



Committee for Public Counsel Services

Children and Family Law Division

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Thomas P. Weierman, Deputy General Counsel
Department of Children and Families
One Ashburton Place
3rd Floor, Boston, MA 02108

Re: Comments regarding proposed 110 CMR 7.104

Dear Mr. Weierman:

The Committee for Public Counsel Services appreciates the opportunity to comment on the Department's proposed regulations. Our comments and recommendations regarding the Department's proposed 110 CMR 7.104 follow.

The proposed change, which CPCS objects to, makes it even more important that all DCF staff involved in a child's placement in foster care fulfill DCF's legal obligations to that child. CPCS notes that each child in DCF's care has a substantive due process right to a placement that ensures their safety and wellbeing (*Gotay v. Creen*, 495 Mass. 537 (2025)). The child's health, safety, and long-term wellbeing are of "paramount concern" in a care and protection case (G. L. c. 119, § 1), and DCF must make decisions that promote reunification or another court-determined permanency plan for a child (G. L. c. 119, §§ 29B, 29C).

DCF's understanding of its legal obligations to children is reflected in its policies and, in particular, the Safe and Supported Placements Policy (SSPP). But a policy is of no value unless it is followed. Particularly in light of the regulatory change, it is vital that DCF ensure that its staff and agents comply with the requirements of SSPP, which explains that because "the Department is committed to minimizing transitions for a child and making efforts to ensure the child's first placement is their only placement . . . [p]lacement decisions are based on matching the child's best interests to a foster family who can provide for their needs, including those needs related to safety [and] well-being[.]" SSPP also requires foster family social workers and their supervisors to "consider[] all characteristics of the child when selecting a [foster] placement[.]" These and other policy provisions would, if faithfully implemented, protect children from placement with foster families who would be unable to meet their needs and, specifically, their needs related to their sexual orientation, gender identity, or gender expression.

DCF staff cannot foresee how a child's needs may change during their placement, though. For example, DCF may place a five-year-old child with a foster family who, at the time of placement and even

for many years thereafter, is able to meet their needs. But if the child comes out at age twelve and, because of sincerely held religious beliefs, the foster family is unable to affirm their now expressed sexual orientation, gender identity, or gender expression, that family will cease to be a match for the child's needs. The consequences for the child will be significant: they will be moved from the placement and likely will experience that move as punishment for coming out. Other children may take from this that they need to conceal their sexual orientation or gender identity to preserve a placement and avoid adverse consequences.

There will also be collateral consequences to other children from the proposed regulatory change. A child in care may not identify as LGBTQ+ themselves but may have or develop a significant relationship with someone – e.g., a sibling, parent, or friend – who does. Or they may have questions about something they heard in school or saw in the community. Children who are unable to communicate openly with their foster families about LGBTQ+ identities because of the foster families' sincerely held religious beliefs, or who are discouraged or prohibited from discussing sexual orientation, gender identity, or gender expression in their placement, will experience unique stressors – among others, lack of support for their own understanding of LGBTQ+ identities. And they may not be provided the same opportunities and relationships as other children. For example, a child may be discouraged or prohibited from, or even disciplined for, engaging in friendships with LGBTQ+ peers. Coupled with recent changes to the LGBTQIA+ Nondiscrimination Policy – including removal of the explicit language requiring use of the terms an individual uses to describe themselves and prohibiting attempts by DCF staff, foster parents, and service providers to convince children to reject or modify their sexual orientation, gender identity, or gender expression – the proposed regulatory change raises significant concerns for CPCS about DCF's ability to continuously ensure the safety and wellbeing of every child in its care.

CPCS suggests that DCF consider an alternative to its proposed language that will be more protective of all children in care. Specifically, rather than replace the current language, CPCS suggests that DCF include an exception for foster parent applicants whose sincerely held religious beliefs preclude them from affirming a child's sexual orientation, gender identity, or gender expression. Including such an exception removes the onus from children and places it on the adults charged with their care and protection. CPCS recommends that the regulation read “In order to be licensed as a foster/adoptive parent, a foster/pre-adoptive parent applicant must meet the following requirements . . . (d) to promote the physical, mental, and emotional well-being of a child placed in his or her care, including supporting and respecting a child's sexual orientation or gender identity. *If a foster parent applicant is unable to support a child's sexual orientation or gender identity due to their sincerely held religious beliefs, that circumstance will not exclude them from licensure, but will inform DCF's placement decisions if licensure ultimately is granted.*” Again, CPCS objects to the proposed regulatory change but, if it must be made, we hope DCF will adopt this recommendation.

Please let us know if you have any questions regarding any of these comments. We look forward to continued conversations between CPCS and the Department about these updated regulations.

Sincerely,

Daniel J. Mahoney, Deputy Chief Counsel
Ann Balmelli O'Connor, Attorney in Charge
Katrina M. Krywonis, Legal Training Attorney