

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # 1 Division 31 Grievance Review Procedures

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held January 13, 2010, as follows:

January 13, 2010
Office Building # 8
744 P St. Room 105
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on January 13, 2010.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

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California Department of Social Services
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CHAPTERS

Manual of Policies and Procedures, Division 31 (Child Welfare Services Program), Chapter 31-000 (General Requirements), Section 31-003 (Definitions – Forms) and Section 31-021 (Child Abuse Central Index (CACI) Grievance Procedures); Chapter 31-400 (Placement), Section 31-410 (Temporary Placement); and Chapter 31-500 (Special Requirements), Section 31-501 (Child Abuse and Neglect Reporting Requirements)

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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. The new notification forms are added by reference (i.e., SOC 832 (“Notice of Child Abuse Central Index Listing” Rev. 5/08), SOC 833 (“Grievance Procedures for Challenging Reference to the Child Abuse Central Index,” Rev. 3/08), and SOC 834 (“Request for Grievance Hearing,” Rev. 6/08)).

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.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would

necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

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, and *Nicholas v. CDSS and Marin County*, Case No: CIV092626. 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.

CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person: Kenneth Jennings (916) 651-2586
Backup: Robin Garvey (916) 657-2586

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code Section 11346.4.