleged abuser/neglector along with his disposition notification letter and appeal notification. This report of findings shall include a summary of the investigation, with an explanation of how the information gathered supports the disposition.
- The LDSS shall inform the mother and father, guardian or custodial agency or agency holding custody of the victim child written notification of the disposition, with a verbal follow-up. The CPS worker may use discretion in determining the extent of investigative findings to share with the parent; however, sufficient detail must be provided for the child's custodian to know what happened to his child, to make plans for the child, and to provide needed support and services.
- If the initial report was made by a school employee, that individual shall receive a written communication from the LDSS informing him that the investigation has been completed, and either that the disposition was "Unfounded," or that "Appropriate action has been taken."

5.13.3 Follow-up to the investigation

- The LDSS may provide post-investigative protective and/or treatment services, and follow-up contacts to the child, family, and named abuser/neglector.
- When a school employee is named as the abuser/neglector, the local school division may provide post-investigation corrective action, as deemed appropriate by the school, for the school facility and any personnel, including the named abuser/neglector.

5.13.4 Confidentiality

- Information shall be shared between appropriate staff of the LDSS and local school divisions which is accurate, complete, timely, and pertinent so as to assure fairness in determination of the disposition of the complaint.
- Appropriate precautions shall be taken by both local entities to safeguard the information maintained as a result of the investigation in accordance with the VDSS confidentiality laws governing child abuse and neglect investigations, except that information obtained from local school division shall be safeguarded in accordance with the confidentiality regulations which govern such information.

5.14 Appendix C: Checklist for out-of-family investigations

	CPS RESPONSIBILITY	DATE	CONTACT INFORMATION
1.	Receive report and enter into OASIS.		
2.	Report to Commonwealth Attorney and law enforcement all class 1 misdemeanors / felonies, as per local guidelines.		
3.	Contact CPS Program Consultant (plan investigation strategy).		
4.	If report involves school personnel, refer to Appendix A: Guide for Assessing Applicability of § 63.2-1511 in CPS Out-of-Family Investigations of School Employees for guidance on these investigations.		
5.	Contact Regulatory agency, obtain name of staff who will investigate report jointly.		
6.	Contact that regulatory staff person to coordinate strategy of investigation.		
7.	Contact facility administrator to inform of impending visit (or announce presence to administrator upon arrival to facility).		
8.	Meet the licensing or regulatory person, if possible, at facility and go together to meet the administrator. Explain differing roles and expectations.		
9.	Advise administrator (or designee) of the allegations in the complaint. Invite their input for preliminary plans.		
10.	Request of administrator the following resources, as appropriate: <ul style="list-style-type: none"> • Private room/space to interview staff and children • Accompaniment to site of alleged abuse • Pertinent policies, records, guidelines • Names, function, roles of all involved parties • Work schedules of alleged abuser/neglector and other staff witnesses • Phone numbers of staff witnesses • Phone number and address for the alleged abuser 		
	CPS RESPONSIBILITY	DATE	CONTACT

			INFORMATION
11.	<p>Interview the victim child(ren).</p> <ul style="list-style-type: none"> • The parent, guardian or agency holding custody should be notified in advance; when not practical shall notify as soon as possible. • CPS determines who can be present during this interview. • Audiotape interview. 		
12.	<p>Determine Immediate Safety (if unsafe and child needs to be removed then the parent, guardian or agency holding custody shall be notified to mutually develop a safety plan).</p>		
13.	<p>Interview Collateral Children.</p> <ul style="list-style-type: none"> • Before interviewing collateral children, consent of the child's parent, guardian, or agency holding custody should be obtained. 		
14.	<p>Interview alleged abuser/neglector.</p> <ul style="list-style-type: none"> • Offer audiotape and provide written notification. 		
15.	<p>Interview collateral staff witnesses.</p>		
16.	<p>Interview victim's parent, guardian or agency holding custody.</p> <ul style="list-style-type: none"> • They should be informed early in the process about the report. The investigative process should be explained. Obtain information about their knowledge of the allegations and the facility. They should be kept involved in the planning and support of the victim child. 		
17.	<p>Keep the facility administrator apprised of the progress of the investigation. If working jointly with regulatory agency, CPS may decide who will perform these progress reports.</p>		
18.	<p>Although statutory authority for the disposition rests with the local agency, at the conclusion of the investigation the CPS worker shall contact the CPS Program Consultant to review the case prior to notifications being sent. This review should include supervisor if possible.</p>		

	CPS RESPONSIBILITY	DATE	CONTACT INFORMATION
19.	Notifications of disposition made to all parties. The alleged abuser/neglector and facility administrator should be verbally notified promptly. The alleged abuser should be notified first or at least at same time the facility administrator is notified.		
20.	Written report of the findings shall be submitted to the facility administrator and the involved regulatory staff person or school superintendent. This report shall include identification of the alleged abuser and victim as well as a summary of the investigation with an explanation of how the information supports the disposition. A copy of this report shall be sent to the abuser/neglector along with the letter of notification and rights of appeal.		
21.	Written notification of findings sent to the parent, guardian or agency that has custody. A verbal follow up is also encouraged. Parents should be advised that the victim (s) names will be purged after 30 days unless they make a request to keep listed in OASIS.		
22.	<i>Notify the Superintendant of Public Instruction when the subject of founded investigation holds a license issued by the Board of Education.</i> <i>This notification is to be sent only after all administrative and judicial appeals have been exhausted.</i>		
22.	Post-investigative treatment services may be provided as needed by local agency to the child, family or abuser. Post-investigative corrective action follow up with the facility is the responsibility of the regulator and facility administration.		
23.	ALL contacts are documented in OASIS.		