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December 4, 2012

Regulation Package # 0312-02

CDSS MANUAL LETTER NO. CWS-12-01

TO: HOLDERS OF THE CHILD WELFARE SERVICES MANUAL, DIVISION 31

Regulation Package #0312-02

Effective 11/19/2012

Sections

31-501, 31-003 and 31-021

This manual letter has been posted on the Office of Regulations Development website at <http://www.dss.cahwnet.gov/ord/PG603.htm>.

Manual of Policies and Procedures (MPP) Sections, 31-003, 31-021 and 31.501 and forms SOC 832 and 833 were amended to make non-substantive and technical changes, with regard to the Child Abuse Central Index (CACI). Specifically, this action amends the MPP sections to remove the requirement to forward inconclusive findings of an investigation relating child abuse to the Department of Justice for listing on the CACI and limits the reporting of substantiated cases of neglect to “severe neglect”.

The Department processed this changed under the California Code of Regulations (CCR), Title 1, Section 100. For that reason, a public hearing was not necessary.

FILING INSTRUCTIONS

Revisions to all manuals are indicated by a vertical line in the left margin. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Child Welfare Services Manual changes was CWS 11-03.

<u>Page(s)</u>	<u>Replace(s)</u>
18.1 and 18.2	18.1 and 18.2
24.1 through 24.2a.	24.1 through 24.2a.
24.5	24.5
109.1 through 109.3	109.1 through 109.3

Attachments

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31-003	DEFINITIONS – FORMS	31-003
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- (a) (Reserved)
- (b) (Reserved)
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- (p) (Reserved)
- (q) (Reserved)
- (r) (Reserved)
- (s) (1) SOC 826 (Rev. 8/09) Child Fatality/Near Fatality County Statement of Findings and Information.
- (s) (2) SOC 832 (Rev. 3/12) Notice of Child Abuse Central Index Listing, hereby incorporated by reference, is used for the purpose of notifying individuals that their name has been submitted to the Department of Justice (DOJ) for listing on the Child Abuse Central Index (CACI).

31-003	DEFINITIONS – FORMS (Continued)	31-003
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- (3) SOC 833 (Rev. 3/12) Grievance Procedures for Challenging Reference to the Child Abuse Central Index, hereby incorporated by reference, is used for the purpose of informing individuals of the requirements for requesting a grievance hearing, as well as providing information regarding timeframes and all required components of a grievance hearing.
- (4) SOC 834 (Rev. 3/10) Request for Grievance Hearing, hereby incorporated by reference, is used for the purpose of providing individuals with a mechanism for requesting a grievance hearing to challenge their listing on the CACI.

- (t) (Reserved)
- (u) (Reserved)
- (v) (Reserved)
- (w) (Reserved)
- (x) (Reserved)
- (y) (Reserved)
- (z) (Reserved)

NOTE: Authority cited: Sections 10553, 10554, and 10850.4, Welfare and Institutions Code. Reference: *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896; Section 11169, Penal Code and Sections 827 and 10850.4, Welfare and Institutions Code and 42 USC 5106.

31-020	GRIEVANCE PROCEDURES (Continued)	31-020
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- .63 The county director's decision shall contain a summary statement of the facts, the issues involved, findings, and the basis for the decision.

- .64 A copy of the decision shall be sent to the following:
 - .641 Each party to the review.

 - .642 Every representative of each party.

 - .643 The California Department of Social Services.

- .7 Unless the child is in immediate danger, he/she shall remain with the foster parent(s), pending decision of the county director, when removal is the basis for a complaint.

- .8 The review record shall be retained for one year from the decision date, and shall include all documents, copies of documents, and physical evidence accepted as review evidence.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 16503, Welfare and Institutions Code.

31-021	CHILD ABUSE CENTRAL INDEX (CACI) GRIEVANCE PROCEDURES	31-021
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- .1 Within five (5) business days of submitting an individual's name to the Department of Justice (DOJ) for listing on the CACI pursuant to Section 31-501.4, the following forms shall be sent to the individual of his/her last known address:
 - .11 The Notice of Child Abuse Central Index Listing (SOC 832),

 - .12 Grievance Procedures for Challenging Reference to the Child Abuse Central Index (SOC 833), and

 - .13 Request for Grievance Hearing (SOC 834).

- .2 Request for a Grievance Hearing
 - .21 The complainant shall send by mail, fax or in person, a completed SOC 834 form, or a written request for grievance hearing that includes all of the information required under Section 31-021.213, signed by the complainant to request a grievance hearing. This must be received by the county within thirty (30) calendar days of the date of notice. Failure to send the completed SOC 834 form or written request within the prescribed timeframe shall constitute a waiver of the right to a grievance hearing.

31-021	CHILD ABUSE CENTRAL INDEX (CACI) GRIEVANCE PROCEDURES	31-021
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(Continued)

- .211 For purposes of this section, a complainant is deemed aware of the county decision when the county mails the notification as specified in Section 31-021.1 to the complainant's last known address.
 - .212 For individuals to whom no prior notification was mailed regarding his or her submission to the CACI, the individual shall file the completed SOC 834 form within thirty (30) calendar days of becoming aware that he or she is listed in CACI and becoming aware of the grievance process.
 - .213 A completed SOC 834 form or a written request for grievance hearing shall include the referral number, name of county, complete contact information, date of birth, a reason for grievance which the complainant believes provides a basis for reversal of the county decision, and if represented, the name of the representative and contact information for the representative.
 - .214 The county shall assist the complainant in preparation of the request for grievance hearing, pursuant to section .213 above, if assistance is requested.
- .3 The following grievance hearing procedures shall only apply for challenges to county submission for listing individuals on the CACI.
- .31 A grievance hearing request shall be denied when a court of competent jurisdiction has determined that the suspected child abuse and/or severe neglect has occurred, or when the allegation of child abuse and/or severe neglect resulting in the referral to CACI is pending before the court.
 - .311 If Section 31-021.31 no longer applies, a complainant can submit the completed SOC 834 form or written request within thirty (30) calendar days of the conclusion of the judicial matter to request a grievance hearing.
 - .312 Timeframes for conducting and completing a grievance hearing will remain as specified in Sections 31-021.4 through .85.
- .4 The grievance hearing shall be scheduled within ten (10) business days and held no later than sixty (60) calendar days from the date the request for grievance is received by the county, unless otherwise agreed to by the complainant and the county.
- .41 Notice of the date, time and place of the grievance hearing shall be mailed by the county to the complainant at least thirty (30) calendar days before the grievance hearing is scheduled, unless otherwise agreed to by the complainant and the county.
 - .42 The complainant may have an attorney or other representative present at the hearing to assist him or her.

31-021 CHILD ABUSE CENTRAL INDEX (CACI) GRIEVANCE PROCEDURES 31-021
(Continued)

- .43 Either party may request a continuance of the grievance hearing not to exceed ten (10) business days. Additional continuance or dismissal of the hearing shall be granted with mutual agreement of all parties involved or for good cause.
- .44 The county may resolve a grievance at any point by changing a finding of substantiated child abuse and/or severe neglect to a finding that is not substantiated and notifying the DOJ of the need to remove the individual's name from the CACI.
- .5 The grievance review officer conducting the grievance hearing shall be:
 - .51 A staff or other person not directly involved in the decision, or in the investigation of the action or finding, that is the subject of the grievance hearing.
 - .52 Neither a coworker nor a person directly in the chain of supervision of any of the persons involved in the finding, or in the investigation of the action or finding, that is the subject of the grievance hearing unless the grievance review officer is the director or chief deputy director of the county.
 - .521 For the purposes of this section, a coworker includes a staff person who has regular direct contact with the staff involved in the finding related to the grievance, and this person is unable to separate themselves as an impartial reviewer.
 - .53 A staff or other person who is knowledgeable of the child welfare services field and capable of objectively reviewing case information pertaining to the grievance.
 - .54 A staff or other person who is able to conduct a fair and impartial hearing. A grievance review officer shall voluntarily disqualify him or herself and withdraw from any proceeding in which he or she cannot give a fair and impartial hearing or in which he or she has an interest.
 - .541 A claimant may request at any time prior to the close of the record, that the grievance review officer be disqualified upon the grounds that a fair and impartial hearing cannot be held or a decision cannot be rendered.
 - (a) Such request shall be ruled upon by the grievance review officer prior to the close of the record. The grievance review officer's determination is subject to rehearing review and judicial review in the same manner and to the same extent as other determinations of the grievance review officer in the proceeding.

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31-021 CHILD ABUSE CENTRAL INDEX (CACI) GRIEVANCE PROCEDURES 31-021
(Continued)

- .67 The county employee(s) who conducted the investigation that is the subject of the grievance hearing shall be present at the hearing if that person is employed by the county and is available to participate in the grievance hearing.
 - .671 For purposes of this paragraph, a conflict in work assignments shall not render the county employee who conducted the investigation unavailable to participate in the hearing.
- .68 The county shall first present its evidence supporting its action or findings that are the subject of the grievance. The complainant will then provide evidence supporting his or her claim that the county's decision should be withdrawn or changed. The county shall then be allowed to present rebuttal evidence in further support of its finding. Thereafter, the grievance review officer may, at his or her discretion, allow the parties to submit any additional evidence as may be warranted to fully evaluate the matter under review.
 - .681 The grievance review officer shall have the authority to continue to review for a period not to exceed ten (10) calendar days if additional evidence or witnesses are necessary to make a determination on the issue.
- .7 The county shall have the proceedings of the grievance hearing audio recorded as part of the official administrative record. The county shall possess and maintain the administrative record of the grievance hearing.
 - .71 The complainant or the complainant's attorney and/or representative shall be entitled to inspect the recording and any transcripts made thereof, however the county shall keep possession of the recording and transcript and its contents will remain under seal.
 - .711 Where the complainant seeks to inspect the transcript, the costs for transcribing a recording of the hearing shall be assessed to the complainant.
 - .72 The county shall lodge the administrative record with the court if any party seeks judicial review of the final decision of the county director.
- .8 Grievance hearing decisions shall be rendered as follows:
 - .81 The grievance review officer shall make a determination based upon the evidence presented at the grievance hearing, whether the allegation of child abuse and/or severe neglect is substantiated as defined by the Penal Code Section 11165.12.
 - .82 The grievance review officer shall render a written recommended decision within thirty (30) calendar days of the completion of the grievance hearing. The decision shall contain a summary statement of facts, the issues involved, findings, and the basis for the decision.

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CHAPTER 31-500 SPECIAL REQUIREMENTS

31-501 CHILD ABUSE AND NEGLECT REPORTING REQUIREMENTS 31-501

- .1 The county shall report by telephone, fax or electronic submission every known or suspected instance of child abuse and/or neglect as defined in Penal Code Section 11165.6, to law enforcement departments and the District Attorney's Office as specified in Penal Code Section 11166(j).

HANDBOOK BEGINS HERE

Penal Code Section 11165.6 defines child abuse or neglect to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

HANDBOOK ENDS HERE

- .2 When the county receives a report of known or suspected child abuse and/or neglect that has allegedly occurred in a licensed facility, the county shall notify the licensing office with jurisdiction over the facility, as specified in Penal Code Sections 11166.1 and 11166.2.
- .3 When the county receives a report of known or suspected child "abuse or neglect in out-of-home care," including a child placed in the home of a relative or non-related extended family member, the county shall create a new referral.
- .31 The county shall respond to all referrals of "abuse or neglect in out-of-home care" in accordance with the provisions of Section 31-101.
- .32 A disposition of the investigation shall be recorded in the child's case record.
- .4 The county shall submit a report to the Department of Justice (DOJ) pursuant to Penal Code Section 11169 of every case it actively investigates of known or suspected child abuse that it has determined to be substantiated as defined in Penal Code Section 11165.2.
- .41 The county shall not submit a report to the DOJ for referrals it investigates and the only allegation substantiated is general neglect or the only incident is a positive toxicology screening at the time of delivery, as specified in Penal Code Sections 11165.2(b) and 11165.13.
- .42 The county shall not submit a report to the DOJ for referrals it investigates and that are determined to be not substantiated.
- .43 The county shall ensure that the report submitted to the DOJ is complete and is in conformity with the California Code of Regulations, Title 11.

31-501	CHILD ABUSE AND NEGLECT REPORTING REQUIREMENTS	31-501
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(Continued)

- .44 The county shall make information received from DOJ pursuant to Penal Code Section 11170(b)(1) available to the persons or agencies as specified in that section.

- .5 Within five (5) business days of the county submitting information to the DOJ to list an individual's name on the Child Abuse Central Index (CACI), the county shall provide to that individual written notification, which shall contain the following information and materials:
 - .51 The completed SOC 832, as found in Section 31-003(s)(2), notification that the county has completed an investigation of suspected child abuse and/or severe neglect, which the county has determined to be substantiated, and has submitted the individual's name to the DOJ for listing on the CACI.
 - .511 The completed SOC 832 shall include the victim's name, and a brief description of the alleged abuse and/or severe neglect, and the date and location where this occurred;
 - .52 The SOC 833, as found in Section 31-003(s)(3), information explaining the individual's right to request a grievance hearing, and the procedures for the hearing.
 - .53 The SOC 834, as found in Section 31-003(s)(4), a request for grievance hearing;
 - .531 A completed SOC 834 shall include the referral number, name of county, complete contact information, date of birth, reason for grievance, information regarding an attorney or representative for the individual if any, and the address where to submit the request for grievance hearing.

31-501	CHILD ABUSE AND NEGLECT REPORTING REQUIREMENTS	31-501
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(Continued)

- .54 The SOC 832, 833 and 834 shall be mailed to the last known address where the notice and request for grievance are most likely to be received by the individual.

- .6 An individual wishing to challenge his or her referral to the CACI may request a grievance hearing utilizing the procedures under Section 31-021. The county may initiate an internal review relating to the matter identified in the request prior to the hearing.

- .7 Where the county's substantiated finding for abuse and/or severe neglect is changed to a finding that is not substantiated as a result of the grievance hearing or internal review, or a judicial determination of factual innocence of all the investigated allegations that supported the county's decision to refer the individual's name to the DOJ for listing on CACI, the county shall within five business days submit to the DOJ a revised DOJ form BCIA 8583 containing the change in finding.

- .71 Where the county's substantiated finding for child abuse and/or severe neglect is changed to a finding that is not substantiated as a result of the grievance hearing, the county shall within five business days submit to the DOJ a revised Form BCIA 8583 containing the change in finding.

- .8 The county shall document the outcome of the grievance hearing and any change in the finding of an allegation, if any, within the child's case record.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896 and Sections 11165.12, 11165.5, 11165.6, 11166, 11166.1, 11166.2, 11166.3, 11169, and 11170(b)(1), Penal Code.

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