

§ 1355.22 Designated Placement requirements under titles IV-E and IV-B for LGBTQI+ children.

LGBTQI+ children (including children with lesbian, gay, bisexual, transgender, queer, or questioning, and intersex status or identity) shall be placed and receive services in accordance with the following requirements:

(a) *Protections generally applicable.* As part of meeting the requirement to provide a safe and appropriate placement for all children in foster care, the title IV-E/IV-B agency must ensure that all placements, including those for LGBTQI+ children, are free from harassment, mistreatment, or abuse.

(b) *Designated Placements and services for LGBTQI+ children.* The title IV-E/IV-B agency must meet the following requirements for each LGBTQI+ child in foster care:

(1) *Designated Placements.* The title IV-E/IV-B agency must ensure there is a Designated Placement available for all LGBTQI+ children in foster care who request or would benefit from such a placement. Nothing in this section requires any provider to become or serve as a Designated Placement. As used in this section, for a placement to be specifically designated for an LGBTQI+ child, the provider must meet the protections generally applicable as defined at paragraph (a) of this section and:

(i) Commit to establish an environment that supports the child's LGBTQI+ status or identity;

(ii) Be trained with the appropriate knowledge and skills to provide for the needs of the child related to the child's self-identified sexual orientation, gender identity, and gender expression. The training must reflect evidence, studies, and research about the impacts of rejection, discrimination, and stigma on the safety and wellbeing of LGBTQI+ children, and provide information for providers about professional standards and recommended practices that promote the safety and wellbeing of LGBTQI+ children; and

(iii) Facilitate the child's access to age- or developmentally appropriate resources, services, and activities that support their health and well-being as described in paragraph (e) of this section.

(2) *Process for notification of and request for Designated Placements.* The IV-E/IV-B agency must implement a process by which an LGBTQI+ child may request a Designated Placement as described in paragraph (b)(1) of this section or request that their current placement be offered services to become a Designated Placement. The title IV-E/IV-B agency's process for considering such a request must provide the child with an opportunity to express their needs and concerns. The process must safeguard the privacy and confidentiality of the child, consistent with section 471(a)(8) of the Act and 45 CFR 205.50, and must include the following components:

(i) Notice of the availability of Designated Placements and the ability to request that services be offered to their current placement must be provided to, at minimum:

(A) All children age 14 and over; and

(B) Children under age 14 who:

(1) Have been removed from their home due, in whole or part, to familial conflict about their sexual orientation, gender identity, gender expression or sex characteristics; or

(2) Have disclosed their LGBTQI+ status or identity or whose LGBTQI+ status or identity is otherwise known to the agency;

(ii) The notice must be provided in an age- or developmentally appropriate manner, both verbally and in writing, and must inform the child of how they may request a Designated Placement or services for their current placement and the process the title IV-E/IV-B agency will use in responding to their request; and

(iii) The notice must inform the child of the nonretaliation protections described at paragraph (d) of this section and describe the process by which a child may report a concern about retaliation.

(3) *Placement and services decisions and changes.* When making placement and service decisions related to an LGBTQI+ child, the title IV-E/IV-B agency shall give substantial weight to the child's expressed concerns or requests when determining the child's best interests. To promote placement stability, when an LGBTQI+ child requests a Designated Placement and before initiating any placement changes, the title IV-E/IV-B agency must consider whether additional services and training would allow the current provider to meet the conditions for a Designated Placement. If so, and if the current provider is willing to meet the conditions for a Designated Placement, the IV-E/IV-B agency must use the case review system to regularly review the provider's progress towards meeting the conditions of such a designation.

(c) *Process for reporting concerns about placements and concerns about retaliation.* The title IV-E/IV-B agency must implement a process for LGBTQI+ children to report concerns about a placement that fails to meet the applicable requirements of this section, and to report concerns about retaliation as described in paragraph (d) of this section. The process must safeguard the privacy and confidentiality of the child, consistent with section 471(a)(8) of the Act and 45 CFR 205.50. The title IV-E/IV-B agency must respond promptly to an LGBTQI+ child's reported concern, consistent with the agency's timeframes for investigating child abuse and neglect reports depending on the nature of the child's report.

(d) *Retaliation prohibited.* (1) The title IV-E/IV-B agency must have a procedure to ensure that neither the title IV-E/IV-B agency, nor any provider, nor any entity or person acting on behalf of the agency or a provider retaliates against an LGBTQI+ child in foster care based on the child's actual or perceived LGBTQI+ status or identity, any disclosure of that status or identity by the child or a third party, or the child's request or report related to the requirements for placements or services under this part.

(2) Conduct by the title IV-E/IV-B agency, provider, or any entity or person acting on behalf of the agency or a provider that will be considered retaliation includes, but is not limited to:

(i) Harassment, mistreatment, or abuse as described in paragraph (a) of this section.

(ii) Attempts to undermine, suppress, change, or stigmatize a child's sexual orientation or gender identity or expression through "conversion therapy."

(iii) Unwarranted placement changes, including unwarranted placements in congregate care facilities, or restricting an LGBTQI+ child's access to LGBTQI+ peers, siblings, family members, or age- or developmentally appropriate materials and community resources.

(iv) Disclosing the child's LGBTQI+ status or identity in ways that cause harm or risk the privacy of the child or that infringe on any privacy rights of the child.

(v) Using information about the child's LGBTQI+ status or identity to initiate or sustain a child protection investigation or disclosing information about the child's LGBTQI+ status or identity to law enforcement in any manner not permitted by law.

(vi) Taking action against current or potential caregivers (including foster parents, pre-adoptive parents, adoptive parents, kin caregivers and birth families) because they support or have supported a child's LGBTQI+ status or identity.

(e) *Access to supportive and age- or developmentally appropriate services.* The title IV-E/IV-B agency must ensure that LGBTQI+ children have access to age- or developmentally appropriate services that are supportive of their sexual orientation and gender identity or expression, including clinically appropriate mental and behavioral health supports.

(f) *Placement of transgender and gender non-conforming children in foster care.* When considering placing a child, the title IV-E/IV-B agency must offer the child a placement consistent with their gender identity. The title IV-E/IV-B agency must also consult with the child to provide an opportunity to voice any concerns related to placement.

(g) *Compliance with privacy laws.* The title IV-E/IV-B agency must comply with all applicable privacy laws, including section 471(a)(8) of the Act and 45 CFR 205.50, in all aspects of its implementation of this section. Information that reveals a child's LGBTQI+ status or identity may only be disclosed in accordance with law and any such disclosure must be the minimum necessary to accomplish the legally-permitted purposes.

(h) *Training and notification requirements.* In addition to meeting the requirements of paragraph (b)(1)(ii) of this section, the title IV-E-/IV-B agency must:

(1) Ensure that its employees who have responsibility for placing children in foster care, making placement decisions, or providing services:

(i) Are trained to implement the procedural requirements of this section; and

(ii) Are adequately prepared with the appropriate knowledge and skills to serve an LGBTQI+ child related to their sexual orientation, gender identity, and gender expression.

(2) Ensure that all its contractors and subrecipients who have responsibility for placing children in foster care, making placement decisions, or providing services are informed of the procedural requirements to comply with this section, including the required non-retaliation provisions outlined in paragraph (d) of this section.

(3) Ensure that all placement providers are informed of the procedural requirements to comply with this section, including the required non-retaliation provision outlined in paragraph (d) of this section.

(i) *Protections for religious freedom, conscience, and free speech.* Insofar as the application of any requirement under this section would violate applicable Federal protections for religious freedom, conscience, and free speech, such application shall not be required.

(j) *No penalties for providers that do not seek to qualify as Designated Placements.* Nothing in this section shall be construed to require or authorize a State or Tribe to penalize a provider in the titles IV-E or IV-B programs because the provider does not seek or is determined not to qualify as a Designated Placement under this section.

(k) *Severability.* Any provision of this section held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this section is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this section and shall not affect the remainder thereof.

(l) *Implementation.* Title IV-E/IV-B agencies must follow the requirements of this section beginning on October 1, 2026.

(m) *No effect on more protective laws or policies.* Nothing in this section shall limit any State, Tribe, or local government from imposing or enforcing, as a matter of law or policy, requirements that provide greater protection to LGBTQI+ children than this section provides.

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