



A PLACE OF RESPECT:

**A GUIDE FOR GROUP CARE FACILITIES
SERVING TRANSGENDER AND GENDER
NON-CONFORMING YOUTH**

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SYLVIA RIVERA  LAW PROJECT

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The National Center for Lesbian Rights (NCLR) is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education.

The Youth Project at the National Center for Lesbian Rights has been advocating for LGBT youth in schools, foster care, juvenile justice settings, and the mental health system since 1993. The Project provides direct, free legal information to youth, legal advocates, and activists through a toll-free line; advocates for policies that protect and support LGBT youth in these different arenas; and litigates cases that are creating new legal protections for youth in schools, foster care, juvenile justice, and other settings.

SYLVIA RIVERA LAW PROJECT



The Sylvia Rivera Law Project (SRLP) works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race, and without facing harassment, discrimination, or violence. SRLP is a collective organization founded on the understanding that gender self-determination is inextricably intertwined with racial, social and economic justice. Therefore, we seek to increase the political voice and visibility of low-income people and people of color who are transgender, intersex, or gender non-conforming. SRLP works to improve access to respectful and affirming social, health, and legal services for our communities.

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EXECUTIVE SUMMARY

Transgender and gender non-conforming youth often face serious physical, emotional, and sexual abuse in group homes, detention centers, and correctional institutions. Because staff members are often unsure of how to provide respectful and supportive services to these youth, they may unwittingly subject them to situations that are discriminatory and harmful. This guide offers group care facilities information and tools to provide transgender and gender non-conforming young people with appropriate and informed care. It also describes laws requiring facilities to protect these youth from harassment and abuse, to provide them with appropriate medical care, and to treat them fairly. This publication helps staff understand the experiences and concerns of transgender and gender non-conforming youth, and explains how staff members can respond to these youths' safety, programmatic, and health care needs in an informed and effective manner that meets facilities' legal obligations. Finally, it provides administrators with a model policy and comprehensive practice guidelines to help keep transgender and gender non-conforming youth safe, prevent programmatic disruptions, and promote respectful and supportive environments for all youth.

Problems and Solutions

This guide provides solutions to address nine common problems transgender and gender non-conforming youth face in group care facilities. These solutions are practical, workable approaches to improve the delivery of services to transgender and gender non-conforming youth and meet facilities' legal obligations to ensure safety for all youth.

Policy, Training, and Accountability

The guide concludes with recommendations for facility and agency administrators on ways to provide leadership on the important issue of providing respectful and supportive services for transgender and gender non-conforming youth. It recommends that administrators: (1) develop and implement non-discrimination policies and comprehensive practice guidelines that clearly state facility rules and expectations; (2) ensure staff receive appropriate and sufficient training on working with transgender and gender non-conforming youth; and (3) hold staff accountable for following established policies and practices through a staff evaluation process.

Using the information and approaches described in this guide, group care facilities will gain the understanding and skills necessary to implement practices that provide emotional and physical safety for transgender and gender non-conforming youth and ensure that these youth are treated fairly and respectfully as required by law.

PROBLEM	SOLUTION
1 Lack of Respect and Support for Youths' Gender Identity and Expression	Acknowledge, respect, and support transgender and gender non-conforming youth by referring to them by their preferred name and pronoun and allowing them to express their gender identity through clothing, hairstyles, and mannerisms.
2 Gender-Inappropriate Placements	Provide individualized placement and classification assessments for transgender youth that recognize the youth's gender identity and ensure emotional and physical safety.
3 Verbal Harassment, Threats, Violence, and Isolation	Appropriately respond to harassment, provide diversity trainings for youth in the facility, and institute practices that create a supportive and respectful environment for transgender and gender non-conforming youth.
4 Sexualizing Non-Conforming Gender Identity or Expression	Do not sexualize gender non-conforming behaviors or attempt to change a youth's gender identity or expression as part of treatment.
5 Inappropriate Labeling as Sexual Predators	Do not label or treat transgender and gender non-conforming youth as "sexually abusive" merely because of their gender identity or expression.
6 Lack of Privacy and Safety in Bathrooms, Showers, and During Searches	Ensure the privacy, safety, and dignity of transgender and gender non-conforming youth in bathrooms, showers, when changing clothes, and during physical searches.
7 Unmet Health Care Needs	Provide transgender and gender non-conforming youth with access to health care providers who are knowledgeable about the needs of transgender youth and ensure these youth receive recommended medically necessary treatments, including transgender-related care.
8 Barriers to Safe and Non-Discriminatory School Environments	Work with school administration to ensure that transgender and gender non-conforming youth are safe and supported at off-site schools.
9 Inability to Access Supportive Community Services	Inform transgender and gender non-conforming youth about supportive local and national resources and programs and assist youth in accessing these services.

ACKNOWLEDGEMENTS

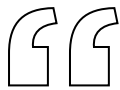
This guide is dedicated to Kira Bellah, a beautiful, brave, generous, smart, and passionate young woman whose life was tragically cut short at the age of 25 due to complications related to diabetes. While in foster care, Kira spent many years living in boys' group homes where she faced resistance from staff to her being her true self. Her experience in care motivated her to join the California Youth Connection in 1999, where, for the next ten years, she advocated for foster care reform. Much of Kira's advocacy work focused on lesbian, gay, bisexual, and transgender youth. From 2004 to 2006, she co-facilitated numerous trainings as a youth trainer with a project that worked to improve care and outcomes for LGBT youth in California's foster care. She also created a digital story about her experience as a transgender youth in foster care and her ideas for change. Kira's story is part of a compilation of digital stories called "Breaking the Silence," that has been used to train thousands of system workers throughout the country.

This guide would not be possible without the assistance of many former and current staff members and interns from the National Center for Lesbian Rights (NCLR) and the Sylvia Rivera Law Project (SRLP), including: Dean Spade, of SRLP, who was a key partner in the initial development of this guide and contributed greatly to the writing during the early stages of the project; Joshua Delgado, Cathy Sakimura, Cara Sherman, Ming Wong, Melanie Rowen, and Shannon Minter of NCLR, and Elana Redfield and Gabriel Arkles, both of SRLP, who provided careful review and feedback at critical points throughout the writing process; Liz Seaton, of NCLR, who served as the editor of this publication and Meghan Hennessey, also of NCLR, who interviewed youth across the country and provided them a comfortable space to share their stories; and the lawyers, health care providers, and other advocates who shared what they had learned working with transgender and gender non-conforming youth in order to help educate others. Most importantly, our deepest gratitude goes out to all of the transgender and gender non-conforming youth who generously shared their experiences and recommendations for inclusion in this guide. Their insights, courage, and honesty were invaluable.

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INTRODUCTION

INTRODUCTION



When I was in a group home, I lost points because I didn't have long hair or wear dresses. Even my mannerisms got me into trouble. The staff would tell me I wasn't 'talking like a lady' or that I was being 'too gentlemanly' when I opened doors for girls. They wouldn't let me be me because to them, I was outside of the gender boundaries they were comfortable with.¹



—**CAPTAIN**, A GENDER NON-CONFORMING YOUTH

At any given time, there are more than 100,000 youth living in group homes, or confined to either detention facilities or other secure facilities across the United States. Each of these young people arrives at a group care facility with a unique set of life experiences and needs. Understanding and supporting these youth, keeping them safe, and meeting their individual needs can be challenging. This guide is designed to help group care facilities better understand, support, and meet the needs of transgender and gender non-conforming youth.

A Note on Terminology

A **transgender** youth has a gender identity (his or her internal, deeply felt sense of being male or female) that is different from his or her assigned birth sex. For example, a **transgender girl** is a girl whose assigned birth sex was male but who understands herself to be female. A **transgender boy** is a boy whose assigned birth sex was female but who understands himself to be male. **Gender non-conforming** youth express their gender in ways that do not conform with gender stereotypes.

Why Read a Guide for Serving Transgender and Gender Non-Conforming Youth in Group Care Facilities?

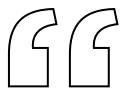
Many group care facilities currently serving transgender and gender non-conforming youth are unaware of best practices for this population. Emerging research indicates that substantial numbers of transgender and gender non-conforming youth are in state custody.³ In the first study to examine this issue, Ceres Policy Research found that substantial numbers—as many as 13 percent—of youth in detention facilities are lesbian, gay, bisexual, transgender, questioning (LGBTQ), or are gender non-conforming.⁴ Some facility staff acknowledge, respect, and support the transgender and gender non-conforming youth in their care, but many others have misconceptions about transgender identity. Unsure how to respond to these youth, they may inadvertently subject them to discriminatory and sometimes harmful situations, even if they have good intentions. The result is that transgender and gender non-conforming youth in group care facilities are regularly denied fair and respectful treatment and often face serious emotional, physical, and sexual abuse.

Group care facilities have the same responsibility to ensure safety and appropriate treatment for transgender and gender non-conforming youth as they do for other youth. Inappropriate

treatment of transgender youth can expose facilities and staff to legal liability. Transgender youth who have been prohibited from dressing in gender-appropriate clothing, denied health care, placed in isolation, forced to shower with youth of a different gender identity, or left unprotected from physical and sexual abuse have brought successful legal cases against group care facility administrators and staff.⁵ In these cases, courts found facilities in violation of these youths' rights and some facilities were required to pay significant monetary settlements in addition to agreeing to develop appropriate policies and training for staff members. Facilities can help avoid this liability if they adopt and implement appropriate policy and practice guidelines.

Implementing best practices for serving transgender and gender non-conforming youth in group care facilities is easy. As more youth are coming out as transgender and gender non-conforming, all group care facilities need to know how to work effectively with them. The good news is that, with a few changes in policy and daily practice, facilities can meet their obligations and increase safety and respect for transgender and gender non-conforming youth. These changes will likely benefit all youth in the facility, not just transgender and gender non-conforming youth.

Using this Guide to Better Support and Protect Transgender and Gender Non-Conforming Youth



I came in to the detention center dressed as I always did, and they ripped the weave out of my hair, broke off my nails, wiped my makeup off, stripped me of my undergarments, and made me wear male undergarments and clothes.²



—**MARIAH**, A TRANSGENDER YOUNG WOMAN

This guide is specifically designed to assist group care facility administration and staff, juvenile justice and child welfare agencies, and anyone else invested in making group care facilities safer and more responsive to the needs of transgender and gender non-conforming youth. This guide uses the term “group care facility” to refer to homes, facilities, or institutions that house youth in state custody and receive public funds. This term also includes non-secure facilities such as group homes, temporary shelters, camps, or ranches; and locked facilities, such as detention facilities, long-term correctional facilities, treatment facilities, or psychiatric institutions.

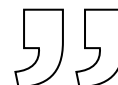
This guide is divided into five chapters. Chapter One addresses common misconceptions about transgender people and explores some specific health care needs of transgender youth. Chapter Two examines the stigma, rejection, and harassment that many transgender and gender non-conforming youth face and how this affects their development and behavior. Chapter Three highlights the legal rights of transgender and gender non-conforming youth in group care facilities and the legal responsibility of facilities.

The last two chapters provide recommendations to help group care facilities develop sound practices for serving transgender and gender non-conforming youth and meet their legal

responsibilities. These recommendations are based on social science and legal research as well as interviews with transgender and gender non-conforming youth who have lived in group care facilities. Chapter Four uses a practical problem-solving approach: identifying nine common problems transgender and gender non-conforming youth face in group care facilities, and outlining strategies and best practices to prevent or address each of these problems. Chapter Five provides recommendations for facility administrators related to leadership development, policy and practice guidelines, and staff trainings and evaluations.



In one of my group homes, they told me that I couldn't be transgender. They wouldn't let me carry a purse or wear girl clothes because they said the other kids would be embarrassed. So I used to take my girl clothes with me and change outside as soon as I got off the property.⁶



—MIMI, A TRANSGENDER YOUNG WOMAN

ENDNOTES

¹ NCLR, personal interview with transgender youth (May 24, 2006) (on file with author).

² NCLR, personal interview with transgender youth (Feb. 28, 2003) (on file with author).

³ Angela Irvine, Ceres Policy Research, *Youth Hype Drug and Alcohol Use Survey: Summary of Findings Related to LGBQ, Latino, and Foster Youth in Santa Cruz, CA* (2008) (on file with author); Angela Irvine, Ceres Policy Research, *The Inappropriate Use of Secure Detention for Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Youth* (2009), presented at the Columbia University Gender on the Frontiers Symposium (April 10, 2009) (available on file with authors) [hereinafter *Inappropriate Use of Secure Detention*]. Results of the 2009 Ceres Policy Research study will appear in 19 Colum. J. Gender & L. (forthcoming 2011).

⁴ *Inappropriate Use of Secure Detention*, *supra* note 3.

⁵ See e.g. *R.G. v. Koller*, 415 F. Supp.2d 1129, 1157 (D. Haw. 2006); *Rodriguez v. Johnson*, No. 06CV00214 (S.D.N.Y. filed Jan. 11, 2006); *Doe v. Bell*, 754 N.Y.S.2d 846, 853-56 (N.Y. Sup. Ct. 2003). For further discussion of these cases, see Chapter 3.

⁶ NCLR, personal interview with transgender youth (May 8, 2006) (on file with author).

CHAPTER ONE:

**UNDERSTANDING TRANSGENDER AND
GENDER NON-CONFORMING YOUTH**

CHAPTER ONE: UNDERSTANDING TRANSGENDER AND GENDER NON-CONFORMING YOUTH

To work effectively with transgender and gender non-conforming youth, group care facility staff must rely on sound research and medical knowledge—not misinformation or bias—in order to gain an accurate understanding of these youth. This chapter addresses common misconceptions about transgender people and explores some of the specific health care needs of transgender youth.

Understanding Gender Identity and Gender Expression

Gender identity or **core gender** refers to a person's internal, deeply felt sense of being male or female—one's psychological identification as masculine or feminine. There is consensus among health professions that a person's gender identity is such a deep-seated, inherent aspect of human identity that efforts to change a person's core gender identity are ineffective and likely to cause significant harm.¹ Every person has a gender identity that develops in early childhood and is usually firmly established by age three or four.²

For most people, their gender identity corresponds with their assigned birth sex and physical body characteristics. For transgender people, this is not the case. Accordingly, a **transgender girl** is a young person whose assigned birth sex was male but who understands herself to be female and desires to live her life as a girl, and later as a woman. A **transgender boy** is a young person whose assigned birth sex was female but who understands himself to be male and desires to live his life as a boy, and later as a man. Transgender people may begin to understand or publicly express their core gender at different points during their lives—as children or youth, or when they are middle-aged, or even elderly. Some children self-identify as transgender as young as three or four.³ Many transgender people have medical treatments to change their physical bodies in order to live more easily in the gender that matches their core self. The term **transition** is often used to describe both the process and time period when a transgender person starts publicly living in line with his or her core gender.

Although gender identity is established at a young age, this does not mean that every person's gender identity is fixed as exclusively male or exclusively female because some people have a gender identity that is fluid. In addition, there are many people whose **gender expression**—their gender-related appearance, characteristics, and behaviors—crosses genders or has aspects of both masculinity and femininity. The term **gender non-conforming** can be used to describe people whose gender expression falls outside of stereotypical assumptions about how men and women are “supposed” to appear or behave.

NOT ALL GENDER NON-CONFORMING PEOPLE ARE GAY, LESBIAN, OR BISEXUAL

Some people may assume that a gender non-conforming person must be gay, lesbian, or bisexual. That assumption is often wrong. The fact that a person is gender non-conforming does not tell us anything about that person's sexual orientation. There are heterosexual people who are gender

non-conforming, and there are gay, lesbian, and bisexual people who are gender conforming. But regardless of their sexual orientation, people who are visibly gender non-conforming often experience harassment and are often prevented from expressing their core gender.

BEING TRANSGENDER IS NOT THE SAME AS BEING GAY OR LESBIAN

Sexual orientation and gender identity are not the same. A person's **gender identity** refers to that person's *core gender*. In contrast, **sexual orientation** refers to a person's emotional, romantic, and sexual *attraction* to people of the same sex (lesbian and gay people), people of a different sex (heterosexual people), or both (bisexual people).⁴ People who are transgender, like all people, have both a gender identity and a sexual orientation. There are transgender people who identify as lesbian, gay, or bisexual, and there are transgender people who identify as heterosexual.

Additional terms and definitions can be found in Appendix A.

GENDER NON-CONFORMING BEHAVIOR DOES NOT REFLECT UNDERLYING PATHOLOGY AND TRANSGENDER AND GENDER NON-CONFORMING YOUTH ARE NOT ANY MORE LIKELY TO BE SEXUALLY PREDATORY THAN OTHER YOUTH

There is no inherent connection between gender non-conformity and mental illness. Numerous studies over the last twenty years have found that “the ... incidence of reported psychiatric problems [for transgender people undergoing treatment] is similar to that seen in the general population.”⁵ Similarly, there is no evidence that transgender individuals have any underlying psychopathology that causes or influences their transgender identity. While some transgender people experience depression and anxiety, these issues are often alleviated once a transgender person is able to live and be accepted in their core gender.

Research also confirms that there is no inherent connection between an individual's sexual orientation or gender non-conformity and the likelihood that he or she will behave in sexually predatory ways. Studies using a variety of psychological measures indicate that people who are not heterosexual are no more likely “to possess any psychological characteristics that would make them less capable of controlling their sexual urges, refraining from the abuse of power, obeying rules and laws, interacting effectively with others, or exercising good judgment in handling authority.”⁶

SAFE AND EFFECTIVE MEDICAL TREATMENTS CAN HELP TRANSGENDER PEOPLE LIVE IN LINE WITH THEIR CORE GENDER

Many transgender young people experience high levels of distress because their body does not match their core gender, resulting in depression, anxiety, and low self-esteem.⁷ For some young people, this level of distress may be so intense that they meet the diagnostic criteria for a treatable medical condition called Gender Identity Disorder or GID.⁸

The World Professional Association for Transgender Health (WPATH) is a professional association of health care professionals who specialize in transgender health care.⁹ For several decades,

WPATH has issued internationally accepted protocols for the diagnosis and treatment of youth and adults with GID called “The Standards of Care for the Treatment of Gender Identity Disorders” (“WPATH Standards of Care”).¹⁰ Treatment for GID is focused on supporting a person’s understanding of his or her gender and includes a combination of individual and family counseling and medical treatments, such as hormone therapy and surgeries that change a person’s body to match his or her core gender identification.¹¹ These treatments are sometimes referred to as **sex-reassignment** or **transition**. Transition is medically necessary for many transgender people and leads to improved mental health, alleviated feelings of self-hatred and shame, success in employment and education, and reduced risk of drug or alcohol abuse and suicide attempts.¹²

What Medical Professionals Have to Say About Transgender Health Care

Medical experts agree that transition-related treatments for transgender youth and adults are safe, effective, and, for many, medically necessary.¹³ Both the American Medical Association (AMA)¹⁴ and the American Psychological Association (APA)¹⁵ have adopted public statements recognizing the necessity of transition-related medical care and calling for improved access to these treatments. Both groups also reject the misconception that these treatments are “cosmetic” or “experimental,” and recognize transition-related medical care as effective, therapeutic, and a “medical necessity ... for appropriately evaluated individuals.”¹⁶

In addition, the APA recognizes the necessity of providing transition-related care for transgender people in institutional settings and calls on institutions—including foster care and juvenile justice facilities—to provide such care.¹⁷ Similarly, the National Commission on Correctional Health Care (NCCHC) has adopted a position statement that provides guidance to health professionals in juvenile justice facilities, prisons, and jails about their responsibility to ensure the physical and mental health and well-being of transgender people in their custody.¹⁸ According to NCCHC the proper approach to transgender medical management is to follow the WPATH Standards of Care.¹⁹

TRANSGENDER YOUTH ARE NOT “ACTING OUT” OR TRYING TO GET ATTENTION WHEN THEY EXPRESS THEIR CORE GENDER

Group care facility staff should understand that when transgender youth express their gender identities, they are expressing a fundamental aspect of their identity, not trying to break rules or cause problems. Medical research confirms the importance of allowing transgender youth to express their core gender. According to the WPATH Standards of Care and experts in the field, professionals should support transgender youth in expressing their gender through wearing clothing and using names and pronouns associated with the youth’s core gender identity.²⁰ In 2008, the American Psychological Association adopted a policy statement supporting, among other

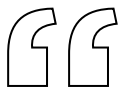
things, “efforts to provide safe and secure...foster care environments and juvenile justice programs that promote an understanding and acceptance of self and in which all youths, including youth of all gender identities, may be free from discrimination, harassment, violence, and abuse.”²¹

Meeting the Health Care Needs of Transgender Youth

Therapeutic interventions and daily interactions with transgender youth should focus on reducing the distress these youth experience due to the difference between their gender identity and their bodies, as well as the trauma that many of these youth experience due to societal discrimination and violence based on their gender expression. Some transgender youth with GID may also need medical treatment, such as supportive counseling and hormone therapy, to allow them to express their gender identity and to help reduce their feelings of anxiety and discomfort about their bodies.

TRANSGENDER YOUTH DO NOT NEED TO WAIT UNTIL AGE EIGHTEEN TO BEGIN TO MEDICALLY TRANSITION

For transgender youth, the start of puberty can be very traumatic. Many youth should begin hormone treatment before they complete puberty in order to stop their bodies from irreversibly changing in ways that further conflict with their internal core gender. According to the WPATH Standards of Care, once a transgender young person approaches puberty, his or her medical care providers should assess whether the young person is an appropriate candidate to begin medical treatment that will enable him or her to delay the onset of puberty, and/or physically transition through the use of prescription hormone treatments.²² Doctors and mental health professionals who are experts in gender development agree that early hormonal intervention is very important for youth who have been diagnosed with GID because it reduces their risk of suicide and social isolation, lessens their need for future medical interventions, and greatly improves their overall mental health.²³



As people with gender identity disorder are recognized and diagnosed at younger ages than ever before, this presents a crucial opportunity for early medical intervention during puberty. The chance to prevent the development of gender-inappropriate secondary sexual characteristics that create such significant obstacles to future gender reassignment is profoundly important. Such early treatment provides transgender patients greater psychological benefits, greater protection from current and future interpersonal violence, and often minimizes the need for future surgeries to correct the damage done by a gender-inappropriate puberty.²⁴



—**DR. NICK GORTON**, PRIMARY CARE PROVIDER,
LYON-MARTIN HEALTH SERVICES,
SAN FRANCISCO, CA

TRANSGENDER YOUTH WHO DO NOT RECEIVE APPROPRIATE TREATMENT ARE AT RISK OF SERIOUS NEGATIVE HEALTH CONSEQUENCES

Medical experts agree that preventing transgender youth from expressing their gender identity or punishing them for doing so increases the distress they experience; undermines their emotional stability; and interferes with their care, treatment, and rehabilitation.²⁵ When a transgender youth does not have access to knowledgeable medical professionals for support and treatment, the youth may attempt to treat themselves by buying and using hormones of unknown quality from an underground market. Youth who use hormones without medical supervision are at risk of developing serious medical conditions, including contracting HIV from using dirty needles for injection, and other life threatening complications from inappropriate dosages or poor quality hormones.²⁶ Many youth who turn to the street to get hormones engage in criminalized behavior, such as prostitution, in exchange for the hormones or in order to pay for them.²⁷ In addition to these serious negative health and social consequences, transgender youth who do not receive appropriate treatment for GID are at high risk for clinical depression, suicide attempts, and problems with relationships, school, and work.²⁸

By examining research and medical understandings about transgender people and exploring their specific health care needs, group care facility staff will improve their understanding of transgender identity and be better prepared to meet the needs of the transgender and gender non-conforming youth in their care.

What Does It Mean to Have an Intersex Condition?

An estimated one in 2,000 babies is born with a sexual or reproductive anatomy and/or chromosome pattern that does not seem to fit typical definitions of male or female, and the medical conditions causing these variations are sometimes grouped by doctors under the terms “intersex” or Differences of Sex Development (“DSD”).²⁹ Because some youth with gender non-conforming identities or appearances may have an intersex condition, staff also need to understand these conditions and the needs of these youth. Some young people who have an intersex condition may experience harassment and/or mistreatment because of their gender expression. Group care facilities should take steps to ensure that these youth are safe. In addition to ensuring that youth who have an intersex condition are not harassed based on their gender differences, facilities also need to meet these youths’ specific medical and privacy needs. This includes providing access to doctors and mental health providers who are familiar with the young person’s specific intersex condition as well as ensuring that the youth has sufficient privacy for changing clothing, showering, and using restrooms.³⁰

ENDNOTES

- ¹ Gianna E. Israel & Donald E. Tarver II, *Transgender Care: Recommended Guidelines, Practical Information, and Personal Accounts* 134-5 (Temple University Press 1997); Gerald P. Mallon, *Practice with Transgendered Children*, in *Social Services with Transgendered Youth* 49, 55-6 (Gerald P. Mallon, ed., 1999).
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- ⁷ Israel & Tarver, *supra* note 1, at 134-5; American Medical Association, "Resolution 122: Removing Financial Barriers to Care for Transgender Patients" (2008) [hereinafter *AMA Resolution 122*].
- ⁸ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 576, 581 (4th ed., text revision 2000) (diagnostic criteria for GID include a persistent discomfort with one's assigned sex and with one's primary and secondary sex characteristics, which causes intense emotional pain and suffering) [hereinafter APA, *DSM-IV-TR*]. At the time of this publication, the APA was considering a change in terminology from Gender Identity Disorder to Gender Incongruence for inclusion in the fifth edition of the DSM which will be published in 2012.
- ⁹ WPATH (www.WPATH.org) is a professional organization devoted to the understanding and treatment of gender identity disorders, and is actively involved in supporting, educating, and advocating on behalf of individuals with gender identity disorder. The organization's membership includes approximately 350 licensed professionals in the disciplines of medicine, psychiatry, nursing, psychology, sociology, social work, counseling, and law, from twenty countries, including the United States. WPATH was formerly known as the Harry Benjamin International Gender Dysphoria Association, Inc. (HBI/GDA).
- ¹⁰ Walter Meyer III et al., *The Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders* (6th ed. 2001) [hereinafter *Standards of Care*]
- ¹¹ *Standards of Care*, *supra* note 10, at 1, 11, 13, 18.
- ¹² See *AMA Resolution 122*, *supra* note 7, at 2, n. 7; American Psychological Association, "Policy Statement: Transgender, Gender Identity, & Gender Expression Non-Discrimination," 1, 3 (adopted Aug. 2008), available at <http://www.APA.org/PI/LGBC/Policy/Transgender.html> [hereinafter *APA Transgender Policy Statement*]; World Professional Association for Transgender Health, "WPATH Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.," 2 (2008); Z. Rakic, et al., *The Outcome Of Sex Reassignment Surgery In Belgrade: 32 Patients Of Both Sexes*, 25 *Archives of Sexual Behavior* 515-25 (1996).
- ¹³ See generally *Standards of Care*, *supra* note 10; Walter O. Bockting & Eli Coleman, *A Comprehensive Approach to the Treatment of Gender Dysphoria*, in *Gender Dysphoria: Interdisciplinary Approaches in Clinical Management* 131 (W.O. Bockting & E. Coleman eds., 1992); *APA Transgender Policy Statement*, *supra* note 12, at 3; *AMA Resolution 122*, *supra* note 7, at 2, n. 7.
- ¹⁴ *AMA Resolution 122*, *supra* note 7.
- ¹⁵ *APA Transgender Policy Statement*, *supra* note 12.

¹⁶ *APA Transgender Policy Statement*, *supra* note 12, at 3; *AMA Resolution 122*, *supra* note 7, at 1.

¹⁷ *APA Transgender Policy Statement*, *supra* note 12, at 3.

¹⁸ See National Commission on Correctional Health Care, Position Statement, “Transgender Health Care in Correctional Settings,” (adopted Oct. 18, 2009), *available at* <http://www.NCCHC.org/Resources/Statements/Transgender.html>.

¹⁹ *Id.* at 1.

²⁰ *Standards of Care*, *supra* note 10, at 9, 12; see also Teresa DeCrescenzo & Gerald P. Mallon, *Serving Transgender Youth: The Role of the Child Welfare System* 19 (Child Welfare League of America 2000); Brill & Pepper, *supra* note 3, at 94.

²¹ *APA Transgender Policy Statement*, *supra* note 12, at 3.

²² *Standards of Care*, *supra* note 10, at 10.

²³ 23 Peggy Cohen-Kettenis & Stephanie Van Goozen, *Sex Reassignment of Adolescent Transsexuals: A Follow-Up Study*, 36 *Am. Acad. of Child and Adolescent Psychiatry* 263 (1997); Yolanda Smith, et al., *Sex Reassignment: Outcomes And Predictors of Treatment for Adolescent And Adult Transsexuals*, 35 *Psychological Medicine* 89 (2005), *available at* http://www.NCBI.NLM.NIH.gov/entrez/query.fcgi?cmd=retrieve&db=pubmed&dopt=abstract&list_uids=15842032&query_hl=16.

²⁴ SRLP, personal interview with Dr. Nick Gorton (July 17, 2006).

²⁵ Israel & Tarver, *supra* note 1, at 132-41; Brill & Pepper, *supra* note 3, at 74-5; *Standards of Care*, *supra* note 10, at 9; Mallon, *supra* note 1, at 51.

²⁶ Mallon & DeCrescenzo, *supra* note 2, at 224-225; Wilber et al., *supra* note 2, at 58.

²⁷ *Id.* See also Rebecca Klein, *Group Work Practice with Transgendered Male to Female Sex Workers*, in *Social Services with Transgendered Youth*, 95, 96-9 (Gerald P. Mallon, ed., 1999).

²⁸ APA, *DSM-IV-TR*, *supra* note 8, at 578; Israel & Tarver, *supra* note 1, at 132-3.

²⁹ See *Advocates for Informed Choice: FAQ*, <http://AICLegal.org/FAQ/> (last visited, Mar. 5, 2010). These conditions include androgen insensitivity syndrome, some forms of congenital adrenal hyperplasia, Klinefelter’s syndrome, Turner’s syndrome, hypospadias, and many others.

³⁰ For more information about intersex conditions and accepted clinical standards of care, visit Accord Alliance, <http://www.AccordAlliance.org/>.

CHAPTER TWO:

**THE CHALLENGES OF LIVING WITH A
STIGMATIZED IDENTITY**

CHAPTER TWO: THE CHALLENGES OF LIVING WITH A STIGMATIZED IDENTITY

Many transgender and gender non-conforming youth face rejection, harassment, and physical abuse at the hands of their families, communities, and schools due to bias against their gender identity or expression. Without the support of their families, these youth are at risk for depression, suicide, substance abuse, truancy, homelessness, and HIV infection.¹ In addition, because of the harassment and abuse that transgender and gender non-conforming youth experience, they are more likely to enter the dependency and delinquency systems and spend part of their teenage years residing in group care facilities.²

Transgender and Gender Non-Conforming Youth Often Face Rejection by Their Families

Most parents expect their children to exhibit “typical” male or female behavior and interests from a very early age. When a child strays too far from what is considered socially acceptable behavior for a boy or a girl, some parents become upset, embarrassed, and concerned. These parents may try to prevent their child from expressing characteristics outside of traditional gender roles, through verbal means (for example, by telling their child that “boys don’t play with dolls” or that “girls must wear dresses”), and in some cases, through physical abuse or forcing their child to leave home.³ Some parents of gender non-conforming children have sought out treatment to try to “cure” their child’s gender non-conformity.⁴ Attempts to change a young person’s core gender are not only ineffective, but can cause intense, lasting psychological harm and alienate children from their families.⁵ These attempts often contribute to the child’s involvement in state care.⁶

Recent studies completed by the Family Acceptance Project⁷ have found that many parents and family members who initially reject their child can become more supportive if given a chance to learn about the issue and to understand the negative impact their rejection has on their child.⁸ Unfortunately, resources to help families become more accepting are not widely available, and few families have access to the support they need to understand and accept their transgender or gender non-conforming child. This leads to high levels of family rejection.

“

While I was in detention, I asked my grandma if I could come back to live with her and she said ‘if you aren’t going to change and like boys and stop acting like one, you can’t come back here.’ I told her I understood it was hurting her but that I couldn’t change for her.⁹

”

—**JORDAN**, A TRANSGENDER YOUNG MAN

Transgender and Gender Non-Conforming Youth Often Experience Violence, Harassment, and Mistreatment At School, Interfering with School Success

In addition to the typical challenges faced by all adolescents in school, those who are transgender and gender non-conforming also often face name-calling, bullying, harassment, and assaults by fellow students—and even teachers—because of their gender expression.¹⁰ According to studies:

- Almost 80 percent of transgender students nationwide report feeling unsafe at school because of their gender expression.¹¹
- Nearly half of transgender students in a nationwide survey report being physically harassed at school because of their gender expression, and one-third report being physically assaulted.¹²
- A California study found that 27 percent of students surveyed report harassment because they were not “masculine enough” or “feminine enough;” for students who identified as LGBT this percentage increased to 40 percent.¹³
- Fifty-three percent of California students report that their school is unsafe for “guys who aren’t as masculine as other guys” and 34 percent report that their school is unsafe for “girls who aren’t as feminine as other girls.”¹⁴

School Harassment Leads to Poor Grades, Depression, and Low Self-Esteem

Experiencing bias, harassment, and violence has a profound negative effect on students’ self-esteem, mental health, and overall likelihood of success at school, and increases their likelihood of alcohol and drug use.¹⁵ In a California study, for example, students who were harassed based on their actual or perceived sexual orientation—which is often related to a student’s gender expression—were *more than three times* as likely to carry a weapon to school, to seriously consider suicide, or to miss at least one day of school in the last 30 days because they felt unsafe, when compared to students who did not experience this type of harassment.¹⁶ In addition, the study found that students who were harassed were *more than twice* as likely to report depression, to use methamphetamines or inhalants, and to binge drink. They were also more likely to have low grades (C’s or below), to be victims of violence, to smoke cigarettes, to drink alcohol, or to use marijuana.¹⁷ Another study found that students who frequently faced harassment because of their sexual orientation or gender expression had grade point averages almost half a grade lower than students experiencing less frequent harassment.¹⁸

Transgender and Gender Non-Conforming Students Drop Out of School or Are Expelled Because of Hostility to Their Gender

In addition to gender-based harassment and violence described above, transgender and gender non-conforming youth often face additional barriers to school success because teachers or school administrators:

- Refuse to allow students to wear clothing that matches their gender identity,
- Refuse to recognize and use a student's chosen name and pronoun,
- Deny transgender and gender non-conforming students access to school activities, and
- Fail to provide transgender or gender non-conforming students access to safe and appropriate restrooms and/or locker rooms.

Because of these policies or practices, transgender students who go to school expressing themselves in accordance with their core gender may be disciplined or even expelled for infractions such as violating school dress codes or using the “wrong” bathroom.¹⁹ As a result, some transgender youth simply stop going to school, further increasing the likelihood of juvenile court intervention.

Transgender and Gender Non-Conforming Youth Are at High Risk for Homelessness

As a result of family rejection or abuse, a disproportionate number of transgender and gender non-conforming youth are homeless.²⁰ Studies indicate LGBT youth comprise between 20 to 40 percent of all homeless youth.²¹ A San Diego study of LGBT homeless youth found that approximately four percent of surveyed youth identified themselves as transgender girls.²² Once on the street, LGBT youth often have nowhere to turn for help or protection. Studies have shown that when homeless LGBT youth try to access homeless youth services, they experience discrimination, as well as assaults by peers.²³ Transgender youth face additional hurdles because many homeless shelters and other programs that assist youth are segregated by gender and have little understanding of transgender youth and their needs.²⁴ As a result, many of these young people end up sleeping on the streets without access to the social programs connected to shelters that could provide them with food, medical care, and support.

Transgender and Gender Non-Conforming Youth Who Are Homeless Are at High Risk of Entering the Juvenile Delinquency System

For a variety of reasons, homeless transgender and gender non-conforming youth, like other youth who are homeless, are at a much greater risk of entering the delinquency system than youth who have stable homes.²⁵ For example, transgender and gender non-conforming youth who are homeless may have little choice but to engage in activities that are criminalized in order to

survive while living on the street.²⁶ In addition, living on the street puts these youth at high risk of exploitation by adults who may manipulate vulnerable youth into participating in criminalized activities.²⁷

For some homeless transgender youth, sex work may be their only option for income and may be the only way that they can access hormones or other forms of medical care.²⁸ Even when transgender and gender non-conforming homeless youth are not engaging in activities that are criminalized, they face risk of arrest. According to a 2005 Amnesty International report, police regularly profile transgender and gender non-conforming youth as criminals, and selectively enforce laws relating to minor “quality of life” offenses, such as loitering, public drunkenness, public urination, and littering.²⁹ Transgender and gender non-conforming youth may also be arrested for simply sleeping on the streets, which is in itself a crime in many places.

Developing an understanding of the stigma, rejection, and harassment that transgender and gender non-conforming youth commonly face and how it can negatively affect their psychosocial development and behavior can help group care staff to better meet these young person’s needs and ensure their safety.

ENDNOTES

¹ Gerald P. Mallon & Teresa DeCrescenzo, *Transgender Children and Youth: A Child Welfare Practice Perspective*, 85 *Child Welfare* 215, 218 (2006); Shannan Wilber, Caitlin Ryan, & Jody Marksamer, *Child Welfare League of America Best Practice Guidelines: Serving LGBT Youth in Out-of-Home Care*, at 2 (2006); Caitlyn Ryan & Rafael M. Diaz, *Family Responses as a Source of Risk and Resiliency for LGBT Youth*, presentation at the pre-conference Institute on LGBTQ Youth, Child Welfare League of America 2005 National Conference, Washington, D.C. (2005); Caitlin Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Adults*, 123 *Pediatrics* 346, 349-51 (2009) [hereinafter *Family Rejection as a Predictor*].

² Katayoon Majd, Jody Marksamer, & Carolyn Reyes, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*, at 69-78 (Equity Project 2009) [hereinafter *Hidden Injustice*]; Ryan & Diaz, *supra* note 1.

³ Teresa DeCrescenzo & Gerald P. Mallon, *Serving Transgender Youth: The Role of the Child Welfare System* 19 (Child Welfare League of America 2000).

⁴ Mallon & DeCrescenzo, *supra* note 1, at 221 (2006); Dylan Scholinski, *The Last Time I Wore a Dress* (Putnam 1997).

⁵ Mallon & DeCrescenzo, *supra* note 1, at 229; Gianna E. Israel & Donald E. Tarver II, *Transgender Care: Recommended Guidelines, Practical Information, and Personal Accounts* 134-5 (Temple University Press 1997); Gerald P. Mallon, *Practice with Transgendered Children*, in *Social Services with Transgendered Youth* 49, 55-6 (Gerald P. Mallon, ed., 1999).

⁶ *Family Rejection as a Predictor*; *supra* note 1 at 350; Ryan & Diaz, *supra* note 1; Wilber et al., *supra* note 1, at 15.

⁷ The Family Acceptance Project studies the impact of family acceptance and rejection on the health, mental health, and well-being of lesbian, gay, bisexual, transgender, and gender non-conforming youth. For more information about the Family Acceptance Project, visit: <http://FamilyProject.SFSU.edu>.

⁸ Caitlin Ryan, *Families of Lesbian, Gay and Bisexual Adolescents*, 34 *Current Problems in Pediatric and Adolescent Health Care* 369, 371-72 (2004); Ryan & Diaz, *supra* note 1.

⁹ NCLR, personal interview with transgender youth (May 8, 2006) (on file with author).

¹⁰ Gay, Lesbian and Straight Education Network, *The 2007 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation’s Schools* 25-26, 29-32 (2008), available at <http://>

www.GLSEN.org/Binary-Data/GLSEN_ATTACHMENTS/File/000/001/1290-1.pdf [hereinafter *GLSEN 2007 National School Climate Survey*]; Advocates for Children of New York, *In Harms Way: A Survey of Lesbian, Gay, Bisexual, and Transgender Students Who Speak About Harassment and Discrimination in New York City Schools* 4 (2005), available at http://www.AdvocatesForChildren.org/Pubs/LGBT_Report.pdf; Human Rights Watch, *Hatred in the Hallways: Violence and Discrimination Against Lesbian, Gay, Bisexual and Transgender Students in U.S. Schools* 80-86 (2001).

¹¹ Gay, Lesbian and Straight Education Network, *The 2003 National School Climate Survey: The School-related Experiences of Our Nation's Lesbian, Gay, Bisexual and Transgender Youth* 26 (2004), available at http://www.GLSEN.org/Binary-Data/GLSEN_ATTACHMENTS/File/300-3.PDF

¹² Gay, Lesbian and Straight Education Network, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* 18-19 (2009), available at http://www.GLSEN.org/Binary-Data/GLSEN_ATTACHMENTS/File/000/001/1375-1.pdf. [hereinafter *Harsh Realities*].

¹³ California Safe Schools Coalition, *Safe Place to Learn: Consequences of Harassment Based on Actual or Perceived Sexual Orientation and Gender Non-Conformity and Steps for Making Schools Safer* 15 (2004), available at <http://www.CASafeSchools.org/SafePlacetoLearnLow.pdf> [hereinafter *Safe Place to Learn*].

¹⁴ *Id.* at 16.

¹⁵ *GLSEN 2007 National School Climate Survey*, *supra* note 10, at 83-94; *Harsh Realities*, *supra* note 12, at 25-29.

¹⁶ *Safe Place to Learn*, *supra* note 13, at 8-11.

¹⁷ *Id.*

¹⁸ *GLSEN 2007 National School Climate Survey*, *supra* note 10, at 84, 86.

¹⁹ GSA Network, Transgender Law Center, & National Center for Lesbian Rights, *Beyond the Binary: A Tool Kit for Gender Identity Activism in Schools*, 1-2 (2004).

²⁰ Heather Berberet, *Putting the Pieces Together for Queer Youth: A Model of Integrated Assessment of Need and Program Planning*, 85 *Child Welfare Journal* 361, 373 (2006) (showing, in one survey, that 39 percent of LGBT Youth ages 12-24 living out of home had been forced to leave home due to sexual orientation or gender identity).

²¹ Nicholas Ray, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* 1, 11-14 (National Gay and Lesbian Task Force Policy Institute and National Coalition for the Homeless 2006), available at http://www.TheTaskForce.org/Reports_and_Research/Homeless_Youth; Rob Woronoff et. al., *Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth in Care* 34-35 (Child Welfare League of America 2006).

²² Heather Berberet, *Living in the Shadows: An Assessment of Housing Needs Among San Diego's LGBTQ Youth Living Outside the Home*, presentation at the American Psychological Association annual meeting, Honolulu, HI. (2004).

²³ Ray, *supra* note 21, at 83-5; National Alliance to End Homelessness, et al., *National Recommended Best Practices for Serving LGBT Homeless Youth* 2 (2009).

²⁴ *Id.*

²⁵ Berberet, *supra* note 20, at 373; Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 *Nev. L.J.* 774, 796 (2006); *Hidden Injustice*, *supra* note 2, at 71-73.

²⁶ Berberet, *supra* note 20, at 374; *Hidden Injustice*, *supra* note 2, at 72-73; Rebecca Klein, *Group Work Practice with Transgendered Male to Female Sex Workers*, in *Social Services With Transgendered Youth*, 95, 98 (Gerald P. Mallon, ed., 1999).

²⁷ B.N. Cochran, et al., *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 *American Journal of Public Health* 774, 774--75 (2002); Klein, *supra* note 26, at 98-100.

²⁸ Ray, *supra* note 21, at 55; Wilber et al., *supra* note 1, at 58.

²⁹ Amnesty International, *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual, and Transgender People in the U.S.* 33 (Sept. 2005).

CHAPTER THREE:

**GROUP CARE FACILITIES' LEGAL RESPONSIBILITY TO
TREAT TRANSGENDER AND GENDER NON-CONFORMING
YOUTH FAIRLY AND KEEP THEM SAFE**

CHAPTER THREE: GROUP CARE FACILITIES' LEGAL RESPONSIBILITY TO TREAT TRANSGENDER AND GENDER NON-CONFORMING YOUTH FAIRLY AND KEEP THEM SAFE

Under the U.S. Constitution, federal and state statutes and regulations, as well as agency policies, group care facilities have legal responsibilities to uphold the rights of all youth in their care. Group care facilities need to understand these laws in order to develop and implement legally sound policies and practices for the care of transgender and gender non-conforming youth. This chapter highlights group care facilities' legal responsibility to treat transgender and gender non-conforming youth fairly and uphold their legal rights to safety, freedom from isolation, and access to necessary medical care.



Case Spotlight: *R.G. v. Koller*

In 2005, a 17-year-old transgender girl, an 18-year-old lesbian, and an 18-year-old boy perceived to be gay filed a lawsuit in federal district court challenging the failure of Hawaii Youth Correctional Facility (HYCF) staff to protect them from relentless physical, emotional, and sexual abuse by other youth.⁵ In 2006, the court granted the youths' motion for a preliminary injunction, finding they would likely prevail at trial in showing the facility violated their constitutional rights.⁶ Specifically, the court found that the defendants were deliberately indifferent to the health and safety of the plaintiffs by failing to have (1) policies and staff training necessary to protect LGBT youth; (2) adequate staffing and supervision; (3) a functioning grievance system; and (4) a classification system to protect vulnerable youth. The court also found that HYCF's practice of isolating LGBT youth, as a means to protect them from abuse, violated HYCF's legal obligations to the youth. The court explained: "Consistently placing juvenile wards in isolation, not to impose discipline for violating rules, but simply to segregate LGBT wards from their abusers, cannot be viewed in any reasonable light as advancing a legitimate nonpunitive governmental objective."⁷ The case eventually settled and HYCF agreed to pay the plaintiffs and their attorneys \$625,000, hire a court-appointed consultant to train all HYCF staff, and adopt official policies and procedures that protect LGBT youth from harm.

Group Care Facilities Have a Legal Responsibility to Keep Transgender and Gender Non-Conforming Youth Safe from Emotional, Physical, and Sexual Abuse

Like all youth in state custody, transgender and gender non-conforming youth have a right to be safe in the facilities in which they are living. Because young people in group care facilities are in the custody of the state, facilities have a legal responsibility to protect them from physical,

emotional, and sexual abuse at the hands of other youth and facility staff.¹ For example, if a staff member is aware that a transgender or gender non-conforming youth is being subjected to harassment or violence, he or she must respond with appropriate actions to stop the harassment and violence.² Facility staff should never ignore gender-related harassment or abuse, repeatedly move a transgender or gender non-conforming youth from placement to placement in response to abuse, or tell youth that they should expect to be harassed because they are openly gender non-conforming. In addition, detention and correctional facilities must have a well-defined classification system that provides for the safety of all vulnerable youth, including transgender youth.³

Non-secure group care facilities also have a responsibility to protect youth in their care from abuse outside of the facility.⁴ For example, if a transgender or gender non-conforming youth is experiencing harassment and discrimination at school, group care facilities have a legal obligation to ensure that the school addresses the harassment promptly and appropriately.

Group Care Facilities are Prohibited from Using Isolation to Protect Transgender and Gender Non-Conforming Youth from Abuse

All youth in group care facilities have a right to be free from unreasonably restrictive conditions of confinement, including isolation.⁸ Facilities may face liability if:

- They place transgender or gender non-conforming youth in isolation, either as punishment for expressing their gender identity or based on the unfounded notion that transgender youth somehow pose a danger to other youth; or
- They place transgender or gender non-conforming youth in segregation or isolation to protect them from their abusers.

When transgender or gender non-conforming youth are at risk of violence in a group care facility, the law requires a more effective and less stigmatizing response than simply isolating the youth.⁹ More specifically, group care facilities have a legal obligation to address the root of the problem and take appropriate steps to stop the harassment and abuse.

Group Care Facilities Must Treat Transgender and Gender Non-Conforming Youth Equally and Without Discrimination

All youth in state custody have a constitutional right to equal treatment under the law. This means that child welfare and juvenile justice professionals must treat transgender and gender non-conforming youth equally when determining placements, delivering services, and responding to complaints of harassment or abuse. Specifically:

- Facilities should not refuse to accept a youth for placement because the youth is transgender or gender non-conforming.
- Facility staff should respond appropriately to complaints of gender-based harassment or abuse, following the facility's adopted procedures for handling harassment or violence.

- Facilities should provide services to transgender and gender non-conforming youth on an equal basis with other youth, and in a non-discriminatory manner. For example, a facility should not require transgender youth to wear distinguishing clothing, prohibit transgender or gender non-conforming youth from participating in programs, or punish these youth more harshly for violating facility rules.

Group Care Facilities Have a Legal Responsibility to Provide Transgender Youth with Adequate Medical and Mental Health Care

All youth in group care facilities have a right to receive adequate physical and mental health care, including transgender-related health care.¹⁰ A facility must provide transgender youth with access to medical providers with experience in evaluating and treating youth with Gender Identity Disorder.¹¹ If a facility ignores the instructions of a transgender youth's treating physician or otherwise does not provide the youth with necessary health care, this may constitute a violation of the youth's right to adequate health care and place a facility at risk of liability.¹²

For more information about appropriate medical care for transgender youth, see Chapter 1.



Case Spotlight: *Rodriguez v. Johnson*

Before Ms. Rodriguez—a young transgender woman—was sent to a secure facility in New York State, she had been taking medically prescribed hormone treatments for four years. When she arrived at the facility, rather than continuing this medically necessary care, the facility refused to fill her prescription and stopped all transgender related medical care. Without her hormone treatment, Ms. Rodriguez experienced nausea, headaches, masculinization, and severe emotional distress, which increased through the duration of her incarceration. In 2006, after she was released from the facility, Ms. Rodriguez filed a lawsuit against officials of the New York State Office of Children and Family Services (OCFS), alleging violations of her rights based on the facility's failure to provide her with adequate medical care.¹³ Before the court heard the case, the parties reached a settlement which included monetary damages for Ms. Rodriguez and an agreement by OCFS to work toward implementing system-wide changes to ensure the safety and appropriate treatment of transgender youth.¹⁴ In 2008, OCFS adopted a comprehensive policy and practice guide for serving transgender youth, as well as lesbian, gay, and bisexual youth.

Group Care Facilities Must Allow Transgender and Gender Non-conforming Youth to Express Their Gender Identity

All youth have a constitutional right to freedom of speech and freedom of expression, which includes a right to be open about their sexual orientation,¹⁵ and express their core gender through their clothing and hairstyle.¹⁶ Facility staff should not require youth to hide their gender identity

in order to receive services; or refuse to allow transgender or gender non-conforming youth to express their gender through their clothing, hairstyle, or other accessories. If necessary, facilities must make an exception to their dress codes to allow transgender youth to wear clothing that fits with their gender identity.¹⁷



Case Spotlight: *Doe v. Bell*

In 2003, a New York court found that a boy's group home was required to make an exception in its dress code policy and allow the plaintiff, a transgender girl, to wear skirts and dresses.¹⁸ The court was particularly concerned with preventing the significant emotional distress the plaintiff experienced when she was prohibited from wearing feminine attire. The court explained: "The evidence before the Court establishes that...Jean Doe experiences significant emotional distress if denied the right to wear...feminine clothing. Indeed, the treatment she has received for her GID calls for her to wear feminine clothing... Granting her an exemption from the dress policy avoids this psychological distress."¹⁹

Group Care Facilities are Prohibited from Intimidating or Coercing Youth into Adopting Religious Practices or Requiring Youth to Participate in Religious Programming

Transgender and gender non-conforming youth have the same rights as other young people to have their religious beliefs respected while in state custody.²⁰ Facility staff members are prohibited from proselytizing or otherwise intimidating or coercing youth into adopting any particular religious practices or beliefs.²¹ In addition, transgender and gender non-conforming youth in group care should not be forced to hide their identities because of religious objections of facility staff, or be required to participate in religious activities that condemn same-sex attraction or being transgender. The beliefs or values of staff members—even if religiously based—do not override the rights of young people in state care.



I was not supported when I came out as transgender to the workers at my group home. Their religious beliefs got in the way and they weren't shy about letting me know they didn't approve of me. While they told me I was free to identify as I pleased, they said I would have to go to their church, wear only boys' clothes, and they would not let me talk freely about who I was because it wasn't part of their beliefs. I was often punished just because I didn't conform to how they wanted me to be. One time, I was grounded for two weeks for wearing eyeliner to school.²²



—KIRA, A TRANSGENDER YOUNG WOMAN

Group Care Facilities Must Not Treat Transgender and Gender Non-Conforming Youth as “Sex Offenders”

The law requires group care facilities to provide adequate due process protections before classifying a youth as a “sex offender,” such as a hearing, an evaluation by a qualified mental health professional, and a chance for the youth to appeal. Facilities should never treat transgender and gender non-conforming youth as sex offenders, house them with youth accused of sex offenses, or send them to sex offender treatment programs solely on account of their gender identity or expression. These practices are both discriminatory and extremely harmful to the youth, and can expose a facility to liability.²³

ENDNOTES

¹ See *R.G. v. Koller*, 415 F. Supp.2d 1129, 1157 (D. Haw. 2006) (finding facility violated LGBT plaintiffs' due process rights by allowing pervasive verbal, physical, and sexual abuse to persist); *Alexander S. v. Boyd*, 876 F. Supp. 773, 782 (D.S.C. 1995) (noting state's child detention policy requires protecting the emotional, mental, and physical welfare of children in custody), *aff'd in part and rev'd in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997); *Hernandez ex rel. Hernandez v. Texas Department of Protective and Regulatory Services*, 380 F.3d 872, 880 (5th Cir. 2004) (explaining based on "special relationship" between foster children and the state, foster children have clearly established right to personal security and safe living arrangements); *B.H. v. Johnson*, 715 F. Supp. 1387, 1395 (N.D. Ill. 1989) (explaining children in state custody also have substantive due process rights to protect their emotional well-being).

² See, e.g., *R.G.*, 415 F. Supp.2d at 1156 (finding placing vulnerable transgender girl in unit with aggressive boys amounted to deliberate indifference); *A.M. v. Luzerne*, 372 F.3d 572, 580-81 (3rd Cir. 2004) (finding sufficient evidence individuals were deliberately indifferent to the substantial risk of harm to thirteen-year old boy with mental illness who was placed in general population).

³ Appropriate classification is particularly important for the physical and emotional safety of transgender youth. In *R.G.*, the facility originally placed the transgender plaintiff in the girls' unit. Because of physical plant repairs, and over the medical staff's objections, the facility transferred her to the general boys' unit where she endured physical and sexual assaults. *R.G.*, 415 F.Supp.2d at 1144. The defendants' own experts submitted declarations stating that in their expert opinion, they believed that male to female transgender youth, like the plaintiff, were "better off ... with the girls than anywhere else at the [facility] and that this placement kept them physically and psychologically safe." *Id.* at 1145; see also *Alexander S.*, 876 F. Supp. at 787 (discussing how facilities must have system for screening and separating aggressive juveniles from vulnerable juveniles).

⁴ See *Camp v. Gregory*, 67 F.3d 1286, 1294 (7th Cir. 1995).

⁵ See complaint at 6, *R.G. v. Koller*, No. 05-566 JMS/LEK (D. Haw. filed Sept. 1, 2005).

⁶ *R.G.*, 415 F.Supp.2d 1129.

⁷ *R.G.*, 415 F.Supp.2d at 1155-56.

⁸ Juvenile detention or correctional facilities should not place youth in conditions that are unreasonably restrictive or amount to punishment, or that stigmatize or humiliate youth as part of their treatment. With the understanding that some restrictions of liberty may be constitutional, a court will look at whether a particular restriction is "reasonably related" to a legitimate governmental interest to determine if there is a violation. If it is not, it may be inferred that the purpose of the restriction is punishment. *Bell v. Wolfish*, 441 U.S. 520, 539 (1979); see also *Milonas v. Williams*, 691 F.2d 931, 942 n.10 (10th Cir. 1982) ("Any institutional rules that amount to punishment of those involuntarily confined ... are violative of the due process clause per se."); *R.G.*, 415 F.Supp.2d at 1154 ("After examining expert opinions and case law regarding the use of isolation on children, the court concludes that the defendants' use of isolation was not within the range of acceptable professional practices and constitutes punishment in violation of the plaintiffs' Due Process Rights.").

⁹ *R.G.*, 415 F.Supp.2d at 1155-56 ("The likely perception by teenagers that isolation is imposed as punishment for being LGBT only compounds the harm.").

¹⁰ See *Youngberg v. Romeo*, 457 U.S. 307 (1982); *Jackson v. Johnson*, 118 F.Supp.2d 278, 289 (N.D.N.Y. 2000) (intentional delay in provision or denial of medical care may demonstrate claim of deliberate indifference); *Alexander S.*, 876 F.Supp. at 788 (D.S.C. 1995) (stating that incarcerated youth have right to adequate healthcare); *K.H. ex rel. Murphy v. Morgan*, 914 F.2d at 851 (explaining that the Constitution requires state officials to take steps to prevent children in state institutions from deteriorating physically or psychologically).

¹¹ Child welfare and juvenile justice professionals must provide some form of appropriate treatment for transgender youth diagnosed with Gender Identity Disorder (GID). Even under the more restrictive minimally adequate medical care standard applicable to adult prisoners, courts have held that GID constitutes a "serious medical need." Therefore, deliberately denying access to transgender-related health care for prisoners amounts to cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution. See, e.g., *Phillips v. Michigan Dep't. of Corr.*, 731 F.Supp. 792 (W.D. Mich. 1990) (holding transgender inmate had "serious medical need" and ordering correctional officials to provide her with estrogen therapy); *Meriwether v. Faulkner*, 821 F.2d 408, 413 (7th Cir. 1987) (holding that "[t]here is no reason to treat [GID] differently from any other psychiatric disorder"); *Kosilek v. Malone*, 221 F.Supp.2d 156 (Mass. Dist. Ct. 2001).

¹² See complaint at 2-3, 6, *Rodriguez v. Johnson*, No. 06CV00214 (S.D.N.Y. filed Jan. 11, 2006) (on file with author).

¹³ *Id.*

¹⁴ Settlement Agreement, *Rodriguez v. Johnson*, No. 06CV00214 (S.D.N.Y. settled Nov. 13, 2006) (on file with author).

¹⁵ See *Henkle v. Gregory*, 50 F. Supp. 2d 1067 (D. Nev. 2001) (allowing claims under First Amendment based on demands by school officials that student keep his sexual orientation to himself).

¹⁶ See, e.g., *Doe v. Yunits*, 2000 WL 33162199, at *4, *6-7 (Mass. Super. 2000), *aff'd sub nom. Doe v. Brockton Sch. Comm.*, 2000 WL 33342399 (Mass. App. Ct. 2000) (holding transgender girl has First Amendment right to wear clothing consistent with her gender identity).

¹⁷ See *Doe v. Bell*, 754 N.Y.S.2d 846, 853-56 (N.Y. Sup. Ct. 2003) (recognizing foster care facility's obligations to act in non-discriminatory manner and provide transgender girl with reasonable accommodation to dress code to allow her to wear skirts and dresses).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See *Canell v. Lightner*, 143 F.3d 1210, 1214 (9th Cir. 1998) (noting that practice of condoning or failing to prevent known proselytizing or religious indoctrination by prison staff would violate the Establishment Clause if plaintiff could make requisite factual showing).

²¹ See *R.G.*, 415 F.Supp.2d at 1160-61 (expressing concern facility staff members promoted anti-LGBT religious teachings to LGBT youth).

²² NCLR, personal interview with transgender youth (Apr. 12, 2006) (on file with author).

²³ In the adult context, courts have found the classification of an inmate as a "sex offender" has such stigmatizing consequences that unless the inmate has a sexual offense history, additional requirements must be met before this classification can take place. See *Neal v. Shimoda*, 131 F.3d 818, 830 (9th Cir. 1997) ("We can hardly conceive of a state's action bearing more 'stigmatizing consequences' than the labeling of a prison inmate as a sex offender."). Youth are entitled to greater protections than adult inmates, and branding a juvenile with a sex offender label clearly would have the same, if not an even greater, stigmatizing effect.

CHAPTER FOUR:

**BEST PRACTICES FOR WORKING WITH TRANSGENDER
AND GENDER NON-CONFORMING YOUTH**

CHAPTER FOUR: BEST PRACTICES FOR WORKING WITH TRANSGENDER AND GENDER NON-CONFORMING YOUTH

When transgender or gender non-conforming youth arrive at group care facilities, staff members are often unsure of how to provide these youth with the respectful and supportive services they need, and may unwittingly subject them to situations that are harmful or violate their legal rights. This chapter explores nine common problems transgender and gender non-conforming youth face in group care facilities and provides easy-to-implement approaches to address and prevent each of these problems. In addition, it identifies specific best practices that will help facility staff members to respond to the safety, programmatic, and health care needs of transgender and gender non-conforming youth in an appropriate and effective manner. Facility administrators may also find this chapter helpful for developing comprehensive policy and practice guidelines for serving transgender and gender non-conforming youth in their facility.



At my current group home, the staff understand and work with me. When I came here from juvenile hall and I didn't have the right clothes, they made sure that I got some. Here I can get my hair done how I want it to be done. They even helped me change my name at school and they have my new name listed on the board at the house. Staff said they can take us to Gay Prom or the Pride parade if we want. I don't feel so alone here. Here I feel normal.¹



—MIMI, A TRANSGENDER YOUNG WOMAN

Acknowledging, Respecting, and Supporting a Youth's Gender Identity and Expression

Problem: Failure to respect and support a youth's gender identity or expression

Transgender and gender non-conforming youth in group care facilities often face resistance from staff when they express their core gender through their clothing, mannerisms, or accessories, or when they ask staff members to call them by a different name and pronoun than what is noted in their file. When a facility prohibits a transgender youth from expressing his or her gender, calls a youth by the wrong name and pronoun, or confiscates a youth's clothing items, this can cause a youth significant distress, making it difficult for him or her to benefit from programs, and may compel the youth to run away.

Solution: Acknowledge, respect, and support transgender and gender non-conforming youth by referring to them with their preferred name and pronoun and allowing them to express their core gender through clothing, hairstyles, and mannerisms.

The key to providing appropriate services to transgender and gender non-conforming youth in group care facilities is to acknowledge, respect, and support a youth's gender identity and expression. Transgender youth, like all people, communicate their gender identity through their clothing, hairstyles, mannerisms, and name and pronoun—all of which are expressions of a core aspect of themselves. Respect and support of gender identity and expression are essential for transgender and gender non-conforming youth to develop into healthy adults.

BEST PRACTICE:

REFER TO YOUTH BY THEIR PREFERRED NAME AND PRONOUN

All group care facility staff members should call transgender youth by the name and pronoun that the youth asks them to use, even if this is different from what is listed in the youth's file. When staff members address transgender youth by their preferred name and pronoun, it demonstrates the facility's commitment to making transgender youth feel accepted and understood. In addition, when adults in positions of authority respect and support transgender youth in this way, they set a positive example for the other youth in the facility. This encourages youth to respect their transgender peers, which helps to create a safer environment.

- If a transgender youth identifies as a girl, staff members should refer to her using the pronoun “she” and the name she uses to identify herself rather than “he” and the name she was given at birth, unless the youth requests otherwise.
- If a transgender youth identifies as a boy, staff members should refer to him using the pronoun “he” and the name he uses to identify himself, rather than the name he was given at birth, unless the youth requests otherwise.
- Staff should respect that some youth may not identify as male or female and may prefer using pronouns other than “he” or “she.”²
- Staff should actively encourage other youth to refer to transgender youth by their preferred name and pronoun.
- Staff should never call a transgender youth “he/she” or “it.”
- While formal written documents about a transgender youth may need to include a reference to the youth's legal name, these documents should use the youth's preferred name and pronoun throughout.
- If a facility makes identification documents for youth, the documents should include a youth's preferred name even if that is not the youth's legal name.

BEST PRACTICE:

ALLOW YOUTH TO EXPRESS THEIR GENDER IDENTITY THROUGH CLOTHING, HAIRSTYLE, AND ACCESSORIES

Group care facilities should allow transgender and gender non-conforming youth to dress, accessorize, and otherwise physically present themselves in a manner that matches the youth's gender identity. Staff of group care facilities should not question, ridicule or punish

transgender or gender non-conforming youth for expressing their gender identity or for expressing their gender in a non-stereotypical manner.

- Group care facilities should allow transgender girls to wear the same kinds of clothing and accessories that non-transgender girls in the facility or agency are allowed to wear and should allow transgender boys to wear the same kinds of clothing and accessories that non-transgender boys are allowed to wear. Where possible, facilities should consider adopting gender-neutral rules for clothing and grooming.
- Staff members should not force youth to wear clothing or other items associated with their birth sex.
- Group care facilities should provide youth with or allow youth to buy clothing, including bras, shorts, and underwear, that match the youth's gender identity.
- Transgender and gender non-conforming youth should be permitted to express their gender identity through their mannerisms and behaviors. Facility staff should not require youth to conform their behaviors, interests, or mannerisms to gender stereotypes.
- Staff members should not insist that transgender girls have short or male haircuts or that transgender boys have long or feminine haircuts. Instead, facilities should permit these youth to wear and style their hair in accordance with their core gender.

BEST PRACTICE:

TREAT INFORMATION ABOUT A YOUTH'S GENDER IDENTITY AS CONFIDENTIAL TO ENSURE PRIVACY

Staff should respect the privacy of transgender and gender non-conforming youth by treating information about a youth's gender identity as confidential. While this information may be relevant for specific reasons, such as when staff members are developing and implementing a youth's case plan, making decisions about placement, or providing health or mental health services, information about a youth's gender identity is uniquely sensitive and should be treated as such. Because transgender youth still face misunderstanding and stigmatization from their peers and, sometimes, from adult caregivers, it is essential that group care facilities acknowledge, respect, and support a transgender youth's need for privacy and confidentiality in order to prevent unnecessary stigmatization, harassment, discrimination, and violence.

- All staff members working with youth should understand the legal requirements in their jurisdiction regarding confidentiality and disclosure laws for system-involved youth. In general, information regarding a youth under the jurisdiction of the juvenile court—in both the child welfare and juvenile justice systems—is confidential; this includes information about a youth's gender identity.
- Facility staff should only share information about a youth's transgender status with outside agencies in situations where disclosure is required by law or necessary to achieve a specific benefit for the youth. Disclosure should not occur without first talking with the youth and obtaining his or her consent.

Making Appropriate Individualized Placement and Classification Decisions for Transgender Youth

Problem: Gender inappropriate placements

Many transgender youth experience emotional distress and are at risk of abuse when placed in facilities according to their assigned birth sex. Because most group care facilities are segregated by sex, almost all transgender and gender non-conforming youth in group care are living in facilities that house either boys or girls, or where boys and girls are housed on separate units or in separate buildings. When facilities encounter transgender youth, most often they place these youth according to their assigned birth sex rather than their gender identity, without considering other more appropriate options. Placing transgender youth with youth of the same assigned birth sex without doing an individualized analysis of the transgender youth's gender identity and related needs in this regard, can cause serious harm to the youth's well-being, create unnecessary safety risks, and may violate non-discrimination laws. In addition, once improperly placed, youth are frequently required to conform to gender norms that are inappropriate for them, which increase their levels of stress and discomfort.

Solution: Provide individualized placement and classification assessments for transgender youth that recognize the youth's gender identity and ensures emotional and physical safety.

Group care facilities should approach placement and classification decisions for transgender youth by focusing on how the facility can best protect and support a transgender youth's emotional and physical well-being, rather than assigning transgender youth to the boys or girls units strictly according to their assigned birth sex.

BEST PRACTICE:

MAKE PLACEMENT AND CLASSIFICATION DECISIONS FOR TRANSGENDER AND GENDER NON-CONFORMING YOUTH BASED ON AN INDIVIDUALIZED ASSESSMENT

Group care facilities should *a/ways* complete an individualized assessment prior to placing or classifying a transgender youth. The first step in this process is to acknowledge and respect the gender identity of the youth. While staff should look to the facility's medical staff and administrators for placement recommendations that will best protect a youth from harm, staff should also solicit input from the youth and prioritize the youth's evaluation of his or her safety. Staff should also consider recommendations from a youth's mental health provider regarding appropriate housing or classification for the youth and how best to meet the youth's privacy needs. Throughout the process, staff members should keep in mind that their overarching responsibility is to determine what placement will best support a transgender youth's emotional and physical well-being. In recognition of the importance of appropriately placing and classifying transgender youth, some group care facilities have established specialized committees made up of intake and medical staff, administrators, and individuals with expertise on transgender youth to help determine appropriate placements for transgender youth.

- In most cases, it will be appropriate for group care facilities to house a transgender youth according to his or her gender identity, not the youth’s birth sex, and if necessary, make accommodations to ensure privacy by providing a single room for sleeping.
- Another option is for a facility to place a transgender youth in a mixed-gender unit or program. This type of placement may reduce a transgender youth’s vulnerability to violence and harassment and may eliminate other difficulties associated with gender-segregated placements.
- In some cases, a transgender youth may be emotionally and physically safer in a unit with youth of their assigned birth sex. This is often the case for transgender boys because of the high level of violence in some boys’ facilities and the risk of physical and sexual assault that a transgender boy could face if the other boys find out he was not born male. In these situations, it is appropriate for a group care facility to place a transgender youth according to his or her birth sex, but it is essential that the youth’s core gender is acknowledged and respected by the staff and youth in such a placement.

When transgender youth are placed in facilities or units that do not match their gender identity—by court order or after a determination that such placement is safer for the youth—it is vital that the facility understands the youth’s safety risks and their legal responsibility to keep the youth emotionally and physically safe and respect the youth’s gender identity.



For nearly eight years the practice at [the Hawaii Youth Correctional Facility (HYCF)] was to house all male-to-female transgender wards with the other girls rather than with the boys ... It is my belief that any male-to-female transgender youth at HYCF should be housed with the other girls. Such a placement increases the likelihood of keeping the child physically safe ... As an Adolescent Medicine and Pediatric Physician who is concerned about the development of youth, I am concerned about the effects of being placed based on anatomy rather than gender identity. There is significant psychological harm to one who identifies as male or female and who is then told by the ‘system,’ that he or she is, in fact, the other gender. Such a practice goes against the prevailing recommendations of pediatrics, psychology, social workers, and other youth-serving professionals that individuals should be treated in accordance with their identified gender.³



**—DR. ROBERT BIDWELL, PEDIATRICIAN,
HAWAII YOUTH CORRECTIONAL FACILITY**

Protecting Transgender and Gender Non-Conforming Youth from Physical and Emotional Abuse

Problem: Verbal harassment, threats, violence, and isolation

For transgender and gender non-conforming youth, group care facilities are often scary, unsafe, and in some instances, completely unlivable situations. Name-calling, ridicule, and overt hostility are regularly an accepted part of facility culture. Left unchecked, these behaviors and attitudes escalate and can lead to even more serious and harmful harassment and violence—at the hands of other youth as well as facility staff.

Unfortunately, when transgender and gender non-conforming youth inform staff of harassment or violence, too often they receive little or no help. Some facilities have responded to complaints of abuse by moving the victimized youth to another, often more restrictive facility or by isolating the youth, rather than addressing the hostile environment that fostered the abuse or appropriately handling the harasser. Isolating or segregating transgender and gender non-conforming youth reinforces the notion that these youth are bad or at fault for the harassment directed at them. Further, youth in locked facilities who are isolated often cannot access education, training, recreation, employment, and other support services that are available to youth in the general population.

Solution: Appropriately respond to harassment, provide diversity trainings for youth in the facility, and institute practices that create a supportive and respectful environment for transgender and gender non-conforming youth.

“ I endured...verbal harassment nearly every day. When we were in the common area watching television, the boys would touch and rub my legs without my permission...They would say things like, ‘why don’t you touch this?’ and threateningly say ‘I am going to touch you.’ On several occasions, they even masturbated in front of me. Other times they would come up from behind, grab my waist and rub up against my buttocks. [Staff] were always present when these things were happening, but usually ignored it or failed to pay attention. In some instances [staff] heard what was being said and laughed or encouraged the boys’ conduct in some other way.⁴ ”

–**CYRYNA**, A TRANSGENDER YOUNG WOMAN
WHO WAS INCARCERATED IN A BOYS’ FACILITY

No matter where a facility houses a transgender or gender non-conforming youth, it is vital that the facility understands the youth’s safety risks and the staff’s legal responsibility to keep youth emotionally and physically safe. Facilities should work to create a climate of non-violence and respect for all youth that will allow these institutions to safely incorporate transgender and gender non-conforming youth into their general programs.

BEST PRACTICE:***PROMPTLY AND APPROPRIATELY RESPOND TO ALL GENDER-BASED INCIDENTS OF HARASSMENT AND ABUSE***

Group care facilities should not permit disrespect or intolerance of any kind among youth or staff and should immediately respond to such incidents. If a staff member sees that a transgender or gender non-conforming youth is being subjected to harassment or violence at the hands of other youth or staff, the staff member must take appropriate actions to stop the incident and then address the underlying issue.

- Staff members should promptly intervene in all incidents of verbal and physical harassment or demeaning behaviors that target transgender or gender non-conforming youth, explaining that the conduct is not tolerated in that facility.
- Staff members should report repeated or serious incidents to administrators who should investigate promptly and respond as necessary according to established procedures for addressing harassment and abuse in the facility.
- Staff should never ignore gender-related abuse or tell youth that they should expect to be harassed because they are gender non-conforming. Similarly, it is inappropriate to suggest to youth that they are inviting harassment or violence by dressing or behaving in a manner inconsistent with their birth sex.

By responding quickly and appropriately to these incidents, staff members reinforce the principle that every youth is entitled to respect. This can help prevent verbal harassment from escalating into physical or sexual violence.

BEST PRACTICE:***PROVIDE A SYSTEM FOR REPORTING GENDER-BASED HARASSMENT OR ABUSE AND PROMPTLY AND APPROPRIATELY RESPOND TO ALL VERBAL OR WRITTEN COMPLAINTS***

Group care facilities should have a mechanism for residents to report threats and incidents of verbal, physical, and sexual abuse. This reporting system should be confidential, private, and easily accessible. In addition, facilities should explain to all youth how to report abuse and how complaints are handled.

- Staff and administrators should complete proper and thorough investigations of all complaints of gender-based violence or threats as required under facility policy and should never minimize or ignore reports of abuse. If the complaint is substantiated, staff should respond to the aggressor appropriately. The type of response should depend on the severity of the incident and whether the aggressor has engaged in repeated incidents of harassment or violence against this youth or other transgender or gender non-conforming youth, and should be similar in seriousness to actions used in response to other incidents of harassment or violence.

- Group care facilities should take prompt disciplinary action against any staff member who engages in harassing, abusive, or discriminatory behavior toward a transgender or gender non-conforming youth or who fails to respond appropriately to an incident of abuse that he or she witnessed or was informed about.

BEST PRACTICE:

FOSTER A CLIMATE OF RESPECT TO PROTECT TRANSGENDER AND GENDER NON-CONFORMING YOUTH FROM HARASSMENT OR ABUSE, WITHOUT RESORTING TO ISOLATION

Although group care facilities have a legal responsibility to protect transgender and gender non-conforming youth from abuse, simply isolating a transgender or gender non-conforming youth or moving the youth to a more secure unit in response to a youth's complaint of harassment or assault is not an appropriate or legally sound approach. Instead, facility staff members need to address the harassing behaviors of the aggressor or aggressors and if necessary, segregate or move these youth to another unit or facility. Overall, facilities should look to create a climate of non-violence and respect for all residents in order to prevent harassment and abuse and allow these institutions to keep transgender and gender non-conforming youth safe in their general programs.

- Group care facilities should adopt and enforce policies that prohibit discrimination and harassment based on race, gender, religion, disability, national origin, sexual orientation, gender identity, and other differences.

For further discussion of policy development, see Chapter 5.

- All staff members should model and communicate the message that everyone is entitled to respect and dignity and that disrespect and intolerance of any kind is not permitted.
- During orientation and at other appropriate times, youth should be informed about the facility's anti-harassment policy, including what types of behaviors are prohibited, what the consequences are for violating the policy, and what they can do if they are harassed or abused by staff members or other youth.
- Staff members should closely supervise youth at all times and maximize opportunities for positive youth/staff interaction.
- Group care facilities should provide a range of supportive and programmatic services that meet the needs of individual youth and keep them engaged in meaningful activities.

BEST PRACTICE:***EDUCATE YOUTH ABOUT DIFFERENCES AND THE HARMS OF HARASSMENT***

Group care facilities should educate youth about diversity, respecting differences, and understanding the harmful effects of harassing others. Using educational programs that teach youth about these topics can help residents to understand that tolerance and acceptance is key to group living. These programs can be incorporated into school-based instruction in facilities that have their own school programs or they can be integrated into general group discussions or meetings in facilities without in-house schools. Some examples of programming that can foster a safe and respectful environment for all youth include:

- Creating a video for youth to watch during orientation on the diverse population of young people the facility serves and the expectation that they treat other youth with respect.
- Showing age-appropriate movies or videos where young people with different backgrounds talk about their experiences of harassment and discrimination and how it has affected them.
- Developing activities, educational programs, and discussions that celebrate the history, achievements, and struggles of a community that is commemorated during a particular month (e.g., Black History Month, Asian-American History Month, Women’s History Month, American Indian/Native Alaskan Heritage Month, LGBT History Month, Hispanic Heritage Month, etc.).
- Having books, movies, and magazines in facility common areas that include positive images of young people of different backgrounds and that foster acceptance and understanding of different communities and identities.

Supporting Transgender and Gender Non-Conforming Youth Rather Than Sexualizing Their Gender Identity or Expression

Problem: Sexualizing Non-conforming Gender Identity or Expression

By mischaracterizing gender non-conforming expressions as sexual in nature and therefore as “inappropriate sexual behavior,” some group care facilities have prevented transgender and gender non-conforming youth from expressing their core gender or have tried to change a youth’s gender identity as part of treatment goals. A case plan that prohibits a youth from expressing his or her gender identity or punishes a youth for doing so will likely increase the distress the youth experiences, undermine the youth’s emotional stability, and interfere with the youth’s care, treatment, and rehabilitation. It may also violate the youth’s legal rights.

Solution: Do not sexualize gender non-conforming behaviors or attempt to change a youth’s gender identity or expression as part of treatment.

Facility staff should understand that a youth who expresses his or her gender identity is not engaged in sexual misconduct. For example, when a transgender girl behaves in a feminine manner or wears feminine clothing, this is an expression of her core gender, and staff should not prevent her from doing so by characterizing it as “inappropriate sexual behavior.” The same is true of a transgender boy who dresses or behaves in a masculine manner.

BEST PRACTICE:

ACCEPT A YOUTH’S GENDER IDENTITY, RATHER THAN ATTEMPTING TO CHANGE IT OR PUNISHING A YOUTH FOR HIS OR HER GENDER EXPRESSION

Facilities should not try to change a youth’s gender identity or expression because one or more staff members views a youth’s gender expression as “inappropriate sexual behavior.” Facility policies and practices, rather than the personal views of individual staff members, should determine what kind of care youth receive.

- Facility staff should never punish transgender and gender non-conforming youth for expressing their core gender or tell youth they must wait until they are no longer at the facility to dress or behave in gender non-conforming ways.
- Group care facilities should never include as part of case plans or treatment goals that transgender or gender non-conforming youth should change their gender identity or must conform to gender stereotypes.
- When a youth’s treatment plan or goals are developed by outside contractors, group care facilities should carefully review the youth’s file to ensure that the youth’s gender expression is not labeled “inappropriate sexual behavior.”

Ensuring Transgender and Gender Non-Conforming Youth Are Not Labeled “Sexually Abusive” Because of their Non-Conforming Gender Identity or Expression

Problem: Inappropriate Labeling as Sexual Predators

Some facilities have treated transgender or gender non-conforming youth as if they were a sexual threat to other youth and segregated them or inappropriately labeled these young people as “sex offenders”—even though the youth had not engaged in any acts that could be categorized as sexually abusive or predatory. This unfair punishment and stigmatization can be severely traumatizing and may require these youth to carry a sex offender label with them for the rest of their lives.

Solution: Do not label or treat transgender and gender non-conforming youth as “sexually abusive” merely because of their gender identity or expression.

Being transgender or gender non-conforming does not make a person a sexual predator. Transgender and gender non-conforming youth are no more likely to have psychological

characteristics that would make them less capable of controlling their sexual urges than gender conforming youth. In fact, studies indicate that transgender youth are at higher risk of being sexually abused in group care facilities.⁵

BEST PRACTICE:

DO NOT PLACE TRANSGENDER AND GENDER NON-CONFORMING YOUTH IN “SEX-OFFENDER” TREATMENT PROGRAMS

Transgender and gender non-conforming youth as a group do not present a danger to other youth because of their gender difference or their sexual orientation.

- Facilities should not isolate or segregate these youth based on the misconception that transgender and gender non-conforming youth are sexual predators.
- Unless required to do so by a court, facilities should not classify or label transgender or gender non-conforming youth as sex offenders.
- Similarly, unless required to do so by a court, facilities should not require transgender and gender non-conforming youth to participate in programs focused on rehabilitating youth who engage in sexually abusive behaviors.

Protecting the Privacy, Dignity, and Safety of Transgender and Gender Non-Conforming Youth in Bathrooms, Showers, and During Searches

Problem: Lack of privacy and safety in bathrooms, showers, and during searches.

Transgender and gender non-conforming youth are at risk of harassment and assault when using a bathroom, shower, or in other situations where they are required to undress in front of others with a different gender identity. This risk is heightened in group care facilities that provide little or no privacy for changing clothes and showering, such as when facilities require all youth housed in a particular unit to shower in each others' presence. In addition to physical risks, for some youth this is so emotionally traumatic that the youth avoids using the bathroom or shower altogether, which can cause severe discomfort and medical and hygiene problems.

In some secure facilities, transgender and gender non-conforming youth have been repeatedly strip-searched for non-legitimate reasons, such as to humiliate the youth or to show other staff members the youth's body. Often these strip searches have occurred in front of other youth, adding to the humiliation and exposing the youth to risk of further abuse.

Solution: Ensure the privacy, safety, and dignity of transgender and gender non-conforming youth in bathrooms, showers, when changing clothes, and during physical searches.

Facilities must ensure privacy, safety, and dignity for transgender and gender non-conforming youth in all situations involving nudity, including physical searches. Transgender youth should not be required to use the bathroom, shower, or undress in front of youth with a different gender identity.

“ I refused to use the group shower with the 13 boys in my unit because I was afraid they would assault me. [The facility] wouldn’t let me use it by myself so I just didn’t shower until the judge ordered them to let me shower alone.⁶ ”

–**MARIAH**, A TRANSGENDER YOUNG WOMAN WHO WAS DETAINED IN A BOY’S DETENTION FACILITY

BEST PRACTICE:

PROVIDE TRANSGENDER AND GENDER NON-CONFORMING YOUTH WITH SAFE ACCESS TO BATHROOMS

In order to protect transgender youth from physical and emotional harm, respect their core gender, and avoid liability, all group care facilities must provide transgender youth with safe access to bathrooms. Facilities should never force transgender youth to use multi-user bathrooms that do not match their core gender.

- Generally, group care facilities should allow transgender youth to use the bathroom that matches their gender identity, without any restrictions.
- If a transgender or gender non-conforming youth feels vulnerable to abuse or harassment in either a girls’ or boys’ bathroom, or if a transgender youth is housed in a single-sex facility that does not correspond with the youth’s gender identity, the facility should permit the youth to access a single-user bathroom, if available, or allow the youth to use the multi-user bathroom in private. However, facilities should not require a transgender youth to use a single-user bathroom if he or she does not wish to do so.
- If necessary to ensure privacy and safety, a transgender or gender non-conforming youth should be permitted to use a bathroom that is usually reserved for staff.

BEST PRACTICE:

PROVIDE TRANSGENDER AND GENDER NON-CONFORMING YOUTH WITH PRIVACY AND SAFETY IN SHOWER FACILITIES

To avoid subjecting a transgender youth to unnecessary risk of physical and emotional harm, group care staff should work with the youth to determine the best solution for showering consistent with his or her gender identity and in keeping with safety concerns. Group care facilities should never force transgender youth to use shower facilities that would require them to undress in front of other youth. Appropriate solutions include:

- Allowing a transgender youth to use a single-user shower facility.
- Installing privacy barriers in multi-user showers to create private showering spaces.
- Permitting a transgender youth to use the shower at a different time than other youth.
- Permitting a transgender youth to use a shower otherwise reserved for staff.

BEST PRACTICE:***CONDUCT STRIP SEARCHES OF TRANSGENDER AND GENDER NON-CONFORMING YOUTH IN A RESPECTFUL AND DIGNIFIED MANNER***

While there can be legitimate security-related reasons for staff in secure facilities to strip search youth in certain situations, facilities must conduct these searches in a manner that affords the greatest degree of privacy, safety, and dignity. Strip searches of youth should only be conducted if there is a reasonable suspicion that the youth may be concealing contraband, and then only after approval of a supervisor. Even when conducted in the most respectful manner possible, strip searches are extremely unpleasant and humiliating experiences.

Because their bodies do not match their core gender, transgender youth experience higher levels of discomfort than other youth when required to undress in front of others, and they are at high risk of exploitation during strip searches.

- Searches of transgender youth should always be conducted in private, out of sight of other youth and staff members who are not necessary for the search.
- Transgender youth should be able to choose the gender of the person conducting the search and should have the option of having a second staff member present or of having a nurse or other health professional conduct or be present for the search.
- Staff should receive training on appropriate methods for conducting respectful searches of transgender youth.
- Searches should never be conducted for non-legitimate purposes, such as to examine a youth's genitalia, to punish, demean, or humiliate a youth, or for the amusement of staff members.

Provide Appropriate and Adequate Health Care for Transgender Youth

Problem: Unmet transgender-related health care needs.

Transgender and gender non-conforming youth in group care facilities are often denied supportive counseling, appropriate evaluations, and other medically necessary transgender-related treatments. In some cases, facilities have even refused to fill prescriptions from a transgender youth's treating physician. Transgender youth who are denied appropriate treatment are at risk for serious negative health and social consequences, including depression, suicide attempts, and self-treatment (using street hormones and engaging in other medically unsupervised activities for gender transition). In addition, when a facility fails to meet a transgender youth's medical needs, abruptly stops a transgender youth's hormone treatment, or refuses to provide the youth with other medically necessary care, the facility is at risk of liability for violating the youth's right to adequate medical care.

Solution: Provide transgender and gender non-conforming youth with access to health care providers who are knowledgeable about the medical needs of transgender youth and ensure these youth receive the recommended transgender-related care.

Group care facilities have a legal responsibility to provide adequate medical and mental health care to all youth in their custody. Many transgender and gender non-conforming youth have specific

medical and mental health care needs because their bodies do not match their gender identity. It is essential that group care facilities are capable of identifying when a transgender or gender non-conforming youth may be in need of health services and are knowledgeable about how to help these youth get access to the care they need. While it is not a staff member's responsibility to determine what type of treatment a youth may need, if a youth says they are transgender, is distressed about their gender, or has a prior gender identity disorder (GID) diagnosis, the group care facility should arrange an evaluation with a mental health provider with appropriate expertise in this area. If a transgender or gender non-conforming youth requests it, facilities should also provide supportive counseling either on-site or with local providers.

BEST PRACTICE:

ENSURE THAT TRANSGENDER YOUTH RECEIVE RECOMMENDED MEDICAL TREATMENTS

Transgender youth have highly individualized healthcare needs; what specific medical treatments an individual youth needs, and when they need it, is a decision that can only be made by the youth, the youth's family, and his or her medical providers.

- Group care facilities should provide transgender youth with access to medical providers who have specialized training and competence in the diagnosis and treatment of gender identity disorders as well as expertise in adolescent development. These providers can conduct individualized assessments to determine whether hormone treatment or other forms of care are medically necessary for a particular youth.
- Once a youth has undergone an assessment, group care facilities should make arrangements for the youth to receive the recommended transition-related treatments. Living consistently with one's gender identity is a recognized form of therapeutic treatment and requires facilities to refer to youth by their preferred names and allow them to express their gender through clothing and hairstyle.
- When necessary, staff members should assist a youth in getting consent for treatment from the custodial agency or the court.

BEST PRACTICE:

ENSURE THAT EXISTING TRANSGENDER-RELATED TREATMENT CONTINUES AFTER A YOUTH ARRIVES AT A FACILITY

Some transgender youth arrive at a group care facility already undergoing transgender-related medical treatments. For these youth, group care facilities should look to the youth's treating clinicians for treatment planning and should never abruptly cut off hormone treatment because facility medical staff are unfamiliar with transgender medical care. In order to ensure a youth's treatment is not interrupted:

- Non-secure facilities should continue to bring the youth to his or her health care appointments and assist the youth in getting and taking his or her prescription medications.

- When secure facilities have their own medical staff, a medical staff member should consult with the youth's previous clinicians and continue to provide the youth with all transition-related treatments that are medically necessary. If a secure facility does not have medical staff, or if the staff is not experienced in transgender care, the facility should contract with the youth's prior clinicians or other medical providers who have appropriate knowledge and experience.

For more information about transgender-related medical care, see Chapter 1.

Supporting Transgender and Gender Non-Conforming Youth in Off-Site Educational Programs

Problem: Barriers to a safe and non-discriminatory school environment.

Transgender and gender non-conforming youth often face harassment, abuse, and discrimination at school. Many transgender youth are unable to access safe bathrooms or are disciplined for wearing clothing or accessories that match their core gender. When teachers do not acknowledge, respect, and support a youth's gender identity or if they do not promptly and appropriately respond to harassment and abuse, transgender and gender non-conforming youth are at high risk of dropping out, getting kicked out, or receiving poor grades.

Solution: Work with school administration to ensure that transgender and gender non-conforming youth are safe and supported when attending off-site schools.

When transgender and gender non-conforming youth attend off-site schools, group care facilities have a legal responsibility to respond to any problems these youth experience while at school by working with school administration to ensure safety and support.

BEST PRACTICE:

APPROPRIATELY RESPOND WHEN TRANSGENDER AND GENDER NON-CONFORMING YOUTH ATTENDING OFF-SITE SCHOOLS EXPERIENCE HARASSMENT OR ABUSE

It is essential for transgender and gender non-conforming youth in group care to be able to complete their education in a safe, respectful, and non-discriminatory environment.

- Facility staff members should be familiar with local school non-discrimination laws and policies and the process for making complaints of harassment.
- In order to help prevent potential school problems, group care facilities should meet with a school to discuss the school's responsibility to provide an education free from discrimination and a safe learning environment for all students, prior to enrolling a transgender or gender non-conforming youth.
- Staff should regularly and proactively ask transgender and gender non-conforming youth if they are facing harassment at school; are unable to access appropriate bathrooms, locker rooms, or physical education classes; or are experiencing other issues that are interfering with their schooling, and then assist youth who are having problems by advocating with school officials until the situation is resolved.

- Staff should work with the school to ensure that youth are able to dress and groom in accordance with their gender identity.
- If necessary, staff should assist youth with negotiating with the school about the use of gender-segregated facilities, such as restrooms, locker rooms or showers, ensuring that a transgender youth does not have to use facilities that do not match his or her gender identity.
- Transgender and gender non-conforming youth should be able to participate in physical education classes according to their gender identity. As gym classes and sports teams are often segregated by sex, youth may need assistance from facility staff in negotiating their ability to participate.

Connecting Transgender and Gender Non-Conforming Youth to Supportive Resources, Programs, and Services

Problem: Inability to access supportive community services.

Many transgender and gender non-conforming youth in group care facilities are unable to access supportive services and programs because facilities cut off connections to their networks of support when they enter the facility or fail to introduce them to locally available supportive services or programs. Transgender and gender non-conforming youth may become depressed and isolated if they are unable to access resources and programs to help provide them with support, guidance, and validation.

Solution: Inform transgender and gender non-conforming youth about supportive local and national resources and programs and assist youth in accessing these services.

Many cities have support groups, social programs, and health care centers for transgender people. Transgender young people can get valuable information, support, and guidance by accessing these services. In addition, these services help transgender youth form strong positive community connections which contributes to their healthy adolescent development.

BEST PRACTICE:

HELP TRANSGENDER AND GENDER NON-CONFORMING YOUTH ACCESS SUPPORTIVE PROGRAMS IN THE COMMUNITY, OR BRING THESE SERVICES TO THE YOUTH

Group care facilities should be knowledgeable about local transgender support services and resources and help youth in their care to access these services.

- Facility staff should ensure that the transgender and gender non-conforming youth are aware of local transgender resources and have the necessary transportation and support so they can participate. In secure facilities, this might require bringing these services and programs to the youth.

- Facility staff should be familiar with local non-discrimination laws and help a youth reach a legal advocacy organization if the youth is subject to discrimination outside the facility. Transgender youth may also need legal help or advice to get their name legally changed.

See Appendix B for a list of resources for transgender and gender non-conforming youth.

By following the easy-to-implement approaches and best practices described above, group care facilities will be able to address and prevent many of the common problems transgender and gender non-conforming youth face. In addition, facility staff will be better prepared to respond to the safety, programmatic, and health care needs of transgender and gender non-conforming youth in a manner that is respectful, effective, and legally sound.

ENDNOTES

¹ NCLR, personal interview with transgender youth (May 8, 2006) (on file with author).

² Some examples of alternate pronouns that are gender neutral and preferred by some gender non-conforming youth include: “ze” instead of “he” or “she” and “hir” instead of “his” or “her,” or “they” and “their” used in reference to one person.

³ Declaration of Robert J. Bidwell at ¶¶ 36, 37, 51, & 52, *R.G. v. Koller*, 415 F.Supp.2d 1129 (D. Haw. 2006) (No. 05-566).

⁴ Testimony of Cyryna Pasion, an 18-year-old transgender girl who was sexually harassed and assaulted, and continuously threatened with rape by other wards while incarcerated at the Hawai'i Youth Correctional Facility. National Prison Rape Elimination Commission Hearing, written transcription of oral testimony, at 9-10 (June 1, 2006), *available at* http://www.NPREC.us/Docs/Boston_SurvivorTestimony_Pasion.pdf.

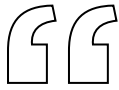
⁵ National Prison Rape Elimination Commission, Report at 148 (June 2009), *available at* <http://www.NCJRS.gov/pdffiles1/226680.pdf>.

⁶ NCLR, personal interview with transgender youth (Feb 28, 2003) (on file with author).

CHAPTER FIVE:

BEST PRACTICES FOR ADMINISTRATORS FOR CHANGING CULTURE, ADOPTING PRACTICE GUIDELINES AND POLICIES, AND TRAINING AND EVALUATING STAFF

CHAPTER FIVE: BEST PRACTICES FOR ADMINISTRATORS FOR CHANGING CULTURE, ADOPTING PRACTICE GUIDELINES AND POLICIES, AND TRAINING AND EVALUATING STAFF



I felt comfortable in my group home because they allowed me the freedom to go through the process of discovering my identity, and never told me I was wrong, or forced me to be somebody I wasn't. We were always taught that hate was wrong, in whatever form it came in. When my beliefs came into conflict with staff members, they didn't push their own agenda. Both the staff and the youth went through diversity training. I was allowed to wear what I felt comfortable in, without questions. When I changed my name, everyone called me by my new name and used the correct pronouns.¹



— **KEVIN**, A TRANSGENDER YOUNG MAN

Administrators can take several steps to ensure the health, welfare, and safety of transgender and gender non-conforming youth in their group care facilities. This chapter provides specific guidance to facility administrators to assist them in providing leadership, developing and implementing policy and practice guidelines, and instituting staff training and evaluation.

Providing Leadership

First, to ensure that transgender and gender non-conforming youth receive appropriate care and treatment, administrators need to provide leadership at their facility on this issue. Administrators should clearly articulate what they expect from staff members and hold staff accountable when transgender or gender non-conforming youth face discrimination or are mistreated. Clear administrative leadership is essential in order to create a culture in which the worth and dignity of every person is respected. Administrators must ensure that all facility staff members—from the director to the line staff—model values of acceptance, fairness, and respect when working with transgender and gender non-conforming youth.

To lead the way in creating and reinforcing this culture, administrators should take these concrete steps, thus modeling the expected approach themselves.

- Call transgender youth by their preferred names and pronouns, and require other staff to do the same.
- Require staff to respond immediately and adequately to all harassment and abuse.

- Use staff meetings and other communication mechanisms to convey to staff the expectation that they are to treat all youth, including transgender and gender non-conforming youth, respectfully and in a fair and non-discriminatory manner.
- Display posters that inform youth the facility is a “hate-free space” and task staff with acquiring LGBT supportive books, magazines, and videos that can be placed in common areas of the facility, such as reading rooms or libraries.
- Regularly engage in dialogues with facility staff and youth about respecting differences and understanding the harms of harassment and bias.

Developing, Adopting, and Posting Written Non-discrimination Policies and Practice Guidelines

To make facility rules and expectations clear, administrators of group care facilities should develop and implement non-discrimination policies and comprehensive practice guidelines that incorporate the best practices detailed in the previous chapter. Policies tell staff what the rules are, and practice guidelines help to reinforce these policies.

NON-DISCRIMINATION POLICIES

Group care facilities, and the child welfare and juvenile justice departments that oversee these facilities, should adopt written policies that prohibit harassment and discrimination on the basis of actual or perceived sexual orientation and gender identity, as well as race, ethnicity, gender,

A SAMPLE NON-DISCRIMINATION AND HARASSMENT POLICY MIGHT READ:

“It shall be the policy of the ABC Group Care Facility to maintain and promote a safe environment for all youth in the facility’s care. All ABC staff, volunteers, and contract providers are prohibited from engaging in any form of discrimination against or harassment of youth on the basis of actual or perceived race, ethnicity, immigration status, national origin, sex, disability, sexual orientation, gender identity, and gender expression. ABC is committed to providing a healthy and accepting setting for all youth placed in its facilities by training staff and educating youth to respect each other. Any discrimination against or harassment of youth, including by other youth, will not be tolerated. The provision of services to lesbian, gay, bisexual, transgender, and gender non-conforming youth in facility programs shall be free of institutional and personal bias and shall be based on the attached practice guidelines and procedures. ABC staff shall recognize and address the individual needs of each youth and shall apply ABC policies and practices fairly to all youth in our facilities. If you have experienced harassment or discrimination in violation of this policy, please file a grievance according to facility policy. All grievances will be reviewed and investigated immediately.”

religion, disability, and other differences. These policies should apply to all employees, volunteers, and contractors who have contact with youth in the facility. Non-discrimination policies should contain written procedures for filing grievances based on violations of the policy, and these procedures should explain how complaints will be investigated and resolved. Facilities should also post their non-discrimination policy in locations where both the staff and youth in the facility can see it and provide youth and staff with copies during orientation. By informing all staff and youth of facility policies, and by providing a clear avenue for youth to file grievances, administrators convey that this is a serious concern and create a specific feedback mechanism for determining whether problems are occurring.

PRACTICE GUIDELINES

In order to further assist staff members in serving transgender and gender non-conforming youth and to provide guidance on what it means to not discriminate under the facility's policy, administrators should also adopt practice guidelines and procedures for the care of transgender and gender non-conforming youth. Written practice guidelines clarify what is the established and expected facility protocol for handling specific situations that arise when working with transgender and gender non-conforming youth. Administrators can use the best practice recommendations described in the previous chapter as a foundation for creating practice guidelines for this population. Facilities should include copies of these practice guidelines in all written handbooks and orientation materials they give to youth entering the facility. They should also include these documents in all handbooks and orientation materials given to new employees, contractors, and volunteers.

See Appendix C for a model policy and practice guidelines for serving youth who are transgender and gender non-conforming (as well as youth who are lesbian, gay, or bisexual).

Providing Training to Staff

Training is an essential step to ensure that staff members understand the requirements of the new policy and guidelines and have the tools to put the guidelines into everyday practice. All staff members and administrators of group care facilities should receive training about transgender and gender non-conforming youth during orientation and as part of continuing education. Administrators should work with facility training staff to obtain or develop a training curriculum that, at a minimum, covers the following topics: 1) the goals and requirements of the facility's non-discrimination policy and practice guidelines regarding transgender and gender non-conforming youth; 2) how to serve transgender and gender non-conforming youth in a respectful, fair, and non-discriminatory manner; and 3) how to recognize, prevent, and respond to harassment and violence against these youth. These trainings should be taught by professional trainers with expertise in issues affecting transgender and gender non-conforming youth, preferably in the state care context. Administrators also should work with trainers to incorporate transgender issues into general trainings for staff members. Trainers can do this by using transgender and gender non-

conforming youth as examples in training scenarios or by including concerns facing transgender and gender non-conforming youth in trainings that cover youth safety, substance abuse, or other facility policies.

Including Adherence to Transgender Policies and Practices in Staff Evaluation Procedures

Administrators should include a way to measure how well staff members follow the facility's adopted policies and practice guidelines in staff evaluation procedures in order to hold staff members accountable. Facilities should inform staff members that this will be part of their evaluation process and that administrators will take into account their adherence to these policies when making determinations related to promotion, disciplinary action, and termination. Staff members who are not treating transgender and gender non-conforming youth appropriately should receive additional training, increased supervision, and any other actions necessary to ensure future compliance with the policy.

Conclusion

Through the leadership of administrators, the development and implementation of policy and practice guidelines, and the provision of training and evaluation, group care facilities can greatly improve outcomes for transgender and gender non-conforming youth. At a minimum, transgender and gender non-conforming youth must be safe and treated in a non-discriminatory manner. Ideally, however, these steps will help group care facilities to establish an institutional culture where all youth are treated with dignity and respect, with a focus on helping youth to grow into healthy and independent adults. Ultimately, that is what all young people need.

ENDNOTES

¹ NCLR, personal interview with transgender youth (May 3, 2006) (on file with author).

APPENDICES

APPENDIX A: COMMON TERMS AND DEFINITIONS

This glossary provides an overview of some common terms used by many transgender and gender non-conforming people and their allies. It is meant to be a general guide. It would be impossible to create a glossary that included every potential word people might use to describe themselves, especially since these terms are always evolving. For that reason, you should refer to any person using the terms and pronouns they prefer.

Androgynous: having or displaying characteristics, feelings, or behaviors that are both feminine and masculine.

Assigned birth sex: the sex, male or female, originally noted on an individual's birth certificate. May also be referred to as "birth sex."

Bisexual: a person who is emotionally, romantically, and sexually attracted to both men and women.

Butch: a term some individuals use to describe their masculine gender identity or expression.

Coming out: the process of disclosing one's sexual orientation or gender identity to others. Coming out is not a discrete event but a lifelong process.

Femme: a term some individuals use to describe their feminine gender identity or expression.

FTM: a person who transitions from female to male, meaning a person who was assigned female at birth, but identifies and lives as a male. Also known as a "transgender man" or "transgender boy."

Gay: a person whose emotional, romantic, and sexual attractions are primarily for individuals of the same sex, typically in reference to men. In some contexts, it is still used as a general term for gay men and lesbians.

Gender expression: a person's expression of their gender identity, including their characteristics and behaviors such as appearance, dress, mannerisms, speech patterns, and social interactions.

Gender identity: a person's internal, deeply felt sense of being male or female, or something other or in-between. Everyone has a gender identity.

Gender Identity Disorder (GID): a diagnosable medical condition in which an individual has a strong and persistent cross-gender identification, which is the desire to be, or the insistence that one is, of the opposite sex, as well as a persistent discomfort about one's assigned birth sex or a sense of inappropriateness in the gender role of that sex. To be diagnosed, the individual must be evidencing clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Gender non-conforming: having or being perceived to have gender characteristics and/or behaviors that do not conform to traditional or societal expectations. Gender non-conforming people may or may not identify as LGBT.

Gender roles: social and cultural beliefs about appropriate male or female behavior.

Genderqueer: a term of self-identification for people who do not identify with the restrictive and binary terms that have traditionally described gender identity (for instance, male or female only).

Hormone Therapy (also Hormone Replacement Therapy, HRT, Hormonal Sex Reassignment): administration of hormones to affect the development of secondary sex characteristics that are consistent with one's gender identity.

Intersex: a term used to refer to an individual born with a reproductive or sexual anatomy that does not conform exclusively to male or female norms in terms of physiological sex (this may include variations of genetics, genital or reproductive structures, or hormones). According to the Intersex Society of North America (ISNA)—an organization that advocates and educates about intersex concerns—about one in every 2,000 children are born intersex.

LGBT: common acronym for lesbian, gay, bisexual, and transgender—persons who despite their differences, are often discriminated against in similar ways. Sometimes written to include Q for questioning and/or queer, I for intersex, A for ally, and/or TS for two-spirit. May also be written as GLBT.

Lesbian: a woman whose emotional, romantic, and sexual attractions are primarily for other women.

MTF: a person who transitions from male to female, meaning a person who was assigned male at birth, but identifies and lives as a female. Also known as a “transgender woman” or “transgender girl.”

Non-discrimination policy: a written policy that explicitly includes sexual orientation and gender identity and that prohibits anti-LGBT harassment and discrimination.

Preferred name: the name an individual prefers to be called. If you are unsure what name to use, ask to clarify what name the individual uses.

Preferred pronoun: the gender pronoun that an individual prefers. If you are unsure what pronoun to use, ask to clarify what pronoun the individual uses.

Queer: a historically derogatory term for a gay man, lesbian, or gender non-conforming person. The term has been widely reclaimed, especially by LGBT youth, as a positive social and political identity. It is sometimes used as an inclusive, or umbrella, term for all LGBT people. Queer is also used as a term of self-identification by people who do not identify with more restrictive, binary terms. Some LGBT community members still find this term offensive.

Questioning: an active process in which a person explores their own sexual orientation and/or gender identity and questions the cultural assumptions that they are heterosexual and/or gender conforming. Many LGBT people go through this process before “coming out.” Not all people who question their identities end up self-identifying as LGBT.

Self-identification: one's own identification of one's gender identity or LGB sexual orientation. Increasingly, LGBT youth are self-identifying during pre-adolescence or early adolescence.

Sex reassignment: medical procedures that change one's body to make it conform to one's gender identity. Contrary to popular belief, there is not one surgery but rather various procedures that a person might undergo, depending on their own medical needs determined with a health care provider.

Sexual orientation: a term describing a person's emotional, romantic, and sexual attraction, whether it is for members of the same sex or a different sex. More appropriate than "sexual preference."

Stud: a term that some masculine women use to describe themselves in regards to their sexual orientation and gender identity. Most prevalent in urban youth-of-color communities. Also known as "ag" or "aggressive."

Transgender: a term that can be used to describe people whose gender expression is non-conforming and/or whose gender identity is different from their assigned sex at birth.

Transition: the time period when a transgender person starts living as the gender they identify as. Often includes a change in style of dress, selection of new name, a request that people use the correct pronoun, and possibly hormone therapy and/or surgery.

Transphobia: fear of, hatred of, aversion to, or discrimination against transgender people or people who are gender non-conforming.

Transsexual: a term for someone whose gender identity is different from their assigned birth sex. Often transsexual people undergo medical treatments to change their physical body to match their innate sense of their gender identity through hormone treatments and/or surgery. Many transsexual people refer to themselves as transgender.

Two-Spirit: an English term that emerged in 1990, out of the third annual inter-tribal Native American/First Nations gay and lesbian conference to describe Native Americans who fulfill one of many mixed gender roles found traditionally among Native Americans and Canadian First Nations indigenous groups. The mixed gender roles encompassed by the term historically included wearing the clothing and performing the work associated with both men and women.

APPENDIX B: LIST OF RESOURCES

Support Organizations for Transgender and Gender Non-Conforming Youth

Advocates for Youth

www.AdvocatesForYouth.org

Advocates for Youth is the only organization that works both in the United States and internationally with a sole focus on adolescent reproductive and sexual health, providing information and peer support to transgender youth. Their website includes listings of resources and articles.

CenterLink

www.LGBTCenters.org

The National Association of LGBT Community Centers' website allows users to search for LGBT community centers in your city or state. Centers are the primary point of contact for people coming out and seeking LGBT health services, community information and referrals.

FIERCE!

www.FierceNYC.org

FIERCE! is a community organizing project for Transgender, Lesbian, Gay, Bisexual, Two Spirit, Queer, and Questioning (TLGBTSQQ) youth of color in New York City.

Gay, Lesbian and Straight Education Network (GLSEN)

www.GLSEN.org

GLSEN, the Gay, Lesbian and Straight Education Network, is the leading national education organization focused on ensuring safe schools for all students. GLSEN envisions a world in which every child learns to respect and accept all people, regardless of sexual orientation or gender identity/expression.

Gay-Straight Alliance Network (GSA Network)

www.GSANetwork.org

GSA Network is a youth-led organization that empowers youth to fight homophobia and transphobia in schools through Gay-Straight Alliances. GSA Network advocates on behalf of transgender and gender non-conforming youth through lobbying, policy advocacy, education programs, and grassroots organizing.

National Youth Advocacy Coalition

www.NYACYouth.org

The National Youth Advocacy Coalition is a capacity-building organization that advocates for and with LGBTQ young people in an effort to end discrimination against these youth and to ensure their physical and emotional well-being.

OutProud

www.OutProud.org

OutProud, the National Coalition for Gay, Lesbian, Bisexual & Transgender Youth, serves the needs of these youth by providing advocacy, information, resources and support.

Survivor Project

www.SurvivorProject.org

The Survivor Project is an organization that is dedicated to addressing the needs of trans and intersex survivors of sexual assault, rape, or domestic violence through caring action, education, and expanding access to resources. Their website includes educational resources, tips for services providers, and survivors' stories.

Youth Guardian Services

www.Youth-Guard.org

Youth Guardian Services is a youth-run organization that provides support services on the Internet to LGBTQ and ally youth.

Support Organizations for Families

Family Acceptance Project

FamilyProject.SFSU.edu

The Family Acceptance Project (FAP) is a community research, intervention, education and policy initiative that studies how family acceptance and rejection affects the health, mental health and well-being of their LGBT children. FAP is developing evidence-based interventions to help ethnically diverse families decrease rejection and increase support of LGBT children and adolescents, decreasing health and mental health risks and promoting their well-being. FAP develops educational materials and resources for families and providers to help families support their LGBT children, and publishes research on LGBT young people and families.

Parents, Families & Friends of Lesbians and Gays (PFLAG) - TNET

www.PFLAG.org

The purpose of this special affiliate of PFLAG is to promote the health and well-being of transgender persons, their families and friends through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights. PFLAG-TNET focuses on support for transgender people and their parents, families, and friends; education on transgender facts and issues; and advocacy for equal rights for the transgender community at local and national levels.

Helplines

GLBT National Help Center

www.GLBTNationalHelpCenter.org

The GLBT National Help Center is dedicated to meeting the needs of this community and those questioning their sexual orientation or gender identity. The hotline offers free and confidential peer-counseling, information and local resources for cities and towns throughout the United States. The hotline offers counsel to callers of all ages about coming out issues, relationship concerns, HIV/AIDS anxiety, safer-sex information and more.

The Trevor Project

www.TheTrevorProject.org

The Trevor Project operates the only nationwide, around-the-clock crisis and suicide prevention helpline for lesbian, gay, bisexual, transgender and questioning youth. The Trevor Helpline can be reached at 866.4.U.TREVOR

Transgender Health Care Resources

Gay and Lesbian Medical Association

www.GLMA.org

Gay and Lesbian Medical Association (GLMA) works to ensure equality in health care for lesbian, gay, bisexual and transgender (LGBT) individuals and health care professionals. GLMA provides information for transgender people on accessing quality health care and hosts a referral network of GLMA members and LGBT-friendly clinicians across the country.

Gender Identity Research and Education Society

www.GIRES.org.uk

The aim of this United Kingdom website is to inform a wide public of the issues surrounding gender identity and transsexualism. It is also a resource for gender variant people and their families, the medical and other professionals that provide their care, health authorities, members of Parliament and other policy makers.

National Coalition for Lesbian, Gay, Bisexual and Transgender Health

www.LGBTHealth.net/Stage

The National Coalition for Lesbian, Gay, Bisexual and Transgender Health is committed to improving the health and well-being of lesbian, gay, bisexual and transgender individuals and communities through public education, coalition building, and advocacy that focuses on research, policy, education and training.

Trans-Health.com

www.Trans-Health.com

Trans-Health is a trans community electronic journal on trans health issues. Trans-Health is a volunteer-run website providing information on health and fitness for trans people.

TransGenderCare

www.TransGenderCare.com

TransGenderCare contains a large archive of health information that Dr. Carl Bushong and associates of the Tampa Stress Center have written and compiled from years of providing medical, psychological, and general health services to the transgender community.

Transgender Health Channel

www.LGBTHealthChannel.com/Transgender/Index.shtml

This website provides an overview of transgender health issues and includes information on health care guidelines and Gender Identity Disorder. The website's content is developed and monitored by physicians.

Vancouver Coastal Health: Transgender Health Program

www.VCH.ca/TransHealth

The Transgender Health Program oversees the development of guidelines for care, with program staff and contracted specialists assisting with review of best practice research and standards developed by other transgender health programs. In addition, this website provides materials for transgender youth and their families explaining transgender medical care and what to expect.

World Professional Association for Transgender Health (WPATH)

www.WPATH.org

WPATH is an international, interdisciplinary organization of professionals from fields of psychiatry, endocrinology, surgery, law, psychology, sociology, and counseling. WPATH publishes the internationally recognized Standards of Care for Gender Identity Disorders, an evolving consensus on best practice in the provision of medical treatments for individuals with Gender Identity Disorder (GID).

Legal and Advocacy Organizations**Advocates for Informed Choice**

www.AICLegal.org

AIC promotes the civil rights of children born with variations of sex anatomy. AIC is the first organization in the country to undertake a coordinated strategy of legal advocacy for the rights of children with intersex conditions or DSDs (disorders of sex development).

American Civil Liberties Union (ACLU) - Lesbian, Gay, Bisexual, and Transgender Project

www.ACLU.org/LGBT-Rights

The ACLU's LGBT Project fights discrimination and moves public opinion through the courts, legislatures and public education across the following issue areas: relationships, youth and schools, parenting, gender identity and expression, and discrimination in employment and housing.

Equity Project

www.EquityProject.org

The Equity Project is an initiative to ensure that lesbian, gay, bisexual and transgender (LGBT) youth in juvenile delinquency courts are treated with dignity, respect, and fairness. The Equity Project examines issues that impact LGBT youth during the entire delinquency process, ranging from arrest through post-disposition.

Gay & Lesbian Advocates & Defenders' Transgender Rights Project

www.GLAD.org

Through the Transgender Rights Project (TRP), Gay and Lesbian Advocates and Defenders puts litigation, legislative, and educational assets to work in a focused way to establish clear legal protections for the transgender community.

Lambda Legal

www.LambdaLegal.org

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

National Center for Lesbian Rights

www.NCLRights.org

NCLR is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. NCLR's Youth Project offers training, resources, and technical assistance to attorneys and advocates who represent LGBTQ youth. NCLR provides free legal information to LGBTQ youth and their families through their toll-free helpline.

Sylvia Rivera Law Project

www.SRLP.org

The Sylvia Rivera Law Project (SRLP) works to guarantee that all people are free to self-determine their gender identity and expression, regardless of income or race, and without facing harassment, discrimination, or violence. SRLP is a collective organization founded on the understanding that gender self-determination is inextricably intertwined with racial, social and economic justice.

The National Center for Transgender Equality

www.TransEquality.org

The National Center for Transgender Equality (NCTE) is a social justice organization dedicated to advancing the equality of transgender people through advocacy, collaboration and empowerment.

The National Gay and Lesbian Task Force

www.TheTaskForce.org/Issues/Transgender

The mission of the National Gay and Lesbian Task Force is to build the grassroots power of the LGBT community by training activists, equipping state and local organizations with the skills needed to organize broad-based campaigns to defeat anti-LGBT referenda and advance pro-LGBT legislation, and building the organizational capacity of the movement.

Peter Cicchino Youth Project

www.UrbanJustice.org

The Peter Cicchino Youth Project assists LGBT young people in New York City with benefits, housing, discrimination, and healthcare issues. Call 1-800-LGBT-LAW to make an appointment or attend a clinic at the Ali Forney Center or Streetworks. Services are administered in English.

The Transgender Law and Policy Institute

www.TransgenderLaw.org

The TLPI brings experts and advocates together to work on law and policy initiatives designed to advance transgender equality. The TLPI provides legal, medical, and social science resources to attorneys and others advocating on behalf of transgender individuals. The TLPI makes freely available litigation, legislative, and education advocacy materials for use by other advocates for transgender people.

The Transgender Law Center

www.TransgenderLawCenter.org

TLC is a civil rights organization that utilizes direct legal services, public policy advocacy, and educational opportunities to advance the rights and safety of transgender youth and adults. TLC connects transgender people and their families to culturally competent legal services, increases acceptance and enforcement of laws and policies that support California's transgender communities, and works to change laws and systems that fail to incorporate the needs and experiences of transgender people. TLC's services are provided in California.

Transgender Legal Defense and Education Fund

www.TransgenderLegal.org

TLDEF is committed to ending discrimination based upon gender identity and expression and to achieving equality for transgender people through public education, test-case litigation, direct legal services, community organizing and public policy efforts. TLDEF's services are provided in New York.

Additional Resources for Group Care Facilities

Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts

Legal Services for Children, National Juvenile Defender Center, National Center for Lesbian Rights, 2009.

Hidden Injustice represents the first effort to examine the experiences of LGBT youth in juvenile courts across the country. The report is based on information collected from 414 surveys and 65 interviews with juvenile justice professionals, including judges, defense attorneys, prosecutors, probation officers, detention staff, and other juvenile justice advocates; focus groups and interviews of 55 youth who possess relevant firsthand experience; and an extensive review of relevant social science and legal research findings. The report contains extensive recommendations directed towards judges, defense attorneys, prosecutors, probation officers, detention facility administrators, policy makers, and advocates. In addition, the report makes eleven core recommendations to enhance the overall capacity of the system to work effectively with LGBT youth.

Download full publication: www.EquityProject.org

To order (free of charge): Order online at <http://www.NCLRights.org/HiddenInjustice>

Locked Up & Out: Lesbian, Gay, Bisexual, & Transgender Youth in Louisiana's Juvenile Justice System

Juvenile Justice Project of Louisiana, Wesley Ware, 2010.

Locked Up & Out shares the experiences of LGBT youth in Louisiana's juvenile justice system, particularly in long-term secure confinement. The report discusses the path LGBT youth often take into the juvenile justice system, including various risk-factors that may indicate LGBT youth are disproportionately represented in secure care. Once inside Louisiana's youth prisons, LGBT youth often face psychological abuse, sexual abuse, isolation, increased barriers to their early release, and other harmful conditions. The report provides recommendations for Louisiana's juvenile justice system, including trainings and policy reform. While focused on the stories of LGBT youth in Louisiana, the report is relevant throughout the country.

Download full publication: <http://JJPL.org>

To order (free of charge): Contact JJPL's LGBT and HIV/AIDS Project – 504-522-5437 ext. 292.

Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual & Transgender Children

Family Acceptance Project, San Francisco State University, Caitlin Ryan, 2009.

This is the first of several basic educational materials to share findings from the Family Acceptance Project to help families support their LGBT children. This first version is written in English, Spanish and Chinese at a 10th grade reading level.

Download publications: <http://FamilyProject.SFSU.edu/Publications>

To order: Contact FAP at FAP@SFSU.edu for information on ordering publications in bulk.

Opening Doors for LGBTQ Youth in Foster Care: A Guide for Lawyers and Judges

American Bar Association, Laver & Khoury, 2008.

This guide aims to increase the legal community's awareness of LGBTQ youth in foster care and the issues they face. It provides tools for lawyers and judges to aid their advocacy and decision-making on behalf of LGBTQ youth. Special attention is given to helping lawyers and judges understand the unique needs and risk factors of LGBTQ youth, forming positive attitudes and beliefs about LGBTQ youth, developing strong attorney-client relationships, and using effective advocacy strategies.

To order: Call the ABA Service Center at 800.285.2221. Or go to the ABA web-store at <http://www.ABABooks.org> (ISBN: 978-1-60442-073-9, ABA CATALOG #: 5490444)

Website: <http://www.ABANet.org/Child/LGBTQ.shtml>

CWLA Best Practice Guidelines: Serving LGBT Youth in Out-of-Home Care

Child Welfare League of America, Wilber, Ryan, & Marksamer, 2006.

This easy-to-use resource contains the first-ever set of comprehensive professional guidelines for how child welfare and juvenile justice professionals can best serve LGBT youth in state care. The *Best Practice Guidelines* developed out of recommendations from the Model Standards Project, a collaboration between Legal Services for Children and the National Center for Lesbian Rights.

Download full publication, executive summary, and Power Point presentation: www.NCLRights.org/Youth_Pubs

To order: Order online at <http://www.CWLA.org/Pubs> or call CWLA at 1-800-407-6273.

Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Care

Child Welfare League of America and Lambda Legal, Woronoff, Estrada & Sommer, 2006.

The CWLA/Lambda Regional Listening Forums provided an opportunity for LGBTQ youth in care, and the adults who work with and care for them, to share their experiences and work together to identify strategies for bringing about lasting change within the child welfare system. *Out of the Margins* consolidates the responses of the more than 500 youth and adult participants from 22 states who attended the Forums and offered personal stories of actual experiences and concrete solutions for building the capacity of the child welfare system to better meet the needs of LGBTQ young people.

Download full publication: www.CWLA.org/Programs/Culture/OutoftheMargins.pdf

To order (free of charge): Order online at <http://www.LambdaLegal.org/Our-Work/Issues/Youth/Out-of-Home-Care/YOHC-Publications-Order-Form.html> or call Lambda Legal at 212-809-8585.

Getting Down to Basics: Tools to Support LGBTQ Youth in Care

Child Welfare League of America and Lambda Legal Defense & Education Fund, 2006.

This tool kit offers practical information on helping to ensure that LGBTQ youth in care receive the support and services they deserve. Consisting of 18 colorful pull-outs, it serves as an ideal starting point for administrators and practitioners unfamiliar with LGBTQ youth in out-of-home care issues. Specific target audiences include: caseworkers; attorneys, guardians *ad litem*, and advocates; congregate care providers; juvenile justice professionals; faith-based providers; LGBTQ youth; and families supporting LGBTQ youth. Sub-topics include (but are not limited to): working with transgender youth; working with homeless LGBTQ youth; LGBTQ youth risk data; recommendations for training and education; combating misguided efforts to ban lesbian and gay adults as foster and adoptive parents; and basic facts about being LGBTQ.

Download full publication: <http://www.LambdaLegal.org/Take-Action/Tool-Kits>

To order (free of charge): Order online at <http://www.LambdaLegal.org/Issues/Youth-In-Out-of-Home-Care/YOHC-Publications-Order-Form.html> or call Lambda Legal at 212-809-8585.

Breaking the Silence: Lesbian, Gay, Bisexual, Transgender, and Queer Foster Youth Tell Their Stories - DVD and Resource CD

National Center for Lesbian Rights, 2006.

The *Breaking the Silence* DVD, produced in collaboration with the Y.O.U.T.H. Training Project and the Center for Digital Storytelling, contains ten short digital stories that were written and directed by LGBTQ youth who have spent time in state custody. Each of these digital stories is designed to stand on its own. For specific suggestions on how to use the DVD for training or other purposes, refer to the *Introduction and User's Guide* and the *DVD Viewing and Discussion Guide* provided on the CD.

A supplemental bonus CD contains a comprehensive collection of more than 25 resources produced by organizations that are nationally respected for their expertise in supporting LGBTQ out-of-home youth. These tools provide additional background and support for trainers and advocates as well as guidance to administrators and managers on how to transform agencies to be safe and non-discriminatory.

To order (free of charge): Order online at www.NCLRights.org/Youth_BTS

APPENDIX C: DRAFT MODEL POLICY & PRACTICE GUIDELINES FOR PROVIDING NON-DISCRIMINATORY SERVICES TO LGBT AND GENDER NON-CONFORMING YOUTH IN GROUP CARE FACILITIES

Purpose

In accordance with state and federal laws, each youth under the jurisdiction of [insert the name of your facility] has the right to live in an environment free of harassment and discrimination. [insert the name of your facility] is committed to providing a healthy and accepting setting for all youth placed in its care by training and evaluating staff, instituting policies, and educating youth to respect each other. [Insert the name of your facility] does not tolerate discrimination or harassment by employees, volunteers, contract providers, or youth.

The purpose of these policy and practice guidelines is to establish operational practices that reinforce our commitment to respect the dignity of LGBT and gender non-conforming youth, create a safe environment for all members of the [insert the name of your facility] community, and ensure that all youth have equal access to all available services, placement, care, treatment, and benefits provided by [insert the name of your facility].

Policy

- It shall be the policy of [insert the name of your facility] to maintain and promote a facility that provides the highest quality of services to youth regardless of their actual or perceived race, ethnicity, sex, immigration status, disability, national origin, sexual orientation, or gender identity or expression.
- LGBT youth confined at [insert the name of your facility] shall receive fair and equal treatment, without bias and in a professional and confidential manner based on principles of sound professional practice.
- Employees, volunteers, and contractors that offer services to youth confined at [insert the name of your facility] shall not discriminate against or harass any youth in their care based on a youth's actual or perceived sexual orientation, gender identity or expression, or other protected categories.
- [Insert the name of your facility] employees shall protect youth from discrimination, physical and sexual harassment or assault, and verbal harassment by other youth, based on a youth's actual or perceived sexual orientation, gender identity or expression, or other protected categories.
- [Insert the name of your facility] will take all reasonable steps within its control to meet the diverse needs of all confined youth and provide an environment in which all individuals are treated with respect and dignity, regardless of sexual orientation, gender identity or expression, or other protected categories.

Practice Guidelines for Providing Services to LGBT Youth

General Facility Operations

- All youth need to feel safe in their surroundings in order to fully benefit from facility programming. [Insert the name of your facility] shall establish and maintain a culture where the dignity of every youth is respected and all youth feel safe. Employees shall create opportunities for dialogue with youth and staff about all forms of diversity to increase tolerance and respect.
- [Insert the name of your facility] will promote the positive adolescent development of all youth in its care. Actions that support positive adolescent development include: modeling desired behavior such as demonstrating respect for all youth; reinforcing respect for differences amongst youth, encouraging the development of healthy self-esteem in youth, and helping youth manage the stigma sometimes associated with difference.
- Employees should model positive behavior when interacting with LGBT youth and remind all youth that anti-LGBT threats of violence, actual violence, or disrespectful or suggestive comments or gestures, will not be tolerated.
- [Insert the name of your facility] intends to provide a safe and non-discriminatory environment where youth can learn and grow. Employees of [insert the name of your facility] shall not prohibit or discourage communication or interaction between youth of the same sex that is not also prohibited or discouraged between youth of different sexes. Expressions of romantic or emotional attraction between youth of the same sex that do not include sexual activity are not prohibited and shall not result in punishment.
- [Insert the name of your facility] shall include LGBT-affirming books, magazines, movies, and other materials in [insert the name of your facility] library. All youth shall be made aware of these materials and shall have access to them when requested. Where possible, employees shall display materials, such as “safe zone” or “hate-free zone” posters that convey to youth that the facility maintains an LGBT-friendly environment. [Insert the name of your facility] shall ensure that employees are made aware of local LGBT resources and reach out to the LGBT community to find organizations the facility can contract with to provide supportive services to LGBT youth.
- [Insert the name of your facility] shall provide LGBT youth with access to educational, rehabilitative, recreational, and other programming on the same bases as other youth. Youth shall not be denied qualification for or access to programming based on sexual orientation or gender identity or expression.

Confidentiality

- Employees shall not disclose a youth’s sexual orientation or gender identity to other youth at the facility or to outside parties, individuals, or agencies, such as health care or social service providers or a youth’s family and friends, without the youth’s permission, unless such disclosure is necessary to comply with state or federal law.

- Any disclosure of confidential information related to a youth's LGBT identity shall be limited to information necessary to achieve the specific beneficial purpose of the disclosure.
- This confidentiality restriction does not prevent individuals working at [insert the name of your facility] from discussing a youth's needs or services with other staff members or when resolving a grievance.

Intake

- Staff should be aware that LGBT youth are in various stages of awareness and comfort with their sexual orientation and gender identity. Youth intake interviewers shall sensitively inquire about fears the youth may have of being harassed in the facility, but intake workers should not directly ask youth if they are LGBT. Some youth will disclose that they are LGBT. If a youth discloses their sexual orientation or gender identity, the intake worker should talk with the youth about it in an open and non-judgmental fashion and determine if the youth has particular concerns or needs related to being LGBT.

Youth Placement

- Placement decisions for LGBT youth shall occur as soon as possible after intake. All classification and placement decisions for youth in [insert the name of your facility] shall be individualized, based on good juvenile systems practices, and shall prioritize the youth's physical and emotional well-being.
- Youth shall not be prohibited from having a roommate based on a youth's actual or perceived sexual orientation. If a youth is fearful of rooming with a particular youth, he or she will be provided a different roommate or a single room, if available. This assignment will be made in accordance with classification procedures and facility safety and security needs.
- *[If facility is a locked facility include this clause.]* LGBT youth shall not be placed in isolation or segregation as a means of keeping them safe from discrimination, harassment, or abuse. LGBT youth shall not be treated or classified as sex offenders unless required by a court.
- Transgender youth shall not automatically be housed according to their birth sex. [Insert the name of your facility] staff shall make housing decisions for transgender youth based on the youth's individualized needs and should prioritize the youth's emotional and physical safety taking into account the youth's perception of where he or she will be most secure, as well as any recommendations from the youth's health care provider. Generally, it is most appropriate to house transgender youth based on their gender identity. If necessary to ensure their privacy and safety, transgender youth shall be provided a single room, if available.

Names and Language

- Employees, volunteers, and contractors, when working with youth at [insert the name of your facility] shall use respectful language and terminology that does not further stereotypes about LGBT people.
- Employees, volunteers, and contractors of [insert the name of your facility], in the course of their work, shall not refer to youth by using derogatory language in a manner that conveys bias towards or hatred of LGBT people. In particular, employees of [insert the name of your facility] shall not imply to or tell LGBT youth that they are abnormal, deviant, or sinful, or that they can or should change their sexual orientation or gender identity.
- Transgender youth shall be referred to by their preferred name and the pronoun that reflects the youth's gender identity, even if their name has not been legally changed. All written documentation about a transgender youth shall use the youth's preferred name as well note the youth's legal name recognized by the court.

Clothing and Gender Presentation

- Youth shall be allowed to dress and present themselves in a manner consistent with their gender identity. [Insert the name of your facility] shall allow youth to purchase or shall provide youth with clothing, including undergarments, appropriate for the youth's gender identity and gender presentation.
- Grooming rules and restrictions, including rules regarding hair, make-up, shaving, etc., shall be the same in male and female units. Transgender girls shall not be required to have a male haircut, or to wear masculine clothing. Transgender boys shall not be required to maintain a female hairstyle, to wear make-up, or to wear feminine clothing.

Bathrooms and Showers

- Consistent with the facility's reasonable and necessary security policies, [insert the name of your facility] shall provide transgender youth with safety and privacy when using the shower and bathroom and when dressing and undressing. Transgender youth shall not be required to shower or undress in front of other youth and shall be permitted to use the bathroom that is consistent with their gender identity. Where available, transgender youth shall have access to single-occupancy bathrooms and showers. Such accommodation shall be provided in a sensitive manner.

Medical and Mental Health Care

- If the youth requests assessment or treatment, [insert the name of your facility] shall provide transgender youth with access to medical and mental health care providers who are knowledgeable about the health care needs of transgender youth. [Insert the name of

your facility] will provide all recommended transgender-related treatments in accordance with the medical and mental health assessments performed by the youth's health care provider and will provide transportation for the youth to receive such treatments, if necessary.

- If prior to arriving at the facility a transgender youth has been receiving transgender-related medical care, such as hormone therapy or supportive counseling, [insert the name of your facility] medical staff shall consult with the youth's medical providers and shall continue to provide the youth with all transgender-related treatments that are medically necessary according to the youth's provider and accepted professional standards. Hormone therapy shall continue at current levels pending this consultation.
- In accordance with accepted health care practices which recognize that attempting to change a person's sexual orientation or gender identity is harmful, [insert the name of your facility] shall not employ or contract with mental health providers who attempt to change a youth's sexual orientation or gender identity.
- LGBT youth shall not participate in sex offender treatment or counseling unless required to do so by a court. All sex offender treatment shall not discriminate based on sexual orientation and gender identity and shall not criminalize or pathologize LGBT identity.

Search Issues [for locked facilities only]

- LGBT youth shall not be physically searched in a manner that is humiliating or degrading, or for the purpose of determining the youth's physical anatomy.
- Transgender youth may request that either a male or female staff member conduct a strip search, if such search is required. [Insert the name of your facility] shall accommodate this request when possible and consistent with maintaining the security of the facility.

Procedures

Training of Employees, Volunteers, & Contractors

- In order for employees, volunteers, and contractors to have the awareness and capacity to effectively work with LGBT youth in this facility, all facility administrators, employees, volunteers, and contractors are required to attend training on working with LGBT youth. This training should teach participants: 1) the goals and requirements of the Non-discrimination Policy and Practice Guidelines Regarding LGBT Youth; 2) how to work with LGBT youth in a respectful and non-discriminatory manner; and 3) how to recognize, prevent, and respond to harassment against LGBT youth.
- All employees and administrators of [insert the name of your facility] shall receive training about LGBT youth during their orientation and as part of their continuing education requirements. These trainings shall be taught by a qualified trainer with expertise in working with LGBT youth.

- All new facility administrators, employees, volunteers, and contractors shall receive a copy of the Policy and Practice Guidelines with their orientation materials. Current administrators, employees, volunteers, and contractors shall receive a copy of the Policy and Practice Guidelines before it is to go into effect.

Policy Dissemination to Youth

- At the time of intake, [insert the name of your facility] staff shall verbally inform all youth about the facility's Policy and Practice Guidelines, including the youth's rights and responsibilities under this policy and the procedures for reporting violations. Each youth shall receive a copy of the Policy and Practice Guidelines [and all other policies related to grievance procedures] during intake. Additional copies of the policy shall also be provided to youth when requested.

Responsibilities of Employees and Contractors to Respond to and Report Harassment

- Employees of [insert the name of your facility] shall promptly and appropriately intervene when a youth physically, verbally, or sexually abuses or harasses another youth based on the youth's actual or perceived sexual orientation or gender identity.
- All employees and contractors shall be required to report all incidents in violation of this policy in accordance with facility operating procedures. Failure to report an incident may result in disciplinary or other consequences.
- [Insert the name of your facility] employees have an obligation to report conduct by other employees and contractors that may be in violation of this policy to the other individual's supervisor and the [insert the name of your facility] administration.

Reporting Procedures for Youth

- Youth shall be able to report violations of this policy following established facility grievance procedures. Grievance procedures shall protect confidentiality of youth and contain other measures to prevent retaliation.

Enforcement

- Supervisory and management staff shall treat all reports of violations of this policy seriously. The [insert the name of your facility] administration shall promptly and effectively respond to grievances filed by youth and shall take swift action according to established procedures when employees or contractors report violations.

Scope

- This policy shall apply to all employees and volunteers of [insert the name of your facility], to employees or representatives of any agency providing services on behalf of

youth at [insert the name of your facility], including but not limited to the Department of Health, Department of Education, their contractors, volunteers, and any other relevant agencies or departments which have contact with youth confined at [insert the name of your facility].

Definitions

For purposes of the policy and practice guidelines, the following definitions apply:

Bisexual

A person who is emotionally, romantically, and sexually attracted to both males and females.

Contractor

Any person who is employed directly by an agency or organization that has a contract or Memorandum of Understanding with the [insert the name of your facility].

Discrimination

Any act, policy, or practice that, regardless of intent, has the effect of subjecting any youth to differential treatment as a result of that youth's actual or perceived sexual orientation or gender identity.

Gay

A person who primarily is emotionally, romantically, and sexually attracted to individuals of the same sex, typically in reference to boys or men.

Gender Expression

The manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, etc. Gender expression is a separate concept from sexual orientation and gender identity.

Gender Identity

A person's internal, deeply felt sense of being male or female, regardless of the person's sex at birth.

Gender Identity Disorder (GID)

A diagnosable medical condition for individuals who are experiencing high levels of distress because they have a strong and persistent desire to be a different sex and a persistent discomfort with their birth sex. According to accepted professional standards, treatments, such as supportive counseling, hormone therapy, and sex reassignment surgery are medically necessary for many youth or adults who have GID.

Harassment

Includes, but is not limited to, name-calling; disrespectful gestures, jokes, or comments; inappropriate touching; threats of physical or emotional acts or negative consequences (including religious condemnation); physical abuse; sexual abuse, including unwanted sex acts, touching, pantomime, and threats; and emotional abuse, such as shunning or isolation. Attempting to change a youth's sexual orientation or gender identity is also a form of harassment.

Lesbian

A girl or woman who primarily is emotionally, romantically, and sexually attracted to girls or women.

Sexual Orientation

A person’s emotional, romantic, and sexual attraction, to individuals of the same sex or of a different sex.

Transgender

A person whose gender identity (their understanding of themselves as male or female) does not correspond with their birth sex. A transgender girl is a girl whose birth sex was male but who understands herself to be female. A transgender boy is a boy whose birth sex was female but who understands himself to be male.

Youth

Any person committed to the custody and care of [insert the name of your facility], any person who is subject to supervision by [insert the name of your facility], or any person who is in the custody of the state who receives services from the [insert the name of your facility].

Severability

The provisions of the Policy and Practice Guidelines shall be severable. If any provision or portion of this policy or its application to any person or circumstance is held invalid, the remainder of this policy or the application of the provision to other persons or circumstances is not affected.

BIOGRAPHIES

REPORT AUTHOR:

Jody Marksamer

Jody Marksamer joined the National Center for Lesbian Rights in 2003 as an Equal Justice Works Fellow, and currently is a staff attorney and the Youth Project Director. He also coordinates the Equity Project, a collaborative project between NCLR, Legal Services for Children, and the National Juvenile Defender Center, working to ensure fairness and respect for LGBT youth in juvenile courts. Jody regularly presents at national conferences on legal and policy issues affecting LGBT youth in the child welfare and juvenile justice systems. Much of his work focuses on transgender youth, and he has served as a consultant on this topic for numerous child welfare and juvenile justice agencies.

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Dean Spade

In 2002, Dean Spade founded the Sylvia Rivera Law Project, where he worked as a staff attorney until 2006. He continues to stay involved with SRLP as a collective member. Dean is currently an assistant professor at Seattle University School of Law. Prior to joining the faculty at Seattle University, Dean was a Williams Institute Law Teaching Fellow at the University of California, Los Angeles Law School, teaching classes related to sexual orientation and gender identity law. He has authored numerous articles and publications on transgender and poverty issues, and lectures internationally on this topic.

Gabriel Arkles

In 2004, Gabriel Arkles joined the Sylvia Rivera Law Project, where he worked as a staff attorney through 2010. He continues his involvement with SRLP as a collective member. Gabriel recently joined the faculty of New York University School of Law as acting assistant professor. He has written extensively on gender identity issues.

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