

Amend Section 31-003 to read:

31-003 DEFINITIONS – FORMS (Continued)

31-003

(s) (1) (Continued)

(2) SOC 832 (Rev. 3/10) 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).

(3) SOC 833 (Rev. 3/10) 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) (Continued)

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.

Adopt Section 31-021 to read:

Post-Hearing: Adopt Section 31-021 to read:

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

- .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 at 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.
 - .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 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 neglect has occurred, or when the allegation of child abuse and/or 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.
 - .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 inconclusive or substantiated child abuse and/or neglect to unfounded 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.
- .542 If, at the beginning or during the hearing, the grievance review officer upholds a party's motion for disqualification, the matter shall be postponed. A postponement due to a disqualification of a grievance review officer shall be considered a postponement with good cause. If, after the hearing, but before the close of the record the grievance review officer determines that disqualification is appropriate, the provisions of Section 31-021.55 shall apply.
- .55 A staff or other person who is available to prepare the proposed decision. If the grievance review officer who heard the case is unavailable to prepare the proposed decision, the County Director or his or her designee shall contact the claimant and the county and notify each party that the case is being assigned to another grievance hearing officer for preparation of the decision on the record.
- .551 The notice shall inform the claimant that her or she may elect to have a new grievance hearing held in the matter, provided that he or she agrees to waive the ten (10) day or sixty (60) day period set forth in Section 31-021.4.
- .552 A grievance review officer shall be considered unavailable within the meaning of this section if he or she:
- (a) Is incapacitated.

(b) Has ceased employment as a grievance review officer.

(c) Is disqualified under Section 31-021.54-542.

.6 The grievance review hearing shall be conducted in the following manner:

.61 The grievance hearing shall, to the extent possible, be conducted in a non-adversarial environment.

.62 The county, complainant and his or her representatives, if any, shall be permitted to examine ~~all documents and relevant evidence that is not otherwise made confidential by law, which the opposing party intends to introduce at the grievance hearing~~ all records and evidence related to the county's investigative activities and investigative findings associated with the original referral that prompted the CACI listing, except for information that is not otherwise made confidential by law.

.621 The county and the complainant shall make available for inspection ~~the documents and other evidence they intend to rely upon at the grievance hearing~~ all records and evidence related to the original referral that prompted the CACI listing, except for information that is otherwise made confidential by law, at least ten (10) business days prior to the hearing, to the extent permitted by law.

(a) The county shall redact such names and personal identifiers from the ~~documents~~ records and other evidence as required by law and to protect the identity, health, and safety of those mandated reporters of suspected child abuse and/or neglect pursuant to Penal Code Section 11167. The county may further redact information regarding the mandated reporter's observations of the evidence indicating child abuse and/or neglect.

.622 The county shall release disclosable information to the complainants' attorney or representative only if the complainant has provided the county with a signed consent to do so.

.623 Witness lists shall be available for exchange in advance of the hearing. The county and the complainant shall provide a list of witnesses they intend to call at the grievance hearing at least ten (10) business days prior to the grievance hearing.

.624 Failure to disclose evidence or witness lists in advance of the grievance hearing can constitute grounds for objecting to consideration of the evidence or allowing testimony of a witness during the hearing.

.63 Each party and their attorney or representative, and witnesses while testifying, shall be the only persons authorized to be present during the grievance hearing unless all parties and the grievance review officer consent to the presence of other persons.

- .64 The information disclosed at the grievance hearing may not be used for any other purpose unless otherwise required by law. No information presented at the grievance hearing shall be disclosed to any person other than those directly involved in the matter. ~~Any documents or records and~~ other evidence disclosed by the county to the complainant or the complainant's representative shall be returned to the county at the conclusion of the hearing.
- .65 All testimony shall be given under oath or affirmation.
- .66 The grievance review officer has no subpoena power. However, the parties may call witnesses to the hearing and question the witnesses called by the other party.
- .661 The grievance review officer may limit the questioning of the witness to protect the witness from unwarranted embarrassment, oppression, or harassment.
- .662 The grievance review officer may prevent the presence and/or examination of a child at the grievance hearing for good cause, including but not limited to protecting the child from trauma or to protect his or her health, safety, and/or well-being.
- .663 The grievance review officer may permit the testimony and/or presence of a child only if the child's participation in the grievance hearing is voluntary and the child is capable of providing voluntary consent.
- (a) The grievance review officer may interview the child outside the presence of county staff, complainant and/or any other party in order to determine whether the participation of the child is voluntary, or whether good cause exists for preventing the child from being present or testifying at the grievance hearing.
- .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 neglect is unfounded, inconclusive, or 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.
 - .83 The county director shall issue a final written decision adopting, rejecting, or modifying the recommended decision within ten (10) business days after the recommended decision is rendered. The final written decision shall explain why a recommended decision was rejected or modified by the county director.
 - .84 A copy of the recommended and final decision shall be sent to the following:
 - .841 The complainant that requested the grievance hearing;
 - .842 The complainant's attorney or representative, if any; and
 - .843 The California Department of Social Services.
 - .85 If the complainant chooses to challenge the final decision of the county director, the evidence and information disclosed at the grievance hearing may be part of an administrative record for a writ of mandate and kept confidential. The

administrative record shall be kept confidential, including, if any of the parties request, that it be filed with the court under seal.

- .86 The grievance hearing administrative record shall be retained for a length of time consistent with current law, regulations, or judicial order which governs the retention of the underlying record, but not less than one year from the decision date in any circumstance, and shall include the documents and other information accepted as evidence at the hearing.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896; Sections 11165.12, 11166(g) and 11167, Penal Code and Sections 827, 10850, and 16503, Welfare and Institutions Code.

Amend Section 31-410 to read:

31-410 TEMPORARY PLACEMENT (Continued)

31-410

.5 The county welfare department or probation department shall begin an assessment for a relative or nonrelative extended family member, as defined in Welfare and Institutions Code Section 319, who either has requested placement of a child pending the detention hearing or whom the social worker/probation officer has identified as willing to provide care for a child pending the detention hearing.

.51 The assessment shall include, but is not limited to, all of the following: (Continued)

.514 The results of a Child Abuse Central Index (CACI) check conducted on all persons 18 years of age and older residing in the home.

HANDBOOK BEGINS HERE

- (a) Penal Code Section 11170(c) in summary states that when Child Abuse Central Index information is released by the Department of Justice for temporary placement of a child, the child protective services agency or court investigator is responsible for notifying, in writing, the person listed in the Child Abuse Central Index that he/she is in the index. The notification shall include the name of the reporting agency and the date of the report.
- (b) Penal Code Section 11170(b)(10)(A) in summary requires persons or agencies who receive Child Abuse Central Index information for purposes of licensing, adopting or placing a child to obtain the underlying report from the reporting agency and make their own independent assessment regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the placement of a child which will be the most appropriate placement and in the best interest of the child.

HANDBOOK ENDS HERE

.515 A CACI listing does not necessarily preclude placement with a relative or non-related extended family member. Instead, the relative or non-related extended family member may still be entitled to placement upon consideration of all relevant factors. These factors include but are not limited to the following:

- (a) The nature of the substantiated or inconclusive child abuse/neglect report that led to the CACI listing;

- (b) The period of time that has elapsed since the substantiated or inconclusive child abuse/neglect was committed and the number of offenses;
- (c) The circumstances surrounding the commission of the substantiated or inconclusive child abuse/neglect that would demonstrate the likelihood of repetition; and
- (d) Character references.

.52 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code and Assembly Bill 1695, Section 21.

Reference: Sections 309 (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 319 (as amended by Senate Bill 2232, Chapter 1530, Statutes of 1990), 319(d) (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 309, 309(d), 319, 319(f), 361.2(h), 362.7, 727, 11402, and 16507.5(b) (as amended by Assembly Bill 1695, Chapter 653, Statutes of 2001), 361.2(b) and (g), 366(c), 11467.1, and 16501.1(c), Welfare and Institutions Code; Section 1530.8, Health and Safety Code; Sections 11170(b)(10)(A) and 11170(c), Penal Code; and 42 U.S.C. Section 675(1)(A), and *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896.

Amend Section 31-501 to read:

Post-Hearing: Amend Section 31-501 to read:

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 inconclusive or 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 unfounded.

.4243 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.

HANDBOOK BEGINS HERE

.421431 The California Code of Regulations, Title 11, Standard Reporting Form for Reports of Child Abuse Maintained in the Automated Child Abuse System (ACAS) states:

- (a) The "Child Abuse Summary Report: Form ~~SS~~ BCIA 8583 is the standard reporting form required to report investigative summaries of suspected incidents of child abuse and severe neglect to ACAS. Reporting agencies shall submit Form ~~SS~~ BCIA 8583 to DOJ after an active investigation has been conducted and the incident has been determined not to be unfounded. Reporting agencies must obtain and use the most recent version of the ~~SS~~ BCIA 8583 when submitting the report to DOJ." The ~~SS~~ BCIA 8583 form is maintained by DOJ and may be obtained by contacting that department.

HANDBOOK ENDS HERE

.4344 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 either inconclusive or 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.
- .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 finding of inconclusive or substantiated for abuse and/or severe neglect is changed to unfounded as a result of the grievance hearing or internal review, or a judicial determination of factual innocence of all of 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 ~~SS~~ BCIA 8583 containing the change in finding.
- .71 Where the county's finding of inconclusive or substantiated child abuse and/or neglect is changed to a finding other than unfounded as a result of the grievance hearing, the county shall within five business days submit to the DOJ a revised Form ~~SS~~ 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.

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.