

FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. In October of 2007, The Los Angeles Superior Court entered its Order in the matter of Amelia Gomez v. Bill Lockyer and Rita Saenz. This Order mandated the California Department of Social Services (CDSS) to implement specified grievance procedures for challenging reference to the Child Abuse Central Index (CACI). On January 15, 2009, the United States Court of Appeals for the Ninth Circuit issued its decision in the matter of Humphries v. County of Los Angeles. In its decision, the Ninth Circuit found unconstitutional the reference of an individual's name for listing on the CACI without due process. On May 29, 2009, CDSS received notice of a lawsuit filed against Marin County and CDSS, in the matter of Nicholas v. CDSS; Marin County. In this lawsuit, petitioner challenges the Notice of Child Abuse Central Index listing and grievance hearing procedures established pursuant to All-County Letter No. 07-53 (December 17, 2007).
2. These emergency regulations establish the processes required to be implemented by county welfare departments (CWDs) to comply with the constitutional requirements attendant to reference of an individual's name for listing on the CACI pursuant to Penal Code Section 11169. Welfare and Institutions Code Section 361.4(c) requires the county social worker to cause a check of the CACI for all adults living in the home whenever a child may be placed in the home. Health and Safety Code Section 1522(b) requires the Community Care Licensing (CCL) Division of CDSS to conduct a check of the CACI prior to issuing a license to care for children. A failure or delay by the CWD to comply with the constitutional requirement for due process when referring an individual's name for listing on the CACI could result in a court decision invalidating the CACI. Alternatively, a failure or delay by the CWD to comply with the constitutional requirement for due process when referring an individual's name for listing on the CACI could result in a court decision preventing both the county social worker and the CCL Division from accessing the CACI. Either of these developments would create an immediate risk to CDSS' ability to preserve public health and safety of children placed in licensed or approved foster care homes, and licensed child care facilities. Lack of effective regulations will also leave the State and counties vulnerable to legal action.
3. The emergency regulations establish a clear process for CWDs to utilize when fulfilling their legal obligations under Penal Code Section 11169. The regulations provide for notice to the individual whose name the county is referring to the Department of Justice for listing on the CACI, and for the opportunity for that individual to challenge that action before an independent grievance officer.

4. A delay in implementing these regulations may result in court action invalidating the CACI, or a court action preventing CDSS and CWDs from accessing information on the CACI, as required by statute.
5. Emergency regulations were filed and became effective with the Secretary of State on August 31, 2009. The public comment period was held on January 13, 2010. Testimony was received orally and in writing from several sources. CDSS Legal and Program are drafting responses to the testimony received for the final Statement of Reasons. The readoption is necessary to continue compliance with the Los Angeles Superior Court Order in the matter of Amelia Gomez v. Bill Lockyer and Rita Saenz and allow the benefit of any further required public comment periods (e.g., 15-day renote).
6. After the initial package was filed with the OAL in August 2009, the Department was required to strengthen the Statement of Reasons, which in turn, delayed scheduling the public hearing. As a result of this delay, the public hearing date was not available until January 13, 2010, which did not leave an adequate amount of time for the CDSS Office of Regulations Development (ORD) to complete their sign-off process and submit the completed package to ~~ORD~~ OAL by the deadline.
7. The Department has been impacted by the implementation of three (3) furlough days per month, which decreases the amount of time staff have to complete work assignments. This impact is evident in the Department's inability to respond to the shortened timelines in an emergency regulations process.
8. Therefore, in order to protect the public peace and general welfare of the accused, these regulations are readopted on an emergency basis to be effective immediately upon filing with the Secretary of State.
9. Emergency regulations were readopted for a 90-day extension effective February 26, 2010 with an expiration date on May 28, 2010. The 15-day renote public comment period was released on March 18, 2010. Further comments were received in writing from several sources. CDSS Legal and Program are drafting responses to the comments received for the final Statement of Reasons and may require a second 15-day renote period. This second and final readoption is necessary to continue compliance with the Los Angeles Superior Court Order in the matter of Amelia Gomez v. Bill Lockyer and Rita Saenz and allow the benefit of any further required public comment periods (e.g., 15-day renote).

INFORMATIVE DIGEST

In 2004, the California Department of Social Services (CDSS) was party to a lawsuit, Gomez v. Saenz, which alleged that individuals' names were submitted to the Child Abuse Central Index (CACI), a child abuse registry maintained by the California Department of Justice, without a right to challenge the placement, which the plaintiff alleged was a violation of due process guarantees of the California Constitution. In addition, the lawsuit challenged the accuracy of information retained on the CACI, alleging that a significant number of listings were maintained on the CACI without adequate underlying files to support the listing. This lawsuit was settled in

October 2007 and as part of the agreement between the parties, CDSS agreed to amend current regulations to reflect the new grievance hearing procedures as required by the settlement.

Pursuant to Penal Code Section 11169, an individual's name is submitted to the CACI whenever a county child welfare services (CWS) agency determines that a child abuse and/or neglect (excluding general neglect) allegation regarding that individual is found to be inconclusive or substantiated. Prior to *Gomez v. Saenz*, individuals did not have the opportunity to challenge their listing. This settlement agreement provides individuals with due process by allowing them to dispute their listing on the CACI. The settlement agreement further stipulates that county CWD agencies are to furnish a request for grievance hearing and notice of listing on CACI forms to persons subject to listing on CACI.

The stipulation to create regulations based on *Gomez v. Saenz* requires the adoption of a new section in the Manual of Policies and Procedures, Division 31 regulations. In addition, amendments to other portions of Division 31 were necessary to provide consistency and to accurately reflect the due process requirements pursuant to the *Gomez v. Saenz* settlement agreement.

The settlement agreement includes specific language that explains the procedures to provide due process for individuals listed on CACI. Significant additions to these regulations include: 1) grievance request procedures, 2) grievance hearing procedures, and 3) procedures for grievance review decisions.

Section 31-003 provides definitions for the new notification forms required by the settlement agreement.

Section 31-021 provides detailed grievance hearing procedures.

Section 31-410 of Division 31 regulations outlines special requirements for notifying individuals of their listing on the CACI. Additional information is included to specify that a substantiated CACI listing does not preclude temporary placement of a child with a relative or non-relative extended family member.

Section 31-501 of Division 31 regulations outlines special requirements for reporting child abuse and neglect to the California Department of Justice. Amendments to this section are needed to include new procedures and handbook information defining child abuse or neglect requirements as stipulated in the *Gomez v. Saenz* lawsuit settlement agreement.

COST ESTIMATE

1. Costs or Savings to State Agencies: The May Revision includes \$2.3 million total funds (\$1.6 million general fund) for the anticipated costs under the Gomez vs. Saenz premise.]
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None.

3. Nondiscretionary Costs or Savings to Local Agencies: Additional expenditures of approximately \$700,000 in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation implements the court mandate set forth by the Superior Court of California court in the case of Gomez vs. Saenz.
4. Federal Funding to State Agencies: No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

LOCAL MANDATE STATEMENT

The addition to Division 31, Section 31-021 (Child Abuse Central Index [CACI] Grievance Review Procedures), the amendments to Division 31, Section 31-501 (Child Abuse and Neglect Reporting Requirements), and the amendments to Division 31, Section 31-410 (Temporary Placement) will impose mandates on local county child welfare agencies.

These regulations will require additional workload for the agencies. The additional activities include noticing individuals of their listing on the CACI, preparing for and performing grievance hearings as requested, and other documentation as specified in the regulations. This will create additional costs for the local CWS agencies.

At this time, it is unknown what fiscal impact these new regulations will have on the CDSS. County CWS agencies are currently time-studying grievance hearing activities to a Program Code created specifically for this purpose.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10553, 10554, and 10850.4, Welfare and Institutions Code; *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896. Subject regulations implement and make specific Section 827, Welfare and Institutions Code; Penal Code Sections 11165.5, 11165.12, 11166(g), 11166.3, 11167, and 11169.