

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814

**REASON FOR THIS TRANSMITTAL**

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

March 26, 2008

ALL COUNTY INFORMATION NOTICE NO. I-22-08

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHILD WELFARE SERVICES
PROGRAM MANAGERS

SUBJECT: IMPLEMENTATION ACTIVITIES FOR GOMEZ V. SAENZ LAWSUIT
SETTLEMENT

The purpose of this All County Information Notice (ACIN) is to provide instruction regarding the activities set forth in the Gomez v. Saenz ("Gomez") lawsuit settlement. All County Letter (ACL) 07-53 provided an overview of the settlement agreement. This letter clarifies the responsibility of child welfare agencies to purge names from the Child Abuse Central Index (CACI), notify individuals of their listing on the CACI and right to grieve the listing, and provide grievance hearings for individuals who challenge their name listing on the CACI. In addition, included are answers to frequently asked questions (FAQs) posed by county child welfare agencies.

Background

The Gomez settlement challenged the integrity of the CACI and provided due process rights for individuals whose names have been submitted for listing on the CACI as a result of a qualifying substantiated or inconclusive finding on a child abuse/neglect investigation. As of May 1, 2008, the Gomez settlement allows individuals the opportunity to challenge their name listing on the CACI. Questions regarding the settlement activities were gathered from county welfare agencies and are addressed in this ACIN.

Public Notification

On May 1, 2008, all child welfare and California Department of Social Services (CDSS) Community Care Licensing offices will be required to post a notice informing individuals of their right to determine whether their name is listed on the CACI. The notices will be available online for child welfare offices to print on 8½ X 11 paper (www.cdss.ca.gov - Forms/Brochures tab).

Child welfare offices must then post this notice in a prominent location accessed by the public. In addition to this notification, CDSS will publish the information in at least five newspapers with large circulation, and two Spanish newspapers.

If an individual is interested in determining whether his/her name is listed on the CACI, the notice includes information for contacting the California Department of Justice (DOJ). Individuals must submit a notarized *Child Abuse Central Index Self Inquiry Search Request* form to the DOJ. This form can be obtained either via the [California Attorney General's website](#) or by calling the DOJ's Child Protection Program at (916) 227-2173. Child welfare offices are encouraged to keep a supply of the forms on hand to provide to interested individuals.

Once a properly completed form is received, the DOJ will then perform a CACI search. Within approximately 45 days, the DOJ will send the individual a letter confirming or denying his/her listing on the CACI. If the individual's name is listed on the CACI, the DOJ will inform him/her of the listing, along with county contact information. If the individual wishes to contest the listing, she/he must submit a *Request for Grievance Hearing* form to the county child welfare agency no later than 120 days after the date the notice is posted, as described above.

- Q.1. If a person who is listed on the CACI prior to May 1, 2008, contacts the county to request a grievance hearing after the 120 days they are allowed under the settlement agreement, can the county deny the request? Should the county deny the request?
- A. Although technically the county may deny the request if it is received after the stipulated timeframe, CDSS strongly recommends granting hearings to those individuals who may not have received notice during the notification period. Because individuals who are denied a grievance hearing have the right to appeal to a higher court of law, it is in the best interest of all concerned that the grievance hearing be granted.

Purging or changing listings on the CACI

According to the settlement, counties are required to notify DOJ of any periods of time that underlying investigative files are not available to support names listed on the CACI.

This may be for particular periods of time (i.e. 1993 files destroyed by fire), or whenever the county is aware of an individual case where there is inadequate documentation to support the finding that led to the name listing. In addition, child welfare agencies may contact DOJ if they would like to obtain a disk containing the names of all listed individuals from their county.

Q.2. What is considered supporting documentation?

A. The underlying file should contain enough documentation to support the finding if challenged. This would include:

The identity and contact information for the victim(s) and witnesses;
What abuse or neglect was alleged, what allegations were investigated, what findings were made from the investigation;
Where and when the abuse is alleged to have occurred.

Q.3. What is the process for removing a name from the CACI after a grievance hearing finds in favor of the alleged perpetrator? What is the process for downgrading a child abuse investigation disposition to inconclusive or unfounded?

A. The child welfare agency should reflect the change of allegation type in Child Welfare Services/Case Management System (CWS /CMS) and submit to the DOJ:

A copy of the original *Child Abuse Summary Report* form (SS 8583)
A new SS 8583, which states that supplementary information is being provided for a previously submitted SS 8583 (check the appropriate box in Section 10A, "SUPPLEMENTAL INFORMATION"). This information should be sent to the DOJ at:

Department of Justice
4949 Broadway, Room B216
Sacramento, CA 95820

The DOJ will also accept forms submitted via email or fax. Submit the information to: DOJChildProtectionProgram@doj.ca.gov or fax (916) 227-4094.

Counties may use this contact information to request a disk containing the names of listed individuals.

- Q.4. If the grievance results in a change of allegation conclusion, what procedure should the counties follow to make the change on a case that has already been closed on CWS/CMS?
- A. A code drop was implemented in November 2007 that provided CWS/CMS users the ability to edit allegation conclusions in referrals they cannot reopen because the referral has been promoted to a case. If the referral is closed on CWS/CMS, county staff will need to reopen it, make the appropriate edits and close out the referral. Counties should reference instructions provided in the CWS/CMS Release 6.1.

Notice of CACI listing and Grievance hearings

The settlement requires that counties provide two forms to individuals who are referred to the DOJ for listing on the CACI. The first form is a *Notice of Child Abuse Central Index Listing* (SOC 832), in which the county must include case specific information discovered in its child abuse investigation. The second form is a *Request for Grievance Hearing* (SOC 834) that attaches the hearing procedures, and which includes county contact information. In addition, *Grievance Procedures for Challenging Reference to the Child Abuse Central Index* (SOC 833) must be included in the noticing packet sent to individuals. These forms can be accessed at www.cdss.ca.gov – Forms/Brochures tab. This requirement does not extend to law enforcement agencies that refer individuals to the CACI.

- Q.5. When the noticing regulations came out years back, counties were provided with two sample forms. These forms meet the requirement in Penal Code 11170 that agencies are to provide notice to an individual of their CACI listing when a name search for placement purposes has resulted in a "hit." Relative Assessment Units and some counties have been using this form. With the "cleanup" of CACI will we no longer be required to use this form?
- A. The only noticing form required by the Gomez settlement is the *Notice of Child Abuse Central Index Listing* contained in the settlement. This lawsuit only addresses the requirements of county child welfare agencies in noticing individuals whose names are sent to the CACI as a result of a child abuse/ neglect investigation.
- Q.6. When completing the *Notice of Child Abuse Central Index Listing*, the form provides a section for child welfare agencies to indicate the alleged victim's name. The current form we use only provides the Referral ID number and date of report. Does the settlement change this practice?

- A. Yes. The griever has a constitutional right to know the identity of the person they allegedly abused. The only name redacted in the documentation is the mandated reporter's name.
- Q.7. The settlement requires that "the request for grievance shall set forth the facts which the individual believes provides a basis for reversal of the county's finding of inconclusive or substantiated abuse." What if the grievance request doesn't contain those facts?
- A. It is not a completed grievance form, and it is not sufficient to require due process. The county should let the individual know that the request for grievance has been denied due to an incomplete grievance request. If the individual is able to resubmit a properly completed *Request for Grievance Hearing* within the 30 day timeframe, a grievance hearing should be scheduled.
- Q.8. If the suspect's basis for the grievance is "I didn't know _____ was physical abuse, is that a valid reason for a hearing?
- A. Yes. Acceptable reasons to grant a hearing include the griever not understanding that his/her act was considered abuse. Other acceptable reasons are found on the *Request for Grievance Hearing* form: 1) I am not the person who committed the alleged acts of abuse or neglect, and 2) The alleged acts of abuse or neglect did not occur. In addition, the individual completing the form can check the "other" box, and provide another reason for requesting the hearing.
- Q.9. What are the required forms that must be used for these grievance hearings? Will counties be required to only use the state forms, and can these forms be adapted (with state permission) for county use?
- A. Only the state forms listed below may be used. The settlement requires that counties must provide the listed person with the following:

Notice of Child Abuse Central Index Listing (SOC 832)

This form provides the individual with notice that the county has completed an investigation of suspected child abuse or neglect that the county has determined to be either inconclusive or substantiated and has referred the individual to the DOJ for listing on the CACI. This form includes the victim's name and a brief description of the alleged abuse or neglect, including the date and location it occurred. In addition, a county contact person's name is provided on this form.

This is a state form that must be used and will be added to CWS/CMS in the 6.3 code drop.

Request for Grievance Hearing (SOC 834)

This form provides individuals with notice of the right to challenge their listing in the CACI. The county's address must be included at the bottom of the form. This is a state form that must be used and will be added to CWS/CMS in the 6.3 code drop.

A copy of the Grievance Procedures (SOC 833)

- Q.10. Will CDSS provide samples of other forms counties may need for the grievance process? (i.e. notice to suspect of the hearing time, location, etc.; notice that the grievance request was denied due to a court determining the abuse or neglect occurred (or is pending before a court); or grievance hearing recommendation signed by hearing officer and child welfare director.
- A. The settlement does not proscribe the format for any additional forms that the county may use as a result of the hearing.
- Q.11. What level of detail should the *Notice of Child Abuse Central Index Listing* form include with respect to describing the alleged acts of abuse or neglect?
- A. The form should include summary information regarding the allegation. This would include a brief description of the allegation.
- Q.12. If the suspect is no longer a resident at the last known address, will the county incur any liability for disclosing confidential information if the notice is read by another individual living at that address? If a current address is unknown, can the county simply state that for the file and not send notice?
- A. The notification is presumed served when it is mailed to the last known address. However, if the child welfare agency knows that the suspect is no longer at the last known address, they should make a reasonable effort to obtain the suspect's current address. If the suspect has moved and the county is unsuccessful in obtaining further information, then the social worker should document this information in CWS/CMS. Child welfare agencies may need to consult with county counsel to determine whether further steps should be taken to locate the suspect.
- Q.13. Does the County Welfare Department have any obligation to assist the griever in preparing for the hearing in the event they cannot afford their own legal

representation? Is the county required to provide assistance beyond what is required in the settlement (completing the necessary forms to initiate a request for grievance) such as preparing witness lists, gathering facts, etc?

- A. The county is only required to assist the individual in completing the forms if assistance is requested. There is no requirement to provide counsel to the individual.

The Grievance Hearing

A grievance hearing is available to those individuals who wish to contest their listing as a result of the notification, as well as any person who receives a notice that the CWS/ Probation agency has submitted the individual's name to the DOJ for listing on the CACI as a result of a child abuse/neglect investigation. However, persons whose names are listed on the CACI, but whose allegation of abuse/neglect is pending before a court of competent jurisdiction, or when the court has determined that the abuse/neglect has occurred, will not have the right to a grievance hearing. Per the settlement agreement, specific grievance procedures must be followed. The CDSS is developing new grievance hearing guidelines that will be issued via emergency regulations, effective May 1, 2008.

Q.14. Is the grievance officer required to be staffed by someone outside of the line of supervision?

- A. The grievance officer cannot be a person involved in the investigation of child abuse in that case or directly in the chain of command or supervision of any of the persons investigating the child abuse in that case. The restrictions therefore are case specific, not classification specific, so long as they are familiar with the general subject matter of child abuse investigations. Theoretically, a grievance officer could be a supervisor for investigators from another county office, who is not in the chain of command for that investigating social worker involved in the case. The settlement provides maximum flexibility regarding who could serve as grievance officer, and restricts only those persons who worked on the case, or who supervise those who worked on the case. A grievance officer should be:

A staff or other person not involved in the investigation of the alleged child abuse/neglect.

Neither a co-worker nor a person directly in the chain of supervision of any of the persons involved in the investigation of the alleged abuse/neglect unless the agent is the director or chief deputy director of the county.

Knowledgeable of the field and capable of objectively reviewing the complaint.

Q.15. The regulations require counties to release disclosable information to attorneys or representatives when the individual has provided a signed authorization. The settlement also requires the county and complainant to make available for inspection the documents they intend to rely upon during the hearing, ten (10) days prior to the hearing. Further, the settlement provides instructions for presenting evidence during the hearing. Can the grievance officer still allow additional evidence/information to be presented during the hearing that was not previously shared in advance? What are the requirements concerning the sharing of new/additional information during the hearing?

A. The grievance officer may allow additional evidence/information at the time of the hearing, but county staff may ask for a continuance, if necessary, to allow for additional time to review the new information.

Q.16. Will the grievance officer be required to base decisions on information provided at the time of the hearing even if this information that was not available to the social worker at the time of the original investigation?

A. The decision is based on evidence presented at the hearing.

Q.17. Information discussed during the hearing is considered confidential and is not to be released outside of the hearing environment. However, it is possible that information which comes to light during the course of the hearing could constitute grounds for a subsequent child abuse report.

Can information from the hearing be released if it involves new allegations that pertain to child safety?

A. Mandatory reporting laws take precedence in this situation.

Q.18. Will these new grievance procedures replace those listed in Division 31 regulations, section 31-020 (these regulations currently govern the grievance process for foster parents, legal guardians and relative and non-related extended family member approvals)?

A. No, a new section (31-021) is being added that specifically addresses the CACI grievance hearing process.

Q.19. Current law under Welfare & Institutions Code (WI&C) Section 827 requires persons to first petition the juvenile court for the release of the case file, portions of the case file, or information relating to the contents of the case file. Did the Gomez lawsuit settlement change this requirement? Are counties still bound by the requirements of WI&C Section 827?

A. Penal Code Section 11167.5(b)(11) authorizes counties to provide suspects with reports including the child abuse investigation report. Additionally, Penal Code Section 11167(e) requires the county, when making contact with the suspect, to provide the suspect with information concerning the complaints and allegations against the suspect. The CDSS recommends that each county consult with their county counsel regarding issues of confidentiality of child abuse records.

Q.20. The ACL 07-53 indicates that “persons whose names are listed on the CACI but whose allegation of abuse/neglect is pending before a court of competent jurisdiction, or when the court has determined that the abuse/neglect has occurred, will not have the right to a grievance hearing.” If a petition does not end up being sustained, at what point is the person listed on the CACI eligible to request a hearing, and what timeframe do they have to then make that request?

A. If the individual requested a hearing when his/her case was still pending before the court, the hearing would be denied. If, however, the court does not sustain the petition, the individual would then have the opportunity to contest the listing and request a hearing within the timeframe allowed per grievance procedures. In these cases, the child welfare agency should develop a procedure for placing the initial grievance request on hold and tracking the results of the court’s decision.

Q.21. At times the law enforcement agency will request or instruct child welfare staff to restrict its child abuse investigation. Commonly law enforcement will ask the county to refrain from interviewing the suspect. Does the county have a legal obligation to submit to DOJ the *Child Abuse Summary Report* (form SS 8583) under these circumstances?

A. CDSS hopes to issue an ACL in the future, which will provide specific instructions to counties to address this issue.

Q.22. What other reviews can counties employ in addition to the review required in the Gomez settlement agreement?

A. The settlement does not preclude child welfare agencies from offering other dispute resolution meetings (i.e. informal meetings) to resolve the matter.

Q.23. If a county provided a CACI grievance hearing prior to May 1, 2008, and denied the request to remove the individual's name from the listing, will that person have the right to request another grievance hearing after the implementation date?

A. It would depend on the processes provided in the prior grievance hearing. In the Gomez settlement, CDSS has agreed that procedural elements such as document exchange, witness lists, the opportunity to cross examine witnesses, and to have a disinterested but knowledgeable hearing officer is necessary. If the prior grievance hearing did not substantially provide for these and other processes that are set out in the Gomez settlement, the individual in the prior grievance hearing did not substantially receive the level of due process they are entitled to under the Gomez settlement. In cases where doubt exists as to whether the prior grievance hearing provided these important processes, counties should provide a new grievance hearing.

In order to time study activities related to the Gomez grievance hearings, CDSS will issue a program (time study) code in an upcoming County Fiscal Letter.

Please direct all questions regarding any of the listed activities to Diane Brown, Manager of the Policy Development and Support Unit of the Child Welfare Policy and Program Development Bureau at (916) 651-6160.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Acting Deputy Director
Children and Family Services Division

c: CWDA
Karuk Tribe