

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

December 28, 2007

ALL COUNTY LETTER No. 07-53

TO: ALL COUNTY WELFARE DIRECTORS
 ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
 CHIEF PROBATION OFFICERS

SUBJECT: GOMEZ V. SAENZ LAWSUIT SETTLEMENT

The purpose of this All County Letter (ACL) is to provide a general overview of the requirements contained in the settlement agreement of the Gomez v. Saenz lawsuit. The settlement agreement sets forth specific requirements for notifying individuals of their right to request a hearing if they feel their name is incorrectly listed on the Child Abuse Central Index (CACI). In addition, the settlement outlines, in part, the following:

- Public notification to persons previously listed on the CACI by county Child Welfare agencies (CWS/Probation) that might not have previously been provided with appropriate notice of their CACI listing by such agencies.
- A requirement to purge unsupported listings in the CACI database when the county is unable to provide underlying investigative files for the individual listed.

Purpose

The Gomez v. Saenz lawsuit originated in July 2004, and was settled on October 9, 2007. The lawsuit addresses the rights of individuals whose names either are or will be listed on the CACI. Based on the settlement agreement, beginning March 1, 2008 individuals are to be provided appropriate notice of their CACI listing as well as the right to appeal. In addition, the settlement allows individuals who may not have received a notice of their right to appeal prior to March 1, 2008, to challenge their listing on the CACI.

Requirements

This section will serve to present an overview of the activities required by the settlement and provides only general information for county child welfare agencies. Subsequent

ACL/All County Information Notices (ACIN) will address the specifics regarding implementation of each component.

Public Notification

Child welfare agencies and Community Care Licensing Division (CCLD) offices will be required to post for 30 days (in a prominent manner in locations to which the public has regular access) a notification informing the public of their right to determine whether or not their name is listed on the CACI. The notifications and instructions for posting will be distributed to counties and CCLD offices by the California Department of Social Services (CDSS) prior to March 1, 2008. In addition to the posting of notifications, the settlement requires CDSS to publish the same information in both English and Spanish newspapers that have widespread circulation. **This notification will begin on March 1, 2008**, along with other key activities prompted by the settlement. March 1, 2008, also marks the date that individuals will have a right to request a grievance hearing (details below). This applies to new persons being listed on the CACI as well as those persons currently listed by CWS/Probation agencies who previously did not have the right to grieve.

Purging Unsupported Listings in CACI

An important part of this settlement lies in the requirement that county CWS/Probation agencies notify the Department of Justice (DOJ) of any periods of time that underlying investigative files are not available to support names listed on the CACI. **The purge activities should begin immediately for any records where no underlying files exist (for instance, records destroyed as a result of floods or fires).** This process is necessary since the CACI is a pointer system that directs inquiring agencies to a local investigative file. If no underlying file exists, an individual's name cannot remain on the CACI. In addition, this process will help counties reduce the number of grievance hearings and potentially improve the outcome of the 12-county survey described below. It is imperative that this activity is carried out expeditiously, as subsequent data will be collected via survey to verify the accuracy of CACI listings.

Counties are strongly encouraged to take any other steps it deems appropriate to ensure that it has available the underlying investigative files for all persons it has referred to DOJ for listing on the CACI. Most counties will have underlying documentation on the Child Welfare Services/Case Management System (CWS/CMS) system, or will have such documentation in hard copy format prior to 1999 when counties began using CWS/CMS.

Counties that want to obtain a listing of persons currently listed on the CACI by their agency may contact DOJ for a hard-copy or electronic listing. The DOJ requires counties to submit a letter requesting the removal of names from the CACI. This letter should include the particular timeframe where no underlying files exist. Requests to remove names, as well as requests for a list of persons named on the CACI, can be mailed to:

Department of Justice
4949 Broadway, Room B216
Sacramento, CA 95820

The DOJ will also accept letters submitted via email or fax. Submit the information to: DOJChildProtectionProgram@doj.ca.gov or fax (916) 227-4094.

Notice of CACI Listing and Grievance Hearings

The settlement requires that counties provide two forms to individuals who are referred to DOJ for listing on the CACI. The first form is a *Notice of Child Abuse Central Index Listing*, in which the county must include case specific information discovered in its child abuse investigation. The second form is a *Request for Grievance Hearing* that attaches the hearing procedures, and which includes county contact information. If an individual who receives these forms wishes to challenge his/her listing on the CACI, the settlement requires the county to convene a grievance hearing to allow the individual to challenge the listing.

A grievance hearing is available to those individuals who wish to contest their listing as a result of the notification, as well as any person who receives a notice that the CWS/Probation agency has submitted the individual's name to the DOJ for listing on the CACI as a result of a child abuse/neglect investigation. However, persons whose names are listed on the CACI but whose allegation of abuse/neglect is pending before a court of competent jurisdiction, or when the court has determined that the abuse/neglect has occurred, will not have the right to a grievance hearing. Per the settlement agreement, specific grievance procedures must be followed. CDSS is developing new grievance hearing guidelines that will be issued via emergency regulations, effective March 1, 2008.

Further information regarding forms, mailing written notice, timeframes, and legal procedures for the hearings will be addressed in subsequent ACL/ACIN. Drafts of the emergency regulations, as well as noticing forms, will be distributed to counties by December 31, 2007, to assist in the planning of the activities discussed in this ACL.

Survey of the Accuracy Rate of the Index

In September 2008, following the purge of unsupported listings (as described above); CDSS will take a statistically valid sample size of CACI listings from the 12 largest counties to determine the accuracy rate of the CACI (in the aggregate). The 12 counties, Alameda, Contra Costa, Fresno, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, Santa Clara and Ventura, will track incoming CACI inquiries. If the sample size determines that the accuracy of the CACI is 85 percent or better [meaning that at least 85 percent of the listings have a retained underlying report(s)], no further action by CDSS will be required.

If, however, the accuracy rate is less than 85 percent, a follow-up survey will be required the following year. If that follow-up survey results in an accuracy rate of less than 85 percent, one of two action steps must ensue. If the below 85 percent accuracy rate is due to poor accuracy rates in three or fewer counties, then only those specific counties must engage in

follow-up activities. If however the below 85 percent accuracy rate is due to data submitted by more than three counties, then a statewide, name by name purge of all persons listed on the CACI will be required.

Next Steps

Because this is a legal settlement with specific requirements, the activities must be carried out as specified in the settlement. It is important that the implementation of the activities is carried out in a consistent manner throughout the state in order to assure accurate notification and purging of unsupported CACI listings. To recap, the timeline for settlement activities follows:

Fall 2007

- Begin purge process to remove from the CACI those names or dates for which supporting documentation is unavailable.

March 1, 2008

- Post and Publish notifications of individual's right to determine CACI listing and to request grievance hearing

September 1, 2008

- Survey to begin in 12 counties as noted in the settlement

Again, a subsequent ACL/ACIN will be forthcoming with more detailed instructions regarding implementation and will include the required noticing forms and grievance procedures, as well as Q & A from the counties. CDSS is working with the County Welfare Directors Association to identify implementation issues and address questions that will assist counties with planning for this process.

If you have any questions, please contact the Child Welfare Policy and Program Development Bureau at (916) 651-6160.

Sincerely,

Original Document Signed By:

MARY L. AULT
Deputy Director
Children and Family Services Division

c: CWDA