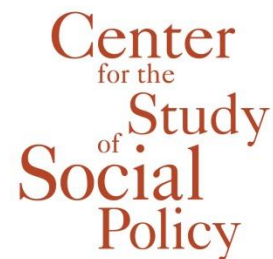


# Guidelines for Managing Information Related to the Sexual Orientation & Gender Identity and Expression of Children in Child Welfare Systems

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NATIONAL CENTER FOR LESBIAN RIGHTS



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## I. INTRODUCTION

In the last decade, the child welfare profession has made significant progress toward the goal of developing competence to serve children whose actual or perceived sexual orientation is other than heterosexual, and children whose gender identity or expression is incongruent with their biological sex or with cultural expectations related to gender presentation. Practitioners, advocates, researchers and public policymakers have contributed to a growing field of knowledge and accepted best practice (Child Welfare League of America [CWLA], 2012) (Wilber, Ryan, & Marksamer, 2006) (Mallon, 2009). Although there is a continuing need for written policies, training and technical assistance, as well as organizational culture change, child welfare professionals have made impressive strides toward achieving a better understanding of the relevance of sexual orientation and gender identity and expression to child protection and well-being.

Despite this commendable progress, however, the field has not arrived at consensus about how and when to elicit or collect information related to young people's sexual orientation, gender identity or gender expression. Similarly, there are no clear guidelines navigating the tension between the need to disclose the information to appropriately serve children, and the need to guard their privacy. Although the field increasingly recognizes the need for better data to measure outcomes and develop interventions, most systems still do not systematically collect, track or report this information. The lack of clarity on these complex issues hinders the efforts made toward increasing positive outcomes for children across the spectrum of sexual orientation and gender identity and expression. This publication will begin to bridge the gap by proposing standards governing the management of information related to sexual orientation and gender identity and expression.

This publication was developed in conjunction with the Putting Pride into Practice Project ("P4"), a three-year effort undertaken by Family Builders by Adoption, in partnership with the California Department of Social Services, to implement CWLA's Best Practice Guidelines for Serving LGBT Youth in Out of Home Care in several county child welfare systems in California. P4's objective is to increase the competence of child welfare professionals to serve children whose actual or perceived sexual orientation is other than heterosexual, and children whose gender identity or expression is incongruent with their biological sex or with cultural expectations related to gender presentation. The project provides training and technical assistance to build agency capacity and improve organizational competency through leadership and policy development, community and constituency engagement, and recruitment, training and support of placement resources. In 2012, the P4 project engaged The Center for the Study of Social Policy ("CSSP") both

to provide additional support to the work and leadership in developing the strategy for introducing the guidelines to the field.

In November 2011, the P4 staff at Family Builders joined with Legal Services for Children to convene a two-day meeting of 25 individuals with broad child welfare experience to examine three questions:

- Under what circumstances should child welfare personnel seek information about a child's sexual orientation or gender identity if it is not otherwise disclosed?
- Under what circumstances should child welfare personnel record information about a child's sexual orientation or gender identity?
- Under what circumstances should child welfare personnel disclose information about a child's sexual orientation or gender identity?

The objective of the convening was to gather expert opinions that would guide the formulation of a set of professional guidelines. This document represents the culmination of those efforts. The CSSP will be taking the lead on field testing these guidelines. CSSP is in the process of securing funding and working with up to three child welfare jurisdictions to field-test the guidelines. Based upon the experiences and input in the field sites, project staff will refine the guidelines, if necessary, and develop a final version for national dissemination. The field-testing will also inform us what is needed in terms of tools, policies, training, and technical assistance to effectively implement the guidelines.

## II. GUIDING PRINCIPLES

The following principles provide the theoretical and philosophical underpinnings for the professional guidelines contained in this publication. When confronted with a situation not directly addressed by the guidelines, professionals should rely on these principles to guide their decisions.

1. All children deserve safety and acceptance in their homes and communities.
2. All children need support and nurturance to develop and embrace all aspects of their evolving identities, including their sexual orientation and gender identity and expression.
3. Children thrive when their caregivers affirm and respect their sexual orientation and gender identity and expression, and family acceptance both protects against health risks and promotes overall health. Conversely, children experience negative health and mental health outcomes when their caregivers reject or fail to support their sexual orientation and gender identity or expression.
4. Children perceived by others to be lesbian, gay, bisexual or gender nonconforming are exposed to the same risks as children who openly identify as lesbian, gay, bisexual or transgender.

### III. LAYING THE GROUNDWORK FOR IMPLEMENTATION

Child welfare professionals routinely collect and analyze information about the children in their care for the purposes of creating individualized case plans, monitoring agency trends and performance, guiding strategic planning, and reporting to government agencies and funders. Standard demographic data fields include gender, race, ethnicity, and age, among others. However, most assessment protocols and case management systems do not require or accommodate collection of data related to children's sexual orientation, gender identity or gender expression. In addition to these structural and procedural barriers, many professionals are reluctant to collect, record or disclose this information and may express a range of concerns about any requirement to do so. Common reservations include:

- The private and sensitive nature of information related to sexual orientation and gender identity may make workers feel that is inappropriate to directly ask about these issues. (*"It's none of our business."*)
- A young person's sexual orientation or gender identity or expression may seem unrelated to the reasons that he or she is in protective custody. (*"What does this have to do with abuse or neglect?"*)
- Many professionals feel uncomfortable talking about sexual orientation and gender identity. (*"What if I say the wrong thing?"*)
- Workers may feel that children are too young to have considered these issues or to understand or discuss them. (*"I'm supposed to ask a 5-year-old whether he likes boys or girls?"*)
- Requiring collection or documentation of this data imposes unnecessary burdens on overworked and under-resourced personnel. (*"This is just one more mandate . . ."*)
- Collecting the information poses the risk of inappropriate disclosure. (*"Don't ask, don't tell. What we don't know cannot be repeated."*)

Child welfare managers should be prepared to respond to these issues in order to ensure broad buy-in prior to implementation of the guidelines. The most important message to convey is that the information guidelines are essential to advancing the core objectives of child safety, permanency and well-being. The field must adapt to society's evolving understanding of the relationship between children's actual or perceived sexual orientation or gender identity and expression, and their health, social and educational outcomes. Research has established that lesbian, gay, bisexual and gender nonconforming children confront significant external threats to their health and well-being. Research has also informed the development of interventions that support children in overcoming these challenges. Child welfare leadership must give workers the

tools to understand this research and its application to contemporary social work practice. Once child welfare personnel understand that the guidelines are consistent with good social work practice, their initial objections may prove less daunting.

Child welfare managers and supervisors should support workers by reminding them that they routinely discuss sensitive issues with their clients. Learning how to perform this core function is an integral part of clinical training. The skills and knowledge necessary to sensitively and appropriately explore the issues of sexual orientation and gender identity and expression can and should be taught and integrated into existing training, policies and procedures. Protecting the confidentiality of sensitive client information is also a hallmark of good social work practice with which workers will be fully familiar. The guidelines reflect this same protection by limiting disclosure and emphasizing the importance of written policies, and ongoing training supported by skilled supervision.

That child welfare personnel confront serious workload challenges cannot be denied. However, by providing clear standards and promoting sound practices and professional support, the guidelines may prevent the types of crises that exacerbate workload issues. Again, workers are more likely to embrace the guidelines if child welfare directors and managers communicate the ways in which the guidelines promote the well-being of *all* children in the agency's care and custody.

With appropriate policies, training and support, the perceived obstacles to obtaining information related to children's sexual orientation and gender identity and expression can be addressed. More importantly, the benefits of obtaining the information outweigh the risks – especially if child welfare agencies adopt and scrupulously adhere to procedural safeguards. Information about the sexual orientation and gender identity and expression of children in care is essential to the agency's core function of developing and implementing individual case plans. Disaggregated data is also essential to adequately assess the agency's competence in serving children of all sexual orientations and gender identities, and to guide strategic planning and reform efforts.

### III. INFORMATION GUIDELINES

The child welfare profession is increasingly focused on outcomes and accountability as the framework for reforming systems nationally. The federal government routinely reviews states on a set of outcomes through the Child and Family Services Review. States are required to develop Program Improvement Plans based on these reviews and to engage in ongoing quality improvement. The field is moving toward measuring well-being through the use of evidence-based strategies and interventions. States and counties are implementing new practice models based on implementation science. All of these reform efforts hinge on the collection and analysis of client data.

At the same time, the field is increasingly aware of the correlation between children's actual or perceived sexual orientation, gender identity or gender expression and their overall well-being. Thus, the Administration of Children and Families recently issued an information memorandum emphasizing the importance of supporting and affirming LGBT children and families. It is both timely and essential that the child welfare profession create the infrastructure and policy framework for meeting this obligation, including the collection, analysis and integration of accurate data.

These guidelines are divided into five sections:

- Collecting information for individual case planning
- Collecting information for agency planning and assessment
- Recording information
- Disclosing information
- Institutionalizing practice

The guidelines provide the framework for utilizing client data to ensure the safety, permanency and well-being of children across the spectrum of sexual orientation and gender identity and expression. The commentary following the guidelines provides background information and the rationale for each standard. Prior to implementing the guidelines, agencies should develop practice tools designed to provide more detailed instruction to personnel charged with implementing the guidelines. Along with ongoing training and supervision, these tools should provide guidance to workers on how to talk to youth about sexual orientation, gender identity and gender expression, what specific questions to ask and at what intervals, and how to record the information in the appropriate paper or digital file.



## **A. COLLECTING INFORMATION FOR INDIVIDUAL CASE PLANNING**

Child welfare professionals cannot adequately serve the children in their care unless they understand the strengths, needs, experiences and characteristics of each unique child. Possession of information about the child's age, development, temperament, academic achievement, physical and mental health, and many other individual characteristics is essential in assessing the child's current circumstances and developing a case plan. The child's sexual orientation, gender identity and gender expression are integral and defining aspects of his or her identity and experience, and are essential to understanding the whole child.

The child welfare profession is chiefly concerned with child safety, permanency and well-being. These outcomes are supported or undermined by the reactions of adults to the sexual orientation and gender identity or expression of the children in their care. Research conducted by the Family Acceptance Project has established the critical role that caregiver acceptance of young people's sexual orientation and gender identity in promoting health and well-being and protecting against risk. Conversely, caregiver rejection based on these aspects of a child's identity is highly correlated with serious health problems (Ryan et al., 2010) (Ryan, Huebner, Diaz, & Sanchez, 2009). Recent research has also established a clear link between gender nonconformity and childhood abuse and post-traumatic stress disorder in youth (Roberts, Rosario, Corliss, Koenen, & Austin, 2012). Thus, a child's perceived or declared sexual orientation or gender identity may be directly relevant to the alleged abuse or neglect, whether or not the connection has been expressly identified.

Even if a child's sexual orientation or gender identity or expression is not directly related to the alleged abuse or neglect, these aspects of the child's identity may have some bearing on the child's safety, permanency and well-being. A growing body of research demonstrates that sexual orientation and gender identity are important predictors of the health and social outcomes of youth due to the distinct challenges lesbian, gay, bisexual and transgender individuals confront. As such, understanding these aspects of the child's identity is essential. Conversely, failure to understand the whole child can lead to poor decisions that seriously undermine the chief aims of permanency, safety and well-being.

**1. Intake forms and protocol should require child welfare personnel to document each child's biological sex, gender identity, and gender expression.**

*Commentary: Biological sex, gender identity and gender expression are three distinct aspects of every person's identity. Biological sex refers to a person's physical anatomy and is used to assign gender at birth. In the majority of cases, a child's biological sex is either clearly male or clearly female. However, there is a range of possible variations in human anatomy and chromosomal makeup (Irby & Brown, 2011) (Brill & Pepper, 2008), necessitating a separate classification for the small percentage of children who are not clearly biologically male or female. Some individuals have medical conditions known as "differences of sex development" (DSD) in which their biological attributes (chromosomes, gonads, reproductive anatomy or genitalia) differ from what is associated with male or female biology (Malouf & Baratz, 2012). These individuals are sometimes referred to as "intersex." Child welfare personnel are not qualified to determine whether or not a child is intersex, and should not attempt to make this determination independently. However, if the child or family offers the information or it is otherwise acquired through medical screening, child welfare personnel should document the information and its source. In documenting a child's biological sex, commonly used terms include male, female or intersex.*

*Gender identity refers to a person's deeply felt sense of being male, female, both or neither. An individual's gender identity may or may not be congruent with that person's biological sex. Terms for identifying a person's gender identity may include male, female, unsure, neither or both.*

*Gender expression refers to the manner in which a child expresses or externalizes gender, through dress, mannerisms and behavior. Again, an individual's gender expression may or may not be congruent with that person's biological sex. Terms used to describe a person's gender expression may include masculine, feminine, androgynous, or both masculine and feminine.*

**2. Child welfare personnel should assess the extent to which each child's expression of gender matches or diverges from cultural and social expectations in the child's family and community.**

*Commentary: Gender expression is not exact or objective. It is a relative concept based on an individual or community's subjective perception of gender roles and expectations, which is influenced by beliefs, culture, experiences and frame of reference. For these purposes, the perception or beliefs of the child welfare worker are not as important as the child's experience and the perception and reaction of important people in the child's life. Children may be subjected to ridicule, rejection or humiliation based upon other people's perception that their mannerisms, behavior or dress diverge from that which is expected of their gender (gender variant). Child welfare personnel should not classify or evaluate any child's gender expression for the purposes of redirecting or changing the child, but to explore the child's need for support and to monitor the child's adjustment. Gender variant expression, by itself, is not problematic nor cause for concern. However, gender nonconforming children may need support to form and integrate a healthy identity. To explore the child's gender expression, child welfare personnel may rely on information from the child, family and reliable third parties, such as school and medical personnel. Child welfare personnel may also rely on personal observation supported by objective information.*

**3. Child welfare workers should document the gender identity of every child three years of age or older.**

*Commentary: Gender identity is formed at very early age, often emerging around the same time that a child learns to speak (Brill & Pepper, 2008). Everyone has a gender identity, which is internal and personally defined. Most people's gender identity is congruent with their biological sex, in which case there is little need to consciously define one's gender identity as distinct from one's gender. When a child's biological sex and gender identity are not congruent, the child often begins voicing this discrepancy between ages 2 and 4. (For example, a young boy may consistently report that when he grows up, he's going to be a woman.) It is important to identify children who experience this incongruity – children who describe or manifest a gender identity that differs from their biological sex. The purpose is not to categorize or diagnose the child, but to ensure that the child's family or caregivers have the information and support necessary to better understand and support the child's healthy development.*

- 4. Child welfare personnel should determine the most appropriate time and manner of identifying each child's gender identity and expression, based upon the child's age, stage of development, cognitive abilities and personality, as well as the level of trust developed between the worker and the child.**

*Commentary: Child welfare personnel should directly engage children who are developmentally and cognitively capable of understanding and discussing gender, in age-appropriate discussion of their preferred gender expression and the gender with which they identify. Children and youth who openly identify as transgender or use other words to indicate that they are gender nonconforming may be willing and able to discuss how they express and identify their gender. Language and conventions related to discussing gender roles may vary in different cultures. Child welfare personnel should rely on visual observation and reliable third party reports of young or incompetent children's choice of interests, activities, mannerisms and clothing, as well as any disclosures by the child about the child's gender. Family members, as well as medical and mental health professionals may provide important insights.*

- 5. Child welfare workers should document the sexual orientation of every child 10 years or older who can understand and discuss these issues.**

*Commentary: Every person has a sexual orientation that exists somewhere along a continuum ranging from exclusive attraction to the same sex to exclusive attraction to the opposite sex and every variation in between. Although the development of each person's sexual orientation is unique, studies show that children become aware of sexual attraction at about age 10 (Ryan, 2003). Compared to children of earlier generations, today's young people are self-identifying as lesbian, gay or bisexual at increasingly younger ages (Ryan, 2003). Children may be aware of same-sex attraction long before they engage in any sexual behavior and sometimes before they know the language or concepts to describe their feelings. Nonheterosexual youth may use words other than lesbian, gay, or bisexual to describe their sexual orientation. Terminology may differ across cultures or geographic locations. Youth may engage in heterosexual sex even if they identify as LGB or experience same-sex attraction. The best source of information about a child's sexual orientation is the child. Thus, it is critical for workers to develop competency to skillfully and sensitively engage children and youth in these discussions.*

*Understanding a child's sexual orientation, at every stage of development, helps child welfare professionals create and implement appropriate case plans. Competent services ensure that all children are safe and supported, and that caregivers have the tools to embrace and guide all children – including lesbian, gay and bisexual children, and children who are perceived by others to be nonheterosexual. Child welfare professionals, along with families and peers, can provide critical support to young people during the development and integration of their sexual orientation. Acceptance and support bolster resilience and counteract the health risks associated with harassment and rejection. Engaging young people in supportive discussions about their sexual orientation provides an opportunity for youth to come out, a process that boosts self-esteem and decreases health risks (Wilber et al., 2006).*

- 6. Child welfare personnel should identify the most appropriate time and manner of documenting the child's sexual orientation, based upon the child's age, stage of development, cognitive abilities, personality, and readiness to discuss the issue.**

*Commentary: Children are at various stages of awareness and comfort with their sexual orientation. Some children may not have consciously experienced same-sex attraction or become aware that they are not heterosexual. Others may be aware of attraction and emotional connection to people of the same gender and may identify as lesbian, gay or bisexual, whether or not they have had any type of sexual experience. Children and youth who internally identify as lesbian, gay or bisexual may not be comfortable discussing these issues – especially before they know it is safe to do so. Cultural and religious norms also influence children's willingness to talk about sexual orientation or gender identity. Child welfare personnel should signal their openness and acceptance in order to encourage disclosure and normalize discussion of these issues. Using language which is inclusive, age appropriate, culturally accepted and understandable helps to create an environment in which children can disclose information about themselves at their own pace and on their own terms. Conveying inclusive and affirming messages in posters and other materials or images also helps to create a safe environment.*

- 7. Child welfare personnel should ensure that their understanding, and any documentation, of the child's sexual orientation and gender identity and expression remains current.**

*Commentary: Gaining an understanding of a child's gender identity and sexual orientation and the impact of these issues in the child's life cannot occur in a single encounter or interview, but necessarily occurs over time. Sexual orientation and gender identity are immutable characteristics that cannot be changed. However, awareness and integration of one's sexual orientation and gender identity is an evolving process, as is*

*one's ability and readiness to discuss these issues. Some children may enter care at a very young age, and begin understanding their sexual orientation many years later. Some young people may deny or repress their sexuality or gender nonconformity. Others may feel uncertain because of a lack of contextual information or role models – while others may know that they are gay or lesbian at early ages. A child's understanding of her sexual orientation or gender identity may also shift over time. A child who initially identifies as bisexual may ultimately determine that she is a lesbian. A child who initially demonstrates gender nonconforming behavior or expression may discover that he is gay.*

*Just as a child's understanding of her identity develops over time, her external circumstances may also change. A school or home environment that that was once stable and supportive may become unsafe for a child who openly identifies as gay, or insists upon wearing gender nonconforming clothing in middle school. Child welfare workers cannot expect to "check a box" or definitively address these issues in one meeting. The objective is not to simply repeat the same questions at preset intervals, but to stay connected, pay attention, and create opportunities to discuss all aspects of the child's experience. It is particularly important to be alert to any indication that the child is experiencing distress, lack of support or external pressure related to developing or integrating a positive gender identity and sexual orientation.*

## **B. COLLECTING INFORMATION FOR AGENCY ASSESSMENT AND PLANNING**

Like all publicly funded services, child welfare agencies are under increasing pressure to demonstrate that their programs are effective and efficient. Shrinking public dollars have increased the demand for accountability, prompting public agencies to collect data to support program assessment and planning. Child welfare agencies collect and report client data to track demographic trends, identify gaps in programming, assess the effectiveness of specific interventions and programs, and measure progress toward system objectives. (Child Welfare League of America and Juvenile Law Center, 2008) Client data can also be used to measure the outcomes of targeted populations of children and youth.

A growing body of research has demonstrated that lesbian, gay, bisexual and transgender youth are at increased risk for homelessness (Rosario, Schrimshaw, & Hunter, 2012) (Quintana, 2010), substance abuse, suicide, school bullying (Gay, Lesbian, and Straight Education Network [GLSEN], 2010), and family rejection (Willoughby, Doty, & Malik, 2010). Informed by these findings, the child welfare profession is obliged to monitor and protect the safety and well-being of children who may face enhanced risks based upon their actual or perceived sexual orientation or



gender identity or expression. In order to meet this obligation, child welfare personnel must collect data – on an individual and aggregate level. Simply put, the agency cannot determine whether it is meeting its obligation to LGBT youth unless it makes an authentic effort to identify the sexual orientation and gender identity of the children in its care. In the absence of such data, child welfare agencies cannot accurately assess their services to LGBT children or youth, track the outcomes of these young people, or create services that respond to the needs of this population.

Fortunately, the child welfare profession can follow the lead of other public agencies that are successfully collecting this information. For example, sexual orientation questions have been included on school-based surveys of adolescents since the mid 1980's through versions of the Youth Risk Behavioral Survey. Researchers have drawn from the experience of these surveys to distill best practices for asking questions related to sexual orientation and gender identity and expression (Badgett & Goldberg 2009). Researchers have also successfully surveyed LGBT youth in the juvenile justice system, significantly increasing the profession's understanding of the disproportionate numbers of LGBT youth in detention, as well as their experiences and offenses (Irvine, 2010).

**1. Child welfare agencies should include sexual orientation and gender identity in the demographic data collected for each child.**

*Commentary: Including data fields for sexual orientation, gender identity and gender expression is important for several reasons. Absent this data, agencies can only guess about the prevalence of LGBT youth in their care. Client specific data is also necessary to track permanency, well-being and safety outcomes for LGBT youth, and the extent to which these outcomes differ from those of heterosexual and gender conforming children and youth. The data is essential to assessing the agency's success in recruiting and supporting affirming, competent caregivers.*

**2. Child welfare agencies should provide all youth in protective custody with the opportunity to complete an annual confidential survey evaluating the services they have received.**

*Commentary: Supplementing intake questions with a self-administered survey increases the validity of the agency's data by providing youth with an opportunity to identify themselves confidentially. Anonymous surveys permit youth to be more candid, increasing the reliability of the data and potentially providing more accurate data on the quality of services and the needs of youth. In their report on "Best Practices for Asking Questions about Sexual Orientation on Surveys," Badgett and Goldberg (2009) provide*

*several recommendations for maximizing the accuracy and validity of survey data. Survey drafters should give careful consideration to the framing of the questions used to elicit the data, as well as their placement on the survey. Questions designed to elicit data on sexual orientation should address one or more dimensions, such as self-identification, sexual behavior, sexual attraction or romantic relationships. These questions should not immediately precede or follow questions about sexual abuse or assault. Questions eliciting information about gender identity or expression should define the relevant terms in simple, direct language. In general, the language used in the survey should be “culturally appropriate, relevant, acceptable, and compatible with the respondent’s understanding of the construct that the question is intended to measure” (Badgett & Goldberg, 1998).*

### **C. RECORDING INFORMATION**

Clinical education and training emphasizes the critical importance of accurate, timely case notes. The case file documents all aspects of the child welfare worker’s investigation, assessment and case plan. Caseworkers must capture each child’s story and summarize the actions undertaken by the agency to strengthen the family and keep the child safe. The importance of this function cannot be overstated. Documentation is an important tool for improving outcomes for children, and protecting both children and caseworkers. Lack of timely and accurate documentation can undermine the effectiveness of all other priorities and tasks undertaken by the caseworker (Stephenson-Valcourt, 2009-2010).

The case file provides a comprehensive record for the current caseworker and a case history for subsequent workers. Information from the case file is used to develop court reports and recommendations. Generally, clients are also entitled to copies of all or part of their case files when they reach the age of majority. Caseworkers should anticipate the multiple functions of a case file when making the inevitable judgment calls about what to include and what to exclude.

- 1. Child welfare personnel should record relevant and reliable information related to the child’s sexual orientation, gender expression or gender identity in the case file.**

*Commentary: As part of the process of documenting the information they have gathered through interviews and observations, child welfare personnel should record information related to the child’s sexual orientation, gender identity and gender expression. Workers*



*should carefully identify the source of the information in the case file, and limit the information recorded to that which is relevant to furthering the goals of permanence, well-being and safety. For example, while it is important to document that a young person in care has recently disclosed that he is gay, it is not necessary to divulge every aspect of his personal life and relationships. It may be most important to document efforts to ensure that the youth is in a safe and supportive environment at home, at school and in the community. Consistent with sound social work practice and professional guidelines, child welfare agencies should adopt and implement policies that protect the confidentiality of information in the case file.*

- 2. Child welfare personnel should record information related to a child's sexual orientation or gender identity or expression in a court report only when the information is directly relevant to the issue to be decided by the court, the worker preparing the court report has discussed the matter with the child and obtained his or her authorization, and the worker has taken precautions to minimize unnecessary disclosure of the information to third parties.**

*Commentary: There may be circumstances under which it is essential for the court to understand how the child's sexual orientation or gender identity or expression is related to the issue to be decided at a hearing or other proceeding. For example, in a hearing at which a change in placement is considered, the court may need to understand the need for a safe and accepting caregiver. However, court proceedings are often attended by many individuals – including parents, siblings, caretakers, providers, guardians ad litem and attorneys. These individuals may or may not be aware of the child's sexual orientation or gender identity. Moreover, despite policies and statutes that require the confidentiality of court reports, their contents are often disclosed outside of court proceedings. Thus, workers should exercise caution and should only include this information in court reports when they can articulate a specific rationale for doing so, and have worked with the child to minimize any potential negative ramifications that may stem from disclosure. Agency policy may provide that, even when disclosure to the court is necessary, workers must prepare a supplemental report containing the information and request an in camera discussion of the matter and/or a protective order prohibiting re-disclosure of the information.*

#### **D. DISCLOSING INFORMATION**

Children served by the child welfare system interact with many other systems and individuals, including service providers, courts, schools, caregivers and others. Disclosing personally identifiable information across these systems may help children achieve better safety, permanency and well-being. With appropriate safeguards, sharing information can reduce duplication of effort and enhance coordination of services, all toward the goal of improving outcomes for children. Child welfare agencies may share information internally, with other agency employees, without violating confidentiality provisions. However, information contained in child welfare agency files is protected by federal and state confidentiality provisions, such as the Social Security Act of 1935, and generally may not be disclosed outside the agency without proper consent or a court order. Child welfare agencies must carefully reconcile these potentially countervailing interests in order to appropriately serve the children in their care (CWLA & Juvenile Law Center, 2008).

- 1. Child welfare professionals should regard children as the principle owners of information related to their sexual orientation and gender identity and expression, and should actively involve them in decisions related to any disclosure of this information.**

*Commentary: The consequences that flow from disclosure of personal information are primarily borne by the individual who is the subject of the information. For this reason, ethical and legal standards generally require the subject's consent or authorization prior to disclosure of confidential or sensitive information.*

*Young people are uniquely qualified to anticipate the positive and negative consequences that may result from disclosure of information related to their sexual orientation or gender identity and expression. At a minimum, child welfare professionals should engage youth in a discussion prior to disclosure in which the young people have an opportunity to ask questions, assert their wishes and problem-solve to minimize potential negative consequences or amend the information to be disclosed. This discussion also provides an opportunity for the professional to clearly identify the objective of the contemplated disclosure. Meaningful engagement with young people conveys respect, and builds trust.*

*Child welfare professionals should obtain the child's consent prior to disclosure whenever possible. In rare circumstances, child welfare professionals may determine that they are legally or ethically obligated to disclose this information against the child's wishes. For example, the child's sexual orientation may be directly tied to abuse or self-harm that the professional is mandated to report. In this situation, the professional should carefully explain the reason for disclosure, and should limit the disclosure to that information necessary to protect the child's safety and well-being.*

**2. Child welfare professionals should identify and document a specific rationale related to the child's interests for every decision to disclose information related to the child's sexual orientation or gender identity.**

*Commentary: In an ideal world, children and youth would feel secure in all aspects of their identities, and coming out as gay, lesbian, bisexual or transgender would engender support and affirmation. In such a world, information related to a child's sexual orientation or gender identity might not warrant such stringent protections. Unfortunately, we are far from achieving these aspirational conditions. In fact, unwarranted disclosure of this information may subject a child to a range of physical and emotional harm. Under these circumstances, information related to a child's sexual orientation or gender identity must be considered both private and sensitive.*

*At the same time, there are circumstances under which disclosure of this information may be necessary to promote a child's welfare. Child welfare professionals should be thoughtful and cautious about any decision to disclose this information in verbal, written or digital communications. Prior to any disclosure, professionals should identify the rationale for disclosure, specifically ascertaining how the child will benefit from disclosure. Professionals should document this decision and the rationale in the case file.*

*Disclosure of information increases the likelihood that it will be re-disclosed beyond the intended recipient. While the nature of this risk can differ, all modes of disclosure (verbal, written, and digital) necessarily involve risk of re-disclosure and potential negative collateral consequences. Child welfare professionals should limit disclosure of the information to recipients who need it to support or serve the child. Professionals should also consider the risk of re-disclosure and take measures to minimize this risk.*

**3. Policies governing the management of information related to the sexual orientation or gender identity of children should be consistent with state and federal confidentiality laws, as well as agency policy and rules of court.**

*Commentary: State and federal laws govern the management of client information held by public child welfare agencies, including the circumstances under which personally identifiable information may be shared. Different laws govern what information may be shared with whom, often depending upon the original source of the information. For example, information obtained from health records is governed by different laws than information obtained from education or mental health records.*

*Confidentiality laws may differ from relevant professional standards. For example, the regulations governing the Health Insurance Portability and Accountability Act (HIPAA) of 1996 permit disclosure of health information for routine purposes of treatment, payment or health care operations without specific consent of the client. This regulation conflicts with the Privacy and Confidentiality standards of the NASW Code of Ethics, which provide, "Social workers may disclose confidential information when appropriate with valid consent from a client or person legally authorized to consent on behalf of a client" (Polowy, Morgan, Khan, & Gorenberg, 1997). The HIPAA provision authorizes disclosure for some purposes without consent, whereas the NASW provision requires consent for any disclosure.*

*Child welfare agencies should consult their legal counsel to ensure that agency policies comply with all relevant legal standards and requirements.*

**4. Child welfare agencies should consider adopting additional measures to prevent inappropriate or harmful disclosure of information related to children's sexual orientation, gender identity or gender expression.**

*Commentary: Because of the unique sensitivity of this information, child welfare agencies may determine that additional layers of protection are appropriate. Agencies may decide to add one or more of the following protections: a requirement for supervisory approval prior to disclosure, a requirement that child welfare personnel obtain a signed consent prior to disclosure, or a requirement that child welfare personnel obtain a court order authorizing disclosure and/or prohibiting re-disclosure of the*

*information. Child welfare agencies may also consider entering into a Memorandum of Understanding with local child welfare system stakeholders that specifies the limited circumstances under which information related to children's sexual orientation, gender identity or gender expression may be disclosed.*

#### **E. INSTITUTIONALIZING PRACTICE**

Competent child welfare practice is informed by a constantly evolving body of research and accepted best practice. Child welfare agencies also experience frequent turnover of personnel. Combined with daily workload challenges, competing reform initiatives and shrinking budgets, these realities threaten the sustainability of new policies and procedures.

Meaningful integration of these guidelines will require several key structural elements. At the outset, agency leadership is crucial. The Director of the child welfare agency, and other key managers, must fully understand and embrace these guidelines. Leadership is essential to conveying the importance of the guidelines and their connection to the agency's mission and values, as well as responding to any initial resistance. Agency management must be visibly involved in the introduction of the guidelines, as well as their implementation over time.

Child welfare agencies must also commit sufficient resources to ensure the viability and sustainability of the guidelines in daily practice. At the outset, resources are necessary to adequately communicate the change in policy to all of the important internal and external stakeholders, including agency managers, supervisors, line workers, families, children, judges and attorneys. Agencies should ensure that all personnel receive training and ongoing supervision geared toward consistent implementation of the policy in daily practice. Agencies must also build internal competence across all levels of the organization to decrease the agency's dependence on outside consultants and resources.

- 1. Agency policies, practices, training and supervision related to children's sexual orientation, gender identity and gender expression should be explicitly grounded in credible social science research and the foundational objectives of safety, permanency and well-being.**

*Commentary: Policies and practices related to sexual orientation, gender identity and gender expression often engender controversy due to their association with entrenched religious and political points of view. Agencies cannot expect to prevent resistance or debate, and should instead invite constructive engagement as an opportunity to convey a consistent and thoughtful rationale. Internal and external messaging related to these issues must emphasize their connection to the child welfare objectives of safety, permanency and well-being. All communications should cite peer reviewed, published social science research, as well as emerging professional standards, that support the objectives and content of the policies and training.*

- 2. Child welfare agencies should have written policies and procedures governing the management of information related to the sexual orientation, gender identity and gender expression of children and youth under their care.**

*Commentary: Written policies and procedures provide the roadmap for consistent and competent practice, as well as professional accountability. Thoughtful development and revision of agency policy provides an opportunity to engage and educate agency employees and external stakeholders about the agency's mission and values, and permits personnel and providers to reflect on their own experiences and points of view. Development of written policy should be as inclusive as practicable to incorporate the perspectives of important child welfare stakeholders, including managers, supervisors, line workers, court officers, families, children, guardians ad litem, judges and attorneys. Policies should be specific enough to provide meaningful guidance, and general enough to permit trained professionals to exercise reasoned judgment and discretion. When questions arise about the management of information related to children's sexual orientation, gender identity or gender expression, professionals should refer to written policy for guidance. Agency policy should also form the backbone of all training and supervision. Child welfare agencies should institutionalize the practice of regular review and revisions of policies to ensure that they remain consistent with emerging research and understanding of children and families.*

**3. Child welfare agencies should provide pre-service and ongoing training to all child welfare personnel regarding the agency's policies governing the management of information related to children's sexual orientation, gender identity and gender expression.**

*Commentary: Under Title IV-E of the Social Security Act (1935), the federal government underwrites 75% of the cost of training employees of state and local child welfare agencies, as well as foster and adoptive parents and child care institutions staff. The Children's Bureau has clarified that matching federal funds are available to support training that addresses "How to assess and serve the needs of children without bias and ensure their safety, including how to parent youth struggling with issues related to sexual orientation, gender identity and/or gender expression" (Children's Bureau, 2012). Child welfare agencies should include these topics in their existing training programs, including training of child welfare workers on the practice issues covered by these guidelines. The training should be tailored to respond to the agency's current level of competence and familiarity with serving children whose actual or perceived sexual orientation is other than heterosexual, and children whose gender identity or expression is incongruent with their biological sex or with cultural expectations related to gender expression. A series of trainings dedicated to implementation of the guidelines may be appropriate to introduce new policies and procedures. Agencies may also determine that initial trainings are best delivered by outside consultants, or some combination of internal and external trainers. As personnel become more familiar with the guidelines and agencies more fully integrate these practices, it is important to build internal capacity to conduct the training. Integrating these issues into broader training programs may also assist in institutionalizing these guidelines.*

**4. Child welfare agencies should ensure that all staff receive ongoing supervision and technical assistance on the management of information related to the sexual orientation, gender identity and gender expression of children and youth under the agency's care.**

*Commentary: Particularly in the early stages of implementation, child welfare workers will likely have questions about how to apply the guidelines in specific situations. Agencies must provide some accessible mechanism for exploring solutions to such questions. Options include assignment of a specific person or persons to whom such questions are directed, a means of convening a group of personnel to "staff" a specific case to brainstorm potential solutions, or a contract with an external expert to provide coaching and technical assistance. Although the number of questions is likely to diminish over time, it is still a good practice to ensure some means of providing guidance in*

*individual cases. In addition to case specific technical assistance, agencies should ensure that supervisors regularly monitor practice through the supervision process. This may involve case file reviews to ensure compliance with the guidelines, or simply inviting questions about implementation.*



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