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DEPARTMENT OF SOCIAL SERVICES

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EDMUND G. BROWN JR.
GOVERNOR

December 19, 2016

ALL COUNTY LETTER NO. 16-110

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO:

ALL COUNTY WELFARE DIRECTORS ALL CHIEF PROBATION OFFICERS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL FOSTER CARE MANAGERS
ALL COUNTY STATE-LICENSING OFFICERS ALL ADMINISTRATIVE LAW JUDGES
TITLE IV-E AGREEMENT TRIBES

SUBJECT:

STATE HEARING PROCEDURES IN PROCESSING DISPUTES UNDER THE RESOURCE FAMILY APPROVAL (RFA) PROGRAM AND THE SUPERIOR COURT WRIT *HARRIS V. CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)*

REFERENCE:

Welfare and Institutions Code (W&IC) Section 319, subdivision (f)(2), section 362.7 (as amended Stats. 2013, c. 294 (A.B. 545), §1, eff. Jan.1. 2014); Sections 10950 through 10967; Section 16519.5 (added by Stats. 2007, c. 464 (A.B. 340), §3; amended by Stats. 2011, c. 32 (A.B.106), §69, eff. Jun. 29, 2011; Stats. 2012, c. 35 (S.B. 1013), §136,eff. Jun. 27, 2012; Stats. 2013, c. 21, §42, eff. Jun.27, 2013; Stats. 2014, c. 772 (A.B. 1460), §21, eff.Jan. 1, 2015; amended Stats. 2015, c.773 (A.B. 403, §111); Section 16519.6 (added Stats.2015, c. 773 (A.B.403), § 116, eff. Jan. 1, 2016); Health and Safety Code Sections 1522, 1551(b); 1551.2; Evidence Code Sections 782 and 1106. CDSS, RFA Written Directives, Version 3, eff. Sept. 30, 2016; CDSS Manual of Policies and Procedures (MPP) sections 22-000, *et seq.*, and All County Letter (ACL) number 12-71.

This ACL replaces hearing procedures for cases under *Harris v. CDSS* set forth in ACL 13-27, issued April 4, 2013. This ACL supersedes ACL 13-27.

INTRODUCTION:

This ACL provides counties with instructions and information regarding state hearing procedures in adjudicating disputes under the RFA program for those counties that are implementing RFA, as well as the remaining state hearings for relatives and nonrelative extended family members (NREFMs) mandated by the Sacramento County Superior Court in the case *Harris v. California Department of Social Services* for those counties that have yet to implement RFA. Details relating to requests and processing of appeals, prehearing, hearing, post hearing procedures, and evidentiary procedures are set forth in **Attachment I** and are incorporated herein by reference.

BACKGROUND FOR RFA

Welfare and Institutions Code, Section 16519.5, mandates the Department, in consultation with county child welfare agencies, foster parent associations, and other interested community agencies to implement a unified family-friendly and child-centered RFA process to replace the existing multiple processes for licensing foster family homes and approving relatives and NREFMs as foster care providers, guardians and approving adoptive families.

On October 11, 2015, Assembly Bill (A.B.) 403 (Ch. 773, Stats. 2015) became law. AB 403 amended Welfare and Institutions Code, Section 16519.5, creating a right to a state hearing upon an appeal from a county's action denying or rescinding a RFA or criminal record exemption or the county or Department's action excluding an individual from a resource family. The bill also added Section 16519.6, which sets forth state hearing requirements.

Pursuant to Welfare and Institutions Code, Section 16519.5, subdivision (f)(4), the RFA program is governed by Written Directives that have the same force and effect as regulations. Effective September 30, 2016, the Department revised the RFA Written Directives to update the rules of due process that will impact state hearing processes (see RFA Writ. Dirs., Version 3, Art. 12).

STATE HEARING FORUMS FOR DISPUTES UNDER RFA:

All disputes under RFA with a right to a state hearing shall be heard by the Department's State Hearings Division (SHD) or the California Department of General Services' Office of Administrative Hearings (OAH) (see Welf. & Inst. Code, §16519.6). The rules as to which cases will be heard by SHD or OAH are set forth in Article 12 of the Written Directives. A legal consult is required with a CDSS Legal Division attorney or the county's attorney in order to ensure that a matter is set in the correct forum.

JURISDICTION FOR A STATE HEARING UNDER RFA:

Within those counties that are implementing RFA, and for all counties beginning on January 1, 2017, a Resource Family parent, applicant, or associated individual (as defined in the RFA Writ. Dirs., §3-01, subd. (a)(9)) who have received notice of an application denial, rescission of approval, exemption denial or rescission, or exclusion is accorded the right to a state hearing. (Welf. & Inst. Code, §§ 16519.5, et seq., RFA Writ. Dirs., Art. 12.)

Notwithstanding Welfare and Institutions Code Section 10951 and pursuant to Section 16519.6, subdivisions (d) and (e), a Resource Family parent, applicant, or excluded individual may file an appeal, or request a state hearing, within 25 days of service of a notice of action (NOA), or within 30 days if the NOA is mailed.

The RFA implementing county shall issue an RFA Notice of Action (hereinafter referred to as the RFA NOA) to the applicant, Resource Family parent, or associated individual.

For applicants, Resource Family parents, or associated individuals receiving the RFA NOA, the individual will be deemed a “respondent.” For RFA matters heard by SHD, the “respondent” will have the same rights as a “claimant” defined in MPP section 22- 001(c)(2); however, Welfare and Institutions Code, Section 16519.5, *et seq.*, and the RFA Written Directives prevail over a conflicting or inconsistent provision in MPP sections 22-000, *et seq.*

RFA applies to all individuals who wish to become an approved foster caregiver on or after January 1, 2017; therefore, for RFA matters relating only to home approval, there is no longer a need to adjudicate whether a nonrelated adult is an “extended family member” pursuant to Welfare and Institutions Code, Section 362.7.

Disputes concerning an agency’s submittal of an alleged severe neglect or child abuse incident(s) onto the Child Abuse Central Index (CACI) maintained by the California Department of Justice, or a dispute requesting the removal of the listed incident(s) from the CACI, continue to be grieved through the appropriate county pursuant to Division 31 of the MPP, sections 31-021.1 through 31-021.86. There is no state hearing right in such disputes.

For the purpose of hearing RFA matters, there is no right to a state hearing concerning decisions to remove or place a foster child as provided in MPP, section 22-001, subdivision (c)(2)(B)(1.). The county grievance procedures for disputing removals and placements set forth under MPP, sections 31-020.1 through 31-020.8, continue to apply.

BACKGROUND FOR CASES ADJUDICATED UNDER *HARRIS v. CDSS*:

On April 23, 2012, the Superior Court in Sacramento County issued an order in *Harris v. CDSS*. The Department was ordered to provide state hearings, conducted in compliance with Welfare and Institutions Code, Sections 10950 through 10967, in cases where a county child welfare agency denied a relative (as defined in Welf. & Inst. Code, §319, subd. (f)(2)) or a NREFM (as defined in Welf. & Inst. Code, §362.7) approval to provide care to a foster child.

These hearings (“*Harris* hearings”) for those counties who have yet to implement RFA continue to be heard by SHD and are subject to the hearing procedures currently established for state hearings in the MPP, including the timeliness requirements under Division 22 of the MPP, with the exception of an administrative denial process for a home denial due to a nonexemptible criminal conviction (see Health & Saf. Code, §1522, subd. (g)) established through admissible documentary evidence.

Grievance procedures that had previously applied to home approval disputes for relatives or NREFMs set forth in Division 31 of the MPP, sections 31-020.1 through 31- 020.8, are no longer applicable. However, county grievance procedures for disputes relating to decisions to remove or place a foster child are still in operation as set forth in Division 31 of the MPP.

The prehearing, hearing, post hearing procedures for *Harris* hearings are now revised to begin mirroring those used in RFA hearings, where legally appropriate. (See Attachment I to this letter.)

JURISDICTION FOR A STATE HEARING UNDER *HARRIS v. CDSS*:

, Prior to the full implementation of RFA on January 1, 2017, a state hearing in counties not yet implementing RFA shall be available to those relatives or NREFMs, or those purporting to be a relative, for whom the county child welfare agency, under authority of Welfare and Institutions Code, Sections 309, 319(f), 361.3 or 362.7, or applicable foster family home regulations, has determined the following:

- A. The relative or NREFM did not meet the qualifications to be a caregiver;
- B. The relative or NREFM resident adult(s) or adult(s) with significant contacts to children was not approved under the applicable background check laws, or;
- C. The relative's or NREFM's home does not meet health and safety requirements, or;
- D. The relative or NREFM did not pass other assessment requirements

For counties that have not yet implemented RFA, *Harris* hearings will continue to be available to relatives and NREFMs who have requested approval on or before December 31, 2016.

Disputes concerning an agency's submittal of an alleged severe neglect or child abuse incident(s) onto the Child Abuse Central Index (CACI) maintained by the California Department of Justice, or a dispute requesting the removal of the listed incident(s) from the CACI, continue to be grieved through the appropriate county pursuant to Division 31 of the MPP, sections 31-021.1 through 31-021.86. There is no state hearing right in such disputes.

For the purpose of hearing *Harris* matters, there is no right to a state hearing concerning decisions to remove or place a foster child as provided in MPP section 22-001, subdivision (c)(2)(B)(1.). The county grievance procedures disputing removals and placements set forth under MPP, sections 31-020.1 through 31-020.8, continue to apply.

FOR DETAILS REGARDING PREHEARING, HEARING, POSTHEARING, AND EVIDENTIARY PROCEDURES SEE ATTACHMENT I: "APPEALS PROCESS FOR RESOURCE FAMILY APPROVAL AND *HARRIS* CASES" WHICH IS INCORPORATED HEREIN BY REFERENCE.

Questions regarding the state hearing process for *Harris* and RFA cases should be directed to the State Hearings Division's Resource Family Approval Bureau at (916) 651-0927, facsimile (916) 657-3126, or emailed to **SHDRFA@dss.ca.gov**.

Questions regarding a specific RFA case that is pending administrative action should be directed to the county's assigned consulting attorney, as described in ATTACHMENT I.

General questions on RFA should be emailed to **RFA@dss.ca.gov**.

Sincerely,

Original Document Signed By:

MANUEL A. ROMERO
Chief Administrative Law Judge Deputy Director
State Hearings Division

Attachment

ACL 16-110 – ATTACHMENT 1
APPEALS PROCESS FOR RESOURCE FAMILY APPROVAL AND HARRIS CASES

The basic provisions of the state hearing process that will apply to appeal and hearing requests on Resource Family Approval (RFA) and Harris cases are as follows:

I. PREHEARING PROCEDURES

1. Intake of Harris and RFA Appeals: The RFA “respondent” or Harris “claimant” may submit a request for an appeal or request for a state hearing (hereinafter “appeal”) in response to a county’s RFA Notice of Action (RFA NOA).
 - a. In a *Harris* case, an individual may submit a request for hearing in person, by mail, telephone, e-mail, or fax to the county’s or to the Department’s State Hearings Division’s Resource Family Approval Bureau (RFAB) directly. The request for hearing must be filed timely as provided under Welfare and Institutions Code, Section 10951.
 - b.
 - 1) In an RFA case, an individual may submit a written appeal in person, by mail, e-mail, or fax to the applicable county or the Department directly. An RFA respondent should use the appeal form provided with the RFA NOA but use of this form is not required. Any written request for appeal will be accepted. Though it is not required, the respondent’s request for appeal should list the county issuing the NOA and the basis for denial or rescission and attach a copy of the RFA NOA.
 - 2) The RFA written appeal must be filed within 25 days of the date of the county’s RFA NOA or within 30 days if the county’s RFA NOA is mailed (see Welf. & Inst. Code, § 16519.6(d), (e); Writ. Dirs., §12-06). Filing an appeal on an RFA case must be in writing (see Writ. Dirs., §12-06).
 - 3) Upon receipt of an appeal, a county shall date stamp the appeal and update the appeal status in the state-wide data system maintained by the Department. An appeal shall be processed as required, even if a county has reason to believe that an informal resolution is expected in the matter (see Writ. Dirs. §§4-04, 12-09).
 - c.
 - 1) If the RFA matter is to be heard by SHD, the county must forward the request for appeal to the RFAB within ten (10) business days following the receipt of an appeal. The appeal and file documents should be forwarded to the Department’s Legal Division (“CDSS Legal”) or the county’s legal representative (if CDSS Legal will not be representing the county) at the same time the appeal is forwarded to the RFAB (see Writ. Dirs., §12-09). Due to time constraints, a draft Position Statement should be included with the documents forwarded to CDSS Legal.
 - 2) If the matter is to be heard by the Office of Administrative Hearings (OAH), the county will mail an acknowledgement of receipt of appeal to respondent and then forward the appeal with supporting documents to CDSS Legal or the county’s attorney or representative if CDSS Legal will not be representing the county. The representing attorney will work with the county to prepare the necessary pleadings to be filed with OAH, such as the Statement of Issues or Accusation, and if a Notice of Defense is received, to prepare for hearing before OAH.

- 3) CDSS Legal may represent the county in an RFA proceeding held either at OAH or SHD.
 - d. Telephone and facsimile lines at the RFAB have been established for use in *Harris* and RFA hearing matters. The toll-free telephone number is 1-866-538-2431 choosing option 3 when calling in to direct your call to the Resource Family Approval Bureau (RFAB); and a fax line, 916-657-3126 to receive communications from parties relating to either RFA or *Harris* cases.
2. “Onlining” the Harris or RFA Case: All RFA or *Harris* appeal requests received by the county that are to be heard by SHD are to be forwarded directly to the RFAB within ten (10) business days from receipt of the appeal.
 - a. The RFAB *will* enter (or “online”) all RFA and *Harris* appeals into the SHD database. Counties with the ability to currently online *Harris* hearings into HWDC must no longer do so and must forward all *Harris* appeals to the RFAB.
 - b.
 - 1) All RFA information submitted on behalf of the counties, including Requests for Hearing and Statements of Position and other documentation from the counties, must be transmitted through the county’s RFAB Secured File Transfer (SFT). In the event the RFAB SFT is unavailable, information may be transmitted via facsimile or by mail.
 - 2) For OAH matters, upon receipt of an RFA appeal, CDSS Legal or the county attorney or representative will work with the county to determine if an informal resolution of the case can be made at this stage. If not, CDSS Legal or the county attorney or representative will prepare and file an Accusation or Statement of Issues as required by the Administrative Procedure Act (APA) and serve it on the respondent along with copies of the applicable statutes, regulations or written directives, and any other documentation required by the APA. If the respondent submits a Notice of Defense (hearing request) in response to the Accusation or Statement of Issues, CDSS Legal or the county attorney or representative will obtain a hearing date at OAH.
 - c. An RFA respondent or *Harris* claimant may represent himself or herself or be represented by an authorized representative (AR) who may or may not be an attorney, a relative, a friend, or another spokesperson, during the appeal process. For SHD proceedings, proper documentation must be submitted to the RFAB verifying the RFA respondent’s or *Harris* claimant’s AR designation. An attorney for an RFA respondent or *Harris* claimant will not be provided by the Department.
 3. Scheduling the Prehearing Conference (PHC) and Hearing:
 - a. For SHD proceedings, the RFAB sends an acknowledgement of receipt of appeal to the RFA respondent or *Harris* claimant, schedules the PHC and hearing, and sends a Notice of Hearing (NOH) to all parties, providing at least ten days’ notice of the PHC and hearing date. Accommodations to adjust the date, time, or location for the hearing may be discussed at the PHC.
 - b. For OAH proceedings, CDSS Legal or the county attorney or representative will handle all aspects of scheduling the RFA hearing date and sending the NOHs. A PHC is not automatically set for OAH matters except upon request or as provided in the APA. Accommodations to adjust date or time or location for the hearing may be resolved by agreement of the parties and the ALJ.

- c. The hearing with SHD or OAH may be scheduled as an in-person, video conference (where county has video conference capability), or telephone hearing. The RFA respondent or *Harris* claimant has the right to request an in-person hearing.
- 4. Annual Scheduling with Counties for SHD Proceedings: RFAB will schedule cases in a manner similar to that of the ongoing *Harris* annual master calendar model. The RFAB will meet and confer with county representatives to determine availability to schedule hearings, determining county preferred hearing weeks, days, and times. Subject to timeliness requirements, a strong effort will be made to accommodate county preferences. However, requests that cannot be accommodated will be discussed and appropriate alternatives identified and implemented. All *Harris* and RFA hearings will be scheduled using this annual master calendar. Mid-year changes to the annual master calendar will only be made if there is good cause.
- 5. Postponements before SHD and Continuances before OAH:
 - a. For RFA or *Harris* hearings held by SHD, requests for postponements require good cause and will be managed by the RFAB in compliance with MPP sections commencing with 22-053.1 and with SHD's protocol on postponements, which is published on SHD's website. All requests for postponements must be directed to the RFAB Support Staff. Any requests received by RFAB prior to assigning the hearing ALJ will be determined by RFAB's Presiding Administrative Law Judge (PALJ). Requests for postponements received after the hearing ALJ has been assigned to the case, will be determined by the hearing ALJ.
 - b. For RFA hearings held at OAH, requests for continuances require good cause and shall be governed by Welfare and Institutions Code, Section 16519.6, and the APA. CDSS Legal or the county attorney or representative will generally handle all aspects of filing and responding to motions for continuance.
- 6. Dismissals, in General: The Department's regulations provide for dismissals of appeals set before SHD as follows:
 - a. RFA respondent or *Harris* claimant unconditionally or conditionally requests a withdrawal in writing prior to the hearing date (see §§ I.11-13 below);
 - b. RFA respondent or *Harris* claimant fails to appear at the hearing without good cause (see §§ I.8 and I.9 below);
 - c. RFA respondent or *Harris* claimant fails to submit a valid appeal request without good cause (see §§ I.7 and I.10 below);
 - d. RFA respondent or *Harris* claimant dies while the appeal is pending, unless the appeal affects remaining member(s) of the RFA respondent's or *Harris* claimant's household or the appeal can be carried forward by the representative of the RFA respondent's or *Harris* claimant's estate (see MPP §22-004.4);
 - e. If the appeal is dismissed, the RFAB shall provide timely notice in five business days, including:
 - 1) Reason for the dismissal;
 - 2) Explanation of the dismissal's effect on the RFA respondent's or *Harris* claimant's eligibility;
 - 3) Explanation how, with good cause, the dismissal may be vacated;
 - 4) Notify the county within three business days of the dismissal.
 - f. RFAB may set aside a dismissal if the RFA respondent or *Harris* claimant makes a written

request within 30 days and shows good cause. The RFAB must notify the RFA respondent or *Harris* claimant within five business days of denial to set aside the dismissal. This is an appealable issue;

- g. If RFA respondent's or *Harris* claimant's request to reopen the SHD hearing request is granted, the hearing will be rescheduled. Pending the hearing, the county may engage in any informal resolution process, which may result in an unconditional or conditional withdrawal of the hearing request;
 - h. Dismissal of Cases before OAH: For RFA matters set with OAH, a process similar to the dismissal procedures described above is available under the APA. The process provides for a Default Decision and Order to be issued by the Department upon a respondent's withdrawal or failure to appear at hearing. The process allows a respondent to request that the Default Decision and Order be set aside if good cause exists (Gov. Code, §11520). If such a request to set aside a Default Decision and Order is received by the county, the county should immediately forward the request to CDSS Legal or the county's representative for a response and a decision pursuant to the procedures in the APA.
7. Administrative Dismissals for RFA and *Harris* Cases without a Hearing or Decision:
- a.
 - 1) For RFA or *Harris* matters set at SHD, the county may raise a request for administrative dismissal under the principles set forth below. The request for administrative dismissal must be received by the RFAB prior to the date the PHC is conducted.
 - 2) For RFA matters set at OAH, the APA shall govern administrative dismissals. CDSS Legal or the county attorney or representative will handle the filing of requests for dismissal or responses to motions for dismissal in an OAH matter.
 - b. The SHD Chief Administrative Law Judge, the RFAB PALJ, or designee, shall have authority to dismiss, without a hearing and written decision, a hearing request which is subject to dismissal pursuant to MPP, section 22-054.4, because the SHD does not have subject matter jurisdiction (see MPP, § 22-054.31 and the main body of this letter "Jurisdiction for a State Hearing Under *Harris*" or "Jurisdiction for a State Hearing Under the RFA") or because the RFA respondent or *Harris* claimant raises a compliance issue, e.g., an allegation that the county has failed to comply with a previously- adopted state hearing decision (see MPP, §22-078 distinguishing a compliance issue from a compliance- related issue).
 - c. Prior to such dismissal, the RFAB will send a letter to the RFA respondent or *Harris* claimant setting out the reasons for the dismissal indicating that a dismissal shall occur within 15 days unless the claimant sets forth further facts and/or argument, orally or in writing, which would indicate that the matter should not be dismissed. If the RFA respondent or *Harris* claimant presents information that may indicate that the matter should not be dismissed, a hearing shall be scheduled. If the RFA respondent or *Harris* claimant presents information but it fails to establish that the matter should be heard, the request shall be dismissed, and a hearing will not be scheduled. RFAB will notify the RFA respondent or *Harris* claimant of the reasons for such action.
8. Non-Appearance Dismissals for RFA and *Harris* Cases:
- a. In RFA or *Harris* cases set at SHD where the RFA respondent or *Harris* claimant or the claimant's AR fails to appear at the scheduled hearing, the request for hearing shall be considered abandoned and a written decision shall be issued dismissing the claim without

prejudice, pursuant to MPP, sections 22-054.22, .221, and .222.

- b.
 - 1) Non-appearance dismissals at SHD will be issued as final decisions, using a face page that reflects the RFA respondent's or *Harris* claimant's right to request setting aside the dismissal and requesting a new SHD hearing, pursuant to MPP, section 22-054.222.
 - 2) For RFA matters that were set at OAH, the APA shall govern failure to appear at the scheduled hearing. OAH will refer the matter back to the Department to issue a Default Decision and Order, which will include a notice to respondent of the right to request that the Default Decision and Order be set aside if good cause exists (Gov. Code, §11520).
9. Requests to Set Aside a Non-Appearance Dismissal and Set a New Hearing:
 - a. SHD Cases: The RFA respondent or *Harris* claimant shall have the right to request that the dismissal decision be set aside and to have a new hearing if good cause is established for not attending the hearing. Such request must be made within 30 days of the date the dismissal decision is received by the RFA respondent or *Harris* claimant, as described in the MPP, section 22-054.222.
 - b. If an RFA respondent or *Harris* claimant files a separate new request for hearing at SHD that has been dismissed for non-appearance addressing the same issue as dismissed, the hearing ALJ will have the authority to determine whether the RFA respondent or *Harris* claimant has provided sufficient good cause for failing to appear at the initial hearing. If the filing of the new request for hearing exceeds 30 calendar days after receiving the non-appearance dismissal, the ALJ will have authority to also determine whether good cause for the late filing exists.
 - c. OAH Cases: CDSS Legal or the county attorney or representative will treat a request to "reopen" a hearing following a non-appearance as a request to set aside the Default Decision and Order and comply with the requirements of Government Code, Section 11520.
10. Requests to Challenge Jurisdiction and Set a Bifurcated Hearing for *Harris* and RFA Cases:
 - a. SHD Cases: A county's requests to limit a hearing set at SHD to only a jurisdictional challenge (request for "bifurcated" hearing) are governed by the rules set forth under the MPP, sections 22-049.53, .531, and .532. However, the county should raise their request for a bifurcated hearing five (5) business days prior to the date the PHC is conducted. Any such request must be in writing and include the reason for which the county believes the matter should be bifurcated.
 - b. OAH Cases: For matters set at OAH, the APA governs requests for bifurcation, and CDSS Legal or the county representative may assist in filing a request for bifurcation.
11. Withdrawals, in General:
 - a. For RFA matters set at either SHD or OAH, withdrawals by the respondent must be in writing and signed by the respondent.
 - b. SHD Cases: Unless otherwise provided in this Letter, for RFA and *Harris* matters set at SHD, the rules set forth in MPP, section 22-054.21, will govern unconditional and conditional withdrawals. The withdrawal should be received by RFAB no later than five business days prior to the hearing.
 - c. Upon receipt of a signed withdrawal, the appeal will be dismissed without prejudice. The

RFA respondent or *Harris* claimant may file for a new hearing on the same matter withdrawn subject to a jurisdictional challenge on whether the new request for hearing is filed timely.

- d. OAH Cases: CDSS Legal or the county attorney or representative will handle all aspects of the withdrawal and file a signed copy of any withdrawal with OAH. OAH will remove the matter from the hearing calendar and refer the matter back to the Department to issue a Default Decision and Order.
12. Unconditional Withdrawals for RFA or *Harris* Cases Set with SHD: If, as a result of the informal resolution process, the RFA respondent or *Harris* claimant elects to withdraw without conditions, the appeal request shall be dismissed without prejudice, (MMP, §22-054.211, subd. (b)(2)(A)). If a respondent refiles a request for appeal on the previously withdrawn issue, the request will be subject to the jurisdictional time limitations to file an appeal; i.e., 25 days of the date of the county's RFA NOA or within 30 days if the county's RFA NOA is mailed (see Welf. & Inst. Code, § 16519.6(d), (e); Writ. Dirs.,§12-06).
 - a. Unconditional Verbal Withdrawals in RFA or *Harris* Cases:
 - 1) If a verbal unconditional withdrawal request is received on an RFA or *Harris* case, SHD will attempt to contact the RFA respondent or *Harris* claimant and verify the withdrawal (see MPP, §22-054.211(a)). If RFAB is unable to contact the respondent or claimant, it will send a written confirmation within five business days to the respondent or claimant's last known address on record. This confirmation letter will be incorporated by reference with the verbal unconditional withdrawal in order to serve as a written withdrawal.
 - 2) The respondent or claimant will be informed that if s/he does not contact the RFAB within 15 calendar days of mailing the request for confirmation of withdrawal, the RFAB will take this to mean that the respondent or claimant wishes to withdraw the appeal, and the case shall be dismissed. A final Notice of Dismissal is thereafter mailed informing the respondent or claimant that the appeal is dismissed, unless good cause is provided within 30 calendar days for setting aside the dismissal.
 - 3) If the dismissal is set aside, the matter will be set for hearing. If the request is denied, the RFAB must notify the respondent or claimant within five business days of denial to vacate. This is an appealable issue.
13. Conditional Withdrawals for RFA or *Harris* Cases Set with SHD: As a result of the informal resolution process, if the RFA respondent or *Harris* claimant and the county reach agreement and, as a result, the RFA respondent or *Harris* claimant withdraws the hearing request on the understanding that the terms and conditions of the agreement are to be met by the parties, the appeal is dismissed without prejudice. Once the RFAB is notified, it shall dismiss the case and remove the matter from the hearing calendar.
 - a. Conditional Withdrawals in RFA or *Harris* Cases Set with SHD: Conditional withdrawals must be signed by both parties and received by the RFAB prior to hearing. CDSS Legal or the county's representative should send conditional withdrawals using the SFT. In addition to a physical signature, the RFA respondent or *Harris* claimant may sign the agreement using a telephonic signature as set forth in All County Information Notice (ACIN) I-60-13 and the Code of Civil Procedure, Section 1633.1, et seq. If a county uses a telephonic signature to secure a conditional withdrawal, the county must provide a script to ensure the RFA respondent, *Harris* claimant, or his or her AR has entered into the agreement knowingly, intelligently, and voluntarily.

- b. Where the county offers a conditional withdrawal in order to propose to review a prior application denial, rescission, or exclusion, the agreement must specify what the county agrees to review and the actions to be taken after review, with sufficient detail such that the obligations of the RFA respondent or *Harris* claimant and the county are clear. Stating that the county will review the matter is not sufficient by itself. The agreement must instead state what the county shall review and what action, after review, the county will take. A best practice is to set forth all findings and conditions on either party, including time limits or due dates, in a written agreement signed by all parties.
- c. The responsibilities of either or both parties shall be listed with sufficient detail so as to establish a meeting of the minds and to permit enforcement. As a best practice, the county should begin to take action as soon as practicable after the agreement with the RFA respondent or *Harris* claimant has been made, even if the signed conditional withdrawal is not received before the hearing.
- d. The County should, as a best practice, advise the RFA respondent or *Harris* claimant if the written conditional withdrawal has not been received two business days before the hearing so the RFA respondent or *Harris* claimant is aware of the non-receipt of the agreement and the need to appear at the hearing.
- e. In any event, if the RFA respondent or *Harris* claimant or his or her AR is not certain that the executed conditional withdrawal has been received by the RFAB, the RFA respondent or *Harris* claimant should be prepared to attend the scheduled hearing.

14. Administrative Denials for *Harris* Cases: In ACL 13-27, the Department created a procedure for counties to request an administrative denial regarding an individual who has suffered a non-exemptible criminal conviction as defined in Health and Safety Code, Section 1522, subdivisions (g)(1)(A), (B), and (C). If the county submitted admissible evidence establishing the conviction, SHD would send out a 15- day letter alerting the home approval applicant that SHD intended to deny the request for hearing giving an opportunity to the *Harris* claimant to respond.

This administrative denial procedure is now vacated effective the date of this ACL. The RFAB will no longer honor requests for an administrative denial as of this date.

15. The Settlement Conference for RFA and *Harris* Cases:

- a. In addition to the PHC and the hearing or, as an alternative, either party may request a settlement conference. While not routinely scheduled, settlement conferences are considered by SHD or OAH to be a valuable means to resolve issues in controversy. A settlement conference can be scheduled at the discretion of the hearing ALJ or when both parties agree that a settlement conference may be an appropriate method to resolve the case. Upon notification that a settlement conference will be scheduled, the OAH or RFAB PALJ shall assign an ALJ, who is not the hearing ALJ, to conduct the settlement conference (hereby, the settlement ALJ).
 - 1) For matters set at SHD, any party may make a request for a settlement conference by contacting the RFAB support staff or by contacting the judge assigned to the case directly. Support staff will forward the request to the RFAB PALJ or appropriate ALJ for review.
 - 2) For RFA hearings set at OAH, a settlement conference will be set upon the request of

either party or as provided in the APA. CDSS Legal or the county attorney will generally handle all aspects of requesting, calendaring, and preparing for a settlement conference and will file the settlement conference statement, if a statement is required by OAH.

- b. If a settlement conference is to be held, OAH or the RFAB shall notify the parties of the date, time, and location (if scheduled in-person) of the settlement conference. If OAH or the RFAB denies the request for a settlement conference, RFAB shall notify the parties, either in writing or orally, within three days of the request or, for OAH matters, as provided in the APA.
- c. The settlement conference is not an adversarial hearing and need not be conducted under oath but is an opportunity for both parties to attempt to reach a resolution to their dispute. Once the settlement conference has been set and the parties have been notified by OAH or the RFAB, then the ALJ assigned to conduct the conference can meet with the parties, individually or at the same time, to discuss the parameters of the settlement conference. There is no set procedure dictating the modality on how these conferences must be held. The ALJ assigned to conduct the settlement conference can determine whether the conference can be held in-person, telephone, or video conferencing, as well as how the settlement conference shall proceed.
- d. Discussions and disclosures made during a settlement conference shall remain confidential in order to facilitate honest discourse by the parties as they attempt to reach a mutual resolution of the case. Therefore, the ALJ assigned to hold the settlement conference shall not conduct either the PHC or hearing and shall not share any discussions or disclosures made during the settlement conference with the hearing ALJ when the settlement conference does not resolve the case.
- e.
 - 1) For matters set at SHD, if the case is resolved through the settlement conference, the settlement ALJ shall prepare a written settlement agreement decision. A settlement conference can be heard either prior to or after the PHC.
 - 2) For matters set at OAH, CDSS Legal or the county representative will prepare a written settlement agreement to be signed by all parties.
- f. If the case was not resolved, the PHC and/or the hearing shall proceed on the date, time, and modality as originally scheduled. Granting and calendaring a settlement conference will not automatically change the PHC or hearing dates.

16. The PHC for RFA and *Harris* Cases:

- a.
 - 1) SHD Cases: After receiving the request for hearing, RFAB will schedule a PHC as well as the hearing. The date and time of the scheduled PHC will be listed on the NOH, but the date and/or time of the PHC may be adjusted by the hearing ALJ. It is anticipated that the PHC will be conducted following any settlement conference that has not fully resolved the parties' disputes. The PHC will be conducted by telephone or video conferencing by the hearing ALJ, unless the ALJ determines that the PHC should be conducted in-person. Only the hearing ALJ has discretion to determine whether the PHC shall be conducted.
 - 2) OAH Cases: A PHC is not automatically set except upon request of either party or as

provided in the APA. If a PHC is set before OAH, CDSS Legal or the county attorney or representative will prepare any required motions or PHC statements.

- b. The purpose of the PHC is for the hearing ALJ to clarify all relevant issues in dispute to ascertain all relevant, non-duplicative, or necessary witnesses or documentary evidence that the parties propose will testify or present at hearing, to determine if interpretive services will be needed, unless this information has already been communicated to the RFAB; to discuss the preferred modality of the hearing, to discuss any necessary accommodations in adjusting the date or time of the hearing, and other concerns.
 - 1) SHD Cases: All anticipated evidentiary or procedural challenges or motions by either party should be made at the PHC and must be in writing and submitted to the RFAB and served upon the opposing party ten (10) calendar days prior to the date the PHC is scheduled to be conducted. Any response to a filed motion must be in writing and submitted to the RFAB and served upon the motioning party five (5) calendar days prior to the date the PHC is scheduled to be conducted.
 - 2) OAH Cases: Timelines and due dates shall be as set forth in the APA and as ordered by the ALJ.
- c. The SHD ALJ's rulings on all evidentiary or procedural challenges or motions shall be made in writing and made available to the parties and representatives at or following the PHC. Any challenges to privilege or confidentiality raised by either party prior to the PHC will be resolved at the PHC by the ALJ through an *in camera* hearing (see § III below, "Evidence in an RFA or *Harris* State Hearing").
- d. All parties or ARs participating in the PHC need not be under oath unless the hearing ALJ determines otherwise. For example, at the hearing ALJ's discretion, a PHC may be converted into a hearing, whereupon all parties will be asked to take the oath. Attorneys acting as ARs who do not anticipate testifying to facts, but only argue on the party's behalf, will not be mandated to take the oath. However, if, during the course of the proceedings, the AR or counsel for either party does begin to testify, the hearing ALJ shall interrupt the testimony to administer the oath to the AR or attorney.

II. RFA OR *HARRIS* STATE HEARING

- 1 The Hearing for RFA and *Harris* Cases:
 - a.
 - 1) SHD Cases: *Harris* state hearings conducted by SHD are held pursuant to the policies and procedures set forth in the MPP, sections 22-000 through 22-085, and Welfare and Institutions Code, Sections 10950 through 10967.
 - 2) SHD Cases: RFA hearings conducted by SHD are held pursuant to the policies and procedures set forth in the MPP, sections 22-000, *et seq.*, Welfare and Institutions Code, Sections 10950 through 10967, Section 16519.5, *et seq.*, and the CDSS Written Directives or RFA-specific regulations, once promulgated. Welfare and Institutions Code, Section 16519.5, *et seq.*, and the CDSS Written Directives or RFA-specific regulations, once they are promulgated, will take precedence over Welfare and Institutions Code, Sections 10950 through 10967, and MPP, section 22-000 through 22-085, wherever inconsistencies or conflicts exist.
 - 3) OAH Cases: RFA hearings conducted by OAH are held pursuant to the APA, Welfare

and Institutions Code, Section 16519.5, et seq., and the CDSS RFA Written Directives or RFA regulations, once promulgated.

- 4) CDSS Legal may represent the county in RFA hearings held at OAH as well as at SHD.
 - b. It is a best practice for parties to file any procedural or evidentiary challenges or motions prior to the PHC as discussed above. Parties are not precluded from filing a procedural or evidentiary challenge or motion in preparation for the hearing. If a party wishes to do so, the party must notify the hearing ALJ as soon as practicable prior to hearing, whereupon the ALJ will establish a submission schedule.
 - c. SHD Cases: The ALJ shall determine how his or her rulings on evidentiary or procedural challenges or motions made prior to the hearing are communicated to the parties. However, rulings on the admissibility of evidence made during the hearing must be made on the record and, when appropriate, shall be included in the ALJ's decision.

III. EVIDENCE IN AN RFA OR *HARRIS* STATE HEARING

- 1 Evidentiary Burdens for RFA and/or *Harris* State Hearings:
 - a. The standard or proof at hearing shall be by the preponderance of the evidence, and the burden of proof shall be on the county or Department, where applicable (see Welf. & Inst. Code, §16519.6(l); RFA Writ. Dirs., §12-18).
 - b. Criminal Exemptions: In a *Harris* or RFA case where the county or Department has established a preponderance of evidence with admissible evidence that an individual has suffered an exemptible criminal conviction, the burden shifts to the individual to prove by substantial and convincing evidence that the individual is rehabilitated and of such present good character that the individual should be granted a criminal record exemption. (See Health & Saf. Code, §1522, subd. (g)(1); RFA Writ. Dirs., §06-03B(c)(2).)
2. Evidentiary or Procedural Challenges or Motions at the PHC or Hearing for *Harris* and RFA Cases:
 - a. Evidentiary or procedural challenges or motions, including requests for subpoenas, are characteristically managed by the hearing ALJ at the PHC or at another time prior to hearing but can also be raised at the hearing.
 - b.
 - 1) Requests for Subpoenas for Cases Set with SHD: Requests for subpoenas, either to mandate the appearance of a witness or for the production of documentary evidence, should be made prior to the commencement of the hearing (see MPP, §22-051.4), but such requests may also be made at hearing (MPP, §22-051.5). The requesting party must submit a statement under penalty of perjury as to what is requested to be produced, or who is requested to appear and the relevance to the issues in dispute for such requests, provided the requested testimony or documents are not cumulative or unduly repetitive. Requests for subpoenas must be directed to the RFAB Support Staff who will log the requests and forward them to the appropriate ALJ for review. The hearing ALJ, or the CALJ or designee, shall determine whether the subpoena is to be ordered. If ordered, SHD shall produce the subpoena to be served. Service must be performed by the requesting party, providing a reasonable time for compliance. Because service and compliance to ordered subpoenas take time, the requesting party should consider requesting the subpoena with sufficient time prior to the scheduled hearing date and providing the hearing ALJ sufficient time to address the request at the

PHC.

- 2) Requests for Subpoenas for Cases Set at OAH: Requests for subpoenas shall be handled as specified in the APA. CDSS Legal or the county's attorney/representative will generally prepare or respond to subpoenas.
- c. Special Evidentiary Motions Added to the RFA Written Directives: Two specified evidentiary rules will be made available for both RFA and *Harris* cases:
 - 1) The RFA Written Directives, section 12-14, provides for a child hearsay rule:

(a) The out-of-court statements made by a child under twelve years of age who is the subject or victim of an allegation at issue constitutes admissible evidence at an administrative hearing conducted pursuant to Welfare and Institutions Code section 16519.6. The out-of-court statement may provide the sole basis for a finding of fact if the proponent of the statement provided the statement to all parties prior to the hearing and the adjudicator finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability. However, the out-of-court statement shall not be admissible if an objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence.

(b) This section shall not be construed to limit the right of any party to the administrative hearing to subpoena a witness whose statement is admitted as evidence or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant." (Also see Welf. & Inst. Code, §16519.62, added Stats. 2016, c. 612, §125, [A.B. 1997], eff. Jan. 1, 2017.)
 - 2) RFA Written Directives, section 12-16, provides evidentiary limitations on evidence regarding alleged victims of inappropriate sexual conduct:

(a) In any proceeding in which a child or other minor or nonminor dependent is the victim in an allegation of inappropriate sexual conduct, specific instances of the victim's sexual conduct with individuals other than the alleged perpetrator is subject to all of the following limitations:
 - (1) The evidence is not discoverable unless it is to be offered at a hearing to attack the credibility of the victim as provided for in subsection (b). This paragraph is intended only to limit the scope of discovery; it is not intended to affect the methods of discovery allowed by statute.
 - (2) The evidence is not admissible at the hearing unless offered to attack the credibility of the victim as provided for in subsection (b).
 - (3) Reputation or opinion evidence regarding the sexual behavior of the victim is not admissible for any purpose.
 - (a) Evidence of specific instances of a victim's sexual conduct with individuals other than the alleged perpetrator is presumed inadmissible absent an offer of proof establishing its relevance and reliability and that its probative value is not substantially outweighed by the probability that its admission will create substantial danger of undue prejudice or confuse the issue.
 - (b) As used in this section 'victim' means a person claiming to have been subjected to inappropriate sexual conduct by an alleged perpetrator.

- (c) This section shall also apply to a victim in an allegation of inappropriate sexual conduct who was previously placed with a Resource Family as a child or dependent minor, but who is an adult at the time of a hearing.”
- d. Other evidentiary motions can also be addressed at the PHC or at hearing, with the understanding that hearings before an ALJ are conducted in a manner best suited to ascertain the facts and to control the conduct of the hearing (see Gov. Code, §11513; MPP, §22-050.1). Except for these two specific evidentiary rules above or where privileged or confidential evidence is challenged (see below in §3), ALJs with SHD are not bound by rules of procedure or evidence. ALJs at both forums may exclude evidence that is irrelevant, cumulative, or unduly repetitive (see Gov. Code, §11513; MPP, §§ 22-050.2, .21, and .22).
3. Privileges Asserted at the PHC or Hearing for both *Harris* and RFA Cases:
- a. The hearing ALJ must exclude evidence which is privileged under the Evidence Code if the privilege is claimed in accordance with the law (see Evid. Code, §911, *et seq.*; MPP, §22-050.23).
 - b. *In Camera* Hearings for Cases Set at SHD: In order to provide a forum for parties to allege privileges or confidentialities, the ALJ may conduct an *in camera* hearing either when the PHC or hearing is conducted. It is a best practice, however, for a party to assert such privileges or confidentialities prior to the PHC. An SHD ALJ may conduct an *in camera* hearing as follows:
 - 1) The party asserting the privilege or confidentiality must make an offer of proof to the ALJ as to why an *in camera* hearing is needed, and the opposing party shall be given an opportunity to agree or disagree as to the need for an *in camera* hearing;
 - 2) The ALJ has the discretion to order an *in camera* hearing;
 - 3) If held, the *in camera* hearing must be recorded on a separate record from the PHC or hearing;
 - 4) Only the party asserting the privilege or confidentiality may be present as the information alleged to be privileged or confidential is presented to the ALJ, unless this party consents for others to attend and/or the ALJ deems their presence is appropriate;
 - 5) Following presentation of asserted privilege or confidential information to the ALJ, both parties shall be provided the opportunity to argue their positions before the ALJ as to the allegation of privilege or confidentiality or relevance of the information to the matter at hand;
 - 6) The ALJ will determine whether all or part of the information is privileged or confidential and determine the relevance of the information to the matter at hand;
 - 7) The ALJ shall exclude all or any portion of the information if disclosure is forbidden by law or the necessity of disclosure of the information in the interest of justice does not outweigh the necessity to preserve the privilege or confidentiality;
 - 8) If only part of the documentary information is excluded, the party asserting the privilege or confidentiality will be responsible for redacting that portion of the excluded document prior to admittance of the information at hearing;
 - 9) The party asserting the privilege or confidentiality must disclose the information that the ALJ orders to be disclosed;
 - 10) Any part of the information in which the ALJ orders excluded cannot be admitted into evidence, nor can the ALJ consider or rely upon any information that has been excluded in order to render a decision;
 - 11) The recording of the *in camera* hearing must be preserved for subsequent review.
 - 12) Where a document is deemed admissible, the ALJ may need to provide the other party

time to respond by either continuing the hearing or holding the record open for response and rebuttal.

- c. SHD Cases: If the *in camera* hearing is conducted at the PHC, the hearing ALJ shall summarize the proceeding on the post-prehearing letter or any decisional order issued to both parties following the PHC. Where the *in camera* hearing is conducted at the hearing, the hearing ALJ will include a summary of the proceeding in the proposed decision, when appropriate.
4. Party Responsibilities in Providing Evidence at an RFA Hearing:
- a. The county has the burden to produce at the hearing all evidence, including witness testimony and documents, relevant to the basis for the county's decision denying or rescinding a resource family approval, denying or rescinding a criminal record exemption, and the county or Department has the burden to produce at hearing all evidence relevant to an action excluding an individual from a resource family home. The following documents should be submitted at an RFA state hearing:
- 1) SHD Cases: A Position Statement prepared by the county consistent with MPP, section 22-073.25, must be made available to the RFA respondent or AR at least two business days prior to the schedule hearing date. Prior to the hearing, the county shall prepare at typewritten Position Statement summarizing the facts of the case and setting forth the statutory or regulatory justification for the county's action and, with some exceptions, attach copies of documentary evidence and a list of witnesses whom the county intends to use during the hearing, and include any other information required by Written Directives, section 12-11.
 - 2)
 - i SHD Cases: The RFA respondent or AR may submit a Position Statement and other documents at the discretion of the respondent or the AR.
 - ii OAH Cases: Prior to a hearing, CDSS Legal or the county attorney or representative will have filed and served the Accusation or Statement of Issues on the respondent along with copies of the applicable law, regulations, or RFA Written Directives.
 - 3) The following additional documents may be relevant to an RFA dispute held at either SHD or OAH and should be considered for submission at hearing where applicable:
 - i RFA NOA and other Resource Family related correspondence between the county and the respondent;
 - ii Respondent's appeal;
 - iii Resource Family Application (forms RFA-01(A) and RFA 01(C)) and supporting documents;
 - iv Resource Family Criminal Background Check (form RFA-02);
 - v Criminal Exemption Request, Denial, and/or Grant (under Welf. & Inst. Code, §361.4 and 16519.5(d));
 - vi Resource Family Criminal Records Statement (form RFA-01(B)) executed by the

- respondent and, if applicable, "Out-of-State Child Abuse/Neglect Report Request" (state form LIC 198B) and response thereto;
- vii Log entries and/or notes from social workers or other county staff persons processing the application or exemption(s);
 - viii Certified Superior Court records related to a conviction;
 - ix Certified Juvenile Court records, including jurisdictional/dispositional reports with findings and orders, status review reports with findings and orders, social worker reports to the Court, and minute orders regarding substantial child abuse or neglect or adjudication of criminal conduct. (See below discussing the impact of the Welf. & Inst. Code, §§827 and 828, privilege for juvenile records);
 - x Character reference letters provided by the RFA respondent in support of a criminal record exemption(s);
 - xi Reports and investigative narratives related to substantiated allegations;
 - xii Certified Arrest Disposition Report Form(s) provided by the Department of Justice (DOJ). (Note: this is not the RAP sheet or CORI, issued by DOJ.);
 - xiii Certified California Department of Corrections and Rehabilitation incarceration or prison records (also known as the "969b packet");
 - xiv Certified law enforcement arrest or incident reports related to a conviction or criminal or child abuse/neglect conduct that did not result in a conviction. Note: If certified reports are not available, an uncertified report may be offered into evidence;
 - xv Party testimony, party admissions, declarations, stipulations in fact, or other statements by RFA respondent;
 - xvi The Written Report of the comprehensive assessment in compliance to RFA Written Directives, section 6-07: Resource Family Written Report (form RFA-05) and any completed Resource Family Written Update Report (form RFA-06);
 - xvii Any supplemental reports or documentation to support the Written Report or Written Update Report;
 - xviii Resource Family visit reports, investigation reports, or incident reports such as the RFA 809, RFA 809C, RFA 9099, or RFA 9099C;
 - xix "Community Care Licensing" facility visit reports, investigation reports, or incident reports, when applicable;
 - xx Medical or similar records relevant to the allegations at issue. (For motions relating to privilege or confidentiality, see above § III, 3.);
 - xxi Resource Family Home Environment report (form RFA-03); Notice of Deficiency(s) and Corrective Action Plan(s); Resource Family Evaluation Report – CAP (Form RFA-809C);

- xxii Relevant health documents, including the Health Screening form (Form RFA-07); Tuberculosis (TB) Screening Questionnaire (Form RFA 08);
- xxiii Documented Alternative Plan Approval or Denial;
- xxiv Resource Family Risk Assessment (form RFA-04);
- xxv Psychosocial or permanency assessments conducted pursuant to RFA Written Directives, section 06-04 and 06-05;
- xxvi "Relative or Nonrelative Extended Family Member Caregiver Assessment" (state form SOC 818) or "Relative or Nonrelative Extended Family Member Caregiver Assessment – Nonminor Dependent" (state form SOC 818NMD). Until such time as forms providing this information are issued as RFA forms;
- xxvii Log Entries and/or other notes from social workers, probation officers or other county staff persons processing home approval or relevant court minute orders.

Party Responsibilities in Providing Evidence at a *Harris* Hearing Set at SHD:

- a. The county has the burden to produce at the hearing all evidence, including witness testimony and documents, relevant to the basis for the county's decision that a relative's or NREFM's home does not meet home assessment standards, or that an adult in the relative's or NREFM's home does not meet background check requirements, and to produce any evidence relied upon in determining the relationship as an NREFM.
- 1) For clarity, the county's decision to deem a nonrelative not to be an "extended family member" is not a basis for denying a home under *Harris* or approving federal or non-federal Foster Care benefits but is a decision that strictly relates to the county's and/or Juvenile Court's decision to place a dependent minor or nonminor with a nonrelative.

- b. The following documents should be submitted at a *Harris* hearing:

- 1) A Position Statement prepared by the county, consistent with MPP, section 22- 073.25, and Welfare and Institutions Code, Section 10952.5, must be made available to the *Harris* claimant and/or the AR at least two business days prior to the scheduled hearing date.

Prior to a hearing the county representative shall prepare a typewritten statement summarizing the facts of the case and set forth the regulatory justification for the county's action and, with some exceptions, attach copies of documentary evidence and a list of witnesses whom the county intends to use during the hearing. Some documents, such as certain law enforcement records, may not be attached to the Position Statement.

- 2) The Harris claimant or AR may also submit a Position Statement and other documents at the discretion of the claimant or the AR.
- 3) The following documents may be relevant to a *Harris* hearing and should be considered for submission at hearing, where applicable:
 - i "Approval of Family Caregiver Home" (state form SOC 815);

- ii Criminal Exemption Request, Denial, and/or Grant (under Welf. & Inst. Code, §361.4);
- iii "Out-Of-State Disclosure & Criminal Record Statement" (state form LIC 508D) executed by the *Harris* claimant and, if applicable, "Out-of-State Child Abuse/Neglect Report Request" (state form LIC 198B) and response thereto;
- iv Log entries and/or notes from social workers or other county staff persons processing the exemption(s);
- v Character reference letters provided by the *Harris* claimant in support of a criminal exemption;
- vi Reports and investigative narratives related to substantiated allegations;
- vii Evidence establishing criminal activity, such as Superior Court records of the criminal case, Arrest Disposition Form(s) provided by DOJ, California Department of Corrections and Rehabilitation incarceration or prison records (Pen. Code, §969b, also known as "969b packets"). Certified copies of these documents provide the best evidence;
- viii Party testimony, party admissions, declarations, stipulations in fact, or other statements by the *Harris* claimant; Relevant Juvenile Court records, including jurisdiction/dispositional reports with findings and orders, status review reports with findings and orders, and minute orders regarding substantiated child abuse or neglect adjudication of criminal conduct. (See below discussing the impact of the Welf. & Inst. Code, §§827 and 828 relating to privilege for juvenile records.) Certified copies of these documents provide the best evidence;
- ix Medical or similar records relevant to the allegation at issue. (For motions relating to privilege or confidentiality, see above § III, 3, (a) and (b); *Privileges Asserted at the PHC or Hearing for both Harris and RFA Cases*);
- x Documented Alternative Plan Approval or Denial;
- xi "Relative or Nonrelative Extended Family Member Caregiver Assessment" (state form SOC 818) or "Relative or Nonrelative Extended Family Member Caregiver Assessment – Nonminor Dependent" (state form SOC 818NMD);
- xii "Checklist of Health and Safety Standards for Approval of Family Caregiver Home" (state form SOC 817) or "Checklist of Health and Safety Standards for Approval of Family Caregiver Home – Nonminor Dependent" (state form SOC 817NMD);
- xiii "Approval of Family Caregiver Home" (state form SOC 815);
- xiv Log entries and/or notes from social workers or other county staff persons processing home approval;
- xv Notice of Deficiency(s) and Corrective Action Plan(s).

IV. EVIDENTIARY STATUS OF JUVENILE COURT RECORDS IN *HARRIS* AND/OR RFA STATE HEARINGS

1. The Department has concluded that SHD is an appropriate repository for all juvenile records privileged under Welfare and Institutions Code, Section 827, that are relevant to all hearings addressing home approval under *Harris* or RFA as provided under Section 827, subdivision (a)(1). That subdivision states, in pertinent part:

“(a)(1) Except as provided in section 828, a case file may be inspected only by the following,....
(I) The State Department of Social Services, to carry out its duties pursuant to Division 9 (commencing with section 10000), and Part 5 (commencing with section 7900) of Division 12, of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements, section 10850.4 and paragraph (2)”.
2. For RFA matters set before OAH, effective January 1, 2017, all RFA hearings set at OAH will be confidential and not open to the public in order to protect juvenile court records or records of a foster child. Additional measures to protect records may include an *in camera review*, a protective order and sealing of the record.

V. RFA & *HARRIS* POSTHEARING PROCEDURES

1. Proposed Decisions: Following the close of the hearing record, the hearing ALJ shall issue a proposed decision, except for non-appearance dismissals or default decisions and orders discussed above. The proposed decision shall be in writing and shall include a statement of the factual and legal basis for the decision and any other basis as required in any applicable law (RFA Writ. Dirs., §12-19). In addition, the proposed decision will include the following:
 - a. A concise and explicit statement of the underlying facts of record that support the decision;
 - b. Any determinations on the weight of evidence or determinations of credibility that affect the findings and conclusions;
 - c. Rulings on evidentiary or procedural challenges or motions, as applicable;
 - d. If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness or content of the witness testimony that supports the determination;
 - e.
 - 1) SHD Cases: The proposed decision shall be subject to review by the Department's Director, or designee, pursuant to Welfare and Institutions Code, Section 10959, whereupon the proposed decision may be adopted, alternated, or an order for further hearing made. After 30 days, if no action is taken, the proposed decision is adopted by operation of law.
 - 2) OAH Cases: The proposed decision shall be subject to review by the Department's Director, or designee, pursuant to the APA at Government Code, Section 11517, *et seq.*, whereupon the proposed decision may be adopted, alternated, or an order for further hearing made. Timelines and procedures are further clarified at Government

Code, Section 11517, *et seq.*

2. Final Decisions: Any final decision order favorable to the *Harris* claimant or RFA respondent in either a *Harris* or RFA case, either in whole or in part, will mandate that the county or Department comply with the order pursuant to MPP section 22-078.
 - a. SHD Cases: The cover page on final decisions issued by SHD shall provide to the parties notice of their right to file a request for a rehearing pursuant to Welfare and Institutions Code, Section 10960 or judicial writ review pursuant to Welfare and Institutions Code, Section 10962, with the mandatory timelines to file for each designated on the cover page. It is SHD's intent to issue final decisions in either *Harris* or RFA cases within 90 days of receipt of the RFA respondent's or *Harris* claimant's appeal, where practicable.
 - b. OAH Cases: After the issuance of a final decision, a party has a right to file a request for reconsideration or writ for judicial review as set forth in the APA at Government Code, Section 11521, *et seq.*
 - c. Cover Page in SHD Proceeding: The cover page on final decisions issued by an ALJ with SHD shall provide to the parties their right to file a request for a rehearing or judicial writ review pursuant to Welfare and Institutions Code, Section 10962, with the mandatory timelines to file for each designated on the cover page.
3. Precedential Decisions: RFA Written Directives, section 12-17 mandates that ALJs apply the principles of the Department's precedential decisions where the facts or issues in the precedential decision are similar to the matter at hand. The Department's designation of a precedential decision is not subject to judicial review (see Gov. Code, §11425.60).
4. Retention of Records Held on the SHD Case Management Data System (CMDS): The RFAB will hold *Harris* and RFA case information on its CMDS for at least 12 months or on its ACMS for at least 12 months (once the ACMS is operational).

VI. PROTOCOL DISTINGUISHING RFA AND *HARRIS* DISPUTES FROM TITLE IV-E FUNDING CASES

1. *Harris* Requests for Hearing: For *Harris* matters, children may be placed into a relative or NREFM's home on an emergency basis pending home approval of the caregiver's home (see Welf. & Inst. Code, § 309(a)). However, once the county determines that the caregiver's home is not approved and the county is not continuing efforts to approve the home but has not removed the child from the unapproved home and makes no efforts to remove the child, or is not prohibited from doing so by an order of the Juvenile Court, the case shall be considered a Title IV-E funding case and adjudicated by an SHD ALJ accordingly. The decision to assess whether to proceed as a *Harris* or funding case will be made at or prior to the PHC.
2. RFA Requests for Appeal:
 - a. Emergency Placements: Under RFA Written Directives, section 7-01, a county may make an emergency placement of a child with a relative or NREFM provided a CLETS and a Child Abuse Central Index (CACI) is run on all adults in the home and the home has passed an initial health and safety inspection. Within 90 days, unless there is good cause for delay, the relative or NREFM must be approved as a Resource Family.
 - b. Compelling Reason Placements: Under the RFA Written Directives, section 7-02, a county may immediately place a child with an applicant for a compelling reason provided a home

environment assessment is completed, a complete risk assessment is conducted, and background checks on all adults in the home are conducted. Within 90 days, unless there is good cause for delay, the relative or NREFM must be assessed and approved as a Resource Family.

- c. However, once a county determines that the relative or NREFM or applicant is not approved as a Resource Family but has not removed the child and makes no efforts to remove the child, or is not prohibited from doing so by an order of the Juvenile Court, the case shall be considered a Title IV-E funding case and adjudicated by an SHD ALJ accordingly. The decision to assess whether to proceed as a *Harris* or funding case will be made at or prior to the PHC.