

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 12

An Act to amend and reenact § 63.2-1526 of the Code of Virginia, relating to appeals from founded complaints of child abuse or neglect; concurrent criminal investigations.

[H 1953]

Approved February 13, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1526 of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1526. Appeals of certain actions of local departments.

A. A person who is suspected of or is found to have committed abuse or neglect may, within ~~thirty~~ 30 days of being notified of that determination, request the local department rendering such determination to amend the determination and the local department's related records. Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of a collateral witness or any other person shall not be released if disclosure may endanger his life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released. The local department shall hold an informal conference or consultation where such person, who may be represented by counsel, shall be entitled to informally present testimony of witnesses, documents, factual data, arguments or other submissions of proof to the local department. With the exception of the local director, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the informal conference. If the local department refuses the request for amendment or fails to act within ~~forty-five~~ 45 days after receiving such request, the person may, within ~~thirty~~ 30 days thereafter, petition the Commissioner, who shall grant a hearing to determine whether it appears, by a preponderance of the evidence, that the determination or record contains information which is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the subject of the determination or record and therefore shall be amended. A person who is the subject of a report who requests an amendment to the record, as provided above, has the right to obtain an extension for an additional specified period of up to ~~sixty~~ 60 days by requesting in writing that the ~~forty-five~~ 45 days in which the local department must act be extended. The extension period, which may be up to ~~sixty~~ 60 days, shall begin at the end of the ~~forty-five~~ 45 days in which the local department must act. When there is an extension period, the ~~thirty-day~~ 30-day period to request an administrative hearing shall begin on the termination of the extension period.

B. The Commissioner shall designate and authorize one or more members of his staff to conduct such hearings. The decision of any staff member so designated and authorized shall have the same force and effect as if the Commissioner had made the decision. The hearing officer shall have the authority to issue subpoenas for the production of documents and the appearance of witnesses. The hearing officer is authorized to determine the number of depositions that will be allowed and to administer oaths or affirmations to all parties and witnesses who plan to testify at the hearing. The Board shall adopt regulations necessary for the conduct of such hearings. Such regulations shall include provisions stating that the person who is the subject of the report has the right (i) to submit oral or written testimony or documents in support of himself and (ii) to be informed of the procedure by which information will be made available or withheld from him. In case of any information withheld, such person shall be advised of the general nature of such information and the reasons, for reasons of privacy or otherwise, that it is being withheld. Upon giving reasonable notice, either party at his own expense may depose a nonparty and submit such deposition at the hearing pursuant to Board regulation. Upon good cause shown, after a party's written motion, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing, except that alleged child victims of the person and their siblings shall not be subpoenaed, deposed or required to testify. The person who is the subject of the report may be represented by counsel at the hearing. Upon petition, the court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review. Such hearing officers are empowered to order the amendment of such determination or records as is required to make them accurate and consistent with the requirements of this chapter or the regulations adopted hereunder. If, after hearing the facts of the case, the hearing officer determines that the person who is the subject of the report has presented information that was not available to the local department at the time of the local conference and which if available may have resulted in a different determination by the local department, he may remand the case to the local department for reconsideration. The local department shall have ~~fourteen~~ 14 days in which to reconsider the case. If, at the expiration of ~~fourteen~~

14 days, the local department fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be returned to the hearing officer for a determination. If aggrieved by the decision of the hearing officer, such person may obtain further review of the decision in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.).

C. Whenever an appeal of the local department's finding is made and a criminal charge *or investigation* is also filed *or commenced* against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal prosecution in ~~either~~ *the trial court* is completed, *until the criminal investigation is closed, or, in the case of a criminal investigation that is not completed within 180 days of the appellant's request for an appeal of the local department's finding, for 180 days after the appellant's request for appeal.* During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in ~~either~~ *the trial court* has been completed, *the criminal investigation is closed, or, in the case of a criminal investigation that is not completed within 180 days of the appellant's request for an appeal of the local department's finding, 180 days have passed,* the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation.