GOMEZ vs. SAENZ
SETTLEMENT:
Training for Child Welfare Workers & Supervisors

Presented by:
Central California Training Academy
California State University, Fresno
Central California Training Academy

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

Trainee’s guide

MAY 2009

Agenda & Learning Objectives

Training Content

Powerpoint

Supplemental Handouts

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

Agenda

- Welcome, Registration, Learning Objectives, and Topic Introduction – Liberty Interests and Due Process Session Warm-up
- Overview of Gomez v. Saenz Settlement and History of Child Abuse Central Index (CACI)
- Referral Dispositions and Examining The Critical Link to Penal Code Definitions of Abuse and Neglect: A Model for Practice
- What Gomez vs. Saenz Means Out in the Field: Processes for Referral Investigation
- CACI Reporting Procedures
- Putting It All Together: Skills Application
- Overview of CACI administrative appeals process and comparing and contrasting court and administrative hearings; Overview of process for requesting a review and hearing
- Maintaining focus on the relevant hearing issues; Preparing for the administrative hearing as a worker and supervisor; Principles of effective testimony
- Documenting decisions in CWS/CMS after the hearing
- Summary and Evaluations
Gomez vs. Saenz Settlement: Training for Child Welfare Workers & Supervisors

Learning Objectives

Knowledge

- The participant will learn about the foundational legal history, principles and issues related to the Gomez v. Saenz Settlement and how it relates to their Child Welfare Services investigations and dispositions.

- The participant will understand the Penal Code thresholds of referral dispositions, including application of “unfounded,” “inconclusive” and “substantiated” findings.

- The participant will review the statutory definitions of child abuse and neglect and requirements of Child Abuse Central Index (CACI) related Penal Code statutes.

- The participant will understand the processes for reporting of appropriate referral dispositions to the Department of Justice.

- The participant will be able to identify key components of referral documentation and client full disclosure related to the Gomez v. Saenz settlement when investigating and assessing referral allegations.

- The participant will become familiar with the grievance information sheet and grievance hearing request form.

- The participant will understand the steps in competently preparing for and participating in an administrative hearing related to Gomez v. Saenz Settlement.

- The participant will understand the importance of focusing all their testimony and evidence they present on the specific issues being contested at the hearing.

- The participant will understand the principles of effective testimony within an administrative hearing.

- The participant will understand the steps required in documenting decisions in CWS/CMS and changing referral decisions in CWS/CMS.
based upon the hearing outcome.

Skills

- The participant will be able to appropriately distinguish between referral conclusions and provide a written rationale for their findings in accordance with statutory definitions of child abuse and neglect.

- Given a case example, the participant will be able to identify key steps that must be taken during a referral investigation in order to properly inform clients and document actions in accordance with state statute and the Gomez v. Saenz Settlement.

- Given a case example, the participant will be able to competently prepare for and testify in an administrative hearing related to their referral dispositions.

Values

- The participant will understand and respect the key constitutional and due process rights of all clients involved in a child welfare investigation.

- The participant will appreciate the implications of making decisions regarding disposition of referrals on clients.

- The participant will understand the importance of professional demeanor in participating in a hearing.

- The participant will understand and respect the key constitutional and due process rights of all clients involved in a child welfare investigation.

- The participant will appreciate the implications of making decisions regarding disposition of referrals on clients.
Key Concepts

- Each individual in American society has the right to certain processes in actions taken by the government in order to protect one’s good name and reputation.

- The Child Abuse Central Index was created as a means to protect children from adults with a known or suspected history of child abuse or severe neglect.

- The Gomez vs. Saenz Settlement contains procedures to allow alleged perpetrators to challenge the listing of their name on CACI.

- Penal Code statutes specifically define child abuse and severe neglect under California law as well as the thresholds for making referral conclusions.

- Administrative hearings are conducted to review the Child Welfare Services investigator’s referral disposition and the thoroughness of the investigation to reach this conclusion.

- The Gomez Settlement provides an opportunity for an individual being listed on CACI to have the agency’s decision reviewed by an independent review officer.

- Workers and supervisors may need to testify at administrative hearings to support their findings.

- Case record documentation and review becomes an essential part of preparing for an administrative review.

- An administrative hearing is similar to a regular court hearing, but is less formal and adversarial.

- The decisions of the administrative hearing are endorsed, modified or rejected by the county director.
The Constitution, Due Process, and Child Welfare Workers

Constitutional protections against government actions

- **Fifth Amendment:** No person shall be … deprived of life, liberty or property, without due process of law.

- **Fourteenth Amendment:** Nor shall any State deprive a person of life, liberty or property, without due process of law.

Liberty rights

The actions taken by child welfare services workers often affect people's liberty rights. For example,

- Parents have the liberty right of freedom of personal choice in matters of family life, including the right to raise their children.
- Children have the liberty right to grow up in a permanent, secure, stable and loving environment, free from abuse or neglect.
- A person accused of abuse or neglect has the liberty right to ensure that his or her "good name" and reputation are not stigmatized by false information maintained by the government, where it is likely that members of the public will see the damaging information.

Rationale for due process

Remember what the framers of the Constitution had in mind when they created the Constitution — protecting the people from abuse by their government. Therefore, the due process protections set forth in the Fifth and Fourteenth Amendments to the Constitution are intended:

- To protect individuals from unwarranted or arbitrary governmental intrusion.
- To prevent the government from abusing its power over individuals.
• To prevent the government from using its power as an instrument of oppression.

Due process — two types

• **Substantive Due Process:** An individual’s right to be free of government interference in matters involving life, liberty and property **absent a compelling reason for government interference.**

• **Procedural Due Process:** Notice and an opportunity to be heard.
  
  ✓ **Notice:** Being advised of the nature of the action taken by the government and of the exact reasons for the action.

  ✓ **Opportunity to be heard:** The right to have some kind of a hearing to challenge the government’s action.

REMEMBER —

You work for the County. California’s county governments are considered subdivisions of State government. Bottom line: YOU represent the GOVERNMENT!!
What is the Child Abuse Central Index?

In 1980, the California Legislature enacted Penal Code § 11169 and 11170 that specifically directed the California Department of Justice (DOJ) to maintain a statewide data base (called the Child Abuse Central Index or CACI) to maintain information regarding all substantiated and inconclusive reports of child abuse and severe neglect that are investigated in California.

The information in this database is available to a number of statutorily authorized persons and agencies, including law enforcement, county welfare agencies (including their foster care and child care licensing organizations) and county probation departments that are conducting a child abuse investigation that is associated with information contained in the database.

The purpose of allowing access to this information on a statewide basis is to quickly provide authorized agencies with relevant information regarding individuals with a known or suspected history of abuse or neglect.

While the DOJ is responsible for maintaining this centralized database, individual county agencies are responsible for assuring the accuracy and completeness of any investigation that results in the listing of an individual on CACI.
What is the Child Abuse Central Index and How Does It Work?

Penal Code §§ 11170 and 11170.5

What is the Child Abuse Central Index?

- A continually updated index of all reports of child abuse (including emotional abuse) and severe neglect that are determined to be substantiated or inconclusive, maintained by the Department of Justice.
- The Department of Justice is not responsible for the accuracy, completeness or retention of any of the reports in the CACI—the agencies that submit the reports have that responsibility.

How long do reports remain in the Child Abuse Central Index?

- Inconclusive reports are removed after 10 years, if no subsequent report concerning the same suspected child abuser was received within that 10 year time period.
- If another report concerning the same suspected child abuser was received within 10 years of receipt of an inconclusive report, information from the first report and from all subsequently filed reports is kept for 10 years from the time of the most recent report.
- Substantiated reports are not removed.

Who has access to information in the Child Abuse Central Index and why?

- Child welfare agencies
  ✓ When they have submitted a report, the Department of Justice will provide them with any information already in the CACI that is relevant to the incident reported. The agency is required to share the received information with any of the following who are treating or investigating a case of known or suspected child abuse or severe neglect:
    ➢ The reporting medical practitioner,
    ➢ The child custodian,
    ➢ The guardian ad litem appointed under WIC section 326,
    ➢ Attorneys appointed under WIC section 317 or 318, or
    ➢ The appropriate licensing agency.
  ✓ When conducting child abuse investigations.
When assessing the adults residing in a home where a child may be placed, for purposes of ensuring that the placement is in the best interest of the child.

When conducting background investigations on applicants for employment or volunteer status who, in the course of their work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.

- Law enforcement agencies
  - When conducting child abuse investigations.
  - When conducting statutorily required background investigations of applicants seeking employment as peace officers.

- County probation departments
  - When conducting child abuse investigations.
  - When assessing the adults residing in a home where a child may be placed, for purposes of ensuring that the placement is in the best interest of the child.
  - When conducting statutorily required background investigations of applicants seeking employment as peace officers.

- The State Department of Social Services Community Care Licensing Division, county licensing agencies, tribal courts and tribal child welfare agencies of a tribe or consortium of tribes
  - When assessing any person who is an applicant for licensure.
  - When assessing any adult who resides or is employed in the home of an applicant for licensure.
  - When assessing any adult who is an applicant for employment in a position having supervisory or disciplinary power over a child or children.
  - When assessing any adult who will provide 24-hour care for a child or children in a licensed residential home or facility.

- The State Department of Social Services Adoptions Branch and other licensed adoption agencies
  - When assessing any person who has submitted an application for adoption.

- County adoption agencies
  - When conducting background investigations on applicants for employment or volunteer status who, in the course of their work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.

- Court-Appointed Special Advocate (CASA) programs
When conducting background investigations of applicants for employment or a volunteer position as a CASA.

- The State Child Death Review Council and county child death review teams.
- Probate Court guardianship investigators
  - When assessing the adults residing in a home where a child may be placed, for purposes of ensuring that the placement is in the best interest of the child.
- Certain out-of-state agencies, if their requests comply with specific requirements:
  - Law enforcement agencies, when conducting investigations of known or suspected child abuse or neglect.
  - Agencies responsible for approving prospective foster or adoptive parents, when assessing the adults residing in a home where a child may be placed, for purposes of ensuring that the placement is in the best interest of the child.
- Persons who wonder if they are listed in the CACI, when the request complies with specific requirements. If listed, they will be given the date of the report and the name of the submitting agency.

All persons or agencies receiving information from the CACI are responsible for obtaining the original investigative report from the reporting agency and for drawing their own independent conclusions regarding the quality of the evidence disclosed in that investigative report and its sufficiency for making the decisions the person or agency must make.

**Can reports be removed from the Child Abuse Central Index?**

- A report will be removed from the CACI if the agency which submitted it notifies the Department of Justice that it has since determined the report to be unfounded.
- A name will be removed from the CACI if the person is listed only as a victim of child abuse or neglect, that person is 18 years of age or older and his or her request complies with specific requirements.
Child Welfare Services duties regarding the Child Abuse Central Index (CACI)

Penal Code § 11169 requires child welfare agencies to:

- Report every case of known or suspected child abuse (including emotional abuse) or severe neglect that it actively investigates and determines is not unfounded to the Department of Justice for inclusion in the CACI.

- Notify the Department of Justice of any report it previously filed that it later determines to be unfounded, so the Department of Justice can remove the report from the CACI.

- Notify the known or suspected child abuser, in writing, that he or she has been reported to the CACI.

- Retain the investigative reports that result in referrals to CACI for at least the same period of time that the information is required to be maintained on the CACI.
What does it mean for an individual to be listed on CACI?

- The listed individual may be prevented from obtaining employment in settings involving care of or working with children.

- The individual may not be considered for placement of a relative child in their care.

- The individual may be prevented from becoming a foster parent.

- The individual may be prevented from adopting a child.

- Listing may affect the individual’s efforts to obtain custody of a child in Family or Probate Court.

- The individual may be prevented from obtaining a family or institutional day care license or teaching in a pre-school setting.

- The individual may lose an opportunity for promotion in certain employment settings.

- The individual may lose employment or be suspended as a result of being listed after employment in specific positions has already been obtained.

- The individual may not be allowed to volunteer as a Court-Appointed Special Advocate or other child-related volunteer role.

- Being listed may affect the safety threat and risk level assessment on subsequent investigations or assessments.
Overview of Gomez v. Saenz Settlement

The Gomez lawsuit, filed in 2004, challenged the accuracy of the CACI and the lack of due process rights for individuals whose names have been submitted for listing on the CACI.

The lawsuit was resolved in 2007 through a settlement agreement which required:

- That individuals currently listed or who will be listed in the future be given the opportunity to challenge their listing on the CACI.
- That county child welfare agencies give public notification of the right to challenge listings to persons previously listed on the CACI who might not have been provided with appropriate notice of their CACI listing by those agencies.
- That listings in the CACI database be purged when the county child welfare agency is unable to provide underlying investigative files to support the listing.

Several activities were identified to carry out the settlement requirements.

Public Notification

- Beginning on May 1, 2008, child welfare agencies posted notices for 30 days in prominent locations in their public access offices.
- The California Department of Social Services published the same information in at least five large-circulation newspapers and two Spanish-language newspapers in the state.
- The notification informed members of the public of their right to determine whether their name is listed on the CACI, of the right to request a grievance hearing if their name is listed and of the process to do each.

Purging Unsupported Listings in CACI

- County child welfare agencies were required to notify the Department of Justice of any periods of time for which underlying investigative files are not available to support names listed on the CACI.
  - The counties began this process in the fall of 2007.
o It included identification of time periods in which records were not available due to such things as destruction by flood or fire.

o Completion of the process required that all cases sent for listing on the CACI be reviewed and matched to underlying investigative records or be identified to the Department of Justice for purging if no such records were located.

o Agencies were able to obtain from the Department of Justice a list of all persons the agency had referred to the CACI.

• The Department of Justice was to purge all records for which they were notified that no underlying investigative files existed.

Survey of the Accuracy Rate of the Index

In September 2008, following the purge of unsupported listings, the California Department of Social Services was to sample CACI listings from the 12 largest counties to determine the accuracy rate of the CACI. The 12 counties are Alameda, Contra Costa, Fresno, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, Santa Clara and Ventura.

• If the sample determines the accuracy of the CACI is 85 percent or better (i.e., at least 85 percent of the listings have underlying investigative records), no further action will be required.

• If the accuracy rate of the sample is less than 85 percent, a follow-up survey will be required in 2009.

• If the follow-up survey shows an accuracy rate of at least 85 percent, no further action will be required.

• If the follow-up survey shows an accuracy rate of less than 85 percent, one of two steps must be taken:
  o If the low rate is due to poor accuracy rates in three or fewer counties, then only those specific counties must engage in follow-up activities.
  o If the low rate is due to data submitted by more than three counties, a statewide name-by-name purge of all unsupported listings on the CACI will be required.

Notice to Individuals subject to CACI listing in the future

• Beginning March 1, 2008, county child welfare agencies must, when notifying individuals of their listing on the CACI, explain the listed individual’s right to a review of the decision and provide:
o Notice of Child Abuse Central Index Listing (SOC 832), which must include case specific information discovered in the investigation.

o Request for Grievance Hearing (SOC 834) which includes county contact information.

o Grievance Procedures for Challenging Reference to the Child Abuse Central Index (SOC 833) that explains the hearing procedures.

Right to a Grievance Hearing

• Beginning March 1, 2008, county child welfare agencies must grant a grievance hearing to:

  o Individuals who learn of their listing on the CACI through the public notification process and challenge that listing.
  o Individuals who learn of their listing on the CACI through the Notice of Child Abuse Central Index Listing form and challenge that listing by submitting the Request for Grievance Hearing form.

• However, the following persons whose names are listed on the CACI are not entitled to a grievance hearing:

  o Those whose allegation of abuse or neglect is pending before a court of competent jurisdiction.
  o Those for whom a court of competent jurisdiction has determined that the abuse or neglect did occur.
How does the lawsuit settlement impact practice?

While the Gomez v. Saenz Settlement should not change the way Child Welfare Services investigations are conducted, the settlement will have the effect of underscoring the importance of competently conducted investigations and assessments. Investigation processes that will be scrutinized during administrative review hearings may include:

- Completeness of investigation processes, including conducting all necessary interviews, seeking collateral verification of information and use of safety threat and risk assessment tools needed to make a reasoned referral disposition.

- The basis upon which referral dispositions were made and evaluation of the potential for any personal bias in decision-making.

- Appropriate use of Penal Code definitions of “substantiated,” “inconclusive,” and “unfounded” as well as Penal Code definitions of abuse and severe neglect.

- Clear documentation of full disclosure of referral findings to parents.

- Clear documentation of written notice to all alleged perpetrators of referrals of abuse and severe neglect where a finding of substantiated or inconclusive is made and a report is required to the Department of Justice.

- Clear documentation regarding notice to alleged perpetrators of their right to file a request for a grievance review hearing.

- Responsibility to change documentation in Child Welfare Services/Case Management System (CWS/CMS) and notify the Department of Justice when referral dispositions are changed.
Sorting out Penal and Welfare Codes: Intersection at the Child Abuse and Neglect Reporting Act

Three areas of California statute are impacted by the Gomez Settlement and it is important to understand the interplay between statutes that define:

- Child abuse and neglect as punishable criminal offenses (Penal Codes),
- Child abuse and neglect that must be reported by mandated reporters (Child Abuse and Neglect Reporting Act described in Penal Code Sections 11165.1 through 11165.6), and
- Child abuse and neglect for the purposes of assuming jurisdiction and care and custody of a child or youth in Juvenile Court (Welfare and Institutions Code 300 (a) through 300 (j)).

When making referral determinations, workers and supervisors need to reference definitions of the Child Abuse and Neglect Reporting Act (as well as any referenced Penal Codes within those sections).

When initiating Juvenile Court action on behalf of a child, workers and supervisors will be referencing definitions in the Welfare and Institutions Codes 300 (a) through 300 (j).

Law enforcement officials who are referring an individual for criminal prosecution would reference Penal Code definitions that describe crimes against a person or persons.
CWS and Law Enforcement

Investigate allegations to determine if abuse or neglect, as defined in Penal Code sections 11165.1 through 11165.6 and 11166.05, has occurred.

“Unfounded”
No further action

“Inconclusive”
CWS agency does safety & risk assessment

Threat
Intervene pursuant to W&I Code 300 (a)-(j)

No Threat
No further action

CWS
Safety & Risk assessment

Law Enforcement
Determines if crime committed

Threat
Intervene pursuant to W&I Code §300(a)-(j)

No Threat
No further action

Sufficient Evidence
Arrest

Insufficient Evidence
No further action
Overview of Penal Code Definitions

Penal Code § 11165.6 is the foundational statute that defines child abuse and neglect for purposes of reporting child abuse and neglect under California law. This short but complex statute references many other Penal Code sections as part of its definition. In addition, definitions of child abuse and neglect under Welfare and Institutions Code § 300 (a)-(j) that are used in the civil proceedings of the Juvenile Court may reference or repeat definitions found in the Penal Code.

- **Physical abuse** is defined as physical injury or death inflicted by other than accidental means “by another person” (WIC §300(a) is limited to physical abuse as the other person being a parent or legal guardian (PC §11165.6));

- **Neglect** means the negligent treatment (acts and omissions) of a child by a person responsible for the child’s welfare where physical harm or threats of physical harm results (PC §11165.2);
  - Severe neglect means the negligent (PC §11165.2) failure of a person with responsibility for care and custody of a child to protect the child from diagnosed severe malnutrition, medically diagnosed non-organic failure to thrive and placing a child in a circumstance in which the child's person or health is threatened, including intentional failure to provide adequate food, clothing, shelter and medical care;
  - General neglect means the negligent failure of a person with responsibility for care of a child to provide adequate food, shelter, clothing, medical care or supervision but no injury to the child has occurred (note that general neglect is not reportable to CACI under current law);

- **Sexual abuse** means sexual assault or exploitation as defined in PC §11165.1. The definition of sexual abuse in Penal and Welfare and Institutions Codes are far broader and more inclusive than definitions of physical and emotional abuse.
  - Sexual assault includes, but is not limited to, acts of penetration, oral contact, use of objects, intentional touching of genital or intimate parts or the clothing covering these parts for purposes of sexual arousal (not including behaviors of normal caretaking), or intentional masturbation of the adult's genitals in the presence of a child.
  - Sexual exploitation includes depicting a child engaged in an obscene act, encouragement or coercion of a child to engage in prostitution or live performance of sexual behaviors and any person who knowingly
possesses or creates pictures or film of children engaged in an act of obscene sexual conduct.

- **Emotional abuse** (as defined in 11166.5) means that a child or youth is suffering states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others as a result of the actions or inactions of a person responsible for the care of the child.

- Willful harming or injuring of a child or endangering of the person or health of a child is defined in PC §11165.3 as willfully causing or permitting a child to suffer unjustifiable physical pain or mental suffering or the caretaker of the child causes the child to be placed in a situation where the child’s physical person or health are endangered;

- Unlawful corporal punishment is defined in PC§11165.4 as the willful inflicting upon a child of any cruel or inhuman corporal punishment or injury that results in a traumatic condition. This section does not include reasonable efforts by school officials or law enforcement to quell a disturbance that is threatening personal safety or property or self-defense.

- Exposure of an infant to drugs or alcohol by maternal substance exposure is reportable for purposes of assessment only when risk factors are also present (PC §11165.13). This section requires that child protection agents conduct an assessment of the needs of the mother and child.

- Abuse or neglect in out-of-home care include all forms of abuse or neglect where the person responsible for the child’s welfare is a licensee, administrator or employee of a licensed or approved child care facility, school or other institution or agency (PC 11165.5).
Summary of Child Abuse and Neglect Definitions in the Child Abuse and Neglect Reporting Act

(Penal Code sections 11165.1 through 11165.4 and 11165.6)

Penal Code § 11165.6 defines "child abuse or neglect" as:

1. Physical injury or death inflicted by other than accidental means upon a child by another person;
2. Sexual abuse, as defined in Penal Code section 11165.1;
3. Neglect, as defined in Penal Code section 11165.2;
4. Willful harming or injuring of a child, or endangered the person or health of a child, as defined in Penal Code section 11165.3; and
5. Unlawful corporal punishment or injury, as defined in Penal Code section 11165.4.

It also provides that "child abuse or neglect" does not include:

1. A mutual affray between minors; or
2. An injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Penal Code § 11165.1 defines "sexual abuse" as:

1. "Sexual assault," which means:
   a. Conduct in violation of one or more of the following Penal Code sections (quoted in supplement):
      i. Section 261 (rape)
      ii. Section 261.5, subdivision (d) (statutory rape);
      iii. Section 264.1 (rape in concert);
      iv. Section 285 (incest);
      v. Section 286 (sodomy);
      vi. Section 288, subdivision (a), subdivision (b), or subdivision (c), paragraph (l) (lewd or lascivious acts upon a child);
      vii. Section 288a (oral copulation);
      viii. Section 289 (sexual penetration); or
      ix. Section 647.6 (child molestation).
b. "Sexual assault" also includes, but is not limited to, all of the following:

i. Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is emission of semen.

ii. Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

iii. Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose (except acts performed for a valid medical purpose).

iv. Intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification (except acts which reasonably may be construed to be normal caretaker responsibilities; appropriate interactions with or demonstrations of affection for the child or acts performed for a valid medical purpose).

v. Intentional masturbation of the perpetrator's genitals in the presence of a child.

2. "Sexual exploitation," which means any of the following:

a. Conduct involving matter depicting a minor engaged in obscene acts in violation of Penal Code section 311.2 (1) (preparing, selling or distributing obscene matter) or Penal Code Section 311.4, (1) subdivision (a) (employment of minor to perform obscene acts).

b. Any person who knowingly promotes, aids or assists, employs, uses, persuades, induces or coerces a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct.
c. Any person responsible for a child's welfare who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct. ("Person responsible for a child's welfare" means a parent, guardian, foster parent or a licensed administrator or employee of a public or private residential home, residential school or other residential institution.)

d. Any person who knowingly promotes, aids or assists, employs, uses, persuades, induces or coerces a child to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting or other pictorial depiction involving obscene sexual conduct.

e. Any person responsible for a child's welfare who knowingly permits or encourages a child to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting or other pictorial depiction involving obscene sexual conduct. ("Person responsible for a child's welfare" means a parent, guardian, foster parent or a licensed administrator or employee of a public or private residential home, residential school or other residential institution.)

f. Any person who depicts a child in any film, photograph, video tape, negative or slide in which a child is engaged in an act of obscene sexual conduct (except activities by law enforcement and prosecution agencies and other persons described in Penal Code section 311.3, subdivisions (c) and (e) (1)).

g. Any person who knowingly develops, duplicates, prints or exchanges any film, photograph, video tape, negative or slide in which a child is engaged in an act of obscene sexual conduct (except activities by law enforcement and prosecution agencies and other persons described in Penal Code Section 311.3, subdivisions (c) and (e) (1)).
Penal Code § 11165.2 defines "neglect" to mean:

1. Negligent treatment or maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare—including both acts and omissions on the part of the responsible person.

2. "Severe neglect" means:
   a. Negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed non-organic failure to thrive;
   b. Situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as described in Penal Code section 11165.3, including intentional failure to provide adequate food, clothing, shelter or medical care.

3. "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care or supervision where no physical injury to the child has occurred.

Penal Code § 11165.3 defines "the willful harming or injuring of a child or the endangering of the person or health of a child" to mean:

1. A situation in which any person willfully causes or permits any child to suffer unjustifiable physical pain or mental suffering;

2. A situation in which any person willfully inflicts unjustifiable physical pain or mental suffering on any child; or

3. A situation in which any person having the care or custody of any child willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

Penal Code § 11165.4 defines "unlawful corporal punishment or injury" to mean:
1. A situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

2. It does not include

a. An amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Education Code section 49001 (1);

b. Exercise of the degree of physical control authorized by Education Code section 44807 (1).

c. An injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.¹

¹ Code section can be found in the Appendix section of these handouts.
California Penal Codes

Penal Code §11165.6. As used in this article, the term "child abuse or neglect" includes physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

Penal Code §11165.1. As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation).

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:
   (1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

   (2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

   (3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.

   (4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.
(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

Penal Code §11165.2. As used in this article, "neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.
(b) "General neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

**Penal Code §11165.3.** As used in this article, "the willful harming or injuring of a child or the endangering of the person or health of a child," means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

**Penal Code §11165.4.** As used in this article, "unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code. It also does not include the exercise of the degree of physical control authorized by Section 44807 of the Education Code. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

**Penal Code §11165.5.** As used in this article, the term "abuse or neglect in out-of-home care" includes physical injury or death inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, unlawful corporal punishment or injury as defined in Section 11165.4, or the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency. "Abuse or neglect in out-of-home care" does not include an injury caused
by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

**Penal Code §11165.13.** For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency.

**Welfare and Institutions Code §300**

Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

- (a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.
- (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or
guardian’s medical treatment, non-treatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or non-treatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or non-treatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child’s parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child’s parent has been incarcerated
or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court’s determination pursuant to this section shall center upon whether a parent’s disability prevents him or her from exercising care and control. The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent. As used in this section, "guardian" means the legal guardian of the child.
Examining the Legal Definitions of Referral Dispositions

Penal Code §11165.12 defines the thresholds between three referral conclusions of “substantiated,” “inconclusive,” and “unfounded” used in Child Welfare Services dispositions of new allegations of abuse and neglect.

How reports are concluded may have an impact on:

- The family’s current safety threat and risk assessment profile,
- Assessment of future allegations, and
- Whether a report is made to the Department of Justice as part of the CACI database.
- Juvenile court cases, particularly when the outcomes of prior referral investigations are relevant to decisions being made by the court.

In addition, individual reports are compiled as part of the county’s overall outcome indicators to assist the county, state and federal government in evaluating the trends and results of these investigations over time within a community. It is important to note that there is an important distinction and separation between any allegation conclusion and the separate and essential processes of assessing the presence of safety threats and the level and category of risk.

When making a referral finding or conclusion, start by first assessing whether the information and allegation meet the criteria for the conclusion of unfounded. If not, then follow up by consideration of whether the allegation and supporting information meets the criteria of a substantiated disposition. If not, the finding will naturally fit in the inconclusive category.

Unfounded: California statute describes the conclusion of “unfounded” to mean that:

- A report is falsely made,
- An incident is “inherently improbable,”
- The injury occurred by accident; or,
- The alleged incident does not meet the statutory definition of child abuse or neglect.

A conclusion of “unfounded” should be based upon verifiable information or evidence.

California statute focuses on a variety of circumstances that do not meet the statutory definition of child abuse or neglect including: A mutual affray between minors, Injury caused by necessary and reasonable force by a peace officer.
**Substantiated:** California statute describes the conclusion of “substantiated” to mean that an incident “more likely than not” constitutes abuse or neglect as defined in the statutes. In Juvenile Court settings, which operate under the provisions of civil court, the standard of proof in most decisions is a “preponderance” of evidence – or the “more likely than not” standard. The information or evidence should be verifiable.

**Inconclusive:** California statute describes the conclusion of “inconclusive” to be appropriate when the evidence or information does not meet the definition of unfounded, but there is not enough credible evidence to reach the preponderance or “more likely than not” standard.

**Penal Code §11165.12.** As used in this article, the following definitions shall control:

(a) "Unfounded report" means a report that is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse or neglect, as defined in Section 11165.6.

(b) "Substantiated report" means a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred.

(c) "Inconclusive report" means a report that is determined by the investigator who conducted the investigation not to be unfounded, but the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.
What is an “active investigation” and how does it affect CACI reporting?

Penal Code § 11169 provides that agencies are not to report cases to DOJ for inclusion in the CACI unless they have "conducted an active investigation and determined that the report is not unfounded." While the statute does not define "active investigation," a definition of the term is found in the regulations issued by DOJ governing operation of the CACI. Those regulations are found in Title 11 of the California Administrative Code, sometimes called the California Code of Regulations (CCR).

As defined in 11 CCR § 901, the investigating agency has conducted an “active investigation” when it has, at a minimum:

- Assessed the nature and seriousness of the known or suspected abuse;
- Conducted interviews of the victims and any known suspects and witnesses, when appropriate and/or available;
- Gathered and preserved evidence;
- Determined whether the incident is substantiated, inconclusive or unfounded; and
- Prepared a report that will be retained in the agency's files.

Investigating agencies are required by 11 CCR § 903 to report cases to the CACI "after an active investigation has been conducted and the incident has been determined not to be unfounded." The same regulation provides that, in order to be considered complete, the investigating agency’s report must contain the following information:

- The investigating agency’s complete name and type (that is, county welfare department, probation department or law enforcement);
- The agency's report number or case name;
- The action taken by the agency;
- The specific type of abuse;
- The name, birth date or approximate age and gender of all victims;
- The name, birth date or approximate age and gender of the suspect, or the notation "unknown;"
- Verification ("yes" or "no" with explanations for all "no" responses) that:
  - An active investigation was conducted;
  - The victims were contacted;
  - The suspect was contacted ("no suspect" may be entered if the suspect is unknown);
o Witnesses were contacted ("no witnesses" may be entered if there were no witnesses);
o The suspect was given written notice that his or her name would be placed in the CACI.

Reports DOJ determines are lacking any of the above information are considered and will be returned to the investigating agency for further information.

**Practice Issues:**

Questions sometimes arise for child welfare agencies with regard to whether the agency has met the "contact" requirements outlined above or how the agency can meet those requirements in certain difficult circumstances. The following are some examples and suggestions for possible resolutions.

- Occasionally, the suspect is not contacted because his or her whereabouts are unknown and the child welfare agency has not been successful in its efforts to locate him/her. In that case, the agency should send written notice of the listing to the suspect at his or her last known address and document that notice in the referral contact. Thereafter, the agency may submit its report of the investigation to DOJ, listing the suspect's name and other identifying information and explaining the reason the suspect could not be contacted, including the efforts the agency made to locate the suspect and verification that notice was sent to the suspect at his/her last known address. A report completed in this manner should meet the completeness requirements of 11 CCR § 903 and, therefore, be accepted by DOJ for inclusion in the CACI.

- When the suspect is not contacted because he or she has been deported or has been incarcerated in a facility that will not allow agency contacts with the suspect, the child welfare agency should send written notice of the listing to the suspect at his or her last known address and document that notice in the referral contact. (A good practice would be to send the notice to both the last known local address and the facility where the suspect is detained, if known.) Thereafter, the agency may submit its report of the investigation to DOJ, listing the suspect's name and other identifying information and explaining the reason the suspect could not be contacted as well as the efforts the agency made to attempt contact. A report completed in this manner should meet the completeness requirements of 11 CCR § 903 and, therefore, be accepted by DOJ for inclusion in the CACI.
• Sometimes, when a law enforcement agency and the child welfare agency are both investigating a referral, the law enforcement officers request or even direct the child welfare worker not to contact the suspect. How such situations should be handled will vary between counties, but some possibilities might include:

  o Follow the formal protocol established between your agency and law enforcement agencies in the county addressing which agency is responsible for the various aspects of a joint investigation, including which agency is to report the outcome of the investigation to DOJ. (See Penal Code § 11166.3(a). If there is no such formal protocol, your agency might want to work on completing one.)

  o If no such protocol has been established yet, discuss with the assigned law enforcement officers who should be responsible for the various aspects of the investigation and come to an agreement with them on which agency will report the outcome of the investigation to DOJ. Document the discussion and the agreements reached in the referral contact.

  o In the absence of a protocol or an agreement with the investigating law enforcement officers, the child welfare agency may elect to submit its report to DOJ, with an explanation of why conducting an interview of the suspect was not, in the language of 11 CCR § 901, "appropriate." (Note that the possibility DOJ will get reports from more than one agency on the same incident of suspected or known child abuse or neglect is contemplated in 11 CCR § 906. This regulation provides that, if the agencies reached different outcome determinations, DOJ is to inform them in writing of the discrepancy.)

  o The child welfare agency may elect not to submit a report to the DOJ, on the ground that the law enforcement agency is responsible for filing a report.

Note: If you are interested in reviewing the DOJ regulations relating to the CACI, they can be found on the Internet by going to the State of California Home Page (www.ca.gov) and, in the section labeled Government Links, selecting Laws & Regulations. Once at that site, select "California Code of Regulations." You will have several choices, including "Search for a Specific Regulatory Section" and "List of CCR Titles." If you select "Search for a Specific Regulatory Section" you will enter "11" in the space for "Title" and one of the section numbers between 900 and 911 in the space for "Section." If you select "List of CCR Titles" you would select "Title 11. Law," then click on the + sign by "Division 1. Attorney General." The regulations will be found in "Chapter 9. Report of Child Abuse."
Competent and thorough investigations

Who must be contacted for an interview during a Child Welfare investigation (Division 31-125):

8 Interviews with all minor children who are subject of allegations, any other minor children in the home, and at least one adult who has information regarding the incident. When these assessments do not result in an unfounded determination, then additional interviews are required.

8 Unless it is already clear the allegations are unfounded, conduct interviews with all children present at the time of the in-person investigation and all parents who have access to the child or children alleged to be at risk of abuse (non-custodial parent shall be considered to have access if he or she has regular or frequent in-person contact with the child).

8 In coordination with law enforcement as needed, interview of alleged perpetrators when determination is not unfounded.

8 Collateral contacts with persons having knowledge of the condition of the children.

8 When appropriate, consider use of family meeting and Team Decision Meeting to encourage engagement.

Other investigatory responsibilities:

8 Cross-report all appropriate allegations to the law enforcement agency of jurisdiction. Consider manner and timing of law enforcement collaboration.

8 Records checks and consideration of prior CWS/CMS history.

8 When appropriate, law enforcement background checks of adults with access to the child.

8 Completion and documentation of a county-approved safety threat assessment conducted at the time of the first in-person response and
recorded within two working days on all referrals requiring an in-person response.

- Evaluation of gathered information as meeting one or more of the definitions of child abuse or neglect and evaluation of the appropriate referral disposition based upon Penal Code §11165.12.

- Completion and documentation of a county-approved risk assessment tool in all cases determined substantiated or inconclusive prior to closure of the referral or development of a case plan.

- Supervisory and cross-system consultation regarding basis of the referral finding and any need for services.

- Reporting as required, findings of the investigation to the Department of Justice.

**Interviewing implications:**

- Knowledge and use of an age-appropriate protocol and questioning techniques for children.

- Consideration of most effective and least intrusive strategies for obtaining needed information.

- Capacity to engage defensive and resistant parents in discussion about private family topics.

- The use of non-adversarial approaches to full disclosure of reported allegations, consequences of investigation and reporting requirements.

**Essential Disclosures:**

- All parents with legal custody shall be advised of how the referral allegations are being concluded and the basis of this conclusion.

- All parents and alleged perpetrators who are not parents shall be advised of the consequences of the referral disposition when it is reportable to DOJ for listing on CACI.
⑤ In coordination with supervisor and law enforcement, a reasonable plan for follow-up with suspects not contacted at the request of law enforcement pending criminal investigation.

⑥ Written notice via mail shall be sent to the suspect in the form of an SOC 832, SOC 833 and SOCI 834 following a telephone or in-person contact to advise them of the referral disposition.
Documentation implications

Once a request for grievance review has been made, the information you record in your case record will, in part, serve as a basis for considering the adequacy of your decision. As a result, careful documentation of all investigatory actions and the basis for the referral determination is essential.

• All interviews, conversations and written contacts must be part of the CWS/CMS referral record (or in a county-approved case file) that supports the basis for the referral disposition.

  o Document allegations reported in the referral and associated information to support or refute. Describe the setting and manner in which interviews occur.

    ▪ Describe concretely the child’s or children’s general appearance and status of wellbeing. Describe marks, bruises, emotional states, pallor, energy level, hygiene and attire. Describe in detail observations in the home, behavior, appearance, emotional state and response of each parent. Describe in detail, if appropriate, the home conditions.

    ▪ Include contacts with other children in the home, even if they are not subject of allegations.

    ▪ Include contacts and information from service providers and collateral contacts and include specific information about medical status, medical reports, police reports and any other information used as the basis for the finding.

    ▪ Include contacts describing any family meetings, TDM or staffing that support your determination.

  o Document findings of safety threat and risk assessments.

  o Document cross reporting of allegations to law enforcement.

  o Document referral disposition and include specific basis for this conclusion.
- Document advising the family, particularly named suspects, of findings and their right to file for grievance review both verbally and in writing.
A model for documenting an interview (POSE)

**Purpose of contact:** Describe the reason, method and date of the contact. Document your explanation of your role and purpose of contact to the client. For example, “Unannounced home visit to determine if home safety and hygiene conditions pose a risk to children in the home” or “Scheduled office visit to discuss progress on service objectives.”

**Observations:** Document clearly in behavioral and non-judgmental terms what you observe. Observations should pertain to the reason that Child Welfare Services is involved in the home (safety and well-being of the child and family).

For example, “Three soiled diapers were observed on the floor near where an infant and two toddlers were playing and prescription medication bottles were open and within reach of the children.” “Mother interacted in an age-appropriate manner with 15-month old Josh during the visit, using redirection to set limits when Josh got close to the entertainment center.”

**Interventions/Statements:** Describe the interaction between yourself and the clients, including information about process and content of the discussion that is related to the reason why the agency is involved with the client.

Describe any specific interventions or referrals that occurred during the interaction and the client’s response to these interventions.

For example, “The worker demonstrated to the mother how to properly support Jacob’s head when holding him.”

Use direct quotes whenever possible to record client responses or statements regarding their situation, perspective or the intervention.

For example, “The mother stated that she had recently registered for parenting classes at the local resource center, but missed her second meeting due to a lack of public transportation. The mother stated, “the handbook on stages of development is hard to read.”

**Evaluation/Assessment/Plan:** Discuss your evaluation of progress and assessment of what you have observed and heard during the contact and give a brief statement of any follow-up steps or plans and timeframe that you or the client will be taking.
Child Welfare Worker Reporting/Notice Requirements

When making a finding of substantiated or inconclusive on any allegation of physical abuse, sexual abuse, emotional abuse or severe neglect (not general neglect) and there is an identified suspect or perpetrator, actions must be taken to:

• Send notice of this finding to the Department of Justice for listing on CACI (via submission of SS8583 – Child Abuse Investigation Report that is generated in CWS/CMS prior to closing a referral), and,

• To advise the suspect in writing that his or her name is being submitted to the DOJ for CACI listing.

Individual county protocols will vary, but the essential steps of the process should be similar to the steps listed below.

Assigned Child Welfare Worker

1. Upon completing the investigation and reaching a referral disposition that is either substantiated or inconclusive, the assigned Child Welfare Worker will generate and submit a Child Abuse Investigation Report (SS8583) to the Department of Justice for listing on the Child Abuse Central Index.

2. The worker must, within five business days, send written notice of this disposition and listing to the suspect using the Notice of Child Abuse Central Index Listing (SOC 832) that contains the following information:

   a. An investigation was completed by the county that was determined to be substantiated or inconclusive and that the person has been referred for listing on CACI;
   b. The victim’s name, a brief description of the alleged abuse and the date and location that it occurred;
   c. The individual’s right to request a grievance;
   d. The name of a county contact person.

Along with this notice, the worker must send the Grievance Procedures for Challenging Reference to the Child Abuse Central Index (SOC 833) and the Request for Grievance Hearing (SOC 834) to the individual’s last known address or any other address where the agency believes the individual is mostly likely to receive the notice.
Notice: Reasonable efforts must be made to obtain a suspect’s current address and efforts to do so should be documented in the record.

3. The worker should record the mailing of these three forms in the CWS/CMS Contact notebook of the referral, selecting Deliver Service to Client as contact purpose.

4. If the suspect contacts the CWW to dispute the submission of their name to the CACI, the CWW should refer the caller to their supervisor and discuss the call with the supervisor.

Supervisor of Assigned Child Welfare Worker

1. When contacted by the suspect, the supervisor should discuss the referral with the assigned worker who conducted the investigation.

2. The supervisor should discuss the grievance process and use of the SOC 832, 833 and 834 and refer the individual to the county’s hearing representative with specific contact information.
NOTICE OF CHILD ABUSE CENTRAL INDEX LISTING

The ____________________________ County Child Welfare Services agency has completed an investigation of alleged child abuse or neglect and determined that the allegations of abuse or neglect are either inconclusive or substantiated. Pursuant to Penal Code Section 11169(b), this is notice that the finding of inconclusive or substantiated abuse or neglect was sent to the California Department of Justice (DOJ) for inclusion in the Child Abuse Central Index (CACI). The CACI contains certain information that enables authorized entities to locate investigations of alleged child abuse or neglect conducted by county child welfare departments.

Law enforcement agencies, court investigators, probation departments and district attorneys may use the CACI when investigating allegations of child abuse or neglect. The CACI is also used by licensing agencies and county welfare agencies to investigate persons who apply for licenses to care for children. If any of these agencies receive information from the CACI that there was a prior investigation of child abuse or neglect, they are required to investigate the child abuse or neglect allegation(s).

REPORTS OF SUSPECTED CHILD ABUSE MAINTAINED BY DOJ ARE CONFIDENTIAL AND MAY ONLY BE DISCLOSED TO STATUTORILY AUTHORIZED PARTIES (Penal Code Section 11167.5).

The County has determined that the allegation of child abuse or neglect against you is:

☐ Inconclusive ☐ Substantiated

An inconclusive finding is defined by Penal Code Section 11165.12(c) to mean that the investigator who conducted the investigation determined that the allegation of abuse or neglect was not unfounded but there is insufficient evidence to determine whether child abuse or neglect has occurred.

A substantiated finding is defined by Penal Code section 11165.12(b) to mean that the investigator who conducted the investigation determined that, based upon the evidence, it was more likely than not that child abuse or neglect occurred.

The term child abuse and neglect is defined by Penal Code section 11165.6. This determination is based on the following information discovered during the investigation:

NAME OF ALLEGED VICTIM(S):

DATE(S) AND LOCATION(S) THE ALLEGED ABUSE OR NEGLECT OCCURRED:

THE SPECIFIC ACT(S) OF ABUSE OR NEGLECT ALLEGED AGAINST YOU IS/ARE AS FOLLOWS:

REFERRAL NUMBER:

No action on your part is required at this time. However, if you want to challenge your listing on the CACI, you must complete the enclosed Request for Grievance Hearing form, and mail it to the following address:

COUNTY STAFF PERSON: ____________________________ PHONE ____________________________ DATED ____________________________

SOC 832 (5/03)
GRIEVANCE PROCEDURES FOR CHALLENGING REFERENCE TO THE CHILD ABUSE CENTRAL INDEX

1. Within five (5) business days of the county submitting information to the Department of Justice (DOJ) to list an individual on the Child Abuse Central Index (CACI), the county shall provide to the listed person written notice, which shall contain the following information and materials:
   a. That the county has completed an investigation of suspected child abuse or neglect that the county has determined to be either inconclusive or substantiated, and has referred the individual to DOJ for listing on the CACI;
   b. The victim's name, a brief description of the alleged abuse or neglect and the date and location it occurred;
   c. The individual's right to request a grievance hearing;
   d. A county contact person;
   e. A Request for Grievance Hearing form;
   f. A copy of these grievance procedures

The notice required by this section may be satisfied by mailing the Notice of Child Abuse Central Index Listing and the Request for Grievance Hearing forms. The forms shall be mailed to the last known address of the individual or any other address known by the county where the notice and request for grievance are most likely to be received by the individual.

2. An individual wishing to challenge his or her reference to the CACI may request a grievance hearing pursuant to the following procedure. This does not preclude the county from initiating an internal investigation to address or rectify the matter identified in the request for grievance prior to the hearing. The county may resolve a grievance at any point by modifying a finding of inconclusive or substantiated abuse or neglect to unfounded and notifying DOJ of the need to remove the individual's name from the CACI.
   a. A grievance shall be initiated by the individual submitting a written and signed Request for Grievance Hearing.
   b. The Request for Grievance Hearing shall set forth the facts which the individual believes provides a basis for reversal of the county's finding of inconclusive or substantiated abuse.
   c. The individual shall mail a completed Request for Grievance Hearing form to the county within thirty (30) calendar days of the date that the Notice of Child Abuse Central Index Listing and Request for Grievance Hearing forms were mailed to the individual identified as the perpetrator of the alleged abuse or serious neglect. Failure to mail the Request for Grievance Hearing form within the prescribed timeframe shall constitute waiver of the right to a grievance.
   d. 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 the CACI and becoming aware of the grievance process.
   e. No grievance hearing shall be required when a court of competent jurisdiction has determined that the suspected abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the CACI is pending before the court.
   f. When an individual requests, the county shall assist the individual in the completion of the form necessary to initiate the request for grievance.

3. 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 Hearing form is received by the county, unless otherwise agreed to by the individual 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.
   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 individual 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 continuances, or dismissal of the hearing, shall be granted with mutual agreement of all parties involved, or for good cause.

4. The review of the social worker's finding of inconclusive or substantiated abuse or neglect shall be conducted as follows:
   a. The grievance officer conducting the grievance hearing shall be:
      i. A staff or other person not involved in the investigation of the alleged child abuse or neglect.
      ii. Neither a co-worker nor a person directly in the chain of supervision of any of the persons involved in the investigation of the alleged abuse or neglect unless the grievance officer is the director or chief deputy director of the county.
      iii. Knowledgeable in the field of child abuse or neglect investigations and capable of objectively reviewing the complaint.
   b. The grievance hearing shall be, to the extent possible, conducted in a nonadversarial atmosphere.
   c. Each party and their attorney or representative shall be permitted to examine the documents and other evidence which the opposing party intends to introduce at the grievance hearing. All relevant evidence, whether inculpatory or exculpatory, should 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 ten (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 ten (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 indicating 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 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 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. The grievance officer has no subpoena power. However, the parties may call witnesses to the hearing and question the other party’s witnesses. The grievance officer may limit the questioning of a witness to protect the witness from unwarranted embarrassment, oppression or harassment.

f. The grievance 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 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 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 who conducted the investigation into the suspected child abuse or neglect 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.

f. The county shall first present its evidence supporting its findings of inconclusive or substantiated abuse or neglect. The complainant will then provide his or her evidence supporting his or her claim that the county’s 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 officer may, at his or her discretion, allow the parties to submit any such additional evidence as may be warranted to fully evaluate whether a finding of inconclusive or substantiated abuse is warranted.

h. The grievance officer shall have the authority to continue the hearing 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.

j. 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. Grievance hearing decisions shall be rendered as follows:

a. The grievance 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 written final decision adopting, rejecting, or modifying the recommended decision within ten (10) business days after the recommended decision is issued. 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 recommended and final 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.

d. Where the county’s finding of inconclusive or substantiated abuse or neglect is changed as a result of the grievance hearing, the county shall advise DOJ of the change and request that the complainant’s name be removed from the CACI or that the designation of inconclusive or substantiated abuse or neglect be changed accordingly.

6. The 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.
REQUEST FOR GRIEVANCE HEARING

No grievance hearing shall be required when a court of competent jurisdiction has determined that the suspected abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the Child Abuse Central Index is pending before the court.

A. CONTACT INFORMATION

<table>
<thead>
<tr>
<th>NAME:</th>
<th>DATE OF BIRTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>STREET ADDRESS:</td>
<td></td>
</tr>
<tr>
<td>CITY:</td>
<td>STATE:</td>
</tr>
<tr>
<td>TELEPHONE NUMBER:</td>
<td>ALTERNATE NUMBER:</td>
</tr>
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</tbody>
</table>

I hereby request a grievance hearing to dispute the decision to list my name on the Child Abuse Central Index (CACI). I acknowledge that I have received a copy of the Notice of Child Abuse Central Index Listing and a copy of the Grievance Hearing Procedures.

B. REASON FOR GRIEVANCE

The reason I am requesting a grievance hearing is because *(YOU MUST CHECK AT LEAST ONE)*:

- [ ] I am not the person who committed the alleged act(s) of abuse or neglect.
- [ ] The alleged act(s) of abuse or neglect did not occur.
- [ ] Even if the alleged act(s) occurred, these acts are not abuse or neglect within the meaning of the Child Abuse and Neglect Reporting Act.
- [ ] Other. If this box is checked, please explain below. If you need more space for your explanation, you may attach additional pages to this form.

<table>
<thead>
<tr>
<th>SIGNATURE:</th>
<th>DATED:</th>
</tr>
</thead>
</table>

☐ Check this box if you would like to schedule an appointment so that you can examine the evidence the county intends to present at the grievance hearing in support of its finding of inconclusive or substantiated abuse or neglect. At this appointment, you must also bring and disclose to the county all the evidence that supports your claim that you should not be listed on the CACI.

You may have an attorney or other representative present at the hearing to assist you. If you intend to have an attorney or other representative present, please provide us with the following information.

C. ATTORNEY/REPRESENTATIVE INFORMATION

<table>
<thead>
<tr>
<th>ATTORNEY OR REPRESENTATIVE’S NAME:</th>
<th>PHONE NUMBER:</th>
</tr>
</thead>
<tbody>
<tr>
<td>ATTORNEY OR REPRESENTATIVE’S ADDRESS:</td>
<td></td>
</tr>
</tbody>
</table>

Please return this Request for Grievance to this address:

Address:

Atttn: 
CACI due process issues revisited in detail

Once an investigation has been completed and documented, individuals who are to be listed on the CACI must be notified and informed of their right to and process for requesting a grievance review within five business days of closing the referral. The person to be listed must be sent three forms:

- SOC 832 -- Notice of Child Abuse Central Index Listing
- SOC 833 – Grievance Procedures for Challenging Reference to the Child Abuse Central Index
- SOC 834 – Request for Grievance Hearing

Workers and supervisors contacted by individuals who dispute the finding are referred to the county’s hearing representative.

The person being listed must complete a written, signed statement (SOC 834) requesting review of the finding and providing a summary of facts that support the request for review within 30 days of being notified.

What if? If this request is not received within 30 days or is not complete, the individual gives up their right to further appeal.

Once a request for grievance review has been properly filed, the county hearing representative must:

- Schedule a hearing within 10 days of receipt of the request and the hearing must be held within 60 days of the request, with 30 days written notice to both the person requesting the review and the assigned child welfare worker.
  - The hearing officer can grant up to a 10-day continuance of hearing.
- Special circumstances: If the referral provides the basis for Juvenile Court intervention and the allegation has been sustained by the Court, the listed person loses their right to an administrative hearing. If the matter is still pending adjudication in Juvenile Court, the request for hearing will be denied. However, if the petition is not sustained, the individual then has 30 days after this decision to request an administrative review of the listing.
The child welfare worker must be present at the hearing and workload responsibilities cannot be used as an excuse not to attend the hearing.

Prior to any hearing, efforts can be made to resolve the matter internally without a hearing through:

- Review of records by the supervisor and/or the county hearing representative and,
- Meetings between the person subject to the CACI listing, the supervisor and the county hearing representative.
- Additionally, the county hearing representative will meet with the individual to discuss the format and processes of the review hearing.

The county hearing representative may make the decision to reduce or overturn the finding made by the worker prior to the hearing.

- If this occurs, the county hearing representative should provide information regarding the reasons for the changed decision and inform all parties, including the assigned Grievance Review Officer.
- County protocols will determine how to handle situations in which the worker and supervisor disagree with the county hearing representative’s decision.

Failing pre-hearing resolution of the matter, the administrative hearing will proceed as scheduled.

- No less than 10 days prior to the hearing, each party must provide the opposing party with all documents and information and a list of witnesses to be called that will be used to support their position (exculpatory information must also be exchanged). The county may redact information regarding reporting party and other legally allowed redactions. If the person requesting the hearing is being represented by an attorney, the information will be released to the representative or an attorney only after a release of information has been signed by the person requesting the hearing.
- The agency representative first presents the position statement prepared by the agency and any additional evidence or witnesses.
to support the position. Then the party subject to CACI listing is
given the chance to present evidence and witnesses that would
support a decision to reduce or alter the finding. Then, the hearing
officer may give each party a chance to present any additional
information that would help to make a decision.

- The hearing officer can grant a continuance of no more than
  10 days in order for parties to gather additional information
to support their position.

  - The hearing officer does not have power to subpoena witnesses,
    but each party can bring witnesses to testify in support of their
    position. Opposing parties or their attorneys may cross-examine
    any witnesses.

  - It is up to the hearing officer to decide to allow a child to
testify at the proceeding and only can do so if the testimony
  is found to be voluntary and the child is able to consent and
  it is not a detriment to the child’s welfare.

  - The hearing officer can limit questioning of any witness to
    prevent harassing, intimidating and badgering.

Within 30 days of the hearing, the GRO will issue a recommended
decision in writing to the agency director.

  - The decision is based upon evidence presented at the hearing, even
    if it was not part of the investigation record.

Within 10 days, the agency director will review the GRO’s recommended
decision and will either:

  - Endorse the recommendation, or

  - Make a different decision and provide a reason why a different
determination was made.

  - Written correspondence of the decision will be sent to the person
    requesting the hearing, their attorney or representative and the
    California Department of Social Services.

If the referral determination is reduced or changed as a result of the
hearing, the agency must:
• Submit a copy of the original SS 8583 and a new SS 8583 that has the box “supplemental information” checked to the Department of Justice.

• Change the conclusion in the allegation notebook of the referral and make note of the hearing outcome in CWS/CMS.
Steps of the Administrative Appeals Process

What is an administrative appeal?

Administrative appeals are the means by which actions or decisions of government agencies can be challenged at the agency. Usually, when an agency has an administrative appeal process available, that process must be completed before the courts will hear a case challenging the agency’s action or decision. The final outcome of the administrative appeal can then be challenged in the court system.

Administrative appeals processes vary widely among agencies and depending upon what kind of action or decision is being challenged. Administrative appeal proceedings can be very simple or very much like a court trial. Agencies sometimes provide multiple levels of review in the appeal process, with steps from simple to more trial-like.

The agency must make a record of each proceeding in the administrative appeals process. The record will include copies of all documents presented to the hearing officer and, usually, an audio-recording or transcript. It will also include all recommended and adopted decisions.

Once a final decision has been issued by the agency, that decision can be appealed to the superior court. The superior court reviews the record of the administrative proceedings and considers the parties’ legal arguments, but usually will not take additional evidence. The superior court looks at whether the decision issued by the agency is supported by the facts and the law and whether the agency acted within the limits of its authority. The court has the power to uphold, modify or overturn the agency decision. If it modifies or overturns the decision, the court may send the case back to the agency to hear the matter again following the court’s instructions.

The Gomez v. Saenz Administrative Appeal Process

The administrative appeal process agreed upon in the Gomez v. Saenz settlement provides for a hearing conducted by a neutral party. While the hearing is conducted somewhat like a court trial, with testimony taken under oath, it is much less formal than a court trial and the rules of evidence are not as strict as in a court trial.
Gomez v. Saenz Grievance Review Hearing Procedures

The settlement agreement included detailed procedures for requesting grievance hearings, responding to requests for hearings and conducting those hearings.

Request for and scheduling of hearing

- Requests must be in writing, filed within 30 days of learning of the listing, and must state the factual basis the complainant believes justifies reversal of the county child welfare agency’s referral.
- County child welfare agencies must assist complainants to prepare their grievance requests, if asked.
- Within 10 days of receiving a grievance request, the county child welfare agency must schedule the hearing, which must be held within 60 days.
- At least 30 days before the hearing, the county child welfare agency must mail notice of the date, time and location of the hearing to the complainant’s last known address.

Before the hearing

- At least 10 business days prior to the hearing, the county and the complainant must each make available for inspection the documents and other evidence they intend to present at the grievance hearing, to the extent such disclosure is otherwise permitted by law. Any documents or other evidence disclosed by the county must be returned to the county at the conclusion of the hearing.
- At least 10 business days prior to the hearing, the county and the complainant must each make available to the other a list of witnesses they intend to call at the grievance hearing.
- Failure to disclose evidence or witness lists in advance of the hearing could result in the evidence not being admitted at the hearing or in the witness not being allowed to testify.
- The county may redact 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.

The grievance review hearing

- The grievance review officer must be
✓ A staff or other person not involved in the investigation of the alleged child abuse or neglect.
✓ Neither a co-worker nor a person directly in the chain of supervision of any of the persons involved in the investigation of the alleged abuse or neglect, except that the agency’s director or chief deputy director may act as the grievance review officer.
✓ Knowledgeable of the field and capable of objectively reviewing the complaint.

- The hearing must be conducted in as non-adversarial an atmosphere as possible.
- The information disclosed at the grievance hearing may not be used for any other purpose. The parties must 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 complainant may be represented at the hearing by an attorney or other representative. However, the county may not release information to that attorney or representative unless the complainant has provided the county with a signed authorization to do so.
- Each party and attorney or representative, and witnesses while testifying, are the only persons allowed to be present during the hearing unless all parties and the grievance review officer consent to the presence of other persons.

- Witnesses
  ✓ The county employee involved in the investigation that is the subject of the grievance review must be present at the hearing, if that person is employed by the county and is available to participate. (A conflict in work schedule does not make the county employee unavailable to participate in the hearing.)
  ✓ The parties may call witnesses to the hearing, though there is no power to issue subpoenas.
  ✓ Each party may question the other party’s witnesses.
  ✓ The grievance review officer may limit the questioning of a witness to protect the witness from unwarranted embarrassment, oppression or harassment.
  ✓ 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 prevent the presence and/or testimony of a child at the hearing for good cause, including but not limited to protecting the child from trauma or protecting the child’s health, safety or well-being.
✓ The grievance review officer may interview a potential child witness 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.

- Presenting evidence
  ✓ First, the county presents its evidence supporting the finding that is the subject of the complaint. The county’s evidence should include the investigation report and may include a hearing report prepared by the county’s representative.
  ✓ Then the complainant presents evidence supporting his or her claim that the county’s finding should be changed.
  ✓ The county is then allowed to present evidence rebutting the complainant’s evidence.
  ✓ The grievance review officer has the discretion to allow the parties to submit any additional evidence the officer believes may be warranted to fully evaluate the matter under review.
  ✓ All testimony is given under oath or affirmation.

The review hearing decision

- The grievance review officer determines, based upon the evidence presented, whether the allegation of abuse or neglect is unfounded, inconclusive or substantiated, as defined by California Penal Code section 11165.12.
- The grievance review officer prepares a written recommended decision within 30 calendar days of the completion of the grievance hearing. The decision must contain a summary statement of the facts, the issues involved, findings of fact, recommendation for whether the referral disposition should be approved, modified or rejected, and the basis for the recommendation.
- Within 10 business days after the grievance review officer’s recommended decision is issued, the county director must issue a final written decision adopting, rejecting or modifying the recommended decision.
  ✓ If the county director rejects or modifies the recommended decision, the reason for that rejection or modification must be explained.
  ✓ The county director’s final decision must be based upon the evidence presented at the hearing.
- The final written decision must be sent to:
  ✓ The complainant;
  ✓ The complainant’s attorney or representative, if any; and
  ✓ The California Department of Social Services.
Records of the hearing

- The county must audio-record all hearing proceedings.
- All evidence and information disclosed at the hearing will be part of the administrative record should a petition for writ of mandate be filed with the court challenging the final decision of the county director.
- The county will possess and maintain the administrative record of the hearing. The administrative record must be kept confidential, including, if any of the parties request, that it be filed with the court under seal.
- The hearing record must be retained for as long the underlying investigative records are required to be retained by law, regulation or court order and must be retained not less than one year from the decision date in any circumstance.
- The complainant or the complainant’s attorney is entitled to inspect the recording and/or transcript, however the county retains possession of the transcript and tape and its contents will remain under seal.
- If the complainant seeks to inspect the transcript, the complainant must pay the costs of transcribing the audio-recording of the hearing.
- If any party seeks judicial review of the final decision of the county director, the county must lodge the administrative record with the court.
Issues and Decisions at CACI Grievance Review Hearings

Issues at the hearing

- Did the county err in making the referral disposition determination (inconclusive or substantiated) which resulted in the complainant being referred for listing in the CACI?

Decisions made by the Grievance Review Officer

- Based upon the evidence presented, was the allegation of abuse or neglect against the complainant unfounded, inconclusive or substantiated, as defined by California Penal Code section 11165.12?

- If that was not the conclusion reached by the county in its investigation, what action should the county be directed to take with regard to the referral disposition?
CWS/CMS checklist for supervisory case review

⑧ Referral Narrative, Related Clients, Name of Alleged perpetrator, Allegation Notebook and Response Determination dialog box (as well as any associated hotline risk assessment tools)

  o Do the referral allegation described in the Referral Narrative (or other referral narrative location) meet the definition of Child Abuse as defined in the Penal Code and Welfare and Institutions Code 300 and were the proper allegations listed in the referral notebook?

  o Is the alleged perpetrator accurately identified? For example: Was a mistake made in erroneously naming a birth father when abuse was perpetrated by a stepfather?

  o Are all family members properly related on the Related Clients page?

⑧ Investigation contacts and investigation narrative:

  o Were interviews conducted with all appropriate family members, including parents who are suspected perpetrators (except in cases of law enforcement request)

  o Were steps taken to verify information obtained in interviews with collateral sources and records checks?

  o Were appropriate developmentally and linguistically appropriate interviewing techniques used, based upon contact narrative?

  o What efforts were made to encourage full disclosure and engagement of family members using family meetings, Team Decision Meetings, or other processes?

  o Does the documentation reflect the referral conclusion and what the worker used as the factual basis for this finding? Was the supervisor consulted in making the finding?

  o Does the documentation adequately support the referral conclusion (in the supervisor’s opinion?)
o Does the documentation reflect the parents and the alleged perpetrator were informed of the referral finding and the basis of this conclusion?

o Does documentation reflect that the person to be named on CACI was properly noticed in writing?

o Were allegations cross-reported to the appropriate law enforcement agency?

Safety and Risk Assessment Tools

o Were tools completed properly and did they reflect the findings made by the worker?

Allegation Notebook and Referral Disposition

o Was each allegation correctly concluded with sufficient detail to support the finding?

o Does the referral conclusion dialog box contain appropriate language that summarizes the referral outcome?

The individual who has requested the grievance hearing, and the representative or attorney (when proper releases have been signed, have the right to inspect the agency’s referral records within 10 days prior to the administrative hearing!

The county may redact names and personal identifiers from the documents and evidence as required by law (for example, confidentiality of identity of reporting parties) and to protect the identity, health and safety of those reporting allegations and observations of abuse or neglect. Consult with County Counsel regarding appropriate redactions.
Administrative Hearing preparation tips

- The assigned child welfare worker and supervisor should discuss expectations for the hearing.

- As appropriate, contact and consult with County Counsel and/or the GRO county representative regarding the upcoming hearing and expectations of your role.

- Review all written records of the investigation and, if appropriate, make some notes regarding chronology of events and the basis of the investigation finding.

- Be able to describe your investigation protocol and processes and the techniques you use in interviewing children and defensive adults.

- Review the Penal Code definitions of the abuse category at issue and relate the facts of the case to this definition.

- Review the Penal Code definitions of referral conclusions and be able to describe how you selected your specific finding.

- Review and be able to relate how you discussed the referral findings with the parents and/or alleged perpetrator.
**Tips for Effective Testimony**

**Know your case and prepare for the hearing ahead of time.**

- Read your investigation report and discuss the case with both your supervisor and the agency’s hearing representative.
- After reviewing the case, try to picture in your mind what happened so you will be able to recall the facts more accurately when questioned on the witness stand.
- Know what information from the case you can disclose and what you cannot (e.g., the reporting party’s identity, mental health reports).
- Don’t memorize your testimony, as you will appear unnatural and as though you were coached.

**Be professional at all times, even when not testifying and not in the hearing room.**

- Keep calm, but know that feeling anxious is normal.
- Your manner of dress, tone of voice and facial expressions all contribute to the Grievance Review Officer’s perception of you and your testimony.
- How you behave and what you say outside the hearing room is important, too—you can’t be certain that the Grievance Review Officer or the complainant won’t observe or hear you. Indiscrete statements and inappropriate behavior have an unfortunate tendency to come back at you during cross-examination.
- Remain respectful and tactful at all times during your testimony. Being polite makes a good impression on the Grievance Review Officer. Being angry or impolite may cause the Grievance Review Officer not to believe you.
- When answering questions, look at the questioner or at the Grievance Review Officer. You will appear—and probably will be—more comfortable if you periodically switch your focus between the two.
- Keep you hands in your lap (so they are away from your face) and avoid other nervous and distracting mannerisms. Never chew gum or suck on candy.
- Turn off your cell phone and pager!!
- Arrive on time—better yet, arrive a little early.

**Speak up, speak clearly and speak slowly.**
• When you are sworn in, look directly at the Grievance Review Officer and say "I do" or "I will" in a strong, clear voice.
• Answer assertively rather than timidly or doubtfully. Be precise and definite in your answers. Avoid saying "I think" or "I believe" as these words will make you appear less than certain about your answers.
• Remember that the hearing is being audio-recorded, so speak loudly and clearly enough for the recorder to pick up your voice accurately. For the same reason, always give a verbal response rather than nodding or shaking your head or using other gestures. It is also better to say "yes" and "no" rather than "uh-huh," "huh-uh," "yeah," etc.

**Listen to the question, answer the question, then wait for the next one.**

• There is no clock running, so listen carefully to the whole question and don’t rush to answer. Take time to consider the question and how to answer it before you speak.
• Make sure you understand the question. If you don’t understand it, or some part of it, say so. You are not the one responsible for making the question understandable—the questioner is.
• If you don’t know the answer to the question, say so. No witness is expected to have answers to every question, so don’t feel you need to guess.
• If you don’t recall something, say so. However, if you think you might be able to refresh your memory by reviewing a document (like your investigation report or notes that you made for the hearing), you can ask to be able to do so. When testifying after that review, do not read from the document—testify from your refreshed memory.
• If a question has two parts, answer the two parts separately. This is especially important where the two parts require different answers.
• If a "yes" or "no" answer is requested but cannot accurately be given, explain that answering the question in this way this would be misleading. You will most likely be allowed to give a full answer.
• While you should limit your answer to just the question asked, don’t be afraid to supply adequate details when answering that question.

**Always tell "the truth, the whole truth and nothing but the truth."**

• This may seem simple, but it bears repeating every time!
• The best way to lose a good case is to leave the Grievance Review Officer thinking you have not told the truth. Don’t withhold information you think may disadvantage your case or be unflattering to you. The Grievance Review
Officer won’t hold it against you that you made a mistake, but will certainly hold it against you that you appear to be lying.

- Demonstrate your honesty, objectivity and professionalism by offering balanced assessments of client situations, recognizing both the client’s strengths and problem areas and being forthright about the strengths and weaknesses in your casework.
- Remember, if you don’t know an answer or can’t recall information, say so.
- If you realize at any point that you have given an inaccurate or misleading answer, say so and ask to be allowed to clarify or correct your prior testimony.

**As a final note**—it may help to consider that someday you, like the complainant in a grievance review hearing, might challenge an action taken against you by a government agency and that the outcome of your own case likely will depend on the quality of the work done by the agency’s worker and the testimony given by that worker.
Checklist for DOJ and CWS/CMS documentation processes following a hearing

⑥ Informing the DOJ of changes in allegation types or referral findings:

- Send the original Child Abuse Information Report (SS 8583) with a new SS 8583 that contains supplementary information and check the box in Section 10 A entitled “Supplemental Information.”
- Send to:
  Department of Justice
  4949 Broadway, Room B216
  Sacramento, CA 95820

  Fax or email these forms via:
  
  DOJChildProtectionProgram@doj.ca.gov or (916) 227-4094

⑧ Changing findings and documentation in CWS/CMS:

- If referral is closed in CWS/CMS, re-open the referral and edit the allegation conclusions to reflect the change in finding. Note in the conclusion comment section that the conclusion has been modified based upon an administrative review.

- Record on the ID page of the referral (using the available information grid “conclusion modified”) that the investigation disposition was a result of a case review or grievance review hearing and the results of the hearing.
Appendix
PENAL CODE

11169. (a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index. The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

(c) Agencies shall retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the Child Abuse Central Index pursuant to this section and subdivision (a) of Section 11170. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

(d) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.
(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation relevant information contained in the index.

(4) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, or to a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of
an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(5) The Department of Justice shall make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.

(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson’s designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interest of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(8) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the
Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(9) The Department of Justice shall make available to a county child welfare agency or delegated county adoption agency, as defined in Section 8515 of the Family Code, conducting a background investigation, or a government agency conducting a background investigation on behalf of one of those agencies, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any applicant seeking employment or volunteer status with the agency who, in the course of his or her employment or volunteer work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.

(10) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or a Court Appointed Special Advocate program conducting a background investigation for employment or volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (8), or a county child welfare agency or delegated county adoption agency conducting a background investigation of an applicant seeking employment or volunteer status who, in the course of his or her employment or volunteer work, will have direct contact which children who are alleged to have been, are at risk of, or have suffered, abuse or neglect, pursuant to paragraph (9), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer.

(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a
delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(11) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing or volunteer status pursuant to paragraph (4), (5), (8), or (9), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency
shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency’s inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision.

(e)(1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent, and any other adult living in the home of the prospective foster or adoptive parent. The department shall make that information available only when the out-of-state agency makes the request indicating that continual compliance will be maintained with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state to have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoption placement cases.
(2) With respect to any information provided by the department in response to the out-of-state agency’s request, the out-of-state agency is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents.

(3) (A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (11) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person’s name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.

(g) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person’s name, address, social security number, and date of birth.

11170.5. (a) Notwithstanding paragraph (4) of subdivision (b) of Section 11170, the Department of Justice shall make available to a licensed adoption agency, as defined in Section 8530 of the Family Code, information regarding a known or
suspected child abuser maintained in the Child Abuse Central Index, pursuant to subdivision (a) of Section 11170, concerning any person who has submitted to the agency an application for adoption.

(b) A licensed adoption agency, to which disclosure of any information pursuant to subdivision (a) is authorized, is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and the sufficiency of the evidence for making decisions when evaluating an application for adoption.

(c) Whenever information contained in the Department of Justice files is furnished as the result of an application for adoption pursuant to subdivision (a), the Department of Justice may charge the agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Sexual Habitual Offender Fund pursuant to subparagraph (C) of paragraph (9) of subdivision (b) of Section 11170.
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
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
March 26, 2008

ALL COUNTY INFORMATION NOTICE NO. 1-22-08

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

SUBJECT: IMPLEMENTATION ACTIVITIES FOR GOMEZ V. SAENZ LAWSUIT SETTLEMENT

The purpose of this All County Information Notice (ACIN) is to provide instruction regarding the activities set forth in the Gomez v. Saenz ("Gomez") lawsuit settlement. All County Letter (ACL) 07-53 provided an overview of the settlement agreement. This letter clarifies the responsibility of child welfare agencies to purge names from the Child Abuse Central Index (CACI), notify individuals of their listing on the CACI and right to grieve the listing, and provide grievance hearings for individuals who challenge their name listing on the CACI. In addition, included are answers to frequently asked questions (FAQs) posed by county child welfare agencies.

**Background**

The Gomez settlement challenged the integrity of the CACI and provided due process rights for individuals whose names have been submitted for listing on the CACI as a result of a qualifying substantiated or inconclusive finding on a child abuse/neglect investigation. As of May 1, 2008, the Gomez settlement allows individuals the opportunity to challenge their name listing on the CACI. Questions regarding the settlement activities were gathered from county welfare agencies and are addressed in this ACIN.
Public notification

On May 1, 2008, all child welfare and California Department of Social Services (CDSS) Community Care Licensing offices will be required to post a notice informing individuals of their right to determine whether their name is listed on the CACI. The notices will be available online for child welfare offices to print on 8½ X 11 paper (www.cdss.ca.gov - Forms/Brochures tab).

Child welfare offices must then post this notice in a prominent location accessed by the public. In addition to this notification, CDSS will publish the information in at least five newspapers with large circulation, and two Spanish newspapers.

If an individual is interested in determining whether his/her name is listed on the CACI, the notice includes information for contacting the California Department of Justice (DOJ). Individuals must submit a notarized Child Abuse Central Index Self Inquiry Search Request form to the DOJ. This form can be obtained either via the California Attorney General’s website http://ag.ca.gov/childabuse/pdf/07_2028_att.pdf or by calling the DOJ’s Child Protection Program at (916) 227-2173. Child welfare offices are encouraged to keep a supply of the forms on hand to provide to interested individuals.

Once a properly completed form is received, the DOJ will then perform a CACI search. Within approximately 45 days, the DOJ will send the individual a letter confirming or denying his/her listing on the CACI. If the individual’s name is listed on the CACI, the DOJ will inform him/her of the listing, along with county contact information. If the individual wishes to contest the listing, she/he must submit a Request for Grievance Hearing form to the county child welfare agency no later than 120 days after the date the notice is posted, as described above.

Q.1. If a person who is listed on the CACI prior to May 1, 2008, contacts the county to request a grievance hearing after the 120 days they are allowed under the settlement agreement, can the county deny the request? Should the county deny the request?

A. Although technically the county may deny the request if it is received after the stipulated timeframe, CDSS strongly recommends granting hearings to those individuals who may not have received notice during the notification period. Because individuals who are denied a grievance hearing have the right to appeal to a higher court of law, it is in the best interest of all concerned that the grievance hearing be granted.

Purging or changing listings on the CACI

According to the settlement, counties are required to notify DOJ of any periods of time that underlying investigative files are not available to support names listed on the CACI.
This may be for particular periods of time (i.e. 1993 files destroyed by fire), or whenever the county is aware of an individual case where there is inadequate documentation to support the finding that led to the name listing. In addition, child welfare agencies may contact DOJ if they would like to obtain a disk containing the names of all listed individuals from their county.

Q.2. What is considered supporting documentation?

A. The underlying file should contain enough documentation to support the finding if challenged. This would include:
   The identity and contact information for the victim(s) and witnesses;
   What abuse or neglect was alleged, what allegations were investigated, what findings were made from the investigation;
   Where and when the abuse is alleged to have occurred.

Q.3. What is the process for removing a name from the CACI after a grievance hearing finds in favor of the alleged perpetrator? What is the process for downgrading a child abuse investigation disposition to inconclusive or unfounded?

A. The child welfare agency should reflect the change of allegation type in Child Welfare Services/Case Management System (CWS /CMS) and submit to the DOJ:
   A copy of the original Child Abuse Summary Report form (SS 8583)
   A new SS 8583, which states that supplementary information is being provided for a previously submitted SS 8583 (check the appropriate box in Section 10A, “SUPPLEMENTAL INFORMATION”). This information should be sent to the DOJ at:

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

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

   Counties may use this contact information to request a disk containing the names of listed individuals.
Q.4. If the grievance results in a change of allegation conclusion, what procedure should the counties follow to make the change on a case that has already been closed on CWS/CMS?

A. A code drop was implemented in November 2007 that provided CWS/CMS users the ability to edit allegation conclusions in referrals they cannot reopen because the referral has been promoted to a case. If the referral is closed on CWS/CMS, county staff will need to reopen it, make the appropriate edits and close out the referral. Counties should reference instructions provided in the CWS/CMS Release 6.1.

**Notice of CACI listing and Grievance hearings**

The settlement requires that counties provide two forms to individuals who are referred to the DOJ for listing on the CACI. The first form is a *Notice of Child Abuse Central Index Listing* (SOC 832), in which the county must include case specific information discovered in its child abuse investigation. The second form is a *Request for Grievance Hearing* (SOC 834) that attaches the hearing procedures, and which includes county contact information. In addition, *Grievance Procedures for Challenging Reference to the Child Abuse Central Index* (SOC 833) must be included in the noticing packet sent to individuals. These forms can be accessed at [www.cdss.ca.gov](http://www.cdss.ca.gov) – Forms/Brochures tab. This requirement does not extend to law enforcement agencies that refer individuals to the CACI.

Q.5. When the noticing regulations came out years back, counties were provided with two sample forms. These forms meet the requirement in Penal Code 11170 that agencies are to provide notice to an individual of their CACI listing when a name search for placement purposes has resulted in a “hit.” Relative Assessment Units and some counties have been using this form. With the "cleanup" of CACI will we no longer be required to use this form?

A. The only noticing form required by the Gomez settlement is the *Notice of Child Abuse Central Index Listing* contained in the settlement. This lawsuit only addresses the requirements of county child welfare agencies in noticing individuals whose names are sent to the CACI as a result of a child abuse/ neglect investigation.

Q.6. When completing the *Notice of Child Abuse Central Index Listing*, the form provides a section for child welfare agencies to indicate the alleged victim’s name. The current form we use only provides the Referral ID number and date of report. Does the settlement change this practice?
A. Yes. The griever has a constitutional right to know the identity of the person they allegedly abused. The only name redacted in the documentation is the mandated reporter’s name.

Q.7. The settlement requires that “the request for grievance shall set forth the facts which the individual believes provides a basis for reversal of the county’s finding of inconclusive or substantiated abuse.” What if the grievance request doesn’t contain those facts?

A. It is not a completed grievance form, and it is not sufficient to require due process. The county should let the individual know that the request for grievance has been denied due to an incomplete grievance request. If the individual is able to resubmit a properly completed Request for Grievance Hearing within the 30 day timeframe, a grievance hearing should be scheduled.

Q.8. If the suspect’s basis for the grievance is “I didn’t know ______ was physical abuse, is that a valid reason for a hearing?

A. Yes. Acceptable reasons to grant a hearing include the griever not understanding that his/her act was considered abuse. Other acceptable reasons are found on the Request for Grievance Hearing form: 1) I am not the person who committed the alleged acts of abuse or neglect, and 2) The alleged acts of abuse or neglect did not occur. In addition, the individual completing the form can check the “other” box, and provide another reason for requesting the hearing.

Q.9. What are the required forms that must be used for these grievance hearings? Will counties be required to only use the state forms, and can these forms be adapted (with state permission) for county use?

A. Only the state forms listed below may be used. The settlement requires that counties must provide the listed person with the following:

Notice of Child Abuse Central Index Listing (SOC 832)
This form provides the individual with notice that the county has completed an investigation of suspected child abuse or neglect that the county has determined to be either inconclusive or substantiated, and has referred the individual to the DOJ for listing on the CACI. This form includes the victim’s name and a brief description of the alleged abuse or neglect, including the date and location it occurred. In addition, a county contact person’s name is provided on this form.
This is a state form that must be used and will be added to CWS/CMS in the 6.3 code drop.

Request for Grievance Hearing (SOC 834)
This form provides individuals with notice of the right to challenge their listing in the CACI. The county’s address must be included at the bottom of the form. This is a state form that must be used and will be added to CWS/CMS in the 6.3 code drop.

A copy of the Grievance Procedures (SOC 833)

Q.10. Will CDSS provide samples of other forms counties may need for the grievance process? (i.e. notice to suspect of the hearing time, location, etc.; notice that the grievance request was denied due to a court determining the abuse or neglect occurred (or is pending before a court); or grievance hearing recommendation signed by hearing officer and child welfare director.

A. The settlement does not proscribe the format for any additional forms that the county may use as a result of the hearing.

Q.11. What level of detail should the Notice of Child Abuse Central Index Listing form include with respect to describing the alleged acts of abuse or neglect?

A. The form should include summary information regarding the allegation. This would include a brief description of the allegation.

Q.12. If the suspect is no longer a resident at the last known address, will the county incur any liability for disclosing confidential information if the notice is read by another individual living at that address? If a current address is unknown, can the county simply state that for the file and not send notice?

A. The notification is presumed served when it is mailed to the last known address. However, if the child welfare agency knows that the suspect is no longer at the last known address, they should make a reasonable effort to obtain the suspect’s current address. If the suspect has moved and the county is unsuccessful in obtaining further information, then the social worker should document this information in CWS/CMS. Child welfare agencies may need to consult with county counsel to determine whether further steps should be taken to locate the suspect.

Q.13. Does the County Welfare Department have any obligation to assist the griever in preparing for the hearing in the event they cannot afford their own legal
representation? Is the county required to provide assistance beyond what is required in the settlement (completing the necessary forms to initiate a request for grievance) such as preparing witness lists, gathering facts, etc?

A. The county is only required to assist the individual in completing the forms if assistance is requested. There is no requirement to provide counsel to the individual.

The Grievance Hearing

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. The CDSS is developing new grievance hearing guidelines that will be issued via emergency regulations, effective May 1, 2008.

Q.14. Is the grievance officer required to be staffed by someone outside of the line of supervision?

A. The grievance officer cannot be a person involved in the investigation of child abuse in that case or directly in the chain of command or supervision of any of the persons investigating the child abuse in that case. The restrictions therefore are case specific, not classification specific, so long as they are familiar with the general subject matter of child abuse investigations. Theoretically, a grievance officer could be a supervisor for investigators from another county office, who is not in the chain of command for that investigating social worker involved in the case. The settlement provides maximum flexibility regarding who could serve as grievance officer, and restricts only those persons who worked on the case, or who supervise those who worked on the case. A grievance officer should be:

A staff or other person not involved in the investigation of the alleged child abuse/neglect.
Neither a co-worker nor a person directly in the chain of supervision of any of the persons involved in the investigation of the alleged abuse/neglect unless the agent is the director or chief deputy director of the county.
Knowledgeable of the field and capable of objectively reviewing the complaint.

Q.15. The regulations require counties to release disclosable information to attorneys or representatives when the individual has provided a signed authorization. The settlement also requires the county and complainant to make available for inspection the documents they intend to rely upon during the hearing, ten (10) days prior to the hearing. Further, the settlement provides instructions for presenting evidence during the hearing. Can the grievance officer still allow additional evidence/information to be presented during the hearing that was not previously shared in advance? What are the requirements concerning the sharing of new/additional information during the hearing?

A. The grievance officer may allow additional evidence/information at the time of the hearing, but county staff may ask for a continuance, if necessary, to allow for additional time to review the new information.

Q.16. Will the grievance officer be required to base decisions on information provided at the time of the hearing even if this information that was not available to the social worker at the time of the original investigation?

A. The decision is based on evidence presented at the hearing.

Q.17. Information discussed during the hearing is considered confidential and is not to be released outside of the hearing environment. However, it is possible that information which comes to light during the course of the hearing could constitute grounds for a subsequent child abuse report.

Can information from the hearing be released if it involves new allegations that pertain to child safety?

A. Mandatory reporting laws take precedence in this situation.

Q.18. Will these new grievance procedures replace those listed in Division 31 regulations, section 31-020 (these regulations currently govern the grievance process for foster parents, legal guardians and relative and non-related extended family member approvals)?

A. No, a new section (31-021) is being added that specifically addresses the CACI grievance hearing process.
Q.19. Current law under Welfare & Institutions Code (W&I&C) Section 827 requires persons to first petition the juvenile court for the release of the case file, portions of the case file, or information relating to the contents of the case file. Did the Gomez lawsuit settlement change this requirement? Are counties still bound by the requirements of W&I&C Section 827?

A. Penal Code Section 11167.5(b)(11) authorizes counties to provide suspects with reports including the child abuse investigation report. Additionally, Penal Code Section 11167(e) requires the county, when making contact with the suspect, to provide the suspect with information concerning the complaints and allegations against the suspect. The CDSS recommends that each county consult with their county counsel regarding issues of confidentiality of child abuse records.

Q.20. The ACL 07-53 indicates that “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.” If a petition does not end up being sustained, at what point is the person listed on the CACI eligible to request a hearing, and what timeframe do they have to then make that request?

A. If the individual requested a hearing when his/her case was still pending before the court, the hearing would be denied. If, however, the court does not sustain the petition, the individual would then have the opportunity to contest the listing and request a hearing within the timeframe allowed per grievance procedures. In these cases, the child welfare agency should develop a procedure for placing the initial grievance request on hold and tracking the results of the court’s decision.

Q.21. At times the law enforcement agency will request or instruct child welfare staff to restrict its child abuse investigation. Commonly law enforcement will ask the county to refrain from interviewing the suspect. Does the county have a legal obligation to submit to DOJ the Child Abuse Summary Report (form SS 8583) under these circumstances?

A. CDSS hopes to issue an ACL in the future, which will provide specific instructions to counties to address this issue.

Q.22. What other reviews can counties employ in addition to the review required in the Gomez settlement agreement?
A. The settlement does not preclude child welfare agencies from offering other dispute resolution meetings (i.e. informal meetings) to resolve the matter.

Q.23. If a county provided a CACI grievance hearing prior to May 1, 2008, and denied the request to remove the individual’s name from the listing, will that person have the right to request another grievance hearing after the implementation date?

A. It would depend on the processes provided in the prior grievance hearing. In the Gomez settlement, CDSS has agreed that procedural elements such as document exchange, witness lists, the opportunity to cross examine witnesses, and to have a disinterested but knowledgeable hearing officer is necessary. If the prior grievance hearing did not substantially provide for these and other processes that are set out in the Gomez settlement, the individual in the prior grievance hearing did not substantially receive the level of due process they are entitled to under the Gomez settlement. In cases where doubt exists as to whether or not the prior grievance hearing provided these important processes, counties should provide a new grievance hearing.

In order to time study activities related to the Gomez grievance hearings, CDSS will issue a program (time study) code in an upcoming County Fiscal Letter.

Please direct all questions regarding any of the listed activities to Diane Brown, Manager of the Policy Development and Support Unit of 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
Statutes referenced in Penal Code sections 1165.1 through 1165.6, regarding child abuse and neglect

**Penal Code § 261** (a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

(1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.
(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.
(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.
(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.
(5) Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

Penal Code § 261.5, subdivision (d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for two, three, or four years.

Penal Code § 264.1 … in any case in which the defendant, voluntarily acting in concert with another person, by force or violence and against the will of the victim, committed an act described in Section 261, …, or 289, either personally or by aiding and abetting the other person,…
Penal Code § 285  Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who being 14 years of age or older, commit fornication or adultery with each other, ...

Penal Code § 286  (a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy. ...

Penal Code §288  (a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, ...

(b) (1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person,...

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), ...

(c) (1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, .... In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

Penal Code § 288a  (a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.....

Penal Code § 289  (a) (1) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person....

(2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, ...
(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, ....

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, ....

(d) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, .... As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

1. Was unconscious or asleep.
2. Was not aware, knowing, perceiving, or cognizant that the act occurred.
3. Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.
4. Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, ....

(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, ....
(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, .... As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official. ...

(j) Any person who participates in an act of sexual penetration with another person who is under 14 years of age and who is more than 10 years younger ....

(k) As used in this section:

(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.
(2) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.
(3) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(l) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

Penal Code § 647.6 (a) (1) Every person who annoys or molests any child under 18 years of age...

Penal Code § 311.2 (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter …
(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, ...

(c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, ...

(d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, ...
(e) Subdivisions (a) to (d), inclusive, do not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses, to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(f) This section does not apply to matter that depicts a legally emancipated child under the age of 18 years or to lawful conduct between spouses when one or both are under the age of 18 years.

(g) …

Penal Code § 311.3

…

(c) … does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

…

(e) The provisions of this section do not apply to an employee of a commercial film developer who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, provided that the employee has no financial interest in the commercial developer by which he or she is employed.

Penal Code § 311.4 (a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, …

Education Code § 44807. Every teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess. A teacher, vice principal, principal, or any other certificated employee of a school district, shall not be subject to criminal prosecution or criminal penalties for the exercise, during the performance of his duties, of the same degree of physical control over a pupil that a parent would be legally privileged to exercise but which in no event shall exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning. The provisions of this section are in addition to and do not supersede the provisions of Section 49000.

Education Code § 49000. The Legislature finds and declares that the protection against corporal punishment, which extends to other citizens in other walks of life, …
life, should include children while they are under the control of the public schools. Children of school age are at the most vulnerable and impressionable period of their lives and it is wholly reasonable that the safeguards to the integrity and sanctity of their bodies should be, at this tender age, at least equal to that afforded to other citizens.

**Education Code § 49001.** (a) For the purposes of this section "corporal punishment" means the willful infliction of, or willfully causing the infliction of, physical pain on a pupil. An amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to persons or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, is not and shall not be construed to be corporal punishment within the meaning and intent of this section. Physical pain or discomfort caused by athletic competition or other such recreational activity, voluntarily engaged in by the pupil, is not and shall not be construed to be corporal punishment within the meaning and intent of this section.

(b) No person employed by or engaged in a public school shall inflict, or cause to be inflicted corporal punishment upon a pupil. Every resolution, bylaw, rule, ordinance, or other act or authority permitting or authorizing the infliction of corporal punishment upon a pupil attending a public school is void and unenforceable.
§ 901. Definitions.

(a) "Active Investigation" means the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, the activities shall include, at a minimum: assessing the nature and seriousness of the known or suspected abuse; conducting interviews of the victim(s) and any known suspect(s) and witness(es) when appropriate and/or available; gathering and preserving evidence; determining whether the incident is substantiated, inconclusive, or unfounded; and preparing a report that will be retained in the files of the investigating agency.

(b) "Audit Trail" is the method used by DOJ to track inquiries to ACAS to determine the requestor and the response provided. (See § 910)

(c) "Automated Child Abuse System" (ACAS) means the current system used by DOJ to electronically store reports of child abuse submitted by investigating agencies. ACAS is also known as the Index and the Child Abuse Central Index. Child Abuse Central Index and the Index are the same terms as used in Penal Code section 11170.

(d) "Child" is the same term as defined in Penal Code section 11165.

(e) "Child Abuse" is the same term as defined in Penal Code section 11165.6.

(f) "Confirmation" is the DOJ process of contacting the agency that submitted the report to confirm that the underlying investigative report is still available and is not unfounded. (See § 908)

(g) "DOJ" means the Department of Justice.

(h) "General Neglect" is the same term as used in Penal Code section 11165.2.

(i) "Inconclusive Report" is the same term as defined in Penal Code section 11165.12(c). This category was originally termed "unsubstantiated report" and was renamed by Chapter 842 of the Statutes of 1997, effective January 1, 1998.

(j) "Investigative Report" or "Underlying Investigative Report" means original and supplemental investigative documents developed by an agency during an investigation of a child abuse incident and that resulted in a report to DOJ.
(k) "Possible Match" means DOJ staff has checked a specific name as the result of an inquiry and has, based on the name and other items of personal description (date of birth, social security number, driver’s license number, or address), matched that name to an existing report(s) in ACAS. The match is considered possible because it has not been confirmed absolutely with positive matching processes such as a fingerprint comparison.

(l) "Severe Neglect" is the same term as used in Penal Code section 11165.2.

(m) "Submitting Agency" means the agency that forwarded the completed summary report on which an ACAS entry is based.

(n) "Substantiated Report" is the same term as defined in Penal Code section 11165.12(b).

(o) "Summary Report" means an entry in ACAS reporting the investigation of a suspected incident of child abuse or severe neglect. All mandatory information as specified in regulation § 903 must be included for the report to be entered into ACAS. (See § 903)

(p) "Suspect" means a person who has been designated as a suspect in an agency’s child abuse investigation and subsequently reported as such to DOJ.

(q) "Unfounded" is the same term as defined in Penal Code section 11165.12(a). Unfounded reports are not forwarded to DOJ for inclusion in the ACAS.

(r) "Unsubstantiated" means a report that is determined by a child abuse investigator not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect has occurred. (This category was renamed "inconclusive" by Chapter 842 of the Statutes of 1997, effective January 1, 1998).

(s) "Verification" means the process DOJ uses to insure that the data entered into ACAS is accurately entered into ACAS. (See§ 904)

(t) "Victim" means a person who has been designated as a victim in a child abuse investigative report and subsequently reported as such to DOJ.

Note: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165, 11165.2, 11165.6, 11165.9, 11165.12(a), 11165.12(b), 11165.12(c), 11169 and 11170(a), Penal Code; and Section 1596.60, Health and Safety Code.

HISTORY

1. New section filed 7-17-98; operative 7-17-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 29).

3. Amendment filed 5-12-2006; operative 6-11-2006 (Register 2006, No. 19).


BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 9. REPORT OF CHILD ABUSE
ARTICLE 1. REPORT OF CHILD ABUSE
This database is current through 5/1/09, Register 2009, No. 18
§ 903. Standard Reporting Form for Reports of Child Abuse Maintained in ACAS.

(a) The "Child Abuse Summary Report" Form SS 8583 is the standard reporting form required to report investigative summaries of suspected incidents of child abuse and severe neglect to ACAS. Reporting agencies shall submit Form SS 8583 to DOJ after an active investigation has been conducted and the incident has been determined not to be unfounded. Reporting agencies must obtain and use the most recent version of the SS 8583 when submitting the report to DOJ. The most recent version of the SS 8583 must be the basis for any report in an automated format submitted to DOJ.

(1) If a report is submitted on a form pre-dating the current SS 8583, and DOJ receives an inquiry that requires a confirmation of the report, the information on the report originally submitted must comply with the reporting requirements of the current Form SS 8583. (See§ 908)

(2) All information items on the standard report Form SS 8583 should be completed by the investigating agency. Certain information items on the SS 8583 must be completed by the investigating agency in order for it to be considered a "retainable report" by DOJ and entered into ACAS. Reports without these items will be returned to the contributor. These information items are:

(A) The complete name of the investigating agency and type of agency.

(B) The agency's report number or case name.

(C) The action taken by the investigating agency.

(D) The specific type of abuse.
(E) The victim(s) name, birth date or approximate age, and gender.

(F) Either the suspect(s) name or the notation "unknown," birth date or approximate age, and gender.

(G) Verification (yes, no) that an active investigation was conducted and that the victim(s) were contacted. Verification (yes, no, no suspect) that suspect(s) were contacted and verification (yes, no, no witness) that witness(es) were contacted. An explanation is required if contacts were not made.

(H) Verification (yes, no) that the suspect was given written notice that his/her name will be placed in the Child Abuse Central Index per PC 11169(b). An explanation is required if no written notice was given.

(b) The following form shall be the standard reporting form for submitting summary reports of child abuse and severe neglect to DOJ:

See forms in appendix

Note: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165.6, 11165.9, 11165.12, 11166(h) and (i), 11168, 11169(a), 11169(b) and 11170(a)(1), Penal Code.

HISTORY

1. New section filed 7-17-98; operative 7-17-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 29).
3. Editorial correction providing clean copy of Form SS 8583 (Register 2002, No. 21).
4. Amendment filed 5-12-2006; operative 6-11-2006 (Register 2006, No. 19).

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This database is current through 5/1/09, Register 2009, No. 18
§ 904. DOJ Review and Verification of Submitted Summary Reports.

All submissions received by DOJ staff are reviewed to determine that they meet the definition of a report in these regulations. DOJ staff verifies only that the information entered into ACAS is consistent with the information as reported by the investigating agency. The DOJ presumes that the substance of the information
provided is accurate and does not conduct a separate investigation to verify the accuracy of the investigation conducted by the submitting agency.

Note: Authority cited: Section 11170(a)(1), Penal Code. Reference: Sections 11165.9, 11169 and 11170(a)(2), Penal Code.

HISTORY

1. New section filed 7-17-98; operative 7-17-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 29).


3. Amendment of section heading filed 5-12-2006; operative 6-11-2006 (Register 2006, No. 19).
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 (PC11166.1)
  - Broader and more inclusive than definitions of physical or emotional abuse
  - Sexual assault
  - Sexual exploitation
- Emotional Abuse (PC11166.05)
  - Willful harming or injury (PC 11166.3)
  - 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 11165.6)
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
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?
### Grievance Review

- 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
- Contact County Counsel and/or GRO County Representative
- Review all written records, make notes
- Know your investigation protocols and processes
- Know your interviewing protocol
- Review Penal Code definitions
- Know how to explain why you decided what you decided
- 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 SS583 plus new SS583 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
Thanks for joining us!
Learning Session Warm-Up:
Liberty Interests and Due Process

Directions: In your learning groups, discuss the three questions listed below and
record the themes of your discussion for follow-up report out as a large group.

Define due process. List as many due process protections as your group can
think of.

What are the due process protections that might be affected by a referral
investigation?

What is the purpose of the Child Abuse Central Index? How can it protect
children? What are the ramifications of being listed as a suspect on CACI?
Skills Application: Make Your Finding

Directions: In your learning team, you will be assigned one or more of the following short referral scenarios. In your teams, apply the Penal Code definitions and referral disposition definitions and make a finding in these cases.

### Abuse Category: Physical Abuse:

**Referral Narrative:** A 14-year old girl is in the middle school health office with a 4-inch scratch on the left side of her neck. The girl explained to her math teacher (who noticed the injury) that her father had scratched her neck during an argument the previous night. The girl had arrived home from her date with her 16-year old boyfriend long after curfew.

No prior CWS history on file.

**Investigation Details:**

During an interview with the CWS investigator at the school, the girl stated that she and her father had argued when she returned home late for curfew. She had become angry with her father when he told her she was restricted from going out of the house except for school for the next five days and was yelling and flailing her arms at him as she had attempted to leave the house. She stated that her father’s ring had scratched her neck when he had moved into her path to prevent her from leaving the house. While not happy that she is on restriction, the girl stated she is not afraid that her father might harm her.

During an interview with the father, the father admitted that his ring had scratched his daughter’s neck as he blocked her path and made efforts to protect his face from her arms. He stated he was attempting to enforce house restriction after his daughter came home late from her outing on a school night.

No one else was in the home at the time of the incident.

**Finding:**

- Unfounded
- Substantiated
**Inconclusive**

**Basis of conclusion:**

<table>
<thead>
<tr>
<th>Abuse Category: Severe Neglect</th>
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**Referral Narrative:** A 10-year old girl has been admitted to the local hospital in critical condition for hypothermia and is near death. Police located the girl and her 8-year old brother on the road between their father’s home and their mother’s home. According to the 8-year old brother, his father’s truck had gotten stuck in the snow about 10 miles from the father’s home on the way to their mother’s home. The father had allowed the two children to walk the two remaining miles to their mother’s home while he and the father’s brother remained behind to get the vehicle out of the snowdrift.

Two prior referrals for general neglect, one listing the father as suspect, the other listing the mother as suspect. Both referrals were inconclusive.

**Investigation Details:** Police officers reported that they responded to a distress call from the children’s mother after the 8-year old had run to the home to inform the mother that his sister was “sleeping” in the snow about half mile from her home. The mother drove with her son to find her daughter and called police for an ambulance when she was unable to revive her. Wind chill temperatures were about 7 degrees.

The 8-year old boy stated that his father had been transporting him and his sister to their mother’s home for a visit when the truck had become stuck in snow that had hidden a deep gutter along the side of the road. After about an hour of effort, the children had grown restless and told their father that they were going to walk the rest of the way. The father stated that as soon as he got the truck free, he would follow them to the mother’s home. About two-thirds of the way there, faced with a stiff, cold wind, his sister sat down, stating she was too sleepy to go on and then laid down in the snow. He was unable to wake her.

The father and his brother stated that the father had told the children to be patient or that they would have to walk the rest of the way to their destination. When the children left to walk down the road, the father remained behind, attempting to extricate the truck.

**Finding:**
Abuse Category: Sexual Abuse

Referral Narrative: A 12-year old girl disclosed to her school guidance counselor that, four years ago, when her mother was married to her stepfather Jake, he would show her sexy videos and walk around naked in front of her with a “hard on.”

The girl stated that she had told her mother, who had not done anything about it at the time. The mother separated from Jake about a year later and she has not seen Jake since.

Investigation Details: The girl reported that when her mother was at work or sleeping, Jake would encourage her to watch adult sex videos that he kept in the den. While they were watching the videos, Jake would sometimes go to the bathroom and then come out in boxer shorts that could not disguise his arousal. This happened about five times when the girl was 8 years old. She denied that Jake had ever touched her inappropriately or asked her to do anything other than watch the videos.

The girl stated that when she told her mother about the incidents, the mother had told her Jake didn’t mean anything and was just fooling around.

The mother denied any knowledge of the incidents, stating that she would have taken action to protect her daughter if she had been told or knew about the incidents. The mother stated that the little girl had stated that sometimes Jake had her watch funny movies before bedtime, but that she had never described the movies as sexual in nature. She stated she was aware that Jake owned sexually explicit videos, but that they had used them as a couple.

Police officers requested that the CWS worker not contact the alleged perpetrator, pending the outcome of a criminal investigation.
Finding:

Unfounded
Substantiated
Inconclusive

Basis for finding:
Case Scenario

Screener Narrative:

A 10-year old male came to the elementary school office this morning crying and asking to talk to the school nurse. The boy stated that he is terrified to go home this afternoon with a report card showing a “D” in mathematics. He stated that he got a bad grade on his report card last semester and that his father had become enraged when he got home and had spanked him so hard that his entire buttocks was bruised black and blue and he had trouble sitting down for almost a week. His father had stated to the boy last weekend that he had better bring home an improved report card this week or he will again “face the music.” He is afraid that the same thing will happen tonight when he brings his report card home.

He begged the school nurse to call his mother at work and tell her that he is very sick and she must come home from work. The boy stated that his mother, who also lives in the home, works from 3:30 PM until midnight on weekdays and his father cares for he and his sister in the evenings after work and oversees his homework.

When asked if he had any current injuries, the boy showed the nurse a faint bruise mark and healing scratch on his arm that he stated was as a result of his father grabbing his arm when he was dawdling over his math homework.

Investigation Narrative/Contacts

2/12/09: CWW received assignment of this immediate response referral at 10:45 AM. Records check of CWS/CMS shows two prior referrals for general neglect (inconclusive) and physical abuse (unfounded). The general neglect referral was investigated about a year ago and involved concerns that the parents were not following up in getting treatment for an infected tooth. The matter was resolved with the boy getting dental treatment and the referral was closed as inconclusive. The second referral was investigated six months ago when a neighbor reported overhearing the father screaming and the boy begging his father not to spank him so hard. The boy, his sister, his mother and his father all denied any problems and the referral was closed as unfounded.

2/12/09: Collateral contact with reporting party. The nurse stated that the boy was currently in the guidance counselor’s office and continued to weep and beg.
not to be sent home with his report card and promised to improve his performance if the school would change his grade.

The guidance counselor told the nurse that the youth has come to the office previously with worries about “getting in trouble” or “getting paddled” by his father for misbehavior, but has never described any concrete incidents involving injury. The father attends all school conferences and shows active interest in his son and daughter’s academic progress. The counselor has never met the children’s mother.

The father works an early morning shift (5:30 AM until 2:30 PM) for the local federal prison facility as a correctional officer and the mother works from 3:30 PM until midnight as a 411 operator for the local telephone company. The boy has an 8 year-old sister who attends the same school. The father also has an adult son, now 18 years old, from a previous relationship, who also attended school in the district, but dropped out at the age of 15 years.

2/12/09: 11:45 AM interview with the 10-year old boy at the school. The worker established rapport and explained to the boy that he could be interviewed alone or with a supportive adult. He asked that the school guidance counselor be present.

The boy stated that he has trouble with math and his father is worried that he will become a “no good drop-out” like his older brother if he continues to do poorly. As he was finishing up his homework last night, his father reminded him that report cards would be sent out today and that he had better have improved his math grade or he would “face the music.” The worker inquired what the father meant by “face the music” and the boy said that he would get paddled with the “Board of Education,” which is a large wooden paddle that hangs on the wall in the family living room. The boy stated that he gets paddled on his bare buttocks for misbehavior about once or twice a month and sometimes gets sent to his room without dinner if he misbehaves.

The boy reported that last time he brought home a report card with a bad grade was at the end of the last school year. His mother had been at work and his sister had been playing at a neighbor’s home. His father had asked to see the report card and had begun yelling at the boy that he would turn out like his “no good older brother” if he kept grades like this. His father had whipped him with the paddle “about a hundred times” and had sent him to his room for the evening without supper. When he got up the next morning, the boy said his butt was covered in black and blue marks. He said he was so sore he had trouble sitting down for a week. He never told his mother about the incident because she had threatened to leave his father once before when he had spanked his sister too
hard. About two weeks later, a social worker had come to see him at school about being spanked, but he had denied the incident because he was fearful that his father would hurt him again if he told someone.

Since the incident, the boy stated that the father has been “all up on him” about his schoolwork, but his father doesn’t help him with math because it is the “new math” and his father doesn’t understand it either. Sometimes when the boy procrastinates or gets distracted from his homework, the father will grab him by the arm and drag him to his desk to get him back working on it. He begged the social worker to put him in foster care so he does not have to go home and be alone with his father. He showed the worker a faint bruise and slight scratch about 2 inches long on his right arm that he stated was a result of his father grabbing his arm about a week ago to make him get back to his homework.

2/12/09: School interview with the boy’s 8 year-old sister. Rapport was established and the girl declined to have anyone present during the interview. The girl reported that her brother does get in trouble from their father when he doesn’t do his homework, but usually her father will grab her brother by the arm and sit him down at the kitchen table or his desk to work. She did not see her father spank her brother hard after report cards came out last year. She stated she gets punished by being sent to her room or getting a spanking. She stated that her brother gets in trouble much more often than she because he goofs off when he gets home from school. She confirmed that her father and mother have a paddle that hangs on the wall in the living room, but she has never been spanked with it, only threatened by her mother.

The girl stated with pride that she gets “all As” on her report card every semester and doesn’t understand why her brother finds math so hard. She stated that the only reason that the boy might be afraid to go home is that he now has to “face the music” of not doing his homework.

2/12/09: The CWW went to the family home to interview the mother, who was home alone. The CWW explained that CWS had received a referral and needed to discuss concerns about her husband and her son. The CWW observed a large wooden paddle hung on the wall in the living room with an inscription “Board of Education” on the wall.

The mother stated that her husband was currently at work and would be home in about 2 ½ hours. He had volunteered to work the early shift as a correctional officer so that both of them could work to provide for the family and the children would never be left unsupervised.
The mother denied any knowledge of an incident in which her husband paddled and injured her son. She stated that her husband is a strict disciplinarian and that he occasionally spanks the children or sends them to their room, but she stated she does not believe he has ever hurt them. She stated the “Board of Education” paddle came from her husband’s grandparents’ home and was used as a means of discipline for her husband’s mother. The mother admitted that they refer to the presence of the “Board” from time to time when the children act up. She denied that either she or her husband every hurt their children. She is sure of this because she and her husband had had an argument a couple of years ago when he had spanked their daughter a bit too hard and she had really set limits with him.

When asked what happened when report cards were released last semester, the mother stated that when she returned home from work that day, the report cards were on the kitchen table and her husband was upset with their son, determined that he improve his grades and avoid dropping out of school like his older son. She explained that her husband was in a previous relationship with a woman who set no limits for their son and he has spent considerable time in Juvenile Hall and County Jail. He told her that he had put their son on restriction from extracurricular activities until he brings up his grades but made no mention of any other punishment. She did not notice anything unusual about her son or husband following that day, other than an increased intensity on the part of her husband’s focus on her son’s math homework. She stated that if her son was making statements about being afraid of coming home with his report card, it is because he will again be restricted and he really wants to play basketball this winter.

The CWW explained to the mother her responsibility to assure the physical safety and appropriate care and supervision of her children and the consequences of further contact by the agency if an injury occurs. The mother stated her understanding and stated that she will assure her children are safe. The CWW asked the mother to inform the father that he needed to come to the social services office after work today to discuss the referral.

2/12/09: Office interview with the father at 2:30 PM. His wife had called him immediately after the CWW home visit and he had left work early to meet for the interview. The father stated that his son has been struggling with his academic performance over the last year and he has been working hard to make sure his son succeeds in school. After report cards came out just before summer break, he stated that his son came home with a “D” and “U” for unsatisfactory effort in Math. He had been angry, because the boy had told him he was doing fine in all subjects. He stated that he told the boy he was on restriction from team sports until he brought the grade up to a “C” and sent him to his room for the evening.
He denied using any form of physical discipline, though he did admit to grabbing the boy’s arm to send him to his room.

He stated that he had begun to have problems with his older son about the same age and he had been unable to gain the cooperation of the boy’s mother (they were separated at the time) in keeping him on track academically. He attributes his current legal troubles and problems with employment to his academic decline. He stated his determination not to allow this to happen to his younger son, stating that he oversees the boy’s homework, keeps in touch with the school and disciplines his son as necessary to keep him on track.

He stated he uses restriction, time-outs in their bedroom and as needed spanking to discipline his children. He denied ever injuring his children during discipline. He stated he believes his son may be fearful of his reaction to poor grades based upon a talk they had had last night regarding what the boy expected for a grade. He told his father he had brought his grade up to a “C” and his father had told him that if he was lying, he would have to “face the music.” The father stated that the boy knows that means he will be unable to participate in winter basketball league. He stated he would not harm or injure his son in any way and stated his understanding of the consequences of Juvenile Court involvement based upon any injury to the child.

Stop and Complete Your Skills Application Worksheet
Skills Application: Part 1 – Make a finding

Directions: Based upon the provided case vignette, complete the following skills application activities focused on making a referral finding and completing all required documentation in compliance with the Gomez Settlement.

What additional information do you need (and how would you attempt to acquire it) and what additional questions would you ask any family member to support a referral conclusion?

Consider the case example and describe, if any, the safety threats and/or risk issues identified in the case. What level of risk does your group believe is present in this situation?

Discuss as a group what finding you would make on this investigation (substantiated, inconclusive or unfounded) and provide a rationale for this finding.

Write the portion of the case contact that adequately documents the referral finding and its basis.
What actions will you need to take as a CWW regarding discussing your findings with the family? Please write the portion of the case contact that adequately documents these discussions with the family.
What Do You Think?: What Does It Take to Testify at An Administrative Hearing?

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 at an administrative hearing?
Case Scenario, Part 2

County Representative Narratives:

3/5/09: Received a timely Request for Grievance Hearing (SOC 834) from father of 10-year male.

3/5/09: Tentatively scheduled Grievance Review Hearing for 4/23/09 and left message for CCTA to assign a GRO.

3/6/09: Reviewed Investigation Narratives and related documents from the investigation conducted on 2/12/09 as well as those from the two earlier referrals.

3/6/09: Met with investigating worker and supervisor. Advised them of father's Request for Grievance Hearing. Described his position as stated on the SOC 834. He says he has never abused the boy. He objects to being listed on the CACI now because the allegation is based entirely on the previous allegation that was investigated and determined to be unfounded. He feels that listing him now is unfair because it effectively reverses the unfounded determination without any new evidence regarding that incident and no allegations—let alone any evidence—of any current abuse.

Worker and supervisor stated that they understand how the father might feel as he does about this CACI listing after the prior referral was determined unfounded. However, they stated that they considered several current factors from their investigation that they feel justify the listing determination. Among the factors they cited are:

- The sister's statement that her father sometimes spanks her as punishment corroborates the boy's reports that he gets "paddled" about once or twice a month.
- Furthermore, the mother stated that the father spanks both children.
- The worker observed the "Board of Education" hanging where the boy stated it hangs on the living room wall in the home. The mother told the worker the "Board" came from the father's family.
- The father has a history of excessive discipline, as both the mother and the boy reported an earlier incident in which the father spanked the boy's sister "too hard."
- The boy had a faint bruise and a long scratch on his arm consistent with his report that his father grabbed him by the arm. The sister reports that the father "usually" grabs the boy by the arm to put him
back at the table or desk to do homework. Though not admitting having caused the current bruise and scratch, they believe the father's statement that he grabbed the boy by the arm in the earlier investigated incident shows that he uses harsh interventions with the boy.

The worker and supervisor oppose changing this referral outcome to "unfounded."

Stop and Complete Your Skills Application Worksheet
Skills Practice: Part II

In your learning teams, review the case example provided in Session I again and the supplemental information that is provided as part of the father’s grievance request.

What are the key differences in information between the social worker’s report and the father’s account?

How do these differences affect the referral conclusion made by the worker, if at all?
Skills Application: Part 2 – Respond to the Request for Grievance Hearing

Directions: Based upon the provided case vignette, complete the following skills application activities focused on decisions the County must make and actions it must complete from the time the Request for Grievance Hearing is received.

As the county representative responsible for determining whether a grievance can be resolved informally, what additional information would you want and what additional actions, if any, you would take before you make that determination?

Consider the entire case scenario and describe what factors would support a decision to change the determination to "unfounded" without a hearing and what factors would support defending the agency's referral determination by proceeding to a hearing?

Discuss as a group what determination you would make on whether the matter can be resolved informally and provide a rationale for your decision.

Assume the matter will proceed to a hearing and you are the county representative responsible for preparing the county's position statement. Briefly outline how you would structure that statement.