



**Comments to  
NYC Administration for Children's Services**

***On Draft of Safe & Respected: Policy, Best Practices, & Guidance for Serving Transgender and Gender Non-Conforming Children and Youth in the Child Welfare and Juvenile Justice System***

Submitted by:

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The Center for HIV Law and Policy (“CHLP”) respectfully submits the following comments on *Safe & Respected: Policy, Best Practices, & Guidance for Serving Transgender and Gender Non-Conforming Children and Youth in the Child Welfare and Juvenile Justice System* (“*Safe and Respected*”) by the NYC Administration for Children’s Services (“ACS”).

CHLP is the only national legal and policy resource and strategy center for people with HIV and their advocates. CHLP works to reduce the impact of HIV on vulnerable and marginalized communities and to secure the human rights of people most affected by HIV. Our Teen SENSE program is a multidisciplinary initiative that works to secure the rights of youth in state custody to comprehensive, LGBTQ-inclusive sexual health care and sexual health capacity-building resources. This includes ensuring that staff of foster care, detention, and other government-operated and -regulated youth facilities are equipped to understand and protect all youth in their care, regardless of sexual orientation, gender identity, and gender expression. Teen SENSE has benefitted greatly from the participation and support of state agencies across the country, including ACS.

CHLP commends ACS for drafting a policy to guide its work with transgender and gender nonconforming (“TGNC”) young people, and for inviting recommendations from selected stakeholders and advocates. These comments focus on provisions related to sexual health services for TGNC young people, and highlight various ambiguities and omissions that may negatively affect these services. These comments also refer to the Teen SENSE Model Policies and Standards, attached, which include provisions specifically related to sexual health care for TGNC youth. These include:

- [Model Policy: Sexual Health Care for Youth in State Custody](#);
- [Model Sexual Health Care Standards for Youth in State Custody](#);
- [Model Policy: Sexual Health Education for Youth in State Custody](#);
- [Model Sexual Health Education Standards for Youth in State Custody](#);
- [Model Policy: Training for Youth Facility Staff: Ensuring Competence on the Rights and Needs of LGBTQ Youth](#); and
- [Model Staff Training Standards: Focusing on the Needs of Youth in State Custody](#).

CHLP’s comments are organized into four sections: Sexual Health Care for TGNC Youth; Sexual Health Education and Capacity-Building Resources for TGNC Youth; Staff Cultural Competency Training; and Respectfully Asking Sexual Orientation, Gender Identity, and Gender Expression Questions. Each segment analyzes the relevant provisions of *Safe & Respected* and provides recommendations on how they should be improved or updated.

## **I. Sexual Health Care for TGNC Youth**

### **Medical Transitions**

Sections 16 through 19 in *Safe & Respected* discuss many important elements of transgender-related medical care, including pubertal suppression, hormone-related care, and surgical intervention. Missing from the medical transition sections include provisions on other services, such as laser hair removal and voice coaching.

Sections 16 through 19 lack specificity regarding timelines for the request, administrative review, approval or denial, and provision of all medical transition services. Instructions are only as effective as they are specific. ACS and foster care staff – not to mention TGNC youth – must have more specific guidelines describing the timeline and process through which requests for medical transition services are handled. Language like “whenever feasible” – appearing in Sections 16, 17, 18, and 19, and describing whether ACS will provide trans-related care recommended by professionals – leaves considerable ambiguity in determining when and under which circumstances ACS and a foster care agency will move forward in planning for a young person’s medical transition.

Sections 16 through 19 provide no guidance on what should be done in the event that private or public funding is unavailable for medical transition services. Sections 18 and 19 mention that a parent or, in the case of youth in detention, the Division of Youth and Family Justice, may need to separately approve a youth’s request for treatment. This could pose a barrier to life-saving medical care and treatment, and yet the document does not explain when this additional approval is necessary or how a denial can be appealed.

ACS’s LGBTQ Policy, titled *Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and their Families Involved In the Child Welfare, Detention and Juvenile Justice System*, is clearer on how these situations should be handled. Section F of the policy, titled Hormone Therapy, explains that TGNC youth who were undergoing hormone therapy upon entering out-of-home care may continue doing so. This section also describes the procedure for TGNC youth to start hormone therapy, and calls for a case-by-case assessment of each TGNC youth’s needs, whether they are requesting hormone treatment or surgery. The LGBTQ Policy references the standards developed by the World Professional Association for Transgender Health, Inc. and incorporates the Teen SENSE *Model Standards for Sexual Health Care*, which includes provisions on TGNC-related care.

### **Other Sexual Health Care Services**

*Safe & Respected* fails to address sexual health care services for TGNC youth that are unrelated to medical transition care. All young people in care must have access to comprehensive, LGBTQ-inclusive sexual health care regardless of sexual orientation, gender identity, or gender expression, and these services are particularly crucial for TGNC youth given their heightened vulnerability to sexually transmitted infections, HIV, and sexual violence.

The Teen SENSE *Model Sexual Health Care Standards for Youth in State Custody* explain not only the components of comprehensive sexual health care that all youth should receive while in care, but also how and when each step should be initiated. Adopting these provisions and incorporating them into *Safe & Respected* would help staff better understand and address the unique health care challenges TGNC youth face.

### **OVERALL RECOMMENDATIONS:**

*Safe & Respected* should be aligned with ACS’s LGBTQ Policy, and clearly describe to staff and young people the exact timeline and process for obtaining services related to TGNC youth’s medical transition services. These services should not be limited to pubertal suppression, hormone use, and surgical intervention. Young people, their medical providers, and their advocates should be meaningfully involved in the review of requests for medical transition services. *Safe & Respected* should also incorporate and adopt the TGNC-related provisions in the Teen SENSE *Model Standards*

for *Sexual Health Care*. It should also discuss sexual health care services for TGNC youth that are not directly related to medical transition; this information, too, may be drawn directly from *Model Standards for Sexual Health Care*.

## **II. Sexual Health Education and Capacity-Building Resources for TGNC Youth**

While *Safe & Respected* discusses the means through which TGNC youth can access some medical transition services, it does not include guidance on the need for sexual health education and capacity-building resources beyond brief lists of referrals and written materials in Sections 15 and 23. Like all young people, TGNC youth need comprehensive, LGBTQ-inclusive sexual and reproductive health care and information. Given the disproportionate numbers of TGNC youth involved in the child welfare and juvenile justice systems, it is equally important for cisgender youth to be able to understand the complex gender-related issues that affect a number of their peers. Staff should not only be able to make appropriate referrals, but also competently address gender-related matters. The Teen SENSE *Model Sexual Health Education Standards for Youth in State Custody* sets forth content goals and instructional characteristics that describe the sexual health information ACS and its contracted agency staff should provide TGNC and cisgender youth. It includes provisions on gender roles and gender identity, and TGNC-related discrimination, harassment, and abuse.

In May 2013, the Juvenile Justice Coalition’s LGBTQ Work Group (“LGBTQ Work Group”) released a directory of LGBTQ-friendly youth organizations in the New York City metropolitan area that should replace – or at least supplement – *Safe & Respected*’s list of resources in Appendix 3. It lists community organizations (including addiction services and support; advocacy organizations; racial and ethnic organizations; religious organizations; social organizations and enrichment programs; and support groups, community resources, and education/outreach), legal organizations (including direct legal services and information; and national organizations), and medical organizations (including addiction services; counseling and mental health services; HIV-specific health services; and physical health and services). This resource is available at: <http://www.hivlawandpolicy.org/resources/view/848>.

These resources will help guide ACS and contracted agency staff through discussions with all youth about what it means to be TGNC. Beyond educating minors about the formation of gender identity and gender expression, Teen SENSE also aims to inform them about any legal protections TGNC people have from discrimination. Implementing the Teen SENSE standards and the LGBTQ Work Group’s director into *Safe & Respected* – as well as agency-wide policies for all youth – will help ensure that all young people in state custody are culturally competent and that all aspects of a TGNC young person’s stay are affirming and comfortable.

### **OVERALL RECOMMENDATIONS:**

*Safe & Respected* should adopt and incorporate the Teen SENSE *Model Sexual Health Education Standards for Youth in State Custody* to guide staff in their sexual health and gender-related discussions with TGNC youth. The LGBTQ Work Group’s directory LGBTQ-Friendly Youth Organizations in New York City should replace – or at least supplement – *Safe & Respected*’s list of resources in Appendix 3.

## **III. Staff Cultural Competency Training**

Section 22 of *Safe & Respected*, titled Staff Cultural Competency Training, mandates that all ACS and contracted agency staff who have contact with youth are to undergo cultural competency training at least once every two years.

Teen SENSE has created a set of materials that directly address staff training on these issues: *Model Policy: Training for Youth Facility Staff: Ensuring Competence on the Rights and Needs of LGBTQ Youth* and *Model Staff Training Standards: Focusing on the Needs of Youth in State Custody*. The *Model Policy* explains that staff should have the ability to “[i]dentify the effects of stigma or discrimination on lesbian, gay, bisexual, transgender, or questioning (LGBTQ) or HIV positive youth’s health.” Relevant educational objectives in the *Model Standards’* include:

- Describe the correlation between the effects of stigma based on sexual orientation or gender identity & the reasons why some youth may be in state custody;
- Explain the detrimental effect homophobia and transphobia have on health outcomes for LGBTQ youth;
- Engage respectfully with LGBTQ youth’s gender identity and expression;
- Use appropriate and respectful terms to identify youth of all sexual orientations and gender identities;
- Make referrals and provide resources as necessary for care and treatment; and
- Meet the specific health care needs of transgender youth.

These and other provisions would improve upon *Safe & Respected’s* section on staff training, which currently includes a number of ambiguities surrounding the content of the curricula and the manner in which ACS will review and approve curricula. There is also no mention of quality assurance mechanisms to ensure the continued cultural competence of staff after they receive appropriate training.

This ambiguity may be cured by the ACS LGBTQ training module, currently under review by selected stakeholders and advocates.

#### **OVERALL RECOMMENDATIONS:**

ACS should adopt and incorporate provisions of the Teen SENSE *Model Policy: Training for Youth Facility Staff: Ensuring Competence on the Rights and Needs of LGBTQ Youth* and *Model Staff Training Standards* to deepen the staff cultural competency training provisions in *Safe & Respected*.

#### **IV. Respectfully Asking Sexual Orientation, Gender Identity, and Gender Expression Questions**

CHLP commends ACS for adding a section about the youth’s gender identity in its standard intake questions in Section 27, Appendix 1.

In the spring of 2013, the Juvenile Justice Coalition’s LGBTQ Work Group reviewed and submitted sexual orientation, gender identity, and gender expression-related recommendations for

ACS's intake form. The questions listed in *Safe & Respected's* Appendix 1: Respectfully Asking Gender Identity & Sexual Orientation Questions appear to reflect most of the LGBTQ Work Group's recommendations. Some problems remain: The first question only lists "Male" and "Female" as the options for a youth's assigned sex at birth. However, an estimated one in 2,000 infants are born with a reproductive or sexual anatomy and/or chromosome patterns that do not fit stereotypical classifications. We recommend that "intersex" or "other" be included as a possible answer. Additionally, it is not just important to ask youth how others may define them, but it is also crucial to ask young people how they self-identify. We recommend an additional question, following "How do you think other people would describe you?" that asks "How do you describe your own appearance, style, dress or the way you talk?"

#### **OVERALL RECOMMENDATIONS:**

CHLP recommends that ACS fully adopt and incorporate the Juvenile Justice Coalition's LGBTQ Work Group's recommendations on the ACS intake form in *Safe & Respected's* Appendix 1.