



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Department of Social Services
VAC Chapter Number:	22 VAC 40-730-10 et seq.
Regulation Title:	Investigation of Child Abuse and Neglect in Out of Family Complaints
Action Title:	Implement Joint Investigations
Date:	August 14, 2002

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

This final regulation is identical to the proposed regulation. Amendments to this regulation emphasize the joint nature of investigations between local Child Protective Services (CPS) staff and staff in designated out of family settings where child abuse or neglect is alleged to have occurred.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On August 14, 2002 the Virginia Department of Social Services approved final changes in the language of this regulation, 22 VAC 40-730-10 et seq., Investigation of Child Abuse and Neglect in Out of Family Complaints, intended to emphasize the joint nature of designated out of family investigations of child abuse or neglect and to clarify the roles of the parties participating in the investigation.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The statutory authority for promulgating this regulation is found in Title 63.1 Welfare (Social Services) of the Code of Virginia. Chapter 12.1, Section 63.1-248 et seq. of the Virginia Code places responsibility for providing protective services for children with the Department of Social Services. Chapter 1, Section 63.1-25 places authority with the Board of Social Services to make rules and regulations consistent with the Virginia Code Section 63.1-248.1 et seq. These regulations are necessitated by legislation enacted by the 2000 General Assembly session.

The Office of the Attorney General has reviewed these regulations and has certified that the agency has the statutory authority to promulgate regulations and that they comport with applicable state and federal laws.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

These regulations affect child abuse and neglect investigations involving staff in designated out of family settings. Designated out of family settings include state licensed and religiously exempt child day centers; regulated family day homes; private and public schools; group residential facilities; and hospitals or institutions. Chapter 854, 2000 Acts of Assembly made changes to Title 63.1 of the Code of Virginia to amend and reenact Section 63.1-248.6 of the Code, in order to emphasize that child protective services designated out of family investigations are to be conducted as joint investigations. These regulations clarify how a facility administrator can participate with the child protective services social worker in the joint investigation involving one or more of the facility's employees, as per Chapter 854.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

Changes in the language of this regulation are intended to emphasize the joint nature of designated out of family investigations of child abuse or neglect and to clarify the roles of the parties participating in the investigation.

-Section 10: The definitions of "Central Registry" and "identifying information" are deleted. These terms are not used in this regulation and are unnecessary. The definition of "Participate" is intended to explain the joint nature of these investigations.

-Section 20: A cross reference to 22 VAC 40-705, Child Protective Services, was added.

-Section 40: This additional line emphasizes participation by all relevant parties in the joint investigation.

-Section 50: These word changes underscore the requirement to involve other professionals in the investigation, even if there is no state regulatory authority to participate.

-Section 70: This language addresses the need to involve all relevant parties in the planning of the interviews in a joint investigation.

-Sections 80 and 90: Final authority is vested in the CPS agency for determining who will participate in interviews when there appears to be a conflict of interest.

These final regulatory changes are essential to comply with the changes to the Code of Virginia.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters

of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Local CPS workers will be required to conduct joint out of family investigations with a representative of the appropriate regulatory authority for regulated or religiously exempt child day centers and, in cases where no state regulatory authority exists, the facility administrator or school superintendent. These joint investigations, in designated out of family settings, will be conducted in the least intrusive way by emphasizing the joint or collaborative nature of these investigations. The collaborative nature of the investigations is seen as an advantage to the public, the agency, and the citizens of the Commonwealth. There are no known disadvantages to the public, the agency, or the Commonwealth.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The final regulation is identical to the proposed regulation, with no changes since the publication of the proposed regulation.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No public comment was received.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Changes in the language of this regulation are intended to emphasize the joint nature of designated out of family investigations of child abuse or neglect and to clarify the roles of the parties participating in the investigation.

-Section 10: The definitions of "Central Registry" and "identifying information" are deleted. These terms are not used in this regulation and are unnecessary. The definition of "Participate,"

means to take part in the activities of the joint investigation as per a plan for investigation developed by the CPS worker with the facility administrator or regulatory authority or both, and is intended to explain the joint nature of these investigations.

-Section 20: A cross reference to 22 VAC 40-705, Child Protective Services, was added to emphasize that this regulation is limited in scope to the topics contained herein. All issues regarding investigations, findings and appeals are found in Child Protective Services, 22 VAC 40-705, and as such are cross referenced and incorporated into and apply to out of family cases to the extent that they are not inconsistent with this regulation.

-Section 40: Adding the word, "joint" emphasizes participation by all relevant parties in the joint investigation.

-Section 50: These word changes from "may" to "shall" and adding the word, "joint" underscore the requirement to involve other professionals in the investigation, even if there is no state regulatory authority to participate, particularly in the public schools.

-Section 60: Changing the word, "should" to "shall" is to emphasize that even though the Department's Regional CPS coordinator is to review the case at the conclusion of the investigation and prior to notifying anyone of the disposition, the local agency is to complete the investigation in the legislatively mandated time frame.

-Section 70: Adding the language, "When the administrator or designee chooses to participate in the joint investigation, he will be invited to participate in developing the plan for investigation, including decisions about who is to be present in interviews" addresses the need to involve all relevant parties in the planning of the interviews in a joint investigation.

-Sections 80 and 90: Final authority is vested in the CPS agency for determining who will participate in interviews when there appears to be a conflict of interest. However, when there is no conflict of interest, the regulation is clear that the regulatory staff person or facility administrator or designee shall be involved both in planning for the investigation and deciding who will be present for the interviews of the children and alleged abusers and neglectors.

These final regulatory changes are essential to comply with the changes to the Code of Virginia.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed changes in the final regulation are expected to mainly affect public and private school authorities in Virginia. In fiscal year 1997-98, 338 investigations involved staff in public and private schools; in fiscal year 1998-99, 263 investigations involved school staff. These numbers suggest that the school authorities will be invited to participate in approximately 300 investigations annually. The proposed changes are likely to produce more accurate decisions through the information and cooperation provided by school authorities. More accurate findings will almost certainly improve public welfare. Parents can be encouraged that their children are likely to be safer in the schools with these changes