

**VIRGINIA DEPARTMENT OF SOCIAL SERVICES
APPEALS AND FAIR HEARINGS UNIT
CHILD PROTECTIVE SERVICES SECTION**

Virginia Code § 63.2-1526 establishes the hearing procedure for Child Protective Services (CPS) appeals. Virginia Code § 63.2-100 defines an “abused or neglected child.” Virginia Code § 63.2-1505 sets forth the investigative and reporting responsibilities of local agencies. Virginia Administrative Code (VAC), beginning at 22 VAC 40-705-10, describes the regulations pertaining to CPS appeals and the responsibilities of local agencies.

NO WEAPONS OF ANY TYPE ARE PERMITTED IN THE HEARING ROOM. THIS DOES NOT INCLUDE WEAPONS CARRIED BY LAW ENFORCEMENT OFFICERS APPEARING IN THE COURSE OF THEIR DUTIES.

BEFORE THE HEARING

General Matters

The case is assigned to a hearing officer, who will schedule a hearing within **45 days** of receipt of the request, unless there are delays due to subpoena requests, depositions, or scheduling conflicts.

- Upon the **written request** of the appellant to the local agency, the agency must furnish copies of all information used in making its determination, except information protected by statute or regulation. The Hearing Officer’s decision may not be based on information not provided to the appellant.
- The Hearing Officer must base his/her decision on information that was provided to both the local agency and the appellant.
- The locality is required, upon the written request of the appellant, to provide to the appellant all information upon which the local agency relied in making its determination. The local agency shall **not** release:
 - a. The name of the complainant or person making the report;
 - b. Information that may endanger the well-being of a child;
 - c. The identity of any collateral witnesses or any other person if disclosure may endanger their life or safety;
 - d. Information prohibited from disclosure by state or federal law or regulation. See § 63.2-1526(A) of the Code of Virginia.
- Both parties, or their counsel, will be **notified in writing** of the date, time and location of the hearing. The appellant is responsible for ensuring that the hearing officer has a current and correct address for receiving correspondence.
- The hearing may be held at the local agency, a nearby agency, a DSS Regional Office, or at another agreed-upon location.

- The hearing may be conducted by **telephone conference call** or **in person**. However, if either party objects to a telephone hearing, the hearing will be conducted in person.
- An appellant requiring special assistance or an accommodation must notify the hearing officer as soon as possible.
- Requests for sign language interpretation must be made through the Hearing Officer. Foreign language interpretation must be arranged by the Appellant.
- The Appellant must advise the Hearing Officer of any change of address.
- The Appellant is to make appropriate arrangements for child care as no children will be allowed in the hearing.
- The hearing may be **rescheduled** once, for good cause, as determined by the hearing officer, if the request is made in advance (except in an emergency).
- A **prehearing conference** may be held in order for the hearing officer to address preliminary matters such as the number of witnesses who will be allowed to testify.
- Both the agency and the appellant have the right to depose witnesses and request the issuance of subpoenas either for documents or to compel the attendance of witnesses to testify at the hearing.¹

Depositions

Both the agency and the appellant may depose up to five witnesses. The number of witnesses to be deposed will be determined by the hearing officer. The party deposing a witness must bear the expense of the deposition. **Neither the agency nor the appellant may depose:**

- A. The child victim;**
- B. The child victim's siblings;**
- C. A party to the hearing.**

- The party deposing a witness must give the witness and the opposing party reasonable **notice** of the date, time and location of the deposition, and send the hearing officer a copy of the notice.
- The opposing party may attend the deposition and question the individual being deposed.
- The hearing officer will not authorize the taking of a deposition where, in their judgment, the deposition is sought for the purpose of harassment, is not reasonably calculated to lead to relevant evidence, or is cumulative.
- Either party may enter any deposition taken into evidence at the hearing or prior to the hearing. The submitting party must provide a **deposition summary** of relevant testimony.

Subpoenas

- Requests for subpoenas to compel witnesses to attend the hearing must be submitted **in writing** to the hearing officer and a copy sent to the opposing party.
- **Subpoena requests must be submitted thirty days before the scheduled hearing.**
- The request must set forth **good cause** for each subpoena requested and must include a complete address where the witness may be found.

¹ A deposition is testimony taken under oath outside of the hearing. A transcript is made of the deposition and submitted to the hearing officer prior to or at the hearing. A subpoena is a written command to appear and give testimony or to produce documents related to the investigation.

- After reviewing the request and any objections made by the opposing party, the hearing officer will rule on the subpoena request and, if the request is granted, issue the subpoena.
- Before the hearing officer will forward the subpoena to a sheriff for service, the hearing officer must receive a check for the **service fee** of \$12 per subpoena. The check must be made payable to the appropriate sheriff. In the alternative, the requesting party may ask that the subpoena be forwarded to the requester for service.
- The party who subpoenas a professional or expert witness is responsible for payment of any fee to that witness.
- If a witness fails to appear for a deposition, a subpoena may be requested to compel attendance at a rescheduled deposition or at the hearing.
- Upon petition, the **juvenile and domestic relations district court** has the power to **enforce** a subpoena or to **review** a hearing officer's refusal to issue a subpoena.
- The hearing officer will not issue any subpoena where, in their judgment, the subpoena is sought for the purpose of harassment, is not reasonably calculated to lead to relevant evidence, or is cumulative.

Subpoenas for Medical Records

Requests for Subpoenas for Medical Records must include a copy of the Notice provided to the individual whose medical records are being sought informing them of the request for subpoena and advising them of their right to object to the subpoena and of their right to file a Motion to Quash in the event the subpoena is granted over their objection. The following constitutes acceptable notice:

The attached Request for Subpoena means that [party] has asked the Hearing Officer to issue a subpoena to [your doctor or other health care provider] requiring them to produce your medical records. [Your doctor or other health care provider] is required to respond by providing a copy of your medical records. If you believe your records should not be disclosed and object to their disclosure, you must notify the Hearing Officer of your objection in writing within 15 days of your receipt of this letter

If the subpoena is issued over your objection, you may be able to file a motion to quash the subpoena with the appropriate Juvenile and Domestic Relations District Court. You may contact the JDR Court clerk's office to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a motion to quash in JDR court, it must be filed as soon as possible before the Hearing Officer issues the subpoena or the provider sends out the records in response to the subpoena.

If you elect to file an objection with the Hearing Officer or file a motion to quash in JDR court, you must notify your [doctor or other health care provider(s)] that you are filing the motion so that [the provider] knows to send the records to the Hearing Officer or the JDR Court in a sealed envelope or package for safekeeping while your motion is being decided.

THE HEARING

- The hearing will be **recorded**. A copy of the recording of the hearing will be provided to either party upon written request. Either party may employ a court reporter to transcribe the hearing. Either party may tape the hearing.
- The hearing officer has **complete authority** over the hearing, including the authority to limit the number of witnesses and to require that evidence be relevant to the CPS disposition.

- The hearing officer may stop the hearing if he or she believes a participant to be under the influence of illegal drugs or is intoxicated.
- The hearing officer may stop the hearing if participants become verbally abusive and fail to follow the hearing officer's directives with regard to their behavior.
- Formal **rules of evidence** do not apply. Only relevant evidence will be admitted.
- The hearing officer will explain the **hearing procedure** on the record before the hearing begins.
- The local agency and the appellant have the right to offer the testimony of witnesses, to offer up to 5 depositions, and to submit documents previously subpoenaed.
- The hearing officer will administer an **oath** or **affirmation** to any person who testifies at the hearing.
- The hearing will generally follow this **order**:
 1. Introductory statement and introduction of attendees by hearing officer;
 2. Agency opening statement (may be waived);
 3. Appellant's opening statement (may be waived);
 4. Presentation of the agency's case and questions by appellant;
 5. Presentation of the appellant's case and questions by the agency;
 6. Agency closing statement (may be waived);
 7. Appellant's closing statement (may be waived).
- The hearing officer may hold the record open to receive **additional evidence** for up to 14 days following the hearing at the request of either party.
- A **written decision** will be sent by certified mail, return receipt requested, to the appellant within 60 calendar days of the close of the record. The agency and appellant's counsel will be sent copies of the decision by first class mail.

AFTER THE HEARING

- The hearing officer will notify the **Central Registry, a subsection of OASIS (On-Line Automated Services Information System)** of the decision. The decision will be mailed to the Appellant via certified mail and to the Agency via courier or first class mail. If applicable, the decision will also be forwarded to counsel for the Appellant and counsel for the Agency.
- If as a result of the final appeal the original disposition is amended, the parents of the involved child(ren) and all others who received notification initially will be notified **by the local agency.**
- An appellant who is dissatisfied with the decision of the hearing officer may appeal to the appropriate circuit court. The **appeal process** is governed by Part 2A of the Rules of the Supreme Court of Virginia. The Hearing Officer's decision will contain instructions concerning the appeal process under the section entitled "Right of Review."
- In the event of an appeal to circuit court, the Department will prepare a transcript from the tape recording of the hearing as part of the record. In cases where the appellant employed a court reporter, the court reporter will prepare the hearing transcript.