

ADVOCATING FOR REASONABLE EFFORTS FOR LGBTQIA+ YOUTH IN FOSTER CARE

NACC
National Association
of Counsel for Children

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Attorneys representing children and youth in foster care cases have an affirmative duty to advance equity for their clients.¹ This responsibility is particularly important when providing legal representation to LGBTQIA+² youth, who experience disproportionate and disparate child welfare outcomes. NACC offers this tip sheet to help child welfare practitioners evaluate and ensure reasonable efforts³ for these clients.

FIRST, UNDERSTAND THE DATA

- LGBTQIA+ youth are 1.5 to 2.5 X more likely to experience foster care.^{4,5}
- Nearly 1/3 of youth in foster care identify as LGBTQIA+.⁶
- LGBTQIA+ youth experience high rates of harassment, bullying, and exclusion in foster care⁷ and are more likely to experience multiple placements⁸ and institutional care.⁹ They are also at heightened risk of “crossover” to the juvenile legal system.¹⁰
- 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.¹¹ Youth of several identities, including Black and Indigenous LGBTQIA+ youth, are at heightened risk of these outcomes.¹²
- Family and community rejection exacerbates mental health concerns; family and community support and affirmation of a youth’s identity mitigates them.¹³

NEXT, REVIEW THE FEDERAL LAW AND GUIDANCE ON REASONABLE EFFORTS

- Federal law requires child welfare agencies to make reasonable efforts to prevent child removal¹⁴ and to achieve permanency.¹⁵
- Service plans must be *customized* to the child/family, *consistent with the permanency goal*, and *address limitations* (such as transportation barriers).¹⁶
- 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.¹⁷
- Active Efforts is applicable in ICWA cases.¹⁸
- 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.¹⁹

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.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.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 (ex. dress, hairstyle, names, pronouns, and decoration of personal space). Care providers should also facilitate access to social supports (ex. affinity groups), events (ex. 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?
- “Reasonable efforts are specific to each family’s circumstances and needs. In the case of a family who is at risk or whose child or youth has been removed from home as a result of conflicts related to the child or youth being LGBTQIA+, these efforts might include, but are not limited to working with a family to provide family preservation services around the issues with which the family is struggling. It might include parent outreach or education. It might include working closely with kinship supports to determine whether a kinship placement might be the most supportive and affirming for the child or youth. Similarly, reasonable efforts to finalize the permanency plan might include the agency’s efforts to assist a parent complete longer term or ongoing parent education on parenting a child or youth who is LGBTQIA+.”*
- U.S. CHILDREN’S BUREAU²⁰
- 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.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-a-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](#)

All Children – All Families: LGBTQ+ Resources for Child Welfare Professionals. Human Rights Campaign.

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

[Introduction to LGBTQ+ Populations with Special Considerations for the 988 Suicide & Crisis Lifeline](#). Children's Bureau Express. Vol. 24, No. 9. November 2023.

[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

1. National Association of Counsel for Children. (2021). *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings*. Page 29.
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.gsrc.princeton.edu/lgbtqia-101>
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5. Fish, J., Baams, L., Wojciak, A.S., & Russell, S.T. (2019). *Are Sexual Minority Youth Overrepresented in Foster Care, Child Welfare, and Out-of-Home Placement? Findings from Nationally Representative Data*. *Child Abuse and Neglect*. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7306404/>
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7. McCormick, A., Schmidt, K., and Terrazas, S. (2017). *LGBTQ Youth in the Child Welfare System: An Overview of Research, Practice, and Policy*, *Journal of Public Child Welfare*, 11:1, Page 27–39. DOI: 10.1080/15548732.2016.1221368. <https://doi.org/10.1080/15548732.2016.1221368>
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10. Goodkind, et al. (2013), and, Terence P. Thornberry, Timothy O. Ireland, and Carolyn A. Smith. (2001). "The Importance of Timing: The Varying Impact of Childhood and Adolescent Maltreatment on Multiple Problem Outcomes," *Development and Psychopathology* 13, no. 4. Pages 957–979, <https://doi.org/10.1017/S0954579401004114>
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12. Kerith J. Conron & Bianca D.M. Wilson, Williams Inst. (2019). *LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems: A Research Agenda*. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-YOC-Social-Services-Jul-2019.pdf>
13. Innovations Institute, University of Connecticut School of Social Work, Family Acceptance Project, and National SOGIE Center (n.d.). *Parents & Families Have a Critical Impact on Their LGBTQ Children's Health Risks & Well-Being* [Fact Sheet] <https://lgbtqfamilyacceptance.org/family-matters/>. Data for the fact sheet is drawn from Ryan, C. (2021) & Ryan, C., Huebner, D., Diaz, R.M., & Sanchez, J. (2009). *Family rejection as a predictor of negative health outcomes in white and latino lesbian, gay, and bisexual young adults*. *Pediatrics*, 123(1), <http://pediatrics.aappublications.org/content/123/1/346>
14. 42 USC 671(a)(15)(B)(i). See also 45 CFR 1356.21(b)(i).
15. 42 USC 671(a)(15)(B)(ii) & (C). See also 45 CFR 1356.21(b)(2).
16. *Children's Bureau Child Welfare Policy Manual*, Section 8.3C.4, Question #1.
17. 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. <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2201.pdf>
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29. 42 USC 675(i).
30. 45 CFR 1355.22 (c) and (d).

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