

## ASSESSMENT OF PUBLIC COMMENT

On October 16, 2019, the State Register published a Notice of Proposed Rulemaking filed by the New York State Office of Children and Family Services (OCFS), amending section 168.7 of Title 18 of the New York Codes, Rules and Regulations (NYCRR). The proposed rule amends an existing regulation governing the disclosure of youth records by OCFS.

OCFS received comments from members of the Assembly. These comments and OCFS's responses are below.

**Comment 1:** The commenters expressed concern that the proposed amendments do not include sufficient safeguards to protect against unintentional disclosure to immigration enforcement authorities or ensure compliance with Executive Order 170.

**Response:** OCFS did not intend for the proposed rulemaking to be read as permitting the disclosure of the records of youth in custody to federal immigration authorities and has amended the definition of "law enforcement authorities" to explicitly exclude them.

**Comment 2:** The commenters requested that the proposed amendments be modified to allow OCFS to seek confirmation of a criminal investigation and withhold records unless a judicial subpoena is presented. The commenters also requested that agency counsel be required to approve the release of any information.

**Response:** OCFS interpreted the proposed rulemaking to have this impact and has modified the proposed amendments to make this interpretation explicit.

**Comment 3:** The commenters request that the terms "OCFS facility" and "OCFS custody" be defined or clarified to establish that the regulation does not apply to placement of unaccompanied children with voluntary agencies.

**Response:** OCFS considers only youth placed with it by Family Court or committed to it pursuant to the Penal Law to be in its custody, and the amended regulation is included in the portion of state regulations relating to OCFS-operated facilities. Unaccompanied children residing in voluntary agencies certified by OCFS under the auspices of the Office of Refugee Resettlement are not in OCFS custody or placed in OCFS facilities.

**Comment 4:** The commenters request that guidance be provided to all OCFS facilities on the requirements of Executive Order 170.

**Response:** OCFS has provided ongoing training to its facility and community multi-service office staff regarding Executive Orders 170 and 170.1.