

Representing Transgender Youth: Learning from Mae's Journey

by Garry Bevel

Mae is the life of the party. She sings and dances at parties and excels in school. When she comes to court hearings people notice how alive and talkative she is. At age eight, it is like she is a new person. In many ways, she is.

Flash back to a few months ago. Kyle was shuffled between placements—11 total. His mother had two other children in the child welfare system and was struggling to manage her responsibilities while in substance abuse rehab. Kyle's older brother routinely burst into fits of anger and performed poorly in school. This family had a long history of mental health problems. It seemed Kyle might follow his mother and brother's path. However, an attentive foster mother, child welfare agency, child's attorney, and judge made it possible for us to learn Kyle was really Mae, and that Mae had a much better life ahead.

If a youth on your caseload behaves or presents in ways that do not conform to expected gender norms, showing understanding and becoming aware of the underlying issues will protect that youth's safety and well-being. The most important thing you can do for transgender youth (or youth you believe may identify as transgender) is be aware of local resources and apply the law and relevant social and medical science to your advocacy so the youth feels accepted and empowered.

This article explores the efforts that made a difference for Mae during her journey through the child

welfare system, including advocacy tips and best practices for legal practitioners when working with transgender youth.

Rights of Transgender Youth in Foster Care

The Equal Protection Clause, Due Process Clause, First Amendment, and Title IX protect transgender youths' rights to safety in schools (freedom from harassment), expression (freedom of dress), equal access, and opportunity to participate in activities.¹ Transgender youth also enjoy freedom of religion (including the right not to practice a

religion). The Hate Crimes Bill (now the Matthew Shepard Act)² was recently expanded to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity, or disability. The Fostering Connections Act provides additional avenues to protect and support transgender youth (see box).

State protections for transgender youth vary. The National Center for Lesbian Rights has a state-by-state guide³ to laws protecting transgender people.

Placement

Mae's placement promoted her safety, well-being, and permanency. The child welfare agency trained its staff and recruited and trained foster parents on the needs of lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth in foster care. Mae's preadoptive foster parent was accepting and actively participated in Mae's services. Allowing Kyle (later Mae) to explore questions of gender identity and expression alleviated previous maladaptive behaviors. Mae did not require medications to control her behavior, she showed appropriate social interaction, and improved in school. "Adequate resources and a relationship characterized by warmth, closeness, parental sensitivity, and commitment that promotes healthy adjustment"⁴ reinforce a child's long-term well-being.

How to approach a young person's gender identity when considering placement is controversial. Experts agree that forcing a child to conform to strict gender roles or reparative therapy is harmful.⁵ Instead, a safe placement takes a holistic view of the young person's environment, gender identity, and

Building Relationships with Transgender Youth

- Use gender-neutral language ("Are you seeing anyone special?" vs. "Do you have a girlfriend?").
- Ask which pronoun/name the youth prefers.
- Display posters of LGBT role models or LGBTQ-friendly signs and antidiscrimination policies.
- Share stories that demonstrate your openness and acceptance.
- Take action if you witness or hear anti-LGBTQ discrimination or harassment.
- Judges can make nondiscrimination the standard in their courtrooms and with court personnel.
- Maintain confidentiality, but make it clear that your role as an advocate does not always *guarantee* confidentiality.
- Be sensitive to practical needs like name changes on important government and personal documents.

Understanding Terms

Biological sex is a male or female classification assigned at birth based on anatomy and genitalia. Gender and gender expression are distinct from biological sex.

Gender is a term that is often used to refer to ways that people act, interact, or feel about themselves, which are associated with boys/men and girls/women. While aspects of biological sex are the same across different cultures, aspects of gender may not be¹ (i.e., expected gender expression in one culture or society may be different from expected gender expression in a different culture or society).

Gender nonconforming (or gender variant) children behave, dress or play, or express feelings about themselves that differ from what is expected for their gender. It could be a boy playing with dolls instead of trucks, or a girl who says she wants to be a boy, or is a boy. This is best understood to be a natural, albeit uncommon, variation in human development.²

Sexual orientation refers to an enduring pattern of emotional, romantic, and/or sexual attractions to men, women, or both sexes. Sexual orientation also refers to a person's sense of identity based on those attractions, related behaviors, and membership in a community of others who share those attractions. Research shows that sexual orientation ranges along a continuum, from exclusive attraction to the other sex to exclusive attraction to the same sex. Sexual orientation is distinct from other components of sex and gender, including biological sex, gender identity, and social gender role³ (e.g., being transgender is separate from the individual's sexual orientation).

Transgender is an umbrella term used to describe people whose gender identity (sense of themselves as male or female) or gender expression differs from that usually associated with their birth sex.⁴ When used broadly, being transgender is not *per se* a mental illness.⁵ Being transgender does not imply that the individual desires or intends to undergo sexual reassignment. There is a difference between being transgender, being transgender and seeking to live as the opposite gender, and being gender nonconforming (and otherwise satisfied with physiological and anatomical features).

Visit www.abanet.org/child/lgbtq.shtml for definitions of lesbian, gay, bisexual, transgender, and questioning.

Sources

¹ American Psychological Association Task Force on Gender Identity, Gender Variation, and Intersex Conditions. "Answers to Your Questions about Transgender Individuals," 2006, accessed October 18, 2010. <www.apa.org/topics/sexuality/transgender.aspx>

² Gender Identity Research and Education Society (GIRES). "Medical Care for Gender Variant Children and Young People: Answering Families' Questions," 2008, 4. www.gires.org.uk/assets/DOH-Assets/pdf/doh-children-and-adolescents.pdf

³ Ibid.

⁴ American Psychological Association, 2006.

⁵ National Center for Transgender Equality. "Frequently Asked Questions About Transgender People." 2009. Retrieved from http://transequality.org/Resources/NCTE_UnderstandingTrans.pdf.

presenting issues. The World Professional Association for Transgender Health's (WPATH) *Standards of Care for Gender Identity Disorders* recommends:

The child and family should be supported in making difficult decisions regarding the extent to which to allow the child to assume a gender role consistent with his or her gender identity. This includes issues of whether to inform others of the child's situation, and how others in the child's life should respond; for example, whether the child should attend school using a name and clothing opposite to his or her sex of assignment. They should also be supported in tolerating uncertainty and anxiety in relation to the child's gender expression and how best to manage it. Professional network meetings can be very useful in finding appropriate solutions to these problems.⁶

Practice tips:

- Be prepared to rebut anecdotal or opinion arguments with social science research that makes clear that lack of acceptance, reparative therapy, physical or emotional violence, and discrimination based on gender identity is harmful.⁷
- In cases where youth are not in a supportive placement, ask for findings that reasonable efforts have not been made to secure a safe, stable placement.
- Hallmarks of LGBTQ-friendly placements include unambiguous nondiscrimination and antiharassment policies, evidence of training on LGBTQ issues, and placements that hold themselves out as being LGBTQ-friendly.

Medical/Therapeutic Services

Mae was participating in therapy with an LGBTQ-friendly clinician at

her agency. The clinician supported Mae and her foster parent by offering guidance and tips for integrating Mae's identity into daily life. For example, the clinician suggested when and how to allow Mae to dress in female clothing and how to handle questions and comments from peers. Additionally, the agency was linked with community resources that offered assistance to Mae and her foster mother, including education on gender and sexual orientation, and provision of social programming and activities for LGBTQ youth.

Some transgender children and youth meet criteria for gender identity disorder. Youth diagnosed with gender identity disorder should be considered for treatment when deemed necessary by a qualified physician or clinician.

Gender identity disorder is characterized in the DSM-IV-TR as a persistent discomfort with one's assigned sex and with one's primary and secondary sex characteristics, which causes intense emotional pain and suffering⁸ and if left untreated, can result in clinically significant psychological distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death.⁹

Transgender youth without a gender identity disorder diagnosis should also receive medical and mental health assessments. These assessments may suggest medical interventions like hormone treatments and surgery. The appropriateness of these interventions will be considered on an individual basis, taking age and psychological factors into account.

The Fostering Connections Act requires states to develop plans with Medicaid for ongoing oversight and coordination of health care services for *any* child in foster care,¹⁰ and

those services should be specific to the needs of the transgender youth.

Practice tips:

- Seek out medical and therapeutic experts in the field. For instance, search HealthCommunities.com, LGBHealthcare.com, WPATH.org, or GMLA.org (Gay and Lesbian Medical Association).
- Create a resource list in your jurisdiction of LGBTQ-competent services/medical providers.
- Be careful that transgender people are not denied coverage for medically necessary procedures because their documented gender does not correspond to the "gender-specific" service,¹¹ (e.g., gynecology, prostate/breast cancer screening, etc.) or if gender identity disorder has been diagnosed.

School

Mae's foster parent spoke to school administrators in advance about Mae's gender identity. The school agreed to allow Mae to use a unisex bathroom. School administrators also sat down with Mae's foster parent, caseworkers, and teachers to discuss Mae's experience and how to appropriately address it. Though issues related to social activities and sports would present themselves later, opening a dialogue and engaging all the stakeholders created an environment to discuss solutions.

Youth have a right to a public education, and to be safe at school. The Fostering Connections Act requires states to improve educational stability for children in care.¹² "In addition to prohibiting harassment, the law also prohibits discrimination against transgender and gender-nonconforming youth. This means that school officials have to let a student wear clothing that matches the student's gender identity, and cannot refuse to call the student by the name and pronoun the student

prefers. The school also has to provide transgender and gender non-conforming students with access to a safe and appropriate restroom and locker room or an appropriate alternative place to change for gym class."¹³ Discrimination at schools can lead to higher rates of emotional distress, suicide attempts, and substance abuse.¹⁴

Practice tips:

- Know the school's discrimination and antiharassment policies.
- Prepare by reviewing and understanding relevant school laws and policies (e.g., Safe Schools Coalition School Law and Policy Guide).¹⁵
- Ensure youth are not isolated or removed from a school solely because of their gender identity without appropriate efforts and intervention by the school.
- If inadequate facilities or harassment make a school an unfit environment for any of your youth, advocate for a different school placement.
- Locate schools with Gay-Straight Alliances (GSAs) and policies that support transgender youth and nondiscrimination.
- Look for warning signs that a youth may be experiencing bullying or harassment or is bullying others in response to discrimination or harassment.

Mae's Family

Kyle and his mother had a close bond that was tested when Kyle began to live as Mae. Mae's mother was heartbroken when the transition occurred. Many parents of transgender children and youth say the experience is like losing a child. The American Psychological Association suggests that parents and caregivers:

Get support in processing reactions. Having someone close to you transition will be an

Legal Tools

Discrimination—Title VII - Sex Discrimination – Supreme Court language suggests protection for LGBT people based on “gender stereotypes.” (*Price Waterhouse v. Hopkins*, 490 U.S. 228 (1998).)

Privacy—Constitutional right to privacy/autonomy (*Lawrence v. Texas*, 539 U.S. 558 (2003).)

Confidentiality—Explain your role to your client, if your role as an advocate does not include attorney-client privilege and what that means about the information your client may disclose.

Documents—Understand your state’s law about what is required to change driver’s licenses/IDs, birth certificates, social security cards.

Detention—Do not isolate LGBT youth. Federal case counted isolation of LGBT youth among other detention center abuses (*R.G., et al. v. Koller*, 415 F. Supp. 2d 1129 (D. Hawaii 2006).)

Facilities—Understand your city, state, or county’s position on restroom use. “Reasonable accommodations” are required of employers under the Occupational Health and Safety Act (OHSA).

Schools—Encourage schools to seek technical assistance from the Department of Education. Schools have a duty to protect students from bullying and harassment.

Medical—Per se exclusions under Medicaid have been found unconstitutional (*Doe v. State Dep’t. of Public Welfare*, 257 N.W.2d 816 (Minn. 1977)). Each case must be assessed individually.

See also, New York appellate court finding that the court lacks authority to order agency to pay for sex reassignment surgery. (*Mariah L. v. Administration for Children’s Services*, 820 N.Y.S.2d 257 (App. Div. 2006).)

How the Fostering Connections Act Supports Your Practice and Advocacy

Section 101 provides support for locating and assisting relative caregivers.

Section 102 provides support to kinship or relative caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs as well as working to reestablish relationships.

Section 103 requires due diligence locating relatives and to inform adult relatives of additional services and supports available to the child.

Section 202 ensures an individualized transitional plan for older youth.

Section 203 provides short-term training dollars for child welfare agencies, staff and court personnel.

Section 204 ensures the educational stability of youth in foster care

Section 205 requires the state to develop a plan for the ongoing oversight and coordination of health care services for any child in care.

adjustment and can be challenging, and takes time. Mental health professionals and support groups for family, friends, and significant others of transgender people can be useful resources.¹⁶

Working with the agency, Mae’s therapist, and the foster parent, Mae’s mother continued to spend time educating herself about Mae’s life and experience. “LGBT young adults whose parents and foster parents support them have better overall health, and mental health. They also have higher self-esteem. They are also much less likely to be depressed, use illegal drugs, or think about killing themselves or attempt suicide”¹⁷ Meanwhile, LGBT young people who were rejected by their families because of their identity have “much lower self-esteem and have fewer people they can turn to for help, are more than 8 times as likely to have attempted suicide, nearly 6 times as likely to report high levels of depression, more than 3 times as likely to use illegal drugs; and more than 3 times as likely to be at high risk for HIV and STDs.”¹⁸

Support for the family should consider ways to integrate the youth’s identity into the family and offer education and strategies for addressing the needs of transgender youth, while honoring any discomfort or unfamiliarity family members may have. Any mental health assessments should include a family evaluation, because other emotional and behavioral problems within the family are very common, and unresolved issues in the child’s environment are common.¹⁹

Use the Fostering Connections Act to argue for notifying grandparents and adult relatives who may be (or may become) suitable and supportive placements. The Act also encourages reasonable efforts to place youth with siblings and provide visitation when they are not placed together. If you are successful in

working with the family to provide permanency, Family Connections grants are available to provide resources for family group decision-making meetings.²⁰

Practice tips:

- Advocate for mental health and family therapy services that support acceptance when a continuing relationship with a parent is likely and appropriate.
- Ensure mental health professionals and service providers recognize and accept the gender identity experience. Acceptance and removal of secrecy can bring much relief.²¹
- Avoid assuming that a parent or family will not accept the youth. An LGBT young person is 24% more likely to be a happy adult if his or her family is “a little accepting” versus “not accepting at all.”²²

In Court

Mae’s transition was not without problems. Before and after court, there were often disparaging, insensitive, and uninformed comments made about Mae, her foster mother, and the professionals who supported allowing Kyle to live as Mae. This included court clerks, parents’ attorneys, and bailiffs. It is important that any courtroom be free of harassment and discrimination. If you hear or see behaviors that are inappropriate in the courtroom, consider these steps:

- Speak to the judge directly.
- Speak to the employee’s supervisor.
- Offer education and speak to the individual directly if you feel comfortable.
- If the behaviors or comments are made in front of the youth, ask the youth what he or she would like done.
- Remind the youth that the comments and behaviors are not a

Training Resources:

ABA Center on Children and the Law Opening Doors Project for LGBTQ Youth in Foster Care: Project that improves outcomes for LGBTQ youth in foster care through training, practice and advocacy tips for the legal community and child welfare professionals. www.abanet.org/child/lgbtq.shtml

Child Welfare League of America/Lambda Legal: Back to Basics: Toolkit that addresses LGBTQ disproportionality in the foster care and juvenile justice systems. www.lambdalegal.org/take-action/tool-kits/getting-down-to-basics/

Human Rights Campaign: All Children All Families Initiative: Project that improves LGBT competence and LGBT awareness of foster care and adoption opportunities. www.hrc.org/issues/12111.htm

The Downs Group LLC: Organization that improves services and outcomes for older youth. www.downsconsultinggroup.com.

The Equity Project (juvenile justice): Project that ensures LGBT youth in delinquency courts are treated with dignity, respect and fairness. www.equityproject.org

reflection of him or her, but the other person’s lack of understanding and fear.

- The Model Code of Judicial Conduct and the Model Rules of Professional Conduct apply a standard for judges and lawyers to act in nonbiased ways when addressing the needs of LGBTQ and all youth. This means personal opinions and beliefs about gender expression and transgender people may not influence legal representation and decision making in a case.

Avoiding Labels

Experts agree it is not helpful to force a child to act in a more gender-conforming way.²³ Gender variance is a natural part of human development (see “Understanding Terms” box) and may take many forms, including:

Boys

- wanting to dress as a girl
- wanting to wear long hair (e.g.,

with a towel, braiding yarn or string into hair)

- wanting to paint toenails or fingernails
- preferring to play with dolls or participate in activities typical for girls
- wanting a nongendered nickname (AJ, Pat, Grey, Blake, Terry, etc)

Girls

- wanting to dress as a boy
- wanting short, cropped hair
- preferring not to wear make-up
- preferring baggy clothes and pants to dresses and skirts
- wanting to reduce or eliminate the appearance of breasts
- wanting a nongendered nickname

Gender variance alone is not a sign a youth is gay, lesbian, transgender or has a disorder. For children who are gender nonconforming, and do not seek to live or dress as the opposite gender, not being allowed to participate in the gender nonconforming play can be

harmful. If the feelings or behaviors persist, an environment where it is safe for the child to explore his or her identity and/or orientation is best for healthy development. If youth demonstrate persistent physical, mental, or social discomfort, then the family should be linked with medical providers with experience serving transgender youth. Either way, it is important that the youth and her caretakers receive appropriate and affirming services. The APA states:

. . . some children express a great deal of distress about their assigned gender roles or the sex of their bodies and experience difficult social interactions with peers and adults because of their gender expression. Parents may become concerned when what they believed to be a “phase” does not seem to pass. It is often helpful to consult with a mental health professional familiar with gender issues in children to decide how to best address these concerns. Peer support from other parents of gender variant children may also be helpful.²⁴

Abuse and rejection often lead youth to runaway behavior, truancy, substance abuse, prostitution, and theft as means of survival and coping. Additionally, normal adolescent sexual behavior by transgender youth is often stigmatized and criminalized. Be careful that these behaviors are not mischaracterized as criminal when a safe placement, affirmative therapeutic intervention, and a harassment-free environment might eliminate them.²⁵

Conclusion

Transgender children and youth present novel issues for ensuring the well-being of youth in care. Personal opinions must yield to our responsibilities as child welfare professionals to provide safe and healthy outcomes for all our youth.

The experts agree that children raised in loving, supportive environments who are linked to appropriate resources thrive. A transgender youth is no more likely to have maladaptive outcomes as any other youth given timely, appropriate, and affirmative responses to his or her needs.

If there is a conflict between your feelings and the needs of transgender youth ask yourself, “what is more important: my personal beliefs or ensuring that every child is safe and happy, like Mae?”

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Endnotes

¹ Gay-Straight Alliance Network, Transgender Law Center, and the National Center for Lesbian Rights. *Beyond the Binary: A Tool Kit for Gender Identity Activism in Schools*, 2004, 32. <www.nclrights.org/site/DocServer/beyond_the_binary.pdf?docID=741>

² Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act of 2007, § 1105, 10th Cong., 1st Sess. (2009). <<http://thomas.loc.gov/cgi-bin/query/z?c110:S.1105:we>>

³ “State by State Guide to Laws That Prohibit Discrimination Against Transgender People,” 2010. <www.nclrights.org/site/DocServer/StateLawsThatProhibitDiscriminationAgainstTransPeople.pdf?docID=7821>

⁴ American Civil Liberties Union. *In re: Gill - Summary of Scientific Evidence*. New York, NY, 2008. November 25, 2008. <www.aclu.org/lgbt-rights_hiv-aids/re-gill-summary-scientific-evidence>

⁵ “Such efforts have serious potential to harm young people because they present the view that the sexual orientation of lesbian, gay and bisexual youth is a mental illness or disorder, and they often frame the inability to change one’s sexual orientation as a personal and moral

failure.” Additionally, the coalition notes that those whose appearance and behavior are perceived as inconsistent with gender norms and roles are often targeted for sexual orientation discrimination and violence. Just the Facts Coalition. *Just the Facts about Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel*. Washington, DC: American Psychological Association, 2008. <www.apa.org/pi/lgbcp/publications/justthefacts.html>

⁶ World Professional Association for Transgender Health. *Standards Of Care For Gender Identity Disorders, Sixth Version*, February 2001. <<http://www.wpath.org/documents2/socv6.pdf>>

⁷ Just the Facts Coalition. 2008.

⁸ DSM-IV-TR, 575-79, from AMA Resolution. <www.gires.org.uk/assets/Medpro-Assets/AMA122.pdf>

⁹ *Ibid.*, 578-79.

¹⁰ Fostering Connections to Success and Increasing Adoptions Act §205.

¹¹ Transgender Law Center Health Care Access Project (HCAP), a joint effort of TLC and The California Endowment. *Transgender Health and the Law: Identifying and Fighting Health Care Discrimination*. 2004, 2. <<http://transgenderlawcenter.org/pdf/Health%20Law%20fact%20sheet.pdf>>

¹² Fostering Connections Act § 204.

¹³ Gay-Straight Alliance Network, 2004, 2.

¹⁴ Just the Facts Coalition, 2008.

¹⁵ Safe Schools Coalition. “Guidance on School Law and Policy.” <www.safeschoolscoalition.org/RG-law_policy_guidance.html>

¹⁶ American Psychological Association, 2006.

¹⁷ Ryan, Caitlyn. *Helping Families Support Their Lesbian, Gay, Bisexual, and Transgender (LGBT) Children*. Washington, DC: National Center for Cultural Competence, Georgetown University Center for Child and Human Development, Fall/Winter 2009, 7.

¹⁸ *Ibid.*, 4.

¹⁹ World Professional Association for Transgender Health, 2001.

²⁰ Fostering Connections Act § 206

²¹ World Professional Association for Transgender Health, 2001.

²² Ryan, Caitlyn. *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual & Transgender Children*. San Francisco, CA: Marian Wright Edelman Institute, San Francisco State University, 2009, 12.

²³ American Psychological Association, 2006.

²⁴ *Ibid.*

²⁵ Majd, Katayoon, Jody Marksamer, and Carolyn Reyes. *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*. Berkeley: Autumn Press, 2009.

²⁶ National Center for Transgender Equality.

“Frequently Asked Questions About Transgender People,” 2009. <http://transequality.org/Resources/NCTE_UnderstandingTrans.pdf>