Attorneys representing children and youth in foster care cases have an affirmative duty to advance equity for their clients. This responsibility is particularly important when providing legal representation to LGBTQIA+ youth, who experience disproportionate and disparate child welfare outcomes. NACC offers this tip sheet to help child welfare practitioners evaluate and ensure reasonable efforts for these clients.

FIRST, UNDERSTAND THE DATA

- LGBTQIA+ youth are 1.5 to 2.5 X more likely to experience foster care.
- Nearly 1/3 of youth in foster care identify as LGBTQIA+.
- LGBTQIA+ youth experience high rates of harassment, bullying, and exclusion in foster care and are more likely to experience multiple placements and institutional care. They are also at heightened risk of “crossover” to the juvenile legal system.
- LGBTQIA+ youth in foster care experience increased rates of anxiety and depression due to stigma and rejection; they are 2.6 times more likely to report a suicide attempt in the past year than LGBTQIA+ youth not in foster care. Youth of several identities, including Black and Indigenous LGBTQIA+ youth, are at heightened risk of these outcomes.
- Family and community rejection exacerbates mental health concerns; family and community support and affirmation of a youth’s identity mitigates them.

NEXT, REVIEW THE FEDERAL LAW AND GUIDANCE ON REASONABLE EFFORTS

- Federal law requires child welfare agencies to make reasonable efforts to prevent child removal and to achieve permanency.
- Service plans must be customized to the child/family, consistent with the permanency goal, and address limitations (such as transportation barriers).
- In 2022, the U.S. Children’s Bureau issued formal guidance to states explicitly linking affirming support and services for LGBTQIA+ youth to the reasonable efforts mandate.
- Active Efforts is applicable in ICWA cases.
- Federal regulations require LGBTQIA+ youth to have access to “Designated Placements” that are supportive, specifically trained, and facilitate access to services and activities that support their health and wellbeing.
THEN, UNDERSTAND THE BEST PRACTICES

- Conversion therapy, which seeks to change a person’s sexual orientation, gender identity, or expression, is harmful, unsupported by evidence, rejected by behavioral health experts and the federal government, and unlawful in many U.S. jurisdictions.\textsuperscript{21}
- The American Academy of Pediatrics endorses the provision of developmentally appropriate health care, including social, medical, and psychological interventions when appropriate for trans and gender non-conforming youth.\textsuperscript{22}
- Foster home and institutional care placements for LGBTQIA+ youth should be safe and affirming environments that support the young person’s identity formation and self-expression (e.g., dress, hairstyle, names, pronouns, and decoration of personal space). Care providers should also facilitate access to social supports (e.g., affinity groups), events (e.g., Pride parades), and culturally competent services aligned with the young person’s identity and needs.
- Practitioners should engage youth in their case planning and court hearings to ensure their voice is heard regarding their needs, services, and concerns.

ROUTINELY ASK YOUR CLIENT:

- What name would you like me to call you by when we talk privately?
- What name would you like me to use in public?
- What pronouns would you like me to use when we talk privately?
- What pronouns would you like me to use in public?
- If you feel comfortable sharing, do you feel like a boy or a girl on the inside? Both? Neither?
- If you feel comfortable sharing, when you grow up, do you think you will date/marry boys? Girls? Anybody? Nobody?
- For LGBTQIA+ clients: who is aware of your identity? Who is not? How should I be mindful of this while advocating for you?
- Tell me about your social community: school, community, faith groups, etc. What people and places are important in your life? Do you need help making sure that you can see those people and be in those places?

FINALLY, APPLY THE LAW TO THE FACTS

PREVENTION

- For situations of family conflict, request high-quality therapeutic services available through Title IV-B, the Family First Act, or state/local funds.\textsuperscript{23}
- Recommend parent education or support groups.
PLACEMENT
- Ensure LGBTQIA+ youth have access to a Designated Placement.²⁴
- Advocate for kinship placement, including with fictive kin.
- Challenge improper placement in group/ institutional settings; ensure youth placed in such settings are not maltreated by peers or staff and are in placements consistent with their gender identity.²⁵
- Query if there has been proper training for foster parents²⁶ and confirmation that the placement is safe and affirming.
- Ensure LGBTQIA+ youth do not face discrimination vis-à-vis dating, socializing, etc.
- If needed, file a motion for a placement review hearing. Consider subpoenaing agency staff to establish evidence about the agency’s efforts (or lack thereof) to develop a suitable placement array.²⁷

SERVICES
- Advocate for gender affirming health care, counseling, peer support, and mentoring services. Request virtual services if not available locally.
- Provide or refer for legal services to update documents (ex. name and gender marker change).
- Litigate service denials in court or via a Fair Hearing.²⁸
- Monitor for bullying in school and placement.

NORMALCY
- Ensure case plan encompasses the youth’s identity and related needs.²⁹
- “Normalcy” should align with reasonable and prudent parenting standards (ex. School-based LGBTQIA+ alliance/ club, dating, dances).

OTHER
- Assess agency compliance with state non-discrimination policies and federal protections from harassment and retaliation.³⁰
- There is state variation regarding consent for medical and mental health services; file motions to reallocate decision-making in accordance with the youth’s needs.
- Discrimination against LGBTQIA+ youth is not justified by religious exemptions. Vigorously oppose these arguments through complaints to the court, state ombudsman, state/federal civil rights commission, or other local advocacy groups.
- Focus on caregivers’ behaviors, not their beliefs. Even where beliefs are protected in the abstract, each child’s placement must be safe and their unique best interests must be considered and prioritized.

DON’T FORGET TO:
- Introduce yourself with your preferred pronouns.
- Use the client’s preferred name and pronouns, and insist others do the same if the client wishes to disclose them.
- Use gender neutral language when interviewing clients (don’t assume they have a “boyfriend” or “girlfriend”) — i.e., “special person”.
- Display a safe space/ally sticker on your phone case or office wall.
LEARN MORE!

The National SOGIE Center


Federal Funding to Support Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, Two-Spirit, Plus (LGBTQIA2S+) Children, Youth, Young Adults, and Families


Advancing Healthy Outcomes: Eight Ways to Promote the Health and Well-Being of LGBTQ+ Youth Involved with Child Welfare through FFPSA. The Center for the Study for Social Policy.

All My Relations (Podcast)

ENDNOTES


2. LGBTQIA+ is an acronym that includes individuals who identify as lesbian, gay, bisexual, transgender, queer, intersex, or asexual. The “+” symbol “holds space for the expanding and new understanding of different parts of the very diverse gender and sexual identities.” https://www.princeton.edu/lgbtqia+10/

3. 25 U.S.C 190 et seq. See also 25 CFR 23.


6. Laura Baams et al. (2019). LGBTQ Youth in Unstable Housing and Foster Care, 143 PEDIATRICS e207421.


14. U.S. Department of Health and Human Services, Administration of Children and Families. (March 2, 2022). Titles IV-B and IV-E of the Act program requirements that state, county, and tribal child welfare agencies and their federally funded contractors (collectively, title IV-B and IV-E agencies, unless otherwise noted) can use to guide their work when determining how best to serve lesbian, gay, bisexual, transgender, queer or questioning, and intersex (LGBTQI+) children and youth, including those with non-conforming gender identity or expression who are involved with the child welfare system, Log No: ACYF-CB-IM-22-01.


20. 25 USC 1912(d).


24. 42 USC 1912(d).

25. 42 USC 1915.22(b).


29. 42 USC 675().

30. 42 CFR 1915.22 (c) and (d).