

# Advocacy for LGBTQ+ Clients 201: Conversations about Identity, Advocacy Strategies, and Holding the System Accountable

*2024 OCR Spring Conference*



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The oldest national legal organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and everyone living with HIV through impact litigation, education and public policy work.



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# AGENDA

- Identity
- SOGIE, Youth Development, and Well-Being
- Legal Update
- Convo About Identity
- Advocacy Strategies
- System Accountability

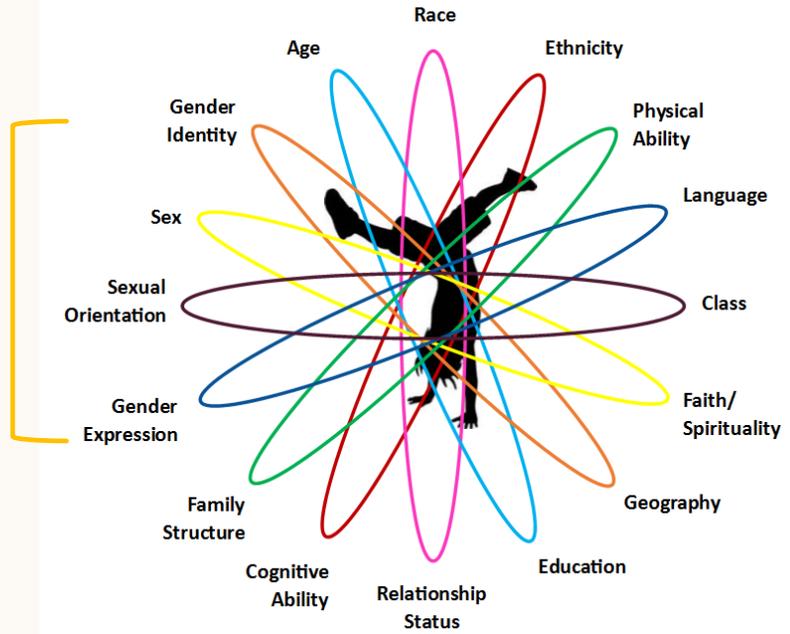
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# IDENTITY

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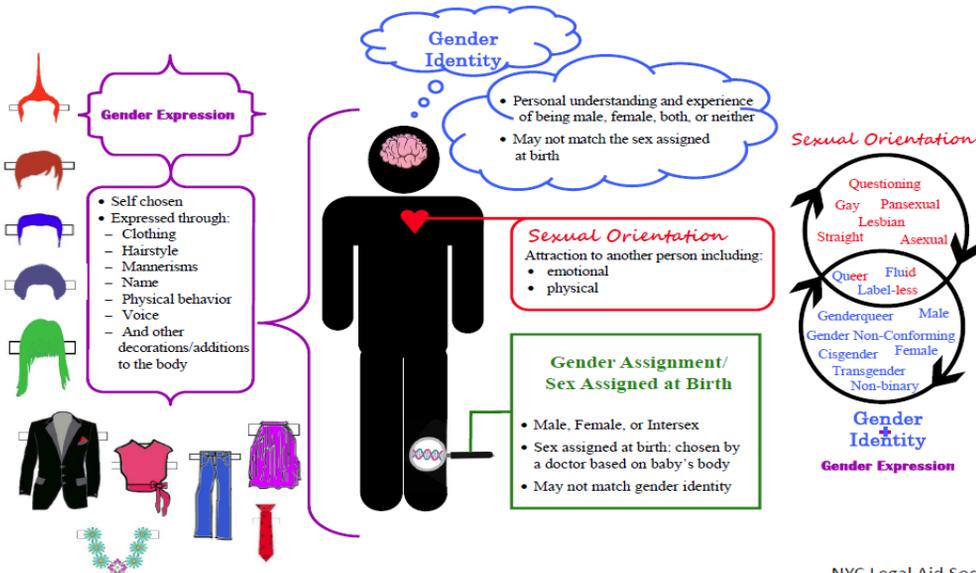
# DIMENSIONS OF IDENTITY

Source:  
Allegheny County  
Department of Human Services  
(2015)



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*Sexual Orientation* + Gender Identity + Gender Expression = **SOGIE**



NYC Legal Aid Society

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# SOGIE, CHILD DEVELOPMENT, AND WELL-BEING

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## Child Development and SOGIE

### Gender Identity

- Around age 2: Consciousness of physical differences between males and females
- Before age 3: Many children will label themselves as either a boy or a girl
- By age 4: Many children will express a stable sense of their gender identity.
- Fantasy play with gender expression is common (eg, exploring clothing, etc.)
- Evidence of gender diversity seen as early as age 2 identified at any age

### Sexual Orientation

- 11-21 is the period identified as the age range for "development and awareness of a sexual identity/orientation"

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On average, LGBTQ+ youth first realized their sexual orientation and/or gender identity (SOGI) in their preteen years.

**11.1**

average age LGBTQ+ youth realized they were something other than heterosexual/straight (Table 5).

**3.5%** realized at age 5 or younger

**84.4%** realized at age 13 or younger

**12.5**

average age transgender and gender-expansive youth realized they were something other than cisgender (Table 6).

**4.3%** realized at age 5 or younger

**58.6%** realized at age 13 or younger

Well over half of LGBTQ+ youth first disclosed their sexual orientation to friends—though a third disclosed to friends and family at the same age.

**59.5%** first disclosed to their friends

**35.4%** disclosed to friends and family at the same age

**5.1%** first disclosed to their family

Transgender and gender-expansive youth were even older when first disclosing their gender identity (GI).

## LGBTQ+ Youth Well-Being

56% of LGBTQ young people who wanted mental health care in the past year were not able to get it.

56%

A majority of LGBTQ young people reported being verbally harassed at school because people thought they were LGBTQ.

41% of LGBTQ young people seriously considered attempting suicide in the past year—and young people who are transgender, nonbinary, and/or people of color reported higher rates than their peers.

Fewer than 40% of LGBTQ young people found their home to be LGBTQ-affirming.

38%

Source: <https://www.thetrevorproject.org/survey-2023/>

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## Family Acceptance



**No or LOW**  
Family Rejecting Behaviors

3 x Depression  
2 x Suicidal thoughts  
2 x Suicide attempts  
1.5 x Illegal drug use

**MORE or Moderate**  
Levels of Family  
Rejecting Behaviors

6 x Depression  
5.5 x Suicidal thoughts  
8 x Suicide attempts  
3 x Illegal drug use  
3 x HIV/STD risk

**HIGH**  
Levels of Family  
Rejecting Behaviors

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# LEGAL UPDATE

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## Federal Law

### **Safe and Appropriate Foster Care NPRM**

“Federal law requires . . . each child in foster care receives “safe and proper” care and has a case plan that addresses the specific needs of the child while in foster care to support their health and wellbeing.”

<https://www.govinfo.gov/content/pkg/FR-2023-09-28/pdf/2023-21274.pdf>

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## Federal Law

### Title IX Final Rule – April 2024

Clarifies that sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

<https://www2.ed.gov/about/offices/list/ocr/docs/t9-unofficial-final-rule-2024.pdf>

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## Colorado Law

### HB 1017 – Bill of Rights for Youth in Foster Care

(a) FAIR AND EQUAL ACCESS, INCLUDING:

- (I) FREEDOM FROM DISCRIMINATION OR HARASSMENT ON THE BASIS OF ACTUAL OR PERCEIVED RACE OR ANCESTRY, ETHNIC GROUP, NATIONAL ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION, DISABILITY, MARITAL STATUS, FAMILIAL STATUS, SOURCE OF INCOME, MILITARY STATUS, OR HIV STATUS;
- (II) FREEDOM OF THOUGHT, CONSCIENCE, CULTURAL AND ETHNIC PRACTICE, AND RELIGION, INCLUDING THE RIGHT TO ATTEND OR REFUSE TO ATTEND CULTURAL, ETHNIC, AND RELIGIOUS SERVICES AND ACTIVITIES;
- (III) EXPRESSION OF THE CHILD'S OR YOUTH'S GENDER IDENTITY AND BE REFERRED TO BY THE CHILD'S OR YOUTH'S PREFERRED NAME AND GENDER PRONOUNS;

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## Colorado Law

### HB 1017 – Bill of Rights for Youth in Foster Care

(4) THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES SHALL PROVIDE EACH CHILD OR YOUTH WHO IS FIVE YEARS OF AGE OR OLDER WITH THE WRITTEN NOTICE DEVELOPED PURSUANT TO SUBSECTION (3) AT THE TIME OF THE CHILD'S OR YOUTH'S INITIAL PLACEMENT IN FOSTER CARE, AT EACH PLACEMENT CHANGE, AND AT LEAST ANNUALLY. THE NOTICE MUST BE IN THE CHILD'S OR YOUTH'S PRIMARY LANGUAGE.

(5) CERTIFIED AND LICENSED FOSTER PLACEMENTS FOR CHILDREN AND YOUTH SHALL POST THE WRITTEN NOTICE ON THE PREMISES IN A PLACE WHERE CHILDREN AND YOUTH HAVE ACCESS. THE DEPARTMENT OF HUMAN SERVICES SHALL ENSURE COMPLIANCE WITH THIS SECTION AS PART OF ITS OVERSIGHT PROCESS OF CERTIFIED AND LICENSED HOMES FOR YOUTH.

(6) SUA SPONTE OR UPON MOTION, A JUVENILE COURT MAY ISSUE ANY ORDERS TO ANY PARTY TO ENSURE THE CHILD OR YOUTH IS PROVIDED THE RIGHTS ENUMERATED IN SUBSECTION (2) OF THIS SECTION.

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## Colorado Law

### HB 1017 – Bill of Rights for Youth in Foster Care

(III) CONNECTIONS TO THE CHILD'S OR YOUTH'S COMMUNITY AND SUPPORTS, INCLUDING COMMUNICATION AND CONTACT WITH PEOPLE OUTSIDE THE FOSTER CARE SYSTEM WHO ARE IMPORTANT TO THE CHILD OR YOUTH, UNLESS OTHERWISE LIMITED BY LAW OR COURT ORDER;

THE OFFICE OF THE CHILD PROTECTION OMBUDSMAN SHALL INCLUDE IN ITS ANNUAL REPORT THE NUMBER OF COMPLAINTS RECEIVED RELATED TO THE RIGHTS ENUMERATED IN THIS SECTION, INCLUDING THE RIGHTS BEING VIOLATED OR YOUTH BEING UNAWARE OF THE RIGHTS.

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# RECOMMENDED PRACTICES & PROFESSIONAL STANDARDS

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## Child Welfare - Professional Standards



### RECOMMENDED PRACTICES

To Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of or Living with HIV in Child Welfare Settings



- Adopt & Implement Written Policies Prohibiting Discrimination on the Basis of SOGIE and HIV Status
- Treat LGBTQ Youth with Respect and Competence
- Ensure Effective Child Protection Practices that Correctly Identify Abuse and Neglect of LGBTQ Youth
- Ensure Effective Services That Address Family Rejection of LGBTQ Youth and Help Reunification
- Provide Mandatory LGBTQ Competency Training to All Agency Employees and Volunteers
- Ensure Safe and Supportive Foster or Adoptive Placements for LGBTQ Youth and Require Training
- Ensure the Safety and Emotional Development of LGBTQ Youth in Congregate Care
- Support Access to Appropriate Medical and Mental Health Care Services for LGBTQ Youth
- Support Access to Safe Educational Services and LGBTQ Community Programs and Services

Source:  
<https://legacy.lambdalegal.org/sites/default/files/publications/downloads/recommended-practices-youth.pdf>

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## FACJJ LGBT Subcommittee Recommendations

SOGIE inclusive nondiscrimination policy & policy to youth and families	Affirmation of trans & nonbinary youth – housing, health care, name + pronouns, freedom of expression	Promote wellbeing by reducing family rejection, increasing support
Training (preservice + ongoing)	Trained and well-resourced defense counsel	No “conversion therapy”
Avoid assumptions, hetero- and cisnormative language, binary language	Signal openness by using nonverbal and environmental cues	Establish relationships with LGBTQ+ organizations and providers, including faith communities
SOGIE data collection (after training + confidentiality protocols)	Defer to youth regarding the identity language they use	Referral to supportive services and pro-social opportunities
Inclusive diversion efforts	Ensure efforts to reduce over-representation of youth of color address the experiences and needs of LGBTQ+ youth of color, LGBTQ+ undocumented youth, LGBTQ+ youth with disabilities	

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### NCJFC/Gault Center Bench Card - Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE)

- Use the youth’s chosen name and pronouns.
- Ensure others in the courtroom & courthouse also respect youth’s identity.
- Use appropriate terminology when discussing SOGI.
- Display an “All Are Welcome Here”/”Safe Space sign.
- Intervene if someone makes disrespectful comments or jokes about anyone’s SOGI.
- Ensure frontline court staff & security training, including in restroom access.
- Consider confidentiality! Youth may not be out to everyone.
- Full participation by LGBTQ+ youth in a safe court improves outcomes.

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# CONVERSATIONS ABOUT IDENTITY

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## Terminology

Learning about terms youth use to identify themselves (and terms that are offensive to some) is helpful and important, but it can be hard to keep up.

### A few guidelines:

Allow the young person to self-identify (when ready).

Mirror their language. Language differs regionally and culturally.

Ask questions in a respectful way that helps you understand what the terminology or language they use means to them.

Adjust your language if a youth's identity or expression shifts. Language, identity, expression are fluid, especially for youth.

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## Talking to & about trans and non-binary people

- **Always** use the pronouns people use for themselves when talking to or about them. If you don't know someone's pronouns, you can ask. If you need time to ask this question in private, use the person's name until then. We often make assumptions about pronouns based on appearance, but this is not an accurate method.
- Someone's pronouns do not necessarily inform you of their gender identity. i.e., someone may be non-binary and use he/him pronouns.
- **They/them/their:** Here is how to use this pronoun to refer to individual people in writing or speaking: "**They** are a writer and wrote that book **themselves (or themselves)**. Those ideas are **theirs**. I like both **them** and **their** ideas." Please note that although "they" pronouns here are singular and refer to an individual, the verbs are conjugated the same as with the plural "they" (e.g. "they are").

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## Talking to & about trans and non-binary people

### What do you do if you make mistake?

- Making a mistake and misgendering someone can be very stressful for everyone involved. But there is a simple way to correct your mistake:

**Ex. You used the pronouns she/her to refer to Ash who uses they/them pronouns. "Ash is working on a big project. She needs support to finish the first section."**

1. Apologize to the person you misgendered in the moment. Once, not repeatedly. It is important not to create a more stressful environment or draw more attention to the issue and person. (Ex. "I'm sorry for my mistake, Ash." or "I apologize for using incorrect pronouns, Ash.")
2. Correctly gender the person in the moment. (Ex. "They need support to finish the first section.")
3. Practice, practice, practice, so you do not make the same mistake again. Once is a mistake, repeatedly misgendering someone is intentional.

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## A Proactive Approach

### Why?

- Often harm is occurring right under our noses, but we're not aware
- Our own conclusions about someone's identity are assumptions
- System continues to perpetuate harm if we are not aware and calling it out
- Identity is part of who are clients are, often tied to why they are system involved, and always at play while in care
- New CO bill of rights is perfect entry point for discussion with clients
- Allows you to follow up about experiences in system

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## A Proactive Approach

### How?

- Think about your intro game, and tweak it a bit
- Share your pronouns, and name you use
- Acknowledge the legal name you have for youth may not be the name they use
- Ask what name they would like to be called; what pronouns they use
- Explain your role- confidentiality, advocate for rights and safety; use law as hook
- Share that you ask all clients, why you ask, and that it is okay not to share

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## A Proactive Approach

### When?

- As soon as possible, but mindful of privacy, life situation, sense of development age and ability
- Conversations can be ongoing depending on the child, circumstances of the case

### At What Age?

- Based on child development, by ages 10 – 12, but earlier possible

Ongoing Convos: caseworkers, placement, services, school, adult support, community connections, navigating court appearances

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**ADVOCACY  
STRATEGIES**

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## Challenges for System Involved LGBTQ+ Youth

Isolation  
Victimization  
Differential Treatment  
Re-entry

Disclosure Dilemmas & Confidentiality Violations  
Lack of Family-Centered Services  
Lack of Cultural Competence Among Providers

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## Some Questions to Ask

Are placements and providers educated about and supportive of LGBTQ+ youth?

Do they have SOGI-inclusive nondiscrimination policies and training requirements?

Do experts have LGBTQ+ experience or expertise?

Question statements like, “it’s our policy” or “that is what licensing says.”

Is there baked in stereotyping or invalid assumptions at play? (ex. LGBTQ+ youth more likely to be sexually active or perpetrators)

Is there a way to do [\_\_\_\_\_] that is more supportive and less invasive for everyone?

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## Motion Practice

- ✓ Motion practice\*
  - ✓ Lack of reasonable efforts
  - ✓ Order regarding name pronouns in reports and in court
  - ✓ Contested placement and permanency Hearings
  - ✓ Health care
  - ✓ Others?

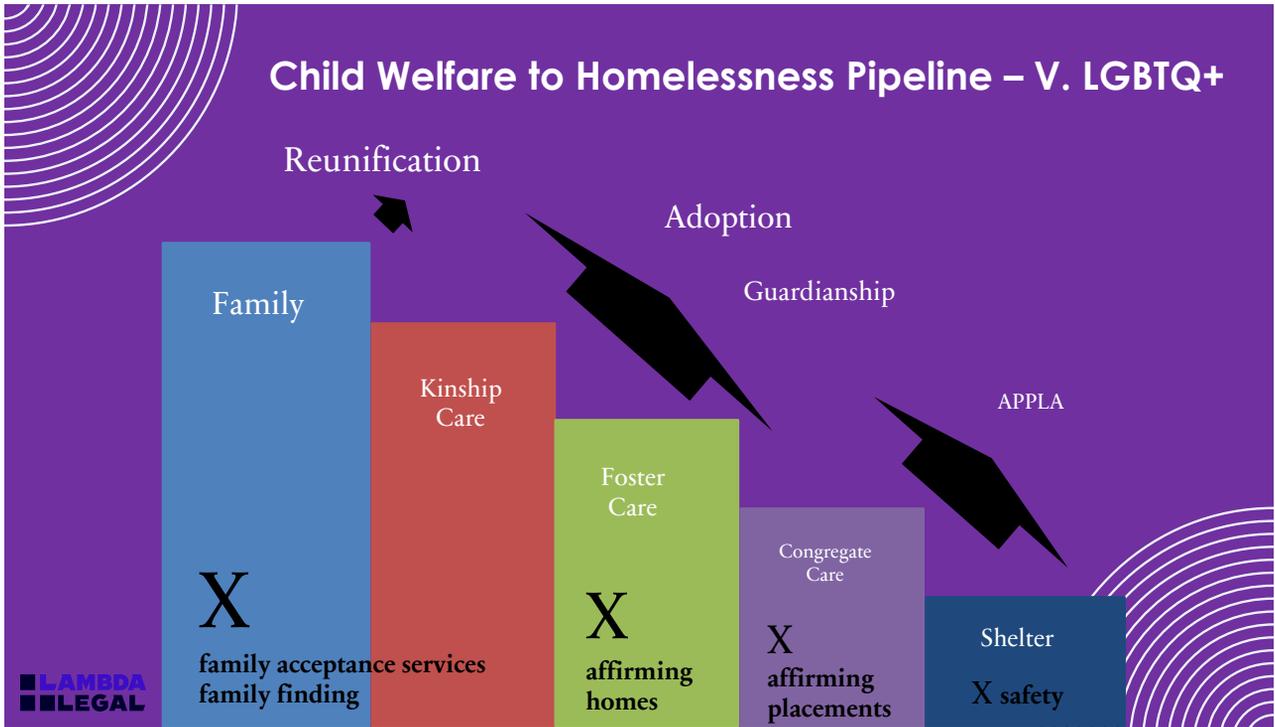
**\*make constitutional arguments, federal policy, social science and professional standards**

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## No Reasonable Efforts

- A tool no one likes to use (results in loss of federal funding), but can be a useful tool before some judges; may get attention of agency counsel
- Attorneys for children have used NRE motions in a few situations:
  - ❖ Failure to provide services to promote youth acceptance by their parents or kin
  - ❖ Failure to consent to/facilitate recommended gender-affirming medical care
  - ❖ Failure to make efforts to locate family home placement versus defaulting to congregate care placement

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## Placement and Permanency

- Family acceptance services offered? Provided?
- Relatives? Refuse to affirm? Or need support? Services offered?
- What is process for finding home? Who did you consult/speak with/ask?
- Additional specific efforts for this child?
- Reach out to LGBTQ service providers or advocacy groups?
- Reach out to affirming faith communities?
- Were efforts made to screen services to ensure they are supportive?

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## Advocacy for Trans and Nonbinary Youth

- ID documents -  
<https://transequality.org/documents/state/colorado>
- Respect for names, pronouns – courtroom, reports, caseworkers, lawyers
- Gender affirming mental health and medical care
- Placement – refusal to accept, perceived licensing issues
- Questioning gender-specific, gender-segregated programs

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## Experts and Services

- Cultivating experts –
  - Gender affirming mental health and medical care
  - Importance of youth acceptance by family to well-being
- Relationships with service providers
- Placement options – outreach to affirming communities of faith? To LGBTQ+ advocacy orgs?

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# SYSTEM ACCOUNTABILITY

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## Grievances and Complaints

*Grievance Procedure:* Child Protection  
Ombudsman File a Complaint  
<https://coloradocpo.org/complaint-form/>

*Ombuds:* Child Protection Ombudsman of  
Colorado  
Phone: (720) 625-8640  
<http://www.coloradocpo.org/>

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## Grievances and Complaints

### Facility Licensing

- *Regulated facilities* -  
<https://cdphe.colorado.gov/health-facilities/regulated-facilities>
- *Complaint form* -  
<https://cdphe.colorado.gov/health-facilities/health-facilities-complaints>

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## Systemic Reform

- ✓ Regular meetings with agency leaders
- ✓ Training for Ombudsman office
- ✓ Youth with lived experience engagement (ex. CO bill of rights)
- ✓ Further statutory or regulatory reform
- ✓ Training and continuing education collaboration
- ✓ Facility Licensing

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**THANK YOU!**

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