

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



October 10, 2001

CSS LETTER: 01-25

TO: ALL IV-D DIRECTORS
 ALL DISTRICT ATTORNEYS
 ALL COUNTY ADMINISTRATIVE OFFICERS
 ALL BOARDS OF SUPERVISORS

SUBJECT: JURISDICTION OF STATE HEARING PROCESS

The Department of Child Support Services (DCSS) has promulgated regulations, effective July 1, 2001, implementing the legislative mandate that local child support agencies (LCSA) establish a local complaint resolution process, and that complainants have the right to appeal appropriate complaints to a state hearing. The legislative mandate is set forth in Family Code Section 17800 et seq., and DCSS' implementing regulations can be found in Title 22, Division 13, Chapter 10, of the California Code of Regulations. This letter clarifies the following: 1) the types of complaints that are not appropriate for submission to, and resolution through, the local complaint resolution process; 2) the types of complaints which, after exhaustion of the complaint resolution process, must be pursued through motion, order to show cause, or appeal to court; and 3) the types of complaints which, after exhaustion of the complaint resolution process, may properly be reviewed through the state hearing process.

The attached chart details types of complaints that may be lodged, complaints which should not be included within the complaint resolution process, and the appropriate forum for review for complaints that are properly the subject of the complaint resolution process. The chart is not intended to address every type of complaint that may be made, but rather is intended as a general guide. This chart should provide guidance to help the LCSA provide accurate information and assistance to complainants.

<u>Reason for this Transmittal</u>	
<input type="checkbox"/>	State Law or Regulation Change
<input type="checkbox"/>	Federal Law or Regulation Change
<input type="checkbox"/>	Court Order or Settlement Change
<input type="checkbox"/>	Clarification requested by One or More Counties
<input checked="" type="checkbox"/>	Initiated by DCSS

DCSS-LG-2001-CSS-0010



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Complaints Not Appropriately Addressed Through the Complaint Resolution Process

Although the majority of complaints are appropriately within the jurisdiction of the complaint resolution process (if not resolved prior to the filing of a complaint), the following types of complaints are not within the purview of the process:

- 1) Complaints which must, by law, be addressed by motion, order to show cause, or appeal, in a court of law – unless an administrative review is provided for by statute.
- 2) A court ordered amount of child support or child support arrears.
- 3) A court order or equivalent determination of paternity.
- 4) A court order for spousal support.
- 5) Child custody or visitation matters.

If the LCSA receives a Request for Complaint Resolution on one of these issues, the LCSA is not required to conduct a review of the complaint, and may close the complaint by sending a Notice of Complaint Resolution to the complainant within 30 days of receipt of the complaint.

Additionally, for certain complaints, taking the time to complete the local complaint resolution process can jeopardize an individual's right to seek court review of the complained of action or otherwise resolve the issue. This would occur in matters where there is a particularly short time frame in which to challenge an action. For example, if the LCSA notifies an obligor of its intent to levy on property, the obligor generally has 10 days in which to file a claim of exemption with the LCSA. If the obligor were to file a Request for Complaint Resolution to have the concern addressed by the complaint resolution process, instead of filing the claim of exemption, the property would be levied upon before any resolution of the issue were possible.

The attached chart details other circumstances in which the complaint resolution process should not be used to resolve concerns raised by obligors or obligees. If the LCSA receives a Request for Complaint Resolution on one of these issues, the LCSA should contact the complainant immediately and inform him or her that the proper forum to raise that complaint is in court, and not through the local complaint resolution process. In these circumstances, the LCSA should either assist the complainant in filing the appropriate action in superior court or refer the complainant to the family law facilitator or local legal aid office for assistance.

State Hearing Jurisdiction

Although all complaints by custodial parties and noncustodial parents affecting their child support case, with the exceptions noted above, are within the purview of the local complaint resolution process if filed in a timely manner, not all complaints which are the appropriate subject of complaint resolution fall within the jurisdiction of, and may be appealed to, the state hearing process. Most complaints that fall outside of the jurisdiction of the state hearing process may be addressed in court if the complainant is not satisfied with the results of the local complaint resolution process. Some complaints such as those for discourteous treatment are not subject to further review after the complaint resolution process has been completed.

California Family Code section 17801 et seq. defines the following types of complaints as within the jurisdiction of the state hearing process, after the complainant has exhausted the local complaint resolution process and received a "Notice of Complaint Resolution," LCR006, from the LCSA:

- 1) An application for child support services has been denied or has not been acted upon within the required timeframe.
- 2) The child support services case has been acted upon in violation of state or federal law or regulation or department letter ruling, or has not been acted upon within the required time frame, including services for the establishment, modification, and enforcement of child support orders and child support accountings.
- 3) Child support collections have not been distributed or have been distributed or disbursed incorrectly, or the amount of child support arrears, as calculated by the LCSA is inaccurate.
- 4) The LCSA's decision to close a child support case.

The Family Code specifically provides, however, that issues which are required by law to be addressed in court by motion, order to show cause, or appeal, including the amount of a court order for support, are not within the jurisdiction of the state hearing process. The attached chart provides examples of types of complaints that may be lodged and the appropriate forum for review of those complaints – the superior court or the state hearing process.

Calculation of Support Arrearages – Election of Forum

Under California law, jurisdiction for the review of complaints concerning the calculation of arrearages resides in a state hearing or in a court. The complainant has the choice of where to seek review. Specifically, Family Code section 17801 places the issue of review of arrearages calculated by the LCSA within the purview of the state hearing if

the complainant is dissatisfied with the results of the complaint resolution process (although a court determination of arrearages is not reviewable in a state hearing). Family Code sections 17524 – 17526 also describe a support obligor's right to an administrative determination of arrearages, which is met by complaint resolution and a state hearing. State hearing jurisdiction over arrears issues is limited to disputes regarding the accounting of the arrears. State hearing jurisdiction does not extend to arrears issues if there is no dispute as to the accounting of the amount owed, but the complainant is seeking relief from enforcement of the order or judgment, or if the complainant is seeking credit for payments that were made to someone other than the LCSA. In that event, the complainant should be advised that the proper forum to address his or her issue is the court.

Family Code section 17526 allows any party to an action involving child support enforcement services of the LCSA to request a judicial determination of arrearages, whether or not the party first exhausted his or her administrative remedies. In other words, a custodial party or noncustodial parent who disagrees with the LCSA's accounting of arrearages owed may file a complaint as part of the local complaint resolution process, request a state hearing after completion of the local complaint resolution process, or file a motion in court at any time before or after, the complaint process or state hearing. If the sole disputed issue is the calculation of arrears, the complainant should not be discouraged from selecting any of these routes for review of the matter.

If the complainant has other issues in addition to the calculation of the arrears that are required to be addressed in court, the complainant should be encouraged to pursue all of the issues in court. For example, a noncustodial parent may object to the accounting of the arrears but also wants to modify his or her order for current support or for monthly payments of the arrears. The state hearing jurisdiction is limited to the calculation of arrears. The other issues must be resolved in a separate proceeding in court. In order to avoid multiple hearings, the LCSA should encourage the complainant to file one action in court for all issues rather than for two separate hearings.

The complainant is not entitled to file for a state hearing and a court review at the same time. If the complainant or the other party files for a court determination of arrears either before or after a state hearing is requested, the LCSA should notify the State Hearing Office and any state hearing that has been filed on the same issue should be dismissed.

If the complainant chooses a state hearing to challenge the LCSA'S calculation of arrears and either party is dissatisfied with the state hearing decision, the complainant or the other party is entitled to file a motion in court for a de novo determination of arrears under Family Code section 17526. This right to file a motion for de novo review

only applies to determinations of arrears in the state hearing. All other issues within the jurisdiction of the state hearing process must be appealed to the court by filing a writ pursuant to Family Code section 17803.

The LCSA is not required to give notice to the non-complaining party of a state hearing request that concerns the calculation of the arrears. However, in order to protect the property rights of the parties, the LCSA must send a copy of any hearing decision in which the calculation of arrears is at issue and provide notice of the right to have the arrears issue heard in court.

State Hearings Where Both Parents Must Attend

Most complaints are between one parent and the LCSA and the other parent does not need to be notified of the request for complaint resolution or of the state hearing. Although the non-complaining parent will not be required to attend most hearings, there will be some circumstances in which the non-complaining party may need to attend as a witness or for due process reasons. The LCSA shall review any state hearing request to determine whether the non-complaining party needs to be notified of the state hearing and provide notice where appropriate. The LCSA shall notify the State Hearing Office in advance of any case in which the LCSA knows that the non-complaining party may appear. If the LCSA is aware of a history of domestic violence, the LCSA must notify the State Hearing Office of that history. Whenever possible the State Hearing Office will arrange to have one of the parents appear by telephone.

Scope of Relief

The regulations at Section 120221 specify that the administrative law judge has the authority to order the county to take corrective action in a particular case when he or she determines that there has been an action or inaction by the LCSA that is contrary to state or federal law. The regulations further specify that the LCSA must submit a compliance plan to DCSS to indicate how it is complying with the order made by the administrative law judge. However, the administrative law judge does not have the authority to award damages to the complainant or to impose financial penalties on the LCSA.

State Hearing Office / Administrative Law Judge to Determine Jurisdiction Issues

It is important that LCSAs understand the type of complaints that are appropriately within the jurisdiction of the state hearing process, and be able to accurately and effectively communicate this information to complainants. If the complaint is within the jurisdiction of the state hearing process, the LCSA should assist the complainant to file for a hearing. If a complaint is not within the jurisdiction for the state hearing process and the review should be in court, the LCSA should either assist the complainant to file

in court or refer him or her to the family law facilitator or local legal aid office. However, LCSAs must strive not to discourage complainants from filing a request for a state hearing in appropriate cases. Like court actions, failure to file a request for a state hearing within set time frames will cause the complainant to lose the right to a state hearing. Specifically, a request for a state hearing must be made within 90 days of the date the complainant received the Notice of Complaint Resolution from the LCSA or, if the LCSA did not complete the complaint resolution process, within 90 days from the date the request for complaint resolution was made.

If the LCSA believes that a state hearing request should be dismissed prior to a hearing because there is no jurisdiction, the LCSA should send a copy of the "Notice of Complaint Resolution," LCR006 to the State Hearing Office as soon as possible. The State Hearing Office or the administrative law judge will dismiss requests for hearing if they determine that the complaint is outside of the jurisdiction of the state hearing process.

If you have any questions on this issue, please contact Donna Hershkowitz, in the Office of Legal Services at (916) 464-5181 or email at donna.hershkowitz@dcss.ca.gov.

Sincerely,

LEE MORHAR
Chief Counsel

LCSA or FTB Action or Inaction	<u>Not Appropriate for Complaint Resolution</u>	Review Method: <u>Court</u>	Review Method: <u>State Hearing</u>
Application for child support services: <ul style="list-style-type: none"> • Denial of application 			✓
<ul style="list-style-type: none"> • Failure to open a case within required time frame 			✓
Locate: <ul style="list-style-type: none"> • Failure to perform locate functions within required time frame 			✓
<ul style="list-style-type: none"> • Failure to act on custodial party's information re: address of noncustodial parent 			✓
<ul style="list-style-type: none"> • Release of information to unauthorized person pursuant to a non-IV-D locate request 			✓
Establishment of support order: <ul style="list-style-type: none"> • Failure to establish support within required time frame 			✓
<ul style="list-style-type: none"> • Improper service of court pleadings 	✓	✓	
<ul style="list-style-type: none"> • Amount of support order 	✓	✓	
<ul style="list-style-type: none"> • Retroactivity of support order 	✓	✓	
Establishment of paternity: <ul style="list-style-type: none"> • Failure to establish paternity within required time frame 			✓
<ul style="list-style-type: none"> • LCSA order for genetic testing 	✓	✓	
Enforcement of support order: <ul style="list-style-type: none"> • Placing lien on property 	✓	✓	

LCSA or FTB Action or Inaction	<u>Not Appropriate for Complaint Resolution</u>	<u>Review Method: Court</u>	<u>Review Method: State Hearing</u>
<ul style="list-style-type: none"> Release of lien on real property – property owner not support obligor 	✓	✓	
<ul style="list-style-type: none"> Failure to take action to suspend/revoke license 			✓
<ul style="list-style-type: none"> Release of suspended/revoked licenses 		✓	
<ul style="list-style-type: none"> Withholding from unemployment or disability benefits 	✓	✓	
<ul style="list-style-type: none"> Failure to follow enforcement priorities set forth by DCSS 			✓
<ul style="list-style-type: none"> Satisfaction of installment judgment (lien on real property) - failure to acknowledge satisfaction 	✓	✓	
<ul style="list-style-type: none"> Action to use money or sell assets deposited as security for payment of child support 	✓	✓	
<ul style="list-style-type: none"> Issuance of notice of levy on particular assets or property 	✓	✓	
<ul style="list-style-type: none"> Submission of name to credit reporting agency 			✓
<ul style="list-style-type: none"> Failure to serve notice of satisfaction of judgment upon employer re: wage withholding 			✓

LCSA or FTB Action or Inaction	<u>Not Appropriate for Complaint Resolution</u>	Review Method: <u>Court</u>	Review Method: <u>State Hearing</u>
<ul style="list-style-type: none"> Failure of FTB to send 20 day notice to obligor of delinquency due and intent to commence actions 			✓
<ul style="list-style-type: none"> FTB enforcement actions despite compliance with court ordered scheduled for payment of arrearages 			✓
<ul style="list-style-type: none"> Other actions of FTB to collect delinquent support 			✓
<ul style="list-style-type: none"> IRS intercept 			✓
<ul style="list-style-type: none"> FTB intercept 			✓
<ul style="list-style-type: none"> Passport withhold 	✓	✓	
<ul style="list-style-type: none"> Requiring posting of bond or other security for delinquent support 	✓	✓	
Earnings Assignment Orders: <ul style="list-style-type: none"> Imposition of an earnings assignment order (motion to quash) 	✓	✓	
<ul style="list-style-type: none"> Modification or termination of order 	✓	✓	
Claims of mistaken identity: <ul style="list-style-type: none"> Review of LCSA decision rejecting claim of mistaken identity 		✓	

LCSA or FTB Action or Inaction	<u>Not Appropriate for Complaint Resolution</u>	Review Method: <u>Court</u>	Review Method: <u>State Hearing</u>
<ul style="list-style-type: none"> Review of LCSA action to terminate enforcement activities after mistaken identity claim granted 		✓	
<ul style="list-style-type: none"> Failure of LCSA to timely investigate claim of mistaken identity 			✓
Determination of Arrearages		✓	✓
Collection and Distribution: <ul style="list-style-type: none"> Improper distribution of collections 			✓
<ul style="list-style-type: none"> Failure to return undeliverable child support payments to obligor 			✓
<ul style="list-style-type: none"> Failure to pay disregard 			✓
<ul style="list-style-type: none"> Failure to provide Barnes notice 			✓
Case closure: <ul style="list-style-type: none"> Decision of LCSA to close case 			✓
<ul style="list-style-type: none"> Failure to re-open case 			✓
<ul style="list-style-type: none"> Failure to close non-assistance case upon request 			✓
Modification of support order: <ul style="list-style-type: none"> Failure to respond to request for review and adjustment within required time frame 			✓
<ul style="list-style-type: none"> Amount of support order 	✓	✓	

LCSA or FTB Action or Inaction	<u>Not Appropriate for Complaint Resolution</u>	<u>Review Method: Court</u>	<u>Review Method: State Hearing</u>
Relief from support order: <ul style="list-style-type: none"> Order procured by fraud, perjury or lack of notice 	✓	✓	
<ul style="list-style-type: none"> Order procured due to obligor's mistake inadvertence, surprise, excusable neglect 	✓	✓	
<ul style="list-style-type: none"> Order based on presumed income and defendant defaulted 	✓	✓	
<ul style="list-style-type: none"> Appeal 	✓	✓	
Medical Coverage / Health Insurance Coverage Assignment Orders:			
<ul style="list-style-type: none"> Modification or termination of assignment order 	✓	✓	
<ul style="list-style-type: none"> Imposition of health insurance coverage assignment 	✓	✓	
<ul style="list-style-type: none"> Application of health insurance coverage assignment to wrong person 	✓	✓	
<ul style="list-style-type: none"> Failure to provide custodial party with information on health insurance that has been provided for child 			✓

LCSA or FTB Action or Inaction	<u>Not Appropriate for Complaint Resolution</u>	<u>Review Method: Court</u>	<u>Review Method: State Hearing</u>
Confidentiality of Child Support Records: <ul style="list-style-type: none"> • Failure to maintain confidentiality of documents that are required to be kept confidential 			✓
<ul style="list-style-type: none"> • Failure to release papers, applications, or documents required by due process 	✓	✓	
<ul style="list-style-type: none"> • Failure to release information to party who provided it, failure to release payment history, income and expense forms, public records 			✓
Registration of Out-of-County CA Orders: <ul style="list-style-type: none"> • Registration of order established in another CA county 	✓	✓	
Independent Actions: <ul style="list-style-type: none"> • Objection by LCSA to custodial party's request to take independent action to enforce a support order 			✓
UIFSA <ul style="list-style-type: none"> • Notice of registration of out-of-state order (complaint to contest validity or enforcement) 	✓	✓	

LCSA or FTB Action or Inaction	<u>Not Appropriate for Complaint Resolution</u>	<u>Review Method: Court</u>	<u>Review Method: State Hearing</u>
<ul style="list-style-type: none"> Inappropriate modification or enforcement of out-of-state order 	✓	✓	
Miscellaneous <ul style="list-style-type: none"> Failure of LCSA to use statewide forms or follow uniform policies and procedures established by DCSS 			✓
<ul style="list-style-type: none"> Failure to follow caseload processing priorities established by DCSS 			✓
<ul style="list-style-type: none"> Failure to notify custodial party of initial date, time and purpose of hearings related to paternity and support 			✓
<ul style="list-style-type: none"> Other actions expressly required by law to be addressed via motion, order to show cause, or appeal to court 	✓	✓	

LCSA or FTB Action or Inaction	<u>Not</u> Appropriate for Complaint Resolution	Review Method: <u>Court</u>	Review Method: <u>State Hearing</u>
<ul style="list-style-type: none"> Other actions relating to an individual's child support case which are not expressly required by law to be addressed via motion, order to show cause, or appeal to court, including all failures to meet any time frames established by federal or state law or regulation, or other noncompliance with federal or state law or regulation. 			✓