

# 7

## APPEALS

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## APPEALS

### 7.1 Introduction

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Any person who is the subject of a founded investigation of abuse and/or neglect may appeal that finding and any inaccurate information about the abuser that is contained in the CPS record. There is no difference in the appeal process of founded dispositions for “in family investigations” and “out of family investigations”. There are three (3) levels of administrative appeals:

- Conference with the local department of social services (LDSS).
- Administrative hearing conducted by a state hearing officer.
- Judicial review by the circuit court.

This section explains the statutory and regulatory requirements for CPS appeals and provides guidance where needed to further explain these requirements.

The statutory authority for a person seeking review of an LDSS's finding of abuse or neglect can be found in [§ 63.2-1526](#) of the Code of Virginia. The regulatory authority for appeals of findings of abuse and neglect can be found in [22 VAC 40-705-190](#).

### 7.2 Definitions

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The following definitions regarding CPS appeals are applicable to this chapter.

[\(22 VAC 40-705-190 A\)](#). Appeal is the process by which the abuser and/or neglector may request amendment of the record when the investigation into the complaint has resulted in a founded disposition of child abuse and/or neglect.

([22 VAC 40-705-10](#)). "Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to [§ 63.2-1526](#) of the Code of Virginia, under which an individual who is found to have committed abuse and/or neglect may request that the local department's records be amended. "Appellant" means anyone who has been found to be an abuser and/or neglecter and appeals the founded disposition to the director of the local department of social services, an administrative hearing officer, or to circuit court.

When a person who is the subject of a founded investigation requests a local conference or a state administrative hearing that person is referred to as the appellant.

### **7.3 CPS appeal automatically stayed during criminal proceedings against abuser**

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([22 VAC 40-705-190 C](#)). Whenever an appeal is requested and a criminal charge is also filed against the appellant for the same conduct involving the same victim child as investigated by the local department, the appeal process shall be stayed until the criminal prosecution in circuit court is completed pursuant to [§ 63.2-1526 C](#) of the Code of Virginia. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation pursuant to [§ 63.2-1526 C](#) of the Code of Virginia.

#### **7.3.1 Criminal proceedings in juvenile or circuit court**

When the LDSS learns that a criminal process has been initiated in either juvenile or circuit court, the LDSS must notify the appellant in writing that the CPS administrative appeal process is stayed and that his right to access his CPS record is suspended until the criminal process is completed in circuit court and the judge enters a final appealable order. Cases that are continued for a period of time or taken under advisement do not constitute a final appealable order.

CPS appeals should be stayed if a criminal charge originates in the juvenile and domestic relations court, because the appellant may appeal a conviction to the Circuit Court.

The LDSS shall notify the appellant in writing that the CPS administrative appeal may resume at the conclusion of the criminal proceeding. LDSS are encouraged to establish procedures with the court to advise the LDSS when the criminal process has been completed in order to initiate the CPS administrative appeal process on a timely basis.

The LDSS should seek guidance from its legal representative to determine if a final appealable order in the criminal proceeding has been entered and to clarify whether the criteria for a stay of appeal has been met before notifying the appellant.

### 7.3.2 Criminal proceedings in military court

The Code stays CPS administrative appeal proceedings until “the criminal prosecution in circuit court is completed.” The stay provisions apply when there are criminal charges “against the appellant for the same conduct involving the same victim as investigated by the local department.” (Virginia Code § [63.2-1526 C](#)). The intent of the stay provisions is to protect the appellant from having to testify in the CPS case while the criminal matter is pending. It also is designed to protect the agency case record from inappropriate use by the appellant in the criminal proceeding. Given the intent of the statute, the stay provisions noted in [Section 7.3.1](#) apply to the prosecution of a criminal charge in military courts.

## 7.4 Local conference

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### 7.4.1 Appellant must request local conference

([22 VAC 40-705-190 B](#)). If the alleged abuser and/or neglector is found to have committed abuse or neglect, that alleged abuser and/or neglector may, within 30 days of being notified of that determination, submit a written request for an amendment of the determination and the local department's related records, pursuant to § [63.2-1526 A](#) of the Code of Virginia. The local department shall conduct an informal conference in an effort to examine the local department's disposition and reasons for it and consider additional information about the investigation and disposition presented by the alleged abuser and/or neglector. The local department shall notify the child abuse and neglect information system that an appeal is pending.

When the LDSS receives a written request for a local conference, the LDSS must stamp the date of receipt on the appeal request.

If the alleged abuser or neglector fails to make a timely request for a local conference, then the alleged abuser or neglector forfeits his right to a local conference.

### 7.4.2 Document pending local appeal

([22 VAC 40-705-190 B](#)). The local department shall notify the child abuse and neglect information system that an appeal is pending.

### 7.4.3 Time frame to conduct local conference

([22 VAC 40-705-190 D](#)). The local department shall conduct an informal, local conference and render a decision on the appellant's request to amend the record within 45 days of receiving the request. If the local department either refuses the appellant's request for amendment of the record as a result of the local conference, or if the local department fails to act within 45 days of receiving such request, the appellant may, within 30 days thereafter and in writing, request the commissioner for an administrative hearing, pursuant to [§ 63.2-1526 A](#) of the Code of Virginia.

The LDSS must make a good faith effort to schedule and conduct a local conference. If the LDSS fails to conduct a local conference, the LDSS must document in the automated data system the reasons why the local conference was not conducted.

### 7.4.4 Appellant may request extension

([22 VAC 40-705-190 E](#)). The appellant may request, in writing, an extension of the 45-day requirement for a specified period of time, not to exceed an additional 60 days. When there is an extension period, the 30-day time frame to request an administrative hearing from the Commissioner of the Department of Social Services shall begin on the termination of the extension period pursuant to [§ 63.2-1526 A](#) of the Code of Virginia.

The extension period begins at the end of the original 45 days.

### 7.4.5 LDSS must provide information to appellant

([22 VAC 40-705-190 F](#)). Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of collateral witnesses or any other person shall not be released if disclosure may endanger their life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released. In case of any information withheld, the appellant shall be advised of the general nature of the information and the reasons, of privacy or otherwise, that it is being withheld, pursuant to [§ 63.2-1526 A](#) of the Code of Virginia.

Upon written request from the appellant, the LDSS shall provide the appellant all information used in making its determination with the following exceptions:

- The complainant's name shall not be released.
- The identity of collateral witnesses or any other person shall not be released if disclosure may endanger their life or safety.

- Information prohibited from being disclosed by state or federal law or regulation shall not be released.

If information is withheld, the appellant shall be advised of the general nature of such information, the reason the information is being withheld, and the appellant's right to petition the juvenile and domestic relations court, or family court, to enforce any request for information which has been denied.

LDSS are advised to consult with local county or city attorneys for advice and guidance on the release of information to appellants.

#### **7.4.5.1 Electronic recording of alleged victim interview**

The appellant is entitled to a copy of the electronic recording of the alleged victim interview unless disclosure of the contents of the recording would endanger the health or safety of the child or any other person pursuant to [§ 63.2-1526 A](#) of the Code of Virginia, or the information is protected by federal statute, the Code of Virginia or the Virginia Administrative Code.

The LDSS is not required to release confidential information contained on the recording if it is protected by law or regulation. However, the LDSS must abstract or summarize information from the recording or convert the audio or video tape recording into one form, such as a typed transcript, so that information needing to remain confidential may be redacted or edited out. The LDSS should make reasonable efforts to reach an agreement with the alleged abuser or neglecter concerning the production of the electronic recording.

LDSS are encouraged to seek consultation from their legal representatives in this matter.

#### **7.4.6 Conduct the local conference**

VDSS developed a [Local Conference Handbook](#) for agency directors to provide additional guidance and best practice to conduct local conferences. It is available on the DSS internal website.

##### **7.4.6.1 Who may preside over the local conference**

([22 VAC 40-705-190 G](#)). The director of the local department, or a designee of the director, shall preside over the local conference. With the exception of the director of the local department, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the local conference, pursuant to [§ 63.2-1526 A](#) of the Code of Virginia.



#### 7.4.6.2 Appellant may seek assistance of counsel

([22 VAC 40-705-190 G1](#)). The appellant may be represented by counsel, pursuant to § [63.2-1526 A](#) of the Code of Virginia.

#### 7.4.6.3 Local conference participants

Participants in the local conference will include the appellant and, if the appellant chooses, a representative, and the worker and supervisor who made the founded disposition. The representative may be an attorney who may appear in lieu of the appellant.

Neither the alleged victim nor victim's parents if they are not the appellant are permitted to attend the local conference.

#### 7.4.6.4 Appellant may present testimony at local conference

([22 VAC 40-705-190 G2](#)). The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof, pursuant to § [63.2-1526 A](#) of the Code of Virginia.

Any additional information or documentation presented at the local conference must be added to the CPS record and documented in the automated data system.

#### 7.4.6.5 Time frame to notify appellant of results of local conference

([22 VAC 40-705-190 G3](#)). The director of the local department, or a designee of the director, shall notify the appellant, in writing, of the results of the local conference within 45 days of receipt of the written request from the appellant unless the time frame has been extended as described in subsection E of this section...

#### 7.4.6.6 Local director's authority to sustain, amend, or reverse findings

([22 VAC 40-705-190 G3](#)). The director of the local department, or the designee of the director, shall have the authority to sustain, amend, or reverse the local department's findings...

As a result of the local conference, the local director or the local director's designee may amend the final disposition and case record.

The local director, or designee, has the authority to amend parts of the record by ordering that certain parts be stricken if those parts are proven to be inaccurate or irrelevant.

#### 7.4.6.7 Notify appellant

([22 VAC 40-705-190 G3](#)). Notification of the results of the local conference shall be mailed, certified with return receipt, to the appellant. The local department shall notify the child abuse and neglect information system of the results of the local conference.

The written decision shall be mailed to the appellant as specified in [22 VAC 40-705-190](#) and shall include:

- The action to be taken on the request for amendment.
- Explanation of any additional appeal rights available to the appellant.

#### 7.4.6.8 Document results of local conference

([22 VAC 40-705-190 G3](#)). The local department shall notify the child abuse and neglect information system of the results of the local conference.

#### 7.4.6.9 Notify all original recipients of initial disposition, if amended

The LDSS must notify in writing all persons who were originally informed of the original disposition, if the local conference results in an amended or reversed disposition. This includes the complainant as well as custodial and non-custodial parents of all victim children.

### 7.5 State administrative appeal

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The State Appeals Hearings Officers developed a [guide for local agencies](#) that explains the state appeal hearing process in more detail. It is available on the DSS internal website.

#### 7.5.1 Appellant must request state administrative hearing

([22 VAC 40-705-190 H](#)). If the appellant is unsatisfied with the results of the local conference, the appellant may, within 30 days of receiving notice of the results of the local conference, submit a written request to the commissioner for an administrative hearing pursuant to [§ 63.2-1526 B](#) of the Code of Virginia.

### 7.5.2 Exception to time frames

There is an exception to requesting an administrative hearing **within 30 days** of receipt of local conference results. The appellant may request in writing that the Commissioner grant an administrative hearing to review the request for amendment if:

- The LDSS refuses to amend their report (disposition); or
- The LDSS fails to act within 45 days after receiving the appellant's request, unless an extension has been requested by the appellant.

If the LDSS refuses to conduct a local conference within the 45-day time frame (unless there is an extension of that time frame), then the **30-day** time frame for the appellant to request a state administrative hearing begins running at the end of the 45-day time frame. The request to the Commissioner must be made in writing within 30 days thereafter.

### 7.5.3 Document pending state appeal

The State Hearing Officer notifies the automated data system that a state appeal is now pending.

### 7.5.4 Who may conduct state administrative appeals

([22 VAC 40-705-190 H1](#)). The Commissioner shall designate a member of his staff to conduct the proceeding, pursuant to [§ 63.2-1526 B](#) of the Code of Virginia.

### 7.5.5 Time frame to schedule state administrative hearing

([22 VAC 40-705-190 H2](#)). A hearing officer shall schedule a hearing date within 45 days of the receipt of the appeal request unless there are delays due to subpoena requests, depositions or scheduling problems.

### 7.5.6 State administrative appeal officers authorities

#### 7.5.6.1 Subpoenas and depositions

([22 VAC 40-705-190 H3](#)). After a party's written motion and showing good cause, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing. The victim child and that child's siblings shall not be subpoenaed, deposed or required to testify, pursuant to [§ 63.2-1526 B](#) of the Code of Virginia.

### 7.5.6.2 Review of subpoena or deposition decision by J&DR court or family court

([22 VAC 40-705-190 H4](#)). Upon petition, the juvenile and domestic relations district court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review pursuant to [§ 63.2-1526 B](#) of the Code of Virginia.

### 7.5.6.3 Depositions

([22 VAC 40-705-190 H5](#)). Upon providing reasonable notice to the other party and the hearing officer, a party may, at his own expense, depose a non-party and submit that deposition at, or prior to, the hearing. The victim child and the child's siblings shall not be deposed. The hearing officer is authorized to determine the number of depositions that will be allowed pursuant to [§ 63.2-1526 B](#) of the Code of Virginia.

### 7.5.7 Information to be provided to appellant and state hearing officer

([22 VAC 40-705-190 H6](#)). The local department shall provide the hearing officer a copy of the investigation record prior to the administrative hearing. By making a written request to the local department, the appellant may obtain a copy of the investigation record. The appellant shall be informed of the procedure by which information will be made available or withheld from him.

In any case of information withheld, the appellant shall be advised of the general nature of the information and the reasons that it is being withheld pursuant to [§ 63.2-1526 B](#) of the Code of Virginia.

### 7.5.8 Conduct state appeal hearing

#### 7.5.8.1 Appellant may seek assistance of counsel

([22 VAC 40-705-190 H7](#)). The appellant and the local department may be represented by counsel at the administrative hearing.

#### 7.5.8.2 Oath and affirmation

([22 VAC 40-705-190 H8](#)). The hearing officer shall administer an oath or affirmation to all parties and witnesses planning to testify at the hearing pursuant to [§ 63.2-1526 B](#) of the Code of Virginia.

### **7.5.8.3 Burden on LDSS to prove disposition**

([22 VAC 40-705-190 H 9](#)). The local department shall have the burden to show that the preponderance of the evidence supports the founded disposition. The local department shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof.

### **7.5.8.4 Submission of proof**

([22 VAC 40-705-190 H10](#)). The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof.

### **7.5.8.5 Submission of new evidence**

([22 VAC 40-705-190 H11](#)). The hearing officer may allow either party to submit new or additional evidence at the administrative hearing if it is relevant to the matter being appealed.

### **7.5.8.6 Hearing officer not bound by strict rules of evidence**

([22 VAC 40-705-190 H12](#)). The hearing officer shall not be bound by the strict rules of evidence. However, the hearing officer shall only consider that evidence, presented by either party, which is substantially credible or reliable.

### **7.5.8.7 Allow record to remain open for additional evidence**

([22 VAC 40-705-190 H13](#)). The hearing officer may allow the record to remain open for a specified period of time, not to exceed 14 days, to allow either party to submit additional evidence unavailable for the administrative hearing.

## **7.5.9 State administrative appeal hearing decision**

### **7.5.9.1 Notify appellant and LDSS of results of state administrative appeal hearing**

([22 VAC 40-705-190 I](#)). Within 60 days of the close of receiving evidence, the hearing officer shall render a written decision. The hearing officer shall have the authority to sustain, amend, or reverse the local department's findings. The written decision of the hearing officer shall state the findings of fact, conclusions based on regulation and policy, and the final disposition. The decision will be sent to the appellant by certified mail, return receipt requested. Copies of the decision shall be mailed to the appellant's counsel, the local department and the local department's counsel...

#### 7.5.9.2 State appeal officer may remand case to LDSS

([22 VAC 40-705-190 H14](#)). In the event that new or additional evidence is presented at the administrative hearing, the hearing officer may remand the case to the local department for reconsideration of the findings. If the local department fails to act within 14 days or fails to amend the findings to the satisfaction of the appellant, then the hearing officer shall render a decision, pursuant to [§ 63.2-1526 B](#) of the Code of Virginia.

#### 7.5.9.3 Appellant has further right of review by circuit court

([22 VAC 40-705-190 J](#)). The hearing officer shall notify the appellant of the appellant's further right of review in circuit court in the event that the appellant is not satisfied with the written decision of the hearing officer. Appeals are governed by Part 2A of the rules of the Supreme Court of Virginia. The local department shall have no further right of review pursuant to [§ 63.2-1526 B](#) of the Code of Virginia.

([22 VAC 40-705-190 K](#)). In the event that the hearing officer's decision is appealed to circuit court, the department shall prepare a transcript for that proceeding. That transcript or narrative of the evidence shall be provided to the circuit court along with the complete hearing record. If a court reporter was hired by the appellant, the court reporter shall prepare the transcript and provide the court with a transcript.

#### 7.5.9.4 Document results of state administrative appeal

([22 VAC 40-705-190 I](#)). ...The hearing officer shall notify the child abuse and neglect information system of the hearing decision...

#### 7.5.9.5 Notify all original recipients if disposition is amended or reversed by state appeal hearing officer

([22 VAC 40-705-190 I](#)). ...The local department shall notify all other prior recipients of the record of the findings of the hearing officer's decision.

The LDSS shall notify in writing all persons who were originally informed of the original disposition, if the state appeal hearing results in an amended or reversed disposition. This includes the complainant as well custodial and non-custodial parents of all victim children.

## 7.6 Appendix A: Local conference procedures

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### 7.6.1 Introduction

The purpose of this guide is to provide recommended procedures and practices when an alleged abuser appeals the LDSS's founded disposition of a CPS investigation. This information is a companion to the Code of Virginia, CPS Regulations, and CPS Manual.

Virginia Code § [63.2-1526](#) establishes the right to an administrative appeal by any individual against whom a founded disposition of abuser and/or neglect has been made in a Child Protective Services (CPS) investigation.

Virginia Administrative Code (VAC), beginning at [22 VAC 40-705-10](#), includes regulations pertaining to CPS appeals and the responsibilities of the LDSS.

- Virginia Code § [63.2-100](#) defines an "abused or neglected child."
- Virginia Code § [63.2-1505](#) sets forth the investigative and reporting responsibilities of the LDSS.
- The CPS Manual contains guidance to clarify the Code of Virginia and the Virginia Administrative Code for the LDSS to respond to reports of abuse or neglect, including when an alleged abuser appeals an LDSS's founded disposition of a CPS investigation.

### 7.6.2 Levels of appeal

- **Local Informal Conference.** This is the first level of administrative appeal conducted by the LDSS director or his designee.
- **State.** This is a review of the local informal conference decision. The LDSS has an opportunity to present witnesses, testimony, and other evidence, as does the appellant.
- **Circuit Court.** This is an appellate review of the decision by the State. At this level of the appeal process, and hereafter, new evidence will not be presented. Instead, the Circuit Court Judge will listen to oral arguments by the Assistant Attorney General for the State, representing the LDSS's position, and the Appellant, or their counsel, if they have one.
- **Court of Appeals.** This is an appellate review of the decision of the Circuit Court that is conducted in the same format as the Circuit Court.

### 7.6.3 Purpose of local conference

The purpose of the local conference is to allow the abuser to meet informally with the LDSS director or designee to present testimony of witnesses, documents, arguments, submissions of proof or any additional relevant information he wants the LDSS to consider in his request to change the finding of the investigation. He may also submit additional information to be included in the CPS investigation record.

### 7.6.4 Local conference time frames

- Appellant must request appeal in writing **within 30 days** of receipt of the disposition letter.
- LDSS must complete the local conference process and notify appellant of decision within 45 days of receipt of the written request for appeal.
- Appellant may seek a state appeal if the LDSS does not meet the 45 day requirement and no extension was requested by the appellant.
- Appellant may request in writing an extension of up to 60 days from the end of the 45 days to complete the local conference.
- Local conference is automatically stayed if there is a pending criminal proceeding in juvenile, circuit or military court against the abuser for the same conduct and the same victim as the founded disposition. The stay lasts until the final order has been entered in circuit court.
  - The intent of the stay provisions is to protect the appellant from having to testify in the CPS case while the criminal matter is pending. It also is designed to protect the case record from inappropriate use by the appellant in the criminal proceeding. The stay is initiated upon the filing of the criminal charge. The court where the proceedings begin is irrelevant.
  - The Code stays proceedings until “the criminal prosecution in circuit court is completed.” The stay provisions apply when there are criminal charges “against the appellant for the same conduct involving the same victim as investigated by the LDSS.” Virginia Code [§ 63.2-1526 C](#). According to the Rules of the Supreme Court of Virginia, a case is not completed until the judge enters a final, appealable order. See Rule 1:1, Rules of Supreme Court of Virginia. Therefore, the stay of the administrative appeal continues until such time as the court enters a final order.



- The local conference is mandatory and the LDSS must make efforts to schedule and conduct a local conference, even if the appellant does not appear at the scheduled conference time. Failure to conduct a local conference may affect the outcome of a circuit court appeal.

#### 7.6.5 Pre-conference preparation

- Send appellant and local agency CPS staff written acknowledgement of receipt of the request to appeal that may also include a date for the local conference.
- The local conference can be face-to-face or by phone if the appellant agrees.
- Contact LDSS legal counsel to review appeal process and to determine what role legal counsel will take in the local conference.

#### 7.6.6 CPS case record

- Obtain and review CPS record. Because local conference decisions can be appealed to the State Appeal Unit, the LDSS director should be given a redacted copy of the CPS record.
- The LDSS CPS worker is strongly encouraged to consult with the department attorney to review the proposed redaction of the record prior to its release.
- The CPS Record may include the following:
  - All documentation, including OASIS data, audio or video recordings; medical reports, psychological evaluations, handwritten notes from the child, transcripts, etc., that is considered significant evidence.
  - If the department is represented by the LDSS attorney at the informal conference, he may formally submit the document(s). However, it is up to the CPS worker to determine what documents should be admitted.
  - **Do not include the complainant's name or other information.**
  - Any documents included in the CPS record for the local conference can be viewed by the appellant. This includes health or hospital reports that the LDSS may not have the authority to release as part of the local conference process. It is important that the LDSS attorney review all documents to be released to the appellant as part of the redacted record.

- Photographs should identify who took them and when they were taken. The quality of the photos in documenting injury can be considered by the LDSS director.
- The appellant or his representative should receive the same redacted CPS record the LDSS director has received.
- LDSS director should set a time to receive the CPS record that allows sufficient time to review prior to the local conference.

### **7.6.7 Conducting the local informal conference**

The LDSS director or designee chairs the conference. The conference may generally follow this order:

#### **7.6.7.1 Introduction and summary of the conference process**

- This summary will discuss the purpose of the hearing, the use of witnesses, general structural matters such as who will present first, relaxation of the rules of evidence, burden of proof issues and any other matters which can be appropriately discussed at this stage. The conference may be recorded by either party.
- The parties will be advised that witnesses can be heard, but that a rule on the witnesses will be imposed during the hearing. As in a court setting, this simply requires that any witnesses intending to testify must wait outside of the hearing room until such time that they testify. They will be entitled to remain in the hearing room following their testimony at the discretion of the parties and the hearing officer.

#### **7.6.7.2 Presentation of the LDSS's case and questions by appellant and/or LDSS director**

The following are several guidelines for the LDSS director to consider during the case presentation:

- Worker can summarize the case, if possible. It is not necessary to read it. Whether reading or summarizing, however, the worker should be prepared to regularly reference what page of the dictation they are on, both for the benefit of the LDSS director and for the appellant.
- The oral summary should include all factors that contributed to the finding. The focus should primarily be on any elements required by policy in establishing a particularly form of abuse.

- At the conclusion of the oral summary, explain how the facts constitute the founded disposition. It is useful to refer to the finding/disposition page for this information.
- Define and describe not only the policy definition for the applicable form(s) of abuse, but also the level finding made for each abuse or neglect finding. Be prepared to explain the distinction of the different levels of abuse in a given case, as such distinctions are often useful in helping the appellants understand the finding in context.
- Understand that the parties will often have questions and concerns about the risk level; the hearing officer does not have jurisdiction over that part of the finding. This is LDSS discretion. The Code of Virginia and CPS Regulations are silent on whether local conference can amend level.
- Be aware that anything that appears in the dictation, no matter how long it is, is subject to discussion at the conference, since the Appellant has the right to amend the record, even if that particular information in the dictation is not relevant to the finding, since it is in the dictation, it is subject to amendment.

#### **7.6.7.3 Presentation of the appellant's case and questions by the CPS worker and/or LDSS director**

- At the hearing, when the Appellant makes a statement that the local director or CPS worker believe to be inaccurate, it is important to voice your objections and your reasons why you believe such statement is inaccurate. You will not be perceived as being argumentative, probably, as long as you allow the Appellant to complete their statement(s) before responding.
- The local conference is intended to be an exchange of information. If the local director does not hear during the local conference, the information that rebuts any new information provided by the Appellant, he will not be able to take that rebuttal information into consideration, nor will he be able to use it in any subsequent appeal summary to the state.
- The LDSS director will referee the questioning to a certain degree. The questioning process will have been explained to the parties in the opening summary. However, the appellant/appellant's attorney may not successfully abide by such instructions. Typically, the LDSS director will allow the attorney/appellant to ask initial questions and follow-up questions but will intercede if, in the LDSS director's opinion, the questions are overly repetitive and/or abusive.

- The LDSS director may stop the conference if participants become verbally abusive and fail to follow the LDSS director's directives with regard to their behavior.
- The department attorney, if present, can be helpful in making objections to appellant's questioning. Some objections may be sustained. The LDSS director will not potentially cross the line of impartiality by appearing to be interceding on the behalf of the worker.
- One of the purposes of a local conference as defined by statute is to allow the Appellant to provide additional information to the LDSS, in an informal environment, that might give reason why the finding should be amended or overturned. Some reasons for an Appellant to provide new or different information at the hearing include:
  - The appellant may be trying to avoid a founded disposition and possibly losing his current job, losing the opportunity to get certain types of jobs in the future. The appellant may fear the founded disposition will result in loss of custody of his children. The appellant may fear embarrassment of having a founded disposition.
  - The appellant may not want to talk until they have the opportunity to consult with an attorney. The appellant may not know that certain information he could have provided would be exculpatory at the time they were interviewed.
  - The appellant may be confused or upset by the CPS investigation and interviewing process, and not able to summon all of the pertinent information that may be useful in their defense.
  - The CPS worker did not have the opportunity due to time and staff constraints to ask certain questions or pursue other information during the investigation.

## 7.6.8 Other local conference issues

### 7.6.8.1 Witnesses and other participants

- The LDSS director will determine at the beginning of the conference how many witnesses will testify and to what they will testify. If numerous witnesses are providing similar character testimony or are testifying, as an example, that appellant is an exemplary day-care provider, the LDSS director will likely not have all such witnesses testify but will hear from two or three of them at the most. The rest of the appellant's witnesses' testimony in such an instance would be cumulative and can be proffered to avoid repetitive testimony.

- Children, and most specifically the alleged victim child, will not be permitted to testify for either side. The worker must be mindful, however, of the requirement that findings must be based on first source material and not on hearsay.
- For purposes of the informal conference, information that the worker hears directly from the child and repeats at the local conference is deemed to be first source material, even though such testimony would be considered hearsay in court. Second- and third-hand hearsay would not have the same reliability, however, and while such information would be admissible in the hearing under the relaxed rules of evidence in effect during an administrative hearing, they would not be considered first source. Such information might be statements from the teacher about information that the child told to him or her, which were then relayed to the worker.
- See CPS Manual, [Part 4, Family Assessment and Investigation](#) for more information about first source evidence.

#### 7.6.8.2 Non-offending parent and non custodial parent of the victim child

- If the appellant is an out of family caretaker, the parents of the victim child may not attend the local conference.
- The local director may use discretion in determining whether the non custodial parent of the victim child or the non offending parent of the victim child may attend the local conference.

#### 7.6.8.3 Burden of proof

- The LDSS director or designee must make a decision based on whether the CPS worker met the standard to establish abuse and neglect. The specific burden established by state policy is a **preponderance of the evidence**, which is the least onerous burden, the others being **beyond a reasonable doubt** (the criminal standard – probably between 90-99 percent) and **clear and convincing evidence** (probably in the range of 75 percent). A preponderance of the evidence is just enough evidence to tip the balance in one direction or the other, or 51 percent (the civil standard). Due to the fact that the burden is so low, it is particularly important that the worker be able to establish the reliability of all sources used in making the finding. Most important of all witnesses, of course, is the alleged victim child. The worker must find as many indices of the child's reliability as possible, as the ultimate disposition will often turn on the child's credibility.

#### 7.6.8.4 Hold the case open for appellant to provide additional information

- If the 45-day time frame (or 60-day extension, if requested) to complete the appeal has not expired and the appellant makes a written request for an extension, the LDSS director may allow appellant to provide additional information after the hearing.

#### 7.6.8.5 Can CPS worker investigate additional information provided at local conference?

- No. LDSS director must make decision based on CPS record and evidence presented at the local conference.

#### 7.6.8.6 The appellant does not show up for the conference or refuses to agree to a date for the conference.

- The LDSS must conduct the local appeal conference as required by CPS regulations even if the appellant does not appear for the conference and has been duly informed of the conference date.

#### 7.6.9 After the conference

- A **written decision** will be sent by certified mail, return receipt requested, to the appellant.
- The LDSS director will notify the **Central Registry, a subsection of OASIS (Online Automated Services Information System)** of the decision.
- If as a result of the final appeal the original disposition is amended, the parents of the involved child(ren) and all others including the complainant who received notification initially will be notified **by the LDSS**.
- An appellant who is dissatisfied with the decision of the LDSS director may appeal to the Commissioner of Social Services. The LDSS director's written decision must include instructions for the state appeal process.

#### 7.6.10 Sample letters

Sample letters follow on the next pages.

## ACKNOWLEDGEMENT OF APPEAL AND SET CONFERENCE DATE

DATE

APPELLANT NAME  
APPELLANT ADDRESS

Dear APPELLANT NAME:

Your request to appeal the Child Protection Services founded disposition of sexual abuse, level 1, made on DATE was received by this agency on DATE. We must schedule, hear, and decide on your request of amendment within 45 days after receiving such request. Please inform the social worker prior to the local conference if an attorney will present you.

The scheduled local conference to hear your appeal has been set for DATE at TIME, at LOCATION/ADDRESS. Please sign in at the front desk and the social worker will escort you to the conference room.

Under the policy of the Virginia Department of Social Services, you must receive a written decision regarding your request on or before DATE (45 days from date appeal was received). If you do not receive a written decision on your request on or before DATE you have 30 days to request an administrative hearing from the Commissioner of the Department of Social Services, 801 East Main Street, Richmond, Virginia 23219.

If you would like to review your records prior to the local conference or have questions, please contact Name at telephone.

Sincerely,

Local Director

cc. CPS Social Worker  
CPS Supervisor

## ACKNOWLEDGEMENT LETTER AND SET TELEPHONE CONFERENCE

DATE

APPELLANT NAME  
APPELLANT ADDRESS

Dear APPELLANT NAME:

Your request to appeal the Child Protection Services founded disposition of sexual abuse, level 1, made on DATE was received by this agency on DATE. We must schedule, hear, and decide on your request of amendment within 45 days after receiving such request. Please inform the social worker prior to the local conference if an attorney will present you.

Under the policy of the Virginia Department of Social Services, you must receive a written decision regarding your request on or before DATE (45 days from date appeal was received). If you do not receive a written decision on your request on or before DATE you have 30 days to request an administrative hearing from the Commissioner of the Department of Social Services, 801 East Main Street, Richmond, Virginia 23219.

In response to your request, a telephone conference will be conducted on DATE at TIME. I will call you at your home telephone number (Telephone Number), unless you designate a different location before DATE.

If you have documents that you wish to submit during the conference, please have them delivered to the department at least three days before the conference date.

If you would like to review your records prior to the local conference or have questions, please contact Name at (Telephone Number).

Sincerely,

Local Director

cc. CPS Supervisor  
CPS Worker



### ACKNOWLEDGE APPEAL REQUEST FROM ATTORNEY

DATE

ATTORNEY FOR APPELLANT  
ADDRESS

Dear ATTORNEY NAME:

Your request to amend the disposition of Founded, Level 2, Physical Neglect (Lack of Supervision) of VICTIM CHILD (REN) by APPELLANT NAME was received by this Department on DATE. A local conference will be scheduled in the near future to discuss your request for an amendment of the record.

Under the policy of the Department of Social Services, a local conference must be conducted and you must receive a written decision based on your request on or before DATE (45 DAYS FROM RECEIPT OF APPEAL REQUEST), unless you submit a written request for an extension of that period for a specific time not to exceed 60 days.

If you do not receive a written decision on the request on or before DATE (45 DAYS FROM RECEIPT OF APPEAL REQUEST), and no extension was requested, you have 30 days from that date to request an administrative hearing, in writing, from the Commissioner, Department of Social Services, 801 East Main Street, Richmond, Virginia 23219.

Your office will be contacted in the next few days to schedule a conference date and time or if you wish, you can contact me at (telephone number).

Sincerely,

Local Director

cc: CPS Supervisor  
CPS Social Worker

CERTIFIED MAIL NO.: 7007 2680 0000 2816 6128

### CRIMINAL CHARGES PENDING

DATE

Appellant Name  
Appellant Address

Dear APPELLANT NAME:

Your request to amend the record was received on DATE. According to the Virginia Code, Sections 2.2-3802 and 63.2-1526, when a criminal charge is brought against an appellant, for the same conduct and involving the same victim, the CPS appeals process shall be suspended until the criminal prosecution is completed. The appellant's right to access his record under the Government Data Collection and Dissemination Practices Act is also suspended until the criminal process is completed. This law became effective April 7, 1993.

When the criminal proceedings are completed, you will have the right to resume the appeal process within the times frames provided by the Code and Policy. If you have any questions, please feel free to give me a call at (telephone number).

Sincerely,

Local Director

cc: Agency CPS Supervisor  
Agency CPS Social Worker

Certified Mail: 7007 2680 0000 2816 6913

**UPHOLD FOUNDED DISPOSITION**

DATE

APPELLANT NAME  
APPELLANT ADDRESS

Dear APPELLANT NAME:

After careful review of the record in this case and of the evidence presented at the hearing held on DATE, I have decided to uphold the agency's finding of Founded, Level 3, Physical Neglect of VICTIM CHILD(REN) by APPELLANT.

If you would like to appeal this decision further you should write to the Commissioner of Social Services and request a hearing. The request must be made within 30 days of receiving this letter. Please address your request to:

Commissioner  
Virginia Department of Social Services  
801 East Main Street  
Richmond, Virginia 23219

If you have any questions, please feel free to contact me.

Sincerely,

Local Director

cc: CPS Social Worker  
CPS Supervisor

CERTIFIED MAIL NO: 7007 1490 0001 3107 3681

### AMEND FOUNDED DISPOSITION

DATE

APPELLANT NAME  
APPELLANT ADDRESS

Dear APPELLANT NAME:

After careful review of the record in this case and after consideration of the evidence presented at the hearing held on HEARING DATE, I have decided to amend the agency's finding of Founded, Level 2, Physical Abuse of VICTIM NAME(S) by ABUSER NAME to Founded, Level 3, Physical Abuse of VICTIM NAME(S) by ABUSER NAME.

If you would like to appeal this decision further, you should write to the Commissioner of Social Services and request a hearing. The request must be made within thirty days of receiving this letter. Please address your request to:

Commissioner  
Virginia Department of Social Services  
801 East Main Street  
Richmond, Virginia 23219-3301

If you have any questions, please feel free to contact me.

Sincerely,

Local Director

cc: CPS Social Worker  
CPS Supervisor

Certified Mail: 7007 1490 0001 3106 7017

## OVERTURN FOUNDED DISPOSITION

DATE

APPELLANT NAME  
APPELLANT ADDRESS

Dear APPELLANT NAME:

After careful review of the record in this case and of the evidence presented at the hearing held on DATE, I have decided to Overturn the agency's finding of Founded, Level 3, Physical Neglect of VICTIM CHILD(REN) by APPELLANT.

The LDSS records will be destroyed one year from the date of the complaint unless there are other CPS reports that require a longer retention period.

You may request the department in writing to retain your CPS record for up to two years past the original purge date. You may also petition the court to obtain the identity of the complainant if you believe the complaint was made maliciously.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact me.

Sincerely,

Hearing Officer

cc: CPS Social Worker  
CPS Supervisor

Certified Mail: 7007 1490 0001 3107 3698

### CPS LOCAL CONFERENCE SUMMARY - SUGGESTED OUTLINE

CASE NAME:

COMPLAINT DATE:

REFERRAL NUMBER:

CHILDREN (NAME&DOB)

#### 1) INTRODUCTION

An informal Child Protective Service conference was held at Local Dept. of Social Services on **(date)**.

Present were:

Name	Title
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#### 2) CASE SUMMARY

A disposition of **(type of abuse/neglect)** was made based upon the following evidence:

#### 3) APPELLANT'S RESPONSE

The following new information was provided by the appellant:

Documentary evidence presented by the appellant included:

Appellant's arguments and objections to the disposition were:

#### 4) WORKER'S RESPONSE

The worker's arguments and supports of the disposition were:

#### 5) FINDING

Following the agency conference, a decision was made to **(upheld, amend, overturn disposition)** based on the following reasons: