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Helping Lawyers Help Kids

IN PRACTICE

Opening Doors for LGBTQ Youth in Foster Care

by Andrea Khoury

Some studies suggest lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth are two times more likely to attempt suicide than their heterosexual peers.¹

Between 11% and 40% of homeless youth are LGBTQ.² Over half of homeless youth have spent some time in foster care.³

LGBTQ youth are two times as likely to be threatened or injured with a weapon at school and two times as likely to skip school because they feel unsafe.⁴ 69% of LGBTQ youth reported experiencing some form of harassment or violence.⁵

The reality is that the statistics and the stories are mostly grim for LGBTQ youth in foster care. Whether they enter foster care because their parents reject them due to their LGBTQ status or they disclose their LGBTQ status while in foster care, these youth experience discrimination, harassment, and often violence because of their sexuality or gender identity.

“Ignorance can only be remedied with knowledge. The system is broken; the only way to change it is through advocacy.”⁶

“I use gender neutral language when asking my clients about their dating life.”⁷

“I have a folder on my bench with resources for different issues (e.g., domestic violence). If I had a resource for LGBTQ youth, I would include it and give it to people that needed it.”⁸

Lawyers and judges can help change these statistics. Lawyers who develop relationships with LGBTQ clients and provide appropriate representation can make a difference for these youth. Judges who ask the right questions and insist on appropriate services and fair and respectful treatment can protect this vulnerable population and help them become successful adults. This article discusses the risks facing LGBTQ youth in foster care. It also describes the roles judges and lawyers must play in these young people’s lives to protect them from these risks and help them succeed.

A Life of Risks

LGBTQ youth have special risks related to their sexual orientation and gender identity that set them apart from non-LGBTQ youth in foster care. The social stigma attached to LGBTQ people causes these youth to hide their identities, fear for their safety, and often turn to

illegal substances to cope. Higher suicide rates and increased likelihood of violence in schools are two of the many risk factors lawyers and judges should be aware of when representing LGBTQ youth in foster care.

Suicide

Studies report that LGBTQ youth are twice as likely as non-LGBTQ youth to attempt suicide. Others put the number closer to four times as likely.⁹ Aside from typical adolescent turmoil, LGBTQ youth face significantly greater conflict due to their sexual orientation or gender

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About this Series

This article is the first in a four-part series prepared by the ABA's Opening Doors Project. This three-year project aims to increase the legal community's awareness of LGBTQ youth in foster care and the issues they face. It will provide advocacy tools to help lawyers successfully represent these youth and tools for judges to aid decision making. For more information about this project, visit www.abanet.org/child/lgbtq.shtml.

Topics addressed in this series are:

- Understanding LGBTQ Youth Issues (this issue)
- Attitudes and Beliefs about LGBTQ Youth (September 2007)
- Representation Issues (TBA)
- Attorney-Client Relationships (TBA)

Save the Date

Opening Doors Webcast, Thursday, October 11, 2007, 3-4 p.m. ET

The ABA Opening Doors project will host a one-hour webcast for child welfare practitioners on LGBTQ youth in foster care. Project attorneys, Mimi Laver and Andrea Khoury, will give a short presentation and take your questions about issues raised in the first two articles in this series.

To reserve your spot, e-mail Jada Mardis, mardisj@staff.abanet.org

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identity. They don't have the same feelings as their peers with respect to sexual attraction or sense of identity. During adolescence, youth explore their identities and find where they fit in. LGBTQ youth struggle with loneliness and feeling different: "*I knew that I was different, no one ever told me, but I just knew.*"¹⁰ This feeling, coupled with being in foster care and having limited resources to seek support, leaves some youth feeling like they have no way out. One youth explains it: "*As I got older through high school, it started to get even worse because I attempted suicide many times. It was too much. It was like at first I did it because I wanted people to say hey look, you know, look at me, pay attention to me. But after that I was placed at St. Jude's, and that's when I started to realize and accept that I was gay.*"¹¹

Homelessness

When youth disclose their LGBTQ

status to their parents or foster parents, the result is sometimes devastating. They are often rejected by the people they rely upon for basic needs like housing, food, and unconditional love and acceptance. Some youth voluntarily leave to escape the harassment or violence they experience at home. Some youth are forced to leave because the family does not accept their LGBTQ status: "*One day my father heard me talking on the telephone to a guy who I had met. When I got off the phone he just went crazy on me.... He told me to get out and literally threw me out the front door. I was devastated and didn't know where to go.*"¹² Some youth travel from sofa to shelter to street corner. They often have no permanent place to call home. On the streets they are more susceptible to violence and crime.

School

Youth spend the majority of time at school. It is supposed to be a place to feel safe and accepted: "*Safety*

holds different meaning for LGBTQ kids: School is hard. Any situation can mean danger. Just because they are in stable placement doesn't mean they are safe. We are quick to assume that the world likes gay people. [The] simple fact of being queer puts people at risk (physically and mentally). Judges and lawyers should start with these understandings and then take the step to question safety."¹³

School is the place where youth learn to interact with peers and form trusting relationships that often last into adulthood. LGBTQ youth in foster care have the added burden of moving from placement to placement and changing schools. They experience harassment and rejection through multiple school placements. They often do not have supportive teachers or counselors to turn to for help. Many end up dropping out or doing poorly in their studies.

Prejudicial Treatment

Seventy-four percent of LGBTQ youth in foster care believe they experience prejudicial treatment by service providers because of their sexual orientation or gender identity.¹⁴ Youth often believe that professionals accept people regardless of their differences. Sometimes they are wrong. Many youth in foster care find the professionals who work with them are just as harmful as the parents who abused them or the peers who harassed them. This realization is particularly harmful because youth feel they have no where to look for support. The people who are supposed to support, care for, and provide treatment are often the perpetrators of the harassment, intolerance, and sometimes violence.

One LGBTQ youth reported that he was in a religious foster home where it was not OK for him to be gay: "*I had my own lock box with my stuff in it. They broke into it one day while I was at school. When I*

got home, they had me all packed up, because I was gay. I left town.”¹⁵

Another youth reported: “When I was in a group home, I was assaulted because I’m gay. I didn’t appreciate that I had to take it. The staff knew what was going on but they didn’t try to stop it.”¹⁶

Still another youth reported that although most staff did not say anything to his face he overheard staff saying things like: “That new fag kid that just came in. Why do they make us put up with these gay children? Why do they ship them here? No wonder their parents get rid of them.”¹⁷

Substance Abuse

LGBTQ youth are twice as likely as heterosexual youth to abuse alcohol, and eight times as likely to use cocaine/crack.¹⁸ Using and abusing illegal substances is a common way that youth escape their troubles. LGBTQ youth in foster care have especially high rates of substance abuse due to their circumstances. Isolation, rejection, harassment, and violence can all be forgotten by getting high. “...pot, acid, ecstasy, speed...I did it all. I just wanted to kill the loneliness I felt inside. I really didn’t care if I lived or died. Trying to deal with my identity was a really difficult time for me.”¹⁹ They have limited exposure to positive coping tools and turn to substances to deal with the problems in their life.

By becoming aware of the risks associated with LGBTQ youth in foster care, lawyers and judges can take steps to address these issues. The fact that the youth is LGBTQ will factor into placement, permanency, services, advocacy by lawyers, and rulings by judges.

Legal Roles

Youth in foster care interact with social workers, foster parents, mentors, court appointed special advocates (CASAs), therapists, teachers, and other professionals.

All of these professionals try to do what is in the child’s best interests. Lawyers and judges have unique roles when the sexual orientation or gender identity of a client is an issue in a case. Judges and lawyers should not leave this issue up to the child welfare agency and other professionals to address.

The people who are supposed to support, care for, and provide treatment are often the perpetrators of the harassment, intolerance, and sometimes violence.

Judges

The judge is the gatekeeper for a youth’s safety, permanency, and well-being. Everyone follows the lead of the judge. The judge is unbiased and objective. The judge decides what is in the child’s best interests. The judge decides whether the child comes into care, services for the child, visitation with parents and relatives, the child’s permanency plan, and whether the agency has made reasonable efforts to prevent removal and finalize a permanency plan. If the judge creates an open and supportive courtroom for all youth (including LGBTQ youth), insists the agency keep the youth safe, finds an appropriate placement, and asks all parties to respect the youth, then other professionals involved in the case will follow the judge’s lead.

Lawyers

Lawyers or guardians ad litem (GAL) who represent children in dependency cases are in a unique position. Their job is to provide the voice of the child. The youth depends on the lawyer’s ability to know the system and advocate for her. Lawyers meet with the child, establish a lawyer-client relationship, request services from the child welfare agency, negotiate with parents, and advocate for the youth

in court proceedings. Sometimes youth only disclose their LGBTQ status to their lawyers because they are the only ones youth trust. Lawyers can help normalize the youth’s feelings, request LGBTQ-specific services, and address any unfair treatment. If the agency is not placing youth in supportive homes or getting appropriate services,

lawyers can make reasonable efforts and cultural competency arguments. Finally, the lawyer can appeal unjust rulings. Lawyers need the tools to successfully address all the issues that a youth may face. The youth must be able to depend on the lawyer to have this knowledge and experience.

There is a problem when youth are able to say: “I never got to go to court, I never even saw my lawyer” and “I wanted to speak on my own behalf...but I did not get to go [to court]. If I’m not there, present, my words can get twisted...I felt I was in care for longer because of this woman (GAL).” These youth need to be able to feel confident that their lawyers will advocate for them and that they will be involved in the process. One youth felt exactly this way and revealed that she had her lawyer’s cell phone number and could call and rely on her for anything. Because of the trusting relationship she had with her lawyer, this youth was able to tell her she was a lesbian. She felt heard and supported.²⁰

LGBTQ youth endure out-of-home placement in foster care and the added stigma of being LGBTQ. They cannot always rely on the agency to make things better. Judges and lawyers can make a dif-

A National Call to End Discrimination

The following child welfare and mental health organizations condemn discrimination against LGBTQ youth and reject efforts to change their sexual orientation:

- American Psychiatric Association
- American Psychological Association
- National Association of Social Workers
- American Medical Association
- American Academy of Pediatrics
- American Counseling Association
- American School Health Association
- Child Welfare League of America

ference in their lives.

Interacting with Youth

Judges and lawyers need to closely watch how they interact with LGBTQ youth. The following discussion is not exhaustive and should be supplemented based on your comfort level and knowledge of LGBTQ issues.

Attitudes

Whether known or not, lawyers and judges have preconceived notions when representing a child client or presiding over a dependency case. Some are appropriate, for example: children shouldn't live in unsafe homes, youth are generally better off in family-like settings, and children need stability and permanency in their lives. These notions are based on knowledge of the child welfare field, child development, and the best interests of children.

Some preconceived notions, however, can potentially harm a youth and/or family. Some can be based on a lack of understanding and information. Judges must understand their own beliefs about sexual orientation and gender identity when presiding over dependency cases. They must learn the issues facing LGBTQ youth in foster care. Remaining objective does not require a judge to be free of these beliefs; it requires a judge to recog-

nize them and to make rulings without imposing them on children and families. For example, a judge may feel uncomfortable with gender non-conforming behavior but have to remain objective when determining how to keep a transgender girl safe in a group home.

When interviewing and representing youth, lawyers should recognize their beliefs about sexual orientation and gender identity and not allow them to impact their representation. Developing a trusting relationship with a client is critical. If a youth feels that she is being judged based on her sexual orientation, or that her advocate has negative beliefs about homosexuality, she is likely to withhold information that may jeopardize her safety or permanency. For example, a youth who is being physically assaulted in her placement because she is a lesbian may not disclose the abuse to her lawyer if she thinks her lawyer has negative beliefs about homosexuality. She may become depressed and attempt suicide or runaway to live on the streets instead of seeking a more supportive environment with the assistance of her lawyer. (An upcoming article will further explore beliefs about LGBTQ youth, ways to recognize any preconceived notions, and how to overcome them in representation.)

Language (verbal and nonverbal)

One of the first ways a youth decides whether to trust a person is by observing that person (and his surroundings) and listening to his words.

- Is he polite?
- Does he explain who he is and why he is here?
- Does he take time to ask the youth questions to get to know the youth?
- Does he encourage the youth to talk?
- Does he have pictures of children and family around?
- Does he have books and posters around his office that signal inclusion and respect?

Lawyers have the ability within the first several minutes to establish the base for a trusting relationship.

Judges often have the opportunity to speak with youth during court hearings. Like lawyers, they can quickly show a youth whether the courtroom is safe.

- Does the judge address the youth?
- Does the judge speak with the youth respectfully and understand what the youth has had to endure?
- Does the judge let the youth speak?

(Future articles will explore how lawyers and judges can tailor language so youth feel comfortable opening up and disclosing their LGBTQ status. Knowing a youth's LGBTQ status may help advocate for services and safety measures.)

Confidentiality

Children's lives in dependency cases are often publicized for many to examine. The social worker knows about the youth's home life, school progress, doctor appointments and results, friends and social activities, and frequency of therapy appointments. Foster parents receive

reports about youth before they come into their homes. These reports are filled with details about the youth and the youth's birth family. For example: *One youth reported that his foster parents were given a report when he was placed in their home at age six stating that he was gay. He expressed dismay because at six years old he did not know what being "gay" meant.*²¹ The lawyers know most things that the social worker knows and have read and discussed the results of any medical/mental health professional's reports. The judge hears it all. Although hearings may be closed, inevitably people who don't know the youth hear the most intimate details.

Sexual orientation and gender identity are intimate issues. Youth who are heterosexual and whose gender identity matches their physical sex have trouble discussing these issues. For many youth, the topic can cause discomfort. For LGBTQ youth, the situation is worse. Because stigma is often attached to LGBTQ people, youth may refuse to disclose their status for fear of others finding out. Constantly living under this fear can spiral into any number of risk factors that are common among LGBTQ youth. Lawyers and judges can help lift the fears and stigma by assuring youth that all communications will be confidential.

When representing a youth, the lawyer should explain all communications (except a few circumstances) between the youth and lawyer are confidential and the youth should feel comfortable telling the lawyer anything. The lawyer must then stick to that promise. Many times lawyers with good intentions disclose information to social workers, foster parents, the judge, and others because they think it is in the best interests of the child. If youth are able to rely on the promise of confidentiality, they may be more likely to disclose their LGBTQ sta-

tus. The lawyer and the youth can then work together to decide if and when the youth should tell others.

If a youth is represented by a GAL or CASA, there is no confidentiality requirement. The GAL or CASA must inform the youth of the extent to which they will keep the youth's confidences. (Future articles will explore confidentiality, why it is important for LGBTQ youth in foster care, and ways to address LGBTQ issues without sacrificing the confidential relationship.)

Conclusion

*I think foster care is hard enough in the best cases. LGBTQ youth already feel estranged and foster care does nothing to make them feel like they belong.*²²

LGBTQ youth experience harassment, violence, homelessness, and rejection. Lawyers and judges can ensure this does not continue by using the legal system to make LGBTQ clients safe, give them permanency, and ensure their well-being.

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