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Ten Tips for Family Court Professionals Working with Families of Transgender/Gender-Expansive Children Engaged in Custody Disputes

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Custody cases involving transgender and gender-expansive (TGE) children have garnered media [attention](#) in recent years. How do family court professionals (FCPs) work with TGE children and families when one parent affirms a child's gender identity/expression and another is unsupportive? Recent research has examined the complex challenges experienced by affirming parents and their TGE children involved in custody disputes. Due to lack of familiarity within family courts regarding TGE children, misinformation and bias have resulted in affirming parents losing physical custody and/or legal decision-making authority of their TGE children often with detrimental impacts on the children ([Kuvalanka et al., 2019](#)). (*For relevant law review articles, see: [Margolis, 2016](#); [Perkiss, 2014](#); [Skougaard, 2011](#)*). The following are ten tips for FCPs learning about how to advocate for this vulnerable population.

- 1. Listen to and center the child's experience:** Transgender identities and diverse gender expressions are normal aspects of human diversity—and TGE children, like their cisgender peers, have an understanding of their gender from a young age ([American Academy of Pediatrics, 2018](#)). They benefit from being listened to and believed when sharing their identity with family members, providers, and court professionals. Giving a child room to explore their gender identity in a safe, nonthreatening environment is the goal of the [gender-affirmative care model](#). As an FCP, you could be in a critically important and unique position to advocate for a TGE child.
- 2. Familiarize yourself with the literature on family acceptance:** TGE youth who lack supportive families are far more likely to experience depressive symptoms and suicidal ideation (Aitken et al., 2016; Perez-Brumer et al., 2017). The [American Academy of Pediatrics](#) summarizes the existing body of research, which clearly indicates that TGE children not supported in their identities face an increased likelihood of experiencing

adverse social, emotional, and physical health outcomes. Family acceptance is a critical factor when it comes to the health and well-being of TGE children.

3. **Educate yourself on the structures that impact TGE children and their families:** The issues and challenges that TGE children and their families face are complex and multifaceted. Systemic bias and transphobia in [societal institutions](#), such as schools, laws, and health care, can contribute to physical and mental health disparities for TGE youth. TGE children may also face additional risk factors, such as adverse childhood experiences, resulting from family rejection and/or racism. FCPs, who lack training around gender diversity and the best interests of TGE children, may unintentionally exacerbate negative outcomes for TGE children.
4. **Interrupt and challenge interpersonal and institutional transphobia in family court:** Transphobia can take on many forms in family court. The most common in these cases is when an affirming parent is “[blamed](#)” for causing the child to be TGE. Parental acceptance does not determine or change a child’s gender identity, but it can “[profoundly affect young people’s ability to openly discuss or disclose concerns about their identity](#).” Transphobia in family court can also lead to: a) assertions that affirming gender experts are “biased,” b) statements that a child is too young to know their gender, and c) use of Child Protective Services to falsely allege that an affirming parent’s affirmation or validation of their child’s gender is akin to child abuse. FCPs can pay attention to ways in which transphobia manifests in family court and can actively challenge any claims that affirmation and support of a TGE child’s gender identity are detrimental.
5. **Recognize coercive tactics sometimes utilized by non-affirming parents:** Coercive and controlling tactics on behalf of a non-affirming parent toward an affirming parent (as well as toward the child) can occur in these [cases](#). Psychological and emotional abuse, which may have been evident prior to relationship dissolution, can continue post-dissolution through the courts. In these situations, family court has been used by non-affirming parents as a vehicle to further control and punish the affirming parent, such as through relentless threat of (or actual) court filings, which can intimidate and financially devastate, and using court orders to block affirmation of the child’s gender.
6. **Oppose harmful court orders that seek to restrict a child’s gender expression:** Firmly oppose any recommendations that seek to limit a child’s gender exploration or identity development. Court orders that take away toys, clothes, or a child’s favorite items deemed “not in accordance with the child’s sex assigned at birth” are uninformed, arbitrary, harmful, and are not in line with a [gender affirmative model](#).

7. **Understand that a “gender neutral” approach can cause harm:** Some affirming parents have been ordered to refrain from speaking to their TGE children about gender or to stop using the name or pronouns that a child has requested. These orders assume that a “gender-neutral” approach is benign and that, rather than affirming a TGE child’s asserted gender, a more prudent approach is to wait and see if a child is “really transgender.” The [American Academy of Pediatrics](#) asserts that “watchful waiting” is “an outdated approach” that “does not serve the child because critical support is withheld,” and goes on to say that “current research suggests that, rather than focusing on who a child will become, valuing them for who they are, even at a young age, fosters secure attachment and resilience, not only for the child but also for the whole family.”
8. **Seek out experts in the field and follow current standards of care:** FCPs are increasingly turning toward medical and mental health professionals with gender-related expertise for guidance and recommendations when parents disagree about a child’s gender identity or expression. FCPs can also educate themselves by referring to current best practices and standards of care from the [American Academy of Pediatrics](#), the [American Psychological Association](#), and the [World Professional Association for Transgender Health Standards of Care](#). Court delays, due to lack of awareness, implicit bias, and transphobia, that restrict access to affirming health care can have dire consequences for TGE youth. Please visit our [provider toolkit](#) for additional information.
9. **Recognize that affirming parents may need legal and/or financial assistance:** In high-conflict [cases](#), affirming parents can experience significant financial strain due to ongoing litigation stemming from a non-affirming parent’s attempts to stop affirmation of a TGE child’s gender. This happens especially where courts are uninformed about TGE identities in childhood and, therefore, sympathetic to a non-affirming parent’s claims. Some affirming parents who are sued for custody end up out-resourced by the other parent and find it challenging or impossible to afford initial or ongoing legal counsel. In instances where the child’s gender is the central issue, consider connecting the affirming parent to discounted or pro bono legal services, or, when possible, direct gender-related filings to less expensive options, such as guardians ad litem, parenting coordinators, therapeutic interventionists, or community advocates educated about TGE children.
10. **Engage in continuing legal education related to TGE children in family court:** There is a need for well-informed, unbiased FCPs assigned to these [cases](#). Affirming parents and their children would benefit from encountering FCPs who have sound knowledge of TGE identities and gender nonconformity in childhood, including health and mental health disparities of those not supported in their identity. We encourage self-reflection and critique of the legal system (both historically and present-day) and the harm done to

sexual and gender-diverse youth and adults. Legal education on implicit and explicit bias is strongly recommended as a core component of any legal training.

The authors will present a pre-conference institute, *Affirming or Corrupting the Child's Truth: Family Dynamics, Gender Identity, Domestic Violence, and Special Needs*, along with co-presenters Benjamin Garber, Jessica Greenwald O'Brien, and Sol Rappaport, at the AFCC Fall Conference, set for November 11-13, 2021, in Cincinnati, Ohio. [Register now](#) to attend this important, thought-provoking presentation!

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