



Online CLE

LGBTQ Youth in Foster Care: What You Need to Know

1 Access to Justice credit

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Chapter 3

Addressing the Legal Concerns of LGBTQ Youth in Foster Care and Juvenile Justice Settings—Presentation Slides

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Addressing the Legal Concerns of LGBTQ Youth in Foster Care and Juvenile Justice Settings

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Calling it By Name

- ◆ Homophobia and Transphobia:
 - ◆ Displayed as verbal or physical harassment, negativity, and rejection because of a person's perceived or actual
 - ◆ Sexual orientation, or
 - ◆ Gender identity
- ◆ Heterocentrism and Ciscentrism:
 - ◆ Displayed as attitudes and assumptions that all persons are heterosexual and/or that being homosexual or transgender is inferior or negative or a "choice"

Transgender Stats

- ◆ 53% of respondents were harassed or mistreated in a public accommodation
- ◆ More than 50% rejected by family. Of those, more than 50% attempted suicide
- ◆ 61% experienced harassment, assault or expulsion in school
- ◆ As many as 1/4 have been homeless
- ◆ More than 90% experienced job discrimination
- ◆ 19% were outright denied medical treatment because they were transgender
- ◆ 50% saw doctors who did not have knowledge about transgender issues

Oregon Statutes Prohibiting Discrimination

- ◆ OR. REV. STAT. § 659A.006 -- “public accommodations”
- ◆ OR. REV. STAT. § 174.100 defines sexual orientation as an “individual's actual or perceived heterosexuality, homosexuality, bisexuality or **gender identity**, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.”
- ◆ OR. REV. STAT. § 179.750(2) -- Sexual orientation discrimination expressly prohibited in the juvenile justice institutions
- ◆ No express statutory prohibition in foster care setting
- ◆ ORS 419B.349—Court may review placement

Oregon DHS, “Child Welfare Programs” Regulations on Non-Discrimination

- ◆ Foster families required to “respect the spiritual beliefs, lifestyles, sexual orientation, gender identity. . .”
OAR 413-200-0308
- ◆ Foster families prohibited from “verbal abuse including derogatory remarks about . . . sexual orientation. . .”
OAR 413-200-0358
- ◆ “Sexual Orientation” and “Gender Identity” not defined in Child Welfare Chapter

Foster Youth Bill of Rights

- ◆ Requires respect and specific rights for a foster child’s sexual orientation and gender identity:
 - ◆ The young person must be given clean and appropriate clothes that fit and correspond to their gender identity
 - ◆ The young person is allowed to dress and groom themselves according to their own culture and identity
 - ◆ The young person is allowed to determine and express their gender and sexual identity on they determine

Advocacy Standards for Juvenile Attorneys

- ◆ Advocacy Standards: express wishes, unless not in best interests of child.
- ◆ Become familiar with best practices and standards of care
 - ◆ Lambda Legal
 - ◆ National Center for Lesbian Rights
 - ◆ WPATH Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People
 - ◆ Child Welfare League of America Best Practices

Sex vs. Gender

- ◆ “Sex” typically refers to a person’s physical anatomy. This includes:
 - ◆ Chromosomes (XX, XY, XYY, XXY, etc.)
 - ◆ Genitals
 - ◆ Reproductive Organs
 - ◆ Secondary Characteristics: facial hair, breasts, musculature

Sexual Orientation

- **SEXUAL ORIENTATION** refers to who a person is sexually and/or romantically attracted to.
 - Gay, lesbian, straight, bisexual, asexual, and more.

Trans Language

- **Transgender:** A person whose gender identity is different from the sex they were assigned at birth.
- **Assigned Sex:** The sex a person is given at birth, usually based on genitals or chromosomes.
- **Gender Identity:** A person's innate sense of who they are and what their gender is.
- **Transition:** The process of changing ones life or body to bring it into harmony with their gender identity.

Who Might Be Transgender?

- ◆ People who **dress in a way** that is associated with one sex, even though they were raised as another sex
- ◆ People who **identify** as a particular sex or gender, even though they were raised as a different sex or gender
- ◆ People who simply **do not identify with either** male or female at all
- ◆ People who identify with **parts of one sex or gender** and **parts of another** sex or gender

Gender

- ◆ Refers to the social factors associated with biological sex – such as attitudes, behaviors, and expectations.

It's Not Just One Thing



Gender Identity

- ◆ A person's internal sense of being male, female, neither, or another gender.
- ◆ Gender identity is the most important factor in a person's gender, and trumps all other factors, including anatomy.

Gender Expression

- ◆ The outward manifestation of a person's gender:
 - ◆ Clothing
 - ◆ Hairstyle
 - ◆ Jewelry
 - ◆ Mannerisms

Gender Dysphoria

- ◆ The sense of distress brought about by the sense that one's internal sense of gender does not match one's sex assigned at birth
- ◆ From the DSM V

Gender Transition

- ◆ The process of bringing one's external gender (including physical anatomy, appearance, clothing, mannerisms, legal identity, etc.) in line with one's internal sense of gender.
- ◆ Effective treatment for gender dysphoria

What Does it Matter?

- ◆ Rigid expectations of gender are woven deeply into the fabric of our society
- ◆ There is a strong social/cultural bias affecting transgender people and others who do not conform to gender expectations
- ◆ Non-conformity to these expectations is punished

How Do I act?

- ◆ **Use the Preferred Names and Pronouns Whenever Possible**
- ◆ **Emphasize Gender Identity (not birth sex)**
- ◆ **Challenge Assumptions about Health Care**
 - ◆ Less than 25% of all transgender people have gender reassignment procedures
- ◆ **Anticipate Non-Traditional Family & Community Connections**

Naming

- ◆ Many transgender people prefer names that are more consistent with their gender expression or identity than the name they were given at birth
- ◆ Always use the preferred name of a transgender litigant.
 - ◆ If the name is legally changed, make sure to amend court records
- ◆ It's OK to add a AKA, if requested by the young person
- ◆ If the first name is not known, use the last name only

But, Ms. Grammar!?!

- ◆ Pronouns: She/her, He/him, They/them, Ze/Hir
- ◆ Titles: Mr., Ms., Mx., Mrs., [Last Name], [First Name]
- ◆ Avoidance, if not obvious
- ◆ In general, always reflect back the language a person uses for themselves
- ◆ If you don't know what language to use, you can always ask!

What's OK to Ask?

- ◆ Ask yourself if the question is necessary for the purpose of the proceeding or conversation, or will help you better communicate with or serve a litigant
- ◆ If possible, avoid questions that are personal or specific to a person's transgender experiences – such as questions about surgery or gender transition - unless that person offers the information or indicates a willingness to talk about it

Is it OK to...?

- ◆ Will the action demonstrate respect for a person's gender identity?
- ◆ Will the action create investment in the legal system and administration of justice?
- ◆ Will the action have positive repercussions?
Name change → ID → Employment → Housing → Increased Safety and Opportunity
- ◆ Will the action affect someone who is transgender differently than someone who is not transgender?
 - ◆ Haircuts
- ◆ Will the action “out” someone as transgender?
- ◆ Will the action place a litigant at harm because they are transgender?

Make Mistakes!

- ◆ We learn as human beings by taking risks and making mistakes.
- ◆ It's ok to make mistakes! The key piece is to own them and be accountable for them.

How Do I Gain Cultural Competency?

- Challenge what you know and be open to experiences of people who are differently situated
- Challenging assumptions about gender means thinking critically about the impact of gender roles and expectations on transgender people AND non-transgender people
- Look at structures, from intake forms to bathrooms, from hiring practices to security checkpoints, to make sure transgender experiences are included and accounted for

Procedural Fairness

- ◆ Voice—Do they feel heard?
- ◆ Respect—Do they feel treated with dignity and respect?
- ◆ Neutrality—Do they feel the decision was made without bias?
- ◆ Understanding—Do they understand what happened in court?
- ◆ Helpfulness—Do they feel that the court “cares” about them as persons?

Rules to Live By

- ◆ The Golden Rule: Treat others as you would like to be treated
- ◆ The Platinum Rule: Treat others as THEY would like to be treated

The Bright Side

- ◆ Increasing number of advocates for LGBTQ youth
- ◆ Increasing awareness of LGBTQ-specific concerns
- ◆ Resources widely available online-
 - ◆ E.g., US Dept. Health and Human Services Website

Books

- ◆ Redefining Realness - Janet Mock
- ◆ Stone Butch Blues - Leslie Feinberg
- ◆ Becoming A Visible Man – Jamison Green
- ◆ She’s Not There – Jennifer Finney Boylan
- ◆ Becoming Nicole – Amy Ellis Nutt
- ◆ The Transgender Child – Stephanie Brill & Rachel Pepper
- ◆ Being Jazz – Jazz Jennings
- ◆ Gender Born, Gender Made – Diane Ehrensaft & Edgardo Menvielle
- ◆ Transitions of The Heart – Rachel Pepper

Conclusion

- ◆ The key to ensuring procedural fairness for transgender people is respecting every person’s right to self-determination of their gender.
- ◆ Through affirming gender identity, educating ourselves, taking risks, owning our mistakes, and respecting diversity, we create an environment where transgender people experience procedural fairness.

QUESTIONS



