

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814



May 25, 1989

ALL-COUNTY INFORMATION NOTICE NO. I-32-89

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY COUNSELS

SUBJECT: STATE HEARINGS, NOTICES OF ACTION AND CONFIDENTIALITY FOR
RECIPIENTS OF CHILD WELFARE SERVICES.

REFERENCE: ACL 87-99 AND ACIN I-99-87

The regulations and laws that protect the due process rights of recipients/applicants (hereafter referred to as recipients) of Child Welfare Services (CWS) and preserve the confidentiality of evidence are complicated and as such have caused problems in interpretation. This All-County Information Notice (ACIN) contains the following components: issues which may be heard in a State Hearing (SH); issues that are subject to the grievance process; a description of the SH process with the Administrative Law Judge's (ALJ) responsibilities; the County's responsibilities in the SH process; general guidelines on access to CWS records.

SHs and Notices of Action (NOAs) are specifically required by Federal and State law and regulations listed in 45 Code of Federal Regulations (CFR) 205.10, 45 CFR 1355.30 et seq., Federal Policy Interpretation Question (FPIQ) ACYF-PIQ-83-4 dated 10/26/83, State Law contained in the Welfare and Institutions Code (W&IC) 10950 and State regulations contained in the Manual of Policy and Procedures (MPP), Divisions 10, 22 and 30. Confidentiality is regulated by W&IC 827, 10850 and 366, Penal Code (PC) 11165 to 11167.5, and MPP 19-006 and 22-001.

Explanation of Terms with Responsibilities and Duties:

Appeal: The act of requesting a SH regarding a County (hereafter referred to as a "CWD") action or inaction. While an individual may file a SH request on any issue, the ALJ does not have the authority to change a specific requirement of a court order. (ACL 87-99)

State Hearing: "A form of administrative hearing mandated by federal and state law whereby a dissatisfied claimant may obtain an impartial review of a county action." {MPP 22-001(a)(22)}

Notice of Action: The CWD is required to give adequate written notice to a recipient of CWS informing the recipient of the right to a SH at the time of application and at the time of any action affecting the case. A change in foster care (FC) placement (from one FC home to another), which is not part of a change in the service plan, is not considered to be a change in services. (W&IC 16507.5, MPP 10-116, ACL 87-99 and ACIN I-99-87)

Examples:

1. The CWD initiates a change in a service plan due to the child's needs for treatment that cannot be provided by the FC family home. The change results in the child being placed in a FC group home. In this case, a NOA would be required.
2. The CWD moves a child from one FC placement to another. There has been no change in the service plan. A NOA is not required.

Jurisdiction: The ALJ has the authority to review and act on CWD actions which are discretionary. The ALJ does not have the authority to change a Juvenile Court order or decision. (ACL 87-99)

Examples:

1. A juvenile court judge instructs the CWD to provide supervised visitation for the mother "as indicated". The CWD determines that two visits per month will be allowed. The mother files for a SH based on the frequency of the visits. The CWD action was discretionary, and as such, the ALJ has the authority to make a determination as to whether the county abused its discretion in implementing the court order and if necessary to issue an appropriate administrative order.
2. A juvenile court judge instructs the CWD that due to the failure to comply with random drug tests, the visitation with the child will be supervised. The CWD sends a NOA to the mother informing her of the change in the Service Plan. The mother files for a SH based on the requirement for supervision. The CWD action was not discretionary, and therefore, the ALJ does not have the authority to change what is required by the court order.

Recipient: Refers to a person(s) receiving CWS including the parents/guardians, minor child over 10 years, and in some cases, foster parent(s). (ACL 87-99)

Claimant: The person who has requested a SH and is or has been either a recipient of CWS, a foster parent or foster care provider, a representative of the estate of a deceased recipient, the caretaker relative and the guardian or conservator of a recipient. (MPP 22-001)

Examples:

1. A non-custodial mother applies for CWS and is denied services. The mother then files for a SH. While the mother is a claimant and can file for a SH, this does not give her or her AR access to the CWS files on the child. She would have access to her own file.
2. A grandmother files for a SH. While she may request a SH, she is not considered a claimant and her request will be dismissed.

Stay-In-Services: If the recipient files for a SH prior to the effective date of the change in services, the recipient may be entitled to continue to receive the services pending a ruling by the ALJ, with the following exceptions:

1. A specific court order is obtained to start, change or terminate services;
2. When the statutory time limits for any program have expired;
3. When the recipient voluntarily and knowingly waives services;
4. There is a documented threat of danger to the child; or
5. The CWD makes a change in the foster care placement of the child without changing the service plan.

(W&IC 16507.5, MPP 22-022.5 et seq.)

Authorized Representative (AR): An individual or organization authorized by the claimant to represent him/her during all aspects of the hearing process. The AR may file an oral request for a SH without immediately submitting written authorization from the claimant. The AR must provide written authorization to the CWD prior to inspecting or receiving CWS records. The AR shall receive all copies of correspondence regarding the SH. This person is bound by the confidentiality rules. (MPP 22-010 et seq.)

Issues Which May be Appealed:

SHs for recipients of CWS do not and must not duplicate or infringe upon the juvenile court system. The Department of Health and Human Services issued a FPIQ (ACYF-PIQ-83-4 dated 10/26/83), that describes the types of CWD actions which may be appealed.

A recipient of CWS may file for a hearing due to the movement of his/her case between program components, e.g.: Family Reunification (FR) to Family Maintenance (FM), FR to Permanent Placement (PP), etc. The recipient may file based on an allegation that he/she was not informed of his/her right to participate in periodic administrative reviews. Another reason for a SH request involves changes, initiation, termination and denials of services in a Service Plan. Failure by a CWD to provide services agreed to in the service plan is also considered a change. Initiation of a service plan includes both the voluntary service plan and the court-ordered service plan that the CWD has been instructed to design. Termination of services includes the termination of a specific service or the entire service plan.

Issues Subject to the Grievance Process:

Issues that are subject to the Grievance Process are not subject to the SH process. This process addresses concerns of the foster parents, legal parents, guardians and children regarding the placement, care or removal of a child from a foster home. The person requesting a review under this process must request it in writing. The review agent is a staff person that is not directly involved in the complaint nor staff that works directly with any

person involved in the complaint. The CWD shall assist the person filing the complaint if it is necessary or if it is requested. In cases where removal of a child is the reason for filing the complaint, the child shall remain with the foster parent(s) until a decision is rendered. (MPP 30-378)

Description of the SH Process with ALJ Responsibilities:

When a change in a service plan is made by the CWD, a NOA explaining the right to a SH must be issued at least 10 days prior to the implementing action. The recipient files for a SH by submitting a written request to the CWD or contacting Public Inquiry and Response (PIAR) in the State Department of Social Services (SDSS) within 90 days of the date of action or inaction. If the recipient files for a SH prior to the implementation of the change in the service plan, the recipient may be entitled to a Stay-In-Services (subject to the exceptions listed in the section entitled "Explanation of Terms with Responsibilities and Duties").

The Administrative Adjudication Division (AAD) must send a written acknowledgment of all requests for SHs to the claimant. Ten days prior to the hearing, the AAD must notify the claimant and the CWD in writing of the time, date, and place of the SH.

The ALJ is responsible for conducting the SH in the best manner to ascertain the facts and to control the conduct of the hearing. In doing so he/she has the authority to exclude a witness during the testimony of another witness and to exclude disruptive persons from the SH. "Attendance at the hearing is ordinarily limited to the claimant, AR, county representative, legal counsel, authorized interpreter, and witnesses relevant to the issue. Other persons may attend the hearing if the claimant agrees to or requests their presence and the ALJ determines that their presence will not be adverse to the SH." (MPP 22-049)

The timeliness of the request for the SH as well as any other jurisdictional issue will ordinarily not be determined at the hearing. If jurisdiction does not exist due to timeliness, a written decision will dismiss the request.

In cases where jurisdiction is an issue, and prior to the SH when both the claimant and the CWD agree to discuss only the jurisdictional issues, the ALJ will only take evidence on the jurisdictional issues. If the ALJ finds that jurisdiction does not exist, the case will be denied. If the ALJ finds that jurisdiction does exist, the claimant and the CWD will be given a minimum of ten days to prepare for the substantive issues. (MPP 22-049.53)

The ALJ must identify the issues and state the order in which the evidence will be taken. The issues at the hearing shall be limited to those issues which are reasonably related to the request for the SH or other issues which have been agreed upon by both parties prior to or at the SH. When jurisdiction is raised as an issue, both parties must be prepared to submit evidence on the jurisdictional issue.

Responsibilities of the CWD in the SH Process:

The CWD is required to send an adequate NOA when the CWS initiates a change in a service plan (MPP 10-116). State and Federal requirements state that NOAs must be sent to every recipient of services authorized pursuant to a service plan in any CWS program when a service has been denied, terminated, initiated or changed. NOA to the recipient should be as specific as possible. The SH will cover those disputed actions stated in the NOA, those issues reasonably related to the request for the SH or other issues which have been agreed upon by both parties. The CWD must send the NOA to the attorney(s) for the child and for the parents/guardians. (ACIN I-99-87)

Prior to the hearing, the County Representative (CR) must determine the issues raised by the request for the SH. If the basis for SH request is not clear, the CR must contact the claimant immediately for clarification. This contact can identify which issues will be heard at the SH. If this contact fails to identify or clarify the issues, the CR shall make a good faith attempt to identify the issues and should notify the claimant and/or the AR in writing that the county will proceed based on those identified issues. At this point in time, a CR may clarify the issue to the satisfaction of the recipient resulting in a voluntary withdrawal of the request for a SH (MPP 22-023.23 and MPP 22-054). Once the issues are determined, the CR must review the statutes, regulations and policies which apply to the evidence in the case record and determine the appropriateness of the CWD action. If at this point the CR determines that the CWD action was inappropriate, the CR shall rectify the error. If the CR determines that the CWD took a correct action, the CR must prepare a typewritten position statement prior to the hearing. If the CWD received a 10-day prior notice of the date and time of the scheduled hearing, a copy of the position statement must be made available to the recipient at the CWD, not less than two working days prior to the hearing. At the hearing, the CR assumes full responsibility for the presentation of the County's case. The CR can object to the attendance of persons whose presence will be adverse to the SH. (See "Responsibilities of the CWD in the SH Process") The CR can object to the disruptive conduct of a participant, witness, or any party in attendance at the SH and request that the ALJ utilize his/her authority to control the conduct of the hearing.

General Guidelines on Access to CWS Records:

The recipient is allowed to inspect and copy his/her medical and psychotherapist (includes psychiatrist, psychologist, clinical social worker, and marriage, family and child counselor) evaluations and reports which the recipient then proposes to offer in evidence at the SH. However, the recipient does not have a right to violate the confidentiality rights of another party. This would preclude the inspection or copying of medical records, psychotherapist evaluations and records of any other party including the other parent or guardian. Additionally, the identity of the person(s) reporting the abuse is considered confidential. The report of the investigation of the abuse and information relevant to the incident of child abuse is confidential and may be disclosed only to child protective agencies (CPA), attorney(s) for the CPA, the District Attorney in a criminal

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prosecution, multidisciplinary personnel teams, the SDSS and hospital scan teams. Any violation of the confidentiality provisions as they relate to investigation report is punishable by up to six months in jail or by a fine of five hundred (\$500) or by both.

(W&IC 10850, PC 11165 to 11167.5, MPP 22-051, 19-006)

Examples:

1. The mother files for a SH based on a change in the visitation schedule of the father. The mother requests that the visits be terminated. She requests the psychotherapist records of the father alleging that the records are material to her request. The CWD would be correct in denying access to those records citing Section 10850 of the W&IC.
2. The non-custodial father files for a SH based on the CWD's decision to change the service plan. The CWD will no longer require the mother to have drug screening tests at the local medical center based on four months of "clean" tests. The non-custodial father feels that the mother should continue with drug screening tests. The non-custodial father requests the laboratory tests on the mother. The CWD would be correct in denying access to those records citing Section 10850 of the W&IC.
3. The mother files for a SH based on the CWD's decision to change the service plan. The CWD has reduced the frequency of supervised visits due to a failure to participate in counseling sessions. The mother alleges that she complied with the required number of counseling sessions. The mother requests copies of her counseling records. The CWD would be required to allow access to her records based on Section 10850.2 of the W&IC.

It is the position of the State Department of Social Services that the CWD must release the service plan, the most recent court report and the court orders to the person that is a party to the dependency action. All documents submitted at the SH as evidence, subject to release, by either the recipient or the County shall be made available to the the recipient, the ALJ and the County. Copies of the documents to be presented at the SH by the CWD shall be provided to the recipient free of charge. (See "Explanation of Terms with Responsibilities and Duties", "Claimant", Example 1) These are general guidelines on access to CWS records and each case must be reviewed on its own merits. (W&IC 10850, MPP 22-051.2, 22-049.8)

Conclusion:

The foregoing is a description of the current SH process as it relates to CWS. As stated earlier, this is a complex process which is governed by a multitude of federal and state statutes and regulations. It is further complicated by the sensitivity of the subject matter and the numerous agencies and parties which are normally involved, especially the juvenile court system. It is the Department's position that discretionary decisions made by Counties are and

should be subject to the SH process. However, to the degree that the SH process overlaps with decisions made by the juvenile court, we believe that both recipients and Counties are disadvantaged. The Department is currently reviewing all aspects of the SH process in order to eliminate any duplication with the juvenile courts.

If you have any Child Welfare Services program questions, please contact your Adult and Family Services Operations consultant at (916) 445-0623 or ATSS 485-0623.



LOREN D. SUTER
Deputy Director
Adult and Family Services

cc: County Welfare Directors Association