



Pennsylvania Commission for Fairness & Justice

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Via Email Only (ra-pwocf3900sreview@pa.gov)

Caitlin Robinson

Director, Bureau of Children and Family Services
Pennsylvania Department of Human Services
Health and Human Services Building
625 Forster Street
Harrisburg, PA 17120

Re: Comments on Regulation Package #14-559: Residential Services for Children and Youth

Dear Director Robinson:

On behalf of the Pennsylvania Commission for Fairness & Justice (“PCFJ”), we are writing in response to the request from the Pennsylvania Department of Human Services (“DHS”) for stakeholder input on its proposed amendments to the regulatory licensure chapters for children and youth facilities. Thank you for the opportunity to comment on this detailed proposal, which demonstrates thoughtful deliberation and incorporates several crucial provisions for LGBTQIA+ children and youth. We believe that the proposal, as amended pursuant to our recommendations below, will lead to a more equitable foster care system that affirms the dignity and well-being of all populations entrusted to its care.

1. Background

The purpose of PCFJ is to promote fairness and justice in the Commonwealth by identifying and addressing systemic barriers, reducing bias and discrimination in all forms, and working to ensure that justice is accessible, impartial, and grounded in the dignity and humanity of every individual. The Commission fulfills this purpose by, among other things: implementing the findings and recommendations of the 2003 [Final Report](#) by the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System; promoting public and professional awareness of the impact of race, ethnic origin, gender, sexual orientation, and disability on access to justice in the Commonwealth; and identifying, developing, and recommending policies, best practices, and laws that promote fairness and eliminate discrimination.

Consistent with this purpose, PCFJ joined a Commonwealth-wide work group on LGBTQIA+ youth in out-of-home placements in 2021. The work group convened routinely to review model LGBTQIA+-focused regulations successfully adopted in other jurisdictions and prepare a proposal to the Pennsylvania Department of Human Services designed to implement same.¹ Following

¹ The work group proposed changes to three Chapters in the Pennsylvania Code: 55 Pa. Code § § 3130 *et seq.* (county children and youth social service programs), 55 Pa. Code § § 3700 *et seq.* (foster family care agencies),

completion of an initial draft, the group’s proposal underwent several rounds of review by LGBTQIA+ service providers across Pennsylvania, reflecting decades of experience working with youth in our Commonwealth. Those efforts culminated in a final set of proposed regulations drawing from language implemented in New Mexico and Florida, as well as from the [LGBTQ+ Standards of Practice](#) adopted by Allegheny County’s Department of Human Services. In June 2022, the group submitted its proposal to former PCFJ Commissioner, Andrew Barnes, who offered to shepherd the proposal through the regulatory process as Executive Deputy Secretary.

We are pleased to see that DHS’s proposal incorporates several of the LGBTQIA+-specific provisions for which the statewide work group advocated. The following comments and suggestions are intended to make that proposal even stronger, benefiting vulnerable populations in care and thus effectuating DHS’s stated purpose of protecting “the health, safety and well-being of children and youth . . . in child residential, secure residential or secure detention facilities.”

2. Support for, Recommended Changes to Proposed Regulations

a. Addition of New Protected Classes

PCFJ strongly supports the addition of **gender identity** and **gender expression** into the list of enumerated classes for which discrimination against children and youth is prohibited.

LGBTQIA+ children and youth experience trauma stemming from violence, bullying, and discrimination at higher rates than non-LGBTQIA+ children and youth.² Within the LGBTQIA+ community itself, similar disproportionalities abound – outcomes that require regulations dedicated to protecting the most vulnerable within the foster care system. In 2022, the Pennsylvania LGBTQ Health Needs Assessment – a comprehensive assessment conducted biennially by the Bradbury-Sullivan LGBT Community Center in partnership with the Pennsylvania Department of Health – reached over 4,200 LGBTQ Pennsylvanians aged thirteen (13) and older. In the survey, more than six in ten respondents indicated that they have experienced discrimination based on their LGBTQIA+ status.³ That figure was significantly higher for transgender and non-binary respondents compared to their cisgender peers (71.0%, versus 56.1%).⁴

Just as discrimination disproportionately impacts gender diverse individuals in the LGBTQIA+ community, so too does it significantly affect youth. According to the Trevor Project, 71% of

and 55 Pa. Code § § 3800 *et seq.* (child residential and day treatment facilities). At the time of submission, only one of those three Chapters – Chapter 3800 – contained LGBTQIA+-specific non-discrimination protections, and those protections extended only to sexual orientation, not to gender identity or expression.

² Global Health Justice Partnership, Yale Law School, *LGBTQ+ Youth Experiences in the Child Welfare System: What We Know* (last visited July 2, 2026), <https://law.yale.edu/sites/default/files/area/center/ghjp/documents/yes-state-of-knowledge-sheet-2-lgbtq-youth-experiences-in-the-child-welfare-system.pdf>.

³ Res. & Evaluation Group at Pub. Health Mgmt. Corp. and Bradbury-Sullivan Community Ctr., *2022 Pennsylvania LGBTQ Health Needs Assessment* 1, 3 (2023), <https://www.pa.gov/content/dam/copapwp-pagov/en/health/documents/topics/documents/programs/tobacco/LGBTQ%20Health%20Needs%20Assessment.pdf>.

⁴ *Id.* at 27.

Pennsylvania youth report experiencing discrimination based on their sexual orientation and/or gender identity.⁵

Regardless of where it occurs or the specific contours that it takes, discrimination foreseeably impacts the emotional well-being of LGBTQIA+ Pennsylvanians – and youth in particular. The 2024 iteration of the Health Needs Assessment outlined above documented significant mental health challenges for LGBTQIA+ individuals – challenges that are the most prevalent among youth under 18 years old (84.6%).⁶

The inclusion of gender identity and gender expression into the list of Chapter 3900's protected classes takes a crucial and affirmative step toward ensuring that discrimination has no place in Pennsylvania's residential treatment facilities. These protections are particularly important considering LGBTQIA+ youth's overrepresentation in care: while that population constitutes less than 10% of all youth in the United States,⁷ they represent approximately one third of youth in foster care.⁸ PCFJ is thus pleased to support the retention of a provision that better ensures the protection of youth whom we know are vulnerable to discrimination and encounter our state foster care system at higher rates than their non-LGBTQIA+ peers.

b. Staff Training Requirements

PCFJ supports the proposed regulations governing the modified training requirements for facility staff. Specifically, we encourage retention of the following:

- The required completion of at least four hours of orientation training dedicated to the facility's trauma-informed practices. 55 Pa. Code § 3900.57(a)(5). This provision aligns with the accompanying commentary provided by DHS in the regulatory package, which describes “the Commonwealth’s initiative of becoming a trauma-informed and healing-centered state.”
- The expansion of training topics that staff must complete within the first 120 days of employment to include: (1) cultural sensitivity training (§ 3900.57(b)(12)); and (2) training that increases awareness of the impact of gender, race, ethnicity, and sexual orientation on the provision of services. (§ 3900.57(b)(13)).
- The increase in ongoing annual training hours from 40 to 42 hours, which, as proposed, must include instruction on: (1) the facility's trauma informed approach (§ 3900.57(f)(3)); and (2) interpersonal dynamics, including considerations specific to gender, race, ethnicity, and sexual orientation, in interactions with facility management, staff peers, and the population served (§ 3900.57(f)(8)(iii)).

⁵ The Trevor Project, *2022 National Survey on LGBTQ Youth Mental Health: Pennsylvania* 1, 4 (Dec. 2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/12/The-Trevor-Project-2022-National-Survey-on-LGBTQ-Youth-Mental-Health-by-State-Pennsylvania.pdf>.

⁶ Res. & Evaluation Group at Pub. Health Mgmt. Corp. and Bradbury-Sullivan Community Ctr., *2024 Pennsylvania LGBTQ Health Needs Assessment* 1, 32 (June 3, 2025), https://bradburysullivancenter.org/wp-content/uploads/2026/05/2024_PA_LGBTQ_NA_Final_full_edit_v2.pdf [hereinafter *2024 HNA*].

⁷ Kerith J. Conron, *LGBT Youth Population in the United States*, UCLA Sch. of L. Williams Inst. (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.

⁸ U. of Md. Sch. of Soc. Work, *The Cuyahoga Youth Count: A Report on LGBTQ+ Youth Experience in Foster Care* 1, 7 (2021), <https://sogiecenter.org/wp-content/uploads/2023/04/Cuyahoga-Youth-Count-2023.pdf>.

As DHS notes on the Regulatory Analysis Form that accompanies the proposed package, “[c]hild welfare practice is a continually evolving area of service that requires implementation of new programs and approaches” to respond to the needs of children and youth, their families, involved professionals, and the courts. While LGBTQIA+ children and youth have the same basic needs as all other children in the child welfare system, they also have unique life experiences and challenges that merit careful and targeted consideration while in care. Robust training therefore presents an important opportunity to ensure that staff are apprised of evidence-based best practices that are responsive to those considerations and affirm LGBTQIA+ youth.

In sum, increased staff awareness of the population’s lived experiences will, as DHS notes, more effectively position and prepare staff to address the needs of those children and youth, thus “elevat[ing] the quality of services delivered.” Training staff on the ways in which youth’s experiences are shaped by overlapping and interactive aspects of their identity – such as their gender, sexual orientation, race, ethnicity, and religion – will also help to decrease the stigma and discrimination documented above. In so doing, it will enhance safety, permanency, and well-being.

c. Specific Rights

In addition to the expanded non-discrimination protections for which we indicated our support *supra*, PCFJ supports the proposed language in 55 Pa. Code § 3900.32. We also offer several suggestions to flesh out the rights to which LGBTQIA+ children and youth are deservedly entitled.

PCFJ supports proposed 3900.32(u), which explicitly grants the right to **gender-expression-appropriate clothing**. This provision ensures that children and youth have access to and can dress themselves in attire consistent with their identity. The benefits of providing such access are palpable: according to the Trevor Project, wearing clothing or hairstyles that align with one’s identity can evoke “gender euphoria,” or positive feelings about one’s gender expression and experiences of gender affirmation.⁹ In sum, access to gender-expression-appropriate clothing is an important social affirmation – one that promotes self-expression, builds confidence, and improves quality of life.

We strongly urge DHS to amend its proposal to affirm and set forth clear, actionable procedures governing access to **gender-affirming care**. Including concrete regulations on this topic is essential to address existing barriers to care. According to the 2024 Pennsylvania LGBTQ Health Needs Assessment, one third of respondents reported experiencing a negative reaction from a healthcare provider when that provider learned they were LGBTQIA+.¹⁰ As a consequence, two in five respondents indicated that they fear seeking healthcare services, and nearly one in five reported that they are “out” to no providers – a figure even higher among youth respondents.¹¹

Gender-affirming care is the antidote to these troubling challenges and trends. Such care has been endorsed by the vast majority of major medical associations, including the American Academy of Pediatrics, the American Medical Association, and the American Psychological Association.¹² It has

⁹ The Trevor Project, *Gender Euphoria and Mental Health in TGNB Young People* (Mar. 31, 2026), <https://www.thetrevorproject.org/research-briefs/gender-euphoria-and-mental-health-in-tgnb-young-people/>

¹⁰ 2024 HNA, *supra* note 6, at 2.

¹¹ *Id.*

¹² Heather Boerner, Scientific American, *What the Science on Gender-Affirming Care for Transgender Kids Really Shows* 1, 3 (May 12, 2022), <http://tiny.cc/heatherboernerscientamer>.

been shown to reduce the risk of depression, anxiety, suicide, and self-harm in children and youth – conditions to which youth in the foster care system are disproportionately vulnerable.¹³ In short, gender-affirming care is healthcare, and PCFJ urges DHS to update its proposal to reflect this.

Consistent with the recommendations we submitted to DHS in June 2022, we propose amendment of proposed 3900.32(q) by adding a **new subparagraph (3)** that reads as follows:

This right includes a timely referral to an LGBTQIA+-affirming mental health and medical provider with experience and expertise in providing the relevant care when a child makes a request to begin or continue hormone therapy and/or pursue surgical means to align their body with their gender identity, provided that youth under 18 shall first receive parental permission or a court order prior to pursuing hormone therapy. Regardless of whether the young person obtains parental permission, agency staff shall remain supportive and affirming of the individual. Parental consent is not required for youth under 18 who are only interested in making a social transition.

This language is in accordance with Pennsylvania law and mirrors the model language provided in the Allegheny County Department of Human Services’ “Housing and Placement with LGBTQIA+ Individuals” [policy document](#). Consistent with the life-saving options that such care often provides, the language ensures that gender-affirming care is considered part of the necessary medical services that children and youth in care can receive.

Finally, we suggest the inclusion of a **new 3900.32(v)** granting **the right to an orientation** of the facility in which the child or youth will be receiving services. We recommend that the language read as follows:

A child or youth has the right to an orientation on the facility in which they will be receiving services and care. The facility shall provide prior to or at admission an orientation to living in the facility for each child and the child’s parent, guardian or custodian, or child-placing agency staff. The orientation shall be provided in a developmentally appropriate, culturally competent, and confidential manner and shall include the following:

- (1) Information regarding the inherent diversity of facility populations, including race, religion, ethnicity, gender identity and expression, sexual orientation, and other considerations set forth in subdivision 3900.32(a) of this Chapter;
- (2) The rules of the facility, including expectations for facility staff and children and youth receiving services at the facility;
- (3) Information regarding the services offered by the facility;
- (4) Information regarding the facility’s behavior management practices;
- (5) Notice of each child’s rights related to sexual orientation and gender identity and expression (SOGIE), including protections concerning names and pronouns, clothing, grooming, hygiene products, housing, searches, privacy, programming, confidentiality, and freedom from harassment, discrimination, and retaliation;
- (6) The facilities’ obligations and procedures regarding SOGIE-related disclosures; and

¹³ Myeshia N. Price & Amy E. Green, *Association of Gender Identity with Fewer Suicide Attempts Among Transgender and Nonbinary Youth*, 8 J. Transgender Health 56 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9991447/pdf/trgh.2021.0079.pdf>.

(7) The process for requesting accommodations related to SOGIE.

By requiring that facilities provide a well-rounded orientation to their service populations, DHS advances one of the core purposes cited in the regulatory proposal at hand – specifically, to “support compliance and consistency in the application and enforcement of licensing requirements” In clearly delineating the scope of its services, addressing and affirming the inherent diversity of the population it serves, and elucidating relevant disclosure and other relevant procedures, each facility promotes transparency, a key tenet of trauma-informed care.¹⁴

d. Record Contents, Confidentiality

PCFJ supports the language proposed by DHS in § 3900.203(a), which requires that each child’s or youth’s record contain information including, among other things, that individual’s gender, gender identity, and preferred name and pronouns. This provision benefits LGBTQIA+ service populations by ensuring that staff interact with them in a manner that reflects and affirms their identity. It is also important to note that the inclusion of this information benefits *all* children and youth, because *everyone* has a gender identity and a name by which they prefer to be addressed.

Although we support the inclusion of these contents in a child’s records, we strongly recommend that DHS update its proposal to strengthen confidentiality and more clearly define disclosure parameters. Documentation of sensitive information is a form of disclosure when agency staff and others have ready access to it. Disclosing information related to a child’s sexual orientation, gender identity, or gender expression (“SOGIE”) before that child is prepared to share that information can expose LGBTQIA+ youth – and trans and non-binary youth in particular – to grave physical and emotional harm.¹⁵ When youth are involuntarily outed, whether broadly or in individual interactions, they are more likely to experience bullying¹⁶ and depressive episodes¹⁷ and to attempt or commit suicide.¹⁸

In furtherance of DHS’s mission to better “protect the health, safety and well-being of children and youth receiving care,” we therefore recommend the inclusion of a **new § 3900.203(c)**, the proposed language for which we have enclosed in **Appendix A**. We believe this language centers children and youth, who are best equipped to weigh the benefits and consequences of disclosing information deeply personal to their sense of self. The proffered language also recognizes that disclosure may sometimes be required by law and provides guidance on the steps to take when such disclosure is necessary.

¹⁴ The National Child Traumatic Stress Network, *Trauma-Informed Care, Trauma-Informed System, Child Welfare, Essential Elements* (last visited July 2, 2026), <https://www.nctsn.org/trauma-informed-care/trauma-informed-systems/child-welfare/essential-elements>.

¹⁵ The Trevor Project, *Age of Sexual Orientation Outness and Suicide Risk* (Oct. 2022), <https://www.thetrevorproject.org/research-briefs/age-of-sexual-orientation-outness-and-suicide-risk-oct-2022/>.

¹⁶ Valerie A. Earnshaw et al., *Bullying Among Lesbian, Gay, Bisexual, and Transgender Youth*, 63 *Pediatric Clinics of North America* 999, 1003 (Dec. 2016), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8941671/pdf/nihms-1785516.pdf>.

¹⁷ Peter S. McCauley et al., *Stress of Being Outed to Parents, LGBTQ Family Support, and Depressive Symptoms Among Sexual and Gender Diverse Youth*, 34 *J. Rsch. On Adolescence* 205 (Jan. 2024), <https://www.the74million.org/wp-content/uploads/2024/06/McCauley-et-al-2024-1.pdf>.

¹⁸ Brian A. Feinstein et al., *Age Differences in the Associations Between Outness and Suicidality Among LGBTQ+ Youth*, 27 *Archives Suicide Rsch.* 734 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9719400/pdf/nihms-1848184.pdf>.

e. Searches and Pat-Downs

Pursuant to proposed § 3900.42(e)(8), a transgender or intersex child must be provided the opportunity to request and confirm in writing their preference that staff of a particular gender conduct any pat down or visual search of the child or youth. PCFJ commends DHS for its efforts to adopt procedures that are directly responsive to the unique needs of LGBTQIA+ youth, for whom such searches may be unduly or disproportionately invasive and uncomfortable. However, we strongly recommend the inclusion of language that better clarifies the limited instances in which the preference described above may be overridden.

As drafted, the language states that facility staff must comply with the child's or youth's preference unless "exigent circumstances" attach, in which case any deviation from that preference is permissible and must simply be documented in the individual's record and search log. While circumstances demanding immediate action may foreseeably occur, the proposed regulation does not provide a standard against which to assess whether such exigency has indeed arisen. Therefore, PCFJ suggests that the language be modified to clarify that searches conducted irrespective of the child's or youth's preference may only occur when individualized circumstances make the search necessary to address **a specific, articulable, and imminent safety risk and waiting for the child's preferred staff member would materially increase that risk.**

By setting forth a specific standard, DHS reduces arbitrary or overbroad application of searches and pat-downs. It also clarifies that searches should not be routine, automatic, or based on or designed to dissuade a youth's sexual orientation, gender identity or expression, sex characteristics, clothing, appearance, or perceived nonconformity. In addition, our proposal prevents scenarios in which a pat-down or search is conducted for the inappropriate purpose of ascertaining a child's physical anatomy. These benefits are especially important for transgender, non-binary, and gender diverse youth, who are more likely to have experienced sexual abuse and/or state surveillance and institutionalization.¹⁹

f. Bedroom and Bathroom Accommodations

In their current form, the regulations are silent on whether a child whose gender identity does not align with their assigned sex may share a bedroom or bathroom with other children whose assigned sex is different from theirs. This lack of guidance foreseeably facilitates differing practices, such that a child's ability to access necessary accommodations turns on the county and facility in which they are receiving services. Therefore, in the same way that the proposed regulations address the unique needs of LGBTQIA+ youth in searches and access to appropriate clothing, we strongly recommend the inclusion of provisions that affirm and protect LGBTQIA+ youth in the contexts of bathroom and bedroom arrangements. Transgender, nonbinary, and gender diverse youth with access to affirming physical spaces see a 35% reduction in suicidality.²⁰ Our Commonwealth therefore has an important role to play in ensuring that youth can avail themselves of these life-saving accommodations.

In the context of bedroom arrangements, we observe that proposed 3900.83(a) would require facilities to maintain an ability to provide a child or youth with single room accommodations in response to

¹⁹ Joel Mittleman, *Adverse Childhood Experiences Among LGBTQ+ High School Students: National Evidence from the 2023 Youth Risk Behavior Survey*, 115 Am. J. Pub. Health 1137, 1137-45 (2025), <https://pmc.ncbi.nlm.nih.gov/articles/PMC12160653/pdf/AJPH.2025.308094.pdf>.

²⁰ The Trevor Project, *LGBTQ & Gender Affirming Spaces* (Dec. 3, 2020), <https://www.thetrevorproject.org/research-briefs/lgbtq-gender-affirming-spaces/>.

that individual's safety or clinical needs. We also recognize that proposed 3900.83(c) would oblige staff to consider a child's privacy, confidentiality, and personal safety needs in the bedroom assignment process. To more explicitly ensure protections for LGBTQIA+ youth, we suggest that DHS build on these laudable considerations by incorporating a **new 3900.83(e)**, which we have enclosed in **Appendix A**.

Just as gender diverse children and youth deserve an appropriate and affirming space to sleep, so too should they be able to bathe and change in a space that accords with their gender identity. Therefore, we recommend the inclusion of a **new subdivision (j)** in proposed § 3900.84: Bathrooms, to read as follows:

Transgender, nonbinary, and gender diverse children and youth shall not automatically be assigned placement in bathroom spaces based on the sex assigned to them on their birth certificates. In determining the appropriate bathroom space for a child, facility staff shall strongly prioritize the child's individualized needs as they relate to their gender identity, physical safety, and wellbeing. Facility staff shall also consult the recommendations of the child's medical and/or mental health care provider, if any, which shall include the recommendations of the child's LGBTQIA+-affirming provider with expertise and experience in providing that care.

This language closely mirrors the recommended standard of practice outlined in the Allegheny County Department of Human Services' "Housing and Placement with LGBTQIA+ Individuals" model [policy document](#). It provides important flexibility, acknowledging that navigating accommodations will not likely yield a one-size-fits-all policy but that children and youth should not be assigned to facilities incongruent with their identified needs.

g. Enforcement of Regulations

Our review of the proposed regulations indicates that new protections for LGBTQIA+ youth will only be implemented and enforced through facility-specific policies. While facility-level policies and procedures are critical, relying primarily on each facility to develop and interpret its own policies risks uneven application and disparate enforcement.

To reduce that variability and better ensure facilities meaningfully implement policies protecting LGBTQIA+ youth in daily practice, we strongly urge DHS to amend the regulations so that they require facilities to assess SOGIE-related needs *prior to* admission and prohibit facilities from accepting LGBTQIA+ youth unless they can affirmatively meet those needs. More directly, any facility authorized to admit children and youth should be required to accommodate youth of all SOGIEs as a matter of licensing. If a facility cannot effectively accommodate a youth's needs, it should not admit that youth. Such a mandate strengthens the current regulatory framework and supports its core purpose, which the Regulatory Analysis Form identifies as "support[ing] compliance and consistency" in enforcement.

PCFJ therefore recommends that the regulations be updated to include concrete, enforceable requirements consistent with this purpose. At minimum, the regulations should:

- a) Require pre-admittance SOGIE assessments;
- b) Prohibit admission where a facility cannot accommodate SOGIE considerations;
- c) Make SOGIE accommodation an unwaivable condition of licensure;

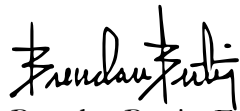
- d) Require written implementation plans, with procedures for documentation and reporting;
- e) Amend § 3900.31 to: (1) create uniform, accessible, and LGBTQIA+-specific grievance procedures, and (2) clarify that youth claiming a violation of this Chapter or wishing to appeal a decision by DHS have the right to a [fair hearing](#).
- f) Include specific enforcement measures and consequences for facilities that are not in compliance, such as corrective action plans, heightened monitoring penalties, restrictions on admissions, suspension, or license revocation.

3. Conclusion

Thank you for the opportunity to provide comments on the proposed changes to the regulations governing residential services for children and youth. We believe that your proposal, inclusive of our suggested amendments, will ensure equal access to justice for all children and youth in the Commonwealth's care. Ensuring such access directly advances the aim of Governor Shapiro's most recent [Pride proclamation](#), which laudably asserts that the administration "will continue to protect and defend the fundamental rights and freedoms of our transgender students and LGBTQ+ Pennsylvanians . . . to ensure that Pennsylvania remains a place that is warm and welcoming for all."

If you have any questions or concerns regarding our input, please do not hesitate to contact me via email, at Brendan.bertig@pacourts.us, or by phone, at (717) 231-9555, ext. 4138. We look forward to continuing to work with you to implement state regulations that reduce bias and discrimination and promote equal application of the law.

Respectfully,



Brendan Bertig, Esq.
Staff Attorney

cc: Maraleen Shields, Esq., Executive Director
PCFJ Commissioners
Members of PCFJ's Equal Opportunity & Diversity (EO+D) Committee

Appendix A: PCFJ Proposed Language for Select Regulations

Proposed New 55 Pa. Code § 3900.203(c)

(c) Confidentiality; Disclosure of Record Contents.

(c)(1) In rare circumstances, staff persons may determine that they are legally or ethically obligated to disclose confidential information.

(c)(1)(i) When confidential information is necessary for a court proceeding involving the child and rationale for the information's disclosure can be clearly stated, the staff person shall explain the reason for disclosure to the child and shall limit disclosure to that which is directly relevant to the issue to be decided by the court.

(c)(1)(ii) When a staff person or authorized agent determines that it is not safe to share a child's confidential information in open court, the staff person or authorized agent shall, as appropriate, request a private discussion with the court to limit the disclosed information to that which is directly relevant to the court proceedings and shall request that the judge issue a protective or gag order prohibiting re-disclosure of such information.

(c)(2) Staff persons shall remember that documentation of confidential information in a child's file, including information related to the child's sexual orientation and gender identity and expression, is a form of disclosure when other individuals have access to that file. Staff persons shall implement protocols to protect and otherwise limit access to paper and electronic records and copies of such files.

(c)(3) If a staff person becomes aware of a colleague disclosing a child's confidential information without the child's permission, in casual or informal interactions with colleagues not related to the delivery of services to the child, or in a manner otherwise not permitted by this section, the staff person shall report the incident to the staff person's supervisor, who shall take appropriate action to prevent further disclosure of confidential information, reduce any negative consequences resulting from the disclosure, and provide appropriate supports to the child whose confidential information was inadvertently or inappropriately disclosed.

(c)(4) Nothing in this section shall be construed as prohibiting staff persons from explaining to a child that they may choose to disclose their sexual orientation and gender identity and expression or other confidential information on their own volition if the child believes it would benefit or otherwise be relevant to their placement options, medical and/or community supports, or when engaging biological family members or other natural supports.

Proposed New 55 Pa. Code § 3900.83(e) (Bedroom Accommodations)

(e) A child may share the same bedroom with a child whose birth certificate contains an assignment of the opposite sex, if:

(e)(1) The child whose birth certificate contains an assignment of the opposite sex is nonbinary, transgender, or otherwise experiences and discloses a gender identity that falls outside of the binary categories of male or female, and that child communicates that sharing a bedroom with a child or children of the opposite assigned sex is required for that child's physical safety or well-being; and

(e)(2) Facility staff consult the recommendations of the child's medical and/or mental health care provider, if any, which shall include the recommendations of the child's LGBTQIA+-affirming provider with expertise and experience in providing that care; and

(e)(3) Facility staff determine that, based on the preference of the child and the recommendations of the child's medical and mental health care providers, if any, it is in the best interest of the child to share a bedroom with a child or children of the opposite assigned sex.

(e)(4) Nothing in subdivisions (e)(1)-(3) shall be construed as preventing facility staff from reevaluating the determined sleeping arrangements of the child if the child is placed with a child or children who share the same assigned sex on their birth certificates and it is determined that those children pose a threat to the physical safety or well-being of the child.

(e)(5) If the child's preference to share a bedroom with a child or children whose birth certificates contain an assignment of the opposite sex cannot reasonably be accommodated, individual sleeping spaces shall be made available if approved by the child or if it is deemed necessary to assure the child's safety, provided that isolating the child without cause is prohibited.