

**COUNTY OF OSWEGO  
HEALTH AND HUMAN SERVICES COMMITTEE**

March 18, 2009  
Special Meeting

**PRESENT:**

Jack Proud, Chair  
Barbara Brown, Vice Chair  
Art Gearsbeck  
Margaret Kastler  
Doug Malone  
Morris Sorbello

**EXCUSED:**

Daniel Chalifoux

**MEDIA:**

Aaron Curtis, Palladium Times  
John Doherty, Post Standard  
Jim Kenyon, Channel 3 News  
Andy Matteson, News 10 NOW  
Carol Thompson, Valley News  
Steve Yablonski, Oswego County Today

**STAFF/GUESTS:**

Fred Beardsley, Legislator  
Clayton Brewer, Legislator  
Kevin Caraccioli, ESQ., Counsel for DSS  
Philip Church, County Administrator  
Shawn Doyle, Legislator  
Mary Flett, Legislator  
Michael Kunzwiler, Legislator  
Frances Lanigan, Commissioner of Social Services  
Louella LeClair, Legislator  
Barry Leemann, Legislature Chairman  
Linda Lockwood, Legislator  
Art Ospelt, Legislator  
Milferd Potter, Legislator  
Paul Santore, Legislator  
Phillip Vasho, Legislator  
Lee Walker, Legislator  
Jeanette Woodland, Administrative Secretary

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Attendance:

Committee Chair Proud called the meeting to order at 8:34 a.m.

Committee Business:

Chairman Proud opened the meeting by introducing Committee Members, Commissioner of Social Services Frances Lanigan, Counsel Kevin Caraccioli, County Chairman Barry Leemann, and County Administrator Philip Church. Several legislators were also in attendance and were asked to stand and identify themselves.

Chairman Proud stated that he prepared a statement that establishes a particular context for what we are to learn. "Tragedy is defined as a disastrous event that is regrettably serious, unpleasant, deplorable or momentable. Today's Health and Human Services Committee meeting is the direct result of such a tragedy in Oswego County. Erin Maxwell's tragic death could certainly be characterized by any or even all of the descriptive terms used in the definition. If there is a positive outcome from today's meeting, it should be that we all better understand our child protective plans and procedures. Hopefully, the materials in the report, the statements of today's participants, and questions from the committee and attending legislators as well as from the press will lead to that more complete understanding. Equipped with such knowledge we can certainly improve and perfect our systems and procedures in a concerted effort to prevent such tragedies in the future."

Chairman Proud turned the meeting over to County Administrator Church who explained that Committee members have received a packet containing the report and additional materials. Public Information Officers then passed out the same report to media and others present. County Administrator Church then identified the materials in the packet. The report contained recommendations from the State and Oswego County's response to those recommendations.

Commissioner of Social Services Frances Lanigan went over the report as well as the Departments' response to the report. A copy of the report is included with these minutes.

Chairman Proud then opened the floor to attending Legislators to ask questions, giving preference to Committee members.

Legislator Brown asked Commissioner Lanigan if she was the one to instigate the report from the State on the department's actions. Commissioner Lanigan responded that in September as the committee made the call she requested that the State to expedite the process and review the department to identify any critical issues and address them and remediate as needed. Legislator Brown asked about mandated reporters and it was noted that there were many people who saw Erin daily that didn't report, that could have reported from 2006 until her demise, and could possibly have prevented this had they done what they should have to do. Commissioner Lanigan replied that mandated reporters they are trained, they know what they are supposed to do. She said that in her perspective she would have anticipated that there would have been a call to the register between 2006 and 2008. There were no calls that came to the attention of the local office.

Legislator Sorbello, noted that there are family members who live out of state. He asked if there had been any communication from them. Commissioner Lanigan responded that in the most recent report there was communication from them. There was no communication prior to that.

Legislator Gearsbeck stated that we need more checks and balances in the department and asked why we couldn't have more committee involvement. Commissioner Lanigan said that if Leg. Gearsbeck wanted to shadow an employee and was willing to sign confidentiality agreements she could probably arrange for that. Commissioner Lanigan asked what kind of involvement Leg. Gearsbeck meant. Legislator Gearsbeck stated that he felt that the committee should have free access to the department, come unannounced, and have a key to grant him access to the building to see what is going on in the building. Commissioner Lanigan said that she is more than willing to provide any information that is requested by the committee, through the chairman on any departmental operation. Chairman Proud noted that the Social Services building is a secure building mandated by law, but if any legislator would like access they can call and make an appointment, or go to the front desk and ask them to make a phone call to see someone.

Legislator Kastler asked if there has been any changes at the State level regarding when a case is closed, if there is suspect of any kind or a situation is not as good as it should be can these cases now be left open? Is there a way that they can be checked so many months or years later? Commissioner Lanigan advised that there are ways that a case can be followed. There is an investigation process which is up to 60 days where a child protective worker can go in and assess the risk or safety and the future safety to the best of their ability under the law within 60 days they are required to close out that investigation. As part of that investigation there may be services that are identified as needed. Services must be accepted voluntarily by the family. They

cannot require the family to accept the services without a court order. The Maxwell family was offered services and declined those services. Once the report is closed and there are no ongoing services there is no authority except through the State Central Registry reports to go into a home. Under law people do not have to let us into their home, they have to produce the child, but they are not required to allow us into their home.

Legislator Gearsbeck asked if there would be anything to stop social services from going to the school district to check on a child after a case is closed. Commissioner Lanigan said that they have no authority to do that, as things have to be done according to the law and there are issues regarding privacy. Once the investigation is closed if there is not an ongoing services case the department cannot intervene.

Attorney Caraccioli advised that the local districts authority is established through the Social Services Law, we get our authority to investigate an allegation of maltreatment through a call to the State central register. That is typically a call that comes from a concerned citizen or a mandated reporter. That is how our investigative authority is derived. Once we conclude a case the agency is done with the investigation we cannot randomly check back in with the family. If there is a subsequent case that is called in then we have the ability to go back to the previous report and look at the information and compare it to the information that is being developed in the current investigation and continue to build a case. Those are the only instances that the department's authority permits them to go into a home, school, physician, etc. It is limited but also controlled by State Law; it is not a local law that can be adopted by the County that would give us additional authority to act where the State prevents us.

Legislator Brown asked if why a school could possibly not want to report that thought there was abuse. Mr. Caraccioli said that is a question that he could not answer as there are a number of individuals in schools who are mandated to make those calls.

Chairman Proud asked Commissioner Lanigan to identify steps that the Social Services Department has initiated since Erin's death that would diminish the possibility of another such tragedy. Commissioner Lanigan stated that initially they immediately asked the State to come in and help us to look at the case in September. We told them that we wanted to know is there was something that we missed. Commissioner read the required actions by the department as well as additional actions that have been taken. These are provided in the attachment to these minutes.

Legislator Kastler asked Attorney Caraccioli if there is anything in Albany that they may look at again that would make it more hands on at the local level. He advised that there is always legislation that is proposed to broaden the authority of the local districts or any other state agency. It really is a state legislative mandate or requirement to law. The regulations are promulgated by the office of Child and Family Services but we have to be careful to balance the rights of privacy for families and children with the need to protect those families and children sometimes from themselves and others which is a difficult balance particularly when there is a death of a child such as this that brings the system to the forefront. I would say that the State law and regulations do give the Department of Social Services some significant authority and how we have the right upon an investigation and an initial determination which is usually done within a 24-hour period. To actually go in and remove a child from a home if it is determined that the child's life or health is at imminent risk. The safety and risk assessment is done in every one of the investigations that this Department of Social Services is called to make including the case of

Erin Maxwell. That risk assessment related to Erin in 2003, 2004 and 2006 all concluded that the child's life and health were not in imminent risk. It is difficult in hindsight to understand and comprehend that when you have a child who dies two and one half years later but we have to be clear that there is nothing in this record in the investigation that was conducted by the local agency by the investigation that was conducted by the office of Child and Family Services that could reasonably connect the death of Erin Maxwell to any lack of follow through by this local agency. The lack of follow through and the required action that were spoken of in this report deal with collateral context reaching out to family members, checking with a pediatrician, talking with teachers, but there is nothing in this record and in many ways defies why we connect this very tragic death. Erin Maxwell was strangled and she was sexually abused two and one half years after the last time the Oswego County Department of Social Services was in the home to investigate the allegations of a dirty house and a child who was hoarding food in school. I don't think that we could make the connection that whatever the department's shortcomings were in the investigation led to the death of Erin Maxwell.

Chairman Proud asked Commissioner Lanigan if she had confidence that as the result of the new additions and further training that the social services staff is fully prepared to conduct thorough and complete investigations of a child neglect and abuse. Commissioner Lanigan said that she has the confidence that our workers are well trained and they will carry out to the best of their ability. She added that any kind of a report is subject to human judgment as humans are infallible. She said that she could not guarantee that there will never be another child fatality in Oswego but she has the confidence in her staff and their single mindedness to do the best job possible.

Legislator Kunzwiler asked about the schools involvement and how many contacts were or were not made. The allegations in the community are that there were multiple allegation reports. As with anything else in hindsight people may have said "well I should have reported it". A recommendation that has not been addressed is that we have to continue to work with the school district. (Recommendation is on page 5 of the report.) Legislator Kunzwiler asked Commissioner Lanigan how we can we make sure that this happens. Commissioner Lanigan stated that will be a contact that we will have with the school district and will welcome that kind of partnership. She stated that they work with many school districts including this (Erin's) school district but thinks that what we were trying to do here is to focus very specifically on what were the symptoms, what were the issues that we want to do to make sure that the school is comfortable with their knowledge and understanding of when it is that they need to call. The reason the Office of Children and Family Services does not address the school is because they are not the oversight agency, the State Education Department is the oversight agency for the schools. Legislator Kunzwiler asked if we should require that the education department look at the school district because the legislators were told that that was not the case, that there were multiple reporting's from the school district; was that true? Commissioner Lanigan said that it is absolutely true, that even the Syracuse Regional Office in their review of our records and their reports from the State central register we find nothing. Part of the packet includes a report that any mandated report is supposed to send to the department following a call to the register and we only have the ones that are attached to the three that we did investigate.

Legislator Vasho asked Commissioner Lanigan when a Child Protective Service Worker is granted entry to a home, what is the criteria for determining whether the living conditions are substandard or not. Is this a subjective process or objective? It is a subjective process, we

cannot hold everyone to middle class standards. It was referenced by council or someone else that what we're looking for is - are the circumstances in the home in the first instance - Is there an immediate threat to the child's health and safety? In each of these circumstances that assessment was made. The circumstances certainly were not ideal, however, they did not create a substantive threat to her health or safety at that time that we would have been able to take a petition to Family Court and ask for the removal of the child. There is nothing in the State report that would indicate that we should have done such an action.

Legislator Doyle said that it is unfortunate that there is not a comprehensive plan in this report that addresses the school district. Legislator Doyle told the group that a couple years ago in his school district, the Pulaski School District; there were similar complaints about housing. The school superintendent took an initiative and formed a task force that involved Social Services, and health agencies. Legislator Doyle is involved with this group that meets regularly where there is interaction between Fran Lanigan and her office, the school and the school nurses. They have solved a few problems and his recommendation is that the Phoenix school district, as well as other school districts, look at something similar where they get together and form a group relationship to try to prevent things before they happen.

Legislator Santore advised Commissioner Lanigan that he has been asked a number of times why the hotline had to be called and not the local office of social services. Commissioner Lanigan said that the process is set up in the law and there is only two counties in the State that have their own child abuse and reporting hotline. Those counties are Onondaga and Monroe. The calls do not go directly to the social services offices in those counties, but to a hotline in their county. It is required that the calls be screened and accessed on the same level in one spot then you are getting consistency in the reports that are then sent to the local district. She said that they do screen out certain calls because some people abuse the hotline. They sometimes get calls from people in child custody cases, not where the child is being abused or neglected but where it benefits one party over the other, and not the child. Commissioner Lanigan said that they got 2100 reports last year and only 30 - 35 percent are indicated. A great number of calls do not have sufficient information, documentation, or circumstances for the caseworker to indicate the report.

At 9:45 a.m. Legislator Sorbello was excused from the meeting.

Legislator Walker voiced his displeasure at receiving the report at the start of the meeting and asked when the Committee members had received theirs. Chairman Proud advised that the Committee had received theirs at the same time.

Legislator Walker asked Commissioner Lanigan if a child had ever been taken from their home because of filthy conditions. He referenced the conditions of the Maxwell home that were indicated in the report and the smell of cat urine that was present in the home. Legislator Walker said that cat urine is toxic and can be dangerous if exposed to for a long period of time. Commissioner Lanigan advised that this is not a yes or no answer and it is based on the health and safety risk to the child and the affect on the child. She said that they have removed a child in the past because there was an affect on the child. Legislator Walker referenced another area in the report concerning Erin's being sexually abused and asked if there was any sexual trauma before the day of Erin's death. Commissioner Lanigan advised that there were never any allegations in the reports of 2003, 2004, or 2006 that there was any report of sexual trauma to the

child. Also there were never any silent signs of sexual trauma as she was a happy child, attended school, and was on grade level. There was never any indication that in 2008 this child would be found asphyxiated and sexually traumatized. Legislator Walker asked if Commissioner Lanigan felt that we failed Erin Maxwell, because he felt that we had. Commissioner Lanigan stated that she felt that the workers did their best given the circumstances and timing. She said that if they had received a report in 2007 or 2008 about the conditions of the home that were observed on August 30, 20008, that there would have been action taken.

At this time Leg. Chairman Leemann responded to Legislator Walker that the report had been received but wanted the report to be given to everyone, press and legislator's, at the same time.

Legislator Flett referenced page 5 of the report where in 2006, social services made an unannounced visit to the Maxwell home. At that time it was indicated that a screen door was put on Erin's bedroom door to keep the cats out of her room due to the school's complaints. Legislator Flett asked who the school complained to. Commissioner Lanigan said that it was her understanding that the school apparently complained to the family that the child was coming to school and the odor was a distraction in the classroom as they found it offensive and overwhelming so the family was trying to keep the cat out of the child's bedroom at that time. The report in 2006 was not made by a mandated reporter, it was an anonymous report. Legislator Flett asked if the school contacted the parents and asked them to go there to speak to them. Commissioner Lanigan said that they did not; in the course of the investigation based upon the anonymous report to the State Central Registry we make contacts and one of the contacts was the school. There had been contacts between the school and the family.

County Administrator Church addressed Commissioner Lanigan referencing her statement that in 2008 the conditions of the home were worse to the point where the child could successfully be removed from the home. County Administrator Church compared page 5 of the report and the year 2006 with page 10 of the report of 2008. The difference is that in 2006 the animal waste was in a shed entrance to the house but the living area was free from clutter, and in 2008 was everywhere including her bedroom and her bedroom had multiple locks on it that weren't there in 2006 and the second exit from her bedroom had been blocked by then. He asked Commissioner Lanigan if that was the differences that she was referring to that would have raised the bar to the point of removing her. Commissioner Lanigan said that it absolutely was as those are two very critical elements. County Administrator Church brought up another issue that people have said that they called the State hotline many times, and we have no reason to disagree. If they screen out calls then you can only act on the ones that you receive, would that be correct? Commissioner Lanigan stated that was correct. County Administrator Church asked who makes the decision on the State level whether to ignore a call or not and is there any way to find out if any of the calls screened out by the State hotline were calls about Erin Maxwell. Commissioner Lanigan advised that there was no way to determine any calls that may have been screened out relating to Erin Maxwell. At the State hotline there is no recording of calls, they do have supervisory oversight of the people who answer the phone. Supervisors oversee what determinations have been made, they take the calls and have the criteria under which they would follow through with sending the call on to the local district. They refer about 65 percent of the calls to the local district. Attorney Caraccioli stated that to be clear on that process there is legislation that is supported by the NY Public Welfare Association that would call for the reporting of the State Central Register calls, similar to a 911 call, a tape but it is a state law that would have to be adopted by the Legislature, and signed by the Governor. That recommendation

isn't contained within our report it is something that we have shared previously when this tragedy first came to light and we continue as local representatives of the Public Welfare Association to continue to support that type of legislation. He said that he would be happy to provide a more comprehensive proposal that the legislature might wish to consider in adopting a resolution supporting such legislation.

Chairman Proud noted that calls from the State Central Registry were received in 1996, 2003, 2004, and 2006, a total of four calls from the State Registry investigating Erin Maxwell and the family conditions. There were two more calls from the registry, one the day of Erin's death and secondly the day after that. He asked if that was the total number of calls that were received from the registry regarding the family conditions and problems in the Maxwell home. Commissioner Lanigan advised that those were the only calls that were received. Attorney Caraccioli made note that the call in 1996 was not about Erin as she was not born at that time.

Legislator Brewer asked if it were decided at one time or another to have a registry right here in Oswego County would it involve a lot of money and would it have to go through the full legislature to have the supervision, etc. Commissioner Lanigan said that it would have to set up a separate parallel 911; you'd have to have authority, oversight. You would also have to have permission from the State as they would want to know that the training and everything else was put into place.

Legislator Doyle referred to October 27, on page 9 of the report, in which the school had made arrangements with Erin's father to have the child change her clothes upon her arrival at school, and they reported that Erin had been hoarding various items including food. Recommendation was to have Erin bring two sandwiches to school and on occasion school personnel was paying for her lunch. Commissioner Lanigan was asked if her department aware that this was going on, and to her knowledge these were statements that the school personnel gave. Legislator Doyle asked the Commissioner that in her opinion if these were flag items that should have been reported to the department by the school district. She advised that the school district seemed to believe that they had no suspicions of abuse or maltreatment. She said that she didn't understand what their reasoning was and we would have to have further discussions with them to come to some understanding. She said that she could not speak for them.

Legislator Kunzwiler in regard to Legislator Brewer's question about a registry in Oswego County, said that he has on occasion has gotten calls, not to this extent, and has contacted the County Administrator who has contacted the Social Services Department. He said that he does not want people to think that we can't report directly because he has had instances where he has, and does not want that out there that it cannot be done. He asked Commissioner Lanigan what is the difference between calling the local office and the State registry. He said that he doesn't believe that there would be a legislator who would not vote to have a number to call locally if it would rectify this type of problem. He asked if the cost of getting a local registry would be astronomical. Commissioner Lanigan said that the criteria would be the same and it would be the structure and the investment that the county would make. She emphasized that as of now they cannot act on a call if it does not go through the State registry. If a person does not call the registry and they call the department directly, it is up to the local department to go through the registry.

Legislator Kastler asked if the registry is a 24 hour 7 day a week call. Commissioner Lanigan said that it is. Legislator Kastler said that if we decided to go locally then we would need to have people work that schedule. Commissioner Lanigan said that we already have employees who are on call to answer reports, but they would have to have another group to be available to take reports. Legislator Kastler asked if they are called in the middle of the night and Commissioner Lanigan said that they do get calls in the middle of the night all the time. They will take the reported information and will attempt to assess what the informant is saying and if it is something like a young child is left alone they will go out immediately and call the police to go with them. If it is a report that someone made that comes in the middle of the night and it says that the child is not going to school they will wait until morning to make those kinds of calls, so it depends on the nature and severity of the call as to do they go out in the middle of the night. It is a risk to these workers as when they get a call they do not know what they are walking into. Commissioner Lanigan added that she has had workers who have been assaulted and have feared for their safety but continue to do their job. They have good rapport with the local law enforcement that is always cooperative in accompanying them.

Legislator Kastler asked about the phone calls being screened at the State level and having legislation to require all the calls to come down to the county level. Attorney Caraccioli advised that legislation would require the recording of all calls. The NY Public Welfare Association takes a very active role in proposing legislation to the State through the Office of Child and Family Services and then on to the overall Commissioner of the Child and Family Services for certain laws that will help assist the local districts in doing their job better. One of those proposals is to have all calls to the NYS Register recorded and it is important similar to 911 calls because you can tell a lot more from hearing the call, the emotion or lack of emotion than you can from receiving three or four lines on a piece of paper coming over the computer which is how it comes from Albany. You can't always tell, at the time, what is the nature of the allegations and how serious it might be, or if somebody is trying to get an advantage in a Family Court proceeding of a child custody matter. Recording it allows not only the State Central Register, or their supervisors for the local district to really get a sense of what the call is about. Commissioner Lanigan added that this is legislation that is proposed. Attorney Caraccioli continued that like any other State legislation, the county could take a position on it, or not, but it is something that if this legislature were interested in seeing the proposed state law and adopting a resolution supporting that law it could make it available for consideration.

County Administrator Church said that one of the criticisms, or rumors that are heard is that when Social Services does investigations that they call ahead and the family has time to prepare to make themselves look good. The State has reported that these were unannounced home visits. He asked if Commissioner Lanigan if it was their standard procedure to do these visits unannounced and are the visitations at the school unannounced. Commissioner Lanigan stated that their protocol is to go unannounced, but if they are having trouble locating someone such as a parent or caregiver we do have to call ahead and tell them that they need to meet with them with respect to a report but 90 percent of the time we are making unannounced visits. They are absolutely unannounced 100 percent in the first instance and when we go to the school it is usually an unannounced visit in the first instance, subsequent contacts as part of the investigation we may work with the school in arranging a visit so we are not upsetting the child's school schedule. County Administrator Church said that in 2003 the State Central Registry report does not indicate whether this was an anonymous public or a mandated report. Commissioner Lanigan advised that this was an anonymous report. County Administrator Church asked about

2004, and Commissioner Lanigan said that it was a mandated report. When asked if it was from the school Commissioner Lanigan said that they cannot say who the report was from. County Administrator Church said that in reading the report he assumed that it was from the school. This being the first report from the school and two years go by and in 2006 another anonymous report comes in. Commissioner Lanigan said that the problem with an anonymous report is that they have no source to get back to and get further clarifying information that can be very helpful to an investigation. County Administrator Church asked about the standards for indicating someone. Attorney Caraccioli said that the standards for indicating a case you need some credible evidence. To indicate a case for maltreatment, inadequate guardianship or lack of supervision, those are broad descriptions, you would need some credible evidence. It is more likely than not that something has occurred that leads one to believe that the child as exposed to some form of maltreatment. To bring a case to Family Court to prove a case of neglect those would be lack of food, clothing, shelter, excessive corporal punishment of the child. To prove a case of neglect the burden of proof is the preponderance of the evidence. He stated that in law school they teach you that if the preponderance of the evidence is more than 50 percent that it is likely to have occurred and that forms the basis of neglect. For abuse such as severe physical abuse which would likely to lead to a charge of endangering the welfare of a child or assault or sexual abuse that is by clear and convincing evidence. To bring a case to criminal court it's beyond a reasonable doubt. There are at least four or five evidentiary standards that the Department of Social Services and law enforcement is looking at with every single case to determine whether that case is appropriate to bring to either Family Court or to a Criminal Court.

County Administrator Church asked Commissioner Lanigan if she had shared the report with her staff and what was their reaction. Commissioner Lanigan advised that the final report has not been shared with them at this time. The ongoing assessment report was shared, but this report, there is the best interest determination has to be completed and we are planning to review this report with staff within a week or two.

Legislator Kastler asked if the Health Department could have been brought in to this situation because of the amount of cat feces, the number of cats and chickens living in the home. Commissioner Lanigan said that they could have offered those services of the Public Health Department to the family potentially. We were dealing with them cleaning up the situation at the time of the different reports so as far as it being a public health nuisance, the environmental division would deal with the exterior of the house and the impact in the community, at one time there were a significant number of preventive nurses that could go to the home but they don't do that as much as they used to but again family would have to accept the fact that we were requesting the Public Health Department to talk to them about the health risk

Chairman Proud entertained a motion to adjourn the meeting to conclude the legislative aspect of the session, following the adjournment press conference will be held in which the questions from the press will be received.

#### Adjournment

**Motion:** Legislator Brown motioned to adjourn the meeting at 10:20 a.m.

**Second:** Legislator Gearsbeck

**Vote:** All in favor

Motion carried.