

# 5

## OUT-OF-FAMILY INVESTIGATIONS

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# 5

## OUT-OF-FAMILY INVESTIGATIONS

### 5.1 Introduction

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If a CPS report involves the abuse or neglect of a child in an out-of-family setting, that investigation is deemed an “out-of-family” (OOF) investigation. There are many types of settings and situations that are considered OOF 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, locally approved foster homes, child placing agencies, group residential facilities, hospitals, or institutions. OOF 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 co-ops, and “sleepovers” at friends’ 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 OOF settings. Complaints of abuse and neglect in OOF settings differ from complaints in the child’s family setting because:

- The alleged abuser(s) in OOF settings may be caring for the alleged *child who is a 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 OOF investigation.

## 5.2 Authorities

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

All CPS authorities, procedures, and requirements applicable to in home investigations found in Section 4, Assessment and Investigations, apply to the investigation of complaints in an OOF setting. This section sets forth the additional requirements to respond to CPS reports in these OOF settings.

### 5.2.1 Minimum standards for *Family Services Specialists* to conduct OOF investigations

Pursuant to [22 VAC 40-730-130](#), in order to conduct OOF investigations, Family Services Specialists must meet the educational standards, including the completion of an out-of-family training course approved by the Department.

## 5.3 Definitions

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In addition to the definitions contained in [22VAC40-705-10](#), [22 VAC 40-730-10](#) defines terms, when used in conjunction out-of-family investigations.

### 5.3.1 Additional definitions used in OOF investigations

The following definitions are also commonly used in the guidance and procedures to conduct OOF investigations:

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Hospitals and Institutions</b>	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.
<b>Locally Approved</b>	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

### 5.3.2 Child care definitions

The following definitions are from the Child Care and Licensing Divisions of VDSS. Additional information regarding child care and licensing can be found on the public website.

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Child Day Centers</b>	<p>These are child day programs offered to</p> <p>(i) two (2) or more children under the age of 13 years in a facility that is not the residence of the provider or any of the children in care, or</p> <p>(ii) 13 or more children at any location. Additional information can be found on the <a href="#">Child Care VA website</a>.</p>
<b>Family Day Homes</b>	<p>These are homes that provide the care for five (5) to 12 children (exclusive of the provider's own children) and required by the Code of Virginia to be licensed. Additional information can be found on the <a href="#">Child Care VA website</a>.</p> <p>Note: Homes that provide care for four (4) or less children (exclusive of their own children) are not required to be licensed.</p>
<b>Family Day System Homes</b>	<p>The Code of Virginia requires licensure of any person who approves family day homes as a member of its system and who refers children to available day homes in that system. Additional information can be found on the <a href="#">Child Care VA website</a>. The only licensed Family Day Home System is operated by <a href="#">Infant/Toddler Family Day Care</a>.</p>
<b>Religiously Exempt Day Care Center</b>	<p>A child day center may be exempt from licensing requirements and regular inspections due to its mission as a religious facility. Additional information can be found on the <a href="#">Child Care VA website</a>.</p>
<b>Voluntarily Registered Family Day Homes</b>	<p>These homes have fewer than five (5) children in care (exclusive of the provider's own children). Voluntary registration is a form of regulation offered to family day homes that are not required to be licensed. Additional information can be found on the <a href="#">Child Care VA website</a>.</p>

## 5.4 Responsibilities to conduct OOF investigations

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### 5.4.1 Determine validity of report or complaint in OOF settings

The criteria used to determine validity of an allegation in an OOF setting are the same as that in an allegation of an “in-home” setting. These criteria are discussed in Section 3, Complaints and Reports, of this guidance manual. Additional criteria for reports involving school personnel can be located in Section 5.10.

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

### 5.4.2 Identify the regulatory agency

- The Virginia Department of Education (DOE) 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 DOE Regional Licensing Offices is available on the [Child Care VA 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.
- 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.

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- The Department of Behavioral Health and Developmental Services (DBHDS) operates or licenses group homes; treatment facilities for children with *substance use* issues, developmental disabilities, and brain injuries; psychiatric hospitals that provide day or residential services to children; training centers; and state mental hospitals. *When a complaint of child abuse or neglect needs to be reported to DBHDS, the LDSS must send the report to the Office of Human Rights via secure email to [statewideaps\\_cpsreports@dbhds.virginia.gov](mailto:statewideaps_cpsreports@dbhds.virginia.gov) or by fax to 833-734-1241.*
- 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)-371-0525 or ask the private school for the DOE specialist for their school and contact that person directly.

**5.4.3 Facilities with no regulatory authority**

Pursuant to [22VAC40-730-50A](#), in an OOF investigation with no regulatory authority, the designated staff person participating in the investigation is not considered a co-investigator with the *Family Services Specialist*. The *Family Services Specialist* 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 *Family Services Specialist* may exclude the designee from interviews as necessary.

**5.4.4 Develop joint investigative plan**

Pursuant to [22VAC40-730-40.2](#), the *Family Services Specialist* and the appointed regulatory staff person shall confer on the preliminary investigation plan. The *Family Services Specialist* 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.

**5.4.4.1 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 *Family Services Specialist* should commence the investigation separately; however, efforts must be made to begin

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coordination and information-sharing as quickly as possible.

**5.4.5 Notify CPS Regional Practice Consultant**

Pursuant to [22VAC40-730-60B](#), the *Family Services Specialist* must inform the *CPS Regional Practice Consultant* of all OOF investigations ***within three (3) business days from the date the referral was received.*** In addition to providing notification to the *CPS Regional Practice Consultant*, the *LDSS* must now provide the same notification to the *OOF Specialist* at [OOF@dss.virginia.gov](mailto:OOF@dss.virginia.gov) . This may be done by sending an e-mail to the regional consultant that includes the following information:

The *CPS Regional Practice Consultant* should review the *OOF Checklist* with the *LDSS* at the time of notification.

- Referral # and locality.
- *Assigned worker/supervisor*
- Type of abuse/neglect.
- Daycare/facility/school name.
- *Is this a public school? (Yes/No)*
- *Foster parent/child? (Yes/No)*
- Brief case summary.

**5.4.6 Notify Interstate Compact on the Placement of Children (ICPC)**

If the alleged *child who is a 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 *Family Services Specialist* shall document this notification in the child welfare information system.

**5.4.7 Time frames to complete investigations**

The Code of Virginia requires the *LDSS* to complete and document the investigation within 45 calendar days of receipt of the complaint or report. There are three (3) exceptions for completing an investigation within 45 days.

**5.4.7.1 Fifteen-day extension to complete investigation**

Pursuant to [22 VAC 40-705-120 A](#), upon written justification by the *LDSS*, based

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on locally determined guidelines, the investigation can be extended for **15 calendar days**.

**5.4.7.2 Extension of joint investigations with law enforcement agency**

The Code of Virginia, § [63.2-1505 \(5\)](#) allows for investigations which are being conducted in cooperation with a local law enforcement agency to be extended an additional 45 days, not to exceed 90 days. This must be agreed upon by both the LDSS and the law enforcement agency. This extension applies only to investigations.

**5.4.7.3 Notification of extension**

If an investigation is extended, the alleged abuser/neglector shall be notified. The notification to the alleged abuser/neglector or involved caretakers should include a brief explanation of the reason for the extension. If written notification is made, a copy of the notification must be included in the LDSS's record. If notification is made verbally, then the LDSS must document the notification in the child welfare information system. The LDSS must document the justification in the child welfare information system for the additional time needed to complete the investigation.

Sample letters for notification of an extension of an investigation are located in this guidance manual, Section 4, Assessments and Investigations.

**5.4.7.4 Suspension of certain investigations**

Pursuant to [22VAC40-705-120 B](#) and [§ 63.2-1505 B5](#) of the Code of Virginia grants exceptions to completing certain investigations under specific conditions. In any child death investigation or sexual abuse investigations which require reports or records generated outside the local department in order to complete the investigation, the time needed to obtain these reports or records shall not be counted towards the 45 days. These records must be necessary to complete the investigation and not available due to circumstances beyond the control of the local department. When the LDSS receives the reports or records, the 45 day timeframe resumes where it had left off, it does not start over.

The decision to suspend making a disposition within 45 days in these cases should be approved by a supervisor and documented in the child welfare information system.

**Child and Family Services Manual      C. Child Protective Services****5.4.7.5 Notification of suspension**

The LDSS should notify the alleged abuser/neglector or involved caretakers and the alleged *child who is a victim's* parents or guardians when suspending an investigation. The notification to the alleged abuser/neglector or involved caretakers should include a brief explanation of the reason for the suspension. If written notification is made, a copy of the notification must be included in the LDSS's record. If notification is made verbally, then the LDSS must document the notification in the child welfare information system. The LDSS must document the justification in the child welfare information system for the additional time needed to complete the investigation.

**5.4.7.6 Contact while investigation is suspended**

As long as the investigation remains open, the LDSS retains all authorities and responsibilities of an investigation. The LDSS should document monthly updates in the child welfare information system until such time that the necessary reports or records to complete the investigation have been received.

**5.5 Conduct OOF investigation**

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**5.5.1 Joint interviews and information sharing**

Pursuant to [22VAC40-730-40.2a](#), the LDSS shall share the complaint information with the regulatory authority who may appoint a staff person to participate in the investigation. The *Family Services Specialist* and regulatory staff person should discuss informational needs, the feasibility of joint interviews, and develop an investigative plan.

**5.5.2 Notify facility administrator**

Pursuant to [22VAC40-730-70A](#), 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, they shall nevertheless be informed of the progress of the investigation.

**Child and Family Services Manual      C. Child Protective Services****5.5.2.1 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.

**5.5.3 Interview alleged child who is a victim**

Pursuant to [22VAC40-705-80 B1](#), the *Family Services Specialist* shall conduct at least one (1) face-to-face interview (worker visit) with the alleged *child who is a victim* and shall conduct this face-to-face interview **within the determined response time** as assessed in Section 3: Complaints and Reports of this manual. A face-to-face interview must be documented as a "worker visit" in the child welfare information system.

The *Family Services Specialist* shall observe the child and document the child's recollection and perception of the allegations. Information regarding the allegations may be obtained during the *Family Services Specialist's* observation of *child who is a victim* interviews conducted by other members of the investigative team including, but not limited to, law-enforcement officers, forensic nurses, physicians or other community professionals trained as forensic interviewers. When possible, it is important to not only observe the interview but also have the ability to ask additional questions as needed. If the *Family Services Specialist* is not the primary interviewer, the *Family Services Specialist* is still responsible for interviewing the child to gather any additional information regarding the allegations and to ensure that the child understands the role of the *Family Services Specialist* and what will occur during the investigation. The *Family Services Specialist* must review all electronically recorded *child who is a victim* interviews to determine if additional interviews are necessary to comply with CPS guidance.

The *Family Services Specialist* must still conduct a face to face interview with the child if the *Family Services Specialist* is not the primary interviewer of the child regarding the allegations. This worker visit shall be **within the determined response time**.

During the child interview, the *Family Services Specialist* should inform the child about the investigation and what will occur during the investigation. The *Family Services Specialist* should note the child's emotional and physical condition (including any injury). The *Family Services Specialist* should learn about the child's needs and capabilities for the purposes of safety and risk assessment and service planning.

Pursuant to [22VAC40-705-80 B](#), the *Family Services Specialist* shall document all observations and interviews involving the *child who is a victim* in the child welfare

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information system. If the face-to-face worker visit with the *child who is a victim* is not made within the determined response time, this shall be documented in the child welfare information system.

**5.5.3.1 Information gathered in the interview with alleged *child who is a victim***

Collect the following information during the alleged *child who is a 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 them.
- 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.

**5.5.3.2 Electronic recording**

Pursuant to [22VAC40-705-80.B1](#), in 2005, the Virginia Supreme Court of Appeals issued a ruling to affirm the regulatory requirement that *child who is a 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 *child who is a 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.

**5.5.3.2.1 Exceptions to electronically recording interviews with the alleged *child who is a victim***

Pursuant to [22VAC40-705-80.B1](#), the VAC provides five (5) exceptions to electronic recording of an interview with an alleged *child who is a victim*. Before electronically recording an interview with a child, the *Family Services Specialist* must assess the circumstances surrounding the allegations of abuse or neglect and determine whether any of the five (5) exceptions precluding audio recording the interview apply. Adequately considering the

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circumstances may include assessing the complaint or report; speaking with the parent or guardians of the child; speaking with collateral witnesses; and conducting an assessment of the child.

The *Family Services Specialist* shall consult with the supervisor when the decision is made not to electronically record an interview with an alleged *child who is a victim*. The consultation and the specific reasons why electronic recording is not done in the specific investigation shall be documented in the child welfare information 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 *Family Services Specialist* 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 *Family Services Specialist* may be able to assess any potential harm to the child by speaking with the child's parents or guardians, or collateral witnesses. If the interview is not electronically recorded, the *Family Services Specialist* 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 *Family Services Specialist* 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 *Family Services Specialist* 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 *Family Services Specialist* 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 *Family Services Specialist* must not electronically record the interview. The *Family Services Specialist* shall document the reasons why the child refused to be electronically

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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 *child who is a victim* 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 *child who is a victim* provided new information as part of a family assessment

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

**5.5.3.3 Each interview with the alleged *child who is a victim* must be electronically recorded**

Each interview with the alleged *child who is a victim* must be electronically recorded unless one (1) of the above mentioned exceptions to electronically recording the interview applies. When an interview is not electronically recorded for any reason, the *Family Services Specialist* 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.

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

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

The LDSS should explain to the parent or guardians that § [63.2-1518](#) of the Code

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of Virginia allows the *Family Services Specialist* to interview the alleged *child who is a victim* without the consent of the parents and [22VAC40-705-80](#) of the VAC requires the interview to be electronically recorded.<sup>1</sup>

**5.5.3.5 Parents or caretakers object to electronically recorded interview**

There is no provision in the VAC allowing an exception to electronic recording when the parent or guardians object to the LDSS electronic recording the interview of the alleged *child who is a victim*. The *Family Services Specialist* should explore the foundation for the parents' objection. The objection to the electronic recording may satisfy one of the enumerated exceptions to electronic recording.

**5.5.3.6 Equipment malfunction**

[22VAC40-705-80 B1](#) provides that a CPS finding may be based on the written narrative should equipment failure occur. If an interview of an alleged *child who is a victim* is not electronically recorded because of equipment malfunction, then the *Family Services Specialist* shall write a detailed narrative of the interview and include that narrative in the record.

**5.5.4 Family Services Specialist determines who may be present during child interview**

Pursuant to [22VAC40-730-80](#), when the *Family Services Specialist* is conducting an interview with the alleged *child who is a victim*, the *Family Services Specialist* 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 *Family Services Specialist*, regulatory staff, and/or facility administrator or designee when issues arise such as the discomfort of the interviewee or an apparent conflict of interest.

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<sup>1</sup> 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 *Family Services Specialist* with an alleged *child who is a victim* be electronically recorded.

### 5.5.5 Notify parents or guardian of the child

The parent, guardian or agency holding custody should be informed of their child's interview and *must be informed of* the investigative process **within 40 work hours of referral validation**; 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 parent, 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 parent, guardian, or agency holding custody should be kept informed of sufficient information to involve them in planning and support for the child.

#### 5.5.5.1 Interview alleged abuser or neglector

Pursuant to [22VAC40-730-90](#), the alleged abuser or neglector must be given written notice of the CPS report, "[Child Protective Services: A Guide to Investigative Procedures in Out of Family Settings.](#)"

#### 5.5.5.2 Inform alleged abuser or neglector of right to electronically record interview

Pursuant to [22VAC40-705-80 B4a](#), the *Family Services Specialist* must inform the alleged abuser or neglector of their right to electronically record any communication with the LDSS.

#### 5.5.5.3 Law enforcement or Commonwealth's Attorney objects to informing the alleged abuser or neglector of their right to record the interview

A law enforcement officer or the Commonwealth's Attorney may object to the LDSS informing the alleged perpetrator of their 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 child welfare information system.

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Pursuant to [22VAC40-705-80 B4b](#), the *Family Services Specialist* 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.

**5.5.5.5 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 *Family Services Specialist* 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 their rights against self-incrimination. If a person suspected of abuse or neglect is arrested, that person must be advised of their 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.

**5.5.6 Interview collateral children**

Pursuant to [22 VAC 40-730-100](#), the Family Services Specialist must interview non-victim children as collaterals if it is determined they may have information which would be helpful to the investigation. 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.

**5.5.7 Observe environment where the alleged abuse or neglect occurred**

Pursuant to [22VAC40-705-80 B7](#), the Family Services Specialist must observe the environment where the alleged abuse or neglect occurred.

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*Pursuant to [22 VAC 40-705-80 B](#), the Family Services Specialist must document all contacts required by regulation in the child welfare information system. It is equally important that the worker document reasons why any mandated contacts or observations were not made or completed. For example, if three phone messages were left or two home visits made with no one answering the door, those attempts should be documented in the child welfare information system.*

*A face-to-face interview with a child must be documented as a “worker visit” in the child welfare information system.*

*Pursuant to [22 VAC 40-705-10](#), the investigative narrative is a detailed written summary of all the evidence supporting the LDSS’s investigation disposition.*

*All documentation must be entered or updated in the child welfare information system within five business days.*

*A hard copy file, in addition to the child welfare information system generated reports, documents, forms, audio and digital image files, for each family assessment or investigation should include correspondence, reports from other sources (school, medical, etc.), and other documentation germane to the investigation which may not be entered into the child welfare information system, such as a safety plan.*

**5.6 Assess safety**

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The VAC [22 VAC 40-730-30](#) provides regulatory authority to conduct the safety assessment in OOF investigations.

*The first meaningful contact in an out-of-family investigation provides pertinent information relevant to the OOF investigation and the safety of the child. It is a face-to-face contact with the family and usually occurs after the completion of the face-to-face interview with the alleged victim. During this face-to-face contact with the family, the Family Services Specialist completes the Safety Assessment Tool in the child welfare information system and develops a safety plan with the family if the child is determined to be conditionally safe. The first meaningful contact must be documented as such in the child welfare information system and the Family Services Specialist must include “safety assessment” as one of the purposes of the contact. The Family Services Specialist should confer with a supervisor if there is any doubt about which contact constitutes the first meaningful contact. Note: The completion of the initial interview with the alleged victim does not satisfy a first meaningful contact.*

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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**

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After safety and protective factors have been assessed, the *Family Services Specialist* 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 (1) child. One of the following safety decisions must be determined and documented in the child welfare information 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 is required to document intervention.

**5.6.4 Emergency removal of child in OOF investigations**

Pursuant to [22VAC40-730-40](#) and [22VAC40-730-40.1](#), if the *Family Services Specialist* is concerned for the child's immediate safety and the situation is such that the child should be immediately removed from the facility, the *parent*, 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 parent, guardian or agency holding custody and the facility at the time of the removal.

**5.7 Risk assessment and disposition**

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**5.7.1 Risk assessment**

Pursuant to [22VAC40-705-110 B](#), 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 child welfare information 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

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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 Practice Consultant**

Pursuant to [22 VAC 40-705-10](#) and [22 VAC 40-705-110.C](#), the *Family Services Specialist* and supervisor must consult with *CPS Regional Practice 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. (60 or 90 days when an extension is documented to be necessary). The *CPS Regional Practice Consultant* must review the *OOF Checklist with the LDSS at the time of consultation*.

After collecting evidence and before expiration of the time frames for completing the investigation, the *Family Services Specialist* shall determine the disposition. The VAC provides the definition of disposition.

**5.7.2.1 Unfounded disposition**

The definition of an unfounded disposition as defined in [22 VAC 40-705-10](#).

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 is found in [22 VAC 40-705-10](#).

**5.7.2.2.1 Preponderance of the evidence**

The definition of a preponderance of the evidence is found in [22 VAC 40-705-10](#). 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

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gathered should be evaluated by its credibility, knowledge offered and information provided.

Proof of one or more of the following factors, linking the abuse or neglect to the alleged abuser or neglecter, may constitute preponderance of evidence:

- Medical or psychological information from a licensed medical professional or other treatment professional that indicates that child abuse/neglect occurred.
- An admission by the alleged abuser/neglector.
- The statement of a credible witness or witnesses regarding the abuse or neglect.
- The *child who is a victim's* statement that the abuse occurred. In assessing the weight to be given to the child's statement, consider:
  - level of detail described;
  - emotional/cognitive developmental level of the child;
  - consistency of statements if more than one interview is conducted;
  - corroboration of statement by other circumstances and/or witnesses;
  - secrecy- child instructed, asked, or threatened to keep the sexual abuse a secret; or
  - coercion- child reports elements of coercion, persuasion, or threats by the alleged abuser to engage in the sexual abuse.
- Circumstantial evidence, or indirect evidence, which links the alleged abuser or neglecter to the abuse or neglect.

**5.7.2.2.2 First source, direct and indirect evidence**

First source evidence and indirect evidence are defined in [22 VAC 40-705-10](#).

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

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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.<sup>6</sup> 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.

**5.7.2.2.3 Credibility of evidence**

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

Pursuant to [22 VAC 40-705-110 D1](#), 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;
  - 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; or
  - 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;
  - has required psychiatric hospitalization;
  - has required treatment for severe dysfunction;
  - presents a danger to self or others; or
  - problems related to the caretaker behavior.
- For sexual abuse:

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- the situation would be one where there was genital contact;
- 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. (refer to physical or mental abuse or neglect above)

**5.7.2.3.2 Level 2**

Pursuant to [22 VAC 40-705-110 D2](#), 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; or
  - 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.

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- For mental abuse or neglect:
  - the situation would be one where the child's emotional needs are rarely met; or
  - the child's behavior is problematic at home or school.
- For sexual abuse:
  - minimal or no physical touching but could be exposure to masturbation, exhibitionism, etc.;
  - caretaker makes repeated sexually provocative comments to the child; or
  - 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; or
  - 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. (refer to physical or mental abuse or neglect above)

**5.7.2.3.3 Level 3**

Pursuant to [22 VAC 40-705-110 D3](#), 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;
  - minimal exposure to the production or sale of methamphetamine or other drugs.
- For physical neglect:
  - child's minimal needs inconsistently met for food, clothing, shelter, supervision, or medical care; or

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- supervision marginal which poses a 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;
  - exposure to sexual acts such as masturbation, exhibitionism, etc.; or
  - 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 physical or mental abuse or neglect above)

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

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In certain OOF investigations, the type or extent of abuse or neglect may increase the concern for other children in the care of the alleged abuser or neglector including children in the alleged abuser or neglector's household or other workplace or OOF 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 OOF settings, referral to the regulatory agency, and consultation with law enforcement.

## **5.9 Notifications for OOF investigations**

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Refer to Section 4, Assessments and Investigations, for notification requirements for all CPS investigations. There are additional notifications required in OOF investigations in

designated settings.

### 5.9.1 Release of information in joint investigations with law enforcement

Pursuant to § [63.2-1516.1](#) of the Code of Virginia, when conducting a joint investigation with law enforcement, no information in the possession of the LDSS from the joint investigation shall be released by the LDSS except as authorized by local law enforcement or the local attorney for the Commonwealth.

### 5.9.2 Consult with regional *practice* consultant

Pursuant to [22 VAC 40-730-60](#), the *Family Services Specialist* and supervisor shall consult with the regional *practice* 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 regulations 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 *Family Services Specialist* shall document this notification in the state child welfare information system.

### 5.9.4 Written notification to alleged abuser/neglector

See FUSION for sample letters of notification to the alleged abuser or neglector.

#### 5.9.4.1 Unfounded disposition

Pursuant to § [63.2-1514 B](#) of the Code of Virginia, the alleged abuser or neglector 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 child welfare information system. The notification shall include the length of time the CPS report will be retained in the child welfare information 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

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regulation, *Family Services Specialists should* 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 or neglect.
- The disposition, level, and retention time, including statement about effect of multiple complaints on retention.
- The name of the *child who is a victim* or children.
- A statement informing the abuser of their 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 their 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 child welfare information system that the abuser or neglector was given the appeal brochure and was informed verbally of their 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 40-705-130 B3](#).

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 40-705-130 B4](#).

#### 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 their right to appeal to finding and to have access to the case record. The worker must document in the child welfare information system, the date the verbal notification took place. If the verbal notification did not occur, the *Family Services Specialist* should document the reasons in the child welfare information system.

#### 5.9.5 Notification to facility administrator and regulatory staff

Pursuant to [22 VAC 40-730-110](#), the *Family Services Specialist* 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 *child who is a 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.

**Child and Family Services Manual C. Child Protective Services****5.9.5.1 Notification for school employees**

In OOF investigations involving school employees, the LDSS shall provide additional notifications pursuant to §§ [63.2-1503 P](#) and [63.2-1505 B\(7\)](#) of the Code of Virginia. See Section 5.10.31.1 and Section 5.10.3.2 for specific information.

**5.9.6 Notification to parent, guardian, or custodial agency of *child who is a victim***

Pursuant to [22 VAC 40-705-140 C2](#), the parent, 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 their 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 OOF 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 parent, 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 parent, 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 child welfare 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**

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The *Family Services Specialist* must refer any inquiries about the findings to the facility administrator or their superior and, when applicable, to the regulatory authority.

**5.9.9 Notify Family Advocacy Program**

The Code of Virginia § [63.2-1503](#) N establishes the authority for the LDSS to share CPS information with family advocacy representatives of the United States Armed Forces.

Effective July 1, 2017: at the conclusion of all investigations (founded and unfounded dispositions), the LDSS shall notify the Family Advocacy Program representative and provide the final disposition, the type(s) of abuse or neglect, the identity of the abuser or neglecter and any recommended services. These notifications allow for coordination between CPS and the Family Advocacy Program and are intended to facilitate identification, treatment and service provision to the military family. For additional information about the Family Advocacy Program, contact information for a particular branch of the military or a specific installation, click [here](#).

- Written notification to Family Advocacy shall be made upon completion of an investigation resulting in an unfounded disposition.
- The Family Advocacy Program representative shall be notified in writing within 30 days after all administrative appeal rights of the abuser or neglecter have been exhausted or forfeited for all investigations with a founded disposition.
- Written notification to abuser or neglecter.

The abuser or neglecter shall be advised that this information is being provided to the Family Advocacy Program and shall be given a copy of the written notification sent to the Family Advocacy Program. These notifications shall be documented in the child welfare information system.

**5.9.10 Founded disposition on a foster parent**

Pursuant to [22 VAC 40-705-140 B2](#), when the abuser or neglecter is a foster parent of the child victim, the LDSS must place a copy of the founded disposition notification letter in the child's foster care record and in the foster home provider record.

**5.10 Conduct investigations involving public school employees**

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Pursuant to § [63.2-1511](#), the Code of Virginia sets out special conditions when investigating complaints of abuse or neglect by public school employees in their official

or professional capacity.

### 5.10.1 Additional requirements

CPS allegations against public school employees have additional considerations which go beyond the normal procedures and requirements for CPS investigations.

#### 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 “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.”<sup>2</sup>

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 they were conscious of their conduct, and conscious, from their knowledge of existing conditions, that injury would likely or probably result from conduct, and that with reckless indifference to consequences they consciously and intentionally did some wrongful act or omitted some known duty which produced the injurious result.<sup>3</sup>

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.

Section 5.17.7 provides additional information to be included when making a finding on a school employee.

### 5.10.1.3 Mandatory timeframe to make disposition

Effective July 1, 2015, [§ 63.2-1505](#) mandates the LDSS to make the final disposition of any report involving a public school employee within the established timeframes. The finding must be completed and approved in the child welfare information system and notification made to the alleged abuser or neglector according to the timeframes outlined in [§ 63.2-1505 B5](#).

### 5.10.2 Additional procedures for investigations involving public school employees

Pursuant to [§ 63.2-1516.1](#) of the Code of Virginia, in addition to the investigation procedures and requirements for other OOF investigations noted in this chapter and in Section 4, Assessments and Investigations, there are additional procedures applicable to reports involving public school employees.

### 5.10.3 Additional notifications

Pursuant to [§ 63.2-1516.1](#) of the Code of Virginia, the written notifications provided to the alleged abuser or neglector shall include:

- Summary of the investigation and explanation of how the information gathered supports the disposition;
- Their right to an appeal; and
- Their right to review information about themselves contained in the case record; except for the identity of the reporter, information provided by law enforcement, any information that may jeopardize the child’s well-being, and identity of any witness if the release may jeopardize the witness’ safety.

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<sup>2</sup> 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).

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

### 5.10.3.1 Notify local school board when abuser is an employee

Pursuant to [§ 63.2-1505](#) of the Code of Virginia, if at the time of the investigation or the conduct that led to the report, the abuser is or was 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 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 their 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 child welfare information system.

### 5.10.3.2 Notify Superintendent of Public Instruction, Department of Education

Pursuant to [§ 63.2-1503 P](#) of the Code of Virginia, the LDSS shall immediately 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. 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](#) of the Code of Virginia.

The LDSS shall immediately notify the Superintendent of Public Instruction, DOE if the founded complaint of child abuse or neglect is overturned on an administrative appeal.

The Board of Education issues licenses to instructional personnel including teachers and other professionals and administrators.

The Board of Education does not license teacher aides, janitorial staff, and administrative support 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 Interagency agreements with local school division for CPS complaints that require coordination

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Pursuant to [§ 63.2-1511 D](#), LDSS shall adopt a written interagency agreement for complaints of child abuse and neglect that require coordination between local departments and local school divisions to facilitate the investigation or family assessment. The LDSS shall no longer be required to report annually on the status of the interagency agreement to the Board of Social Services unless the interagency agreement is substantially modified. When substantial modifications are made to an interagency agreement, the LDSS must notify the CPS Program Manager.

A model agreement has been developed by the Virginia Department of Education and VDSS with participation of local school divisions and LDSS and can be found on the [interagency website](#).

## 5.12 Services to abuser/neglector and family in an OOF investigation

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Services can be provided to an abuser/neglector in a founded OOF investigation when the risk assessment is high or moderate for the *child who is a victim* or to other children to whom the abuser/neglector may have access.

Open the CPS *in-home services* case in the name of the abuser/neglector in the child welfare information system.

*The LDSS may offer prevention services for families involved in an investigation when risk is assessed as low or moderate. The following conditions should be met to open a case to prevention services:*

- *LDSS has received a current, valid CPS referral AND*
- *LDSS has conducted a family assessment or investigation AND*
- *The family has been assessed at low or moderate risk of future maltreatment but could benefit from voluntary services AND*
- *The family agrees to services.*

See [Section 2, Chapter B. Prevention, VDSS Child and Family Services Manual](#), for further guidance.