

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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NEW HOPE FAMILY SERVICES, INC.,

*Plaintiff,*

**DECLARATION**

-against-

18-CV-1419

SHEILA J. POOLE,

MAD/TWD

*Defendant.*

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JARA TRAINA, on the date noted below and pursuant to § 1746 of title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

1. I am an employee of the New York State Office of Children and Family Services (“OCFS”) and submit this declaration in support of Defendant’s motion for summary judgment in the above-captioned action.

2. The information contained herein is based on my personal knowledge and review of records maintained by OCFS in the regular course of business. For matters asserted upon information and belief, I believe them to be true.

3. I am currently a Children and Family Services Program Manager 2. In this role, I oversee the Bureau of Domestic Violence Prevention and Victim Support. Prior to this role, from July 31, 2008 to March 19, 2020, I served as an attorney in the Division of Legal Affairs, where

my primary responsibilities were providing legal support to the Commission for the Blind and the Division of Child Welfare. I also handled special projects for the Division of Juvenile Justice and Opportunities for Youth, including participation in a workgroup of internal and external stakeholders concerning the treatment of lesbian, gay, bisexual, transgender and questioning/queer (LGBTQ) youth in OCFS programs and facilities.

4. Upon information and belief, in 2006, a lawsuit was commenced in the United States District Court for the Southern District of New York against employees of OCFS challenging plaintiff's treatment, as a juvenile transgender female, while in court-ordered OCFS custody. A copy of the First Amended Complaint in that action, *Rodriguez v. Johnson*, 06-CV-00214 (RMB)(RLE), is annexed hereto at **Exhibit A**.

5. Upon information and belief, on November 13, 2006, a Stipulation and Order of Settlement was endorsed by the court in the *Rodriguez* litigation. A copy of that Stipulation and Order of Settlement is annexed hereto at **Exhibit B**.

6. Upon information and belief, as a condition of the settlement of the *Rodriguez* litigation, OCFS entered into a Memorandum of Understanding ("MOU") with counsel for the plaintiff in *Rodriguez*, Lambda Legal Defense and Education Fund ("Lambda") and Sylvia Rivera Law Project ("SRLP"). A copy of the MOU is annexed hereto at **Exhibit C**.

7. Upon information and belief, the MOU required that OCFS, Lambda and SRLP engage in six "Informational Meetings" to discuss the care provided to Transgender Youth in court-ordered OCFS custody. Ex. C, p. 2.

8. OCFS assembled a work group to address the issues raised in the *Rodriguez* litigation and MOU (“work group”), in accordance with the MOU. The work group included employees of OCFS.

9. As a result of its work on improving the services to, and treatment of, transgender youth living in OCFS facilities pursuant to a court-order, the work group concluded a policy was necessary to prohibit discrimination against, and harassment of, all LGBTQ youth. Therefore, discussions and collaboration during the Informational Meetings led to the development and issuance of the OCFS “Guidelines for Good Childcare Practices with Lesbian, Gay, Bisexual, Transgender and Questioning Youth,” in 2008, which was incorporated into OCFS Policy PPM 3442.00 (“LGBTQ Youth Policy”). A copy of that policy is annexed hereto at **Exhibit D**.

10. OCFS implemented the 2008 LGBTQ Youth Policy to further its commitment to “provid[e] lesbian, gay, bisexual, transgender and questioning youth in residential and after-care programs it operates with a safe and discrimination-free environment.” Exh. D.

11. As a result, the Policy stated as follows:

The New York State Office of Children and Family Services (OCFS) is committed to providing quality services to all youth in our care. OCFS prohibits discrimination on the basis of race, creed, color, age, sex, national origin, religion, marital status, mental or physical disability, gender identity, gender expression, sexual orientation, veteran status and criminal record. No person in the agency shall unlawfully discriminate against other persons in the course of their work. OCFS is committed to respecting the dignity of all youth, and keeping them safe and secure, regardless of individual differences. The agency does not tolerate discrimination by staff, volunteers, contract providers or youth.

The OCFS Lesbian, Gay, Bisexual, Transgender and Questioning Youth Policy protects from discrimination both youth who self-identify as lesbian, gay, bisexual, transgender, or questioning (LGBTQ) and those who are perceived by others as LGBTQ.

Exh. D.

12. In 2010, Lambda recommended OCFS expand the protections against discrimination on the basis of sexual orientation, gender identity or gender expression to other programs and services regulated by OCFS. A copy of a February 26, 2010 letter from Lambda is annexed hereto at **Exhibit E**. Annexed hereto at **Exhibit F** is a copy of a November 4, 2010 letter from Lambda.

13. Thereafter, the workgroup considered expanding its scope to include other program areas in furtherance of OCFS's commitment to protect individuals from discrimination based on sexual orientation, gender identity or gender expression. OCFS determined that it had an obligation to protect not only the children in its custody, but also the children and families it serves through programs and services it regulates, approves, funds, or otherwise oversees. To this end, the workgroup considered how to protect LGBTQ people from discrimination in other programs or services regulated by OCFS including: (1) Child Protective Services; (2) Juvenile Detention Facilities; (3) Runaway and Homeless Youth Approved Programs; (4) Child Care Agencies; (5) Foster Services; and (6) Adoption Services.

14. The work group worked collaboratively with stakeholders to draft OCFS regulations to prohibit the discrimination and/or harassment of anyone involved in services regulated by OCFS on the basis of sexual orientation, gender identity or gender expression.

15. The work group assembled a package of proposed regulations and amendments, which proceeded through rulemaking and were promulgated in November 2013 as follows:

- a. Addition of 9 N.Y.C.R.R. § 180.5(a)(6) (protecting youth in detention centers); 18 N.Y.C.R.R. § 421.3(d) (protecting applicants for adoption services); 18 N.Y.C.R.R. § 423.4(m)(7) (protecting families receiving preventive services); and 18 N.Y.C.R.R. § 441.24 (protecting prospective foster parents, foster parents and foster children);
- b. Amendment of 9 N.Y.C.R.R. § 182-1.5(g)(1) (protecting youth in runaway and homeless youth programs) and 18 N.Y.C.R.R. § 421.16(h)(3) (removing consideration of “sexual preference” of adoption applicant); and
- c. Repeal and renumbering of 18 N.Y.C.R.R. § 421.16(e) (prohibiting consideration of length of marriage of applicants, provided it was for at least one year) and § 421.16(h)(2) (prohibiting the rejection of applicants for adoption solely on the basis of “homosexuality”).

A copy of the rulemaking record maintained by OCFS in the ordinary course of business is annexed hereto at **Exhibit G**.

16. At all times while considering, drafting and promulgating these regulations and amendments, including 18 N.Y.C.R.R. § 421.3(d), OCFS understood the proposed regulation as drafted to be lawful and within its authority to promulgate.

17. The decision to create generally applicable regulations was based on the desire to protect all children and families in New York State, regardless of their provider. At no time was there any discussion about omitting an accommodation for the purposes of targeting religious

providers. No animosity toward religious views was raised or expressed. To the contrary, the workgroup actively engaged with faith leaders in its work.

18. OCFS also prohibits discrimination and harassment on the basis of race, creed, color, national origin, age, sex, marital status, religion, or disability in the provision of OCFS programs and services. Specifically, OCFS prohibits discrimination and harassment, including on the basis of sexual orientation and marital status, in the provision of the following services: adoption services (18 NYCRR § 421.3), services for children and youth in foster care (18 NYCRR § 441.24; 15-OCFS-ADM-18), child welfare and youth programs (16-OCFS-ADM-02), residential and non-residential programs for victims of domestic violence (18 NYCRR § 452.9; 15-OCFS-ADM-23), youth development programs (9 NYCRR § 165-1.5), runaway homeless youth crisis services programs (9 NYCRR § 182-1.5), preventative services programs (18 NYCRR § 423.4), youth care in juvenile detention facilities (9 NYCRR § 180-1.5), and youth care in specialized secure detention facilities (9 NYCRR § 180-3.4). Copies of the referenced OCFS administrative directives are collectively attached hereto as **Exhibit H**.

Dated: October 7, 2021  
Rensselaer, New York



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Jara Traina

# Traina Exhibit A

06-CV-00214 (RMB)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ALYSSA RODRIGUEZ,

Plaintiff,

-against-

JOHN JOHNSON, DR. MICHAEL COHEN, EDWARD  
FIGUEROA, CHERYLE MEANS, MARIA GALARZA,  
RICK BULL, RUTH NORIEGA, DEVIN CUSHNER,  
TIMOTHY TERRY, and OCFS EMPLOYEES JOHN AND  
JANE DOES,

Defendants.

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FIRST AMENDED COMPLAINT

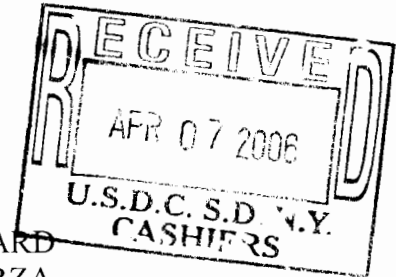
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

ALYSSA RODRIGUEZ, :

Plaintiff, :

-against- :

JOHN JOHNSON, Commissioner of the New York State Office of Children and Family Services ("OCFS"); DR. MICHAEL COHEN, Medical Director of OCFS' Bureau of Health Services; EDWARD FIGUEROA, Director of OCFS Red Hook Residential Center; CHERYLE MEANS, Director of OCFS Ella McQueen Residential Center; MARIA GALARZA, Director of OCFS Middletown Residential Center; OCFS Facilities Coordinators RICK BULL and RUTH NORIEGA; DEVIN CUSHER, Assistant Director of OCFS Red Hook Residential Center; TIMOTHY TERRY, Youth Counselor at Red Hook Residential Center and OCFS employees JOHN and JANE DOES, all in their personal capacities, :

Defendants. :

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06-CV-00214 (RMB)

**FIRST AMENDED COMPLAINT**

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*Attorneys for Plaintiff Alyssa Rodriguez*

Plaintiff Alyssa Rodriguez (formally known as Andrew Rodriguez, and also known as Jennifer Rodriguez) (“Alyssa” or “Plaintiff”) by her attorneys Debevoise & Plimpton LLP, Lambda Legal Defense and Education Fund, Inc., and the Sylvia Rivera Law Project, for her Complaint against John Johnson, Commissioner of the New York State Office of Children and Family Services (“OCFS”); Dr. Michael Cohen, Medical Director of OCFS’ Bureau of Health Services; Edward Figueroa, Director of Red Hook Residential Center; Cheryle Means, Director of Ella McQueen Residential Center; Maria Galarza, Director of Middletown Residential Center; OCFS Facilities Coordinators Rick Bull and Ruth Noriega; Devin Cusher, Assistant Director of OCFS Red Hook Residential Center; Timothy Terry, Youth Counselor at Red Hook Residential Center; and OCFS employees John and Jane Does, all in their personal capacities (collectively, “Defendants”), alleges as follows:

### **NATURE OF THE ACTION**

1. Plaintiff is a transgender woman, meaning that she<sup>1</sup> was born biologically male, but has a female gender identity.
  
2. From the ages of 15 to 17, Alyssa was under Defendants’ custodial care at various facilities in New York State, including St. Christopher-Otilie group home (“St. Christopher-Otilie”), Middletown Residential Center (“Middletown”), Gramercy

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<sup>1</sup> This complaint uses feminine pronouns to refer to Alyssa, a practice consistent with her gender identity, her preference, common practice, and the advice and guidance of mental health and other professionals who work with transgender clients.

Residence of Green Chimneys Children’s Services (“Green Chimneys”), Red Hook Residential Center (“Red Hook”), Pyramid Reception Center (“Pyramid”) and Ella McQueen Residential Center (“Ella McQueen”).

3. While under Defendants’ care as a minor, Plaintiff was denied the feminizing hormones she had been taking since at least the age of 14. Defendants denied Plaintiff these hormones despite parental consent and a prescription from a doctor. Plaintiff also was prohibited from dressing in female clothing and was called by her male name. She further was housed in male housing facilities and disciplined for expressing her feminine gender identity. For part of the time Plaintiff was under Defendants’ care, she was also denied testosterone suppressants.

4. The acts of Defendants were a violation of the Fourteenth Amendment of the United States Constitution, as well as a violation of New York State laws prohibiting discrimination based on disability and sex, and New York City law prohibiting discrimination based on gender and disability.

5. Plaintiff seeks compensatory damages for the harm she suffered due to the deprivation of her rights under the United States Constitution and the laws of New York State and New York City.

### **JURISDICTION AND VENUE**

6. Plaintiff’s causes of action are brought under 42 U.S.C. § 1983, N.Y. Exec § 297(9), and N.Y.C. Admin. Code § 8-502(a).

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as this action arises under the laws and Constitution of the United States. This Court has supplemental jurisdiction over the New York State and City claims pursuant to 28 U.S.C. § 1367 as such state and municipal claims form part of the same case or controversy.

8. Personal jurisdiction over Defendants is proper pursuant to N.Y.C.P.L.R. §302(a), as Defendants committed tortious acts against Plaintiff in the State.

9. Venue is proper in this district pursuant to 28 U.S.C. §1391 because the majority of the events giving rise to this action occurred in this district and because Defendants are subject to personal jurisdiction in this district.

### **PARTIES**

10. Plaintiff is currently 19 years old. While she was a minor (from the ages of 15 to 17), Plaintiff was a ward of the state residing at various state residential facilities under the auspices of the New York State OCFS, which is responsible for residential and community treatment of court-placed youth.

11. Upon information and belief, Defendant John Johnson, at all relevant times, was Commissioner of OCFS, and in that capacity was responsible for OCFS' compliance with all laws and regulations pertaining to children residing in OCFS facilities, including Plaintiff.

12. Upon information and belief, Dr. Michael Cohen, at all relevant times, was Director of OCFS' Bureau of Health Services, and in that capacity was responsible for the health of all children residing in OCFS facilities, including Plaintiff.

13. Upon information and belief, Edward Figueroa, at all relevant times, was the Director of Red Hook Residential Center, and in that capacity was responsible for the safety and well-being of all children residing in that facility, including Plaintiff.

14. Upon information and belief, Cheryle Means, at all relevant times, was the Director of Ella McQueen Residential Center, and in that capacity was responsible for the safety and well-being of all children residing in that facility, including Plaintiff.

15. Upon information and belief, Maria Galarza, at all relevant times, was the Director of Middletown Residential Center, and in that capacity was responsible for the safety and well-being of all children residing in that facility, including Plaintiff.

16. Upon information and belief, Rick Bull and Ruth Noriega, at all relevant times, were the Facilities Coordinators for OCFS, and in that capacity were responsible for the safety and well-being of all children residing in OCFS facilities, including Plaintiff.

17. Upon information and belief, Devin Cusher, at all relevant times, was the Assistant Director of Red Hook Residential Center, and in that capacity was responsible for the safety and well-being of all children residing in that facility, including Plaintiff.

18. Upon information and belief, Timothy Terry, at all relevant times, was a Youth Counselor at Red Hook Residential Center, and in that capacity was responsible for the safety and well-being of all children residing in that facility, including Plaintiff.

19. Upon information and belief, John and Jane Does were employees at OCFS facilities, and in that capacity were responsible for the safety and well-being of all children residing in those facilities, including Plaintiff. John and Jane Does sanctioned Alyssa for expressions of her feminine gender. Plaintiff is unaware of the true names and/or capacities of the OCFS employees sued herein under the fictitious names John and Jane Does, who were responsible in some way for the acts and omissions complained of herein. Plaintiff will seek leave of court to amend the complaint to allege such names and capacities at such time as they are ascertained.

20. Defendants collectively have legal obligations to operate and supervise the administration of the New York State child welfare system and to have provided welfare services, medical and mental health care and protection to Plaintiff.

### **BACKGROUND**

21. Alyssa was identified as male when she was born. However, from early childhood she has had a female gender identity, or an innate sense of being female. At least since February 2002, she has been diagnosed with Gender Identity Disorder (“GID”), a recognized medical condition identified in the American Psychiatric

Association's Diagnostic and Statistical Manual of Mental Disorders. DSM-IV 532 (4<sup>th</sup> ed. 1994).

22. By the age of 14, Alyssa was regularly taking feminizing hormones and testosterone suppressants. Over the next several years she developed breasts and other feminine characteristics.

23. At age 15, Alyssa was arrested and adjudicated to be a juvenile delinquent. On February 15, 2002, she was remanded to the Commissioner of Juvenile Justice.

24. On February 19, 2002, Kelli M. Marvin, Ph.D. of Mental Health Services of Family Court, evaluated Alyssa pursuant to an order of the family court. Dr. Marvin documented Alyssa's diagnosis of GID and documented that Alyssa reported an inability to obtain her feminizing hormones while in OCFS custody, resulting in withdrawal symptoms such as hot spells, headaches, and a more masculine voice. Dr. Marvin recommended a comprehensive medical evaluation to address Alyssa's need for treatment with respect to the use of hormones and recommended that an attempt should be made to place Alyssa in a community-based facility that would accommodate the specialized needs of a transgender adolescent.

25. The Family Court Probation Report relating to Alyssa, dated February 26, 2002, noted that Alyssa reported having a prescription for hormones.

26. Pursuant to an Order of Disposition dated March 14, 2002, Alyssa was remanded to OCFS care and placed at St. Christopher-Otilie, a nonrestrictive group

home with facilities and programs designed to address the special needs of adolescents who identify themselves as gay, lesbian, bisexual or transgendered, on March 18, 2002.

27. During her residence at St. Christopher-Otilie, Alyssa was able to resume taking testosterone suppressants and feminizing hormones, which she obtained from a local doctor. At the time, Alyssa's use of hormones was being monitored by the Callen-Lorde Community Health Center.

28. On or about July 2, 2002, Alyssa was transferred to the Pyramid, an intake facility for OCFS, due to alleged rule violations. From on or about July 5 through on or about July 10, 2002, Alyssa resided at Bridges Juvenile Detention Center, another intake facility for OCFS.

29. On or about July 10, 2002, Alyssa was transferred back to the Pyramid. At Pyramid, Alyssa reported that she had taken her last dose of feminizing hormones on July 5, 2002.

30. On August 15, 2002, Alyssa's mother, Sonia Gonzales, signed a Notification and Consent for Special Medicine form, which stated that OCFS would not provide female hormones for youth under 18 years old, but that OCFS would provide Alyssa with spironolactone, a testosterone suppressant.

31. On August 19, 2002, Alyssa was transferred to Middletown, a secure facility for boys. Alyssa repeatedly and strongly protested her placement in a boys' facility to OCFS Director Maria Galarza, among other individuals. Her protestations



resulted in her inclusion in a meeting, which upon information and belief included Ms. Galarza and Facilities Coordinators Rick Bull and Ruth Noriega.

32. While Alyssa was at Middletown, Ms. Galarza directed all Middletown staff to refer to Alyssa by male pronouns, and Alyssa was sanctioned for **any expressions** of femininity. On one occasion, a staff member struck Alyssa in the face, **after Alyssa** refused to comply with orders to not cross her legs in a feminine manner **while seated**. While at Middletown, Alyssa experienced depression and suicidal ideations. **She** informed a mental health counselor, Ms. Sturges, that she was depressed.

33. The decision by Ms. Galarza and others to sanction Alyssa for **expressing** her feminine gender identity violated accepted standards of care for the treatment of **GID**, including such standards for adolescents. Girls in OCFS custody who are not **transgender** were not sanctioned for expressions of femininity.

34. In addition, while Alyssa was at Middletown, Dr. Michael Cohen, Director of OCFS' Bureau of Health Services, denied Alyssa the feminizing hormones **she** previously had been taking. At that time, however, Alyssa was allowed to **continue** taking the testosterone suppressant spironolactone. During Alyssa's custody at Middletown, Dr. Cohen never examined Alyssa in person.

35. In making his determination to refuse Alyssa any kind of feminizing hormone treatment, Dr. Cohen acted with reckless disregard for the substantial risk posed by Alyssa's serious medical condition and substantially departed from accepted

professional standards and practice. In addition, Dr. Cohen did not act in accord with the prevailing standards of care for the treatment of GID, which requires hormone treatment in the form of testosterone suppressants in conjunction with feminizing hormones.

36. The continued use of spironolactone alone without the accompanying feminizing hormones, which Alyssa's body had become accustomed to and which was terminated abruptly, did not constitute adequate medical treatment. The termination of feminizing hormone replacement therapy typically produces adverse psychological and physical effects including scarring of skin tissue, growth of hair, irreversible facial structure change, mood instability and suicidal ideation.

37. During the months following Dr. Cohen's denial of her feminizing hormones, Alyssa reported the resulting negative physical and psychological consequences to OCFS, including facial hair growth, breast tenderness, depression and suicidal ideation. Alyssa repeatedly sought for her female hormone therapy to be resumed.

38. On January 21, 2003, at the age of 17, Alyssa was transferred to the Gramercy Residence of Green Chimneys, a group home specifically designed for lesbian, gay, bisexual, and transgender young people. On February 28, 2003, Dr. William Hoover of Bellevue Hospital prescribed feminizing hormones to Alyssa, in addition to the testosterone suppressants Alyssa was already taking.

39. Sonia Gonzales, Alyssa's mother, provided written consent to Green Chimneys and OCFS for the hormone treatment prescribed by Dr. Hoover in a letter dated March 11, 2003. The staff at Green Chimneys administered the feminine hormones and testosterone suppressants to Alyssa, after receipt of the abovementioned consent.

40. On April 15, 2003, based upon allegations of rule violations, Alyssa was again transferred to Red Hook, a more secure boys' facility. Alyssa repeatedly protested her placement in a boys' facility to a number of persons charged with her care.

41. Upon arriving at Red Hook, on or about April 15, 2003, Devin Cusher, the Assistant Director of Red Hook, and Timothy Terry, a youth counselor, ordered Alyssa to remove acrylic fingernails she had been allowed to wear at Green Chimneys. When Alyssa did not immediately comply, Mr. Cusher and Mr. Terry physically lifted and carried her to an adjacent building, where they held her down on the ground and attempted to forcibly remove the acrylic fingernails from her fingertips.

42. While at Red Hook, Alyssa was repeatedly sanctioned for expressing her feminine gender identity. She continued to be depressed and have suicidal ideations throughout the time she resided at Red Hook. She reported her depression to Ms. Sturges, her mental health counselor. The decisions by Mr. Figueroa, Mr. Cusher, Mr. Terry and others to sanction Alyssa for expressing her feminine gender identity violated accepted standards of care for the treatment of GID among adolescents. Girls in OCFS custody who are not transgender were not sanctioned for expressions of femininity.

43. An evaluation completed on April 11, 2003 as part of the Red Hook intake process had noted that Alyssa appeared feminine and exhibited feminine behavior. An April 18, 2003 physical exam noted Alyssa's enlarged breasts.

44. Upon Alyssa's transfer to Red Hook, Dr. Michael Cohen, the Director of OCFS' Bureau of Health Services, once again became responsible for Alyssa's medical care.

45. During Alyssa's custody at Red Hook, Dr. Cohen never examined Alyssa in person, but rather spoke with her briefly on the telephone on or about one occasion. On that occasion, Alyssa told Dr. Cohen that she had been taking feminizing hormones since the age of 12 or 13 and requested that the feminizing hormone treatment that Dr. Hoover had prescribed on February 28, 2003 be continued.

46. In contravention of the accepted forms of treatment for people with GID, however, Dr. Cohen reversed Dr. Hoover's decision to prescribe Alyssa feminizing hormones and abruptly terminated her ongoing course of hormone treatment. Dr. Cohen's abrupt termination of Alyssa's feminizing hormones, and his prescription of spironolactone alone without the accompanying feminizing hormones to which Alyssa's body had become accustomed, substantially departed from accepted professional standards and practice and constituted deliberate indifference to the substantial risk posed by Alyssa's serious medical condition.

47. During her detention at Red Hook, Alyssa was not provided with adequate counseling or medical examinations to monitor or treat the effects of Dr. Cohen's abrupt termination of the feminizing hormone component of Alyssa's ongoing course of treatment for GID.

48. On May 8, 2003, Alyssa wrote to Vincent O'Brien, the OCFS Ombudsman, to protest the cessation of her female hormone regime and to request assistance in resuming that regime.

49. On May 28, 2003, Alyssa wrote to family court judge Mary Bednar, with copies to Red Hook facility director Edward Figueroa, Facilities Coordinator Rick Bull, Vincent O'Brien, and others, protesting the cessation of her female hormone treatment, stating that she had been taking hormones since she was 12 or 13, that she was comfortable with her decision to take feminizing hormones, that she was aware of the potential health risks, and that the termination of her treatment was harming her, and requesting assistance in resuming her treatment. Mr. Figueroa and Mr. Bull were on notice, at least by May 28, 2003, that Alyssa required medical attention. However, neither Mr. Figueroa nor Mr. Bull took any appropriate action.

50. On August 11, 2003, Alyssa was transferred back to Green Chimneys. While there, Alyssa was again prescribed and given female hormones and testosterone suppressors.

51. On or about September 17, 2003, based upon allegations of rule violations, Alyssa was transferred to the Ella McQueen Detention Facility, a more secure male facility. Alyssa protested her placement in a male facility to her counselor Mr. Barbola.

52. At Ella McQueen, Alyssa was repeatedly disciplined by the director of the facility, Cheryle Means, and others for expressing her feminine gender identity. Alyssa continued to experience depression while at Ella McQueen. The decision by Ms. Means and others to sanction Alyssa for expressing her feminine gender identity violated accepted standards of care for the treatment of GID among adolescents. Girls in OCFS custody who are not transgender were not sanctioned for expressions of femininity.

53. At Ella McQueen, Alyssa's hormone therapy again was discontinued abruptly; she also was denied even the testosterone suppressing medication that she had been allowed to continue to take. During the months that Alyssa was at Ella McQueen, she was denied access to all hormone treatment that her body had become accustomed to over the prior years. As a result, Alyssa suffered serious physical, psychological and emotional harm, including the further development of suicidal ideation.

54. Dr. Steven Prenzlauer, MD, who conducted a psychological evaluation of Alyssa at the order of Family Court Judge Bednar, confirmed Alyssa's GID diagnosis and concluded that "hormone replacement therapy is medically indicated" for her on September 25, 2003. In a follow up letter dated October 10, 2003 to Judge Bednar, Dr. Prenzlauer reported on Alyssa's mood instability, including suicidal ideation, and scarring on her chest.

55. On November 3, 2003, Judge Bednar ordered that Alyssa be transferred back to Red Hook. Several days after her transfer, she was released from OCFS custody by Judge Bednar.

**FIRST CLAIM FOR RELIEF**

**Violation of Fourteenth Amendment of U.S. Constitution brought  
pursuant to 42 U.S.C. § 1983  
(against all Defendants)**

56. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

57. Alyssa's placement in the custody of OCFS was not for the purpose of punishment, but rather to provide her with guidance and rehabilitation.

58. Alyssa was not convicted of a crime and thus had a substantive due process interest that entitled her to more protective conditions of confinement than that accorded to convicted adult criminals.

59. Alyssa's diagnosis of GID constitutes a serious medical need for which she was being treated with hormone therapy, dressing in female attire, living as a woman and going by a female name.

60. Alyssa's GID diagnosis and course of hormone treatment was repeatedly documented and made known to Defendants from at least as early as Alyssa's February 2002 court-ordered psychiatric evaluation. Defendants were aware or should have been

aware of Alyssa's serious medical needs with respect to her ongoing course of treatment for her GID diagnosis.

61. Defendants knew or should have known that denial and termination of Alyssa's hormone therapy constituted a violation of her substantive due process interest in the protective conditions of her confinement, in that those actions substantially departed from accepted professional practice and standards for the treatment of GID and were not based upon such practices and standards. Defendants also knew or should have known that Alyssa's placement within boys' facilities, her subjection to excessive use of force by staff arising out of her feminine behavior, requirements that she wear traditionally male clothing, the on-going use of a male name and male pronouns by staff to refer to Alyssa, and other requirements that Alyssa live as a boy also substantially departed from accepted professional practice and standards for the treatment of GID and were not based upon such practices and standards. Defendants acted with deliberate indifference by recklessly disregarding the substantial risk posed by their substantial departure from accepted practice and standards.

62. Defendants knew or should have known that the denial and termination of Alyssa's hormone treatment, her placement within boys' facilities, her subjection to excessive use of force by staff arising out of her feminine behavior, requirements that she wear traditionally male clothing, the ongoing use of a male name and male pronouns by staff to refer to Alyssa, and other requirements that Alyssa live as a boy constituted a



violation of her substantive due process interest in the protective conditions of her confinement, in that those actions amounted to punishment.

63. Defendants knew or should have known that the denial and termination of Alyssa's hormone treatment, her placement within boys' facilities, her subjection to excessive use of force by staff arising out of her feminine behavior, requirements that she wear traditionally male clothing, the ongoing use of a male name and male pronouns by staff to refer to Alyssa, and other requirements that Alyssa live as a boy would result in serious psychological harm to Alyssa. Defendants also knew or should have known that the denial and termination of Alyssa's hormone treatment would cause irreversible physical changes that will continue to be barriers to Alyssa's GID treatment for the rest of her life.

64. Defendants were aware or should have been aware that youth under the State's supervision and control have serious medical needs as to which the Constitution compels the State to provide care, and knew or should have known that they created, failed to create, or allowed to continue policies or practices under which that care could not be provided.

65. As a direct and proximate result of Defendants' violations of the aforesaid provisions, Plaintiff suffered injury, including, without limitation, serious physical, psychological and emotional harm, mental anguish, distress, humiliation, and indignity.

**SECOND CLAIM FOR RELIEF**

**Discrimination on the basis of disability in violation of N.Y. Exec. Law § 290 *et seq.* and 18 NY ADC §§ 303.1(a), 303.1(b)  
(against all Defendants)**

66. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

67. Alyssa is protected from disability discrimination, pursuant to N.Y. Exec. Law § 292(21), in that she has GID, a mental impairment that is demonstrable by medically accepted clinical or diagnostic techniques, and in that she is also regarded by others as having such an impairment.

68. Defendants discriminated against Alyssa on the basis of her GID by failing to provide her with the appropriate medical treatment for her condition and abruptly discontinuing her prescribed treatment based on bias against those with her condition.

69. Defendants therefore discriminated against Alyssa because of her disability in the terms and conditions of her custodial care and the medical and clinical treatment accorded to those in custodial care, and in the furnishing of services in connection with custodial care facilities, in violation of N.Y. Exec. Law § 290 *et seq.*, including, *inter alia*, § 296(2)(a), § 296(2-a), § 296(5)(a), and § 296(6) which prohibit discrimination on the basis of disability in the provision of housing, public accommodations and publicly-assisted housing accommodations, as well as aiding and abetting such discriminatory acts.

70. Defendants condoned, encouraged, allowed or engaged in policies and actions that further violated N.Y. Exec. Law § 290 *et seq.*, including, *inter alia*, § 296(2-a)(d)(1), in that their policies and actions constituted a refusal to make reasonable accommodations in the rules, policies, practices, and services of the custodial care facility. Such accommodations were necessary to afford Alyssa, a person with a disability, equal opportunity and rights to use and enjoy the facility. Alyssa was discriminated against and was denied reasonable accommodations in that she was denied adequate medical care, forced to live in boys' facilities, prohibited from wearing female clothing, called by a male name and pronoun, disciplined for expressions of femininity, such as wearing her hair down, and subjected to excessive use of force by OCFS staff because of her feminine behavior.

71. As a direct and proximate result of Defendants' violations of the aforesaid provisions, Plaintiff suffered injury, including, without limitation, serious physical, psychological and emotional harm, mental anguish, distress, humiliation, and indignity.

### **THIRD CLAIM FOR RELIEF**

**Discrimination on the basis of sex in violation of N.Y. Exec. Law § 290 *et seq.*,  
18 NY ADC §§ 303.1(a), 303.1(b), and 441.19  
(against all Defendants)**

72. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

73. Defendants violated 18 NY ADC §§ 303.1(a), 303.1(b) and 441.19, and N.Y. Exec. Law § 290 *et seq.*, including, *inter alia*, § 296(2)(a), § 296(2-a), § 296(5)(a), and § 296(6), which prohibit discrimination on the basis of sex in the provision of social services, housing accommodations, and publicly-assisted housing accommodations, as well as aiding and abetting such discriminatory acts.

74. As alleged in further detail below, if Alyssa had been identified as female at birth, she would not have been denied the right to access hormonal and other medical treatment necessary for some girls to maintain feminine secondary sex characteristics or the right to be placed in custodial facilities appropriate for her gender.

75. Necessary medical treatment to maintain feminine secondary sex characteristics (e.g., suppression of facial hair) would not have been denied to someone in Alyssa's position who was identified as female at birth. For example, people identified as female at birth who are diagnosed with disorders such as Turner's Syndrome (a condition where a person is born without ovaries and therefore does not produce estrogen) are commonly prescribed feminizing hormones in order to maintain their feminine secondary sex characteristics. Defendants discriminated against Alyssa by preventing her from accessing the same medical treatment that would have been provided to someone who was identified as female at birth, who had a condition requiring hormone therapy to maintain feminine secondary sex characteristics, and who had been undergoing treatment for several years.

76. Defendants' policy and practice with regard to Alyssa therefore had the effect of discriminating against Alyssa because of her sex. A similarly-situated person assigned female at birth under the care of OCFS would not have been denied the rights and medical treatment withheld from Alyssa and would not have been disciplined or subjected to excessive use of force by OCFS staff for expressions of her feminine gender identity.

77. Defendants violated 18 NY ADC § 303.1(a) by condoning, encouraging or allowing OCFS' application of or by themselves engaging in policies or practices which had the effect of discriminating on the basis of sex in the provision of aid, care, services, benefits, privileges, and medical and other treatment.

78. Defendants violated 18 NY ADC § 303.1(b) by providing aid, care, services, benefits, privileges, and medical and other treatment to Alyssa which were different from those provided to others in custodial care; and restricting her in the enjoyment of advantages and privileges enjoyed by others, all on the basis of her sex.

79. Defendants violated 18 NY ADC § 441.19 by behaving in a discriminatory manner toward Alyssa, based on her sex, in the course of their custodial conduct.

80. Defendants have violated NY Exec. Law § 290 *et seq.*, including, *inter alia*, § 296(2)(a), § 296(2-a), § 296(5)(a), and § 296(6), by discriminating, or aiding and abetting in discrimination, on the basis of sex against Alyssa in the terms, conditions,

privileges, care, and rights of their public accommodations, housing accommodations, publicly-assisted housing accommodations, and the furnishing of services in connection therewith.

81. As a direct and proximate result of Defendants' violations of the aforesaid provisions, Plaintiff suffered injury, including, without limitation, serious physical, psychological and emotional harm, mental anguish, distress, humiliation, and indignity.

#### **FOURTH CLAIM FOR RELIEF**

**Discrimination on the basis of gender in violation of §§ 8-107(4), (5) and (6)  
of the New York City Human Rights Law  
(against all Defendants except Maria Galarza and Edward Figueroa, Devin Cusher,  
and Timothy Terry)**

82. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

83. John Johnson, Dr. Michael Cohen, Cheryle Means, Rick Bull, Ruth Noriega; and John and Jane Does (collectively "defendants operating within the City of New York"), all in their personal capacities, violated New York City Human Rights Law, Administrative Code of the City of New York, §§ 8-107 (4), (5) and (6) which provisions prohibit discrimination on the basis of gender in public accommodations and housing accommodations, as well as aiding and abetting such discriminatory acts.

84. Defendants discriminated against Alyssa on the basis of her gender when they denied her medical treatment on the basis of her actual or perceived sex and/or her gender identity and expression, which is different from that traditionally associated with

the sex she was assigned at birth. Further, they discriminated against her on the basis of gender when they denied her the right to be placed in custodial care appropriate for her gender, to wear traditionally feminine clothing and hairstyles, to use a traditionally female name and female pronouns, and otherwise to be treated like other girls, all on the basis that her gender identity or appearance was different from that traditionally associated with her birth sex.

85. Those defendants operating within the City of New York therefore violated the New York City Human Rights Law, Administrative Code of the City of New York, §§ 8-107 (4), (5), and (6) by condoning, encouraging or allowing OCFS' application of or by themselves engaging in a policy or practice which had the effect of discriminating on the basis of gender in the housing and/or public accommodation of the group home programs in which Alyssa lived and participated.

86. As a direct and proximate result of Defendants' violations of the aforesaid provisions, Plaintiff suffered injury, including, without limitation, serious physical, psychological and emotional harm, mental anguish, distress, humiliation, and indignity.

#### **FIFTH CLAIM FOR RELIEF**

**Discrimination on the basis of disability in violation of §§ 8-107(4), (5), and (6) of the New York City Human Rights Law  
(against all Defendants except Maria Galarza and Edward Figueroa, Devin Cusher, and Timothy Terry)**

87. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

88. Plaintiff is protected from discrimination based on disability, pursuant to the New York City Human Rights Law, Administrative Code of the City of New York, § 8-102(16) in that she has GID, a mental impairment, and in that she also is regarded by others as having such an impairment

89. Those defendants operating within the City of New York violated the New York City Human Rights Law, Administrative Code of the City of New York, §§ 8-107 (4), (5), and (6) which provisions prohibit discrimination on the basis of disability in public accommodations and housing accommodations, as well as aiding and abetting such discriminatory acts, by failing to provide Alyssa with the appropriate medical treatment for her condition, and discontinuing her prescribed treatment abruptly, based on bias against those with her condition. They further discriminated against Alyssa on the basis of her disability by forcing her to live in boys' facilities, wear boys' clothing, calling her by a male name and pronoun, and disciplining her for expressions of femininity such as wearing her hair down.

90. The policies and actions of those defendants operating within New York City further violated the New York City Human Rights Law, Administrative Code of the City of New York, §§ 8-107 (4), (5), and (6), in that they constituted a refusal to make reasonable accommodations in the rules, policies, practices, and services of the custodial care facility. Such accommodations were necessary to afford Alyssa, a person with a disability, equal opportunity and rights to use and enjoy the facility.



91. Those defendants operating within the City of New York therefore violated the New York City Human Rights Law, Administrative Code of the City of New York, §§ 8-107 (4), (5), and (6) by condoning, encouraging or allowing OCFS' application of or by themselves engaging in a policy or practice which had the effect of discriminating on the basis of disability in the housing and/or public accommodation of the group home programs in which Alyssa lived and participated.

92. As a direct and proximate result of Defendants' violations of the aforesaid provisions, Plaintiff suffered injury, including, without limitation, serious physical, psychological and emotional harm, mental anguish, distress, humiliation, and indignity.

### **RELIEF**

WHEREFORE, Plaintiff prays for judgment under all her causes of action:

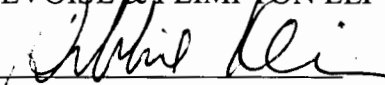
(a) Awarding Plaintiff compensatory damages against all Defendants in an amount to be proven at trial;

(b) Awarding costs for the suit herein, including Plaintiff's reasonable attorneys' fees and expert fees pursuant to 42 U.S.C. § 1988, N.Y. Exec § 297(10), and N.Y.C. Admin. Code §§ 8-502(f); and

(c) Awarding Plaintiff all other relief that the Court deems just and proper.

Dated: New York, New York  
April 7, 2006

Respectfully submitted,  
DEBEVOISE & PLIMPTON LLP

By:   
Felise Nguyen (FN-9242)  
Ellen Hochberg (EH-9843)  
Debbie Klein (DK-0186)  
919 Third Avenue  
New York, New York 10022  
(212) 909-6000

LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
Rudy Estrada (RE-1965)  
Cole Thaler (Of Counsel)  
120 Wall Street, Suite 1500  
New York, NY 10005-3904  
(212) 809-8585

SYLVIA RIVERA LAW PROJECT  
Pooja Gehi (PG-4718)  
Dean Spade (Of Counsel)  
322 8<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
New York, NY 10001  
(212) 337-8550

*Attorneys for Plaintiff Alyssa Rodriguez*

**CERTIFICATE OF SERVICE**

I, Debbie Klein, associated with Debevoise & Plimpton LLP, attorneys for plaintiff herein, certify:

I am over eighteen (18) years of age. On the 7th day of April 2006, I caused to be served copies of the within Amended Complaint by personal delivery upon counsel for the other parties to this action at the following address:

John Gasior  
Office of Attorney General  
120 Broadway 24<sup>th</sup> floor  
New York, NY 10271

Pursuant to 28 U.S.C. § 1746, I certify under the penalty of perjury that the foregoing is true and correct.

Executed on April 7, 2006.

  
\_\_\_\_\_  
Debbie Klein

# Traina Exhibit B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ALYSSA RODRIGUEZ,

Plaintiff,

06 CV 00214 (RMB) (RLE)

- against -

JOHN JOHNSON, Commissioner of the New York State  
Office of Children and Family Services ("OCFS");  
DR. MICHAEL COHEN, Medical Director of OCFS'  
Bureau of Health Services;  
EDWARD FIGUEROA, Director of OCFS Red Hook  
Residential Center;  
CHERYLE MEANS, Director of OCFS Ella McQueen  
Residential Center;  
MARIA GALARZA, Director of OCFS Middletown  
Residential Center; OCFS Facilities Coordinators  
RICK BULL and  
RUTH NORIEGA;  
DEVIN CUSHER, Assistant Director of OCFS Red Hook  
Residential Center;  
TIMOTHY TERRY, Youth Counselor at Red Hook  
Residential Center and  
OCFS employees JOHN and JANE DOES,  
all in their personal capacities,

Defendants.  
-----X

**MEMO ENDORSED**

**STIPULATION AND ORDER OF SETTLEMENT**

**WHEREAS** plaintiff brought this action against defendants Rick Bull, Devin Cusher, Dr. Michael Cohen, Edward Figueroa, Maria Galarza, John Johnson, Cheryle Means, Ruth Noriega and Timothy Terry, (collectively hereinafter "Defendants"), all in their personal capacities, for certain acts alleged to have been in violation of the Fourteenth Amendment of the United States Constitution, as well as in violation of New York State laws prohibiting discrimination based on disability and sex, and New York City law prohibiting discrimination based on gender and

disability; and

**WHEREAS** Defendants deny all wrongdoing alleged in this action and any liability whatsoever to plaintiff, and further assert that they have meritorious defenses to the action and that they enter into this Stipulation and Order of Settlement solely for the purposes of resolving this litigation; and

**WHEREAS** the New York State Office of Children & Family Services (“OCFS”), a non-party to this action, has agreed to enter into a separate Memorandum of Understanding with plaintiff’s counsel in this litigation, Lambda Legal Defense and Education Fund (“Lambda”) and the Sylvia Rivera Law Project (“SRLP”); and

**WHEREAS** the parties believe that the best interests of the parties will be advanced by the settlement of this action;

**IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned counsel for the parties herein, as follows:

**I. Monetary Settlement**

1. Upon the Court's approval of this Stipulation and Order of Settlement, and payment of the sum as set forth below, plaintiff, individually and on behalf of plaintiff’s heirs, executors, administrators, personal representatives, successors and assigns, hereby releases and forever discharges, on the merits with prejudice, all Defendants, the State of New York, OCFS, the Governor of the State of New York, the commissioner of OCFS, and all past and present officials, employees, departments, representatives, directors and agents, their successors and assigns and their respective heirs, executors, administrators, personal representatives, and transferees (collectively the "Releasees") and each of them, of and from any and all claims,

actions, costs, expenses and attorneys' and expert fees, involving, concerning, arising from or in any way relating to any claim which is or could have been stated against the Releasees concerning the conduct challenged in the First Amended Complaint, dated April 7, 2006, filed in this action.

2. The State of New York, on behalf of Defendants, pursuant to New York State Public Officer's Law Section 17, shall pay the total sum of twenty-five thousand dollars (\$25,000.00) to plaintiff in full settlement of all claims in or arising from this action. Payment shall be made by delivering a check payable to "Alyssa Rodriguez" as payee within one hundred twenty (120) days of Defendants' receipt of a "So Ordered" copy of this Stipulation and Order of Settlement and the general release identified in paragraph 5 herein. If payment is made later than the above described one hundred twenty (120) day period, Defendants shall pay interest at the rate set by New York's Civil Practice Law and Rules, section 5004.

3. Payment of the amount contained in paragraph 2 of this Stipulation and Order of Settlement shall be subject to the approval of all appropriate state officials, in accordance with the provisions for indemnification under New York Public Officers Law, Section 17, Subdivision 3(a). If said appropriate state officials do not approve payment of the amount contained in paragraph 2, this Stipulation and Order of Settlement shall be deemed null and void.

4. In consideration for the State of New York's payment on behalf of Defendants, this action shall be deemed dismissed with prejudice, without attorney's fees or costs, and plaintiff and plaintiff's counsel release the Defendants in this action and any present, former, or future employees, agents, or officials of respondent agencies and the State of New York, from any and all liability, claims, or rights of action in or arising from this action, including attorneys'

fees, costs, and disbursements.

5. Upon execution of this Stipulation and Order of Settlement, Plaintiff's counsel shall execute a general release based upon the terms of this Stipulation and Order of Settlement in the form annexed hereto as Exhibit "A", and provide the general release to Defendants' counsel, together with plaintiff's social security number.

6. Nothing in this Stipulation and Order of Settlement shall be deemed to be an admission by Defendants of any liability whatsoever, nor do Defendants admit that Plaintiff or their counsel are entitled to any fees, costs, or disbursements arising from this action.

7. Nothing in this Stipulation and Order of Settlement shall be deemed to be an admission by Defendants, OCFS or the State of New York, that they have in any manner or way violated Plaintiff's rights, or the rights of any other person or entity, as defined in the constitution, statutes, ordinances, rules or regulations of the United States, the State of New York, the City of New York or any other rules, regulations or bylaws of any department or subdivision of government.

8. Nothing in this Stipulation and Order of Settlement shall be deemed, implied or construed to be a policy, custom or procedure of OCFS or the State of New York, nor shall it be deemed, implied or construed to be applicable to any other person or persons, and this Stipulation and Order of Settlement shall have no precedential value or effect whatsoever and shall not be admissible in any other litigation, action or proceeding, other than any litigation, action or proceeding to enforce the terms of this Stipulation and Order of Settlement, as evidence for any purpose.

9. The parties shall comply with paragraph 9 of the Stipulation And Protective

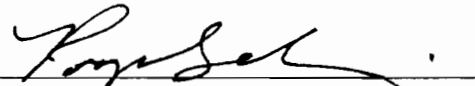


Order, So Ordered by the Court in this action on March 29, 2006, regarding the return or destruction of "Confidential Information".

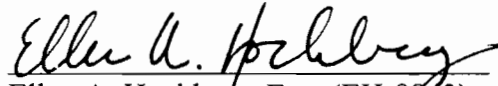
Dated: New York, New York  
November 9, 2006



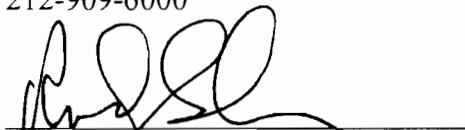
Alyssa Rodriguez (a.k.a. Jennifer Rodriguez, Andrew Rodriguez)



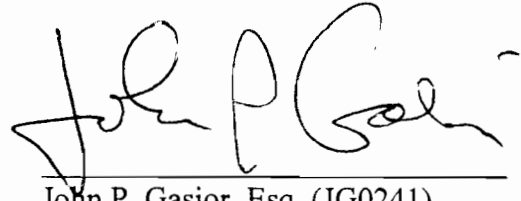
Pooja Gehi, Esq. (PG-4718)  
Attorney for Plaintiff  
Sylvia Rivera Law Project  
322 8<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
New York, New York 10001  
212-337-8550



Ellen A. Hochberg, Esq. (EH-9843)  
Debbie Klein, Esq. (DK-0186)  
Attorneys for Plaintiff  
Debevoise & Plimpton, LLP  
919 Third Avenue  
New York, New York 10022  
212-909-6000



Rudy Estrada, Esq. (RE-1965)  
Cole Thaler, Esq. (Of Counsel)  
Attorneys for Plaintiff  
Lambda Legal Defense and  
Education Fund, Inc.  
120 Wall Street, Suite 1500  
New York, New York 10005-3904  
212-809-8585



John P. Gasior, Esq. (JG0241)  
Attorney for Defendants  
Assistant Attorney General  
of the State of New York  
120 Broadway 24<sup>th</sup> Floor  
New York, New York 10271  
212-416-8570

*On Consent*

SO ORDERED

*RMB*

U.S.D.J.

*11/13/06*

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ALYSSA RODRIGUEZ,

Plaintiff,

06 CV 00214 (RMB) (RLE)

- against -

JOHN JOHNSON, Commissioner of the New York State  
Office of Children and Family Services (“OCFS”);

DR. MICHAEL COHEN, Medical Director of OCFS’  
Bureau of Health Services;

EDWARD FIGUEROA, Director of OCFS Red Hook  
Residential Center;

CHERYLE MEANS, Director of OCFS Ella McQueen  
Residential Center;

MARIA GALARZA, Director of OCFS Middletown  
Residential Center; OCFS Facilities Coordinators

RICK BULL;

RUTH NORIEGA;

DEVIN CUSHER, Assistant Director of OCFS Red Hook  
Residential Center;

TIMOTHY TERRY, Youth Counselor at Red Hook  
Residential Center and

OCFS employees JOHN and JANE DOES,  
all in their personal capacities,

Defendants.  
-----X

**GENERAL RELEASE**

Plaintiff, Alyssa Rodriguez (also known as Andrew Rodriguez and Jennifer Rodriguez), Releasor, in consideration of the payment of the total sum of twenty-five thousand dollars (\$25,000.00) by the State of New York, does hereby

**RELEASE AND FOREVER DISCHARGE**, Rick Bull, Devin Cusher, Dr.

Michael Cohen, Edward Figueroa, Maria Galarza, John Johnson, Cheryle Means, Ruth Noriega

and Timothy Terry, their heirs, executors, administrators, successors, or assigns, and all past, present or future Commissioners, officials, employees, representatives and agents of the New York State Office of Children & Family Services, the State of New York, and their successors in interest, from any and all liability, claims or rights or manner of actions, causes of action, suits, proceedings, debts, sums of money and demands, in law or in equity, including any claim for attorneys' fees, expert's fees, costs disbursements, or expenses, of any kind whatsoever incurred by Plaintiff in the above-captioned action.

This release may not be changed orally.

Dated: New York, New York  
November , 2006

\_\_\_\_\_  
Alyssa Rodriguez (a.k.a. Jennifer  
Rodriguez, Andrew Rodriguez)

Sworn to before me this  
day of November, 2006

\_\_\_\_\_  
Notary Public

# Traina Exhibit C



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER  
Attorney General

RICHARD RIFKIN  
Deputy Attorney General  
State Counsel Division

Writer's Direct Dial  
(212) 416-8570

JAMES B. HENLY  
Assistant Attorney General In Charge  
Litigation Bureau

December 19, 2006

BY HAND DELIVERY

Rudy Estrada, Esq.  
Lambda Legal Defense and  
Education Fund, Inc.  
120 Wall Street, Suite 1500  
New York, New York 10005-3904

Re: Rodriguez v. Johnson et al., S.D.N.Y. 06 Civ. 214 (RMB) (RLE)

Dear Mr. Estrada:

Enclosed is the original Memorandum of Understanding Between The New York State Office of Children & Family Services and Lambda Legal Defense and Education Fund and Sylvia Rivera Law Project ("MOU"). The MOU has been executed on behalf of OCFS by Ed Ausborn, Deputy Commissioner for Rehabilitative Services. Please arrange to have the MOU executed by SRLP and Lambda. You may keep the original, fully executed MOU and send me a copy. I will transmit a copy of the MOU to OCFS. I believe Dr. Cohan and Dr. Mallon are prepared to engage in the first Telephonic Informational Meeting.

Please call me or Debbie Hochhauser if you have any questions.

Very truly yours,

John P. Gasior  
Assistant Attorney General

encl.

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE NEW YORK STATE OFFICE OF CHILDREN & FAMILY SERVICES  
and  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND  
and  
SYLVIA RIVERA LAW PROJECT**

This Memorandum of Understanding (“MOU”) between the New York State Office of Children & Family Services (“OCFS”), Lambda Legal Defense and Education Fund (“Lambda”) and the Sylvia Rivera Law Project (“SRLP”) (collectively hereinafter “the Parties”) represents an agreement whereby OCFS will implement two programs related to the care and custody of transgender children placed in OCFS custody through court adjudication.

**OCFS, LAMBDA AND SRLP HEREBY AGREE AS FOLLOWS:**

**I. DEFINITIONS**

For the purposes of this MOU:

1. “MOU Effective Date” refers to the date that Lambda and/or SRLP mails to OCFS (using the procedure described below in this paragraph) a “So Ordered” copy of the Stipulation and Order of Settlement in the litigation captioned Alyssa Rodriguez v. Johnson, et al., 06 CV 214 (RMB) (RLE) (“Rodriguez v. Johnson”), which action was filed in the United States District Court for the Southern District of New York. A copy of the Stipulation and Order of Settlement, as executed by counsel in the Rodriguez v. Johnson litigation is annexed hereto as Exhibit A. Lambda and/or SRLP shall mail the “So Ordered” Stipulation and Order of Settlement to John Gasior, A.A.G., State of New York, Office of the Attorney General, 120 Broadway, 24th floor, New York, New York 10271.
2. “MOU Effective Period” refers to a period of five (5) years starting on the MOU Effective Date.
3. “OCFS Contact(s)” refers to Dr. Michael Cohen (“Dr. Cohen”), Medical Director of OCFS’ Bureau of Health Services and Dr. Gary Mallon (“Dr. Mallon”) a consultant to OCFS. If, during the MOU Effective Period, Dr. Cohen and/or Dr. Mallon should become unable, for any reason, to act as an OCFS Contact, OCFS shall promptly, and in its sole discretion, appoint as an alternative OCFS Contact(s) an employee, agent or consultant with knowledge of current OCFS policies regarding the care and custody of transgender youth placed in OCFS custody pursuant to a court adjudication.
4. “Lambda/SRLP Flyer” refers to the document annexed hereto as Exhibit B. The Lambda/SRLP Flyer, and any copies made thereof, shall be printed in black ink on white 8" x 11" paper.

5. "Transgender Youth" shall refer to any youth placed in OCFS custody pursuant to a court adjudication who: self-identifies as being transgender, transsexual, gender nonconforming, or as a gender other than the one assigned at birth, or; whose medical records in OCFS's possession indicate that they have received a diagnosis of Gender Identity Disorder from a licensed medical professional or a licensed mental health care provider.

## **II. OCFS IMPLEMENTATION OF THE MOU**

### **A. Telephonic Informational Meetings**

6. The Parties agree that representatives from Lambda and SRLP shall engage in six (6) informational meetings ("Informational Meeting(s)") with the OCFS Contacts during the MOU Effective Period. The Informational Meetings shall be held via telephonic conference calls at mutually agreed-upon dates and times, subject to the other terms of this paragraph. Lambda and/or SRLP shall be responsible for arranging and initiating the telephonic conference calls at the mutually agreed-upon date and time and shall bear the full responsibility for the cost of the telephonic conferences. The first Informational Meeting shall take place within thirty (30) days of the MOU Effective Date. A second Informational Meeting shall take place within six (6) months of the first Informational Meeting. Thereafter, Informational Meetings shall take place during the MOU Effective Period on or around the anniversary of the second Informational Meeting.

- a. The purpose of the Informational Meetings shall be to discuss generally the care provided to Transgender Youth in OCFS custody. The OCFS Contacts shall inform the Lambda and SRLP representatives of any relevant, non-confidential, developments in OCFS's public policies and practices regarding the care and custody of Transgender Youth. The OCFS Contacts shall not be under any obligation to discuss confidential information concerning any individual Transgender Youth in OCFS custody or to identify Transgender Youth in OCFS custody.
- b. At the Informational Meetings, Lambda and SRLP shall be given the opportunity to present the OCFS Contacts with their concerns and suggestions regarding OCFS's policies and practices for Transgender Youth. The OCFS Contacts shall give such concerns and suggestions their good faith consideration. No mechanical recordings (including but not limited to audio tape or digital media) of the Informational Meetings shall be made unless all parties in attendance are informed of and consent to such recording.
- c. All written communications between Lambda/SRLP and the OCFS Contacts regarding the scheduling of Informational Meetings shall be sent to the following addresses:



To OCFS: Ines Nieves (or successor)  
Associate Commissioner  
Division of Rehabilitative Services  
Office of Children & Family Services  
52 Washington St.  
Rensselaer, N.Y. 12144-2796  
518-486-6766

To Lambda/SRLP: Transgender Rights Attorney  
Lambda Legal  
730 Peachtree St. NE, Suite 1070  
Atlanta, GA 30308

Staff Attorney  
Sylvia Rivera Law Project  
322 8<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
New York, NY 10001

**B. Distribution of Lambda/SRLP Flyers**

7. The Parties agree that, within thirty (30) days of the MOU Effective Date, Lambda and SRLP shall provide OCFS with 100 copies of the Lambda/SRLP Flyer annexed hereto as Exhibit B. Lambda/SRLP shall transmit the Lambda/SRLP Flyers to Ines Nieves, (or successor), Associate Commissioner, Division of Rehabilitative Services, New York State, Office of Children & Family Services, 52 Washington St., Rensselaer, N.Y. 12144-2796. Lambda and SRLP also may provide OCFS with a copy of the Lambda/SRLP Flyer in a portable document format (PDF) compatible with the Adobe Acrobat computer program. If the address or phone number for either Lambda or SRLP changes, Lambda/SRLP shall be responsible for informing OCFS of that change and thereafter providing OCFS with 100 copies of an updated flyer bearing the corrected information, and OCFS shall transmit and distribute those updated flyers in the manner described in this MOU.

8. Within two weeks of receipt of the Lambda/SRLP Flyer, OCFS shall transmit copies of the Lambda/SRLP Flyer to the OCFS Ombudsman at OCFS's headquarters in Rensselaer, New York, and to the directors of the OCFS facilities designated for placement of transgender youth (currently located at Redhook Residential Center, Tryon Residential Center, Highland Residential Center, Brookwood Secure Center and Tryon Girls' Center) (hereinafter "Designated Facilities"). The directors at the Designated Facilities shall distribute copies of the Lambda/SRLP Flyer to all of the Youth Counselors then employed at the Designated Facilities.

9. During the MOU Effective Period, the OCFS Ombudsman and the OCFS Youth Counselors at the Designated Facilities shall provide the Lambda/SRLP Flyer to Transgender Youth who, in the Ombudsman's or a Youth Counselor's judgment, would benefit from the

services provided by Lambda and/or SRLP, as those services are described in the Lambda/SRLP Flyer. The Lambda/SRLP Flyer shall be provided to Transgender Youth within seventy-two (72) hours of the Ombudsman's or Youth Counselor's determination that the Transgender Youth would benefit from the services it describes.

10. OCFS agrees to have a sufficient quantity of copies of the Lambda/SRLP Flyer available to Youth Counselors at the Designated Facilities during the MOU Effective Period. Lambda and/or SRLP shall, upon request, supply OCFS with additional copies of the Lambda/SRLP Flyer.

### **III. GENERAL PROVISIONS**

11. It is understood and agreed that all agreements and understandings between the Parties are embodied and expressed herein and that no representations or agreements made to, by, or between the Parties hereto, or their representatives, prior to or at the time of execution hereof, shall be binding upon any party hereto unless the same are expressly set forth in this MOU. This MOU is a complete and integrated statement of the Parties' intent.

12. This MOU shall remain in effect for five (5) years after the MOU Effective Date, whereupon it shall automatically expire by its own terms.

13. It is understood and agreed that the OCFS Contacts, Youth Counselors, facility directors and OCFS Ombudsman identified in this MOU are not parties to the MOU and they shall not be liable, nor shall any action be brought against them, in their individual, personal or official capacity, for any alleged breach of the terms of this MOU.


14. The provisions of this MOU shall be deemed severable, and the invalidity or unenforceability of any one or more of its provisions shall not affect the validity or enforceability of any of the other provisions.

15. Each party signing this MOU, whether signed individually or on behalf of any person or entity, warrants and represents that they have full authority to so execute the MOU on behalf of the party or parties on whose behalf they so sign. Each separately acknowledges and represents that this representation and warranty is an essential and material provision of this MOU and shall survive execution of this MOU.

16. It is understood and agreed that this MOU, and all its terms and conditions, was jointly drafted by the Parties.

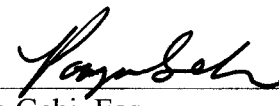
DATED: 12/11, 2006

**NEW YORK STATE OFFICE OF CHILDREN  
AND FAMILY SERVICES**

By:   
Ed Ausborn  
Deputy Commissioner for  
Rehabilitative Services  
52 Washington Street  
Rensselaer, NY 12144  
518-473-1786


DATED: Dec. 19, 2006

**SYLVIA RIVERA LAW PROJECT**

By:   
Pooja Gehi, Esq.  
322 8<sup>th</sup> Avenue, 3rd Floor  
New York, NY 10001  
212-337-8550

DATED: Dec. 19, 2006

**LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.**

By:   
Rudy Estrada, Esq.  
120 Wall Street, Suite 1500  
New York, NY 10005-3904  
212-809-8585

# **EXHIBIT A**

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P.04/11

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ALYSSA RODRIGUEZ,

Plaintiff,

06 CV 00214 (RMB) (FLE)

- against -

JOHN JOHNSON, Commissioner of the New York State  
Office of Children and Family Services ("OCFS");  
DR. MICHAEL COHEN, Medical Director of OCFS'  
Bureau of Health Services;  
EDWARD FIGUEROA, Director of OCFS Red Hook  
Residential Center;  
CHERYLE MEANS, Director of OCFS Ella McQueen  
Residential Center;  
MARIA GALARZA, Director of OCFS Middletown  
Residential Center; OCFS Facilities Coordinators  
RICK BULL and  
RUTH NORIEGA;  
DEVIN CUSHER, Assistant Director of OCFS Red Hook  
Residential Center;  
TIMOTHY TERRY, Youth Counselor at Red Hook  
Residential Center and  
OCFS employees JOHN and JANE DOES,  
all in their personal capacities,

Defendants.

**MEMO ENDORSED**

STIPULATION AND ORDER OF SETTLEMENT

WHEREAS plaintiff brought this action against defendants Rick Bull, Devin Cusher, Dr. Michael Cohen, Edward Figueroa, Maria Galarza, John Johnson, Cheryle Means, Ruth Noriega and Timothy Terry. (collectively hereinafter "Defendants"), all in their personal capacities, for certain acts alleged to have been in violation of the Fourteenth Amendment of the United States Constitution, as well as in violation of New York State laws prohibiting discrimination based on disability and sex, and New York City law prohibiting discrimination based on gender and

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disability; and

**WHEREAS** Defendants deny all wrongdoing alleged in this action and any liability whatsoever to plaintiff, and further assert that they have meritorious defenses to the action and that they enter into this Stipulation and Order of Settlement solely for the purposes of resolving this litigation; and

**WHEREAS** the New York State Office of Children & Family Services ("OCFS"), a non-party to this action, has agreed to enter into a separate Memorandum of Understanding with plaintiff's counsel in this litigation, Lambda Legal Defense and Education Fund ("Lambda") and the Sylvia Rivera Law Project ("SRLP"); and

**WHEREAS** the parties believe that the best interests of the parties will be advanced by the settlement of this action;

**IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned counsel for the parties herein, as follows:

**I. Monetary Settlement**

1. Upon the Court's approval of this Stipulation and Order of Settlement, and payment of the sum as set forth below, plaintiff, individually and on behalf of plaintiff's heirs, executors, administrators, personal representatives, successors and assigns, hereby releases and forever discharges, on the merits with prejudice, all Defendants, the State of New York, OCFS, the Governor of the State of New York, the commissioner of OCFS, and all past and present officials, employees, departments, representatives, directors and agents, their successors and assigns and their respective heirs, executors, administrators, personal representatives, and transferees (collectively the "Releasees") and each of them, of and from any and all claims,

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actions, costs, expenses and attorneys' and expert fees, involving, concerning, arising from or in any way relating to any claim which is or could have been stated against the Releasees concerning the conduct challenged in the First Amended Complaint, dated April 7, 2006, filed in this action.

2. The State of New York, on behalf of Defendants, pursuant to New York State Public Officer's Law Section 17, shall pay the total sum of twenty-five thousand dollars (\$25,000.00) to plaintiff in full settlement of all claims in or arising from this action. Payment shall be made by delivering a check payable to "Alyssa Rodriguez" as payee within one hundred twenty (120) days of Defendants' receipt of a "So Ordered" copy of this Stipulation and Order of Settlement and the general release identified in paragraph 5 herein. If payment is made later than the above described one hundred twenty (120) day period, Defendants shall pay interest at the rate set by New York's Civil Practice Law and Rules, section 5004.

3. Payment of the amount contained in paragraph 2 of this Stipulation and Order of Settlement shall be subject to the approval of all appropriate state officials, in accordance with the provisions for indemnification under New York Public Officers Law, Section 17, Subdivision 3(a). If said appropriate state officials do not approve payment of the amount contained in paragraph 2, this Stipulation and Order of Settlement shall be deemed null and void.

4. In consideration for the State of New York's payment on behalf of Defendants, this action shall be deemed dismissed with prejudice, without attorney's fees or costs, and plaintiff and plaintiff's counsel release the Defendants in this action and any present, former, or future employees, agents, or officials of respondent agencies and the State of New York, from any and all liability, claims, or rights of action in or arising from this action, including attorneys'

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fees, costs, and disbursements.

5. Upon execution of this Stipulation and Order of Settlement, Plaintiff's counsel shall execute a general release based upon the terms of this Stipulation and Order of Settlement in the form annexed hereto as Exhibit "A", and provide the general release to Defendants' counsel, together with plaintiff's social security number.

6. Nothing in this Stipulation and Order of Settlement shall be deemed to be an admission by Defendants of any liability whatsoever, nor do Defendants admit that Plaintiff or their counsel are entitled to any fees, costs, or disbursements arising from this action.

7. Nothing in this Stipulation and Order of Settlement shall be deemed to be an admission by Defendants, OCFS or the State of New York, that they have in any manner or way violated Plaintiff's rights, or the rights of any other person or entity, as defined in the constitution, statutes, ordinances, rules or regulations of the United States, the State of New York, the City of New York or any other rules, regulations or bylaws of any department or subdivision of government.

8. Nothing in this Stipulation and Order of Settlement shall be deemed, implied or construed to be a policy, custom or procedure of OCFS or the State of New York, nor shall it be deemed, implied or construed to be applicable to any other person or persons, and this Stipulation and Order of Settlement shall have no precedential value or effect whatsoever and shall not be admissible in any other litigation, action or proceeding, other than any litigation, action or proceeding to enforce the terms of this Stipulation and Order of Settlement, as evidence for any purpose.

9. The parties shall comply with paragraph 9 of the Stipulation And Protective

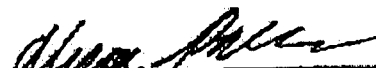



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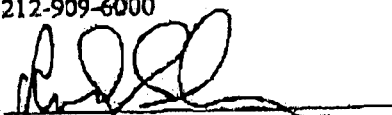
Order, So Ordered by the Court in this action on March 29, 2006, regarding the return or destruction of "Confidential Information".

Dated: New York, New York  
November 9, 2006

  
Alyssa Rodriguez (a.k.a. Jennifer Rodriguez, Andrew Rodriguez)

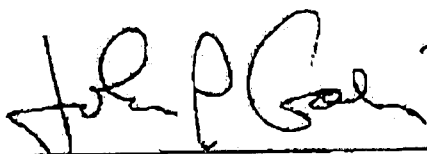
  
Pooja Gahi, Esq. (PG-4718)  
Attorney for Plaintiff  
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New York, New York 10001  
212-337-8550

  
Ellen A. Hochberg, Esq. (EH-9843)  
Debbie Klein, Esq. (DK-0186)  
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919 Third Avenue  
New York, New York 10022  
212-909-6000

  
Rudy Estrada, Esq. (RE-1985)  
Cole Thaler, Esq. (Of Counsel)  
Attorneys for Plaintiff  
Lambda Legal Defense and  
Education Fund, Inc.  
120 Wall Street, Suite 1500  
New York, New York 10005-3904  
212-809-8585

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John P. Gasior, Esq. (JG0241)  
Attorney for Defendants  
Assistant Attorney General  
of the State of New York  
120 Broadway 24<sup>th</sup> Floor  
New York, New York 10271  
212-416-8570

*On Consent*

SO ORDERED

*RMB*

U.S.D.J.

*11/13/06*

# **EXHIBIT B**

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## Resources for Transgender Youth



Lambda Legal  
120 Wall Street, Suite 1500  
New York, NY 10005  
1-866-LGBTeen (toll free)  
(212) 809-8585  
(212) 809-0055 (fax)  
[www.lambdalegal.org](http://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. Its services are free and confidential.

### SYLVIA RIVERA LAW PROJECT

322 8TH AVENUE, 3RD FLOOR NEW YORK, NY 10001 212 337 8550 T 212 337 1972 F WWW.SRLP.ORG

Sylvia Rivera Law Project  
322 8th Ave., 3rd Floor  
New York, NY 10001  
(212) 337-8550  
(212) 337-1972 (fax)  
[www.srlp.org](http://www.srlp.org)  
[info@srlp.org](mailto:info@srlp.org)

The Sylvia Rivera Law Project (SRLP) provides free, confidential legal help to low-income people and people of color who are transgender, intersex, or gender nonconforming. SRLP assists such people with name and gender changes on identity documents, discrimination cases, prisoner's rights, access to transition-related healthcare, and some immigration issues. SRLP also uses public education, impact litigation, policy work, and community organizing support to advance the rights of the communities it serves.

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If you are experiencing legal difficulties, you should contact your law guardian or attorney. If you don't know the name or phone number of your law guardian or attorney, your Youth Counselor or the OCFS Ombudsman can give them to you.

The information on this flyer is presented solely for informational purposes. It is not an endorsement of the services provided by the two organizations listed above and it is not a recommendation that they should, or need to, be contacted.

# Traina Exhibit D



## Lesbian, Gay, Bisexual, Transgender and Questioning Youth (PPM 3442.00)

Approved By: <i>Gladys Carrión (signed)</i> <b>Gladys Carrion</b>	Date Issued: <b>March 17, 2008</b>	Number of Pages: <b>3</b>	Appendix Pages: <b>11</b>
Related Laws: <b>Civil Rights Law Section 40-c Executive Law Article 15</b>	Division/Office: <b>Juvenile Justice and Opportunities for Youth</b>	Contact Office/Bureau/Unit: <b>Office of Program Services</b>	
Supporting Regulations:	American Correctional Association Standards (ACA): <b>3-JTS-3D-03, 3D-06, 3D-06-1, 3D-06-3, 3D-06-6, 3D-06-7, 3D-06-9 and 3D-08</b>		
Regulatory Bulletins & Directives: <b>N/A</b>	Related Policies:	Supersedes:	

### SUMMARY:

The New York State Office of Children and Family Services is committed to providing lesbian, gay, bisexual, transgender and questioning youth in residential and after-care programs it operates with a safe and discrimination-free environment.

## I. POLICY

It shall be the policy of the New York State Office of Children and Family Services (OCFS) to maintain and promote a safe environment for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth in OCFS operated residential and after-care programs. All OCFS 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 sexual orientation, gender identity, and gender expression. OCFS is committed to providing a healthy and accepting setting for all youth placed in its facilities and after-care programs by training staff and educating youth to respect each individual. Any discrimination against or harassment of youth, including by other youth, will not be tolerated. The provision of services within OCFS facilities and programs shall be based on professional standards as found in the New York State Office of Children and Family Services Guidelines for Good Childcare Practices with Lesbian, Gay, Bisexual, Transgender and Questioning Youth (LGBTQ Youth Guidelines) and shall be free of institutional and personal bias. OCFS staff shall recognize and address the individual needs of the youth and shall apply OCFS policies and practices fairly to all youth in our facilities and after-care programs.

## II. DEFINITIONS

**LGBTQ youth** – For purposes of the protections of this policy, LGBTQ youth shall include youth who have self-identified or are perceived by others as lesbian, gay, bisexual, transgender or questioning their sexual orientation or gender identity.

For an explanation of other terms, see the Glossary used with the LGBTQ Youth Guidelines.

## III. PROCEDURES

- A. Training of Staff** - OCFS shall provide strength-based training to all Division of Juvenile Justice and Opportunities for Youth (DJJOY) staff, the Ombudsmen, and other appropriate OCFS staff regarding the goals and requirements of this policy, including what behavior constitutes discrimination and harassment and the procedures for preventing and reporting such behavior. Facility and after-care staff, the Ombudsmen, and other appropriate OCFS staff shall also receive training on the LGBTQ Youth Guidelines.
- B. Resource and Policy Dissemination to Youth** – OCFS will provide written and verbal information to all youth in OCFS facilities and after-care programs regarding this policy, including their rights and responsibilities under this policy and the procedures for reporting complaints. OCFS will provide LGBTQ resources for youth, including a booklist, website list of community resource supports, and other appropriate books and materials. OCFS will strive to provide these resources in languages other than English, as needed.
- C. Reporting Responsibilities and Procedures for Staff** - OCFS staff has an obligation to report conduct by other staff that may be in violation of this policy. All reports shall be made according to current OCFS protocols. OCFS staff shall not tolerate discriminatory or harassing behavior by youth towards other youth and shall take immediate action to intervene in any such situations.
- D. Incident Reporting Procedures for Youth** – The Resident Grievance Program and Ombudsman shall be available for youth to express and resolve concerns regarding their care and treatment.

**E. Enforcement** – Supervisory and management staff shall treat all incidents of discrimination and harassment as serious and follow up promptly. In accordance with OCFS policy and procedures, and consistent with current collective bargaining agreements, alleged violations of this policy by staff or youth will be investigated promptly and, if determined to have occurred, will result in corrective or disciplinary action

**F. Childcare Practices for LGBTQ Youth** - OCFS has developed LGBTQ Youth Guidelines to assist staff in providing services in a respectful and culturally competent manner.

#### **IV. APPENDIX**

New York State Office of Children and Family Services Guidelines for Good Childcare Practices with Lesbian, Gay, Bisexual, Transgender and Questioning Youth.



## **NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES GUIDELINES FOR GOOD CHILDCARE PRACTICES WITH LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUESTIONING YOUTH**

The New York State Office of Children and Family Services (OCFS) is committed to providing quality services to all youth in our care. OCFS prohibits discrimination on the basis of race, creed, color, age, sex, national origin, religion, marital status, mental or physical disability, gender identity, gender expression, sexual orientation, veteran status and criminal record. No person in the agency shall unlawfully discriminate against other persons in the course of their work. OCFS is committed to respecting the dignity of all youth, and keeping them safe and secure, regardless of individual differences. The agency does not tolerate discrimination by staff, volunteers, contract providers or youth.

The OCFS Lesbian, Gay, Bisexual, Transgender and Questioning Youth Policy protects from discrimination both youth who self-identify as lesbian, gay, bisexual, transgender, or questioning (LGBTQ) and those who are perceived by others as LGBTQ.

The following protocols are operational guidelines for good childcare practices with LGBTQ youth in order to provide services in a respectful and culturally competent manner.

### **SECTION I: TRAINING**

In order to raise awareness and capacity for staff to respond to gender identity, sexual orientation, and gender expression issues in residential settings and after-care programs, all facility and after-care administrators and staff, the Ombudsmen, and other appropriate OCFS staff will be required to attend OCFS LGBTQ training.

### **SECTION II: DISCLOSURE**

- A. The only way that anyone knows someone's sexual orientation or gender identity is if they tell you. There are no tools or instruments to assess a person's sexual orientation or gender identity.
- B. Youth will disclose their sexual orientation and/or gender identity to staff when, and if, they feel ready and when, and if, a safe environment and trusting relationship has been created for such disclosure. Staff should not directly ask youth if they are LGBTQ. Direct questioning can make it more difficult for a youth to disclose. Most youth who are directly asked will deny that they are, mostly for reasons related to safety or perceived differential negative treatment. If youth disclose that they are lesbian, gay, bisexual, transgender, or questioning, it is important to talk with them about it in an open and understanding fashion. Staff should never just move on; talk about what it means for this youth to be lesbian, gay, bisexual, transgender, or questioning.

- C. It is important to respect a youth's interest in confidentiality. Consistent with general practice, information must be reported to a supervisor if it involves a danger to self and others. If you are not in a position to keep information that a youth discloses private, you should tell the youth that such information may have to be shared with your supervisor or fellow staff. Also, youth should be informed that under certain circumstances, such as in connection with a preferred name request or placement/transfer request, parents may become aware that a youth has disclosed that he or she is LGBTQ or has raised issues relating to gender identity, gender expression, or sexual orientation.

### **SECTION III: YOUTH PLACEMENT**

OCFS has or will develop designated units within its facilities (both male and female, secure and limited-secure/nonsecure) that have staff trained to provide services for LGBTQ youth. Placement at specialized LGBTQ facilities operated by voluntary agencies will also be considered, when appropriate, for an individual youth. Requests by youth for placement at or transfer to a facility based upon sexual orientation, gender identity, or gender expression can be made during the reception/intake process or at any other time and are to be forwarded to the Bureau of Behavioral Health Services for consideration by the LGBTQ Decision-making Committee.

### **SECTION IV: LGBTQ DECISION-MAKING COMMITTEE**

Certain issues that require consideration of individual circumstances are to be referred to the LGBTQ Decision-making Committee (Decision-making Committee) for determination.

- A. The issues to be referred to the Decision-making Committee include placement of youth in or transfer to a facility based upon sexual orientation, gender identity or gender expression, and the wearing of a uniform (other than undergarments) that is consistent with a youth's identified gender.
- B. When facility staff receive a request from a youth concerning either of these issues, the request should be referred immediately to the Bureau of Behavioral Health Services, along with all relevant reports and facility records. The Bureau of Behavioral Health Services will acknowledge the request and initiate an assessment within one week. The youth will receive a response to his or her or request within two weeks.
- C. The Decision-making Committee is comprised of staff from the Office of the Ombudsman, the Division of Legal Affairs (DLA), and the Division of Juvenile Justice and Opportunities for Youth (DJJOY), including administrative, behavioral health, medical services personnel, and designated facility staff, with assistance from LGBTQ consultants.

- D. An LGBTQ Appellate Review Committee, comprised of the Executive Assistant to the Commissioner, the Deputy Commissioner for DJJOY, and the Deputy Commissioner for DLA and General Counsel, is available, upon request, to review the decision of the Decision-making Committee. The LGBTQ Appellate Review Committee will respond to a youth's appeal from the decision of the Decision-making Committee within one week.

## **SECTION V: MENTAL HEALTH ASSESSMENTS**

- A. Clinicians should not assume any pathology simply because a youth expresses a different gender identity or sexual orientation. All adolescents experience developmental and social challenges during this time. However, LGBTQ youth frequently face additional pressures based on their gender identity or sexual orientation. Clinicians should be aware that difficulties in coping with these challenges frequently result in co-morbid problems including increased suicide risk, depression and anxiety, tobacco/drug/alcohol use, and school drop-out.
- B. It is important that every youth receive a comprehensive bio-psycho-social screening and assessment, so that individual special needs can be identified and a treatment response provided.
- Assessments should include a family evaluation, where possible, and where clinically indicated, a psychiatric assessment to assess fully for any related mental health distress and potential co-morbid problems requiring mental health care and treatment.
- C. Clinicians should help LGBTQ youth explore their feelings about their gender identity or sexual orientation, along with related issues and questions, in a safe, affirming manner. Clinicians should help youth reduce co-occurring problems or distress related to their gender identity or sexual orientation, and develop their strengths, coping skills, and resiliency. Staff working with transgender youth should become familiar with the World Professional Association for Transgender Health's Standards of Care for Gender Identity Disorders (WPATH Standards of Care for GID).
- D. Where clinically indicated, the facility clinical staff working with transgender youth should refer the youth for a diagnostic assessment by or in consultation with specialists in the field of LGBTQ youth or gender identity disorders.

## **SECTION VI: SUBSTANCE ABUSE**

Due to the high risk of substance abusing behaviors for youth, a comprehensive assessment of the youth and family history should be incorporated into the overall bio-psycho-social assessment. The majority of LGBTQ youth report alcohol and drug use as common mechanisms for coping with feelings of severe isolation.

## **SECTION VII: MEDICAL**

- A.** All youth arriving at an OCFS facility have an initial health screening, which includes identification of existing medications being taken by the youth. If, during the course of that screening, the continuation of hormone therapy is identified as an issue for the youth, staff should follow OCFS policy and practice for the continuation of medication upon admission. If hormone therapy is discontinued for the youth, the youth should continue to be monitored by medical and behavioral health staff in order to treat any symptoms that may occur as a result.
- B.** Youth who request to begin hormone therapy while in OCFS care should be referred to facility medical and behavioral health staff for an evaluation. Facility medical and behavioral health staff will inform and seek guidance from the Bureau of Behavioral Health Services. OCFS will make a determination regarding the initiation of hormone therapy based on accepted standards of care (see WPATH Standards of Care for GID) and the youth's best interest. Appropriate consent must first be sought and obtained as required by law.
- C.** Facility medical staff should provide appropriate medical information and education for all youth inclusive of LGBTQ issues.

## **SECTION VIII: COUNSELING**

- A.** If a youth discloses that he or she is lesbian, gay, bisexual, transgender or questioning while in placement, the youth should be offered appropriate counseling and information to support individual, family, and health issues.
- B.** The supervisory staff are responsible for referring a youth for counseling, mental health, health, or other program services as appropriate.
- C.** All staff should recognize that many adolescents are still exploring their sexuality, gender identity, and/or gender expression, testing boundaries, confused about the sexual terminology, and/or questioning their own sexuality and/or gender identity. This may be particularly true of youth who have been victims of sexual abuse and have not previously been provided treatment.
- D.** Counselors should facilitate exploration of any gender or sexuality issues with LGBTQ youth by being open, non-judgmental, and empathic.
- E.** Counseling sessions for the entire youth population should include group and individual opportunities to discuss any gender identity questions or feelings that may arise as a result of having youth in the residential setting who may be perceived as "different."

## **SECTION IX: LGBTQ LITERATURE AND RESOURCES**

- A. Programs should affirm the cultural identity of the youth whom they serve with respect to creating supportive environments for them. It is important that educational books and other reading materials for youth interested in learning more about LGBTQ identity are available. Materials should be made available in languages other than English as needed and as funding is available.
- B. LGBTQ literature and other visible signs should be available in the common areas, office, etc., that indicate staff are knowledgeable and open to communication on this topic.
- C. Youth should have access to supportive resources with age appropriate LGBTQ information, including a book list, website list of community resource supports, and advocacy groups.

## **SECTION X: GENERAL FACILITY OPERATIONS**

All OCFS youth must abide by the Resident Manual and are accountable for their behavior, and for being respectful of others and the setting in which they are placed as a result of their adjudication.

- A. Safety and security, as well as OCFS good childcare practices, remain paramount for all youth in OCFS facilities.
- B. All youth, regardless of gender identity, gender expression or sexual orientation, need to feel safe in their surroundings, in order for positive programming and youth outcomes to occur.
- C. Rules must be maintained with dignity and respect for all residents, regardless of their gender identity, gender expression, or sexual orientation.
- D. Staff should help youth to understand the rationale behind their decisions, and youth should be given the appropriate opportunity to express themselves.
- E. Staff should provide youth with information about the Decision-making Committee, and the right to request a uniform or facility change through the Bureau of Behavioral Health Services.
- F. Unless there is reason to the contrary, staff should not over-emphasize gender identity, gender expression, and sexual orientation issues (i.e., youth are placed in OCFS facilities because of their behaviors, not their gender identities, gender expression, or sexual orientations).

- G. Staff should set a good example and make residents aware that any anti-LGBTQ threats of violence, actual violence, or disrespectful or suggestive comments or gestures will not be tolerated concerning any OCFS youth.
- H. The treatment team should decide how to approach certain issues, as they would with behavior of any youth (i.e., as a team or in each specific unit). Good childcare practice requires consistency.
- I. Certain behaviors are inappropriate regardless of gender identity, gender expression or sexual orientation (e.g., seductive or sexual behavior, exchanging sexually-suggestive notes). Staff must maintain boundaries for safe and appropriate behavior with all residents.
- J. As with all residents, transgender residents shall be included in all activities or jobs for which they qualify and show a positive interest.
- K. Remember that transgender female youth see themselves as females, not gay males, and that transgender male youth see themselves as males, not lesbians. Sexual orientation and gender identity are two separate things. (See the attached glossary.)

## **SECTION XI: COMMUNICATION AND DOCUMENTATION**

- A. Ongoing communication among staff and between staff and youth is central to good childcare.
- B. Documentation is an essential treatment team communication tool. All staff who interact with a resident should maintain ongoing documentation in the Youth Development Log (YDL) or treatment team notes in the established format, so that critical information is shared, and appropriate care and treatment coordinated and provided.
- C. In keeping with established policy and procedures for all youth, confidentiality must be maintained in all forms of communication, including written documentation.
- D. Documentation protects the resident and facility staff. Any complaints of discrimination or harassment shall be investigated and remediated according to standard operating OCFS policies and procedures, including the OCFS LGBTQ Youth Policy, and consistent with current collective bargaining agreements.

## **SECTION XII: LANGUAGE AND NAME**

- A. Use the words gay, lesbian, bisexual, and transgender in an appropriate context when talking with youth about diversity, and do not use the value-laden, more antiquated terms, “homosexual” or “transvestite.”

- B.** It is OCFS policy to allow residents to request use of a preferred first name rather than their legal name. Consistent with that policy, all youth may designate a preferred first name that they wish to use. Youth will also be referred to by the pronoun that the youth states reflects the youth's identified gender or gender expression. Staff should understand that the ability to choose a preferred name and/or pronoun that is consistent with the youth's identified gender, rather than the youth's sex at birth, is often especially important to transgender youth. Preferred names and pronouns are used in addressing youth and in documentation. Names affiliated with gangs or that otherwise present safety issues will not be permitted. LGBTQ youth requesting use of a preferred name should be informed that it is OCFS policy to discuss preferred name requests with the youth's family. This is important because the youth may not yet have disclosed his or her sexual orientation or gender identity to family members. Youth are permitted to designate a different preferred name no more often than once every six months.
- C.** Although a legal name change is not required for a youth to use a preferred name while in OCFS custody, many transgender youth may be interested in legally changing their names to ones that reflect their gender identity. A transgender youth who is interested in applying to legally change his or her name shall be referred to the Office of the Ombudsman and may also be referred to the Peter Cicchino Youth Project of the Urban Justice Center (1-877 LGBT LAW or 646-602-5636) or the Sylvia Rivera Law Project (212-337-8550). See the LGBTQ Resource List for additional programs that may provide assistance with legal name changes.

### **SECTION XIII: CLOTHING**

- A.** All residents wear uniforms.
- B.** All residents may receive undergarments of their choice among available agency supplies regardless of gender, except where therapeutically not indicated. Other requests by youth for clothing consistent with their identified gender shall be referred to the Decision-making Committee.
- C.** Bras must be removed at night for safety reasons.
- D.** Residents shall not be required to wear skirts or nightgowns and shall be permitted to wear pants or pajamas.

### **SECTION XIV: INDIVIDUAL BEDROOMS**

Transgender youth shall be placed in a facility that can provide individual sleeping quarters (one-person bedroom) to allow for privacy. Any exceptions must be authorized by the Associate Commissioner for Programs and Services and documented in the youth record.

## **SECTION XV: HAIR AND OTHER PERSONAL GROOMING**

Grooming rules and restrictions, including rules regarding hair, make-up, shaving, etc., shall be the same in male and female facilities. A resident should not be prevented from, or disciplined for, a form of personal grooming because it does not match gender norms.

Examples of grooming rules that may be of interest to LGBTQ youth include:

- Long hair can be tied back with a scrunchie.
- Residents with long hair can receive a basic cut and shape.
- Fingernails must be maintained at a length that supports safety and security.
- Residents may, but are not required to, shave their faces and bodies, as permitted by OCFS practice, in keeping with safety and security concerns.
- Jewelry can be worn as permitted by OCFS policy.

## **SECTION XVI: BATHROOM FACILITIES**

- A. Transgender youth shall be allowed to use individual stalls, within commonly accepted time limits.
- B. Transgender youth shall be allowed to shower privately, if possible. When individual showers are not available, they should be the first or last in line so they can shower separately.

## **SECTION XVII: SEARCH ISSUES**

- A. All youth will be searched as provided by OCFS policy and procedure. Per OCFS policy, all employees conducting the search must assure its thoroughness while maintaining the dignity of the resident being searched.
- B. Transgender youth may request that male or female staff conduct a strip search when such search is required. This request will be accommodated, whenever possible, considering staffing and safety needs.

## **SECTION XVIII: TRANSITION/ DISCHARGE PLANNING**

- A. Members of the Treatment Team shall collaborate and share information with other facilities to coordinate youth's transitions.



- B.** It is critical to work with the youth's family throughout placement to enhance community re-entry efforts. LGBTQ youth are frequently estranged from family. A large percentage of homeless youth self-identify as LGBTQ.
- C.** Families of LGBTQ youth in OCFS facilities may benefit from additional community resources.
- D.** Staff working with LGBTQ youth shall identify and become familiar with community resources to support LGBTQ youth and their families. Staff should assist families of LGBTQ youth in identifying supportive resources and professionals in appropriate LGBTQ issues in their area. (See the LGBTQ Resource List.)
- E.** Some resources that may be helpful for some youth may not be helpful for LGBTQ youth if they are not accepting and supportive of LGBTQ youth. Staff should investigate resources to determine their appropriateness for LGBTQ youth.
- F.** Staff shall help youth to reintegrate into the community and be safe.
- G.** The OCFS Release Planning Coordinators can provide assistance either directly or through OCFS Regional Coordinators when necessary for housing for LGBTQ youth.

### **SECTION XIX: REPORTING**

As outlined in the OCFS LGBTQ Youth Policy, harassment and discrimination on the basis of actual or perceived gender identity, gender expression and sexual orientation will not be tolerated. OCFS staff has an obligation to report conduct by other staff in violation of the policy. OCFS staff shall not tolerate discriminatory or harassing behavior by residents toward other residents and are to take immediate action to intervene in any such situations.

## **OCFS GUIDELINES FOR GOOD CHILDCARE PRACTICES WITH LGBTQ YOUTH**

### **GLOSSARY OF TERMS**

**LGBTQ** is an acronym commonly used to refer to lesbian, gay, bisexual, transgender, and questioning individuals.

**Gay** refers to a person who is emotionally, romantically, and sexually attracted to people of the same gender. Sometimes, it may be used to refer to gay men and boys only. It is preferred over the term “homosexual.”

**Lesbian** refers to a female who is emotionally, romantically, and sexually attracted to other females.

**Bisexual** refers to a person who is attracted to, and may form sexual and romantic relationships with, males and females.

**Questioning** refers to a person, often an adolescent, who is exploring or questioning issues of sexual orientation or gender identity or expression in his or her life. Some questioning people will ultimately identify as gay, lesbian, bisexual or transgender; others will self-identify as heterosexual and not transgender.

**Sexual orientation** refers to a person’s emotional, romantic, and sexual attraction to persons of the same or different gender.

**Gender identity** refers to a person’s internal sense of themselves as male, female, no gender, or another gender, regardless of anatomy.

**Gender expression** refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, etc. A person’s gender expression may vary from the norms traditionally associated with his or her assigned sex at birth. Gender expression is a separate concept from sexual orientation and gender identity. For example, a male may exhibit an effeminate manner, but identify as a heterosexual male.

**Transgender** may be used as an umbrella term to include all persons whose gender identity or gender expression do not match society’s expectations of how an individual of that gender should behave in relation to his or her gender. For purposes of protection from discrimination and harassment, transgender refers to both self-identified transgender individuals and individuals perceived as transgender without regard to whether they qualify for a diagnosis of Gender Identity Disorder.

**Gender Identity Disorder or GID** is a diagnosis listed in the Diagnostic and Statistical Manual of Mental Disorders IV (DSM IV). Some individuals whose gender identity conflicts with the sex assigned to them at birth may be diagnosed with GID. Certain treatments, such as hormone therapy or sex reassignment surgery, may be recommended for individuals diagnosed with GID.

**Transgender female youth** are young people who were assigned the sex of male at birth and who now identify as female. Similarly, the terms *transgender girls* and *trans women* refer to those who now identify as girls or women.

**Transgender male youth** are young people who were assigned the sex of female at birth and who now identify as male. Similarly, the terms *transgender boys* and *trans men* refer to those who now identify as boys or men.

# Traina Exhibit E



**VIA FEDERAL EXPRESS AND E-MAIL**

February 26, 2010

Gladys Carrion  
Commissioner  
Office of Children and Family Services  
52 Washington Street  
Rensselaer, NY 12144-2796

Re: *Expanding the Reach of the Office of Children and Family Services Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth Policy (2008)*

Dear Ms. Carrion:

I write on behalf of several New York City advocates for youth who participated in the Office of Children and Families (OCFS) LGBTQ youth workgroup to inform the creation of the 2008 OCFS LGBTQ Youth Policy.<sup>1</sup> We are reaching out to you to share our suggestions for setting up a framework to expand the reach of this policy to include residential facilities operated by local social services districts and voluntary agencies. We believe that our suggestions will also allow for the extension of the policy to providers of foster home care for youth under your supervision.

We want to thank you for the steps you have already taken to address this important issue, including issuing an OCFS Youth Development Policy Statement<sup>2</sup> (9/30/09) ("Policy Statement") and the Informational Letter "Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender and Questioning Children and Youth in Out-of-Home Placement"<sup>3</sup> (12/31/09) ("Informational Letter"). However, based on our legal research and analysis, we believe that OCFS should further clarify that out-of-home care providers are prohibited from discriminating against youth on the basis of LGBTQ status and have an affirmative constitutional duty to protect the safety of these youth by issuing an Administrative Directive Memo ("ADM") to these facilities.<sup>4</sup> This ADM would officially require the agencies to comply with their obligations under federal and state constitutional and statutory law, including the New York State and City Human Rights Laws. In addition, OCFS should amend the regulations that apply to local social services districts and

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<sup>1</sup> OCFS, Policy and Procedure Manual 3442.00 ("Lesbian, Gay, Bisexual, Transgender and Questioning Youth" and "Guidelines for Good Childcare Practices with Lesbian, Gay, Bisexual, Transgender and Questioning Youth").

<sup>2</sup> OCFS, Youth Development Policy Statement ("Components of Quality Youth Development Programming") (Sept. 30, 2009).

<sup>3</sup> OCFS, 09-OCFS-INF-06 ("Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender and Questioning Children and Youth in Out-of-Home Placement"), available at [http://www.ocfs.state.ny.us/main/policies/external/OCFS\\_2009/INFs/09-OCFS-INF-06%20Promoting%20a%20Safe%20and%20Respectful%20Environment%20for%20Lesbian%20Gay%20Bisexual%20Transgender%20and%20Questioning%20Children%20and%20Youth%20in%20Out-of-Home%20Placement.pdf](http://www.ocfs.state.ny.us/main/policies/external/OCFS_2009/INFs/09-OCFS-INF-06%20Promoting%20a%20Safe%20and%20Respectful%20Environment%20for%20Lesbian%20Gay%20Bisexual%20Transgender%20and%20Questioning%20Children%20and%20Youth%20in%20Out-of-Home%20Placement.pdf).

<sup>4</sup> See N.Y. Soc. Serv. Law § 20(d)(3); OCFS, "2010 Policy Directives," available at <http://www.ocfs.state.ny.us/main/policies/external/>.

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voluntary agencies to recognize their obligations to protect LGBTQ youth from harassment and discrimination under long-settled New York law and policy.

Federal constitutional and statutory law requires that the safety of every child in custody be protected. Sections 42 U.S.C. § 671(a)(16) and (5)(A) require that a plan be developed to ensure “safe and proper care consistent with the child’s best interest and special needs.” The Fourteenth Amendment to the federal Constitution, furthermore, requires that the state affirmatively protect the safety and privacy of every child in custody, including their rights to appropriate services, medical care and protection from physical, emotional and sexual abuse.<sup>5</sup> In addition, the New York State Constitution<sup>6</sup> and the New York State and City Human Rights Laws (“HRLs”) prohibit discrimination against youth in out-of-home care facilities on the basis of being LGBT.<sup>7</sup>

OCFS undoubtedly has the authority to supervise the provision of social services to youth within the state, which includes the authority to prevent continuing violations of youth’s legal rights.<sup>8</sup> Accordingly you should use that authority to issue an ADM to out-of-home care facilities requiring them to comply with their obligations under these laws. Issuing an ADM would protect these LGBTQ youth and clarify the obligations legally owed to them by care providers across the state.

Furthermore, OCFS should also amend its own regulations to clarify the anti-discrimination obligations of these providers and bring these regulations into conformance with long-settled New York State law and policy, as well as with the 2008 OCFS LGBTQ Youth Policy.

*An ADM is a More Appropriate Vehicle to Recognize the Obligations of Local Districts and Voluntary Agencies to LGBTQ Youth*

The Policy Statement and Informational Letter your office issued described some important principles in the treatment of youth in out-of-home care. We believe, however, that an ADM is a more appropriate vehicle to ensure that local social services districts and voluntary agencies comply

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<sup>5</sup> R.G. v. Koller, 415 F. Supp. 2d 1129, 1152-1156 (D. Haw. 2006); see also Hernandez ex rel. Hernandez v. Texas Dep’t of Protective & Reg. Servs., 380 F.3d 872, 880 (5th Cir. 2004); Cannon ex rel. Omar v. Lindsey, 334 F.3d 1246, 1246 (11th Cir. 2003), aff’g 243 F. Supp. 2d 1129 (M.D. Fla. 2003); Murphy ex rel. K.H. v. Morgan, 914 F.2d 846, 849 (7th Cir. 1990); Howard v. Malac, 270 F. Supp. 2d 132, 138 (D. Mass. 2003).

<sup>6</sup> N.Y. Const. art. I, § 11; see also Hernandez v. Robles, 7 N.Y.3d 338, 364 (2006) (explaining that, under the New York State Constitution, heightened scrutiny may apply to discrimination on the basis of sexual orientation when government has no interests that are relevant to that classification).

<sup>7</sup> New York State and New York City Human Rights Laws both prohibit discrimination against LGBT youth in out-of-home care. As you may know, the New York State Human Rights Law (“State HRL”) prohibits discrimination by operators or owners of places of public accommodation and housing accommodations. N.Y. Exec. Law § 296(2)(a). The State HRL prohibits discrimination on the basis of an individual’s sex, sexual orientation or disability. *Id.* In addition, the New York City Human Rights Law (“City HRL”), which applies to public accommodations and housing accommodations within New York City, prohibits discrimination on the basis of an individual’s actual or perceived sex, sexual orientation, gender identity, gender expression or disability. N.Y.C. Admin. Code §§ 8-102, 8-107. For the purpose of these laws, disability includes feelings of cross-gender identification, persistent discomfort or a sense of inappropriateness about one’s assigned sex, or other clinically significant distress, which some health professionals describe as “Gender Identity Disorder.” *Doe v. Bell*, 194 Misc. 2d 774, 775-76, 779-80 (N.Y. Sup. Ct. 2003).

<sup>8</sup> N.Y. Soc. Serv. Law § 20.

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with their legal obligations to youth in their custody. Although Policy Statements, Informational Letters and ADMs are all “policy statements,” ADMs are the only policy statement “designed to advise local service districts and voluntary agencies of policy and procedure *which must be followed and require specific action.*”<sup>9</sup> Informational Letters, on the other hand, need only “provide general educational information.”<sup>10</sup>

Our main concern is that the language in the Policy Statement and the Informational Letter that merely encourages the adoption of non-discrimination policies may have left the unfortunate impression that local social services districts and voluntary agencies are not legally required to fulfill their obligations to prevent the harassment or discrimination against LGBTQ youth in their custody. As discussed above, federal and state constitutional and statutory law unequivocally require that these agencies protect the safety of LGBTQ youth. Because compliance with these obligations is not optional, OCFS should take further steps to clarify the responsibilities of these facilities.

*OCFS Should Clarify the Anti-Discrimination Obligations of Out-of-Home Care Providers Using an ADM*

In addition to federal law’s general requirements that the state protect the safety and privacy of youth in out-of-home care, the New York State Constitution and the State and City HRLs specifically prohibit discrimination against individuals because of their actual or perceived status as an LGBTQ youth.<sup>11</sup>

OCFS should use its authority to clarify and enforce the obligations of all providers of out-of-home care to youth, including local social services districts, voluntary child care agencies or other organizations providing out-of-home care. One way OCFS may use this authority is by issuing an ADM to these entities, requiring them to take specific actions to comply with their non-discrimination obligations. OCFS has previously issued ADMs to clarify the legal obligations of these districts and voluntary agencies, whether those obligations are provided by statutory or decisional law.<sup>12</sup> Additionally, OCFS has specific regulatory authority to determine what constitutes appropriate custodial conduct by residential programs caring for youth, providing an additional basis of authority to issue an ADM.<sup>13</sup>

OCFS recognized the importance of preventing discrimination against LGBTQ youth in its 2008 LGBTQ Youth Policy. The ADM should include the same rules found in that policy and at a minimum should instruct providers of youth in out-of-home care to:

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<sup>9</sup> “2010 Policy Directives” (emphasis added).

<sup>10</sup> *Id.*

<sup>11</sup> *See supra* notes 5 and 6.

<sup>12</sup> *See, e.g.*, OCFS, 09-OCFS-ADM-07 (“Recognition of Legal Same-Sex Marriages”), available at [http://www.ocfs.state.ny.us/main/policies/external/OCFS\\_2009/ADMs/09-OCFS-ADM-07%20Recognition%20of%20Legal%20Same-Sex%20Marriages.pdf](http://www.ocfs.state.ny.us/main/policies/external/OCFS_2009/ADMs/09-OCFS-ADM-07%20Recognition%20of%20Legal%20Same-Sex%20Marriages.pdf).

<sup>13</sup> In addition to the out-of-home care facilities’ specific obligations under the Human Rights Laws, child care agencies also have the obligation to exercise “appropriate custodial conduct,” defined, in part, as refraining from acting “in any other manner which would be detrimental to residents of a residential facility.” 18 N.Y.C.R.R. § 441.19(h).

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- Prohibit discrimination or harassment on the basis of LGBTQ status, whether that status is actual or perceived, and whether committed by employees or youth in their programs;
- Provide accommodations to transgender youth within the meaning of the State and City HRLs and as described in *Doe v. Bell*, 754 N.Y.S.2d 846;
- Promote and maintain a safe environment for LGBTQ youth in all out-of-home care facilities;
- Include a policy prohibiting discrimination against, or harassment of, LGBTQ youth within all manuals, policies, contracts or other governing documents maintained by the providers;
- Train all employees and staff about the policy prohibiting discrimination and harassment on the basis of LGBTQ status, including the policy's goals and requirements, what behavior constitutes discrimination and harassment, and the procedures for preventing and reporting such behavior;
- Provide written and verbal information to youth in out-of-home care about the facility's anti-discrimination policy, including their rights and responsibilities under that policy and the procedure for reporting complaints;
- Provide LGBTQ resources to youth, as appropriate and needed, including a booklist, website list of community resources and other appropriate books and materials (in English and other languages, as necessary);
- Treat all incidents of discrimination and harassment against LGBTQ youth as serious, investigate such incidents promptly and take all appropriate corrective or disciplinary action.

*OCFS Should Also Amend its Own Regulations to Clarify the Providers' Anti-Discrimination Obligations*

In addition to issuing an ADM, OCFS should also amend its own regulations to conform its own requirements for out-of-home care facilities to the State and City HRLs. Pursuant to the State Administrative Procedure Act<sup>14</sup> and the *Rulemaking in New York Manual*,<sup>15</sup> OCFS should adopt these amendments on an emergency basis. Emergency adoption is appropriate in this circumstance because immediate adoption is necessary for the preservation of the public health, safety or general welfare, and specifically is necessary for the preservation of the health, safety and welfare of youth in out-of-home care. In addition, compliance with the ordinary rulemaking procedures would be contrary to the public interest because further violations of the City and State HRLs would result from a continued lack of clarification of care providers' obligations to avoid discrimination.

Concurrently with the OCFS's adoption of the rule on an emergency basis, OCFS should also begin the notice of rulemaking process that is necessary to adopt the rule permanently. Specifically, because these amendments bring these regulations into conformance with long-settled New York State law and policy prohibiting discrimination on the basis of sexual orientation or disability, OCFS may conclude that no person is likely to object to them and adopt them on a "consensus" basis.

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<sup>14</sup> N.Y.S. Admin. P. Act § 202.

<sup>15</sup> N.Y. State Div. of Admin. Rules, N.Y. State Dep't of State, *Rulemaking in New York Manual* (Rev. 2006).



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There are three regulations that should be amended: 18 N.Y.C.R.R. §§ 303.1, 303.2 and 441.19. Sections 303.1 and 302 together prohibit discrimination by local social services districts and also prohibit those districts from using the assistance, care or services of other entities that discriminate. But these sections do not enumerate sexual orientation, gender identity or gender expression as prohibited bases of discrimination. These sections should be amended to bring OCFS's regulations into conformance with the specific requirements of the New York State and City HRLs.

- Subdivision (a) of section 303.1 should be amended to read as follows:  
(a) No social services district or official shall establish or apply any policy or practice which would have the effect of discriminating against an individual because of race, color, national origin, age, sex, religion, sexual orientation, gender identity, gender expression or handicap. This prohibition shall apply to all aid, care, services, benefits or privileges provided directly, or indirectly by other agencies, organizations or institutions participating under contractual or other arrangements.
- Subdivision (b) of section 303.1 should be amended to read as follows:  
(b) In the provision of public assistance, child welfare services, other care and services, no social services district or any member of its staff shall, on the basis of race, color, national origin, age, sex, religion, sexual orientation, gender identity, gender expression or handicap:  
(1) deny an individual any aid, care, services, other benefits or privileges provided by the district . . . .
- Section 303.2 should be amended to read as follows:  
No social services district shall utilize, purchase or otherwise obtain assistance, care or services from any organization, institution or facility which discriminates on the basis of race, color, national origin, age, sex, religion, sexual orientation, gender identity, gender expression or handicap, as set forth in section 303.1 of this Part or otherwise, nor shall it participate in any program that so discriminates.

In addition to this general prohibition, OCFS should also amend the regulations that apply more specifically to residential programs for youth. Section 441.19 applies to “child-care agencies, facilities and programs, public and private, subject to visitation, inspection and supervision by the department.”<sup>16</sup> The section requires those agencies to use “appropriate custodial conduct” with the children in its care, and specifically prohibits discrimination on certain bases that do not include sexual orientation, gender identity or gender expression. OCFS should amend this section to clarify that child care agencies that care for youth do not use appropriate custodial conduct when they discriminate against youth on the basis of LGBT status:

- Section 441.19 should be amended to read as follows:  
Each child care agency will provide for the safety of children in its care by requiring employees, volunteers and consultants of the facilities which it operates to use appropriate

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<sup>16</sup> 18 N.Y.C.R.R. § 441.1

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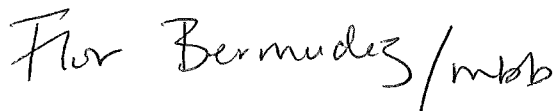
custodial conduct when caring for children. In order to provide appropriate care for children in residential facilities, employees, volunteers and consultants will not . . .

(d) behave in a discriminatory manner toward children receiving care; discrimination on the basis of ethnicity, handicapping condition, religion, creed, sexual orientation, gender identity, gender expression or sex shall be prohibited . . . .

We believe these recommendations provide the framework that is required to ensure that all facilities and agencies under the supervision of OCFS provide compassionate and competent care to LGBTQ youth consistent with OCFS's legal responsibility to these youth. We are confident that you will continue to be committed to producing lasting, positive and systemic changes that support and protect LGBTQ youth.

We hope to have the opportunity to discuss these recommendations and how we may further assist in creating this framework at the next OCFS LGBTQ youth workgroup meeting that will be scheduled this spring. If you have any questions please do not hesitate to contact me at (212) 809-8585 Ext. 241 or email me at [fbermudez@lambdalegal.org](mailto:fbermudez@lambdalegal.org).

Sincerely yours,

Handwritten signature of Flor Bermudez in cursive, with the initials 'mb' at the end.

Flor Bermudez, Esq.  
Youth in Out-of-Home Care Staff Attorney  
Lambda Legal

cc: Karen Walker Bryce  
Deputy Commissioner and General Counsel  
Office of Children and Family Services  
52 Washington Street  
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Laura Etlinger  
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Lois Shapiro  
Director, Behavioral Health Services  
Office of Children and Family Services  
52 Washington Street  
Rensselaer, NY 12144-2796

# Traina Exhibit F



November 4, 2010

Gladys Carrion  
Commissioner  
NYS Office of Children and Family Services  
52 Washington Street  
Rensselaer, NY 12144-2796

Re: *Amending OCFS Regulations to Apply the Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth Policy (2008) to All Services Supervised by the Office of Children and Family Services (OCFS)*

Dear Commissioner Carrion:

I am writing to follow up on the discussion I had with OCFS staff who participated in the last *Rodriguez v. Johnson* post-settlement conference call on September 7, 2010. In February 2010, Lambda Legal shared with your office suggestions for regulatory changes that could assist in expanding the reach of the 2008 OCFS LGBTQ Youth Policy to all services regulated or supervised by OCFS. We continue to believe that the broad non-discrimination regulations discussed in that letter should be amended to include prohibitions against discrimination on the basis of sexual orientation, gender identity or gender expression by all providers of social services to youth. We understood, however, from OCFS staff members at the last OCFS LGBTQ youth workgroup meeting, that OCFS would only undertake regulatory amendments that prohibit these forms of discrimination in each of the categories of services regulated by OCFS.

It is our understanding that these categories are comprised of: (1) Child Protective Services; (2) Juvenile Detention Facilities; (3) Runaway and Homeless Youth Approved Programs; (4) Child Care Agencies; (5) Foster Homes; and (6) Adoptive Services. We write to offer suggestions on how existing regulations might be amended to prohibit discrimination by all providers of care regulated or supervised by OCFS.

### 1. Child Protective Services

18 N.Y.C.R.R. § 432.2 describes the “responsibilities and organization” required for child protective services. Subsection (a), titled “General” should be amended to include three new sub-parts:

- 18 N.Y.C.R.R. § 432.2(a)(4):

(4) No child protective service office or official shall establish or apply any policy or practice which would have the effect of discriminating against an individual because of sexual orientation, gender identity or gender expression. This prohibition shall apply to all aid, care, services, benefits or privileges provided directly or indirectly by other agencies, organizations or institutions participating under contractual or other arrangements.

Commissioner Gladys Carrion

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- 18 N.Y.C.R.R. § 432.2(a)(5):

(5) In the provision of aid, care or services, no child protective service office or any member of its staff shall, on the basis of sexual orientation, gender identity or gender expression:

(i) deny an individual any aid, care, services, or other benefits or privileges provided by the child protective service;

(ii) provide any aid, care, services, or other benefits or privileges to an individual which are different, or are provided in a different manner, from that provided to others;

(iii) subject an individual to segregation or separate treatment in any matter related to his or her receipt of any aid, care, services, or other benefits or privileges;

(iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, care, services, or other benefits or privileges;

(v) treat an individual differently from others in determining whether he or she satisfies any eligibility or other requirement or condition which individuals must meet in order to receive any aid, care, services, or other benefits or privileges;

(vi) deny any individual an opportunity to participate in a program through the provision of services or, otherwise afford him an opportunity to do so which is different from that afforded to others under the program (including the opportunity to participate in the program as an employee where the primary objective of the program is to provide employment, including a program under which the employment is provided to reduce unemployment); or

(vii) make distinctions in relation to the use of physical facilities, intake and application procedures, caseload assignments, determination of the amount and type of aid, care, services and other benefits under the program and use thereof.

- 18 N.Y.C.R.R. § 432.2(a)(6):

No child protective service office shall utilize, purchase or otherwise obtain assistance, care or services from any organization, institution or facility which discriminates on the basis of sexual orientation, gender identity or gender expression, as set forth in section 432.2(a)(4) or 432.2(a)(5) of this Part or otherwise, nor shall it participate in any program that so discriminates.

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## 2. Juvenile Detention Facilities

9 N.Y.C.R.R. § 180 applies to all juvenile detention facilities. A new subsection should be added to part 180 incorporating the regulations against discrimination:

- 9 N.Y.C.R.R. § 180.21, Nondiscrimination.

(a) No juvenile detention facility or official shall establish or apply any policy or practice which would have the effect of discriminating against an individual because of sexual orientation, gender identity or gender expression. This prohibition shall apply to all aid, care, services, benefits or privileges provided directly, or indirectly by other agencies, organizations or institutions participating under contractual or other arrangements.

(b) In the provision of aid, care or services, no juvenile detention facility or any member of its staff shall, on the basis of sexual orientation, gender identity or gender expression:

(i) deny an individual any aid, care, services, or other benefits or privileges provided by the juvenile detention facility;

(ii) provide any aid, care, services, or other benefits or privileges to an individual which are different, or are provided in a different manner, from that provided to others;

(iii) subject an individual to segregation or separate treatment in any matter related to his or her receipt of any aid, care, services, or other benefits or privileges;

(iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, care, services, or other benefits or privileges;

(v) treat an individual differently from others in determining whether he or she satisfies any eligibility or other requirement or condition which individuals must meet in order to receive any aid, care, services, or other benefits or privileges;

(vi) deny any individual an opportunity to participate in a program through the provision of services, or otherwise afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee where the primary objective of the program is to provide employment, including a program under which the employment is provided to reduce unemployment); or

(vii) make distinctions in relation to the use of physical facilities, intake and application procedures, caseload assignments, determination of the amount and type of aid, care, services and other benefits under the program and use thereof.

(c) No juvenile detention facility shall utilize, purchase or otherwise obtain assistance, care or services from any organization, institution or facility which discriminates on the basis of

Commissioner Gladys Carrion

November 4, 2010

Page 4

sexual orientation, gender identity or gender expression, as set forth in section 180.21 of this Part or otherwise, nor shall it participate in any program that so discriminates.

### 3. Runaway and Homeless Youth Approved Programs

9 N.Y.C.R.R. § 182-1.5 describes the “general requirements” for approved Runaway and Homeless Youth Programs, and subpart (g) describes a regulation against discriminatory treatment that does not specifically enumerate protected bases such as sexual orientation, gender identity or gender expression. Subpart (g) should be amended to clarify that discrimination on the basis of these categories is unlawful, and restrict approved programs from engaging in such discrimination.

- 9 N.Y.C.R.R. § 182-1.5(g):

(g) Nondiscriminatory treatment. (1) Each program shall employ policies and procedures designed to ensure that youth are not subject to unlawful discriminatory treatment in any program decision making process or when being considered for any available service. Unlawful discriminatory treatment includes discrimination on the basis of sexual orientation, gender identity or gender expression.

### 4. Child-Care Agencies

18 N.Y.C.R.R. § 441 describes the requirements and obligations of Child-Care Agencies. Section 441 should be amended by adding a new sub-section incorporating the non-discrimination principle:

- 18 N.Y.C.R.R. § 441.23

(a) No child-care agency, including any voluntary authorized agency, public authorized agency, institution, group residence, group home, agency boarding home, health care facility, or official shall establish or apply any policy or practice which would have the effect of discriminating against an individual because of sexual orientation, gender identity or gender expression. This prohibition shall apply to all aid, care, services, benefits or privileges provided directly, or indirectly by other agencies, organizations or institutions participating under contractual or other arrangements.

(b) In the provision of aid, care or services, no child-care agency or any member of its staff shall, on the basis of sexual orientation, gender identity or gender expression:

(1) deny an individual any aid, care, services, or other benefits or privileges provided by the child-care agency;

(2) provide any aid, care, services, or other benefits or privileges to an individual which are different, or are provided in a different manner, from that provided to others;

(3) subject an individual to segregation or separate treatment in any matter related to his or her receipt of any aid, care, services, or other benefits or privileges;



Commissioner Gladys Carrion

November 4, 2010

Page 5

(4) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, care, services, or other benefits or privileges;

(5) treat an individual differently from others in determining whether he or she satisfies any eligibility or other requirement or condition which individuals must meet in order to receive any aid, care, services, or other benefits or privileges;

(6) deny any individual an opportunity to participate in a program through the provision of services, or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee where the primary objective of the program is to provide employment, including a program under which the employment is provided to reduce unemployment); or

(7) make distinctions in relation to use of physical facilities, intake and application procedures, caseload assignments, determination of the amount and type of aid, care, services and other benefits under the program and use thereof.

(c) No child-care agency shall utilize, purchase or otherwise obtain assistance, care or services from any organization, institution or facility which discriminates on the basis of sexual orientation, gender identity or gender expression, as set forth in section 441.23 of this Part or otherwise, nor shall it participate in any program that so discriminates.

## 5. Foster Homes

18 N.Y.C.R.R. § 443.3 describes the requirements for approval and certification of foster parents, but lacks any requirement that foster parents refrain from discriminating against children in their care. A new subsection, § 443.3(r), should be added to require that foster homes do not discriminate on the basis of sexual orientation, gender identity or gender expression:

- 18 N.Y.C.R.R. § 443.3(r) Foster homes.

(r) All foster homes, including foster family homes, relative foster homes, foster family boarding homes, and foster family free homes, are prohibited from engaging in any form of discrimination against or harassment of youth on the basis of sexual orientation, gender identity or gender expression.

## 6. Adoptive Services

18 N.Y.C.R.R. § 421.2 delineates the principles of care that must be taken when considering the needs of children deprived of a permanent family. However, this section does not address unlawful discrimination against any party to an adoption. A new subsection § 421.2 (g) should be added to prohibit unlawful discrimination:

Commissioner Gladys Carrion

November 4, 2010

Page 6

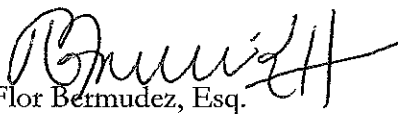
- 18 N.Y.C.R.R. § 421.2(g)

(g) No child, biological parent, legal guardian, foster parent, or adoptive family shall be subject to unlawful discriminatory treatment in any program, decision-making process, or when being considered for licensing or an available service. Unlawful discriminatory treatment includes discrimination on the basis of sexual orientation, gender identity or gender expression.

### Conclusion

As always, we welcome the opportunity to discuss further how to protect the rights of all youth to be free from discrimination, whether the youth is in the care of OCFS institutions or of other entities that OCFS supervises. We also renew our request that these amendments be made on an emergency basis in light of the grave harm that may result to youth in the absence of clear guidance from your office on this important issue. We would appreciate it if you would advise us of the regulatory changes your office intends to seek.

Sincerely yours,



Flor Bermudez, Esq.

Youth in Out-of-Home Care Staff Attorney

cc: Karen Walker Bryce  
Deputy Commissioner and General Counsel  
NYS Office of Children and Family Services  
52 Washington Street  
Rensselaer, NY 12144-2796

Joyce Burrell  
Deputy Commissioner  
NYS Office of Children and Family Services  
52 Washington Street  
Rensselaer, NY 12144-2796

Laura Etlinger  
Acting Director of Bureau of Legislation and Special Projects  
NYS Office of Children and Family Services  
52 Washington Street  
Rensselaer, NY 12144-2796

*Commissioner Gladys Carrion*

*November 4, 2010*

*Page 7*

Lois Shapiro  
Director of Behavioral Health Services  
NYS Office of Children and Family Services  
52 Washington Street  
Rensselaer, NY 12144-2796

Diane Deacon  
Assistant Deputy Counsel  
NYS Office of Children and Family Services  
52 Washington St.  
Rensselaer, NY 12144

Gail Brick  
Clinical Social Worker  
NYS Office of Children and Family Services  
52 Washington St.  
Rensselaer, NY 12144

Ines Nieves  
Associate Commissioner  
NYS Office of Children and Family Services  
52 Washington St.  
Rensselaer, NY 12144

Erika Krystian  
Legal Fellow  
NYS Office of Children and Family Services  
80 Maiden Lane, 24th Floor  
New York, NY 10038

# Traina Exhibit G

1970's. The most current edition, the DSM-V, was published in early 2013. The agencies believe this Part is unnecessary and appropriate for repeal.

**Part 51 - Prior Approval of the Commissioner.** This Part is out of date, and all three agencies have incorporated updated provisions into existing regulations. OPWDD superseded Part 51 with 14 NYCRR Part 620, Certification of Need for Administrative Review Projects, Substantial Review Projects and Terms of Approval for Acquisition of Property or Construction. OMH superseded this Part with 14 NYCRR Part 551, Prior Approval Review for Quality and Appropriateness. OASAS regulations are found at 14 NYCRR Part 810, Establishment, Incorporation and Certification of Providers of Chemical Dependence Services and 14 NYCRR Part 814, General Facility Requirements.

**Part 71 - Visitation and Inspection of Facilities.** OPWDD notes that requirements applicable to visitation and inspection of facilities are found in Article 16 of the NYS Mental Hygiene Law and considers that the provisions of Article 16 are sufficient to address this topic. OPWDD considers the provisions of Part 71 which are not duplicative of the Article 16 provisions to be out of date and unnecessary. OMH superseded this Part by 14 NYCRR Part 553, Visitation and Inspection of Facilities. OASAS provisions are found in Article 32 of the NYS Mental Hygiene Law and 14 NYCRR Part 810, Establishment, Incorporation and Certification of Providers of Chemical Dependence Services.

**Part 103 - Unified Services Plans.** References to the Unified Services Plan were deleted from Mental Hygiene Law by Chapter 111 of the Laws of 2010; therefore, this Part is no longer applicable to any of the three agencies and is appropriate for repeal.

**Statutory Authority:** Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

#### **Job Impact Statement**

A job impact statement is not being submitted because it is evident from the subject matter of the rule making that there will be no impact on jobs and employment opportunities. The consensus rule merely repeals several outdated regulations.

## Office of Children and Family Services

### NOTICE OF ADOPTION

#### **Prohibition of Discrimination on the Basis of Sexual Orientation, Gender Identity or Expression**

**I.D. No.** CFS-32-13-00007-A

**Filing No.** 1002

**Filing Date:** 2013-10-22

**Effective Date:** 2013-11-06

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of sections 180.5 and 82-1.5 of Title 9 NYCRR; amendment of sections 421.3, 421.4, 421.16; and addition of section 441.24 to Title 18 NYCRR.

**Statutory authority:** Executive Law, sections 503 and 532-e; and Social Services Law, sections 20(3)(d), 462(1), 372-b(3), 372-e(2), 378(5), 409 and 409-a

**Subject:** Prohibition of discrimination on the basis of sexual orientation, gender identity or expression.

**Purpose:** Prohibits discrimination on the basis of sexual orientation, gender identity or expression in essential social services.

**Text or summary was published** in the August 7, 2013 issue of the Register. I.D. No. CFS-32-13-00007-P.

**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144. (518) 473-7793

#### **Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

#### **Assessment of Public Comment**

The Office of Children and Family Services (OCFS) received two comments on the proposed regulations regarding changes to Parts 180 and 182-1 of Title 9 of the NYCRR, and Parts 421, 423 and 441 of Title 18 of the NYCRR to include protections for Lesbian, Gay, Bisexual, Transgendered and Questioning (LGBTQ) Individuals, one from a group comprised of various LGBTQ advocates and another from two members of the Legislature.

One commenter recommended that the regulations clarify the definition of gender identity. The regulations were not revised in response to this comment because the Office believes that the terms in question are presently adequately defined.

Both commenters noted that the proposed changes to Part 421 only address discrimination against prospective adoptive parents, and do not address adoption services provided to biological parents, youth or other family members. The regulations were not revised in response to this comment. OCFS intends to address these comments in an administrative directive to be released by OCFS.

Both commenters also noted that the non-discrimination language in different sections of the proposed regulations varies and suggest that they be changed to be consistent. One commenter specifically suggested that OCFS amend Part 441.19 broaden the non-discrimination clause in this section. The regulations were not revised in response to this comment because OCFS believes that the changes to Part 441.24 adequately address these concerns.

One commenter requested that OCFS clarify the expectations of provider agencies and mandate training for staff on working with LGBTQ youth and adults. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS require provider agencies to adopt a grievance procedure for discrimination based complaints. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

Another comment suggested that OCFS require provider agencies to perform an annual review and report regarding their compliance with non-discrimination regulations. Additionally, this comment suggested that OCFS should take actions including termination of contracts or barring providers from being utilized unless they create a grievance procedure for discrimination based complaints and report upon this annually. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS include a non-discrimination policy in the list of policies that child care agencies are required to maintain under 18 NYCRR 441.4. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS should additionally amend Part 441.4 to require provider agencies to inform employees about nondiscrimination regulations and monitor their compliance with them. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS amend Part 441.8 to include discrimination as a part of the definition of abuse or maltreatment of children. The regulations were not revised in response to this comment because OCFS believes that the existing language in Part 441.8 would adequately address these concerns.

Another commenter suggested that OCFS amend Part 423.4 to make it consistent with other sections. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS amend Part 441.15 to include a prohibition against discrimination in special services provided by contractors or service providers outside of the provider agency. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS amend Parts 180.5(b)(2)(iii) to specifically require supervisors in detention facilities to be responsible for protecting youth from discrimination. The regulations were not revised in response to this comment to provide detention facilities flexibility in how they effectuate this regulation.

One commenter suggested that OCFS amend Part 182-1.5 to require training on cultural awareness. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested alternate language for the nondiscrimination clause proposed for Part 182-1.5. The regulations were not revised in response to this comment because the Office believes that the existing language is adequately worded.

**E-FILE - FINAL ADOPTION REGULATORY FILING CHECKLIST**

FILING DATE 10/22 ; EFFECTIVE DATE 11/6 ; REGISTER DATE 11/6

NAME/SUBJECT OF FILING: LB37 Q REGS

- 1.  Draft and send certification on letterhead for signature to Shelia Poole (1 week before planned filing date) 10/16 ✓
- 2.  Draft 101-a letters ✓
- 3.  Draft Buck Slip ✓
- 4.  Obtain Regulatory text (summary if <2000 words) ✓
- 5.  Obtain Impact Statements ([4] RIS, RFA, RAFA, JIS) (summary if <2000 words)   
 N/A BY NO CHANGE ✓
- 6.  Obtain Assessment of Public Comment (summary if <2000 words) ✓
- 7.  Prepare Notice of Adoption and attach attachments (if required), (normally Reg Text, RIS, RFA, RAFA, JIS <sup>N/A</sup> ~~or substituted summaries if <2000 words~~) ASSP... 10/10 ✓
- 8.  Pick up signed Certification from Shelia Poole 10/10 ✓
- 9.  Scan, re-name, and attach Certification to Notice of Adoption and attach regulations, if not already attached because a Summary of Substance was attached ✓
- 10.  Validate and Save the Notice of Adoption and attachments ✓
- 11.  Upload Notice of Emergency Adoption and attachments to   
 http://westdcs.west.thomson.com/ using the following login (nyregcfs) and password (WHYZJJPS) ✓
- 12.  Save and Print screen of successful West Data Capture File Upload ✓
- 13.  Copying, assemble packets (see below) ✓
- 14.  101-a letters out ✓
- 15.  E-mail regulatory text to Marylou Brunette (brunette@LBDC.state.ny.us), Legislative Bill Drafting ✓; cc Kathleen Lydecker: Lydecker@LBDC.state.ny.us.
- 16.  E-mail all emergency/adopted reg text to Jeanine Behuniak, cc to Dan Bloodstein and James Ryan III @ OTDA (James.RyanIII@otda.state.ny.us) for ELIB/Intranet placement ✓

17. Buck Slip to internal OCFS personnel, include information on internet posting of regulations to Webmaster 2

For 101-a letters –

- Need 1 Copy of Entire Proposal (includes Notice of Emergency Adoption, Reg Text, RIS, RFA, RAFA, JIS [and any substituted summaries] and Certification)

For File –

- Need 1 Copy of Entire Proposal (includes Notice of Emergency Adoption, Reg Text, RIS, RFA, RAFA, JIS [and any substituted summaries] and Certification)

- 

Total Copies that need to be made:

- 1 copy of proposal (for file)



New York State  
Office of  
Children &  
Family  
Services

www.ocfs.state.ny.us

October 22, 2013

Mr. Kenneth Adams  
Chairman and CEO  
Department of Economic Development  
30 South Pearl Street  
Albany, New York 12245

Dear Mr. Adams:

**Andrew M. Cuomo**  
*Governor*

**Gladys Carrión, Esq.**  
*Commissioner*

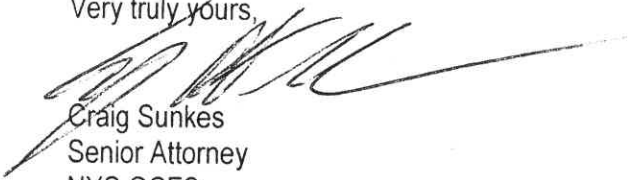
Pursuant to section 101-a of the Executive Law and Article Two of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Adoption which amends and adds to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. The Notice of Adoption will be published in the State Register on November 6, 2013 and the regulations will be effective upon publication.

**Capital View Office Park**  
52 Washington Street  
Rensselaer, NY  
12144-2834

Enclosed please find a copy of the Notice of Adoption along with a complete text of the rule.

Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney  
NYS OCFS

Enc.



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October 22, 2013

New York State  
Office of  
Children &  
Family  
Services

Ms. Hillary Adler  
Handle With Care  
184 McKinstry Road  
Gardiner, New York 12525

www.ocfs.state.ny.us

Dear Ms. Adler:

**Andrew M. Cuomo**  
*Governor*

**Gladys Carrión, Esq.**  
*Commissioner*

Pursuant to section 101-a of the Executive Law and Article Two of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Adoption which amends and adds to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. The Notice of Adoption will be published in the State Register on November 6, 2013 and the regulations will be effective upon publication.

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12144-2834

Enclosed please find a copy of the Notice of Adoption along with a complete text of the rule.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Craig Sunkes', written over a horizontal line.

Craig Sunkes  
Senior Attorney  
NYS OCFS

Enc.



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October 22, 2013

New York State  
Office of  
Children &  
Family  
Services

www.ocfs.state.ny.us

Mr. Gregory Blass, Commissioner  
Suffolk County Department of Social Services  
Mary Gordon Building  
PO Box 18100  
Hauppauge, New York 11788

Dear Commissioner Blass:

Andrew M. Cuomo  
*Governor*

Gladys Carrión, Esq.  
*Commissioner*

Pursuant to section 101-a of the Executive Law and Article Two of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Adoption which amends and adds to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. The Notice of Adoption will be published in the State Register on November 6, 2013 and the regulations will be effective upon publication.

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12144-2834

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Very truly yours,

A handwritten signature in black ink, appearing to read 'Craig Sunkes', written over a horizontal line.

Craig Sunkes  
Senior Attorney  
NYS OCFS

Enc.



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New York State  
Office of  
Children &  
Family  
Services

www.ocfs.state.ny.us

October 22, 2013

Mr. Thomas Brooks  
Assistant Counsel  
Executive Chamber  
State Capitol Building, Room 242  
Albany, New York 12224

Dear Mr. Brooks:

**Andrew M. Cuomo**  
*Governor*

**Gladys Carrión, Esq.**  
*Commissioner*

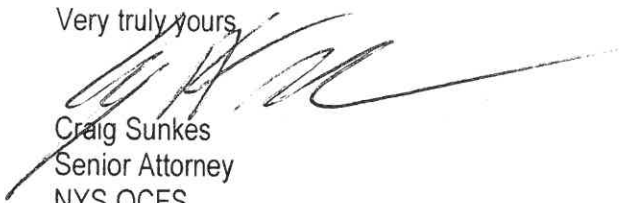
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12144-2834

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Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney  
NYS OCFS

Enc.



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New York State  
Office of  
Children &  
Family  
Services

www.ocfs.state.ny.us

October 22, 2013

Ms. Mary Lou Brunette  
Bill Verification  
NYS Legislative Bill Drafting Commission  
55 Elk Street  
Albany, New York 12210

Dear Ms. Brunette:

**Andrew M. Cuomo**  
*Governor*

**Gladys Carrión, Esq.**  
*Commissioner*

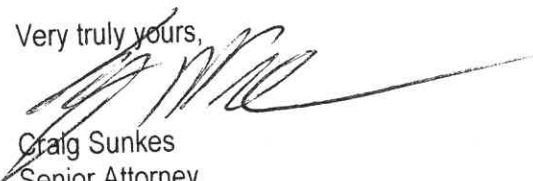
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12144-2834

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Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney  
NYS OCFS

Enc.



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New York State  
Office of  
Children &  
Family  
Services

www.ocfs.state.ny.us

October 22, 2013

Mr. Brian M. Callahan  
General Counsel  
State Commission of Correction  
Alfred E. Smith State Office Building  
80 South Swan Street, 12th Floor  
Albany, New York 12210

Dear Mr. Callahan:

**Andrew M. Cuomo**  
*Governor*

**Gladys Carrión, Esq.**  
*Commissioner*


Pursuant to section 101-a of the Executive Law and Article Two of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Adoption which amends and adds to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. The Notice of Adoption will be published in the State Register on November 6, 2013 and the regulations will be effective upon publication.

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Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney  
NYS OCFS

Enc.



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October 22, 2013

New York State  
Office of  
Children &  
Family  
Services

www.ocfs.state.ny.us

Mr. Roy A. Esnard  
General Counsel  
NYC Human Resources Administration  
Office of Legal Affairs  
1801 Water Street, 25th Floor  
New York, New York 10038

Dear Mr. Esnard:

**Andrew M. Cuomo**  
*Governor*

**Gladys Carrión, Esq.**  
*Commissioner*


Pursuant to section 101-a of the Executive Law and Article Two of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Adoption which amends and adds to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. The Notice of Adoption will be published in the State Register on November 6, 2013 and the regulations will be effective upon publication.

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Craig Sunkes  
Senior Attorney  
NYS OCFS

Enc.



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New York State  
Office of  
Children &  
Family  
Services

www.ocfs.state.ny.us

October 22, 2013

Ms. Robin Forshaw  
Assistant Counsel  
Executive Chamber  
State Capitol Building, Room 242  
Albany, New York 12224

Dear Ms. Forshaw:

**Andrew M. Cuomo**  
*Governor*

**Gladys Carrión, Esq.**  
*Commissioner*


Pursuant to section 101-a of the Executive Law and Article Two of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Adoption which amends and adds to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. The Notice of Adoption will be published in the State Register on November 6, 2013 and the regulations will be effective upon publication.

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Rensselaer, NY  
12144-2834

Enclosed please find a copy of the Notice of Adoption along with a complete text of the rule.

Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney  
NYS OCFS

Enc.



An Equal Opportunity Employer

000011



October 22, 2013

New York State  
Office of  
Children &  
Family  
Services

www.ocfs.state.ny.us

Mr. Richard Murphy  
Assistant Director  
Administrative Regulations Review Commissioner  
Agency Bldg. 4, 12th Floor  
Albany, New York 12248

Dear Mr. Murphy:

**Andrew M. Cuomo**  
*Governor*

**Gladys Carrión, Esq.**  
*Commissioner*


Pursuant to section 101-a of the Executive Law and Article Two of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Adoption which amends and adds to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. The Notice of Adoption will be published in the State Register on November 6, 2013 and the regulations will be effective upon publication.

**Capital View Office Park**  
52 Washington Street  
Rensselaer, NY  
12144-2834

Enclosed please find a copy of the Notice of Adoption along with a complete text of the rule.

Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney  
NYS OCFS

Enc.



An Equal Opportunity Employer





New York State  
Office of  
Children &  
Family  
Services

www.ocfs.state.ny.us

October 22, 2013

Ms. Kristin Proud  
Information Technology and Operations  
Executive Chamber  
State Capitol Building  
Albany, New York 12224

Dear Ms. Proud:

**Andrew M. Cuomo**  
*Governor*

**Gladys Carrión, Esq.**  
*Commissioner*


Pursuant to section 101-a of the Executive Law and Article Two of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Adoption which amends and adds to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. The Notice of Adoption will be published in the State Register on November 6, 2013 and the regulations will be effective upon publication.

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Rensselaer, NY  
12144-2834

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Very truly yours,

  
Craig Sunkes  
Senior Attorney  
NYS OCFS

Enc.



An Equal Opportunity Employer

000013



New York State  
Office of  
Children &  
Family  
Services

www.ocfs.state.ny.us

October 22, 2013

The Honorable Sheldon Silver  
Speaker of the Assembly  
NYS Assembly  
State Capitol  
Albany, New York 12248

Dear Speaker Silver:

**Andrew M. Cuomo**  
*Governor*

**Gladys Carrión, Esq.**  
*Commissioner*

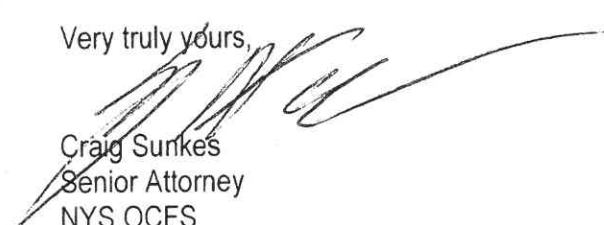
Pursuant to section 101-a of the Executive Law and Article Two of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Adoption which amends and adds to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. The Notice of Adoption will be published in the State Register on November 6, 2013 and the regulations will be effective upon publication.

**Capital View Office Park**  
52 Washington Street  
Rensselaer, NY  
12144-2834

Enclosed please find a copy of the Notice of Adoption along with a complete text of the rule.

Thank you.

Very truly yours,

  
Craig Surkes  
Senior Attorney  
NYS OCFS

Enc.



An Equal Opportunity Employer

000014



New York State  
Office of  
Children &  
Family  
Services

www.ocfs.state.ny.us

Andrew M. Cuomo  
*Governor*

Gladys Carrión, Esq.  
*Commissioner*

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

October 22, 2013

Mr. Dean G. Skelos  
President of Senate  
LOB, Room 907  
Albany, New York 12247

Dear President Skelos:

Pursuant to section 101-a of the Executive Law and Article Two of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Adoption which amends and adds to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. The Notice of Adoption will be published in the State Register on November 6, 2013 and the regulations will be effective upon publication.

Enclosed please find a copy of the Notice of Adoption along with a complete text of the rule.

Thank you.

Very truly yours,

  
Craig Surkes  
Senior Attorney  
NYS OCFS

Enc.



An Equal Opportunity Employer

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For Department of State use only.

## Notice of Adoption

Children and Family Services, Office of  
(SUBMITTING AGENCY)

- This adoption will amend the NYCRR.
- This adoption will not amend the NYCRR.

**NOTE:** Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

**1. Action taken:**

Addition of §180.5(a)(6) of Title 9; Amendment of §182-1.5(g)(1) of Title 9; Addition of §421.3(d), §423.4(m)(7), and §441.24 of Title 18; Amendment of §421.16(h)(3) of Title 18; and Repeal of and Renumbering of § 421.16(e) and § 421.16(h)(2) of Title 18.

- "X" box if the rule was originally proposed as a consensus rule making.

**2. Effective date of rule:**

- Date this notice is published in the *State Register*.
- This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:
  - Date of filing.
  - Other date (*specify*): \_\_\_\_\_
  - Other date (*specify*): \_\_\_\_\_
  - \_\_\_\_\_ days after filing.

**3. Statutory authority under which the rule was adopted:**

Executive Law § 503 and § 532-e; Social Services Law § 20(3)(d), § 462(1), § 372-b(3), § 372-e(2), § 378(5), § 409 and § 409-a.

**4. Subject of the rule:**

Prohibition of discrimination on the basis of sexual orientation, gender identity or expression.

**5. Purpose of the rule:**

Prohibits discrimination on the basis of sexual orientation, gender identity or expression in essential social services.

6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed** or **emergency/proposed** rule making: CF5-32-13-00007 - P

B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):

No changes were made to the proposed rule.

• Do NOT attach the text of the previously published rule. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete Item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C, if applicable, as well as remaining Items 7-8 and 13-14.

Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:

• Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip Items 9-12; revised statements or explanatory statements are required.

Text attached.

Summary attached.

This is a "rate making" as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

C. List the publication date and I.D. No. of any previously published notice(s) of **revised** rule making:

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_

7. The text of the final rule and any required statements and analyses may be obtained from:

Agency contact Public Information Office

Agency name Office of Children and Family Services

Office address 52 Washington Street, Rensselaer, NY 12144

Telephone (518) 473-7793 E-mail: \_\_\_\_\_

8. Additional matter required by statute:

Yes (include below material required by statute).

No additional material required by statute.

9. Revised Regulatory Impact Statement (RIS)

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RIS contains:

The full text of the Revised RIS.

A summary of the Revised RIS.

B. A **statement is attached** explaining why a revised RIS is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published RIS.

This is a technical amendment exempt from SAPA §202-a.

## NOTICE OF ADOPTION (Rev. 1/13)

PAGE 3 OF 5

- C.  A revised RIS is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RIS is **not** attached because this rule was proposed as a consensus rule as defined in SAPA

10. **Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments**

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised RFA contains:  
 The full text of the Revised RFA.  
 A summary of the Revised RFA.
- B. A **statement is attached** explaining why a revised RFA is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published RFA.  
 The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C.  A revised RFA is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

11. **Revised Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised RAFA contains:  
 The full text of the Revised RAFA.  
 A summary of the Revised RAFA.
- B. A **statement is attached** explaining why a revised RAFA is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published RAFA.  
 The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.
- C.  A revised RAFA is not attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 A revised RAFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

12. **Revised Job Impact Statement (JIS)**

(SELECT AND COMPLETE ALL THAT APPLY; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- A. The attached Revised JIS contains:  
 The full text of the Revised JIS.  
 A summary of the Revised JIS.
- B. A **statement is attached** explaining why a revised JIS is not required (check one box):  
 Changes made to the last published rule do not necessitate revision to the previously published JIS.  
 The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency's findings that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.
- C. A revised JIS is **not** attached because:  
 This rule is a "rate making" as defined in SAPA §102(2)(a)(ii).  
 This rule was proposed by the State Comptroller or Attorney General.

000018

13. **Assessment of Public Comment** (includes legislative comments) (check applicable box):

- A.  45-day minimum comment period is complete (Full text was submitted with proposal or summary of text was submitted with the proposal and the full text was posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])
- 60-day minimum comment period is complete (Summary of text was submitted with the proposal and the full text was not posted on a State web site or the rule is **not** a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making])
- B. (COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)
- Attached is an assessment of public comment.  
No particular form is required, and it need **only** include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.
- An assessment is not attached because no comments were received.
- An assessment is not required because this action is for a "rate making" as defined in SAPA §102(2)(a)(ii).

14. *Referenced material* (check one box):

- No information is being incorporated by reference in this rule.
- This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

15. **Initial Review of Rule** (SAPA §207)

(SELECT AND COMPLETE ONE)

- A.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3<sup>rd</sup> year after the year in which this rule is being adopted.
- B.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_ which is the 4<sup>th</sup> or 5<sup>th</sup> year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:
- Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period;  
or  
An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.
- C.  As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_ which is no later than the 5<sup>th</sup> year after the year in which this rule is being adopted.
- D.  Not Applicable. This rule is a "rate making" or a "consensus rule," or the agency is not required to review existing rules.

**NOTICE OF ADOPTION** (Rev. 1/13)

PAGE 5 OF 5

**AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)**

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Craig Sunkes Signature \_\_\_\_\_

Address 52 Washington Street, Rensselaer, NY 12144

Telephone (518) 474-9772 E-mail \_\_\_\_\_

Date 10/22/2013

---

**Please read before submitting this notice:**

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.



A new paragraph (6) of subdivision (a) of section 180.5 of title 9 is added to read as follows:

(6) Staff and volunteers of detention providers shall not engage in or condone discrimination or harassment of youth on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Detention providers shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers and youth, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other like.

Paragraph (1) of subdivision (g) of section 182-1.5 of title 9 is amended to read as follows:

(1) Each program shall employ policies and procedures designed to ensure that youth are not subject to unlawful discriminatory treatment in any program decision making process or when being considered for any available service. Program staff and volunteers shall not engage in or condone discrimination or harassment on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Each program shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers, and youth, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression"

shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other means.

A new paragraph (d) is added to section 421.3 to read as follows:

(d) prohibit discrimination and harassment against applicants for adoption services on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability, and, shall take reasonable steps to prevent such discrimination or harassment by staff and volunteers, promptly investigate incidents of discrimination and harassment, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, and other means.

Subdivision (e) of section 421.16 of title 18 is repealed, and the subsequent subdivisions are re-lettered.

[(e) Length of marriage. Agencies shall not reject applicants for study or after study on the basis of the length of time they have been married, provided that time is at least one year.]

Paragraph (2) of subdivision (h) of section 421.16 of title 18 is repealed, paragraph (3) of said subdivision is renumbered paragraph (2) and is amended to read as follows:

(2) [Applicants shall not be rejected solely on the basis of homosexuality. A decision to accept or reject when homosexuality is at issue shall be made on the basis of individual factors as explored and found in the adoption study process as it relates to the best interests of adoptive children.

(3) Exploration of a [sexual] preference[s] to adopt a child of a particular gender [and practices of applicants], where found necessary and appropriate, shall be carried out openly with a clear explanation to the applicant of the basis for, and relevance of, the inquiry.

A new paragraph (7) is added to subdivision (m) of section 423.4 of title 18 to read as follows:

(7) Staff and volunteers of agencies providing preventive services shall not engage in discrimination or harassment of families receiving preventive services on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Such agencies shall promote and maintain a safe environment, take reasonable steps to prevent discrimination by staff and volunteers, promptly investigate incidents of discrimination and harassment, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other means.

A new section 441.24 is added to part 441 of title 18 to read as follows:

441.24 Nondiscriminatory treatment.

(a) Authorized agency staff and volunteers shall not engage in or condone discrimination or harassment against prospective foster parents, foster parents or foster children on the basis of race, creed, color, national origin, age, sex, religion, sexual orientation, gender identity or expression, marital status, or disability. Authorized agencies shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers and youth, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. Certified or approved foster parents shall not engage in discrimination or harassment against foster children on the basis of race, creed, color, national origin, age, sex, religion, sexual orientation, gender identity or expression, marital status, or disability, and shall promote and maintain a safe environment.

(b) For purposes of this section, the term "gender identity or expression" means having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, and other means.

### Assessment of Public Comment

The Office of Children and Family Services (OCFS) received two comments on the proposed regulations regarding changes to Parts 180 and 182-1 of Title 9 of the NYCRR, and Parts 421, 423 and 441 of Title 18 of the NYCRR to include protections for Lesbian, Gay, Bisexual, Transgendered and Questioning (LGBTQ) Individuals, one from a group comprised of various LGBTQ advocates and another from two members of the Legislature.

One commenter recommended that the regulations clarify the definition of gender identity. The regulations were not revised in response to this comment because the Office believes that the terms in question are presently adequately defined.

Both commenters noted that the proposed changes to Part 421 only address discrimination against prospective adoptive parents, and do not address adoption services provided to biological parents, youth or other family members. The regulations were not revised in response to this comment. OCFS intends to address these comments in an administrative directive to be released by OCFS.

Both commenters also noted that the non-discrimination language in different sections of the proposed regulations varies and suggest that they be changed to be consistent. One commenter specifically suggested that OCFS amend Part 441.19 broaden the non-discrimination clause in this section. The regulations were not revised in response to this comment because OCFS believes that the changes to Part 441.24 adequately address these concerns.

One commenter requested that OCFS clarify the expectations of provider agencies and mandate training for staff on working with LGBTQ youth and adults. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS require provider agencies to adopt a grievance procedure for discrimination based complaints. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

Another comment suggested that OCFS require provider agencies to perform an annual review and report regarding their compliance with non-discrimination regulations. Additionally, this comment suggested that OCFS should take actions including termination of contracts or barring providers from being utilized unless they create a grievance procedure for discrimination based complaints and report upon this annually. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS include a non-discrimination policy in the list of policies that child care agencies are required to maintain under 18 NYCRR 441.4. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS should additionally amend Part 441.4 to require provider agencies to inform employees about nondiscrimination regulations and monitor their compliance with them. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS amend Part 441.8 to include discrimination as a part of the definition of abuse or maltreatment of children. The regulations were not revised in response to this comment because OCFS believes that the existing language in Part 441.8 would adequately address these concerns.

Another commenter suggested that OCFS amend Part 423.4 to make it consistent with other sections. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS amend Part 441.15 to include a prohibition against discrimination in special services provided by contractors or service providers outside of the provider agency. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested that OCFS amend Parts 180.5(b)(2)(iii) to specifically require supervisors in detention facilities to be responsible for protecting youth from discrimination. The regulations were not revised in response to this comment to provide detention facilities flexibility in how they effectuate this regulation.

One commenter suggested that OCFS amend Part 182-1.5 to require training on cultural awareness. The regulations were not revised in response to this comment because OCFS did not want to impose an additional mandate on agencies.

One commenter suggested alternate language for the nondiscrimination clause proposed for Part 182-1.5. The regulations were not revised in response to this comment because the Office believes that the existing language is adequately worded.

**Sunkes, Craig (OCFS)**

---

**From:** Valcik, Edward (DOS)  
**Sent:** Tuesday, October 22, 2013 12:26 PM  
**To:** Sunkes, Craig (OCFS)  
**Subject:** Acknowledgment  
**Attachments:** CFS32007.txt

CFS32007.txt

10/22/2013

Craig R. Sunkes  
Room 133 North Building  
52 Washington Street  
Rensselaer NY 12144

RE: Acknowledgement

The Department of State's Division of Administrative Rules has received the following

notice that will be published in issue 45 of the State Register 11/06/2013

Notice of Adoption

SECTIONS 180.5, 182-1.5 OF TITLE 9; SECTIONS 421.3, 423.4, 441.24, 421.16 OF TITLE

18

Rule # CFS321300007



**Sunkes, Craig (OCFS)**

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**From:** Sunkes, Craig (OCFS)  
**Sent:** Tuesday, October 22, 2013 9:07 AM  
**To:** Prochera, Lee (OCFS); Traina, Jara (OCFS)  
**Cc:** Givner, Jennifer (OCFS); Santiago, Ken (OCFS)  
**Subject:** Final Adoption LGBTQ Regulations - Please Post on 11/6 and please remove 5/6/14 unless directed otherwise by legal  
**Attachments:** ROUTING SLIP FA LGBTQ 10-22-13.doc; Notice of Final Adoption LGBTQ 10-22-13.pdf

ROUTE SLIP	Child Welfare Services Bureau		
	52 Washington Street, Rensselaer		Room 133, North Building
TO: Lee D. Prochera Jara Traina CC: Jennifer Givner Ken Santiago		RE: Amendments and additions to Parts 180 and 182-1 of Title 9 of the NYCRR, and Parts 421, 423 and 441 of Title 18 of the NYCRR	
ACTION:			
<input type="checkbox"/>	Approval	<input type="checkbox"/>	Per Conversation <input checked="" type="checkbox"/> FYI
<input type="checkbox"/>	Signature	<input type="checkbox"/>	Note & See Me
<input type="checkbox"/>	Review	<input type="checkbox"/>	Note & Return
<input type="checkbox"/>	Return/File	<input type="checkbox"/>	For Your Files <input type="checkbox"/> Prepare Reply for my Signature or
<input type="checkbox"/>	As Requested	<input checked="" type="checkbox"/>	Necessary Action
<input type="checkbox"/>	Comment Recommendation	<input type="checkbox"/>	OFFICIAL RELEASE Return w/your comments no later than C.O.B. on _____
REMARKS:	<p>The attached Notice of Adoption was filed on 10/22/13 and will appear in the 11/6/13 <u>State Register</u>. The regulatory amendment will be effective on 11/6/13.</p> <p>Web Administrator: Please list these regulations on the website under the adopted regulations section using the title <u>Adopted Rule - Amendment and additions to Parts 180 and 182-1 of Title 9 of the NYCRR, and Parts 421, 423 and 441 of Title 18 of the NYCRR</u>. The following description should be used to describe the adopted regulations: <u>The adopted regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services.</u></p> <p>Please post only the underlined sections and attachments on the website on 11/6/13 and if you could also please send me a note confirming the posting of these regulations for my records I would appreciate it. Thanks.</p>		
DATE: 10/22/13	FROM THE DESK OF: Craig Sunkes	PHONE NUMBER 474-9772	

**Sunkes, Craig (OCFS)**

---

**From:** Sunkes, Craig (OCFS)  
**Sent:** Tuesday, October 22, 2013 9:11 AM  
**To:** Behuniak, Jeanine (OTDA)  
**Cc:** Bloodstein, Dan (OTDA); Ryan III, James (OTDA)  
**Subject:** OCFS' Final Adoption - LGBTQ Regulations - Effective 11/6/13  
**Attachments:** Regs LGBTQ 7-23-13.docx

Dear Sir or Madam:

I have attached the text of the above-referenced regulations. Thank you.

Craig Sunkes  
Senior Attorney  
Child Welfare Services Bureau  
OCFS

**Sunkes, Craig (OCFS)**

---

**From:** Sunkes, Craig (OCFS)  
**Sent:** Tuesday, October 22, 2013 9:12 AM  
**To:** 'brunette@LBDC.state.ny.us' (brunette@LBDC.state.ny.us)  
**Cc:** 'Lydecker@LBDC.state.ny.us' (Lydecker@LBDC.state.ny.us)  
**Subject:** OCFS' Final Adoption - LGBTQ Regulations - Effective 11/6/13  
**Attachments:** Regs LGBTQ 7-23-13.docx

Dear Sir or Madam:

I have attached the text of the above-referenced regulations. Thank you.

Craig Sunkes  
Senior Attorney  
Child Welfare Services Bureau  
OCFS

**Sunkes, Craig (OCFS)**

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**From:** West Group Data Capture System <west.clandestine@thomson.com>  
**Sent:** Tuesday, October 22, 2013 8:58 AM  
**To:** Sunkes, Craig (OCFS)  
**Subject:** [Receipt # 80616583, Submitting Agency : cfs] : Submission was successful

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Notice-of-Final-Adoption-LGBTQ-10-22-13.pdf  
- Verified

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West Data Capture

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<a href="#">Download Info</a> FTP, World Wide Web, Dial-Up
<a href="#">FAQ</a> West Data Capture Frequently Asked Questions
<a href="#">Contact</a> Contact West Data Capture

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**Receipt Number: nyregcfs-102213-075802**

**The following file(s) were received:**

1) Notice of Final Adoption LGBTQ 10-22-13.pdf (2048960 bytes) Received Successfully.

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**Sunkes, Craig (OCFS)**

---

**From:** Sunkes, Craig (OCFS)  
**Sent:** Tuesday, October 22, 2013 9:02 AM  
**To:** Mahoney, Rita (OCFS)  
**Subject:** 101-a Letters  
**Attachments:** 101-a Notice - FA- LGBTQ - 10-22-13.doc; Notice of Final Adoption LGBTQ  
10-22-13.pdf

Rita,

Please prepare as you have done with others in the past. Thanks.

Craig

October 22, 2013

Pursuant to section 101-a of the Executive Law and Article Two of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Adoption which amends and adds to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The regulations prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. The Notice of Adoption will be published in the State Register on November 6, 2013 and the regulations will be effective upon publication.

Enclosed please find a copy of the Notice of Adoption along with a complete text of the rule.

Thank you.

Very truly yours,

Craig Sunkes  
Senior Attorney  
NYS OCFS

Enc.





New York State  
Office of  
Children &  
Family  
Services

www.ocfs.ny.gov

Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

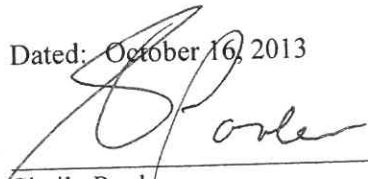
CERTIFICATION FOR A FINAL ADOPTED RULE  
OFFICE OF CHILDREN AND FAMILY SERVICES

I, Sheila Poole, Executive Deputy Commissioner of the Office of Children and Family Services (OCFS), hereby certify that the attached amendments to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), and Parts 421, 423 and 441 of Title 18 of the NYCRR, are duly adopted by me and are effective upon publication in the State Register.

These amendments are adopted pursuant to the provisions of § 20(3)(d), § 372-b(3), § 378(5), § 409, § 409-a and § 462(1) of the New York State Social Services Law; Executive Law § 503 and § 532-e; and Chapter 436 of the Laws of 1997, which transferred certain functions, powers, duties and obligations of the former Department of Social Services to OCFS under which the Commissioner of OCFS may promulgate regulations necessary to carry out the purposes of the agency.

The Notice of Proposed Rule Making for these regulations was published in the State Register on August 7, 2013 under ID# CFS -32-13-00007-P. No other publication or prior notice was required by law.

Dated: October 16, 2013

  
\_\_\_\_\_  
Sheila Poole  
Executive Deputy Commissioner



An Equal Opportunity Employer

## Office of Children and Family Services

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Prohibition of Discrimination on the Basis of Sexual Orientation, Gender Identity or Expression

I.D. No. CFS-32-13-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Addition of sections 180.5(a)(6), 421.3(d), 423.4(m)(7) and 441.24; amendment of sections 182-1.5(g)(1), 421.16(e) and (h) of Title 18 NYCRR.

**Statutory authority:** Executive Law, sections 503 and 532-e; Social Services Law, sections 20(3)(d), 462(1), 372-b(3), 372-e(2), 378(5), 409 and 409-a

**Subject:** Prohibition of discrimination on the basis of sexual orientation, gender identity or expression.

**Purpose:** Prohibits discrimination on the basis of sexual orientation, gender identity or expression in essential social services.

**Text of proposed rule:** A new paragraph (6) of subdivision (a) of section 180.5 of title 9 is added to read as follows:

(6) *Staff and volunteers of detention providers shall not engage in or condone discrimination or harassment of youth on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Detention providers shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers and youth, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other like.*

Paragraph (1) of subdivision (g) of section 182-1.5 of title 9 is amended to read as follows:

(1) Each program shall employ policies and procedures designed to ensure that youth are not subject to unlawful discriminatory treatment in any program decision making process or when being considered for any available service. *Program staff and volunteers shall not engage in or condone discrimination or harassment on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Each program shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers, and youth, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other means.*

A new paragraph (d) is added to section 421.3 to read as follows:

(d) *prohibit discrimination and harassment against applicants for adoption services on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability, and, shall take reasonable steps to prevent such discrimination or harassment by staff and volunteers, promptly investigate incidents of discrimination and harassment, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the*

*purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, and other means.*

Subdivision (e) of section 421.16 of title 18 is repealed, and the subsequent subdivisions are re-lettered.

[(e) Length of marriage. Agencies shall not reject applicants for study or after study on the basis of the length of time they have been married, provided that time is at least one year.]

Paragraph (2) of subdivision (h) of section 421.16 of title 18 is repealed, paragraph (3) of said subdivision is renumbered paragraph (2) and is amended to read as follows:

(2) [Applicants shall not be rejected solely on the basis of homosexuality. A decision to accept or reject when homosexuality is at issue shall be made on the basis of individual factors as explored and found in the adoption study process as it relates to the best interests of adoptive children.

(3) [Exploration of a [sexual] preference[s] to adopt a child of a particular gender [and practices of applicants], where found necessary and appropriate, shall be carried out openly with a clear explanation to the applicant of the basis for, and relevance of, the inquiry.

A new paragraph (7) is added to subdivision (m) of section 423.4 of title 18 to read as follows:

(7) *Staff and volunteers of agencies providing preventive services shall not engage in discrimination or harassment of families receiving preventive services on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Such agencies shall promote and maintain a safe environment, take reasonable steps to prevent discrimination by staff and volunteers, promptly investigate incidents of discrimination and harassment, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other means.*

A new section 441.24 is added to part 441 of title 18 to read as follows:

441.24 *Nondiscriminatory treatment.*

(a) *Authorized agency staff and volunteers shall not engage in or condone discrimination or harassment against prospective foster parents, foster parents or foster children on the basis of race, creed, color, national origin, age, sex, religion, sexual orientation, gender identity or expression, marital status, or disability. Authorized agencies shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers and youth, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. Certified or approved foster parents shall not engage in discrimination or harassment against foster children on the basis of race, creed, color, national origin, age, sex, religion, sexual orientation, gender identity or expression, marital status, or disability, and shall promote and maintain a safe environment.*

(b) *For purposes of this section, the term "gender identity or expression" means having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, and other means.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12210, (518) 473-7793

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### Regulatory Impact Statement

1. Statutory authority:  
Social Services Law § 20(3) authorizes the New York State Office of

Children and Family Services (OCFS) to supervise local social services departments and to establish rules, regulations and policies to carry out these duties. Social Services Law § 462(1) authorizes OCFS to regulate voluntary agencies exercising care or custody of children, and Social Services Law § 378(5) provides the legal basis for regulations governing the issuing and revocation of foster care licenses and certificates and prescribing standards, records, accommodations and equipment for the care of children and minors received under such licenses and certificates. OCFS has the legal authority to regulate preventive services pursuant to Social Services Law §§ 409 and 409-a.

Social Services Law § 372-b(3) authorizes OCFS to promulgate regulations to maintain enlightened adoption policies and establish standards and criteria for adoption practices, and Social Services Law § 372-e(2) authorizes OCFS to establish standards and procedures for evaluating persons who have applied for adoption of a child.

Executive Law § 532-e provides authority for OCFS to approve and regulate programs for runaway and homeless youth, and Executive Law § 503 provides authority for the regulation of secure and non-secure detention.

#### 2. Legislative objectives:

These proposed regulations serve the legislative objective of promoting the safety, permanency, and well-being of families who receive preventive services, and children in foster care, detention and run away and homeless youth programs. The amendments also promote fairness and equality in the child welfare adoption program by eliminating archaic regulatory language that implies the sexual orientation of gay, lesbian and bisexual prospective adoptive parents -- but not of heterosexual prospective adoptive parents -- is relevant to evaluating their appropriateness as adoptive parents.

The proposed regulation would better promote the safety and well-being of such families and children by prohibiting discrimination and harassment on the basis of sexual orientation and gender identity and expression.

#### 3. Needs and benefits:

The proposed regulatory amendments require program staff and volunteers to refrain from engaging in discrimination or harassment on the basis of sexual orientation, or gender identity or expression. They further require that program staff and volunteers take reasonable steps to prevent discrimination against youth by other youth, investigate incidents of discrimination and harassment promptly, and take all reasonable and appropriate corrective or disciplinary action when such incidents occur. The proposed amendments also eliminate archaic regulatory language, which implies that the sexual orientation of gay, lesbian and bisexual prospective adoptive parents -- but not that of heterosexual prospective adoptive parents -- is relevant to evaluating their appropriateness as adoptive parents.

The proposed regulation is needed to allow OCFS to fully implement LGBTQ best practices in child welfare, detention and run away and homeless youth programs.

#### 4. Costs:

There are no costs associated with the proposed regulation. While training on LGBTQ best practices will support implementation of the proposed regulatory amendments, the proposed regulatory amendments do not impose training requirements. Further, OCFS has provided, and anticipates that it will continue to provide, training to local departments of social services, voluntary agencies, and others on this topic. Additionally, many advocacy and educational organizations provide LGBTQ training for child welfare, juvenile justice and related programs at no cost.

#### 5. Local government mandates:

This proposal prohibits counties and local departments of social services (LDSSs) that operate detention facilities, foster care programs, or provide preventive services from discriminating against program participants and service recipients on the basis of sexual orientation or gender identity or expression, and requires that they investigate acts of discrimination or harassment by staff and volunteers and take appropriate and reasonable corrective action in response thereto. The majority of detention and foster care programs are provided by voluntary agencies and the majority of preventive services are provided by not-for-profit entities. Counties and LDSSs are already prohibited from discriminating in the provision of social services on the other bases addressed by the regulations, and OCFS believes that most counties and LDSSs already prohibit discrimination on the basis of sexual orientation and gender identity and expression in the provision of these services.

The proposal also imposes a mandate on local departments of social services who contract with agencies for the provision of preventive services to include such anti-discrimination requirements in these contracts. OCFS does not anticipate that this requirement will limit the pool of available preventive service providers or affect the cost of these contracts.

#### 6. Paperwork:

The proposed regulation requires no additional paperwork.

#### 7. Duplication:

The proposed regulation does not duplicate other state or federal requirements.

#### 8. Alternatives:

The regulatory amendment is necessary to promote and maintain a safe environment for lesbian, gay, bisexual, transgender and questioning youth, families and prospective adoptive parents. OCFS has issued guidelines within existing regulatory authority, but these regulatory amendments are necessary to promote best practices with this population.

#### 9. Federal standards:

While federal statutes and regulations do not prohibit discrimination against youth in care or families receiving the enumerated services on the basis of sexual orientation, or gender identity or expression, the proposed regulations are not inconsistent with federal standards.

#### 10. Compliance schedule:

The proposed regulation will take effect upon enactment. OCFS anticipates that it will issue policy directives to affected entities providing implementation guidance.

#### Regulatory Flexibility Analysis

##### 1. Effect of rule:

The proposed regulation prohibits discrimination or harassment on numerous grounds, including sexual orientation, gender identity, and gender expression, by detention facilities, foster care homes and facilities, runaway and homeless programs, and preventive services providers. Detention facilities are operated by counties or by not-for-profit entities. In most cases preventive services are provided by not-for-profit entities, which may be small businesses; they also may be provided by local departments of social services (LDSSs). Foster care facilities are operated by voluntary authorized agencies, which may be small businesses.

##### 2. Compliance requirements:

The proposed regulation requires counties, LDSSs, and authorized agencies to refrain from engaging in discrimination or harassment on the basis of sexual orientation, or gender identity or expression, take reasonable steps to prevent discrimination against youth by other youth, investigate incidents of discrimination and harassment by staff, volunteers and youth promptly, and take all reasonable and appropriate corrective or disciplinary action when such incidents occur.

##### 3. Professional services:

OCFS anticipates that it will provide technical guidance and training on best practices associated with these regulations.

##### 4. Compliance costs:

This proposal has no economic impact on small businesses and local government. Although training on LGBTQ best practices will support implementation of the proposed regulatory amendments, training requirements are not imposed. Further, OCFS has provided and anticipates that it will continue to provide training to LDSSs, voluntary agencies, and others on this topic. Additionally, many advocacy and educational organizations provide LGBTQ training for child welfare, juvenile justice and related programs at no cost.

##### 5. Economic and technological feasibility:

The proposal is economically and technically feasible. There is no economic impact, and authorized agencies, counties and LDSSs may use whatever procedures are already in place for preventing and correcting prohibited behavior to comply. As noted, there are many sources of training to implement best practices available at no cost.

##### 6. Minimizing adverse impact:

The proposal has no adverse impact.

##### 7. Small business and local government participation:

During development of the informational letter on non-discrimination against LGBTQ youth in the child welfare system, OCFS conferred with representatives of authorized agencies, run away and homeless youth programs, and LDSSs. All of these entities were supportive of the development of non-discrimination standards.

#### Rural Area Flexibility Analysis

##### 1. Types and estimated numbers of rural areas:

The proposed regulation affects the City of New York and all of the counties in New York which operate as local departments of social services (LDSSs) and which may provide detention services, as well as authorized agencies and not-for-profit entities that operate foster care detention, or run away and homeless youth programs, or provide preventive services within those counties. Many of these counties and these agencies are located in rural areas.

##### 2. Reporting, recordkeeping and other compliance requirements and professional services:

The proposed regulation imposes no reporting or recordkeeping requirements.

##### 3. Costs:

The proposal imposes no costs. While training on LGBTQ best practices will support implementation of the proposed regulatory amendments, the proposed regulatory amendments do not impose training requirements.

## Rule Making Activities

NYS Register/August 7, 2013

Further, OCFS has provided, and anticipates it will continue to provide, training to local departments of social services, voluntary agencies, and others on this topic. Additionally, many advocacy and educational organizations provide LGBTQ training for child welfare, juvenile justice and related programs at no cost.

4. Minimizing adverse impact:

The proposal has no adverse impact.

5. Rural area participation:

During development of the informational letter on non-discrimination against LGBTQ youth in the child welfare system, OCFS conferred with representatives of authorized agencies, run away and homeless youth programs, and LDSSs, some of which were located in rural areas. All of these entities were supportive of the development of non-discrimination standards.

**Job Impact Statement**

The proposal prohibits discrimination on the basis of sexual orientation, gender identity and expression. Agencies will likely choose to engage in training to better understand and prevent these forms of discrimination. Such training is currently available at no cost from OCFS and not-for-profit agencies. It is possible that not-for-profit agencies that currently provide LGBTQ non-discrimination training will need to hire additional staff to provide training to the numerous service providers subject to the proposed regulations.

## Division of Criminal Justice Services

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Probation Case Record Management

I.D. No. CJS-32-13-00014-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of Part 348 of Title 9 NYCRR. This rule is proposed pursuant to SAPA § 207(3), 5-Year Review of Existing Rules.

**Statutory authority:** Executive Law, section 243(1)

**Subject:** Probation Case Record Management.

**Purpose:** To establish minimum state standards regarding probation case record management.

**Substance of proposed rule (Full text is posted at the following State website: [www.criminaljustice.ny.gov](http://www.criminaljustice.ny.gov)):** The proposed rule amendments revise Part 348 governing Case Record Management of probation department records governing probation service delivery. Below is a brief summary of the regulatory provisions.

Section 348.1 is the definitional section. It deletes unnecessary language and clarifies that records may be written and/or electronic.

Sections 348.2-348.4 have been renumbered Sections 348.4-348.6 respectively.

New Section 348.2 sets forth the Objective which is to establish minimum state standards regarding probation case record management.

New Section 348.3 governs applicability and provides that Part 348 is applicable to all probation departments in New York State.

Section 348.4 governs content of case records. Clarified is that records may be maintained and an index filing system established in an automated case management system. Other provisions provide more specificity as to minimum information and/or documents which should be in the case record. Additional language emphasizes that appropriate protections shall be instituted to safeguard records, electronic or otherwise prepared, transmitted, and stored.

Section 348.5 sets forth supervision recordkeeping requirements and has been updated to remove obsolete language and replace it with terminology in the new DCJS Supervision rule which took effect June 1, 2013.

Section 348.6 governs accessibility of case records. It has been expanded to clarify additional instances when certain probation case records must be made accessible pursuant to law and other times when probation records may be legally accessible and parameters governing such access. Specific changes reflect recent statutory laws and/or are being incorporated to address confusion. Overall changes in this section should foster greater probation understanding of when record sharing is

mandatory or permissible, terms and conditions with respect to access, lead to greater collaboration where authorized, and maintain safeguards to protect confidentiality and guarantee against inappropriate access. Further, greater flexibility in the area of research, by recognizing bona fide research provided by a private entity, should lead to additional research in the area of probation services which can prove helpful to probation management in terms of assessing their current program services and/or needs and planning future service delivery.

**Text of proposed rule and any required statements and analyses may be obtained from:** Linda J. Valenti, Assistant Counsel, New York State Division of Criminal Justice Services, A.E. Smith Building, 80 South Swan Street, Room 832, Albany, New York 12210, (518) 457-8413, email: [linda.valenti@dcjs.ny.gov](mailto:linda.valenti@dcjs.ny.gov)

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

**Review of Existing Rules:** There exist various state and federal laws governing confidentiality, access and release of information which are typically contained in probation case records. These proposed regulatory amendments to 9 NYCRR Part 348 conform with existing laws governing confidentiality of certain case record information and provide probation departments with greater flexibility to communicate more effectively and better manage those under their supervision. Public safety and the general welfare of the public will be served by adoption of these regulatory amendments.

These regulatory amendments clarify rule language governing mandatory sharing of probation case record information in an effort to assist practitioners in fulfilling their responsibilities under law. Further, additional rule language clarifies discretionary sharing of probation case record information authorized in existing law and also expands upon probation's ability to share and/or otherwise disclose certain case record information to particular individuals or entities for public safety and/or case management purposes. Additional flexibility in the area of research will foster greater collaboration and assessment between probation and academia to assist them in analysis of probation needs and programmatic changes that will improve service delivery.

Moreover, these regulatory amendments address a need to promote community corrections by affording probation departments the ability to authorize greater probation record access to assist them in carrying out their official duties. The amendments retain necessary language to guard against inappropriate access to records which are otherwise sealed or not accessible under state or federal law. The regulatory changes in this area are consistent with good professional practice, are in the best interest of the state and local government since they address and optimize public and victim safety, promote greater offender accountability, facilitate better communication by probation departments, clarify certain constraints in law and establish appropriate safeguards to guarantee more uniform application.

Additionally, certain regulatory language has been updated to reflect recent statutory or regulatory changes and to avoid confusion. For example, mandatory and discretionary record sharing provisions have been expanded to reflect new statutory provisions governing access and/or disclosure of certain probation records relative to specific entities. Further, supervision recordkeeping requirements have been updated to remove obsolete language and replace it with terminology in the new DCJS Supervision rule which took effect June 1, 2013.

With respect to technology, revised regulatory language clarifies that probation case records may be written and/or electronic and that records may be maintained and an index filing system established in an automated case management system. Additional language emphasizes that appropriate protections shall be instituted to safeguard records, electronic or otherwise prepared, transmitted, and stored.

#### Regulatory Impact Statement

1. Statutory authority:

Executive Law section 243(1) empowers the Commissioner of the Division of Criminal Justice Services to promulgate rules "which shall regulate methods and procedure in the administration of probation services", including but not limited to "supervision, case work, recordkeeping... and research so as to secure the most effective application of the probation system and the most efficient enforcement of the probation laws throughout the state."

2. Legislative objectives:

These regulatory amendments are consistent with the legislative intent that the Commissioner adopt regulations in areas relating to critical probation functions. They promote consistent professional standards governing the administration and delivery of probation services in the area of case records management.

There exist various state and federal laws governing confidentiality, access and release of information which are typically contained in probation

**E-FILE PROPOSED REGULATORY FILING CHECKLIST**

Filing date 7/23/13; Register date 8/7/13  
Public Comment Period 8/7/13 to 9/23/13  
OCFS Advisory Board Comment Period 7/26/13 to 9/24/13

NAME/SUBJECT OF FILING: LGBTQ

- 1.  Notice of Proposed, EO 17 form and DOB approval sent to DOB/GO for approval on 4/29/11
- 2.  Draft 101-a letters ✓
- 3.  Draft letter to OCFS Advisory Board ✓
- 4.  Draft Buck Slip ✓
- 5.  Obtain DOB/GO approval for file on 7/17/13
- 6.  Obtain regulatory text (summary if <2000 words) ✓
- 7.  Obtain impact statements ([4] ~~RIS, RIA, RAFA, JIS~~) (summary if <2000 words) ✓
- 8.  Draft Notice of Proposed Rulemaking and attach attachments (normally Reg Text, ~~RIS, RPA, RAFA, JIS~~ [or substituted summaries if <2000 words]) ✓
- 9.  Validate and Save the Notice of Proposed and attachments ✓
- 10.  Upload Notice of Proposed and attachments to http://westdcs.west.thomson.com/ using the following login (nyregcfs) and password (WHYZJPS) ✓
- 11.  Print screen of successful West Data Capture File Upload ✓
- 12.  Copy and assemble packets for letters and file ✓
- 13.  101-a letters sent out on 7/26/13 ✓
- 14.  OCFS Advisory Board letters sent out on 7/26/13 ✓
- 15.  E-mail regulatory text to Marylou Brunette (brunette@LBDC.state.ny.us), Legislative Bill Drafting ✓; cc Kathleen Lydecker: Lydecker@LBDC.state.ny.us.
- 16.  Buck Slip (including internet posting of proposals to webmaster) to OCFS ✓

For 101-a letters - ✓

- Need 1 Copy of Entire Proposal (includes Notice of Proposed, Regulatory Text, RIS, RFA, RAFA, JIS [and any substituted summaries] Hard Copy)

For OCFS Advisory Board Letters –

- Need 1 Copy of Entire Proposal (includes Notice of Proposed, Reg Text, RIS, RFA, RAFA, JIS [and any substituted summaries] Digital Copy)

For File –

- 1 copy of everything for file

**Mahoney, Rita (OCFS)**

---

**To:**

kscheele@honeyo.org

**Subject:**

FW: OCFS' Proposed Regulations for Comment  
OCFS Advisory Board Letter 8-17-12.doc; NOP LGBTQ 7-23-13.pdf

**Attachments:**

Ms. Scheele,

Please excuse the delay in sending the proposed regulations to you I was only advised today that you are a member of the board.

Sincerely,

Rita

Mahoney

Dear OCFS' Advisory Board Member,

Attached please find a regulatory proposal that prohibits discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. Please feel free to submit any comments you may have on the enclosed regulatory proposal by 5 pm on Tuesday, September 24, 2013. As always, we thank you for your interest.

Sincerely,

Craig Sunkes  
Senior Attorney  
Bureau of Child Welfare Services  
NYS OCFS

**Mahoney, Rita (OCFS)**

---

**To:** osanchez@thenyic.org  
**Cc:** schoi@thenyic.org; Sunkes, Craig (OCFS)  
**Subject:** OCFS' Proposed Regulations for Comment  
**Attachments:** OCFS Advisory Board Letter 8-17-12.doc; NOP LGBTQ 7-23-13.pdf

Ms. Sanchez,

Per our telephone conversation attached please find a copy of the Proposed regulations.  
Thank you for your assistance.

Rita Mahoney

*Rita Mahoney on behalf of  
Craig Sunkes, Esq.  
Senior Attorney*

New York State  
Office of Children and Family Services  
Division of Legal Affairs  
Child Welfare Services Bureau  
52 Washington Street  
Room 133 North  
Rensselaer, NY 12144  
**Phone (518) 474-3333**  
**Fax (518) 486-6378**

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*please do not print this e-mail unless necessary*



**From:** Mahoney, Rita (OCFS)  
**Sent:** Friday, July 26, 2013 8:33 AM  
**To:** (abermudez@probation.nyc.gov); (Chong@thenyc.org); (dhightower@childrensinstitute.net); (Eloperena@coac.org); (faithimp@aol.com); (jeisdorfer@aol.com); (jnazario@chcfinc.org); (kleyden@us.ibm.com); (kpiampia@rochester.rr.com); (marycwinter@gmail.com); (pam@weeksvillesociety.org); (roliz13@aol.com); Evelyn Fernandez-Ketcham (Dapheights@hotmail.com); Jane Brown (janeb@rocklandchildcare.org); Sandra Bunkley (sbunkley@buffalo.edu)  
**Subject:** OCFS' Proposed Regulations for Comment

Dear OCFS' Advisory Board Member,

Attached please find a regulatory proposal that prohibits discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. Please feel free to submit any comments you may have on the enclosed regulatory proposal by 5 pm on Tuesday, September 24, 2013. As always, we thank you for your interest.

Sincerely,

Craig Sunkes  
Senior Attorney  
Bureau of Child Welfare Services  
NYS OCFS

**Mahoney, Rita (OCFS)**

---

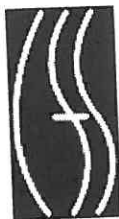
**To:** Advisory Board Members  
**Subject:** OCFS' Proposed Regulations for Comment  
**Attachments:** OCFS Advisory Board Letter 8-17-12.doc; NOP LGBTQ 7-23-13.pdf

Dear OCFS' Advisory Board Member,

Attached please find a regulatory proposal that prohibits discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. Please feel free to submit any comments you may have on the enclosed regulatory proposal by 5 pm on Tuesday, September 24, 2013. As always, we thank you for your interest.

Sincerely,

Craig Sunkes  
Senior Attorney  
Bureau of Child Welfare Services  
NYS OCFS



New York State  
Office of  
Children &  
Family  
Services

[www.ocfs.state.ny.us](http://www.ocfs.state.ny.us)

**Andrew M. Cuomo**  
*Governor*

**Gladys Carrión, Esq.**  
*Commissioner*

**Capital View Office Park**  
52 Washington Street  
Rensselaer, NY  
12144-2834

July 26, 2013

Re: Proposed Regulations for Comment – Prohibition of discrimination on the basis of sexual orientation, gender identity or expression.

Dear Advisory Board Member:

I am pleased to provide you with a copy of a regulatory proposal and accompanying regulatory documents recently filed by the Office of Children and Family Services (OCFS) with the Secretary of State for publication in the State Register.

The proposed amendments and additions are necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services.

Pursuant to statute, the OCFS Advisory Board is given 60 days to comment on any proposed regulations. Therefore, please feel free to submit any comments you may have on the enclosed regulatory proposal by 5 pm on September 24<sup>th</sup>, 2013 to me at the following address: New York State Office of Children and Family Services, 52 Washington Street, Room 133 North, Rensselaer, New York 12144. Alternatively, your comments may also be emailed to me at [Craig.Sunkes@OCFS.state.ny.us](mailto:Craig.Sunkes@OCFS.state.ny.us). Please also feel free to direct any questions regarding the regulations, or the regulatory process to me as well.

As always, we thank you for your interest.

Very truly yours,

/s

Craig Sunkes  
Senior Attorney

Enclosures



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Office of  
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www.ocfs.state.ny.us

Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

July 26, 2013

Mr. Kenneth Adams  
Chairman and CEO  
Department of Economic Development  
30 South Pearl Street  
Albany, New York 12245

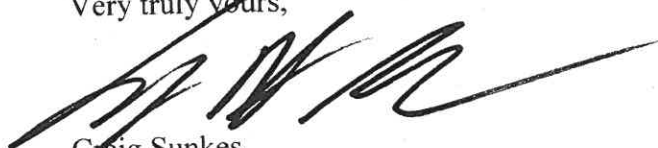
Dear Mr. Adams:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

Enclosed please find a copy of the Notice of Proposed Rule Making, along with a complete text of the rule.

Thank you.

Very truly yours,



Craig Sunkes  
Senior Attorney

Enc.



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New York State  
Office of  
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July 26, 2013

Ms. Hillary Adler  
Handle With Care  
184 McKinstry Road  
Gardiner, New York 12525

www.ocfs.state.ny.us

Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

Dear Ms. Adler:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

Enclosed please find a copy of the Notice of Proposed Rule Making, along with a complete text of the rule.

Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney

Enc.



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Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

July 26, 2013

Mr. Gregory Blass, Commissioner  
Suffolk County Department of Social Services  
Mary Gordon Building  
PO Box 18100  
Hauppauge, New York 11788

Dear Commissioner Blass:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

Enclosed please find a copy of the Notice of Proposed Rule Making, along with a complete text of the rule.

Thank you.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'Craig Sunkes'.

Craig Sunkes  
Senior Attorney

Enc.



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Andrew M. Cuomo  
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Gladys Carrión, Esq.  
Commissioner

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

July 26, 2013

Mr. Thomas Brooks  
Assistant Counsel  
Executive Chamber  
State Capitol Building, Room 242  
Albany, New York 12224

Dear Mr. Brooks:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

Enclosed please find a copy of the Notice of Proposed Rule Making, along with a complete text of the rule.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Craig Sunkes', written over a horizontal line.

Craig Sunkes  
Senior Attorney

Enc.





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Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

July 26, 2013

Ms. Mary Lou Brunette  
Bill Verification  
NYS Legislative Bill Drafting Commission  
55 Elk Street  
Albany, New York 12210

Dear Ms. Brunette:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

Enclosed please find a copy of the Notice of Proposed Rule Making, along with a complete text of the rule.

Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney

Enc.



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Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

July 26, 2013

Mr. Michael Donegan  
Counsel  
State Commission of Correction  
Alfred E. Smith State Office Building  
80 South Swan Street, 12th Floor  
Albany, New York 12210

Dear Mr. Donegan:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

Enclosed please find a copy of the Notice of Proposed Rule Making, along with a complete text of the rule.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Craig Sunkes', written over a horizontal line.

Craig Sunkes  
Senior Attorney

Enc.



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New York State  
Office of  
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www.ocfs.state.ny.us

July 26, 2013

Mr. Roy A. Esnard  
General Counsel  
NYC Human Resources Administration  
Office of Legal Affairs  
1801 Water Street, 25th Floor  
New York, New York 10038

Dear Mr. Esnard:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

Enclosed please find a copy of the Notice of Proposed Rule Making, along with a complete text of the rule.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Craig Sunkes', written over a printed name and title.

Craig Sunkes  
Senior Attorney

Enc.



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Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

July 26, 2013

Ms. Robin Forshaw  
Assistant Counsel  
Executive Chamber  
State Capitol Building, Room 242  
Albany, New York 12224

Dear Ms. Forshaw:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

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Thank you.

Very truly yours,

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Craig Sunkes  
Senior Attorney

Enc.



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Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

July 26, 2013

Mr. Richard Murphy  
Assistant Director  
Administrative Regulations Review Commissioner  
Agency Bldg. 4, 12th Floor  
Albany, New York 12248

Dear Mr. Murphy:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

Enclosed please find a copy of the Notice of Proposed Rule Making, along with a complete text of the rule.

Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney

Enc.



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Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

July 26, 2013

Ms. Kristin Proud  
Information Technology and Operations  
Executive Chamber  
State Capitol Building  
Albany, New York 12224

Dear Ms. Proud:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

Enclosed please find a copy of the Notice of Proposed Rule Making, along with a complete text of the rule.

Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney

Enc.



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Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

July 26, 2013

The Honorable Sheldon Silver  
Speaker of the Assembly  
NYS Assembly  
State Capitol  
Albany, New York 12248

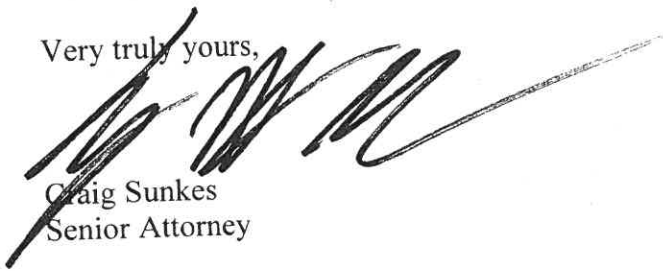
Dear Speaker Silver:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

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Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney

Enc.



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New York State  
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Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

July 26, 2013

Mr. Dean G. Skelos  
President of Senate  
LOB, Room 907  
Albany, New York 12247


Dear President Skelos:

Pursuant to section 101-a of the Executive Law and Article 2 of the State Administrative Procedure Act, notice is hereby given of the filing of a Notice of Proposed Rule Making which proposes to make amendments and additions to Parts 180 and 182-1 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) and Parts 421, 423 and 441 of Title 18 of the NYCRR. The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. This Notice will be published in the State Register on August 7, 2013 and the 45 day public comment period will begin on that date.

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Thank you.

Very truly yours,

  
Craig Sunkes  
Senior Attorney

Enc.



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For Department of State use only.

# Notice of Proposed Rule Making

Children and Family Services, Office of  
(SUBMITTING AGENCY)

- Approval has been granted by Executive Chamber to propose this rule making.
- This rule making does not require Executive Chamber approval.

**NOTE:** Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

1. A. <i>Proposed action:</i>		Title <u>9</u>	NYCRR
Addition of	§ 180.5(a)(6) of		
Amendment of	§ 182-1.5(g)(1) of	Title <u>9</u>	NYCRR
Addition of	§ 421.3(d) and § 423.4(m)(7) of	Title <u>18</u>	NYCRR
Repeal of	and Renumbering of § 421.16(e) and § 421.16(h)(2)	Title <u>18</u>	NYCRR
Amendment of	§ 421.16(h)(3) of	Title <u>18</u>	NYCRR
Addition of	§ 441.24 of	Title <u>18</u>	NYCRR

- B.  This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
- C.  This rule was previously proposed as a consensus rule making under I.D. No. \_\_\_\_\_ Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
- D.  This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

2. *Statutory authority under which the rule is proposed:*

Executive Law § 503 and § 532-e; Social Services Law § 20(3)(d), § 462(1), § 372-b(3), § 372-e(2), § 378(5), § 409 and § 409-a

3. *Subject of the rule:*

Prohibition of discrimination on the basis of sexual orientation, gender identity or expression.

4. *Purpose of the rule:*

Prohibits discrimination on the basis of sexual orientation, gender identity or expression in essential social services.

5. *Public hearings (check box and complete as applicable):*

- A public hearing is not scheduled. (SKIP TO ITEM 8)
- A public hearing is required by law and is scheduled below. (**Note:** first hearing date must be at least 45 days **after** publication of this notice unless a different time is specified in statute.)
- A public hearing is not required by law, but is scheduled below.



**NOTICE OF PROPOSED RULE MAKING (Rev. 1/13)**

<i>Time:</i>	<i>Date:</i>	<i>Location:</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. *Interpreter services* (check only if a public hearing is scheduled):

- Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. *Accessibility* (check appropriate box only if a public hearing is scheduled):

- All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
- Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

8. *Terms of rule* (SELECT ONE SECTION):

- A.  The full text of the rule is attached because it does not exceed 2,000 words.
- B.  A summary of the rule is attached because the full text of the rule exceeds 2,000 words.
  - Full text is posted at the following State website: \_\_\_\_\_
  - Full text is not posted on a State website.
  - Full text is not posted on a State website; this is a consensus rule or a rule defined in SAPA § 102(2)(a)(ii).
- C.  Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making].

9. *The text of the rule and any required statements and analyses may be obtained from:*

Agency contact Public Information Office

Agency Name Office of Children and Family Services

Office address 52 Washington Street, Rensselaer, NY 12210

Telephone (518) 473-7793 E-mail: \_\_\_\_\_

10. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

Agency contact \_\_\_\_\_

Agency name \_\_\_\_\_

Office address \_\_\_\_\_

Telephone \_\_\_\_\_ E-mail: \_\_\_\_\_

11. *Public comment will be received until:*

- 45 days after publication of this notice (MINIMUM public comment period when full text is attached because it does not exceed 2000 words or full text of rule has been posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- 60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing). This box may not be checked and the minimum 60-day comment period applies if full text is not attached or text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- Other: (specify) \_\_\_\_\_.

12. A prior emergency rule making for this action was previously published in the \_\_\_\_\_ issue of the *Register*, I.D. No. \_\_\_\_\_.

13. *Expiration date* (check only if applicable):

- This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102 (2)(a)(ii).

14. *Additional matter required by statute:*

- Yes (include below material required by statute).

No additional material required by statute.

15. *Regulatory Agenda* (See SAPA §202-d[1]):

- This rule was a Regulatory Agenda item for this agency in the following issue of the *State Register*:  
08/31/2011
- This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the *Register*.
- Not applicable.

16. **Review of Existing Rules** (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

This rule is proposed pursuant to SAPA §207 (item 1D applies) (check applicable boxes):

- Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.
- Attached is an assessment of public comments received by the agency in response to its publication of a list of rules to be reviewed.
- An assessment of public comments is not attached because no comments were received.
- Not applicable.

## NOTICE OF PROPOSED RULE MAKING (Rev. 1/13)

PAGE 4 OF 5

17. **Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

- A. The attached RIS contains:
- The full text of the RIS.
  - A summary of the RIS.
  - A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.
- B. A RIS is **not attached**, because this rule is:
- subject to a consolidated RIS printed in the *Register* under I.D. No.: \_\_\_\_\_; issue date: \_\_\_\_\_.
  - exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
  - exempt, as defined in SAPA §102(11) [Consensus Rule Making].
- C.  A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment).

18. **Regulatory Flexibility Analysis (RFA) for small businesses and local governments**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

- A. The attached RFA contains:
- The full text of the RFA.
  - A summary of the RFA.
  - A consolidated RFA, because this rule is one of a series of closely related rules.
- B.  A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.
- C. A RFA is **not attached**, because this rule:
- is subject to a consolidated RFA printed in the *Register* under I.D. No.: \_\_\_\_\_; issue date: \_\_\_\_\_.
  - is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
  - is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

19. **Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

- A. The attached RAFA contains:
- The full text of the RAFA.
  - A summary of the RAFA.
  - A consolidated RAFA, because this rule is one of a series of closely related rules.
- B.  A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.
- C. A RAFA is **not attached**, because this rule:
- is subject to a consolidated RAFA printed in the *Register* under I.D. No.: \_\_\_\_\_; issue date: \_\_\_\_\_.
  - is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

**20. Job Impact Statement (JIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached JIS contains:

The full text of the JIS.

A summary of the JIS.

A consolidated JIS, because this rule is one of a series of closely related rules.

B.  A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.

C. A JIS is **not attached**, because this rule:

is subject to a consolidated JIS printed in the *Register* under I.D. No.: \_\_\_\_\_  
issue date: \_\_\_\_\_

is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is proposed by the State Comptroller or Attorney General.

**AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)**

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Craig Sunkes Signature \_\_\_\_\_

Address 52 Washington Street, Rensselaer, NY 12210

Telephone (518) 474-9772 E-Mail \_\_\_\_\_

Date 07/23/2013

**Please read before submitting this notice:**

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's Register procedures manual, *Rule Making in New York*.
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.

A new paragraph (6) of subdivision (a) of section 180.5 of title 9 is added to read as follows:

(6) Staff and volunteers of detention providers shall not engage in or condone discrimination or harassment of youth on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Detention providers shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers and youth, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other like.

Paragraph (1) of subdivision (g) of section 182-1.5 of title 9 is amended to read as follows:

(1) Each program shall employ policies and procedures designed to ensure that youth are not subject to unlawful discriminatory treatment in any program decision making process or when being considered for any available service. Program staff and volunteers shall not engage in or condone discrimination or harassment on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Each program shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers, and youth, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression"

shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other means.

A new paragraph (d) is added to section 421.3 to read as follows:

(d) prohibit discrimination and harassment against applicants for adoption services on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability, and, shall take reasonable steps to prevent such discrimination or harassment by staff and volunteers, promptly investigate incidents of discrimination and harassment, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, and other means.

Subdivision (e) of section 421.16 of title 18 is repealed, and the subsequent subdivisions are re-lettered.

[(e) Length of marriage. Agencies shall not reject applicants for study or after study on the basis of the length of time they have been married, provided that time is at least one year.]

Paragraph (2) of subdivision (h) of section 421.16 of title 18 is repealed, paragraph (3) of said subdivision is renumbered paragraph (2) and is amended to read as follows:

(2) [Applicants shall not be rejected solely on the basis of homosexuality. A decision to accept or reject when homosexuality is at issue shall be made on the basis of individual factors as explored and found in the adoption study process as it relates to the best interests of adoptive children.

(3) Exploration of a [sexual] preference[s] to adopt a child of a particular gender [and practices of applicants], where found necessary and appropriate, shall be carried out openly with a clear explanation to the applicant of the basis for, and relevance of, the inquiry.

A new paragraph (7) is added to subdivision (m) of section 423.4 of title 18 to read as follows:

(7) Staff and volunteers of agencies providing preventive services shall not engage in discrimination or harassment of families receiving preventive services on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. Such agencies shall promote and maintain a safe environment, take reasonable steps to prevent discrimination by staff and volunteers, promptly investigate incidents of discrimination and harassment, and take reasonable and appropriate corrective or disciplinary action when such incidents occur. For the purposes of this section, "gender identity or expression" shall mean having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, or other means.

A new section 441.24 is added to part 441 of title 18 to read as follows:

441.24 Nondiscriminatory treatment.

(a) Authorized agency staff and volunteers shall not engage in or condone discrimination or harassment against prospective foster parents, foster parents or foster children on the basis of race, creed, color, national origin, age, sex, religion, sexual orientation, gender identity or expression, marital status, or disability. Authorized agencies shall promote and maintain a safe environment, take reasonable steps to prevent discrimination and harassment against youth by other youth, promptly investigate incidents of discrimination and harassment by staff, volunteers and youth , and take reasonable and appropriate corrective or disciplinary action when such incidents occur. Certified or approved foster parents shall not engage in discrimination or harassment against foster children on the basis of race, creed, color, national origin, age, sex, religion, sexual orientation, gender identity or expression, marital status, or disability, and shall promote and maintain a safe environment.

(b) For purposes of this section, the term "gender identity or expression" means having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth. "Gender identity" refers to a person's internal sense of self as male, female, no gender, or another gender, and "gender expression" refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, and other means.



## REGULATORY IMPACT STATEMENT

### 1. Statutory authority:

Social Services Law §20(3) authorizes the New York State Office of Children and Family Services (OCFS) to supervise local social services departments and to establish rules, regulations and policies to carry out these duties. Social Services Law §462(1) authorizes OCFS to regulate voluntary agencies exercising care or custody of children, and Social Services Law § 378(5) provides the legal basis for regulations governing the issuing and revocation of foster care licenses and certificates and prescribing standards, records, accommodations and equipment for the care of children and minors received under such licenses and certificates. OCFS has the legal authority to regulate preventive services pursuant to Social Services Law §§ 409 and 409-a.

Social Services Law § 372-b(3) authorizes OCFS to promulgate regulations to maintain enlightened adoption policies and establish standards and criteria for adoption practices, and Social Services Law § 372-e(2) authorizes OCFS to establish standards and procedures for evaluating persons who have applied for adoption of a child.

Executive Law §532-e provides authority for OCFS to approve and regulate programs for runaway and homeless youth, and Executive Law § 503 provides authority for the regulation of secure and non-secure detention.

### 2. Legislative objectives:

These proposed regulations serve the legislative objective of promoting the safety, permanency, and well-being of families who receive preventive services, and children in foster care, detention and run away and homeless youth programs. The amendments also promote fairness and equality in the child welfare adoption program by eliminating archaic regulatory language that implies the sexual orientation of gay, lesbian and bisexual prospective adoptive parents – but not of heterosexual prospective adoptive parents -- is relevant to evaluating their appropriateness as adoptive parents.

The proposed regulation would better promote the safety and well-being of such families and children by prohibiting discrimination and harassment on the basis of sexual orientation and gender identity and expression.

### 3. Needs and benefits:

The proposed regulatory amendments require program staff and volunteers to refrain from engaging in discrimination or harassment on the basis of sexual orientation, or gender identity or expression. They further require that program staff and volunteers take reasonable steps to prevent discrimination against youth by other youth, investigate incidents of discrimination and harassment promptly, and take all reasonable and appropriate corrective or disciplinary action when such incidents occur. The proposed amendments also eliminate archaic regulatory language, which implies that the sexual orientation of gay, lesbian and bisexual prospective

adoptive parents – but not that of heterosexual prospective adoptive parents -- is relevant to evaluating their appropriateness as adoptive parents.

The proposed regulation is needed to allow OCFS to fully implement LGBTQ best practices in child welfare, detention and run away and homeless youth programs.

#### 4. Costs:

There are no costs associated with the proposed regulation. While training on LGBTQ best practices will support implementation of the proposed regulatory amendments, the proposed regulatory amendments do not impose training requirements. Further, OCFS has provided, and anticipates that it will continue to provide, training to local departments of social services, voluntary agencies, and others on this topic. Additionally, many advocacy and educational organizations provide LGBTQ training for child welfare, juvenile justice and related programs at no cost.

#### 5. Local government mandates:

This proposal prohibits counties and local departments of social services (LDSSs) that operate detention facilities, foster care programs, or provide preventive services from discriminating against program participants and service recipients on the basis of sexual orientation or gender identity or expression, and requires that they investigate acts of discrimination or harassment by staff and volunteers and take appropriate and reasonable corrective action in response thereto. The majority of detention and foster care programs are provided by voluntary agencies and the majority of preventive services are provided by not-for-profit entities. Counties and LDSSs are already prohibited from discriminating in the provision of social services on the other bases addressed by the regulations, and OCFS believes that most counties and LDSSs already prohibit discrimination on the basis of sexual orientation and gender identity and expression in the provision of these services.

The proposal also imposes a mandate on local departments of social services who contract with agencies for the provision of preventive services to include such anti-discrimination requirements in these contracts. OCFS does not anticipate that this requirement will limit the pool of available preventive service providers or affect the cost of these contracts.

#### 6. Paperwork:

The proposed regulation requires no additional paperwork.

#### 7. Duplication:

The proposed regulation does not duplicate other state or federal requirements.

#### 8. Alternatives:

The regulatory amendment is necessary to promote and maintain a safe environment for lesbian, gay, bisexual, transgender and questioning youth, families and prospective adoptive parents. OCFS has issued guidelines within existing regulatory authority, but these regulatory amendments are necessary to promote best practices with this population.

9. Federal standards:

While federal statutes and regulations do not prohibit discrimination against youth in care or families receiving the enumerated services on the basis of sexual orientation, or gender identity or expression, the proposed regulations are not inconsistent with federal standards.

10. Compliance schedule:

The proposed regulation will take effect upon enactment. OCFS anticipates that it will issue policy directives to affected entities providing implementation guidance.

## Regulatory Flexibility Analysis for Small Businesses and Local Governments

### 1. Effect of rule:

The proposed regulation prohibits discrimination or harassment on numerous grounds, including sexual orientation, gender identity, and gender expression, by detention facilities, foster care homes and facilities, runaway and homeless programs, and preventive services providers. Detention facilities are operated by counties or by not-for-profit entities. In most cases preventive services are provided by not-for-profit entities, which may be small businesses; they also may be provided by local departments of social services (LDSSs). Foster care facilities are operated by voluntary authorized agencies, which may be small businesses.

### 2. Compliance requirements:

The proposed regulation requires counties, LDSSs, and authorized agencies to refrain from engaging in discrimination or harassment on the basis of sexual orientation, or gender identity or expression, take reasonable steps to prevent discrimination against youth by other youth, investigate incidents of discrimination and harassment by staff, volunteers and youth promptly, and take all reasonable and appropriate corrective or disciplinary action when such incidents occur.

### 3. Professional services:

OCFS anticipates that it will provide technical guidance and training on best practices associated with these regulations.

### 4. Compliance costs:

This proposal has no economic impact on small businesses and local government. Although training on LGBTQ best practices will support implementation of the proposed regulatory amendments, training requirements are not imposed. Further, OCFS has provided and anticipates that it will continue to provide training to LDSSs, voluntary agencies, and others on this topic. Additionally, many advocacy and educational organizations provide LGBTQ training for child welfare, juvenile justice and related programs at no cost.

### 5. Economic and technological feasibility:

The proposal is economically and technically feasible. There is no economic impact, and authorized agencies, counties and LDSSs may use whatever procedures are already in place for preventing and correcting prohibited behavior to comply. As noted, there are many sources of training to implement best practices available at no cost.

### 6. Minimizing adverse impact:

The proposal has no adverse impact.

7. Small business and local government participation:

During development of the informational letter on non-discrimination against LGBTQ youth in the child welfare system, OCFS conferred with representatives of authorized agencies, run away and homeless youth programs, and LDSSs. All of these entities were supportive of the development of non-discrimination standards.

## Rural Area Flexibility Analysis

### 1. Types and estimated numbers of rural areas:

The proposed regulation affects the City of New York and all of the counties in New York which operate as local departments of social services (LDSSs) and which may provide detention services, as well as authorized agencies and not-for-profit entities that operate foster care detention, or run away and homeless youth programs, or provide preventive services within those counties. Many of these counties and these agencies are located in rural areas.

### 2. Reporting, recordkeeping and other compliance requirements and professional services:

The proposed regulation imposes no reporting or recordkeeping requirements.

### 3. Costs:

The proposal imposes no costs. While training on LGBTQ best practices will support implementation of the proposed regulatory amendments, the proposed regulatory amendments do not impose training requirements. Further, OCFS has provided, and anticipates it will continue to provide, training to local departments of social services, voluntary agencies, and others on this topic. Additionally, many advocacy and educational organizations provide LGBTQ training for child welfare, juvenile justice and related programs at no cost.

### 4. Minimizing adverse impact:

The proposal has no adverse impact.

### 5. Rural area participation:

During development of the informational letter on non-discrimination against LGBTQ youth in the child welfare system, OCFS conferred with representatives of authorized agencies, run away and homeless youth programs, and LDSSs, some of which were located in rural areas. All of these entities were supportive of the development of non-discrimination standards.

### Job Impact Statement

The proposal prohibits discrimination on the basis of sexual orientation, gender identity and expression. Agencies will likely choose to engage in training to better understand and prevent these forms of discrimination. Such training is currently available at no cost from OCFS and not-for-profit agencies. It is possible that not-for-profit agencies that currently provide LGBTQ non-discrimination training will need to hire additional staff to provide training to the numerous service providers subject to the proposed regulations.

**Sunkes, Craig (OCFS)**

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**From:** Sunkes, Craig (OCFS)  
**Sent:** Friday, July 26, 2013 8:55 AM  
**To:** Prochera, Lee (OCFS); Traina, Jara (OCFS); Givner, Jennifer (OCFS); Santiago, Ken (OCFS)  
**Subject:** Proposed LGBTQ Regulations - Please post on 8/7/13 at 9 am and please remove on 9/23/13 at 5 pm  
**Attachments:** ROUTING SLIP - Proposed Regs 8-17-12.doc; NOP LGBTQ 7-23-13.pdf



ROUTE SLIP	Bureau of Child Welfare Services		
	52 Washington Street, Rensselaer		Room 133, North Building
TO: Lee D. Prochera Jara Traina Cc: Susan Steele Ken Santiago		RE: Amendments and additions to Parts 180 and 182-1 of Title 9 of the NYCRR, and Parts 421, 423 and 441 of Title 18 of the NYCRR	
ACTION:			
<input type="checkbox"/>	Approval	<input type="checkbox"/>	Per Conversation <input checked="" type="checkbox"/> FYI
<input type="checkbox"/>	Signature	<input type="checkbox"/>	Note & See Me
<input type="checkbox"/>	Review	<input type="checkbox"/>	Note & Return
<input type="checkbox"/>	Return/File	<input type="checkbox"/>	For Your Files <input type="checkbox"/> Prepare Reply for my Signature or
<input type="checkbox"/>	As Requested	<input checked="" type="checkbox"/>	Necessary Action
<input type="checkbox"/>	Comment Recommendation	<input type="checkbox"/>	OFFICIAL RELEASE Return w/your comments no later than C.O.B. on _____
REMARKS:	<p>The attached Notice of Proposed Rule Making was filed on 7/23/13 and will appear in the 8/7/13 <u>State Register</u>. The 45-day public comment period begins on that date and ends on 9/23/13. The OCFS Advisory Board also has 60 days in which to comment and their comment period starts on 7/26/13 and ends on 9/24/13. Before these regulations can be finalized, an Assessment of Public Comment, addressing all the comments received, will be required.</p> <p>Web Administrator: Please list these regulations on the website under proposed regulations under the title <u>Proposed Rule Making – Amendment and additions to Parts 180 and 182-1 of Title 9 of the NYCRR, and Parts 421, 423 and 441 of Title 18 of the NYCRR</u>. The following description should be used to describe the proposed regulations: <u>The proposed rulemaking is necessary to prohibit discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services.</u></p> <p>Please post these regulations on OCFS' website on 8/7/13 at 9 am and remove these regulations from OCFS' website on 9/23/13 at 5pm, or as soon as possible thereafter.</p>		

	Please send me a note confirming the posting of these regulations for my records. Thanks.	
DATE: 7/26/13	FROM THE DESK OF: Craig R. Sunkes /s/	PHONE NUMBER (518) 474-9772

**Sunkes, Craig (OCFS)**

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**From:** Sunkes, Craig (OCFS)  
**Sent:** Thursday, July 25, 2013 3:40 PM  
**To:** 'brunette@LBDC.state.ny.us'  
**Cc:** 'Lydecker@LBDC.state.ny.us'  
**Subject:** OCFS' Notice of Proposed - Prohibition of discrimination on the basis of sexual orientation, gender identity or expression regulations  
**Attachments:** Regs LGBTQ 7-23-13.docx

Dear Sir or Madam:

I have attached the text of the above-referenced regulation. Thank you.

Craig Sunkes  
Senior Attorney  
Child Welfare Services Bureau  
OCFS

**Sunkes, Craig (OCFS)**

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**From:** Mahoney, Rita (OCFS)  
**Sent:** Thursday, July 25, 2013 2:29 PM  
**To:** Sunkes, Craig (OCFS)  
**Subject:** RE: 101-a Letter

Will do

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**From:** Sunkes, Craig (OCFS)  
**Sent:** Thursday, July 25, 2013 2:24 PM  
**To:** Mahoney, Rita (OCFS)  
**Subject:** 101-a Letter

Rita,

Can you please prepare these as you have done with others. Thanks.

Craig

**Sunkes, Craig (OCFS)**

---

**From:** Mahoney, Rita (OCFS)  
**Sent:** Thursday, July 25, 2013 3:31 PM  
**To:** Sunkes, Craig (OCFS)  
**Subject:** RE: OCFS' Proposed Regulations for Comment

Will do

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**From:** Sunkes, Craig (OCFS)  
**Sent:** Thursday, July 25, 2013 3:27 PM  
**To:** Mahoney, Rita (OCFS)  
**Subject:** OCFS' Proposed Regulations for Comment

Rita – Please send this message to the OCFS AB tomorrow. Thanks. - Craig

Dear OCFS' Advisory Board Member,

Attached please find a regulatory proposal that prohibits discrimination on the basis of sexual orientation, gender identity or expression to recipients of essential social services. Please feel free to submit any comments you may have on the enclosed regulatory proposal by 5 pm on Tuesday, September 24, 2013. As always, we thank you for your interest.

Sincerely,

Craig Sunkes  
Senior Attorney  
Bureau of Child Welfare Services  
NYS OCFS

**Sunkes, Craig (OCFS)**

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**From:** Haines, Kirk (DOS)  
**Sent:** Tuesday, July 23, 2013 12:00 PM  
**To:** Sunkes, Craig (OCFS)  
**Subject:** Acknowledgment  
**Attachments:** CFS32007.txt

CFS32007.txt

7/23/2013

Craig R. Sunkes  
Room 133 North Building  
52 Washington Street  
Rensselaer NY 12144

RE: Acknowledgement

The Department of State's Division of Administrative Rules has received the following

notice that will be published in issue 32 of the State Register 08/07/2013

Notice of Proposed Rule Making

SECTIONS 180.5, 182-1.5, 421.3, 421.16, 423.4, 441.24

Rule # CFS321300007

**Sunkes, Craig (OCFS)**

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**From:** West Group Data Capture System <west.clandestine@thomson.com>  
**Sent:** Tuesday, July 23, 2013 11:08 AM  
**To:** Sunkes, Craig (OCFS)  
**Subject:** [Receipt # 77238228, Submitting Agency : cfs] : Submission was successful

Your submitted files were:

NOP-LGBTQ-7-23-13.pdf  
- Verified

Note: This email is sent from an unattended mailbox. Please do not reply to this email as it is likely no one will read your response. Thank You.



West Data Capture

<a href="#">Log In</a>
<a href="#">Upload Info</a> FTP, World Wide Web, Dial-Up, Email, WESTSend
<a href="#">Download Info</a> FTP, World Wide Web, Dial-Up
<a href="#">FAQ</a> West Data Capture Frequently Asked Questions
<a href="#">Contact</a> Contact West Data Capture

## West Data Capture File Upload: Upload Succeeded

**Receipt Number: nyregcfs-072313-100720**

**The following file(s) were received:**

1) NOP LGBTQ 7-23-13.pdf (2282517 bytes) Received Successfully.

If you want to upload more files then click on the "Back" button on your web browser.

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**Note:** Please, verify that all the files you have uploaded are listed above with the correct size.



THOMSON REUTERS

If any of the files listed above has "Failed" after its name, make sure you have typed the correct filename/path. (Retry/upload Only the failed ones). If you still experience problems, please contact West Data Capture.

**Sunkes, Craig (OCFS)**

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**From:** Sunkes, Craig (OCFS)  
**Sent:** Tuesday, July 23, 2013 11:14 AM  
**To:** Prochera, Lee (OCFS)  
**Cc:** Traina, Jara (OCFS)  
**Subject:** LGBTQ Regulations

Lee,

I just filed the package with DOS; so they have been technically filed today. I will get the 101-a letters, OCFS AB letters and buck slip out by this Friday. The public comment period will start on 8/7 (Register publication date) and end on 9/23/13 and the OCFS AB Period will start 7/26/13 and end on 9/24/13.; only 1 day difference. I hope that this helps.

Craig

**Sunkes, Craig (OCFS)**

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**From:** Prochera, Lee (OCFS)  
**Sent:** Wednesday, July 17, 2013 3:30 PM  
**To:** Carrión, Gladys (OCFS); Poole, Sheila (OCFS); Traina, Jara (OCFS); Sunkes, Craig (OCFS)  
**Subject:** Fw: RRU # 1104001 CFS Prohibits discrimination LGBTQ regs -- REVISED

Jara - please let program know

---

**From:** dob.sm.reg.submittal  
**Sent:** Wednesday, July 17, 2013 01:27 PM  
**To:** Prochera, Lee (OCFS)  
**Cc:** Smith, Scott (DOB)  
**Subject:** RRU # 1104001 CFS Prohibits discrimination LGBTQ regs -- REVISED

Lee,  
Good afternoon. This proposed rule (1104001p) has received sign off from Governor's Counsel and the Deputy Secretary to be published as a Proposed Rule Making in the State Register.

If you have any questions please feel free to email or call.

Ingrid Carr  
Regulatory Analyst  
Division of the Budget

---

**From:** Prochera, Lee (OCFS)  
**Sent:** Friday, April 29, 2011 12:31 PM  
**To:** dob.sm.reg.submittal  
**Cc:** Forshaw, Robin (CHAMBER)  
**Subject:** OCFS Proposed LGBTQ Regulations

OCFS is submitting the attached proposed regulations in accordance with yesterday's memo setting forth the new submission procedures. The proposed regulations were submitted last week to Robin Forshaw, Assistant Counsel to the Governor, who is reviewing them.

Please let us know if you need any additional information.

Thank you.

Lee D. Prochera  
Acting Deputy Commissioner and General Counsel

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This communication, together with any attachments hereto or links contained herein, is for the sole use of the intended recipient(s) and may contain information that is confidential, privileged, or legally protected, and as such is not a public document. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, dissemination, distribution or use of this communication is STRICTLY PROHIBITED. If you have received this communication in error, please notify the sender immediately by return e-mail message and delete the original and all copies of the communication, along with any attachments hereto or links herein, from your system.

**Sunkes, Craig (OCFS)**

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**From:** Carr, Ingrid (DOB)  
**Sent:** Tuesday, August 14, 2012 9:12 AM  
**To:** Sunkes, Craig (OCFS)  
**Cc:** Smith, Scott (DOB); Proud, Kristin (CHAMBER)  
**Subject:** RE: RRU 1104001PP - LGBTQ regs -- REVISED

Craig,  
Good morning. We are awaiting Kristin's approval as well.  
Ingrid Carr

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**From:** Sunkes, Craig (OCFS)  
**Sent:** Tuesday, August 14, 2012 9:10 AM  
**To:** dob.sm.reg.submittal  
**Cc:** Carr, Ingrid (DOB)  
**Subject:** FW: RRU 1104001PP - LGBTQ regs -- REVISED

Can you please advise if this constitutes DOB's final approval to file, or if an additional approval is needed?

Thank you.

Craig Sunkes  
Senior Attorney  
NYS OCFS

---

**From:** Robin Forshaw [<mailto:Robin.Forshaw@exec.ny.gov>]  
**Sent:** Monday, August 13, 2012 4:39 PM  
**To:** dob.sm.reg.submittal; Prochera, Lee (OCFS); Sunkes, Craig (OCFS)  
**Cc:** Proud, Kristin (CHAMBER)  
**Subject:** RRU 1104001PP - LGBTQ regs -- REVISED

On behalf of Governor's Counsel, I approve this proposed rule, which was revised at my request and on OCFS's initiative. The version attached to this email is the approved version, just so there's no confusion.

Robin

\*\*\*\*\*

**WE WORK FOR THE PEOPLE**  
Performance \* Integrity \* Pride

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**Sunkes, Craig (OCFS)**

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**From:** Sunkes, Craig (OCFS)  
**Sent:** Tuesday, August 14, 2012 9:10 AM  
**To:** dob.sm.reg.submittal  
**Cc:** Carr, Ingrid (DOB)  
**Subject:** FW: RRU 1104001PP - LGBTQ regs -- REVISED

Can you please advise if this constitutes DOB's final approval to file, or if an additional approval is needed?

Thank you.

Craig Sunkes  
Senior Attorney  
NYS OCFS

---

**From:** Robin Forshaw [<mailto:Robin.Forshaw@exec.ny.gov>]  
**Sent:** Monday, August 13, 2012 4:39 PM  
**To:** dob.sm.reg.submittal; Prochera, Lee (OCFS); Sunkes, Craig (OCFS)  
**Cc:** Proud, Kristin (CHAMBER)  
**Subject:** RRU 1104001PP - LGBTQ regs -- REVISED

On behalf of Governor's Counsel, I approve this proposed rule, which was revised at my request and on OCFS's initiative. The version attached to this email is the approved version, just so there's no confusion.

Robin

\*\*\*\*\*  
**WE WORK FOR THE PEOPLE**  
**Performance \* Integrity \* Pride**

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**Sunkes, Craig (OCFS)**

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**From:** Prochera, Lee (OCFS)  
**Sent:** Tuesday, August 14, 2012 8:47 AM  
**To:** Sunkes, Craig (OCFS)  
**Cc:** Traina, Jara (OCFS)  
**Subject:** RE: RRU 1104001PP - LGBTQ regs -- REVISED

Yes – Will you please call over and see whether Robin’s was the last sign off or whether we need to get sign off from anyone else. If Robin’s was the last, please ask if they can send the letter today so we can submit the proposed regs to the State Register today. Thanks

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**From:** Sunkes, Craig (OCFS)  
**Sent:** Tuesday, August 14, 2012 8:34 AM  
**To:** Prochera, Lee (OCFS)  
**Cc:** Traina, Jara (OCFS)  
**Subject:** RE: RRU 1104001PP - LGBTQ regs -- REVISED

I think that we still need to get approval from Regs@DOB before we move forward.

---

**From:** Robin Forshaw [<mailto:Robin.Forshaw@exec.ny.gov>]  
**Sent:** Monday, August 13, 2012 4:39 PM  
**To:** dob.sm.reg.submittal; Prochera, Lee (OCFS); Sunkes, Craig (OCFS)  
**Cc:** Proud, Kristin (CHAMBER)  
**Subject:** RRU 1104001PP - LGBTQ regs -- REVISED

On behalf of Governor’s Counsel, I approve this proposed rule, which was revised at my request and on OCFS’s initiative. The version attached to this email is the approved version, just so there’s no confusion.

Robin

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**Performance \* Integrity \* Pride**

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**Sunkes, Craig (OCFS)**

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**From:** Traina, Jara (OCFS)  
**Sent:** Friday, October 07, 2011 11:17 AM  
**To:** Sunkes, Craig (OCFS)  
**Subject:** RE: Regulatory Requirement Change

I don't think that this change applies to the LGBTQ regs since they don't modify or establish penalties for violation of the regs.

**From:** Sunkes, Craig (OCFS)  
**Sent:** Friday, October 07, 2011 9:46 AM  
**To:** Traina, Jara (OCFS)  
**Subject:** Regulatory Requirement Change

Jara,

Can you please review your LGBTQ regulations to see if the new requirement, detailed below (I also attached a copy of the chapter law to this e-mail), is applicable to your regulations. If it is can you please make the required changes and send the revised documents back to me for review and resubmission to DOB. If the new regulatory requirement does not apply, please send me a note indicating that for the regulatory file. If you have any questions, Please let me know.

Thanks.

Craig

*Chapter 524 of the New York Laws of 2011 was signed into law on 9/23/11 and is in effect. This law applies to any new rule that would establish or modify a violation or a penalty associated with a violation. In amending SAPA § 202-b, the law is intended to ensure that each agency, when considering the promulgation of such a regulation, gives ample consideration to including a provision in the rule's text affording small businesses or local governments a period of time or other opportunity, prior to the rule's enforcement, to come into compliance with the rule before it is enforced. More specifically, the Law now requires an agency, when developing a rule for which a Regulatory Flexibility Analysis for Small Businesses and Local Governments (hereinafter, RFA) is required and which involves the establishment or modification of a penalty associated with a violation, to either: include a period of time or other opportunity in the Rule Text for regulated parties to cure matters that will become subject to the penalty; or to include in the RFA filed with such proposed rule or emergency rule, an explanation as to why no such cure period was included in the rule. In consideration of the foregoing, this Department's suggested format for drafting a RFA will be amended by adding an item "8.", to read as follows:*

*8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation: (If the rule text does not include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement, explain why no such cure period was included in the rule.)*

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please notify the sender immediately by return e-mail message and delete the original and all copies of the communication, along with any attachments hereto or links herein, from your system.



**Sunkes, Craig (OCFS)**

---

**From:** Traina, Jara (OCFS)  
**Sent:** Friday, October 07, 2011 9:47 AM  
**To:** Sunkes, Craig (OCFS)  
**Subject:** RE: Regulatory Requirement Change

Lee just sent me some changes that the Gov's office made to our proposed regs so I will review with this in mind later today.

**From:** Sunkes, Craig (OCFS)  
**Sent:** Friday, October 07, 2011 9:46 AM  
**To:** Traina, Jara (OCFS)  
**Subject:** Regulatory Requirement Change

Jara,

Can you please review your LGBTQ regulations to see if the new requirement, detailed below (I also attached a copy of the chapter law to this e-mail), is applicable to your regulations. If it is can you please make the required changes and send the revised documents back to me for review and resubmission to DOB. If the new regulatory requirement does not apply, please send me a note indicating that for the regulatory file. If you have any questions, Please let me know.

Thanks.

Craig

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please notify the sender immediately by return e-mail message and delete the original and all copies of the communication, along with any attachments hereto or links herein, from your system.

**Sunkes, Craig (OCFS)**

---

**From:** Sunkes, Craig (OCFS)  
**Sent:** Friday, October 07, 2011 9:46 AM  
**To:** Traina, Jara (OCFS)  
**Subject:** Regulatory Requirement Change  
**Attachments:** SKMBT\_75011100510320.pdf

Jara,

Can you please review your LGBTQ regulations to see if the new requirement, detailed below (I also attached a copy of the chapter law to this e-mail), is applicable to your regulations. If it is can you please make the required changes and send the revised documents back to me for review and resubmission to DOB. If the new regulatory requirement does not apply, please send me a note indicating that for the regulatory file. If you have any questions, Please let me know.

Thanks.

Craig

Chapter 524 of the New York Laws of 2011 was signed into law on 9/23/11 and is in effect. This law applies to any new rule that would establish or modify a violation or a penalty associated with a violation. In amending SAPA § 202-b, the law is intended to ensure that each agency, when considering the promulgation of such a regulation, gives ample consideration to including a provision in the rule's text affording small businesses or local governments a period of time or other opportunity, prior to the rule's enforcement, to come into compliance with the rule before it is enforced. More specifically, the law now requires an agency, when developing a rule for which a Regulatory Flexibility Analysis for Small Businesses and Local Governments (hereinafter, RFA) is required and which involves the establishment or modification of a penalty associated with a violation, to either: include a period of time or other opportunity in the Rule Text for regulated parties to cure matters that will become subject to the penalty; or to include in the RFA filed with such proposed rule or emergency rule, an explanation as to why no such cure period was included in the rule. In consideration of the foregoing, this Department's suggested format for drafting a RFA will be amended by adding an item "8.", to read as follows:

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**Sunkes, Craig (OCFS)**

**From:** Prochera, Lee (OCFS)  
**Sent:** Thursday, May 05, 2011 9:37 AM  
**To:** Sunkes, Craig (OCFS)  
**Subject:** FW: OCFS Proposed LGBTQ Regulations  
**Attachments:** LGBTQ RIS 5-4-11.docx

\* 5/5/11

SAVED REVISED RIS 2.0  
FILE, DATE OF 5/4/11, REPLYED  
FORSHAW RIS. ALSO REPLYED  
IN NOTICE OF PROPOSED

**From:** Traina, Jara (OCFS)  
**Sent:** Wednesday, May 04, 2011 11:04 AM  
**To:** Forshaw, Robin (CHAMBER); Prochera, Lee (OCFS)  
**Subject:** OCFS Proposed LGBTQ Regulations

Robin,

In response to your email to Lee Prochera on the questions you and Ingrid had with reference to the OCFS Proposed LGBTQ Regulations, please see the answers in red below.

We have also updated the RIS to define the acronym LGBTQ. The revised RIS is attached.

If you have any questions, please feel free to contact me or Lee.

Thanks,

Jara R. Traina, Esq.

Office of Children and Family Services  
52 Washington Street, Rm 135  
Rensselaer, N.Y. 12144  
518-402-7239

**From:** Robin Forshaw [mailto:Robin.Forshaw@exec.ny.gov]  
**Sent:** Monday, May 02, 2011 12:52 PM  
**To:** Prochera, Lee (OCFS)  
**Subject:** Fw: OCFS Proposed LGBTQ Regulations

Do you have short answers to these questions?

**From:** Carr, Ingrid (DOB) [mailto:Ingrid.Carr@budget.state.ny.us]  
**Sent:** Monday, May 02, 2011 12:27 PM  
**To:** Robin Forshaw  
**Subject:** RE: OCFS Proposed LGBTQ Regulations

Robin,

Hi. Working through technical difficulties this morning, but have the documents open now. I have not worked with OCFS for some time but here are some standard questions:

In the RIS, the agency refers to "The proposed regulation is needed to allow OCFS to fully implement LGBTQ best practices in child welfare, detention and run away and homeless youth programs." But the agency does not tell the reader what LGBTQ is.

LGBTQ is an acronym that stands for "Lesbian, Gay, Bisexual, Transgendered and Questioning." We have revised the RIS (see attached) to include the definition of this acronym.

2. There is a reference to existing guidance documents in the RIS, "OCFS has issued guidelines within existing regulatory authority, but these regulatory amendments are necessary to promote best practices with this population," but it does not say how long the regulated parties have been complying with the guidance documents.

The guidance document, 09-OCFS-INF-06, entitled "Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender, and Questioning Children and Youth in Out-of-Home Placement," was issued on December 30, 2009.

3. Clarification of cost: In the RIS the proposal imposes a mandate on local departments of social services who contract with agencies for the provision of preventive services to include such anti-discrimination requirements in these contracts. Will this require contracts to be revised? Is there a cost associated with this?

It is unknown if this proposed regulatory change will require contracts to be revised. OCFS model contracts for purchase of foster care services require compliance with our regulations generally, without specific inclusion of a non-discrimination clause. Districts who use our model contracts should not be required to revise their contracts in order to comply with the proposed regulations.

4. In the RFA, the agency states "During development of the informational letter on non-discrimination against LGBTQ youth in the child welfare system, OCFS conferred with representatives of authorized agencies, run away and homeless youth programs, and LDSSs. All of these entities were supportive of the development of non-discrimination standards." Was this outreach to stakeholders to tell them a regulation is being developed?

No. The outreach to stakeholders occurred prior to the decision to include non-discrimination standards in the regulations.

I hope this helps. Please let me know if you need anything else.

Ingrid

**From:** Robin Forshaw [mailto:Robin.Forshaw@exec.ny.gov]

**Sent:** Friday, April 29, 2011 5:51 PM

**To:** Carr, Ingrid (DOB)

**Subject:** RE: OCFS Proposed LGBTQ Regulations

yes

**From:** Carr, Ingrid (DOB) [mailto:Ingrid.Carr@budget.state.ny.us]

**Sent:** Friday, April 29, 2011 4:22 PM

**To:** Robin Forshaw

**Subject:** Re: OCFS Proposed LGBTQ Regulations

I will review and let you know on Monday, will I see you at training session Monday night?

**From:** Robin Forshaw [mailto:Robin.Forshaw@exec.ny.gov]

**Sent:** Friday, April 29, 2011 04:08 PM

**To:** Carr, Ingrid (DOB)

**Subject:** Re: OCFS Proposed LGBTQ Regulations

Haven't finished my review. If you have time I wouldn't mind your input but if you are busy I can do it

**From:** Carr, Ingrid (DOB) [mailto:Ingrid.Carr@budget.state.ny.us]  
**Sent:** Friday, April 29, 2011 03:15 PM  
**To:** Robin Forshaw  
**Subject:** FW: OCFS Proposed LGBTQ Regulations

You ok with this?

**From:** Prochera, Lee (OCFS)  
**Sent:** Friday, April 29, 2011 12:31 PM  
**To:** dob.sm.reg.submittal  
**Cc:** Forshaw, Robin (CHAMBER)  
**Subject:** OCFS Proposed LGBTQ Regulations

OCFS is submitting the attached proposed regulations in accordance with yesterday's memo setting forth the new submission procedures. The proposed regulations were submitted last week to Robin Forshaw, Assistant Counsel to the Governor, who is reviewing them.

Please let us know if you need any additional information.

Thank you.

Lee D. Prochera  
Acting Deputy Commissioner and General Counsel

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**Sunkes, Craig (OCFS)**

**From:** Prochera, Lee (OCFS)  
**Sent:** Friday, April 29, 2011 12:35 PM  
**To:** Sunkes, Craig (OCFS); Traina, Jara (OCFS)  
**Subject:** FW: OCFS Proposed LGBTQ Regulations  
**Attachments:** EO 17 LGBTQ 4-15-11.doc; Notice of Proposed LGBTQ 4-15-11.pdf

\* 5/2/11 - SAID ALL THESE DOCUMENTS TO ELECTRONIC FILE AS REQUIREMENTS FOR THE CURS IN THE ELECTRONIC FILE PER TO 4/29/11. HOWEVER, SAID AS SAME TO BE AD DATED (4-15-11).

I've submitted these per the brand new (as of yesterday) procedure.

Jara - I bracketed out the word "solely" from the submission after discussing the issue with Robin Forshaw. Thanks for bringing the issue to my attention.

**From:** Prochera, Lee (OCFS)  
**Sent:** Friday, April 29, 2011 12:31 PM  
**To:** 'dob.sm.reg.submittal@budget.state.ny.us'  
**Cc:** Forshaw, Robin (CHAMBER)  
**Subject:** OCFS Proposed LGBTQ Regulations

OCFS is submitting the attached proposed regulations in accordance with yesterday's memo setting forth the new submission procedures. The proposed regulations were submitted last week to Robin Forshaw, Assistant Counsel to the Governor, who is reviewing them.

Please let us know if you need any additional information.

Thank you.

Lee D. Prochera  
Acting Deputy Commissioner and General Counsel

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**Sunkes, Craig (OCFS)**

---

**From:** Sunkes, Craig (OCFS)  
**Sent:** Friday, April 15, 2011 12:18 PM  
**To:** Prochera, Lee (OCFS)  
**Subject:** LGBTQ Regulations  
**Attachments:** Notice of Proposed LGBTQ 4-15-11.pdf; EO 17 LGBTQ 4-15-11.doc

Lee,

Attached please find the above Notice, regulations and supporting documents for submittal to the Governor's Office. I made some corrections of track changes in the documents, but did not proofread them. I also changed the contact to Jara from Laura on the EO 17 form. These should be all set for submission to Governor's Office once we receive DOB approval. I hope that this helps.

Craig



# Traina

# Exhibit H



## Office of Children and Family Services

**Andrew M. Cuomo**  
Governor

52 WASHINGTON STREET  
RENSELAER, NY 12144

**Sheila J. Poole**  
Acting Commissioner

### Administrative Directive

<b>Transmittal:</b>	15-OCFS-ADM-18
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Office of Strategic Planning and Policy Development Division of Child Welfare and Community Services
<b>Date:</b>	September 9, 2015
<b>Subject:</b>	<b>New York State Bill of Rights for Children and Youth in Foster Care</b>
<b>Suggested Distribution:</b>	Directors of Social Services Voluntary Agency Program Directors Voluntary Agency Staff Staff Development Coordinators Foster Care Supervisors
<b>Contact Person(s):</b>	Any questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services: Buffalo Regional Office-Dana Whitcomb (716) 847-3145 <a href="mailto:Dana.Whitcomb@ocfs.ny.gov">Dana.Whitcomb@ocfs.ny.gov</a> Rochester Regional Office-Karen Buck (585) 238-8201 <a href="mailto:Karen.Buck@ocfs.ny.gov">Karen.Buck@ocfs.ny.gov</a> Syracuse Regional Office-Sara Simon (315) 423-1200 <a href="mailto:Sara.Simon@ocfs.ny.gov">Sara.Simon@ocfs.ny.gov</a> Albany Regional Office-Kerri Barber (518) 486-7078 <a href="mailto:Kerri.Barber@ocfs.ny.gov">Kerri.Barber@ocfs.ny.gov</a> Spring Valley Regional Office-Yolanda Désarmé (845) 708-2498 <a href="mailto:Yolanda.Desarme@ocfs.ny.gov">Yolanda.Desarme@ocfs.ny.gov</a> New York City Regional Office-Raymond Toomer (212) 383-1788 <a href="mailto:Raymond.Toomer@ocfs.ny.gov">Raymond.Toomer@ocfs.ny.gov</a> Native American Services-Heather LaForme (716) 847-3123 <a href="mailto:Heather.LaForme@ocfs.ny.gov">Heather.LaForme@ocfs.ny.gov</a>
<b>Attachments:</b>	<ul style="list-style-type: none"> <li>• <b>Desk Aid:</b> Step-by-Step Guidance on Distribution and Review of the Bill of Rights for Youth Age 14 and Older</li> <li>• <a href="#">OCFS-2132</a>: The New York State Bill of Rights for Children and Youth in Foster Care</li> <li>• <a href="#">OCFS-2132-S</a>: The New York State Bill of Rights for Children and Youth in Foster Care (<i>Spanish version</i>)</li> </ul> <p>You can also access the Bill of Rights through the Forms pages on the OCFS websites, at:</p> <p><a href="http://ocfs.ny.gov/main/documents/">http://ocfs.ny.gov/main/documents/</a> (Internet) <a href="http://ocfs.state.nyenet/admin/forms/Foster_Care/">http://ocfs.state.nyenet/admin/forms/Foster_Care/</a> (intranet)</p>

**Filing References**

<b>Previous ADMs/INFs</b>	<b>Releases Cancelled</b>	<b>NYS Regs.</b>	<b>Soc. Serv. Law &amp; Other Legal Ref.</b>	<b>Manual Ref.</b>	<b>Misc. Ref.</b>
14-OCFS-INF-06		18 NYCRR §§428.6, 428.9 and 430.12	SSA §475 (5)(I) [42 U.S.C. §675 (5)(I)] SSA §475A [42 U.S.C. §675a]		Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183)

**I. Purpose**

The purpose of this Administrative Directive (ADM) is to notify local departments of social services (LDSSs) and voluntary authorized agencies (VAs) of important changes in federal law and corresponding amendments to state regulations that impact the New York State Bill of Rights for Children and Youth in Foster Care (Bill of Rights) form and the required distribution of the form to youth in foster care who are 14 years of age and older due to enactment of the federal Preventing Sex Trafficking and Strengthening Families Act [the Act] (P.L. 113-183). The state regulatory changes are effective on September 1, 2015. Other policy releases will address additional requirements of the Act.

**II. Background**

The Bill of Rights was initially released on December 30, 2014 by the New York State Office of Children and Family Services (OCFS) in Informational Letter 14-OCFS-INF-06 and was the result of collaboration between youth in foster care and OCFS staff. In distributing the Bill of Rights to LDSSs and VAs, the informational letter provided guidance on implementation of the Bill of Rights for all children and youth in foster care. In addition, LDSSs and VAs were advised that the Act would have an impact on the Bill of Rights and that additional guidance would be provided.

On September 29, 2014, President Obama signed the Act into law, which amended various provisions of Title IV-E of the Social Security Act (SSA). The Act amended section 475A of the SSA to require that the case plan for any child or youth in foster care who has attained 14 years of age must include a document that describes the rights of the child with respect to education, health, visitation, and court participation, the right to a copy of any consumer reports provided in accordance with federal law, and the right to stay safe and avoid exploitation. In addition, the Act requires that the youth must sign an acknowledgement that he or she has received a copy of the Bill of Rights and that the rights contained therein have been explained to the youth in an age-appropriate way. The acknowledgement must be maintained in the youth's family assessment and services plan (FASP). In order for New York State to maintain Title IV-E compliance, this provision must be in effect by September 29, 2015. A corresponding amendment to 18 NYCRR 428.6 has been made to implement the Act's Bill of Rights requirements. This amendment was filed for Public Comment on February 25, 2015 and published in the *State Register* on March 18, 2015. Notice of adoption of the regulation was published in the *State Register* on June 17, 2015 and the regulation took effect on September 1, 2015.

Several provisions of the Act specifically pertaining to youth in foster care age 14 and over are included in the revised Bill of Rights released in this ADM. They include the right to participate in the development of the youth's service plan and transition planning for

successful adulthood, the ability to choose two members of the youth's case planning team who are not the youth's foster parent, case manager, case planner or case worker and the right to a copy without cost of the youth's consumer reports (credit check report).

### III. Program Implications

The Act, as a whole, has had a significant impact on existing child welfare policy and Title IV-E requirements. This ADM only addresses the changes made to the existing Bill of Rights, the reason for those changes, and the required procedure for the distribution of the Bill of Rights to youth age 14 and older.

Prior policy guidance provided to LDSSs and VAs via 14-OCFS-INF-06 suggested that LDSSs and VAs provide the Bill of Rights to, and review it with, all children and youth age 5 and older who are in foster care at the next casework contact, as well as those entering foster care during a casework contact within the first 30 days of placement. That policy guidance also suggested providing the Bill of Rights to, and reviewing it with, all participants during the initial Service Plan Review (SPR) for children under the age of 5. The rights discussed in this ADM reflect the rights that all children and youth in foster care are entitled to, unless specifically limited by age. OCFS recommends that LDSSs and VAs continue to promote the well-being of all children and youth in foster care by continuing this practice for all children ages 5-13 with the revised Bill of Rights attached to this ADM. However, an amendment to 18 NYCRR 428.6, effective September 1, 2015, requires that all youth in foster care 14 years of age and older are provided with the Bill of Rights including the new provisions, and that the youth sign an acknowledgement that he or she has received the document.

### IV. Required Action

If an LDSS or VA has already chosen to follow the procedures outlined in 14-OCFS-INF-06 for all children and youth in its care, it **must** provide those youth **14 years of age and older** with the revised version of the Bill of Rights attached to this ADM and follow the implementation plan outlined in the attached desk aid. The rights must be explained to the youth. The LDSS or VA **must** encourage the youth to sign the revised copy of the Bill of Rights, place a copy of the document in the youth's case record, update the youth's progress notes in CONNECTIONS to reflect the event, and include the event in the next FASP.

If an LDSS or VA chose not to provide children and youth with the Bill of Rights after the issuance of 14-OCFS-INF-06, caseworkers **must** provide all youth on their caseloads who are 14 years of age and older with the revised Bill of Rights and follow the implementation plan outlined in the attached desk aid. The rights must be explained to the youth. The youth **must** be encouraged to sign the Bill of Rights, a copy of the Bill of Rights with the youth's signature must be placed in the case file and the event documented in the youth's progress notes in CONNECTIONS and in the next FASP.

If an LDSS or VA chooses to provide children and youth younger than 14 years of age with the Bill of Rights, they may do so. However, when such youth turns 14 years of age, caseworkers must provide the youth with the revised Bill of Rights and follow the implementation plan outlined in the attached desk aid. The rights must be explained to the youth. At age 14, the youth **must** be encouraged to sign the Bill of Rights, place a

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copy of the signed document in the youth's case record, and document the event in the youth's progress notes in CONNECTIONS and in the next FASP.

It is highly recommended, but not required, that the Bill of Rights be reviewed annually at the SPR with youth 14 years of age or older. It is important to recognize that the youth's developmental ability, interests, and understanding of the document and his or her rights change as the youth ages.

OCFS has revised the Bill of Rights issued by 14-OCFS-INF-06 to reflect the changes made to federal law as a result of the Act. All existing copies of OCFS-2132 and OCFS-2132S dated 1/2015 must be discarded and replaced with the revised version of the Bill of Rights attached to this ADM. The updated versions can also be found on the OCFS website on the Forms page (<http://ocfs.ny.gov/main/documents/> - type in "2132" in the key word search).

The attached desk aid has been provided to offer step-by-step directions on the provision of the Bill of Rights for youth age 14 and older. LDSSs and VAs should share the attached desk aid with casework staff, as the information contained within can assist them in providing the Bill of Rights to youth.

## V. System Implications

### **CONNECTIONS**

#### **FASP:**

Changes to the FASP are being made to incorporate documentation of the Bill of Rights for all youth age 14 and older. These changes are anticipated to be released as part of the CONNECTIONS modernization build and LDSSs and VAs will be notified when they are completed. The process outlined below will not be effective until the changes to the FASP are released. In the interim, caseworkers must document the event in the youth's progress notes in CONNECTIONS.

When an initial, comprehensive or reassessment FASP is launched and a youth age 14 or older in the stage has a program choice of placement, a node labeled "Bill of Rights" will appear in the FASP tree in the Foster Care Issues section.

After choosing the node labeled "Bill of Rights," the worker completing the FASP will be prompted to complete fields regarding the Bill of Rights for each youth age 14 and older.

All youth age 14 and older will be listed at the top of the screen. Multiple youth can be selected and updated at the same time.

If information already exists for the youth, the window will be prefilled. The worker has the ability to update the window at any time. For example, if a youth refused to sign the Bill of Rights during the previous FASP, but chooses to now, the worker can update the window to reflect it.

The first field that must be completed states "youth has received a copy of the Bill of Rights." The worker must select: yes **or** no.

- If the choice selected is **no**, no other fields will be displayed.
- If the choice selected is **yes**, three additional fields will be displayed.
  1. Date Received: The worker must enter the date youth received the Bill of Rights in the date box. The date can be backdated to the youth's 14<sup>th</sup> birthday, but cannot be a future date.
  2. Bill of Rights has been appropriately explained to youth. The worker must select yes **or** no.
  3. Signature Status: The worker must choose one of three options from the drop-down box: Youth signed the statement, Youth refused to sign, **or** Youth unable to sign.

Upon FASP submission, if worker has selected **no** to "Youth has received a copy of the Bill of Rights" for any child listed who is 14 years of age or older, the FASP cannot be submitted.

**V. Effective Date**

This directive is effective on the date of issuance.

*/s/ Thomas R. Brooks*

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**Issued By:**

Thomas R. Brooks

Title: Deputy Commissioner

Division/Office: Strategic Planning and Policy Development

*/s/ Laura M. Velez*

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**Issued By:**

Laura M. Velez

Title: Deputy Commissioner

Division/Office: Division of Child Welfare and Community Services

## DESK AID

### **Step-by-Step Guidance on Distribution and Review of the Bill of Rights for Youth Age 14 and Older**

1. The assigned caseworker **must** provide youth age 14 or older, who are in foster care, with a copy of the Bill of Rights:
  - At a casework contact within the first 30 days of placement when entering foster care; or
  - At the next casework contact if youth is already in foster care; or
  - At the casework contact immediately after the youth turns 14.
2. During the casework contact, the caseworker **must** read the Bill of Rights to any youth in foster care who is unable to read it independently. If any of the participants require the Bill of Rights in a different language, the agency **must** utilize an interpreter to read and discuss the Bill of Rights with them. OCFS has translated the Bill of Rights into Spanish and it is attached to this ADM.
3. During the casework contact, the caseworker **must** review the Bill of Rights with the youth in an age and developmentally appropriate way and be prepared to answer any questions the youth may have. Caseworkers should also answer any questions that the foster parent(s), pre-adoptive parent(s) or relative caregiver(s), if applicable, may have so that they also have a clear understanding of the youth's rights.
4. After the document is reviewed, or within 90 days of the review of the document, the youth must write his or her name attesting that he or she received a copy of the Bill of Rights and that he or she discussed it with his or her caseworker, parent(s) or guardian(s), and foster parent(s), if applicable. The youth, caseworker, and supervisor must print and sign his or her name and date the Bill of Rights. If the youth is unable or unwilling to sign the document, a note **must** be entered on the youth's signature line stating that the youth did not sign and why.
5. At the initial Service Plan Review (SPR), or at the next SPR for youth in foster care, the Bill of Rights **must** be distributed and reviewed again, in order to engage the parent(s)/guardian(s), attorney for the child, and, if applicable, foster parent(s), pre-adoptive parent(s) or relative caregiver(s). If they have not already been encouraged to sign the document, the parent(s)/guardian(s) and foster parent(s) **must** be encouraged to do so. The caseworker **must** provide all participants with a signed copy of the Bill of Rights, place a copy in the youth's case file, and record the event in a progress note in CONNECTIONS. The event **must** also be recorded in the next family assessment and services plan (FASP). In the event that a *required* participant in the case planning team is unable to attend the SPR, the caseworker **must** mail the participant a copy of the signed Bill of Rights.
6. If the youth initially refuses to sign the Bill of Rights, but decides to do so at a later date, the signed Bill of Rights **must** be placed with the original unsigned Bill of Rights in the youth's case file. The next FASP **must** be updated to reflect the signing of the Bill of Rights.
7. The caseworker should have ongoing conversations with the youth regarding his/her rights while in foster care, and be available to the youth when the youth expresses curiosity and/or concern about his/her rights. Also, the caseworker should periodically meet in private with the youth to give the youth an opportunity to discuss any concerns/problems with his/her rights.
8. It is highly recommended that the Bill of Rights be discussed with all participants annually at the SPR.

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES

**BILL OF RIGHTS FOR CHILDREN AND YOUTH IN FOSTER CARE**

**As a child or youth in foster care in the State of New York, I have the right:**

1. To live in a safe, nurturing, healthy, and suitable residence, to stay safe and to be free from exploitation, where I am treated with respect and where I have enough food and adequate clothing. I have the right to the least restrictive, most home-like setting where I can safely live and receive services.
2. To be treated fairly and with respect and to receive care and services that are free of discrimination based on race, creed, color, national origin, age, religion, sex, gender identity or gender expression, sexual orientation, marital status, physical or mental disability, or the fact that I am in foster care.
3. To visit with my birth or adoptive parents, unless the court or agency has determined that it is not in my best interest or my parents' rights have been ended or given up. If I have had children of my own while in care, I have the right to live with my child(ren) and to make decisions for my child(ren), unless the court determines that I cannot.
4. To live with my brothers and sisters unless the court or my agency has determined it is not in my best interests or those of my brothers or sisters, and to visit with my brothers and sisters regularly if we do not live together, unless the court or a case worker has determined it is not in my best interests or those of one of my brothers or sisters, or their distance from me prevents visitation.
5. To know the name and the contact information for my caseworker, my caseworker's supervisor, and my lawyer (Attorney for the Child). I have the right to have at least a monthly visit with my caseworker, and to contact my caseworker or my lawyer (Attorney for the Child) as I need to in private if I request it and to have my caseworker and/or my lawyer (Attorney for the Child) respond to my attempts to contact them. I have the right to have my records and personal information kept private and only given to people or agencies who have a legal right to see them.
6. To be free from cruel, harsh or unnecessary punishment, including but not limited to, being hit, bullied, locked in a room or separated from others as a means of discipline, being made to do work unfairly or being denied water, food, sleep or contact with my family as a means of discipline. I have the right to be disciplined in a manner that is appropriate to the reason why I am being disciplined, how mature I am, my developmental level, and my medical condition. I must be told why I was disciplined. I may not be restrained for punishment or for the convenience of staff.
7. To have a voice in determining my permanency goal, including, depending on my age or ability, to participate in Service Plan Review meetings and court Permanency Hearings, to give input into the development and review of my service plan. When I am 14 years of age or older, I have the right to choose two members of my case planning team, who are not my foster parent, case manager, case planner or caseworker. When I am 14 years or older, I also have the right to receive services that will help me to become a healthy and successful adult and the right to receive, without cost, a copy of my consumer credit reports each year until I am discharged from care. I also have the right to receive assistance in interpreting and resolving any inaccuracies in such reports. In some cases after leaving foster care, I have a right to continued contact from a caseworker and possibly to return to foster care.
8. To receive dental, medical, vision, mental and behavioral health services regularly, and more often as needed. I have the right to receive guidance on family planning and to consent to reproductive health care services regardless of my age, if my doctor or other medical professional determines that I am able to make these decisions.



After I am 18 years of age, and have been in foster care for at least six months, and discharged to my own care, I have a right to my United States birth certificate, social security card, health insurance information, medical records and a driver's license or state issued identification, if eligible.

9. To receive a free and appropriate education until I receive a high school diploma or IEP diploma. I have the right to request assistance in applying to colleges and vocational programs that are in or out of state.
10. To participate in activities that are appropriate for my age and development, such as after-school activities, summer activities, work experience, to attend or not to attend religious services in my faith, and to practice my religion, if I have one. When I am at least 16 years old, I have the right to apply for my driver's license. I have the right to ask for and to receive guidance in getting a job.

**Who should I talk to if I feel that my rights are not being respected?**

You have the right to report anyone who does not respect your rights, and you do not need to fear being punished for reporting them.

You can:

- Explain what is happening with your caseworker, parent or guardian and possibly the judge at your court case. You can ask to talk with your caseworker in private.
- Contact your caseworker's supervisor and explain the situation. You can ask to talk with your caseworker's supervisor in private.
- Contact your lawyer (Attorney for the Child). Your conversations with your lawyer (Attorney for the Child) are completely private. Your lawyer (Attorney for the Child) cannot tell anyone else what you talk about with him or her, except if he or she has your permission, or if your safety is at risk (talk to your lawyer about this).

I, \_\_\_\_\_, have received a copy of the New York State Bill of Rights for Children and Youth in Foster Care and I have discussed it with my caseworker, my parent(s) (birth or adoptive) or guardian(s), and my foster parent(s), if applicable.

Child/Youth Name (print)	Child/Youth Signature	/ / Date
Caseworker Name (print)	Caseworker Signature	/ / Date
Supervisor Name (print)	Supervisor Signature	/ / Date
Parent/Guardian Name (print)	Parent/Guardian Signature	/ / Date
Foster Parent Name (print)	Foster Parent Signature	/ / Date

ESTADO DE NUEVA YORK  
OFICINA DE SERVICIOS PARA NIÑOS Y FAMILIAS  
**LOS DERECHOS DE LOS NIÑOS Y JÓVENES  
EN EL SISTEMA DE CUIDADO DE CRIANZA**

**Como niño o joven en el sistema de cuidado de crianza del Estado de Nueva York, tengo derecho a:**

1. Vivir en una residencia segura, amable, saludable y adecuada, donde esté seguro y libre de explotación, donde me traten con respeto y donde tenga suficiente comida y ropa adecuada. Vivir en un ambiente menos restrictivo y más hogareño, en el que pueda existir con seguridad y recibir servicios.
2. Ser tratado con justicia y respeto, y recibir atención y servicios sin discriminación de raza, color de piel, origen nacional, edad, religión, género, identidad de género y expresión de género, orientación sexual, estado civil, discapacidad física o mental, o el hecho de que yo esté en el sistema de cuidado de crianza.
3. Visitar a mis padres biológicos o adoptivos, a menos que el tribunal o la agencia haya determinado que esto no está en mi mejor interés o que los derechos de mis padres hayan sido terminados o abandonados. Si he tenido hijos propios mientras estaba bajo cuidado de crianza, tengo el derecho a vivir con mi hijo(a) y de tomar decisiones por mi(s) hijo(s), a menos que el tribunal determine que no puedo.
4. Vivir con mis hermanos y hermanas a menos que el tribunal o mi agencia haya determinado que esto no está en mi mejor interés o en el mejor interés de mis hermanos o hermanas, y de visitar a mis hermanos y hermanas con regularidad si no vivimos juntos, a menos que el tribunal o un trabajador de caso haya determinado que no está en mi mejor interés o en el mejor interés de uno de mis hermanos o hermanas, o la distancia me impida visitarlos.
5. Conocer el nombre y la información de contacto de mi trabajador de caso, del supervisor de mi trabajador de caso, y de mi abogado (abogado del niño). Tengo derecho a por lo menos una visita mensual con mi trabajador de caso, y a ponerme en contacto con mi trabajador de caso o mi abogado (abogado del niño) cuanto lo necesite en privado. Si lo solicito, y de que mi trabajador de caso y/o mi abogado (abogado del niño) responda a mis intentos de contactarme con ellos. Tengo derecho a que mis archivos e información personal se mantengan en privado y sólo se divulguen a las personas o entidades que tengan el derecho legal de verlos.
6. Estar libre de castigos crueles, duros e innecesarios, que incluyen pero no se limitan a ser golpeado, acosado, encerrado en una habitación o separado de los demás como medio de disciplina, ser obligado a trabajar de manera injusta o ser privado de agua, alimentos, sueño o el contacto con mi familia como medio de disciplina. Tengo derecho a ser disciplinado de una manera adecuada, de acuerdo al motivo por el que estoy siendo disciplinado, al grado de mi madurez, al nivel de mi desarrollo y a mi condición médica. Se me debe informar la razón por la que se me disciplinó. No se me debe castigar con restricciones físicas o por conveniencia del personal.
7. Tener una voz en la determinación de mi objetivo de permanencia, dependiendo de mi edad o capacidad, incluyendo la participación en reuniones de Revisión del Plan de Servicios y audiencias de permanencia judiciales para dar voz en el desarrollo y la revisión de mi plan de servicios. Cuando tenga 14 años o más, tengo derecho a escoger a dos miembros de mi caso de planificación, quienes no sean mi padre/madre de crianza, administrador de caso, planeador de caso o trabajador de caso. Cuando tenga 14 años o más, también tengo derecho a recibir servicios que me ayuden a ser un adulto sano y exitoso, y el derecho a recibir gratuitamente una copia de mi informe de crédito cada año hasta que me den de alta del cuidado que recibo. También tengo derecho a recibir ayuda en interpretar y resolver las inexactitudes en tales informes. En algunos casos, después de salir del sistema de cuidado de crianza, tengo derecho a mantener contacto continuo con un trabajador social y, posiblemente, reingresar al cuidado de crianza.

8. A recibir servicios dentales, médicos, de oftalmología y de comportamiento regularmente y más a menudo si es necesario. Tengo derecho a ser orientado sobre planificación familiar y consentir a servicios de salud reproductiva sin tomar en cuenta mi edad, si mi médico y otro profesional médico determina que soy capaz de tomar decisiones. Después de cumplir 18 años de edad y haber estado bajo cuidado de crianza por lo menos seis meses, y dado(a) de alta a mi propio cuidado, tengo derecho a mi partida de nacimiento de los EE.UU., tarjeta de seguro social, información de seguro de salud, registros médicos y a una licencia de conducir o identificación emitida por el estado, si soy elegible.
9. A recibir una educación gratuita y apropiada hasta que reciba mi diploma de la escuela secundaria o el diploma del IEP. Tengo derecho a solicitar asistencia para aplicar a las universidades y a programas vocacionales que se encuentren en o fuera del estado.
10. A participar en actividades que sean apropiadas para mi edad y nivel de desarrollo, como actividades después de la escuela, actividades de verano, experiencia laboral, atender o no servicios religiosos en mi fe y practicar mi religión, si tengo una. Cuando tenga por lo menos 16 años de edad, tengo derecho a solicitar una licencia para conducir. Tengo derecho a pedir y recibir orientación para conseguir un trabajo.

**¿A quién debo hablar si siento que no se respetan mis derechos?**

Tienes derecho a denunciar a cualquier persona que no respete tus derechos, y no tienes que temer ser castigado por reportarlos. Tú puedes:

- Explicar lo que está pasando con tu trabajador de caso, padre o madre, tutor y posiblemente el juez de tu caso ante el tribunal. Tú puedes pedir hablar con tu trabajador de caso en privado.
- Contactar al supervisor de tu trabajador de caso y explicarle la situación. Puedes pedir hablar con el supervisor de tu trabajador de caso en privado.
- Contactar a tu abogado (abogado del niño). Tus conversaciones con tu abogado (abogado del niño) son completamente privadas. Tu abogado (abogado del niño) no puede compartir con nadie lo que tú compartas con él/ella, excepto cuando él o ella tenga tu permiso para compartir información o cuando tu seguridad esté en riesgo (habla con tu abogado sobre esto).

Yo, \_\_\_\_\_ he recibido una copia de la Declaración de Derechos de los Niños y Jóvenes en Cuidado de Crianza del Estado de Nueva York y la he discutido con mi trabajador de caso, mi padre/madre o ambos (biológicos o adoptivos) o tutor/tutores, y mi padre/madre de crianza o ambos, si se aplica.

Nombre del Niño/Joven (en imprenta)	Firma del Niño/Joven	/ / Fecha
Nombre del Trabajador de Caso (en imprenta)	Firma del Trabajador de Caso	/ / Fecha
Nombre del Supervisor (en imprenta)	Firma del Supervisor	/ / Fecha
Nombre Padre/Madre o Tutor(a) (en imprenta)	Firma del Padre/Madre o Tutor(a)	/ / Fecha
Nombre Padre/Madre de Crianza (en imprenta)	Firma del Padre/Madre de Crianza	/ / Fecha

**Step-by-Step Guidance on Distribution and Review of the Bill of Rights  
for youth age 14 and older**

1. The assigned caseworker **must** provide youth age 14 or older, who are in foster care, with a copy of the Bill of Rights:
  - At a casework contact within the first 30 days of placement when entering foster care; or
  - At the next casework contact if youth is already in foster care; or
  - At the casework contact immediately after the youth turns 14.
2. During the casework contact, the caseworker **must** read the Bill of Rights to any youth in foster care who is unable to read it independently. If any of the participants require the Bill of Rights in a different language, the agency **must** utilize an interpreter to read and discuss the Bill of Rights with them. OCFS has translated the Bill of Rights into Spanish and it is attached to this ADM.
3. During the casework contact, the caseworker **must** review the Bill of Rights with the youth in an age and developmentally appropriate way and be prepared to answer any questions the youth may have. Caseworkers should also answer any questions that the foster parent(s), pre-adoptive parent(s) or relative caregiver(s), if applicable, may have so that they also have a clear understanding of the youth's rights.
4. After the document is reviewed, or within 90 days of the review of the document, the youth must write his or her name attesting that he or she received a copy of the Bill of Rights and that he or she discussed it with his or her caseworker, parent(s) or guardian(s), and foster parent(s), if applicable. The youth, caseworker, and supervisor must print and sign his or her name and date the Bill of Rights. If the youth is unable or unwilling to sign the document, a note **must** be entered on the youth's signature line stating that the youth did not sign and why.
5. At the initial Service Plan Review (SPR), or at the next SPR for youth in foster care, the Bill of Rights **must** be distributed and reviewed again, in order to engage the parent(s)/guardian(s), attorney for the child, and, if applicable, foster parent(s), pre-adoptive parent(s) or relative caregiver(s). If they have not already been encouraged to sign the document, the parent(s)/guardian(s) and foster parent(s) **must** be encouraged to do so. The caseworker **must** provide all participants with a signed copy of the Bill of Rights, place a copy in the youth's case file, and record the event in a progress note in CONNECTIONS. The event **must** also be recorded in the next family assessment and services plan (FASP). In the event that a *required* participant in the case planning team is unable to attend the SPR, the caseworker **must** mail the participant a copy of the signed Bill of Rights.
6. If the youth initially refuses to sign the Bill of Rights, but decides to do so at a later date, the signed Bill of Rights **must** be placed with the original unsigned Bill of Rights in the youth's case file. The next FASP **must** be updated to reflect the signing of the Bill of Rights.
7. The caseworker should have ongoing conversations with the youth regarding his/her rights while in foster care, and be available to the youth when the youth expresses curiosity and/or concern about his/her rights. Also, the caseworker should periodically meet in private with the youth to give the youth an opportunity to discuss any concerns/problems with his/her rights.
8. It is highly recommended that the Bill of Rights be discussed with all participants annually at the SPR.

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES

**BILL OF RIGHTS FOR CHILDREN AND YOUTH IN FOSTER CARE**

**As a child or youth in foster care in the State of New York, I have the right:**

1. To live in a safe, nurturing, healthy, and suitable residence, to stay safe and to be free from exploitation, where I am treated with respect and where I have enough food and adequate clothing. I have the right to the least restrictive, most home-like setting where I can safely live and receive services.
2. To be treated fairly and with respect and to receive care and services that are free of discrimination based on race, creed, color, national origin, age, religion, sex, gender identity or gender expression, sexual orientation, marital status, physical or mental disability, or the fact that I am in foster care.
3. To visit with my birth or adoptive parents, unless the court or agency has determined that it is not in my best interest or my parents' rights have been ended or given up. If I have had children of my own while in care, I have the right to live with my child(ren) and to make decisions for my child(ren), unless the court determines that I cannot.
4. To live with my brothers and sisters unless the court or my agency has determined it is not in my best interests or those of my brothers or sisters, and to visit with my brothers and sisters regularly if we do not live together, unless the court or a case worker has determined it is not in my best interests or those of one of my brothers or sisters, or their distance from me prevents visitation.
5. To know the name and the contact information for my caseworker, my caseworker's supervisor, and my lawyer (Attorney for the Child). I have the right to have at least a monthly visit with my caseworker, and to contact my caseworker or my lawyer (Attorney for the Child) as I need to in private if I request it and to have my caseworker and/or my lawyer (Attorney for the Child) respond to my attempts to contact them. I have the right to have my records and personal information kept private and only given to people or agencies who have a legal right to see them.
6. To be free from cruel, harsh or unnecessary punishment, including but not limited to, being hit, bullied, locked in a room or separated from others as a means of discipline, being made to do work unfairly or being denied water, food, sleep or contact with my family as a means of discipline. I have the right to be disciplined in a manner that is appropriate to the reason why I am being disciplined, how mature I am, my developmental level, and my medical condition. I must be told why I was disciplined. I may not be restrained for punishment or for the convenience of staff.
7. To have a voice in determining my permanency goal, including, depending on my age or ability, to participate in Service Plan Review meetings and court Permanency Hearings, to give input into the development and review of my service plan. When I am 14 years of age or older, I have the right to choose two members of my case planning team, who are not my foster parent, case manager, case planner or caseworker. When I am 14 years or older, I also have the right to receive services that will help me to become a healthy and successful adult and the right to receive, without cost, a copy of my consumer credit reports each year until I am discharged from care. I also have the right to receive assistance in interpreting and resolving any inaccuracies in such reports. In some cases after leaving foster care, I have a right to continued contact from a caseworker and possibly to return to foster care.
8. To receive dental, medical, vision, mental and behavioral health services regularly, and more often as needed. I have the right to receive guidance on family planning and to consent to reproductive health care services regardless of my age, if my doctor or other medical professional determines that I am able to make these decisions.

After I am 18 years of age, and have been in foster care for at least six months, and discharged to my own care, I have a right to my United States birth certificate, social security card, health insurance information, medical records and a driver's license or state issued identification, if eligible.

- 9. To receive a free and appropriate education until I receive a high school diploma or IEP diploma. I have the right to request assistance in applying to colleges and vocational programs that are in or out of state.
- 10. To participate in activities that are appropriate for my age and development, such as after-school activities, summer activities, work experience, to attend or not to attend religious services in my faith, and to practice my religion, if I have one. When I am at least 16 years old, I have the right to apply for my driver's license. I have the right to ask for and to receive guidance in getting a job.

**Who should I talk to if I feel that my rights are not being respected?**

You have the right to report anyone who does not respect your rights, and you do not need to fear being punished for reporting them.

You can:

- Explain what is happening with your caseworker, parent or guardian and possibly the judge at your court case. You can ask to talk with your caseworker in private.
- Contact your caseworker's supervisor and explain the situation. You can ask to talk with your caseworker's supervisor in private.
- Contact your lawyer (Attorney for the Child). Your conversations with your lawyer (Attorney for the Child) are completely private. Your lawyer (Attorney for the Child) cannot tell anyone else what you talk about with him or her, except if he or she has your permission, or if your safety is at risk (talk to your lawyer about this).

I, \_\_\_\_\_, have received a copy of the New York State Bill of Rights for Children and Youth in Foster Care and I have discussed it with my caseworker, my parent(s) (birth or adoptive) or guardian(s), and my foster parent(s), if applicable.

Child/Youth Name (print)	Child/Youth Signature	/ / Date
Caseworker Name (print)	Caseworker Signature	/ / Date
Supervisor Name (print)	Supervisor Signature	/ / Date
Parent/Guardian Name (print)	Parent/Guardian Signature	/ / Date
Foster Parent Name (print)	Foster Parent Signature	/ / Date

ESTADO DE NUEVA YORK  
OFICINA DE SERVICIOS PARA NIÑOS Y FAMILIAS  
**LOS DERECHOS DE LOS NIÑOS Y JÓVENES  
EN EL SISTEMA DE CUIDADO DE CRIANZA**

**Como niño o joven en el sistema de cuidado de crianza del Estado de Nueva York, tengo derecho a:**

1. Vivir en una residencia segura, amable, saludable y adecuada, donde esté seguro y libre de explotación, donde me traten con respeto y donde tenga suficiente comida y ropa adecuada. Vivir en un ambiente menos restrictivo y más hogareño, en el que pueda existir con seguridad y recibir servicios.
2. Ser tratado con justicia y respeto, y recibir atención y servicios sin discriminación de raza, color de piel, origen nacional, edad, religión, género, identidad de género y expresión de género, orientación sexual, estado civil, discapacidad física o mental, o el hecho de que yo esté en el sistema de cuidado de crianza.
3. Visitar a mis padres biológicos o adoptivos, a menos que el tribunal o la agencia haya determinado que esto no está en mi mejor interés o que los derechos de mis padres hayan sido terminados o abandonados. Si he tenido hijos propios mientras estaba bajo cuidado de crianza, tengo el derecho a vivir con mi hijo(a) y de tomar decisiones por mi(s) hijo(s), a menos que el tribunal determine que no puedo.
4. Vivir con mis hermanos y hermanas a menos que el tribunal o mi agencia haya determinado que esto no está en mi mejor interés o en el mejor interés de mis hermanos o hermanas, y de visitar a mis hermanos y hermanas con regularidad si no vivimos juntos, a menos que el tribunal o un trabajador de caso haya determinado que no está en mi mejor interés o en el mejor interés de uno de mis hermanos o hermanas, o la distancia me impida visitarlos.
5. Conocer el nombre y la información de contacto de mi trabajador de caso, del supervisor de mi trabajador de caso, y de mi abogado (abogado del niño). Tengo derecho a por lo menos una visita mensual con mi trabajador de caso, y a ponerme en contacto con mi trabajador de caso o mi abogado (abogado del niño) cuanto lo necesite en privado. Si lo solicito, y de que mi trabajador de caso y/o mi abogado (abogado del niño) responda a mis intentos de contactarme con ellos. Tengo derecho a que mis archivos e información personal se mantengan en privado y sólo se divulguen a las personas o entidades que tengan el derecho legal de verlos.
6. Estar libre de castigos crueles, duros e innecesarios, que incluyen pero no se limitan a ser golpeado, acosado, encerrado en una habitación o separado de los demás como medio de disciplina, ser obligado a trabajar de manera injusta o ser privado de agua, alimentos, sueño o el contacto con mi familia como medio de disciplina. Tengo derecho a ser disciplinado de una manera adecuada, de acuerdo al motivo por el que estoy siendo disciplinado, al grado de mi madurez, al nivel de mi desarrollo y a mi condición médica. Se me debe informar la razón por la que se me disciplinó. No se me debe castigar con restricciones físicas o por conveniencia del personal.
7. Tener una voz en la determinación de mi objetivo de permanencia, dependiendo de mi edad o capacidad, incluyendo la participación en reuniones de Revisión del Plan de Servicios y audiencias de permanencia judiciales para dar voz en el desarrollo y la revisión de mi plan de servicios. Cuando tenga 14 años o más, tengo derecho a escoger a dos miembros de mi caso de planificación, quienes no sean mi padre/madre de crianza, administrador de caso, planeador de caso o trabajador de caso. Cuando tenga 14 años o más, también tengo derecho a recibir servicios que me ayuden a ser un adulto sano y exitoso, y el derecho a recibir gratuitamente una copia de mi informe de crédito cada año hasta que me den de alta del cuidado que recibo. También tengo derecho a recibir ayuda en interpretar y resolver las inexactitudes en tales informes. En algunos casos, después de salir del sistema de cuidado de crianza, tengo derecho a mantener contacto continuo con un trabajador social y, posiblemente, reingresar al cuidado de crianza.

8. A recibir servicios dentales, médicos, de oftalmología y de comportamiento regularmente y más a menudo si es necesario. Tengo derecho a ser orientado sobre planificación familiar y consentir a servicios de salud reproductiva sin tomar en cuenta mi edad, si mi médico y otro profesional médico determina que soy capaz de tomar decisiones. Después de cumplir 18 años de edad y haber estado bajo cuidado de crianza por lo menos seis meses, y dado(a) de alta a mi propio cuidado, tengo derecho a mi partida de nacimiento de los EE.UU., tarjeta de seguro social, información de seguro de salud, registros médicos y a una licencia de conducir o identificación emitida por el estado, si soy elegible.
9. A recibir una educación gratuita y apropiada hasta que reciba mi diploma de la escuela secundaria o el diploma del IEP. Tengo derecho a solicitar asistencia para aplicar a las universidades y a programas vocacionales que se encuentren en o fuera del estado.
10. A participar en actividades que sean apropiadas para mi edad y nivel de desarrollo, como actividades después de la escuela, actividades de verano, experiencia laboral, atender o no servicios religiosos en mi fe y practicar mi religión, si tengo una. Cuando tenga por lo menos 16 años de edad, tengo derecho a solicitar una licencia para conducir. Tengo derecho a pedir y recibir orientación para conseguir un trabajo.

**¿A quién debo hablar si siento que no se respetan mis derechos?**

Tienes derecho a denunciar a cualquier persona que no respete tus derechos, y no tienes que temer ser castigado por reportarlos. Tú puedes:

- Explicar lo que está pasando con tu trabajador de caso, padre o madre, tutor y posiblemente el juez de tu caso ante el tribunal. Tú puedes pedir hablar con tu trabajador de caso en privado.
- Contactar al supervisor de tu trabajador de caso y explicarle la situación. Puedes pedir hablar con el supervisor de tu trabajador de caso en privado.
- Contactar a tu abogado (abogado del niño). Tus conversaciones con tu abogado (abogado del niño) son completamente privadas. Tu abogado (abogado del niño) no puede compartir con nadie lo que tú compartas con él/ella, excepto cuando él o ella tenga tu permiso para compartir información o cuando tu seguridad esté en riesgo (habla con tu abogado sobre esto).

Yo, \_\_\_\_\_ he recibido una copia de la Declaración de Derechos de los Niños y Jóvenes en Cuidado de Crianza del Estado de Nueva York y la he discutido con mi trabajador de caso, mi padre/madre o ambos (biológicos o adoptivos) o tutor/tutores, y mi padre/madre de crianza o ambos, si se aplica.

Nombre del Niño/Joven (en imprenta)	Firma del Niño/Joven	/ / Fecha
Nombre del Trabajador de Caso (en imprenta)	Firma del Trabajador de Caso	/ / Fecha
Nombre del Supervisor (en imprenta)	Firma del Supervisor	/ / Fecha
Nombre Padre/Madre o Tutor(a) (en imprenta)	Firma del Padre/Madre o Tutor(a)	/ / Fecha
Nombre Padre/Madre de Crianza (en	Firma del Padre/Madre de Crianza	/ / Fecha





## Office of Children and Family Services

**Andrew M. Cuomo**  
Governor

52 WASHINGTON STREET  
RENSSELAER, NY 12144

**Sheila J. Poole**  
Acting Commissioner

### Administrative Directive

<b>Transmittal:</b>	15-OCFS-ADM-23
<b>To:</b>	Commissioners of Social Services Executive Directors of Domestic Violence Programs
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	October 16, 2015
<b>Subject:</b>	<b>Non-discrimination on the Basis of Sex, Sexual Orientation, and Gender Identity or Expression in Residential and Non-residential Domestic Violence Programs</b>
<b>Suggested Distribution:</b>	Directors of Social Services Domestic Violence Liaisons Staff Development Coordinators Residential and Non-residential Domestic Violence Program Directors Legal Staff
<b>Contact Person(s):</b>	Questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services:  Buffalo Regional Office- Dana Whitcomb (716) 847-3145 <a href="mailto:Dana.Whitcomb@ocfs.ny.gov">Dana.Whitcomb@ocfs.ny.gov</a> Rochester Regional Office- Karen Buck (585) 238-8201 <a href="mailto:Karen.Buck@ocfs.ny.gov">Karen.Buck@ocfs.ny.gov</a> Syracuse Regional Office- Sara Simon (315) 423-1200 <a href="mailto:Sara.Simon@ocfs.ny.gov">Sara.Simon@ocfs.ny.gov</a> Albany Regional Office- Kerri Barber (518) 486-7078 <a href="mailto:Kerri.Barber@ocfs.ny.gov">Kerri.Barber@ocfs.ny.gov</a> Spring Valley Regional Office- Yolanda Désarmé (845) 708-2499 <a href="mailto:Yolanda.Desarme@ocfs.ny.gov">Yolanda.Desarme@ocfs.ny.gov</a> New York City Regional Office- Raymond Toomer (212) 383-1808 <a href="mailto:Raymond.Toomer@ocfs.ny.gov">Raymond.Toomer@ocfs.ny.gov</a> Native American Services- Heather LaForme (716) 847-3123 <a href="mailto:Heather.LaForme@ocfs.ny.gov">Heather.LaForme@ocfs.ny.gov</a>
<b>Attachments:</b>	Attachment A – Equinox intake screening instrument Attachment B - FVPSA LGBTQ Accessibility Policy

**Filing References**

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR §§ 452-455, 462	<a href="#">NYS Social Services Law, Article 6-A</a>		

**I. Purpose**

The purpose of this Administrative Directive is to reaffirm the New York State Office of Children and Family Services' (OCFS) requirement that residential and non-residential programs for victims of domestic violence provide shelter and appropriate services for all victims of domestic violence, regardless of race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, marital status, or disability. This policy clarifies the requirement for domestic violence programs to provide services to males and lesbian, gay, bisexual, transgender, intersex and questioning (LGBTQ) persons, and provides guidance to domestic violence programs for fulfilling federal requirements regarding this commitment necessary for receiving funds through the federal Family Violence Prevention and Services Act (FVPSA) and the Violence Against Women Act (VAWA).

**II. Background**

The New York State Domestic Violence Prevention Act ([Article 6-A of the Social Services Law \(Sections 459-a through 459-h\)](#)) was first enacted in 1987 as a response to the need for specialized supports for victims of domestic violence and their children. This law requires social services districts to provide shelter and services to victims of domestic violence and establishes mainstream funding mechanisms for these programs. Following the enactment of this Act, OCFS developed regulations to:

- Promote standards for the establishment and maintenance of residential and non-residential domestic violence programs.
- Establish social services district responsibility for financial and contractual arrangements with providers of domestic violence residential services.

These regulations - 18 NYCRR Parts 408, 452-455, and 462 - can be found on the OCFS website at: [ocfs.ny.gov/main/dv/regulations.asp](http://ocfs.ny.gov/main/dv/regulations.asp).

The federal Family Violence Prevention and Services Act (FVPSA), first enacted as part of the Child Abuse Amendments of 1984 ([P.L. 98-457](#)) and most recently reauthorized by the Child Abuse Prevention and Treatment Act (CAPTA) Reauthorization Act of 2010 (P.L. 111-320; [42 U.S.C. §§ 10401 – 10414](#)), provides funding to help victims of domestic violence and their dependent children by providing shelter and related help and providing violence prevention programs. When the federal Administration for Children & Families announced the requirements for [FVPSA Grants to States for Domestic Violence Shelters and Support Services](#) in 2013,<sup>1</sup> the announcement contained requirements that programs include and consider the needs of LGBTQ program participants, and that programs establish policies prohibiting harassment of program participants based on race, sexual

<sup>1</sup> Federal Register, Volume 78, Number 75 (Thursday, April 18, 2013), Pages 23263-23271, FR Doc No: 2013-08711.

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orientation, gender, gender identity or expression, religion, and national origin. The announcement also requires that staff members of funded programs must be trained to prevent and respond to harassment and bullying, and that programs must put into effect procedures for monitoring and seriously addressing claims or grievances of discrimination or harassment based on any of the above factors.

Furthermore, the federal [Violence Against Women Reauthorization Act of 2013 \(Public Law No: 113-4\)](#) prohibits discrimination on the basis of actual or perceived race, color, religion, national origin, sex, gender identity [as defined in [18 U.S.C. 249\(c\)\(4\)](#)], sexual orientation, or disability by recipients of funds for all grant programs administered by the Office on Violence Against Women (OVW). The Violence Against Women Act (VAWA) provides an exception to the provision on sex discrimination in certain instances where sex segregation or sex-specific programming has been determined to be necessary to the essential operation of a program.

The U.S. Department of Justice has issued *Frequently Asked Questions: Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013*, which can be accessed at:

<http://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>.

### III. Program Implications

New York State social services regulations [18 NYCRR 452.9(a) and 462.2(d)] require residential and non-residential programs for victims of domestic violence to provide emergency services and temporary shelter to *any* victim of domestic violence [as defined in [18 NYCRR 452.2\(g\)](#)] and his or her minor children, or to have a plan to refer such persons to any available appropriate programs. This includes persons who have special needs, are hearing impaired, or are non-English speaking victims. Programs may *not* accept any person who is in need of medical, mental health, nursing care, or other assistance that the program cannot provide itself or with the assistance of other community resources. Programs may also *not* accept anyone who has a communicable disease that could be transmitted to other residents, who refuses to sign an agreement accepting the program's rules, or who is likely to cause danger to him- or herself or others or to substantially interfere with the health, safety, welfare, or care of other residents.

A residential program for victims of domestic violence may not categorically determine that a person is likely to cause danger to themselves or to others or to substantially interfere with the health, safety, welfare or care of other residents solely because of that person's sex, sexual orientation, or gender identity or expression. Similarly, programs cannot summarily determine that they are unable to appropriately meet a victim's needs solely because of that person's sex, sexual orientation, and/or gender identity or expression.

However, programs may determine that sex segregation or sex-specific programming is necessary for the essential operation of their program. The U.S. Department of Justice guidance defines sex-segregated and sex-specific programming as follows:

Programming is "sex-segregated" when males and females receive services in separate settings. Programming is "sex-specific" when a program designs it differently for males and females. Both "sex-

segregated” and “sex-specific” programming places individuals in a position to “choose” to identify with a particular sex.”<sup>2</sup>

A determination as to whether sex segregation or sex-specific programming is necessary for the essential operation of the program is a fact-specific inquiry and may not be based solely on convenience or rooted in stereotypes. Programs must consider the following in evaluating whether sex-segregated or sex-specific programming is necessary to the essential operations of the program: the nature of the service, the anticipated positive and negative consequences to all eligible victims of not providing the program in a sex-segregated or sex-specific manner, the literature on the efficacy of the service being sex-segregated or sex-specific, the impact on transgender individuals seeking services, and whether similarly situated programs providing the same services have been successful in providing services effectively in a manner that is not sex-segregated or sex-specific. A program may not provide sex-segregated or sex-specific services for reasons that are trivial or based solely on the program’s convenience.

For further guidance, see the U.S. Department of Justice guidance:

<http://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>.

Unless the residential program for victims of domestic violence has determined that sex segregation or sex-specific programming is necessary for the essential operation of its program, **the domestic violence residential program may not refer a victim or a victim’s family member to another program, program location, or shelter because of the sex, sexual orientation, or gender identity or expression of the victim or any member of the victim’s family.**

#### IV. Required Action

By no later than January 15, 2016, every residential and non-residential program for victims of domestic violence that OCFS licenses, funds, approves, or oversees must establish a written policy affirming that it accepts persons in the categories above and that it prohibits harassment of any program participant based on race, sexual orientation, gender, gender identity or expression, religion, or national origin. Furthermore, if a program has determined that sex-segregated or sex-specific programming is necessary to the essential operations of the program, it must explain how it reached this conclusion in its policy. Each program must establish written procedures for responding to harassment or bullying in all forms and for monitoring claims, including addressing such claims seriously and documenting corrective action(s) taken. Each program must develop plans for training staff members to respond to harassment or bullying. OCFS will review these policies, procedures, plans, and records of residential programs as part of its oversight activities. Residential and non-residential programs for victims of domestic violence must also review and, if needed, revise their outreach and education materials, including websites. All information provided on websites and in outreach/education materials must reflect that the program’s services are available for all persons regardless of sex, sexual orientation, and/or gender identity or expression.

As required by [18 NYCRR 452.9\(a\)\(7\)](#), each residential program for victims of domestic violence program must provide each resident admitted to the program’s shelter with a

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<sup>2</sup> See U.S. Department of Justice’s *Frequently Asked Questions: Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013* (2014, Apr. 9), at page 6.  
<<http://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>>.

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written notice within one working day of the person's admission, which must include, among other things:

- A copy of the program's policies that prohibit discrimination or harassment of any person in the residential program because of the person's race, sexual orientation, gender, gender identity or expression, religion, or national origin.
- Notice of the right to present grievances, on one's own behalf or on behalf of other residents, to the program operator or the operator's designee, to the local social services district, and/or to OCFS without fear of reprisal. The notice must provide the procedures for presenting grievance(s).

## V. Systems Implications

There are no systems implications resulting from this policy.

## VI. Additional Information

Programs are encouraged to think about how to welcome, integrate, and successfully serve people regardless of their gender, sexual orientation, and gender identity or expression in their residential programs. This includes providing housing in their shelters, domestic violence programs, safe dwellings, or safe homes networks, and providing support groups and other residential and non-residential program activities. Any program that feels that it needs help with accommodating diverse groups in a setting is encouraged to contact its regional office domestic violence coordinator.

Residential programs for victims of domestic violence that are concerned about the possibility of admitting someone who may be an abuser rather than a victim are advised to use their intake processes to carefully assess potential residents, but are advised that a person's sex, sexual orientation, or gender identity or expression is not evidence that a person is not a victim or may be an abuser. An example of an intake instrument used by a domestic violence shelter that has routinely admitted males and LGBTQ persons is included as Attachment A.

Attachment B is the LGBTQ Accessibility Policy for FVPSA. Programs may, but are not required to, refer to it for language to use in their non-discrimination and non-harassment policies.

Programs can find additional information that could be helpful at the following websites:

- The New York City Anti-Violence Project (AVP) [www.avp.org](http://www.avp.org). AVP has dedicated programming to address LGBTQ domestic violence, including counseling, advocacy and direct legal services. AVP offers technical assistance and training to service providers and organizations and coordinates the New York State LGBTQ Domestic Violence Network, whose mission is to increase access to DV services for LGBTQ victims of domestic violence.
- The Network/La Red <http://tnlr.org>. The Network/La Red provides information about domestic violence for LGBTQ persons and offers technical assistance for service providers. Its offerings include [Open Minds Open Doors: Transforming](#)

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[Domestic Violence Programs to Include LGBTQ Survivors](#),<sup>3</sup> a free manual for service providers. The manual is also available from Network La Red in hard copy.

## VII. Effective Date

This directive is effective on the date of issuance.

*Thomas R. Brooks*

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### **Issued By:**

Name: Thomas R. Brooks

Title: Deputy Commissioner

Division/Office: Strategic Planning and Policy Development

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<sup>3</sup> *Open Minds Open Doors: Transforming Domestic Violence Programs to Include LGBTQ Survivors* can be accessed at [http://www.ncdsv.org/images/TheNetworkLaRed\\_OpenMindsOpenDoors\\_2010.pdf](http://www.ncdsv.org/images/TheNetworkLaRed_OpenMindsOpenDoors_2010.pdf).

Attachment A

Staff Initials \_\_\_\_\_ Time \_\_\_\_\_ Date \_\_\_\_\_ Case # \_\_\_\_\_

**Equinox Domestic Violence Shelter Intake Form**

Are you in a safe place to talk for about 15 minutes? \_\_yes \_\_no

If no, would you like me to call the police or ambulance for assistance?

\_\_yes \_\_no Address calling from: \_\_\_\_\_

Do you have a safe number for me to call in case we get disconnected? \_\_\_\_\_

Is this a: \_\_ cell phone \_\_service provider \_\_friend’s/family’s house \_\_public?

How should I identify myself when I call back (i.e. Equinox, a cleaning service, cable company or friend’s name)? \_\_\_\_\_

The Equinox Domestic Violence Shelter is made up of shared bedrooms with a maximum of three adults to a room and shared common areas at a 24-hour staffed confidential location within Albany County- so you may have a roommate or be asked to change rooms to accommodate more people. Shelter staff can help with obtaining social services or social security to secure financial means to obtain permanent housing. They also help with information and referral for your housing search, education, mental health, substance abuse, medical and employment concerns. Legal assistance and counseling services are also available by staff in Equinox Domestic Violence Services Outreach Department.

The Equinox Domestic Violence Shelter serves people of all racial/cultural backgrounds, religions, sexual orientations (lesbian, gay, bisexual, heterosexual), gender identities (men, women, transgender people), abilities, citizenship status and ages. Some of the questions on this intake may not pertain to you, but please bear with me as all of these questions need to be asked to satisfy our funders’ and program’s needs.

I’m going to complete a short intake form with you that will take about 15-20 minutes to make sure this is the most appropriate place to meet your needs. If it is not, I’ll help you find the right place.

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Do you have a preferred name that is different from your legal name? \_\_\_\_\_

*(Use this name for rest of intake)*

Gender (i.e. man, woman, transgender man, transgender woman, intersex): \_\_\_\_\_

Do you have a preferred pronoun (i.e. he or she)? \_\_\_\_\_

Have you ever been known by any other name (i.e. maiden, married)? \_\_\_\_\_

*(Check name in DNR, client and abuser database, and sex offender registry)*

Where are you staying? (Address): \_\_\_\_\_ (County): \_\_\_\_\_

Where do you receive mail? \_\_\_\_\_

If currently at temporary address, where were you living previously? \_\_\_\_\_

(County): \_\_\_\_\_

If out of County, why are you seeking to leave? \_\_\_\_\_

*(Make sure address is outside safety zone)*

Are there other people who will be coming to shelter with you now? \_\_ Yes \_\_ No

Are you planning on anyone coming to stay with you in shelter in the future?

If yes, When? \_\_\_\_\_

Why are they unable to come with you now? \_\_\_\_\_  
\_\_\_\_\_

*(If yes, it may be important to talk about the potential risks of waiting to bring in children, such as establishing custody, and help determine if there is a safe way to bring children with them now)*

Name: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Age: \_\_\_\_\_

Name: \_\_\_\_\_ Age: \_\_\_\_\_

*(Check Bed Space Chart)*

Can you tell me a little bit about what has led you to seek our services? What led up to this? Has this ever happened before?

*(Feel free to use table on the next page)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What is this person's name? \_\_\_\_\_

Are they known by any other name? \_\_\_\_\_

What is their gender? \_\_\_\_\_

What is your relationship to this person? \_\_\_\_\_

How long have you known them? \_\_\_\_\_

Where does this person live? \_\_\_\_\_

Where did this situation occur? \_\_\_\_\_ When? \_\_\_\_\_

Did you receive any injuries?  yes  no

If yes, what was the injury? \_\_\_\_\_

Was medical attention sought?  yes  no

If no, can we help you obtain medical assistance?  yes  no

Have you sought out any other services from an agency as a result of this (i.e. shelter, police assistance)? \_\_\_\_\_  
\_\_\_\_\_

Are you being mandated by any agency to seek services?  yes  no

If yes, reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Can you tell me a little bit about what your relationship has been like in the past? *(Look for patterns)* \_\_\_\_\_  
\_\_\_\_\_



How would you describe your partner/the other person? How would you describe your children? (if applicable) *(Look for a sense of entitlement, blaming the other person, gender or other stereotypes)* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What do you typically have disagreements/fight about? What leads up to these disagreements? How do disagreements usually end? *(Look for the intention behind a particular behavior and who has more power and control as a result of the particular behavior)*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

How are decisions typically made about shared responsibilities (parenting, household duties, financial decisions, how to spend your time each day)? *(Look for agency. Even though a survivor may have the power to make some of their own choices in a relationship, an abuser is usually determining how much)* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What is your relationship like with family and friends? How about your partner's/other person's relationship with their family and friends? Have these relationships been affected by your relationship? *(Look for a feeling of isolation)*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Do you worry that if you don't do a certain task right/in the way your partner/other person wants that there will be consequences? *(Look for 'walking on eggshells' feeling, fear and/or dread)* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Does this person have access to weapons? \_\_\_\_\_  
Is he/she affiliated with a gang? Is he/she affiliated with a police, fire, EMS, CPS, DSS or other similar agency? If so, what department or station is he/she affiliated with?  
\_\_\_\_\_

Might other people be looking for you? \_\_\_\_\_  
Where do you often go in Albany (addresses of employment, treatment, family friends)?  
\_\_\_\_\_  
\_\_\_\_\_

Would he/she look for you at these places? \_\_\_\_\_  
Where does the other person (partner/family member/etc) often go in Albany?  
\_\_\_\_\_

Is there anything you are leaving behind to come into shelter (children, pets, important documents-license, registration, deeds, passport, items of meaning to you)? \_\_yes \_\_no  
\_\_\_\_\_

(If yes, discuss potential issues that might arise and possible alternatives. For example, are there things that could be safely retrieved now, or should staff work on a police escort? If they have a pet that they fear will be abused and cannot stay with family and friends, call Mohawk Hudson Humane Society at 434-8128)

Do you or does anyone coming with you have any health or medical concerns we should be aware of in order to make special accommodations for you in a community living environment (wheel chair access, skin conditions, illness, medications that require refrigeration, pregnancy)?  yes  no

If yes, explain: \_\_\_\_\_

Many people who have experienced trauma could benefit from speaking with someone about what they have experienced. This is why we ask everyone to meet with one of our domestic violence counselors at least once. Equinox can also make referral to other service providers by request. Are you or is anyone coming with you currently receiving counseling or have ever received counseling for any reason?  yes  no

If no, please explain: \_\_\_\_\_

Equinox is a community residence with shared rooms (maximum of three adults to a room), so you may have a roommate. There may be children in shelter and people with diverse backgrounds. Do you think you would be comfortable living in this environment?  yes  no

If no, please explain: \_\_\_\_\_

Sometimes there can be disagreements between people residing here or with staff. How do you feel you might handle a disagreement if it arises? (*Remind person they can always seek out staff.*) \_\_\_\_\_

Many people who have experienced trauma have used substances to cope with that trauma. If you have been using a substance and would like assistance in finding a treatment program, Equinox can make referrals. The Equinox main office has a substance use counseling center onsite to make your care convenient for you. If you are not interested in treatment at this time, Equinox asks that you remain mindful of our House Guidelines: No alcohol or substance use is permitted onsite and any behavior, related to substance use or not, that appears to threaten yourself or others (for example, aggression when interacting with staff or residents) is not permitted.

Do you or does anyone coming with you have any substance abuse concerns at this time (including any mandated services)?  yes  no

If yes, please explain: \_\_\_\_\_

Please be mindful that actively using substances while in the shelter program does not bar you from accessing Equinox’s services, but no one is permitted to enter the program while under the influence. Would you like a referral to a detox center before entering shelter? yes no

**Please read House Guidelines**

Is there anything that might make it difficult for you to follow these guidelines? yes no  
If yes, please explain: \_\_\_\_\_

Every person admitted into shelter is required to apply for public assistance through the Albany County Department of Social Services whether or not they are eligible. This includes providing copies of available personal identification such as birth certificates, social security cards and drivers’ licenses. If these items are not available, it may be a requirement to begin the process to obtain them during your stay. Equinox has a relationship with the Empire Justice Center’s immigration attorneys that will help immigrants look into options for obtaining documentation without endangering their safety in the United States. Will you agree to apply for public assistance? yes no  
If no, please explain: \_\_\_\_\_

One of our requirements upon arrival will be to have you run all clothes through our dryers for 20 minutes, and have all of your belongings steamed by a member of our staff. This process is for pest prevention. Will you agree to this?  
 yes  no

*(Please put caller on hold and consult with another staff member to determine eligibility.)*

Is person being admitted? yes no      Is this a re-admission? yes no  
If not being admitted, give reason: \_\_\_\_\_

Note any pertinent information for team review or follow up: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Method of transportation to meeting place: cab walking driving bus other:\_\_\_\_\_

**\*\*\* PLEASE REMEMBER TO OBTAIN SOCIAL SECURITY NUMBER IF WE ARE PROVIDING TRANSPORTATION \*\*\*** SS#: \_\_\_\_\_

How will we be able to identify you (description of clothing, bags, car, etc)? \_\_\_\_\_  
\_\_\_\_\_

Will anyone be accompanying you? no one friend family member other:\_\_\_\_\_

**Please remember that the shelter location is confidential. Your safety and confidentiality, as well as the safety and confidentiality of other residents will be jeopardized if others know you are here. Also please remember that this shelter will become an unsafe option for you if the person who has led you to seek shelter accompanies you to the place of pick-up.**

Meeting place: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Please contact us in the event your plans change because we cannot save a space for you after this time.

**Attachment B**

**U.S. Department of Health & Human Services  
Administration on Children, Youth and Families (ACYF)  
Family and Youth Services Bureau (FYSB)  
Standing Announcement for Family Violence Prevention and Services Grants to States  
for Domestic Violence Shelters and Support Services**

**LGBTQ Accessibility Policy**

As the Authorized Organizational Representative (AOR) signing this application on behalf of  
[*Insert full, formal name of applicant organization*]

I hereby attest and certify that:

The needs of lesbian, gay, bisexual, transgender, and questioning program participants are taken into consideration in applicant's program design. Applicant considered how its program will be inclusive of and non-stigmatizing toward such participants. If not already in place, awardee and, if applicable, sub-awardees must establish and publicize policies prohibiting harassment based on race, sexual orientation, gender, gender identity (or expression), religion, and national origin. The submission of an application for this funding opportunity constitutes an assurance that applicants have or will put such policies in place within 12 months of the award. Awardees should ensure that all staff members are trained to prevent and respond to harassment or bullying in all forms during the award period. Programs should be prepared to monitor claims, address them seriously, and document their corrective action(s) so all participants are assured that programs are safe, inclusive, and non-stigmatizing by design and in operation. In addition, any sub-awardees or subcontractors:

- Have in place or will put into place within 12 months of the award policies prohibiting harassment based on race, sexual orientation, gender, gender identity (or expression), religion, and national origin;
- Will enforce these policies;
- Will ensure that all staff will be trained during the award period on how to prevent and respond to harassment or bullying in all forms, and;
- Have or will have within 12 months of the award, a plan to monitor claims, address them seriously, and document their corrective action(s).

Insert Date of Signature:

Print Name and Title of the AOR:

Signature of AOR:



## Office of Children and Family Services

**Andrew M. Cuomo**  
Governor

52 WASHINGTON STREET  
RENSELAER, NY 12144

**Sheila J. Poole**  
Acting Commissioner

### Administrative Directive

<b>Transmittal:</b>	16-OCFS-ADM-02
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	February 8, 2016
<b>Subject:</b>	<b>Regulations Prohibiting Discrimination and Harassment in Child Welfare and Youth Programs</b>
<b>Suggested Distribution:</b>	Directors of Services Voluntary Agency Program Directors Child Welfare Supervisors Foster Care Supervisors Adoption Supervisors Staff Development Coordinators Youth Bureau Directors Directors of Detention Programs
<b>Contact Person(s):</b>	Any questions concerning this release should be directed to the appropriate Regional Office, Division of Child Welfare and Community Services: Buffalo Regional Office-Dana Whitcomb (716) 847-3145 <a href="mailto:Dana.Whitcomb@ocfs.ny.gov">Dana.Whitcomb@ocfs.ny.gov</a> Rochester Regional Office-Karen Buck (585) 238-8201 <a href="mailto:Karen.Buck@ocfs.ny.gov">Karen.Buck@ocfs.ny.gov</a> Syracuse Regional Office-Sara Simon (315) 423-1200 <a href="mailto:Sara.Simon@ocfs.ny.gov">Sara.Simon@ocfs.ny.gov</a> Albany Regional Office-Kerri Barber (518) 486-7078 <a href="mailto:Kerri.Barber@ocfs.ny.gov">Kerri.Barber@ocfs.ny.gov</a> Spring Valley Regional Office-Yolanda Désarmé (845) 708-2498 <a href="mailto:Yolanda.Desarme@ocfs.ny.gov">Yolanda.Desarme@ocfs.ny.gov</a> New York City Regional Office-Raymond Toomer (212) 383-1788 <a href="mailto:Raymond.Toomer@ocfs.ny.gov">Raymond.Toomer@ocfs.ny.gov</a> Native American Services-Heather LaForme (716) 847-3123 <a href="mailto:Heather.LaForme@ocfs.ny.gov">Heather.LaForme@ocfs.ny.gov</a>
<b>Attachments:</b>	None

**Filing References**

<b>Previous ADMs/INFs</b>	<b>Releases Cancelled</b>	<b>NYS Regs.</b>	<b>Soc. Serv. Law &amp; Other Legal Ref.</b>	<b>Manual Ref.</b>	<b>Misc. Ref.</b>
09-OCFS-INF-06 09-OCFS-ADM-07 11-OCFS-INF-01 11-OCFS-INF-05 15-OCFS-ADM-05 15-OCFS-ADM-23		9 NYCRR §§ 180.5(a)(6), 182-1.5(g)(1), 182-2.5(g)(1)  18 NYCRR §§ 421.3(d), 423.4(m)(7), 441.19(d), 441.24	Executive Law §292(8), (21) and (27)		

**I. Purpose**

The purpose of this Administrative Directive (ADM) is to advise local departments of social services (LDSSs) and voluntary authorized agencies (VAs) of provisions in 9 NYCRR §§ 180.5(a)(6), 182-1.5(g)(1) and 182-2.5(g)(1), and in 18 NYCRR §§ 421.3(d), 423.4(m)(7), 441.19(d) and 441.24, several of which became effective on November 6, 2013.<sup>1</sup> These regulations prohibit discrimination and harassment by LDSS and VA staff, volunteers, and certified or approved foster parents against applicants for adoption services, families receiving preventive services, prospective foster parents, foster parents and foster children, youth in runaway and homeless youth (RHY) programs, and youth in detention on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability, in order to promote and maintain a safe environment for children, youth, and families that the Office of Children and Family Services (OCFS) serves.

**II. Background**

OCFS's mission is to promote the safety, permanency, and well-being of New York's children, families, and communities. To further this commitment, OCFS regulations prohibit discrimination and harassment against applicants for adoption services and preventive services, prospective foster parents, foster parents, foster children, youth in RHY programs, and youth in detention facilities on the basis of race, creed, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, religion, or disability. The regulations also outline what LDSS and VA staff, volunteers, and certified or approved foster parents must do to promote and maintain a safe environment for the children, youth, and families they serve.<sup>2</sup>

**III. Program Implications**

Prior to the 2013 amendments to several of the non-discrimination regulations, LDSSs, VAs, RHY programs, and detention programs were already prohibited from discrimination

<sup>1</sup>18 NYCRR 441.19(d) prohibits discrimination based on ethnicity, handicapping condition, religion, creed or sex. 9 NYCRR 182-2.5(g)(1) includes a general prohibition against discrimination.

<sup>2</sup> 9 NYCRR §180.5(a)(6) and 18 NYCRR §§ 421.3(d), 423.4(m)(7) and 441.24.

or harassment in the provision of services on the basis of race, creed, color, national origin, age, and sex under existing regulations. The amendments add to the previous list a prohibition against discrimination on the basis of sexual orientation, gender identity, or gender expression in the provision of services.

The following are explanations of some of the terms that are discussed in the regulations and throughout this ADM. This list is not all inclusive, but may be used as a tool when developing policies and procedures.

**Color** - skin tone or complexion.<sup>3</sup>

**Creed** - a document of faith or system of belief in some principle or idea that a group will determine to follow. Most religions have a creed, or a statement of faith.

**Disability** - is a physical, medical or mental impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or which is demonstrable by medically accepted clinical or laboratory diagnostic techniques.<sup>4</sup>

**Gender Identity or Expression** - means having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth.<sup>5</sup>

**Gender Expression** - refers to the manner in which a person expresses his or her gender through clothing, appearance, behavior, speech, and other means.<sup>6</sup>

**Gender Identity** - refers to a person's internal sense of self as male, female, no gender or another gender.<sup>7</sup>

**National Origin** - is a child's or parent's ancestry.<sup>8</sup>

**Race** - Asian, Black or African American, White, Native Hawaiian or other Pacific Islander, and American Indian or Alaska Native.<sup>9</sup>

**Religion** - is a particular system of faith and worship.

**Sex** - anatomical sex: an individual's gender, male or female, based on the appearance of his or her sexual organs.

**Sexual Orientation** - means heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived.<sup>10</sup>

<sup>3</sup> [15-OCFS-ADM-05](#). *Multiethnic Placement Act of 1994 as Amended by the Interethnic Adoption Provisions of 1996*.

<sup>4</sup> Section 292(21) of the Executive Law.

<sup>5</sup> 9 NYCRR §§ 180.5(a)(6) and 182-1.5(g)(1), and 18 NYCRR §§ 421.3(d), 423.4(m)(7), and 441.24.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> [15-OCFS-ADM-05](#). *Multiethnic Placement Act of 1994 as Amended by the Interethnic Adoption Provisions of 1996* and Section 292(8) of the Executive Law.

<sup>9</sup> *Ibid.*

<sup>10</sup> Section 292(27) of the Executive Law.

#### IV. Required Action

The regulations cited in this policy directive require the formalization of any existing nondiscrimination and harassment policies and procedures, and possibly the revision of such policies and procedures, by requiring that LDSSs, VAs, RHY programs, and detention programs not engage in or condone discrimination or harassment on the basis of race, creed, color, national origin, sex, religion, sexual orientation, gender identity or expression, marital status or disability against youth in detention facilities, youth in RHY programs, applicants for adoption services, families receiving preventive services, prospective foster parents, foster parents, or children in foster care.<sup>11</sup> The regulations mandate specific steps that must be followed in order to promote and maintain a safe environment for those individuals who receive services under those programs.

Certified or approved foster parents **must not** engage in or condone discrimination or harassment on the basis of race, creed, color, national origin, age, sex, religion, sexual orientation, gender identity or expression, marital status, or disability against children in foster care.<sup>12</sup>

LDSSs and VAs **must**:

- promote and maintain a safe environment;
- take reasonable steps to prevent discrimination and harassment against youth by other youth;
- promptly investigate incidents of discrimination and harassment by staff, volunteers and youth; and
- take reasonable and appropriate corrective or disciplinary action when such incidents occur.<sup>13</sup>

LDSSs, VAs, RHY programs, and detention programs must develop policies and procedures and/or revise existing ones to include the requirements discussed in this ADM.

#### V. Effective Date

This policy directive becomes effective immediately upon issuance.

*Thomas R. Brooks*

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#### **Issued By:**

Name: Thomas R. Brooks

Title: Deputy Commissioner

Division/Office: Strategic Planning and Policy Development

<sup>11</sup> 9 NYCRR §§ 180.5(a)(6), 182-1.5(g)(1), 182-2.5(g)(1) and 18 NYCRR §§ 421.3(d), 423.4(m)(7) 441.19(d) and 441.24.

<sup>12</sup> 18 NYCRR 441.24

<sup>13</sup> Ibid.