

POLICY 3.4

DISPUTE RESOLUTION PROCESS

3.4.1 Purpose

To provide guidance to local Children's Services Act (CSA) programs regarding the processes related to the dispute resolution process for appealing administrative actions.

3.4.2 Authority

- A. Section [2.2-2648.D.4](#) of the Code of Virginia requires the State Executive Council for Children's Services (SEC) to: "Provide for a public participation process for programmatic and fiscal guidelines and dispute resolution procedures developed for administrative actions that support the purposes of the Children's Services Act (§ 2.2-5200 et seq.). The public participation process shall include, at a minimum, 60 days of public comment and the distribution of these guidelines and procedures to all interested parties."
- B. Section [2.2-2648.D.19](#) of the Code of Virginia requires the SEC to: "Establish and oversee the operation of an informal review and negotiation process with the Director of the Office of Children's Services and a formal dispute resolution procedure before the State Executive Council, which include formal notice and an appeals process, should the Director or Council find, upon a formal written finding, that a CPMT failed to comply with any provision of this Act. 'Formal notice' means the Director or Council provides a letter of notification, which communicates the Director's or the Council's finding, explains the effect of the finding, and describes the appeal process to the chief administrative officer of the local government with a copy to the chair of the CPMT. The dispute resolution procedure shall also include provisions for remediation by the CPMT, including a plan of correction recommended by the Council and submitted to the CPMT. If the Council denies reimbursement from the state pool of funds, the Council and the locality shall develop a plan of repayment."
- C. Section [2.2-2648.D.20](#) of the Code of Virginia requires the SEC to: "Deny state funding to a locality, in accordance with subdivision 19, where the CPMT fails to provide services that comply with the Children's Services Act (§ 2.2-5200 et seq.), any other state law or policy, or any federal law pertaining to the provision of any service funded in accordance with § 2.2-5211."

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3.4.3 Definitions

“Administrative Actions” actions made by the Office of Children’s Services (OCS) on behalf of the SEC related to the failure of a Community Policy and Management Team (CPMT) to comply with the provisions of § 2.2-5200 et seq.

“Community Policy and Management Team (CPMT)” is the entity that develops, implements, and monitors the CSA local program through policy development, quality assurance, and oversight of functions.

“Formal Notice” is the provision of a letter of notification from the OCS Director or SEC that communicates the Director's or the SEC's finding, explains the effect of the finding, and describes the appeal process to the chief administrative officer of the local government with a copy to the chair of the CPMT.

“Office of Children’s Services (OCS)” is the administrative entity of the SEC responsible for ensuring that the SEC's decisions and policies are implemented per the powers and duties granted by section [2.2-2649](#) of the Code of Virginia.

“State Executive Council for Children’s Services (SEC)” is the supervisory council responsible for agency operations, including approval of requests for appropriations with the powers and duties outlined in section [2.2-2648](#) of the Code of Virginia.

3.4.4 Appealable Actions; Parties; Venue; Written Decisions

- A. Administrative actions that may be appealed through the dispute resolution process are:
 - 1. Denial, in whole or in part, by the OCS of financial reimbursement for expenditures incurred by a CPMT to COV § [2.2-2648\(D\)\(20\)](#); and
 - 2. Request by the OCS for the recoupment of prior reimbursement provided to a CPMT, pursuant to [COV § 2.2-2648\(D\)\(20\)](#).
- B. Only a CPMT can file an appeal. Appeals are not available to clients of CSA services or to any subgroup of the CPMT, including any member agency or individual member.
- C. All hearings and meetings related to appeals shall be held in the Richmond, Virginia area. Informal hearings may be held at an alternate location as agreed to by all parties.
- D. The terms of any final case decision by the OCS or the SEC Council, as signed by it, rendered at the informal or formal stages of the Appeal Process shall be served upon the CPMT by mail unless service otherwise made is duly acknowledged by them in writing. The signed originals shall remain in the custody of the OCS as public records;

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and they, or facsimiles thereof, together with the full record or file in every case, shall be made available for public inspection or copying except *as provided in the Virginia Freedom of Information Act COV § 2.2-3700 et seq or unless otherwise provided by state or federal law.* ~~(i) so far as the OCS may withhold the same in whole or part for the purpose of protecting individuals mentioned from personal embarrassment, obloquy, or disclosures of a private nature including statements respecting the physical, mental, moral, or financial condition of such individuals or (ii) for trade secrets or, so far as protected by other laws, other commercial or industrial information imparted in confidence.~~

- E. The CPMT shall be entitled to be represented by counsel at all hearings and meetings related to appeals.

3.4.5 Appeal Process

- A. Written finding. Upon receipt by the CPMT of a formal written notice from the Executive Director of OCS which communicates a finding by the Executive Director requiring action pursuant to subsection 3.4.1(a), and the basis for such finding, a local CPMT shall have the right to appeal such finding and action.
- B. Request for Reconsideration. Within 45 calendar days of issuance of the formal written notice from the Executive Director, a CPMT appealing such finding and action may file a written Request for Reconsideration with the Executive Director stating its intention to appeal the finding and action and the reasons why the CPMT claims the finding and action are not appropriate. If the formal written notice from the Executive Director is delivered to the CPMT by regular mail, 3 calendar days shall be added to the time in which the CPMT must respond. The Request for Reconsideration shall also include a request for the informal conference pursuant to subsection 3.4.2(c). The CPMT may waive its right to the informal conference and submit a Notice of Appeal requesting a formal hearing before the ~~SEC Council~~ pursuant to subsection 3.4.2(d). The Notice of Appeal shall include a statement of the finding and/or action by the Executive Director being appealed and a brief statement of the reasons why the CPMT claims the finding and/or action are not appropriate.
- C. Informal conference.
 - 1. The informal conference shall be held within 15 business days of the Executive Director's receipt of the Request for Reconsideration unless both parties agree in writing to hold the informal conference at a later date.

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2. The purpose of the informal conference is to allow the CPMT to present, and the Executive Director to consider, any additional facts and reasons providing the basis for the CPMT's appeal of the written findings and action by the Executive Director.
3. The CPMT shall have the right to (i) receive reasonable notice thereof, (ii) appear in person and to be represented by counsel, (iii) have other witnesses appear for the informal presentation of factual data, argument, or proof related to the matter, (iv) have notice of any contrary fact basis of information in the possession of the OCS that can be relied upon in making an adverse decision, and (v) be informed, briefly and generally in writing, of the factual or procedural basis for a decision in any case prior to the commencement of the informal conference.
4. The OCS may, in its decision, rely upon public data, documents, or information only when OCS has provided all parties with advance notice of its intent to consider such public data, documents, or information. This requirement shall not apply to OCS's reliance on administrative precedent.
5. The Executive Director shall have the right to counsel for the informal conference.
6. The CPMT shall have the right and option to submit any documentation to support its case prior to, during, and/or at any time subsequent to the informal conference and prior to the rendering of the Executive Director's written determination.
7. Within 30 business days following the conclusion of the informal conference, or the receipt by the Executive Director of all relevant documents or exhibits, whichever is later, the Executive Director shall render a final decision. The parties may agree in writing to extend this period of time.
8. In the event the Executive Director who issued the written notice of finding and action is unable to conduct the informal conference or issue a written determination following the informal conference due to sickness, disability, or termination of their official capacity with the OCS, the timeframe provisions herein shall commence from the date that either alternate OCS personnel are assigned to the matter or a new proceeding is conducted, if necessary, whichever is later. The OCS shall provide notice within five calendar days to the CPMT of any such inability or incapacity of the Executive Director that necessitates a replacement or a new proceeding.
9. The CPMT may contest the final decision of the Executive Director by submitting to the OCS a written Notice of Appeal requesting a formal hearing before the

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~~SEC Council~~ within 30 calendar days of the issuance of the Executive Director's final decision. If the Executive Director's final decision is delivered to the CPMT by regular mail, 3 calendar days shall be added to *the* time in which the CPMT must respond. If the OCS does not receive such a Notice of Appeal within this time period, the CPMT shall be deemed to accept the final decision of the Executive Director and shall immediately comply therewith. The Notice of Appeal shall include a statement of the finding and/or action by the Executive Director being appealed and a brief statement of the reasons why the CPMT claims the finding and/or action are not appropriate.

D. Formal hearing.

1. Within 5 business days of receipt by the Executive Director of the Notice of Appeal submitted by a CPMT, the Executive Director shall contact the CPMT chair to schedule a mutually agreeable date for the formal hearing and to establish guidelines for the receipt of documentation supporting the Notice of Appeal.
2. In all such formal proceedings all parties shall be entitled to be accompanied by and represented by counsel, to submit oral and documentary evidence and rebuttal proofs, to conduct such cross-examination as may elicit a full and fair disclosure of the facts, and to have the proceedings completed and a decision made. The burden of proof shall be upon the CPMT. The presiding officer at the proceedings may (i) administer oaths and affirmations, (ii) receive probative evidence, exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttal, or cross-examination, rule upon offers of proof, and oversee a verbatim recording of the evidence, (iii) hold conferences for the settlement or simplification of issues by consent, (iv) dispose of procedural requests, and (v) regulate and expedite the course of the hearing.
3. The ~~SEC Council~~ shall conduct the formal hearings and the Chair of the ~~SEC Council~~ shall serve as presiding officer. The decision of the ~~SEC Council~~ shall be final and shall be made in writing in the form of a Final Order of Disposition. The Final Order of Disposition shall include:
 - a. written findings of fact;
 - b. conclusions of law or policy;
 - c. rationale for its conclusion, including the identification of any documents or policies upon which the conclusion was made; and
 - d. the corrective action plan and/or any repayment plan.
4. Timetable for decision:

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- a. The decision of the ~~SEC Council~~ shall be rendered within 30 calendar days of the formal hearing. If the ~~SEC Council~~ fails to render a decision within 30 calendar days of the date of the formal hearing, the decision is deemed to be in favor of the CPMT.
- b. The provisions of subsection 4(a) notwithstanding, if a quorum of the ~~SEC Council~~ is unable to be met at the time the ~~SEC Council~~ makes its decision due to a member's sickness, disability, or termination of their official capacity with the ~~SEC Council~~, then the timeframe provisions of subsection 4(a) shall be reset and commence from the date that either new board members are assigned to the matter or a new proceeding is conducted if needed, whichever is later. The OCS shall provide notice within five business days to the CPMT of any incapacity of the ~~SEC Council~~ members that necessitates a replacement or a new proceeding.

3.4.6 Policy Review

This policy will be subject to periodic review by the State Executive Council for Children's Services.

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