

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-21-08

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

SUBJECT: CHILD ABUSE CENTRAL INDEX (CACI) GRIEVANCE HEARING
INSTRUCTIONS

REFERENCES: ALL COUNTY LETTER 07-53; ALL COUNTY INFORMATION
NO. I-21-08

The purpose of this All County Information Notice (ACIN) is to provide instruction regarding new grievance hearing requirements as stipulated in the Gomez v. Saenz lawsuit settlement. This settlement provided individuals with the opportunity to challenge their listing on the Child Abuse Central Index (CACI), and created grievance hearing procedures for this purpose.

New Division 31 regulations will be forthcoming, with the addition of Section 31-021 that details the CACI grievance hearing process. This ACIN provides the same instruction as the regulations, and is being published to provide direction to the counties while the new regulations proceed through the approval process.

Child Abuse Central Index (CACI) Grievance Review Procedures

The following grievance review procedures shall apply to challenges to county referral for listing on the Child Abuse Central Index (CACI) only.

1. Grievance request procedures shall include the following:
 - a. The county shall explain the right to a review, and shall provide a copy of the grievance procedure regulations to an individual whose name the county is referring for listing on the CACI.

- b. A grievance request shall be filed in the form of a written statement signed by the complainant.
 - i. The grievance request shall set forth the facts which the complainant believes provide a basis for reversal of the county action or finding.
 - ii. The complainant shall file with the county or mail the request for grievance to the county within thirty (30) calendar days of the date the complainant became aware of the county action or finding. Failure to file or mail the request for the grievance within the prescribed time frame shall constitute waiver of the right to a grievance.
 - iii. For individuals to whom no prior notification was mailed regarding his or her referral to the CACI, the individual shall file the request for grievance within 30 calendar days of becoming aware that he or she is listed on CACI and becoming aware of the grievance process.
 - iv. For purposes of this section, a complainant is deemed aware of the county action or finding when the county mails adequate notice to the complainant's last known address.
 - c. The county shall assist in preparation of the grievance request if assistance is requested by the complainant.
2. 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.
 - a. Notice of the date, time and place of the grievance hearing shall be mailed by the county to the individual requesting the grievance hearing (the complainant) at least 30 calendar days before the grievance hearing, unless otherwise agreed to by the complainant and the county.
 - b. The complainant may have an attorney or other representative present at the hearing to assist him or her. The county shall release disclosable information to such attorney or representative only if the complainant has provided the county with a signed authorization to do so.
 - c. 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.

3. The grievance review hearing shall be conducted as follows:
 - a. The grievance review officer shall be:
 - i. A staff or other person not directly involved in the action or finding, or in the investigation of the action or finding, that is the subject of the grievance request.
 - ii. Neither a co-worker nor a person directly in the chain of supervision of any of the persons involved in the action or finding, or in the investigation of the action or finding, that is the subject of the grievance request unless the grievance review officer is the director or chief deputy director of the county.
 - iii. Knowledgeable of the field and capable of objectively reviewing the complaint.
 - b. The grievance review officer shall, to the extent possible, conduct all reviews in a non-adversarial atmosphere.
 - c. All parties and representatives shall be permitted to examine all documents and other evidence which the opposing party intends to introduce at the grievance hearing. All relevant evidence that is not otherwise made confidential by law, shall be permitted to be examined in advance of the hearing. Witness lists shall be available for exchange in advance of the hearing. Failure to disclose evidence or witness lists in advance of the hearing can constitute grounds for objecting to consideration of the evidence at the hearing or to hearing the testimony of a witness during the hearing. Any documents or other evidence disclosed by the county to the complainant and/or his or her attorney or representative for the hearing shall be returned to the county at the conclusion of the hearing.
 - i. The county and the complainant shall make available for inspection the documents and other evidence they intend to rely upon at the grievance hearing at least 10 business days prior to the hearing to the extent permitted by law.
 - ii. The county and the complainant shall make available to the other party a list of witnesses they intend to call at the grievance hearing at

least 10 business days prior to the grievance hearing, to the extent permitted by law.

- iii. The county may redact such names and personal identifiers from the documents and evidence as required by law and to protect the identity, health, and safety of those reporting the suspected abuse or neglect and providing information regarding their observations of the evidence indication abuse or neglect
- d. Each party and their attorney or representative, and witnesses while testifying, shall be the only persons authorized to be present during the hearing unless all parties and the grievance review officer consent to the presence of other persons. The information disclosed at the grievance hearing may not be used for any other purpose. The parties agree that no information presented at the grievance review hearing will be disclosed to any person other than those directly involved in the matter. The evidence and information disclosed at the hearing may be part of an administrative record for a writ of mandate challenging the final decision of the County Director. The administrative record shall be kept confidential, including, if any of the parties request, that it be filed with the court under seal.
- e. All testimony shall be given under oath or affirmation.
- f. The grievance review officer has no subpoena power. However the parties may call witnesses to the hearing and question the other party's witness. The grievance review officer may limit the questioning of a witness to protect the witness from unwarranted embarrassment, oppression, or harassment.
- i. 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. The grievance review officer may permit the testimony and/or presence of a child only if the child's participation in the grievance is voluntary and the child is capable of providing voluntary consent. The grievance review officer may interview the child outside the presence of the parties in order to determine whether the child's participation is voluntary or whether good cause exists for preventing the child from being present or testifying at the hearing.

- ii. The county employee involved in the action or finding or in the investigation of the action or finding that is the subject of the grievance review request shall be present at the hearing if that person is employed by the county, and is available to participate in the grievance. 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.
 - g. The county shall first present its evidence supporting its action or findings that are the subject of the complaint. The complainant will then provide his or her evidence supporting his or her claim that the county's action or finding 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 such additional evidence as may be warranted to fully evaluate the matter under review.
 - h. 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 for determination of the issue.
 - i. The grievance officer shall determine, based upon the evidence presented, whether the allegation of abuse or neglect is unfounded, inconclusive, or substantiated as defined by the California Penal Code.
4. The county shall have the proceedings audio recorded as part of the official administrative record. The county shall possess and maintain the administrative record of the hearing. The complainant or the complainant's attorney shall be entitled to inspect the transcript and/or recording, however the county shall keep possession of the transcript and tape and its contents will remain under seal. Where the complainant seeks to inspect the transcript, the costs for transcribing a recording of the hearing shall be assessed to the complainant. The county shall lodge the administrative record with the court if any party seeks judicial review of the final decision of the County Director.
5. Review decisions shall be rendered as follows:
 - a. The grievance review officer shall render a written recommended decision within 30 calendar days of the close of the grievance hearing. The decision shall contain a summary statement of the facts, the issues involved, findings, and the basis for the decision. The county director shall issue a final written decision adopting, rejecting, or modifying

the recommended decision within ten (10) business days after the recommended issues. The County director shall explain why a recommended decision was rejected or modified.

- b. The final decision shall be based upon the evidence presented at the hearing.
- c. A copy of the decision shall be sent to the following:
 - i. Each complainant that requested a grievance hearing;
 - ii. The complainant's attorney or representative, if any; and
 - iii. The California Department of Social Services.

California Department of Social Services
Attn: Child Welfare Policy and Program Development Bureau
744 P Street, MS 11-87
Sacramento, CA 95814

- 6. The grievance hearing 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 evidence accepted as evidence at the hearing.

If you have any questions regarding the grievance hearing process please contact Diane Brown, Manager of the Policy Development and Support Unit in 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