

Founded Investigation and Appeal Checklist

(rev. 2/2024)

Important points to consider before making a FOUNDED disposition and in preparation for an appeal:	CPS Guidance; Regulation (VAC); Code of Virginia (COV)	Date Completed:
1. Upon acceptance of a referral, the CPS worker MUST notify the family in writing and orally that a report of suspected abuse or neglect has been received and that an investigation will be conducted in response to the report. The written notification is the brochure “Child Protective Services: A Guide to Investigative Procedures”. The CPS worker MUST document this notification in the automated data system.	22 VAC 40-705-90 Guidance: 4.6.3	
2. Referral response time MUST be met. If not, clearly document why this did not occur.	22 VAC 40-705-50 Guidance: 3.8.7	
3. Victim child must be seen face to face within the referral response time.	22 VAC 40-705- 80 Guidance: 4.6.6	
4. During the investigation all victim(s) interviews MUST be recorded. There are specific exceptions to recording a victim interview found in 22VAC40-705-80 B1. If one of these exceptions is used it MUST be documented in the record.	22 VAC 40-705-80 Guidance: 4.6.6.1 (Virginia Court of Appeals case #2144042- West Decision)	
5. During the investigation, the alleged abuser(s) MUST be offered to have their interview recorded. If this was not offered or recorded there MUST be documentation in the record of why it was not done.	22 VAC 40-705-80 Guidance: 4.6.8.1	
6. The category of abuse/neglect being investigated MUST be reviewed closely prior to approval of a founded disposition. Be clear what allegations fall into each category of abuse/neglect and what evidence is needed for a finding. For example: Mental abuse findings require documentation of the abuse and the direct correlation of the caretakers’ action/inaction to victim child’s behavior or threat of harm. Medical neglect findings should have professional documentation to show how the action/inaction by the alleged abuser created harm or a threat of harm to the alleged victim.	COV § 63.2- 1505 22 VAC 40-705-110 Guidance: 4.6.27.1 Guidance: 4.6.27.4	

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7. Workers MUST review the evidence and document how each element supports the allegation being investigated by a preponderance of the evidence. As the standard of proof in making a founded disposition of abuse or neglect, a preponderance of the evidence means that the evidence offered in support of the allegation is of greater weight than the evidence offered in opposition. The evidence gathered should be evaluated by its credibility, knowledge offered, and information provided.	22 VAC 40-705-10 Guidance: 4.6.28	
8. Investigations MUST be completed in a timely manner. There are specific reasons for an <u>extension</u> to an investigation. If an extension is being requested, the worker MUST document the reasons. Notifications are required and documentation MUST be in the case record. There are specific circumstances for an investigation to be <u>suspended</u>. If an investigation is suspended, the worker MUST document the reasons. Notifications are required and documentation MUST be in the case record.	COV §63.2- 1505 22 VAC 40-705-120 Guidance: 4.6.2 COV §63.2- 1505 22 VAC 40-705-120 Guidance: 4.6.2.4	
9. Use of first source, direct, and indirect evidence – Know the difference. First source or direct evidence means evidence that proves a fact. Indirect evidence, also known as circumstantial evidence, is evidence based on inference and not on personal knowledge or observation.	22 VAC 40-705-10 Guidance: 4.6.28.1	
10. Credible 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.	Guidance: 4.6.28.2	

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<p>11. Determining the correct level for a founded investigation MUST be based on the actual evidence and risk factors present. A founded disposition is 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.</p> <p>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 and MUST be clearly documented in the dispositional narrative. It is not enough to state the level and the definition of that level.</p>	<p>22 VAC 40-705-110 Guidance: 4.6.34</p>	
<p>12. Evidence and documentation used in determining a founded disposition MUST be shared with the appellant. The hearing officer MUST receive the same information as the appellant. Only in rare circumstances will a hearing officer allow redacted information to be used in a state appeal hearing. All redactions to the record MUST be accompanied by a detailed explanation of why the information is not being shared and the risk to child or others if the information were to be released. Submitted evidence and documentation MUST be legible or audible.</p>	<p>COV § 63.2-1526(A) 22 VAC 40-705-140 22 VAC 40-705-190 Guidance: 4.6.35 and 9.6.8</p>	
<p>13. Investigations for school employees: The local agency MUST have evidence to support that the employee acted with gross negligence or willful misconduct. These two elements are crucial when making a finding on any investigation that involves a school employee in the course of their employment. Local agencies must have detailed documentation that correlates the actions of the employee with injury or knowledge that the action will result in an injury. Prior to making a finding on school employees staff MUST make sure that the evidence supports the allegation based on guidance. These elements must be clearly documented in the dispositional narrative. The disposition MUST also be staffed with the regional consultant.</p>	<p>COV §63.2-1511 Guidance: 5.10.1.2</p>	
<p>14. All investigations completed (disposition approved by supervisor) on public school employees MUST be done within established timeframes.</p>	<p>COV §63.2-1505 Guidance: 5.10.1.3</p>	

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15. Prepare for the appeal by reviewing the case record. The worker should be prepared to answer questions as to relevant facts and guidance which support the disposition(s) made by the Agency. Attend the appeal hearing and testify in support of the dispositions if called.	22 VAC 40-705-190 Guidance: 7.6.7	
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