

DSS Policy and Procedure Guide

Division 03: Child Welfare

Chapter 11: **Continuous Quality Improvement (CQI) Support**

Item 007: **Grievance Hearings for Child Abuse Central Index Name Listings**

Suggested changes send to: DSS PSOA Mailbox

Issued: **November 21, 2016**

References: All County Letters #07-53 and #12-21
All County Information Notices #I-21-08 and #I-22-08
All County Fiscal Letter #07/08-47
SOC 833 – Grievance Procedures
Penal Code Sections 11165.12 and 11167 (d)(1)
Welfare and Institutions Code Section 827
DOJ/CACI Reporting PPG 03-03-033

Revisions in Red

Replaces Issue: **February 24, 2014**

Preamble

Child Welfare Policy and Procedure Guides are meant to be used as tools to relay best practice and staff expectations. It is understood that specific case scenarios may not always align themselves with the stated practices and that at all times what is of paramount importance is the Safety and Well-being of the children we are charged to protect.

Policy

The Department of Social Services (DSS) shall conduct grievance hearings for individuals who believe their name was listed on the California Department of Justice (DOJ) Child Abuse Central Index (CACI) in error.

Purpose

To allow individuals who disagree with their name being submitted to the CACI by DSS to request a grievance hearing. This policy also outlines specific requirements as outlined in All County Letter (ACL) #07-53, regarding the Gomez v. Saenz lawsuit. Pursuant to the lawsuit, all Child Welfare departments in California have agreed to notify individuals of their listing on CACI, give individuals the right to grieve the listing, and provide grievance hearings for those who challenge the listing.

Definitions

Unfounded Report: According to Penal Code Section 11165.12, 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.

Substantiated Report: A report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Penal Code Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred.

Inconclusive Report: 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 Penal Code Section 11165.6, has occurred.

Active Investigation: As defined by the DOJ regulations Title 11 California Administrative Code, section 901(a), an 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 CACI, 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); 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.

Procedure

Prior to the Grievance Hearing

Completed Grievance Hearing Request forms shall be forwarded to DSS **Child Welfare CQI Support** within 30 days of the complainant being notified or becoming aware of the listing.

If the grievance hearing request is submitted to DSS more than thirty days after the complainant is notified or becomes aware of their name being submitted to CACI, the right to a grievance hearing is waived. However, DSS will, as a courtesy, evaluate each occurrence to determine whether or not the grievance matter should proceed.

Within 10 business days of receipt of the Grievance Hearing Request form, **CQI Support** will complete a pre-hearing screening process to determine if a grievance hearing will be required.

During the screening process, **CQI Support** staff will:

- Conduct a CWS/CMS review of the abuse or neglect allegations and investigation(s) resulting in the individual's name being listed on CACI.
- Interview the investigating Social Worker (SW)
- Review hard copies of any investigation(s) resulting in the individual's name being listed on CACI that occurred prior to 1998.
 - **Complainants with multiple CACI listings will be advised that each listing must be individually contested as each listing is assessed according to the specific facts that resulted in the listing.**
- Request and review police reports, Multi-Disciplinary Interview Center (MDIC) reports, and any other documents or evidence that is relevant to the investigation that resulted in the individual's name being listed on CACI.
- Determine if the allegations that resulted in the individual's name being listed on CACI are pending or have been found true in a court of competent jurisdiction. (If so, the right to a Grievance Hearing is waived.)
- Determine if one of the following applies:
 - The complainant is not the person who committed the alleged acts of abuse or neglect.

- The alleged acts of abuse or neglect did not occur.
 - The act(s) that did occur are not abuse or neglect within the meaning of the Child Abuse and Neglect Reporting Act.
 - The complainant has presented another justifiable reason to remove his or her name from the DOJ/CACI database.
 - An “Active Investigation” has not occurred.
- Determine if the allegation disposition should be modified to Inconclusive or Unfounded.

Hearing Not Required

In assessing if a grievance hearing is necessary, CQI Support will consult with the investigating SW and SWS. Information obtained during the investigation will be discussed. CQI Support will provide the investigating SW and SWS with any information obtained after the conclusion of the investigation. This includes but is not limited to, law enforcement reports, medical records, and court testimony.

If the recommendation is to remove the listing from the DOJ/CACI in lieu of a grievance hearing, the CQI Support SW will prepare a recommendation report.

The CQI Support Supervisor will review the recommendation report and supporting documentation to determine if sufficient evidence exists to warrant removal of the complainant’s name from the DOJ/CACI database and/or to modify the original referral disposition to Inconclusive or Unfounded.

The recommendation report shall be submitted to the CW Deputy Director for final approval.

If compelling evidence exists which warrants removal of the complainant’s name from the DOJ/CACI database without a hearing, and upon final approval of the CW DD, CQI Support will request removal of the complainant’s name via fax or email to DOJ. CQI Support shall notify the complainant by mail that their name has been removed and that a hearing is not required.

CQI Support will then modify the disposition in CWS/CMS. The investigating SW, Social Work Supervisor (SWS), and Program Manager (PM) will be notified of the change in disposition via email.

Hearing Required

When a hearing is required, it shall be scheduled within 10 business days of DSS receiving the grievance hearing request and shall take place no later than 60 calendar days after DSS receives the request, unless otherwise agreed upon by all parties.

CQI Support shall mail the complainant notice of the hearing date, time, and location at least 30 calendar days before the hearing date, unless otherwise agreed upon by all parties. The grievance hearing notice shall also contain notice of the date, time, and location of the evidence exchange meeting.

CQI Support will complete a Position Statement supporting the DSS position that the referral allegations should remain Substantiated and the complainant’s name should remain on the CACI.

Either party may request a continuance of the grievance hearing not to exceed 10 business days. Any additional continuances or dismissal of the grievance hearing will be done upon the mutual agreement of all parties, or for good cause.

The complainant is allowed to have representation at the grievance hearing, by retaining their own attorney or having a friend/family assist. DSS is NOT required to provide an attorney for this hearing.

Note: County Counsel shall be present and/or present the DSS position at all hearings where the complainant has retained a private attorney.

Evidence Exchange

CQI Support shall schedule the evidence exchange meeting at least 10 business days prior to the grievance hearing.

The complainant, any representative with signed authorization (preferably on the SOC 834 form) from the complainant, and DSS shall be permitted to inspect any evidence and all documents which the opposing party intends to introduce at the grievance hearing. This includes the DSS Position Statement, narratives, police reports, witness lists, etc.

The representative and complainant are NOT to receive the name of any mandated reporter or any information that is otherwise protected by Federal, State, or local law, regulation or statute.

Therefore, records will need to be redacted prior to inspection.

Failure to disclose evidence or witness lists at the evidence exchange meeting can constitute grounds for objecting to consideration of the evidence or allowing testimony of a witness during the hearing. Witness(es) for the DSS will, at minimum, include the investigating SW when they are still employed by the County. When the investigating SW is no longer employed by the County, the SWS of the investigating SW shall attend.

The complainant will be advised that he or she may not obtain copies of the DSS evidence presented at the evidence exchange, but copies will be provided for their use during the hearing. All evidence used by the complainant and their representative during the hearing is to be returned to the Department at the conclusion of the hearing.

Hearing Preparation

The **CQI Support** hearing representative will:

- Contact the Investigating SW to coordinate and confirm the date, time and location of both the pre-hearing review and hearing.
- Gather and label all items to be entered into evidence at the hearing. DSS exhibits will be labeled numerically (1,2,3,4). Any evidence presented on behalf of the complainant will be labeled alphabetically (A,B,C,D).
- Appropriately redact all exhibits and prepare copies. Copies will be provided to the investigating SW for the pre-hearing review and during the hearing. The complainant and the Grievance Review Officer will receive copies during the hearing. The Grievance Review Officer may also receive copies prior to the hearing upon request.

- Prepare a list of direct examination questions for the investigating SW.
- Meet with the DSS witnesses prior to the hearing to review the direct examination questions. Additionally, the **CQI Support** hearing representative will ensure that the investigating SW(s), or SWS when the investigating SW is not available, have reviewed copies of the evidence that will be presented at the hearing.
- Discuss the hearing process with the witnesses, explaining that the complainant has the opportunity to question witnesses and that the **CQI Support** hearing representative can not always object to the questions.

Grievance Review Officer (GRO)

The person(s) who hold(s) the position of GRO for the DSS shall be determined by the DSS Director within the guidelines of the Gomez v. Saenz lawsuit. The DSS Director has chosen to utilize the Central California Training Academy Regional Grievance Review Officers.

The GRO has no authority to subpoena witnesses.

The GRO can limit the questioning of a witness to protect the witness from unwarranted embarrassment, oppression, or harassment.

The GRO may prevent the presence and/or examination of a child at the grievance hearing for good cause. The child must be capable of providing testimony, and be a voluntary participant. The GRO may interview the child privately.

The GRO will allow all evidence to be presented, and evidence will be given the weight to which it is entitled.

The GRO is authorized to continue the grievance hearing for 10 calendar days to allow for additional witnesses or evidence to be presented if necessary.

Grievance Hearing

The grievance hearing should be conducted in a non-adversarial atmosphere. All testimony will be given under oath or affirmation.

The only individuals present during the grievance hearing shall be the GRO, each party and their representative, and any witnesses. The **CQI Support** SW who reviewed the investigation of the allegation(s) will serve as the DSS representative. All parties will agree that no information presented at the grievance hearing will be disclosed to any person other than those involved in the grievance hearing.

The hearing proceedings shall be audio recorded and retained by the County as an administrative record of the hearing. If the complainant requests to inspect a transcript of the hearing, the complainant is required to pay transcription costs. The DSS shall lodge the administrative record with the Court if any party seeks judicial review of the final decision of the DSS Director.

DSS will first present its evidence in support of the DSS position and then the complainant will present their evidence in support of the findings being changed and their name being removed from the CACI.

DSS is then allowed to present rebuttal evidence. The GRO then has discretion to allow either party additional evidence.

After the Grievance Hearing

The GRO shall have a written recommendation made and sent to the DSS Director within 30 calendar days after the close of the grievance hearing. The decision shall include a summary of the facts, the issues involved, findings, and the basis for the decision. If possible, the written decision should not expose the complainant's confidential information.

Within 10 business days after receipt of the GRO's recommendation, the DSS Director will issue a written final decision adopting, rejecting, or modifying the GRO's recommendation.

CQI Support will mail the GRO's written recommendation and the DSS Director's written final decision to the complainant. Copies will be mailed to the California Department of Social Services at CDSS Child Welfare P&PDB, 744 P St. MS 11-87, Sacramento, CA, 95814. A copy is also retained with the **CQI Support** CACI hearing records.

When the final decision results in a change of disposition and removal of the complainant's name from the CACI, **CQI Support** will:

- Inform DOJ in writing and request that the complainant's name be removed from the CACI via e-mail to the designated DOJ staff or FAX to (916) 227-4094.
- Modify the referral disposition in CWS/CMS and notify the investigating SW, SWS, and PM via email.

Hearing records will be retained for at least one year or the length of time consistent with current law, regulations, or judicial order, whichever is longer.

Time Studies / Time Sheet

All activities associated with the Gomez v. Saenz lawsuit are to be coded as 7071 for SW staff and A66 for support staff.

The overtime project code for all activities associated with the Gomez v. Saenz lawsuit is GOM/30. This code is to be entered in the "Project" box, with GOM being entered in the first box and 30 in the second box.