



TLDEF and NCTE Release Joint Statement on Foster Care Ruling

On Monday, April 29th, the Administration for Children and Families (ACF) unveiled the final rule concerning “Designated Placement Requirements under Titles IV-E and IV-B for LGBTQI+ Children”. At its core, this rule mandates that agencies ensure that LGBTQI+ children are placed in care settings that are free from harassment, mistreatment, or abuse based on their identity. This comprehensive regulation, slated to take effect on October 1st, 2026, aims to create a more inclusive foster care landscape by ensuring the safety and affirmation of LGBTQI+ youth within the system.

“States and tribes must now ensure that every LGBTQI+ youth in their care has the opportunity to be placed with a care provider that affirms and respects their identity and informs LGBTQI+ youth about their availability,” said Caius Willingham, Senior Policy Advocate for the National Center for Transgender Equality. Willingham said, “Most importantly, this rule emphasizes the preferences of youth in their placement decisions.”

The rule implements measures to minimize disruption for foster children, granting them the option to seek supportive services to stay in their current placement should they choose to do so. The rule also requires congregate care settings to house transgender youth according to their gender identity.

Foster care placements have the option to become “Designated Placements” for LGBTQI+ youth, committing to supporting their identities and offering tailored resources and services. The Administration’s final rule requires Designated Providers to provide appropriate mental health counseling and community resources to LGBTQI+ youth in their care. The rule also expressly prohibits all care providers from subjecting LGBTQI+ children to so-called “conversion therapy,” an abusive practice aimed at changing one’s sexual orientation or trans identity. Additionally, the US Department of Health and Human Services (HHS) will provide compliance resources and technical support to help agencies navigate the intricacies of the foster care system.

However, the rule fails to expressly guarantee access to life-saving healthcare for transgender youth. In a comment letter submitted in the fall of 2023, both the National Center for Transgender Equality (NCTE) and Transgender Legal Defense & Education Fund (TLDEF) called for the rule to include healthcare such as hormone replacement therapy and puberty blockers among the tailored services designated placements must make available, where appropriate and feasible. Yet, the rule refrains from explicitly recognizing this care as essential to the many transgender foster youth who need it, posing a substantial obstacle to accessing necessary care.

Furthermore, the regulation failed to prohibit non-consensual, non-emergent genital surgeries on intersex infants and children, failing to adequately address the unique needs of intersex children within the foster care system. Despite prohibiting conversion therapy, clarity on healthcare remains an issue, raising concerns about the well-being of LGBTQI+ children in foster care.

“While the final ruling represents a significant step forward in safeguarding the rights of LGBTQI+ foster children, it also highlights areas for continued advocacy and improvement. By addressing these gaps in healthcare access, refining placement practices, and ensuring universal protections, we can strive towards a foster care system that better affirms and supports all youth, including trans, nonbinary, and intersex youth,” said Gabriel Arkles, Senior Counsel and Co-Interim Legal Director for Transgender Legal Defense & Education Fund.

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Content last updated on May 3, 2024 - PDF generated from: <https://transgenderlegal.org/stay-informed/tldef-and-ncte-release-joint-statement-on-foster-care-ruling/> on Jan. 12, 2025.

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