

UPDATED INFORMATIVE DIGEST

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.

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.

These regulations were considered at the public hearing held on January 13, 2010 in Sacramento, California. During the 45-day comment period from November 27, 2009 to 5:00 p.m. January 13, 2010, written and/or oral testimony was received from the following:

- Karl Nicholas, San Francisco, California
- George W. McFetridge, Jr., Deputy District Attorney, County of Orange
- Kelly M. Hardy, Principal Deputy County Counsel, County of Los Angeles
- Esther G. Boynton, Attorney at Law, San Diego, CA
- Christopher (no last name provided)

As a result of the testimony received and at the Department's discretion, changes to the regulations were made as follows:

- Sections 31-021.54 through .552(c) were added to incorporate language regarding the duty of the grievance review officer, the ability of the claimant to request grievance officer disqualification, and permit rescheduling of hearing for an alternate grievance hearing officer.
- Sections 31-021.62 through .621(a) are amended to clarify documents a claimant may review and for consistency.
- Section 31-021.64 is amended to provide clarification and consistency with previous sections.
- Section 3-021.84 is amended to provide clarity that the recommended and final decisions shall be sent to the required parties.
- Section 31-501.4 is amended to be consistent with Penal Code section 11169(a).
- Sections 31-501.41 through .431(a) are amended to add .42 to provide clarity to counties regarding what shall not be submitted to Department of Justice and to renumber accordingly.
- Section 31-501.43 is renumbered in accordance with previous sections.

In addition, changes were made to the forms (SOC 832, 833, and 834) to mirror the changes made to the regulations.

Pursuant to Government Code section 11346.8, a 15-day renote and complete text of modifications made to the regulations were made available to the public following the public hearing. The modifications were renoted for public comment from March 19 to April 2, 2010; written testimony was received but did not require further modifications to the regulations.