



Gomez vs. Saenz Settlement: Training for Child Welfare Workers & Supervisors

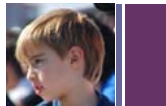
Presented By:
Central California Training Academy

Learning Day Warm-up



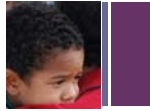
- Define Due Process. List all the due process protections you can think of.
- What are the due process protections affected by child abuse investigations?
- What is the purpose of CACI? How can it protect children? What are the ramifications of being listed as a suspect on CACI?

Where are we headed?



- Overview of History of CACI and Gomez lawsuit
- Understanding Definitions of Child Abuse and Neglect
- Referral Disposition Thresholds
- What Gomez vs. Saenz Means Out in the Field
- CACI Reporting Procedures
- Skills Application

Key Concepts



- Liberty Interest – Right to Protect Your Good Name
- CACI was created as a means to protect children from known or suspected child abusers
- Gomez Settlement allows alleged perpetrators to challenge their listing on CACI
- Penal Code statutes specifically define child abuse and neglect as well as disposition thresholds
- Administrative hearings are conducted to review the investigator's conclusion and thoroughness of investigation that reaches this decision.

Constitution, Due Process and CWS



- Fifth and Fourteenth Amendment: Due Process
- CWS impacts:
 - Self-determination in parenting
 - Children have right to be safe
 - Protection of one's good name
- Due process protects against government abuses and intrusions

Due Process



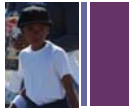
- Substantive:
 - ❖ Right to be free of interference absent a compelling reason for government involvement
- Procedural:
 - ❖ Notice of action taken – exact reasons for action
 - ❖ Opportunity to be heard – challenge government intervention

What is the CACI:



- 1980 – Penal Code 11169 and 11170
- Department of Justice maintains central depository
- All substantiated and inconclusive child abuse and severe neglect reports
- Information available to law enforcement, Child Welfare, Probation, Licensing and CASA
- Individual counties are responsible for assuring the accuracy and completeness of any investigation that leads to putting a name on the list

CWS duties



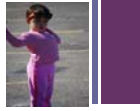
- Report every case of known or suspected child abuse or severe neglect that is actively investigated and not unfounded
- Notify DOJ of any report previously listed that is changed to unfounded
- Notify the individual listed in writing
- Retain records for at least 10 years



How does being listed on CACI impact the person who has been named?

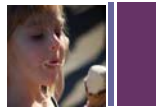


Possible ramifications



- Obtaining employment in settings involving children
- Consideration for relative placement
- Licensing as a foster parent
- Adopting a child
- Custody matters
- Day care license
- Subsequent child abuse and neglect investigation risk assessments
- Promotional opportunities in certain settings
- Lose or be suspended from certain employment settings
- CASA or other volunteer position

Overview of Gomez v. Saenz



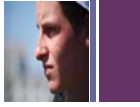
- Lawsuit filed in 2004 challenged accuracy of CACI and lack of due process for those named
- Settlement in 2007 provides for right to challenge listing, and
 - Requires Public Notification
 - Purging Unsupported Listings
 - Survey of accuracy rate
 - Notice to individuals who will be listed

+ What do you know about your county protocol?



Gomez versus Saenz Settlement

Taking it to the field... Not a change in practice, a scrutiny of practice



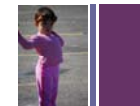
- Completeness of investigation, interviews, collateral verification and safety threat and risk assessment
- How the decision was arrived at – any bias
- Appropriate use of disposition thresholds
- Clear documentation of discussion of findings with parents
- Clear documentation of written notice to anyone listed on CACI
- Clear documentation that person named was given their rights
- Responsibility to change information in CWS/CMS and notify DOJ if disposition changes

Defining Child Abuse



- Penal Code 11165.6 – foundational statute
 - **Physical abuse** – injury or death, “by another person,” non-accidental
- **Neglect** – acts or omissions, by person responsible for care, physical harm threatened or occurs:
 - Severe Neglect (PC 11165.2) – diagnosed malnutrition, non-organic Failure to Thrive, placing in perilous circumstance
 - General Neglect – lack of adequate care or supervision, but no harm has to have occurred
- Welfare and Institutions Code §300 (a)-(j)

Defining Child Abuse



- **Sexual Abuse (PC11165.1)**
 - Broader and more inclusive than definitions of physical or emotional abuse
 - Sexual assault
 - Sexual exploitation
- **Emotional Abuse (PC11166.05)**
 - Willful harming or injury (PC 11165.3)
 - Unlawful Corporal Injury to a Child (PC11165.4)
 - Positive toxicology at birth (PC 11165.13)
 - Child abuse or neglect by out of home care provider (PC 11165.5)

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Penal Code 11165.12

Defines the thresholds between


Substantiated

Inconclusive

Unfounded





Start with unfounded...



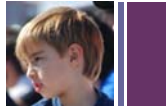
- **Verifiable or affirmative evidence** that
 - Allegation is falsely reported
 - “Inherently improbable”
 - An accidental injury
 - Incident does not meet the statutory definition of child abuse or neglect. (we will get to that in a minute)

Then examine substantiated...



- **Verifiable or affirmative evidence** that
 - The allegation “more likely than not” constitutes child abuse or neglect as defined in statute
 - Preponderance standard -- 51%

Finally consider inconclusive...



- First, it doesn't meet the definition of "unfounded."
- But, credible evidence to substantiate falls short of preponderance or "more likely than not" standard.

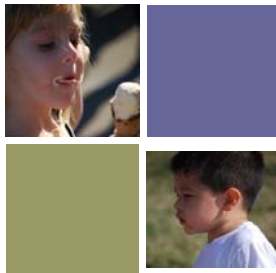
Always assess safety threat and risk



- Evidence of substantiation (or not) is independent of properly conducted safety threat and risk assessment.
- Case opening = risk
- CWS/CMS: Substantial Risk



Let's try it out – Make a finding!



Three case examples

Field Checklist



- Competent and thorough investigations
- Other investigatory responsibilities
- Interviewing implications
- Essential disclosures



How do you deal with referrals where police request a delay in contacting a suspect for criminal investigations?

ACTIVE INVESTIGATION



Documentation implications

- Your referral documentation plays a key role in determining whether the referral determination was made correctly and due process was protected.



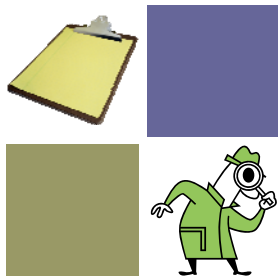
Documentation issues

- Key areas to document:
 - Describe allegations and interviewing process
 - Concrete observations of parties
 - Contacts with other children in the home
 - Contacts with service providers and collaterals
- Content of family meetings
- Safety threat and risk assessment
- Cross reporting
- Referral finding and rationale
- Full disclosure to family

CACI/Gomez Requirements

- Send notice to DOJ for listing prior to closing a referral
- Send notice in writing to listed suspect that name is being submitted for listing:
 - SS8583 – Child Abuse Investigation Report to DOJ
 - SOC 832, 833 and 834 for listed individual
 - Reasonable efforts to send to an appropriate address
 - Facilitate and help individual to file grievance report

Skills Practice



Case Scenario

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The Administrative Hearing



Where are we headed?

- Overview of CACI appeals process
- Process for requesting a review – how the review is processed
- Focusing on what is to be decided – preparing for testifying
- Principles of effective presentation and testimony
- Documenting decisions in CWS/CMS

Key Concepts

- Gomez Settlement provides CACI listed individuals a right to challenge a referral conclusion
- Workers and supervisors will need to testify at administrative hearings to support their decisions
- Case record documentation becomes an essential part of preparing for the hearing
- Administrative hearings are similar to court hearings, but less formal
- Director has the final say

What Does It Take to Testify?

- Identify and list the essential steps for presenting information at a legal proceeding
- What are your best tips for appearing at and testifying in a legal proceeding?
- What makes you most nervous about testifying?

CACI process in detail

- Written notice to listed individual
- Facilitate filing of grievance
- Grievance filed in writing within 30 days
- Hearing scheduled by GRO
- Efforts to resolve matter internally
- GRO county rep can reduce or change finding prior to hearing

CACI process in detail

- Administrative Hearing held
- GRO makes recommended ruling to agency director
- Director reviews and issues final decision
- If changes, documentation must reflect change

Administrative Hearings

- Hearing process that challenges agency decisions
- Final outcome appealed to court system
- Informal, audio recorded, records kept
- No subpoena power
- Witnesses are sworn to tell the truth

Gomez v. Saenz hearings

- Efforts made before hearing to resolve
- Witness list and documentation shared 10 days prior between parties
- GRO must have subject matter knowledge but no conflict

Issues and Decisions of Hearing

- Did the county make an error in referral disposition?
- Was the allegation of abuse or severe neglect unfounded, inconclusive or substantiated?
- What actions does the county need to take now?

Skills Practice

Grievance Review

Supervisor case review checklist

- Review of sufficiency of allegation narrative, proper identification of suspect, does it meet the definition of CA/N?
- Investigation sufficiency – contacts and the Investigation narrative
- Full Disclosure and notice
- Allegations correctly concluded?

Preparing for the hearing

■ Worker and supervisor meet to discuss	■ Know your interviewing protocol
■ Contact County Counsel and/or GRO County Representative	■ Review Penal Code definitions
■ Review all written records, make notes	■ Know how to explain why you decided what you decided
■ Know your investigation protocols and processes	■ Know details of noticing

Tips for effective testimony

- Know your case and be prepared ahead of time
- Be professional at all times – even when not testifying:
 - Dress
 - Demeanor
 - Be on time
- Speak slowly, clearly and confidently
- Listen to the question, make sure you understand it, answer it and then wait for the next one.
- Always tell the truth and nothing but the truth!
- Always imagine if it were you who were seeking to clear your good name!



Let's practice

Mock Administrative Hearing

Documentation Process following a Hearing

- Inform DOJ of changes in allegation types or referral findings
 - Old SS8583 plus new SS8583 with Supplemental Information
- CWS/CMS
 - Edit referral conclusion in referral notebook
 - Reflect reason for change in conclusion comment field
 - Record on ID page that disposition was changed via hearing

