



Office of Children and Family Services

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Commissioner

Local Commissioners Memorandum

Transmittal:	21-OCFS-LCM-12
To:	Commissioners of Social Services
Issuing Division/Office:	Child Welfare and Community Services
Date:	May 28, 2021
Subject:	OCFS Best Interests Determinations Process for Fatality Report Releases
Suggested Distribution:	Directors of Services CPS Supervisors
Contact Person(s):	See section IV.
Attachments:	None

Filing References, if applicable

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
08-OCFS-LCM-14	08-OCFS-LCM-14		SSL 20(5)	CPS Manual Chapters 6 and 11	

I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to inform local departments of social services (LDSSs) of a change in the New York State Office of Children and Family Services' (OCFS) practice pertaining to the public posting of OCFS fatality reports, and subsequently, the best interests determinations used when considering whether to publicly release a child fatality report.

II. Background

Pursuant to Section 20(5) of the Social Services Law (SSL), the commissioner of OCFS may disclose a child fatality report when OCFS has determined that disclosure would not be contrary to the best interests of the surviving sibling(s) or other child(ren) in the

household. Recognizing that child fatalities are a public health concern and of public interest, beginning in June 2021, OCFS will begin publicly posting all child fatality reports, completed by OCFS on our website unless a best interests determination is made that deems the report should be withheld. While many of these reports have been released in response to Freedom of Information Law (FOIL) requests, the posting of these reports on the OCFS website not only supports government transparency but, more importantly, provides a mechanism for the public to have insight, if not a role, in the goal to reduce the number of preventable child fatalities in the State of New York.

In 2008, OCFS released 08-OCFS-LCM-14, which outlined the process for making best interests determinations for the purpose of deciding whether a child fatality report should be released to the public. The process outlined in the above-referenced LCM required LDSSs to submit a best interests determination to OCFS and to recommend whether to release the child fatality report publicly. This LCM removes the requirement for the LDSSs to submit a best interests determination to OCFS and places the best interests determination process, and the decision to publicly release a child fatality report, solely with OCFS.

III. Program Implications

In making the best interests determination, OCFS will consider whether there is a surviving sibling or other child(ren) in the household. When there is not a surviving sibling(s) or other child(ren) in the household the report will be released. When there is a surviving sibling(s) or other child(ren) in the household, OCFS will conduct a best interests determination to review whether extenuating circumstances exist that would negatively impact the surviving sibling(s) or other child(ren) in the household if the report was released publicly.

When considering extenuating circumstances in the context of a best interests determination, OCFS will consider the age of the surviving child(ren), trauma the surviving child(ren) experienced and whether the child(ren) received or are receiving treatment as a result of the fatality. OCFS will also consider whether the surviving child(ren) had any role in the death of the child, whether the surviving child(ren) stated they felt responsible for the death of the child and whether the fatality report discloses that the surviving child(ren) corroborated allegations during an investigation of the fatality, which could place them at risk of harm if the report is released.

OCFS will be using the case record and other sources to make the best interests determinations. Thus, the LDSS must document in the case record the impact of the fatality on any surviving sibling(s) or child(ren) in the household, with attention to manifestations of trauma, the surviving child(ren)'s role in the fatality and whether the surviving child(ren) expressed a sense of responsibility for the death of the child as described above. This documentation should include any information regarding the surviving child(ren) undergoing an assessment of or treatment for trauma related to the death of the child. Such information is already part of the LDSS investigative work regarding child fatalities when there are surviving siblings or other children in the home. OCFS reserves the right to contact the LDSS or other parties to the case, for information that may be relevant in making the best interests determination.

Further, a fatality report will be withheld if the district attorney from the jurisdiction conducting a criminal investigation makes a written request to OCFS to withhold the report pending the outcome of that investigation or grand jury proceeding.

Beginning with the incoming child fatality notifications received from the SCR November 2020¹, the OCFS Child Fatality Review Unit (CFRU) and the New York City Regional Office (NYCRO) fatality review unit will conduct all best interests determinations in preparation for the public release of OCFS-issued child fatality reports on the OCFS website. The new best interests determination process conducted by OCFS will eliminate the need for LDSSs to conduct best interests determinations.

IV. Contacts

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¹ Child fatalities reported to OCFS in November 2020 will be issued in May 2021; investigation, review and drafting of the OCFS fatality report is a six-month process.