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The Challenge of LGBT Youth in Foster Care

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THE CHALLENGE OF LGBT CHILDREN IN FOSTER CARE

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I. INTRODUCTION

Once Lesbian, Gay, Bisexual, or Transgender (“LGBT”) children are in foster care, the state assumes responsibility for the care and protection of these children. The state has a legal obligation to protect the LGBT children, but the state often fails to take action when a child is abused in foster care.¹ Although litigation has brought increased attention to the abuse, bullying, harassment, discrimination, and other challenges that LGBT youth suffer, there are still very few cases in which LGBT children have sued for the abuse that they have endured in foster care. In recent lawsuits, the courts have addressed whether LGBT children should be

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¹James W. Gilliam, *Toward Providing a Welcoming Home for All: Enacting a New Approach to Address the Longstanding Problems Lesbian, Gay, Bisexual, and Transgender Youth Face in the Foster Care System*, 37 LOY. L.A. L. REV. 1037, 1038 (2004).

allowed to dress as they wish, should receive appropriate medical care, and should exercise freedom of religion. However, abuse still continues in the foster care system, and the courts have not ruled that LGBT youth in foster care are entitled to equal protection and Due Process.²

National groups, such as Lambda and the Opening Doors Project, have been advocating for the rights of LGBT youth and have published educational tools to help foster care facilities care for and protect these children.³ However, despite these groups' efforts and the recent litigation, new laws need to be passed to prevent the discrimination that LGBT youth face. States such as California have passed laws to prohibit discrimination against these youth in foster care, but the federal government has not passed any laws that explicitly require state foster care agencies to protect the children from discrimination on the basis of sexual orientation or gender identity.⁴

II. ISSUES FACING TRANSGENDER CHILDREN IN FOSTER CARE

Transgender children are included in the LGBT community, and transgender children's "biological sex does not match their internal sense of gender identity."⁵ These transgender children often experience a "persistent discomfort and sense of inappropriateness about [their] assigned sex" and feel "trapped in the wrong body."⁶ More recently, the definition of the term "transgender" has evolved into a "broad and complex social category" that includes all individuals who fail to conform to society's gender expectations.⁷

While in foster care, LGBT youth are subjected to gender challenges. According to Michael Kimmel, "gender is not merely an element of individual identity, but a socially constructed institutional phenomenon."⁸ Society has constructed traditional gender stereotypes, and the foster care system forces young boys and girls and members of the LGBT community to conform to these gender stereotypes. Society expects children to exhibit so-called typical boy or girl behavior from a very young

² Rudy Estrada & Jody Marksamer, *Lesbian, Gay, Bisexual, and Transgender Young People in State Custody: Making the Child Welfare and Juvenile Justice Systems Safe for All Youth Through Litigation, Advocacy, and Education*, 79 TEMP. L. REV. 415, 431 (2006).

³ *Id.* at 417.

⁴ Christine L. Olson, *Transgender Foster Youth: A Forced Identity*, 19 TEX. J. WOMEN & L. 25, 30 (2009).

⁵ MICHAEL S. KIMMEL, *THE GENDERED SOCIETY* 237 (2d ed. 2004).

⁶ *Id.*

⁷ J. Lauren Turner, Student Note, *From the Inside Out: Calling on States to Provide Medically Necessary Care to the Transgender Youth in Foster Care*, 47 FAM. CT. REV. 552, 553 (2009).

⁸ KIMMEL, *supra* note 5, at 101.

age.⁹ The LGBT children are bullied more often than other children because they do not conform to the traditional gender stereotypes.¹⁰

Once LGBT children have been placed in state custody, the state assumes a tremendous responsibility to ensure that the rights and needs of LGBT youth are legally guaranteed. However, the state has failed to protect a large percentage of the LGBT youth from discrimination. LGBT youth account for between four to ten percent of the national foster youth population, and as many as seventy percent of the LGBT youth in group homes reported that they have suffered violence based on their LGBT status. Furthermore, one hundred percent of the LGBT youth in foster group homes reported verbal harassment, and seventy-eight percent were removed or ran away from their placement as a result of hostility toward their sexual orientations or gender identities. Between twenty-five and forty percent of homeless youth are LGBT community members, and over half of homeless youth have spent some time in foster care.¹¹

LGBT youth in state custody are constantly moved from one foster care home to another because their peers or the staff members at their facility reject their sexual orientations. In some instances, the staff members are intolerant of the LGBT youth and do not believe that anyone is gay or transgender.¹² Other staff workers are indifferent to the LGBT youth and do not believe that any LGBT individuals reside in their facility. Although there are staff members who are tolerant of the LGBT youth at the facility, these staff members do not want to do anything that might actually encourage the LGBT identity. Therefore, because many LGBT youth are rejected by their peers or the staff, the youth move from one placement to another. When the LGBT youth move to a different foster care home, they also must face the added challenge of changing schools. At school, the LGBT youth often do not receive support from their classmates or their teachers, and therefore, they drop out of school or perform poorly in their studies.¹³

LGBT youth often hide their sexual identities because they are harassed by the staff or their peers, and when they do “come out,” they often do not receive the same quality of care that their heterosexual peers receive.¹⁴ Child welfare staff members have an obligation to ensure the safety and emotional development of the LGBT youth in their care. The

⁹ Nancy E. Dowd, Nancy Levit & Ann C. McGinley, *Feminist Legal Theory Meets Masculinities Theory*, MASCULINITIES AND THE LAW 25, 30 (Frank Rudy Cooper & Ann C. McGinley eds., 2012).

¹⁰ Katharine B. Silbaugh, *Bullying Prevention and Boyhood*, 93 B.U. L. REV. 1029, 1040 (2013).

¹¹ Mimi Laver, Am. Bar Ass’n Ctr. On Children & the Law, *Addressing the Needs of and Advocating for LGBTQ Youth in Foster Care* (2013).

¹² *Id.*

¹³ *Id.*

¹⁴ GERALD P. MALLON, LGBTQ YOUTH ISSUES: A PRACTICAL GUIDE FOR YOUTH WORKERS SERVING LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUESTIONING YOUTH 45 (2010).

caregivers should also ensure that LGBT youth have access to appropriate medical and mental health care services and that they are not subject to conversion or reparative therapy to change their sexual orientations or gender identities.¹⁵ Child welfare agencies should place LGBT youth in safe and supportive foster or adoptive home placements. LGBT youth should not be placed in homes and facilities where the caregivers condemn any LGBT child for their sexual orientations or gender identities based on the caregivers' religious and cultural beliefs. Furthermore, LGBT youth should have access to educational settings where they can learn without being harassed or assaulted. State child welfare agencies should adopt these guidelines to provide an environment that promotes the safety and well-being of the LGBT youth in their care.¹⁶

III. STATE HAS A DUTY TO PROTECT TRANSGENDER CHILDREN IN FOSTER CARE

In state custody, the LGBT children are legally entitled to federal constitutional rights and should receive equal protection and Due Process under the law. However, the state has failed to recognize the needs of the LGBT children in foster care and has failed to appreciate the scope of their civil rights. The state owes responsibilities to these children, but in many cases, the state cannot preserve the rights of the LGBT children.¹⁷

In *DeShaney v. Winebago County Department of Social Services*, the Supreme Court held that the state is not liable for the actions of private actors.¹⁸ A mother sued the Department of Social Services for failing to intervene to protect her child from his father's physical abuse. The Department of Social Services received complaints that the father was abusing his young child.¹⁹ Although the Department took certain steps to protect the child, the Department did not remove the child from his father's custody.²⁰ The father severely beat and permanently injured the child, and the mother claimed that by failing to act, the Department of Social Services and the social workers had deprived her son of his liberty and had violated the Due Process Clause of the Constitution.²¹

¹⁵ Shannan Wilber, Caitlin Ryan, & Jody Marksamer, *CWLA Best Practice Guidelines: Serving LGBT Youth in Out-of-Home Care* 1, 53-54 (2006).

¹⁶ Child Welfare League of Am., *Recommended Practices: To Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of Living with HIV in Child Welfare* 1, 9-17 (2012), <http://www.lambdalegal.org/sites/default/files/publications/downloads/recommended-practices-youth.pdf>.

¹⁷ Colleen Sullivan & Lambda Legal Def. & Educ. Fund, *Youth in the Margins: A Report on Unmet Needs of Lesbian, Gay, Bisexual, & Transgender Adolescents in Foster Care* 9, 10 (2001).

¹⁸ *DeShaney v. Winebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 189 (1989).

¹⁹ *Id.* at 191.

²⁰ *Id.* at 192-93.

²¹ *Id.* at 193.

The Court ruled that the Department had not violated the Due Process Clause because the clause “generally confer[s] no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests which the government itself may not deprive the individual.”²² The Court acknowledged, however, that “when the state takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.”²³ The Court also emphasized that the injury to the child “occurred not while he was in the state’s custody, but while he was in the custody of his natural father, who was in no sense a state actor.”²⁴

The state was not responsible for the injury to the child because a private person, not a state actor, inflicted the violence. Furthermore, the Court explained that “had the state by the affirmative exercise of its power removed [the child] from free society and placed him in a foster home operated by its agents, we might have a situation sufficiently analogous to incarceration or institutionalization to give rise to an affirmative duty to protect.”²⁵ The Court recognized that the state has a duty to protect incarcerated persons just as the state also has a duty to protect a child that has been placed in a foster care that is operated by state actors.

After the Supreme Court ruling in *DeShaney*, several circuit courts held that states have a duty to protect foster children from harm.²⁶ Furthermore, the federal law mandates that states develop for every child in state custody a plan to assure “safe and proper care consistent with the child’s best interest and special needs.”²⁷ Many agencies receive federal funding for foster care, and federal laws have been implemented that prohibit these agencies from denying foster care placements “on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.”²⁸ However, there are currently no federal laws that explicitly mandate state foster care agencies to protect foster youth from discrimination on the basis of their sexual orientations or their gender identities.²⁹

States have a duty to protect foster children, but child-welfare agencies typically have not considered the best interests of LGBT youth specifically.³⁰ California is the only state that has adopted laws that explicitly protect LGBT youth from discrimination in the state’s foster care

²² *Id.* at 196.

²³ *Id.* at 199-200.

²⁴ *Id.* at 201.

²⁵ *Id.* at 201 n.9.

²⁶ Olson, *supra* note 4, at 44.

²⁷ Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 NEV. L.J. 774, 794 (2006).

²⁸ See 42 U.S.C. § 671(a)(18)(B) (2000); see also Gilliam, *supra* note 1, at 1045.

²⁹ Olson, *supra* note 4, at 30.

³⁰ Fedders, *supra* note 27, at 795.

system. California took a step toward protecting the LGBT children in foster care when it passed Assembly Bill 458, the Foster Care Non-Discrimination Act (“the Act”), which was implemented on January 1, 2004.³¹ The Act provides that LGBT foster children have a right to “equal access to all available services, placement, care, treatment, and benefits” of the foster care system and that LGBT children should not be “subjected to discrimination or harassment on the basis of actual or perceived sexual orientation or gender identity.”³² The Act also stipulates that group home administrators must be trained on the rights of LGBT foster youth.³³ On September 27, 2012, Governor Jerry Brown signed into law an Equality California-sponsored bill (“Assembly Bill 1856”). Assembly Bill 1856 requires extensive training and sensitivity programs for caregivers of foster youth so that these caregivers can provide adequate care for LGBT youth.³⁴

Although California has adopted laws to protect the interests of the LGBT youth in foster care, the federal government has not implemented laws to protect the youth in foster care based on their sexual orientations or gender identities. LGBT children have stated that they are subjected to emotional, physical, and sexual abuse in foster care. Some of these children have been isolated from their peers, and many face religious discrimination. Foster care agencies have denied the LGBT youth the right to wear clothing that expresses their sexual orientations and have denied them medical treatment. As a result, the LGBT youth have recently begun filing lawsuits challenging these conditions and their treatment in foster care.³⁵

IV. LITIGATION ON ISOLATION OF LGBT CHILDREN IN FOSTER CARE

In *R.G. et al. v. Koller et al.*, three youth who identify as or who are perceived to be LGBT filed a motion for preliminary injunction in an attempt to get relief from the discrimination, harassment, and verbal, physical, and sexual abuse that they endured at the Hawaii Youth Correctional Facility.³⁶ The conditions at the Hawaii Youth Correctional Facility were physically and psychologically hazardous for the plaintiffs, and therefore, the court partially granted the plaintiffs’ preliminary injunction on Due Process grounds.³⁷ The LGBT youth claimed that they were repeatedly subjected to various forms of unwanted sexual touching and frequent threats of rape. Staff members routinely referred to one female ward as “butchie” and “used other slurs based on sexual orientation or

³¹ Anne Tamar-Mattis, *Implications of AB 458 for California LGBTQ Youth in Foster Care*, 14 LAW & SEXUALITY 149, 150 (2005).

³² CAL. WELF. & INST. CODE § 16001.9(a)(22).

³³ Olson, *supra* note 4, at 31.

³⁴ Steve Roth, *Governor Signs Bill to Provide More Supportive Homes to LGBT Foster Youth*, Sept. 28, 2012.

³⁵ Estrada & Marksamer, *supra* note 2, at 421.

³⁶ *R.G. et al v. Koller et al*, 415 F. Supp. 2d 1129, 1133 (D. Haw. 2006).

³⁷ *Id.* at 1162.

failure to conform to gender stereotypes.”³⁸ The defendants did not provide adequate staffing and supervision, a functioning grievance system, or a classification system to protect the vulnerable youth.³⁹ Furthermore, the defendants isolated the LGBT youth. For example, one transgender youth was placed in solitary confinement for six days.⁴⁰ She spent twenty-three hours per day under video surveillance with nothing other than her pillow and a blanket, and she was only allowed to leave for one hour to shower and for recreation.⁴¹

The defendants argued that they had to isolate the LGBT youth to protect them from the harmful actions of others.⁴² However, the court held that the facility’s use of isolation to “protect” LGBT youth was not an acceptable practice and was a violation of their Due Process rights.⁴³ These practices were unconstitutional because they were “an excessive . . . response to legitimate safety needs of the institution.”⁴⁴ The court found that the defendants were deliberately apathetic to the health and safety of the plaintiffs.⁴⁵ The plaintiffs won the case, and the Hawaii Youth Correctional Facility was required to implement a new anti-harassment policy to protect the LGBT youth within its facility from harm.⁴⁶ The facility also had to create a functioning grievance system for the youth who need to report abuse, and the staff had to undergo training to be more sensitive to the needs of the children identifying as LGBT.⁴⁷

V. LITIGATION ON LGBT CHILDREN’S RIGHT TO WEAR CLOTHING THAT EXPRESSES SEXUAL ORIENTATION

In *Doe v. Bell*, the plaintiff filed a complaint stating that the New York City Administration for Children’s Services barred her from wearing clothing and accessories that expressed her sexual orientation and gender identity.⁴⁸ The court in *Doe* examined a policy that prohibited residents of an all-male foster care facility from wearing skirts or dresses.⁴⁹ Doe was born a male, but she identifies as a woman.⁵⁰ Doe suffers from Gender Identity Disorder and needs to be able to wear feminine clothing to avoid psychological distress.⁵¹ The New York Superior Court held that a

³⁸ *Id.* at 1142.

³⁹ *Id.* at 1157.

⁴⁰ *Id.* at 1148.

⁴¹ *Id.*

⁴² *Id.* at 1155.

⁴³ *Id.*

⁴⁴ *Id.* at 1156.

⁴⁵ *Id.*

⁴⁶ *Id.* at 1162.

⁴⁷ *Id.*

⁴⁸ *Doe v. Bell*, 754 N.Y.S.2d 846, 847 (N.Y. Sup. Ct. 2003).

⁴⁹ *Id.* at 848.

⁵⁰ *Id.*

⁵¹ *Id.*

transgender youth's Gender Identity Disorder was a disability within the meaning of the State Human Rights Law.⁵² The court granted Doe an exemption from the dress policy and permitted her to wear feminine clothing in the all-male foster care facility.⁵³ Therefore, even if a state does not explicitly provide nondiscrimination protections based on sexual orientations or gender identities for LGBT youth in foster care, these children may still be able to assert a claim under the applicable state law based on their sex or disability.

VI. LITIGATION ON FREEDOM OF RELIGION FOR LGBT CHILDREN IN FOSTER CARE

LGBT youth have suffered religious discrimination and indoctrination, and they have reported that staff members, social workers, and foster parents who espoused religious convictions often condemned homosexuality and maintained that it is a morally unacceptable lifestyle.⁵⁴ In his story, one LGBT child recalled, "After coming out to one of my foster families, I was told I was going to hell and forced to go to church with them. I became very closeted after that and didn't tell any other foster families I was a lesbian. I was in 22 different homes; most of them were very religious."⁵⁵ Furthermore, another LGBT child declared that her social worker told her "that the Bible says that [she was] an abomination."⁵⁶ Foster care staff members should be prohibited from indoctrinating LGBT youth with religious dogma and should not pass religious judgment on them based solely on their sexual orientations or gender identities.

In *Bellmore v. United Methodist Children's Home*, a lawsuit was filed on behalf of the LGBT youth charging that the Children's Home in Decatur, Georgia used state funds to indoctrinate foster youth with religious teachings against homosexuality.⁵⁷ Susan Sommer, who represented the plaintiffs and is an attorney with Lambda Legal, said that "concern for the needs of lesbian and gay foster care youth [was] a driving force behind this lawsuit."⁵⁸ Lambda Legal won the settlement on behalf of the plaintiffs.⁵⁹ According to the settlement, the United Methodist Children's Home will

⁵² *Id.* at 851.

⁵³ *Id.* at 856.

⁵⁴ Rob Woronoff, Rudy Estrada, & Susan Sommer, Child Welfare League of Am. & Lambda Legal, *Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth in Care 1*, 114 (2006).

⁵⁵ *Id.*

⁵⁶ Laver, *supra* note 11.

⁵⁷ *Bellmore v. United Methodist Children's Home & Dep't of Human Res. of Ga.*, www.lambdalegal.org (Ga. Super. Ct. 2003) (unpublished).

⁵⁸ *Id.*

⁵⁹ *Id.*

lose state funding for foster care if the facilities require the residents to participate in religious services.⁶⁰

VII. LITIGATION ON MEDICAL TREATMENT/SEX REASSIGNMENT FOR TRANSGENDER CHILDREN

State child welfare agencies have a duty to provide medically-necessary treatment to children in its care.⁶¹ The Supreme Court has found that a state has an affirmative duty to meet the child's medical needs when the state places a child in foster care.⁶² The duty of a state to offer medically-necessary care to children has been codified in at least seven states.⁶³ Furthermore, numerous appellate courts have acknowledged that foster care agencies have an explicit duty to offer "food, clothing, shelter, and medical care" to children in their custody.⁶⁴ However, the foster care agencies do not always provide the medically-necessary care to the youth in their custody.

LGBT youth have been denied access to prescription hormone medications, sex reassignment surgeries, and other therapeutic services.⁶⁵ In *Rodriguez v. Johnson*, Lambda Legal and Sylvia Rivera Law Project filed a complaint against the Office of Children and Family Services on behalf of Alyssa Rodriguez.⁶⁶ Rodriguez is a transgender woman who was in the care of Red Hook Residential Center and other New York facilities, and the Office of Children and Family Services "deprived her of prescription hormone medication" and punished her for her feminine hairstyle and other aspects of her gender expression.⁶⁷ Apparently "Rodriguez had been on hormone therapy from a young age and experienced severe health consequences and emotional distress due to withdrawal symptoms after being forced to go without treatment. The case filed on Rodriguez's behalf resulted in a settlement."⁶⁸ The Office of Children and Family Services paid a monetary award to Rodriguez and significantly improved its treatment of transgender youth.⁶⁹

The case *In re Brian (aka Mariah) L. v. The Administration for Children's Servs.*, was about a transgender person named Mariah who had

⁶⁰ *Id.*

⁶¹ Turner, *supra* note 7, at 556.

⁶² See Youngberg v. Romeo, 457 U.S. 307, 317 (1982); Estelle v. Gamble, 429 U.S. 97, 103-04 (1976).

⁶³ Turner, *supra* note 7, at 556.

⁶⁴ Jackson v. Shultz, 429 F.3d 586, 590 (6th Cir. 2005). See, e.g., Burton v. Richmond, 276 F.3d 973, 979 (8th Cir. 2002); Hernandez v. Hines, 159 F. Supp. 2d 378, 384 (N.D. Tex. 2001).

⁶⁵ Turner, *supra* note 7, at 555.

⁶⁶ Rodriguez v. Johnson, No. 06CV00214 (S.D.N.Y. Jan. 11, 2006).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

been in the care of New York City's Administration for Children's Services since she was ten years old.⁷⁰ When she was eighteen years old, the Administration for Children's Services arranged for several health care providers to evaluate her.⁷¹ Although the health care providers recommended sex reassignment surgery for her, the Administration for Children's Services attempted to delay the treatment until Mariah aged out of the foster care system.⁷² The family court decided that delaying medical treatments for Mariah and other LGBT children could result in devastating health effects.⁷³ The court decided that despite the absence of Medicaid coverage, the Administration for Children's Services should arrange for Mariah to undergo sex reassignment surgery as the appropriate treatment for Gender Identity Disorder.⁷⁴

However, the appellate court eventually overruled the family court's decision.⁷⁵ The appellate court held that medical services are provided to foster children by the Administration for Children's Services in accordance with a "local medical plan," and a surgical procedure falls outside of the scope of this plan.⁷⁶ Therefore, despite the fact that Mariah could suffer severe health consequences, she was denied the sex reassignment surgery.⁷⁷

VIII. LITIGATION OF DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

In *L.P. v. Philadelphia* in 2009, Lambda Legal filed a complaint on behalf of L.P. against the City of Philadelphia Department of Human Services and the Youth Study Center.⁷⁸ L.P. is a transgender woman who was physically attacked by other residents and who was verbally abused by staff every day for almost a year and a half when she lived in the youth facility.⁷⁹ The complaint alleged that L.P. endured harassment and discrimination on the basis of her actual and/or perceived gender identity, sexual orientation, sex, and disability.⁸⁰ The Youth Study Center staff members refused to refer to L.P. by her preferred female name and also refused to use female pronouns.⁸¹ The staff members also restricted L.P.

⁷⁰ In re Brian (aka Mariah) L. v. The Admin. for Children's Servs., 51 A.D.3d 488, 489 (N.Y. App. Div. 2008).

⁷¹ *Id.* at 490.

⁷² *Id.*

⁷³ *Id.* at 491.

⁷⁴ *Id.*

⁷⁵ *Id.* at 500.

⁷⁶ *Id.* at 499.

⁷⁷ *Id.* at 500.

⁷⁸ L.P. v. Philadelphia, et al, www.lambdalegal.org, (filed Oct. 2009).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

from accessing the clothing and grooming options that matched her gender identity, and the staff members subjected L.P. to degrading treatment and verbally ridiculed her with derogatory insults.⁸²

In February 2008, a family court judge ordered the City of Philadelphia Department of Human Services to provide L.P. with hormone therapy and other medical treatment for Gender Identity Disorder.⁸³ A 2009 settlement forced the Department of Human Services to revise its policies for non-discriminatory treatment of LGBT youth, and the Department's staff members were required to undergo sensitivity training to treat LGBT youth with respect.⁸⁴ Under these revised policies, LGBT children will be able to live on a floor that corresponds to their preferred gender identities, will be called by their preferred names and pronouns, will be able to access their preferred clothing and grooming products, and will receive the proper hormone treatment.⁸⁵

IX. HARASSMENT AND BULLYING OF LGBT CHILDREN

Many LGBT youth have recounted heartbreaking stories that reveal the harassment, abuse, and bullying that they have endured during their time in foster care. One LGBT youth recalled an incident in which other children assaulted him and in which a group home's authoritative figure ridiculed him with derogatory slurs.⁸⁶ In his story, he stated, "I got jumped by a bunch of guys in my group home, and when I told the Director, he said, 'Well, if you weren't a faggot, they wouldn't beat you up.'"⁸⁷ Another LGBT youth described the intolerance and bigotry that a group home's staff members exhibited by asserting, "I was placed in a co-ed group home. When I was shown to my room, I asked why I was being put on the boys' floor. They said, 'You're not a boy? Well, we can't put you on the girls' floor looking like that.' So, they made me sleep on a couch on a landing in between the two floors."⁸⁸ In another anecdote, an LGBT child insisted that he would have been safer being homeless than being in foster care due to the staff members' intolerance and abuse.⁸⁹ He declared, "It's better on the street. You can fight, or run, but in a shelter, you are trapped. If you tell the staff that somebody called you a 'fag,' they don't care. They turn their back."⁹⁰ The stigma that is attached to being gay, lesbian, or transgender often prevents these children from reporting their victimization. Furthermore, many LGBT children contend that when the abuse is reported,

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Woronoff, Estrada, & Sommer, *supra* note 54, at 18.

⁸⁷ *Id.*

⁸⁸ *Id.* at 23.

⁸⁹ Laver, *supra* note 11.

⁹⁰ *Id.*

the victims themselves are blamed. Consequently, many of the LGBT young people choose to live on the streets rather than living in a foster care home.⁹¹

The LGBT youth in foster care do not report many of the bullying cases because they do not have the support of their parents or an authority figure to help them file a lawsuit. LGBT children in schools sometimes have parents who will defend them from harassment while LGBT children in the foster care system generally lack supportive parents and must rely only on the foster care's abusive staff members for role models and authority figures.⁹² In foster care, LGBT children are often impressionable and do not understand why the staff members are condemning them, and consequently are more likely to blame themselves for the abuse.⁹³ In addition, once LGBT children are placed in the foster care system, they are often moved from one foster care home to another, and many LGBT children are terrified that reporting abuse will cause them to be moved again.⁹⁴ As a result, LGBT youth in foster care generally cannot protect themselves from the harassment and bullying by peers and authority figures.⁹⁵

Bullying behavior is rooted in how other students and school officials view LGBT community members.⁹⁶ Although there are few reported cases of bullying in foster care, many cases have been reported in which LGBT children endured bullying in schools. In the school bullying lawsuits, courts have ruled that based on substantial evidence, students have often bullied and harassed LGBT children based entirely on their sexual orientations.⁹⁷ Because these LGBT youth are powerless and have historically endured discrimination, legislators and school districts should categorize LGBT youth as one of the special classes that are in need of protection.⁹⁸ If the LGBT children in schools are categorized as a special protected class, the LGBT children in foster care should also receive the same status as a special protected class to ensure that they are guaranteed their constitutional rights to safety and equal protection.⁹⁹

Only a minority of states currently identify sexual orientation as a protected category so that LGBT youth can be protected from the

⁹¹ GERALD P. MALLON, *WE DON'T EXACTLY GET THE WELCOME WAGON* 111 (1998).

⁹² Jody Marksamer, *And by the Way, Do You Know He Thinks He's a Girl? The Failures of Law, Policy, and Legal Representation for Transgender Youth in Juvenile Delinquency Courts*, 5 *SEXUALITY RESEARCH & SOC. POLICY*, no. 1, Mar. 2008, at 72, 74.

⁹³ Gilliam, *supra* note 1, at 1043.

⁹⁴ *Id.* at 1045.

⁹⁵ *Id.* at 1043.

⁹⁶ Julie Sacks & Robert S. Salem, *Victims without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies*, 72 *ALB. L. REV.* 147, 148 (2009).

⁹⁷ *Id.* at 149.

⁹⁸ John G. Culhane, *Bullying, Litigation, and Populations: The Limited Effect of Title IX*, 35 *W. NEW ENG. L. REV.* 323, 350 (2013).

⁹⁹ Sacks & Salem, *supra* note 96, at 190.

harassment that they endure solely due to their sexual orientations.¹⁰⁰ However, many state statutes are being passed to recognize these LGBT children's constitutional rights.¹⁰¹ These statutes have concentrated primarily on restricting anti-gay speech in schools, and such legislation should work to benefit LGBT youth in foster care because the schools and the foster care system are interconnected.¹⁰² As the anti-bullying legislation is passed, equality and tolerance will hopefully replace the bullying of LGBT youth in both schools and foster care.¹⁰³

In addition, advocacy groups such as Lambda Legal and the Child Welfare League of America are endorsing policies that include sexual orientation among the categories that are specifically protected from bullying so that LGBT youth can be classified as a protected special class.¹⁰⁴ LGBT students currently can bring legal action against their school districts under Title IX, but Title IX's prohibition of discrimination "on the basis of sex" has not been interpreted to include discrimination on the basis of sexual orientation.¹⁰⁵ Therefore, legislators should amend Title IX and state anti-bullying statutes to protect LGBT students as a special protected class.¹⁰⁶ By increasing political pressure on Congress, state legislatures, and local school boards, the advocacy groups can successfully implement anti-bullying policies for LGBT youth in schools. These school policies would also extend to LGBT youth in foster care and would serve to benefit them. Anti-bullying legislation, rather than extensive litigation, will work to promote constitutional rights for LGBT youth in foster care.¹⁰⁷

X. CASE LAW ON LGBT CHILDREN IN SCHOOLS APPLICABLE TO LGBT CHILDREN IN FOSTER CARE

There have been few lawsuits filed to protect the LGBT while they are in foster care. However, over the last few years, there have been many lawsuits filed on behalf of the LGBT youth who are bullied and harassed at school due to their sexual orientations or gender identities. While these cases do not specifically address equal protection in the foster care system, they have clearly established foster children's rights to equal protection within the public school context. According to the Constitution, LGBT

¹⁰⁰ Lisa C. Connolly, *Anti-Gay Bullying in Schools- Are Anti-Bullying Statutes the Solution?*, 87 N.Y.U. L. REV. 248, 282 (2012).

¹⁰¹ *Id.* at 256.

¹⁰² *Id.* at 282.

¹⁰³ Rebecca Orel, *Making It Better Now: How Advocates Can And Should Use a Critical Period for LGBT Youth to Create Sustainable Change*, 44 COLUM. HUM. RTS. L. REV. 577, 606 (2013).

¹⁰⁴ Connolly, *supra* note 100, at 260.

¹⁰⁵ R. Kent Piacenti, *Toward a Meaningful Response to the Problem of Anti-Gay Bullying in American Public Schools*, 19 VA. J. SOC. POL'Y & L. 58, 96 (2011).

¹⁰⁶ *Id.* at 97.

¹⁰⁷ *Id.*

children are granted the same protections and rights in foster care that they are provided while in school. The cases of discrimination against LGBT children at school demonstrate the types of discrimination that these children may encounter in foster care. The case law on bullying LGBT youth in schools provides guidance for how the courts should deal with cases on the bullying of LGBT children in foster care. The cases of harassment and discrimination also reveal the extensive legal measures that the LGBT children must take to preserve and to secure their basic privacy and liberty interests that the Constitution guarantees.¹⁰⁸

Nabozny v. Podlesny was the 1996 landmark case in which LGBT students claimed that being bullied at school violated their constitutional rights to equal protection and safety.¹⁰⁹ In *Nabozny*, the plaintiff Jamie Nabozny, represented by Lambda Legal, sued his school in Wisconsin after students harassed and “mock raped” him because he was gay.¹¹⁰ LGBT community members have been unsuccessful in their Due Process claims in bullying cases, and the Seventh Circuit followed this precedent by rejecting Nabozny’s Due Process claim based on the bullying that he endured at school.¹¹¹

According to the Seventh Circuit’s ruling, school administrators do not have a “special relationship” with students, and the administrators do not have an affirmative Due Process duty to protect the students.¹¹² The court held that although the school officials had repeatedly ignored the harassment, the officials did not have a duty to prevent the abuse and were consequently not responsible for the danger that Nabozny encountered at school.¹¹³ Although the court rejected Nabozny’s Due Process claim, the court found that the school officials had refused to address the abuse that Nabozny suffered solely based on their disapproval of his sexual orientation. Therefore, the court ruled that the school officials had violated Nabozny’s rights under the Constitution’s Equal Protection Clause and that the school officials were liable for damages.¹¹⁴

The landmark ruling in *Nabozny* could also be applied to cases in which LGBT youth in state custody are denied their rights. However, Few cases regarding the bullying of LGBT children in foster care have been reported because these children are in a private and isolated environment that often prevents them from publicly reporting the discrimination and abuse that they have suffered.¹¹⁵ Nonetheless, the case law on the bullying

¹⁰⁸ ACLU Found., *The Cost of Harassment*, <http://www.aclu.org/safeschools>.

¹⁰⁹ *Nabozny v. Podlesny*, 92 F.3d 446, 449 (7th Cir. 1996).

¹¹⁰ *Id.* at 451.

¹¹¹ *Id.* at 460.

¹¹² *Id.* at 459.

¹¹³ *Id.* at 460.

¹¹⁴ *Id.*

¹¹⁵ JAMES G. BARBER, *CHILDREN IN FOSTER CARE* 123 (2004).

of LGBT children in schools should provide guidance as to how the courts might rule on cases that involve bullying LGBT youth in foster care.

The Nabozny landmark case motivated more LGBT students to file lawsuits against schools that allow their students to harass LGBT youth entirely due to their sexual orientations. In *Putnam v. Board of Education of Somerset Independent Schools*, the plaintiff Bradley Putnam brought a lawsuit against the school district because he suffered anti-gay harassment and death threats.¹¹⁶ The court ruled that the school should pay Putnam \$135,000 and should adopt a more stringent anti-harassment policy.¹¹⁷ In another case, *Flores v. Morgan Hill Unified School Dist.*, the Ninth Circuit affirmed that schools can be held liable if they deliberately ignore harassment of LGBT students and that the schools need to take measures to eliminate harassment when the teachers and other staff members become aware that the harassment is occurring.¹¹⁸ The court also held that schools have a duty to protect LGBT students from harassment based on their sexual orientations.¹¹⁹ Although the *Flores* case was based on a bullying situation in school, the case's ruling may be applicable to cases where foster care workers do not respond effectively to LGBT foster youth who complain of harassment.

Recent cases of bullying LGBT children in school have highlighted the difficulties that these children face publicly in schools and privately in foster care. In the 2000 case *Montgomery v. Indep. School Dist.*, the plaintiff Jesse Montgomery sued his school district for not stopping harassment from his classmates due to his gender and his presumed sexual orientation.¹²⁰ Montgomery endured daily verbal harassment from his classmates for most of his time in school, as well as physical harassment and assault.¹²¹ His peers pushed him down in the hallways, tripped and knocked him down, kicked him on the bus, and punched him on the playground.¹²² Furthermore, Montgomery experienced sexual harassment when students grabbed his thighs, crotch, and buttocks.¹²³ Although Montgomery reported the harmful incidents to the school officials, the officials did not protect him from further harassment.¹²⁴ Montgomery missed school and stayed away from the cafeteria, bathrooms, and bus so that he could avoid the bullying and harassment.¹²⁵ At the end of the tenth grade, Montgomery transferred to another school district and later filed a lawsuit against the previous school district in response to the persistent

¹¹⁶ *Putnam v. Bd. of Educ. of Somerset Indep. Schs.*, C.A. No. 00-145 (E.D. Ky. 2000).

¹¹⁷ *Id.*

¹¹⁸ *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1138 (9th Cir. 2003).

¹¹⁹ *Id.*

¹²⁰ *Montgomery v. Ind. Sch. Dist.*, 109 F. Supp. 2d 1081, 1083 (D. Minn. 2000).

¹²¹ *Id.* at 1084.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 1085.

¹²⁵ *Id.*

harassment that he had suffered there.¹²⁶ The court rejected the claim for sexual orientation discrimination, but approved for the case to proceed by allowing Montgomery to state a claim for discrimination “on the basis of sex.” By allowing a gay student who did not conform to masculine stereotypes to state a claim for discrimination “on the basis of sex,” the court held that harassment based on “sex-based stereotypes of masculinity” is actionable under Title IX.¹²⁷ The school district later settled for an undisclosed amount to punish the school officials who were unwilling to help protect LGBT students from harassment by their peers.¹²⁸ The ruling in this case could also be applicable to cases where LGBT children in foster care are harassed for not conforming to “sex-based stereotypes of masculinity.”

It has been eighteen years since the first federal court held that public schools have a constitutional obligation to prevent their students from being harassed solely based on their sexual orientations. Since that 1996 landmark case of *Nabozny*, courts have awarded millions of dollars to students who have been harassed by other students at school, and the school districts have been held liable if they refused to take appropriate steps to prevent harassment on the basis of sexual orientation or gender identity.¹²⁹ Because of the ruling in *Nabozny*, many cases of LGBT bullying in schools were reported, and more bullied LGBT students were inspired to file lawsuits against the schools that intentionally ignored discrimination and bullying.¹³⁰ Schools provide LGBT children with public locations in which LGBT children can report bullying to school officials and to other authority figures.¹³¹ The foster care system places LGBT children in secluded areas and isolates them from public awareness, so these LGBT children frequently cannot report the abuse that they suffer due to the intimate nature of the foster care settings.¹³² Because of this, greater numbers of cases of LGBT bullying in schools are reported than instances of such bullying in foster care.

XI. SPECIALIZED FOSTER CARE GROUP HOMES FOR LGBT YOUTH

Although there has been little case law to help prevent discrimination against LGBT youth in state custody, several child welfare organizations have established specialized foster care group homes that are designed to address the needs of the LGBT youth.¹³³ Green Chimneys in

¹²⁶ *Id.* at 1086.

¹²⁷ *Id.* at 1099.

¹²⁸ W.J. Hall, *Harassment, Bullying, and Discrimination of Lesbian, Gay, and Transgender Students: Legal Issues for North Carolina Schools*, SAFE SCHOOLS N.C. 4, 13 (2007).

¹²⁹ Orel, *supra* note 103, at 608.

¹³⁰ ELIZABETH J. MEYER, GENDER, BULLYING, & HARASSMENT 52 (2009).

¹³¹ Hall, *supra* note 128, at 9.

¹³² *Id.*

¹³³ Fedders, *supra* note 27, at 795.

New York City, Gay and Lesbian Adolescent Social Services (“G.L.A.S.S.”) in Los Angeles and Oakland, and the Waltham House in Waltham, Massachusetts create supportive environments for LGBT youth.¹³⁴ These specialized foster group homes allow transgender youth to dress as they wish, and the homes respect the gender identification of the young person.¹³⁵ Gay and Lesbian Adolescent Social Services recruits, licenses, and certifies gay adults as foster parents for the children in its group homes.¹³⁶ While these specialized programs provide help to some LGBT youth, they cannot cater to the many thousands of youth in the foster care system who identify as LGBT or who are struggling with sexual orientation and gender identity issues. Additionally, LGBT activists and lawyers contend that the non-specialized group-care facilities should be required to prevent harassment and to create supportive environments so that LGBT youth do not have to live in these separate homes.¹³⁷

XII. ADVOCACY GROUPS FOR LGBT CHILDREN

Innovative national projects have also been established to improve the living conditions for LGBT youth in foster care. These national projects have advocated for training and education on LGBT issues and improvements in policies that will protect LGBT youth in state custody from discrimination. Fostering Transitions is a collaboration of the Child Welfare League of America and Lambda Legal.¹³⁸ One of the priorities of Fostering Transitions has been to listen to the real life experiences of LGBT youth in foster care and the adults who work with these children.¹³⁹ The Child Welfare League of America and Lambda Legal held thirteen Listening Forums around the country between 2003 and 2004 to bring more attention to the needs of the LGBT youth in state custody.¹⁴⁰ In 2006, the organizations published the stories and ideas that were shared during the Listening Forums in a report entitled *Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Care*.¹⁴¹ This report is a valuable resource that has been used to understand, support, and advocate for LGBT youth.¹⁴²

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Colleen A. Sullivan, *Kids, Courts and Queers: Lesbian and Gay Youth in the Juvenile Justice and Foster Care Systems*, 6 LAW & SEXUALITY REV. 31, 58 (1996).

¹³⁷ Fedders, *supra* note 27, at 795-96.

¹³⁸ Estrada & Marksamer, *supra* note 2, at 417.

¹³⁹ *Id.* at 436.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

The Model Standards Project, a collaboration of Legal Services for Children and the National Center for Lesbian rights, is also devoted to improving services for LGBT youth in state care.¹⁴³ In 2006, the Project, in partnership with the Child Welfare League of America, published a resource entitled *Best Practice Guidelines: Serving LGBT Youth in Out-of-Home Care*.¹⁴⁴ This resource includes accurate up-to-date information about the best practices “for supporting positive youth development; meeting the health and educational needs of LGBT youth; managing confidential information; and creating safe, respectful and nurturing home and social environments for LGBT youth in care.”¹⁴⁵

The American Bar Association’s Center on Children and the Law created the Opening Doors Project, which works to raise the legal community’s awareness of LGBT youth in foster care.¹⁴⁶ In 2008, the Opening Doors Project published *Opening Doors for LGBTQ Youth in Foster Care: A Guide for Lawyers and Judges* to provide the legal and child welfare community with advocacy tools, resources, and support so that they could successfully represent LGBT youth in foster care.¹⁴⁷ In 2010, the Project published *It’s Your Life*, a guide to aid LGBT youth in understanding what to expect in the child welfare legal system.¹⁴⁸

XIII. PROPOSED REFORMS TO AID LGBT CHILDREN

The Opening Doors Project also published a resource that establishes guidelines for judges and lawyers who represent the LGBT youth in foster care.¹⁴⁹ These guidelines suggest that legal practitioners should analyze their attitudes toward LGBT youth and concentrate on changing their negative misconceptions.¹⁵⁰ The guidelines state that lawyers and judges can retain their own personal thoughts about LGBT community members, but that they should remain impartial and should not allow their personal beliefs to impact their treatment of clients and litigants.¹⁵¹ Furthermore, lawyers and judges should learn about the healthy sexual developmental needs of all young people and should recognize that LGBT children possess both their own special needs and the same needs that other

¹⁴³ Child Welfare League of Am., *supra* note 16, at 6.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Mimi Laver & Andrea Khoury, Am. Bar Ass’n Ctr. on Children & the Law, *Opening Doors for LGBTQ in Foster Care: A Guide for Lawyers and Judges* (Claire Chiamulera ed., 2008).

¹⁴⁷ *Id.*

¹⁴⁸ Krishna Desai, Mimi Laver, & Andrea Khoury, Am. Bar Ass’n. Ctr. on Children & the Law, *It’s Your Life* (2010).

¹⁴⁹ Laver & Khoury, *supra* note 146.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

young children have.¹⁵² Legal practitioners should also become familiar with the state laws and policies that protect LGBT youth and should become comfortable with using LGBT terminology.¹⁵³

In addition, the Opening Doors Project's guidelines stipulate that judges and lawyers should understand that LGBT youth are not mentally ill.¹⁵⁴ Under these guidelines, judges and lawyers should develop nondiscrimination policies that cover LGBT youth and should develop procedures that assure safety and protection of LGBT community members.¹⁵⁵ These guidelines also require that court staff members undergo sensitivity training to understand the unique needs and the proper treatments of LGBT youth.¹⁵⁶ Additionally, these guidelines promote recreational programs and opportunities for LGBT youth to interact and to socialize.¹⁵⁷

According to the Opening Doors Project's guidelines, legal members should ensure that LGBT youth can access the same educational, recreational, counseling, and social programs that their heterosexual peers use.¹⁵⁸ The guidelines also emphasize that court staff members should remain respectful to all individuals in the courthouse, and that LGBT youth should be entitled to the same respectful treatment so that they can foster personal senses of dignity and self-esteem.¹⁵⁹ The Opening Doors Project guidelines encourage judges and lawyers to visit service providers' websites so as to be mindful about offering legal services in an LGBT-affirming manner.¹⁶⁰ If judges and lawyers adhere to these guidelines, the Opening Doors Project's administrators are confident that the legal community can properly serve LGBT youth as clients by nurturing positive attitudes and fair treatment while providing emotional and psychological support.¹⁶¹

A growing number of state and local agencies have also adopted comprehensive policies to improve the living conditions of LGBT youth in state custody. The Child Welfare League has partnered with Lambda Legal and the Opening Doors Project to endorse guidelines for the proper treatment of LGBT youth in foster care.¹⁶²

All child welfare agencies should institute written policies that prohibit discrimination against LGBT youth on the basis of sexual orientation, gender identity, and gender expression. The caregivers in foster

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Child Welfare League of Am., *supra* note 16, at 1.

care need adequate training on issues of human sexuality to ensure that LGBT youth are treated with respect and dignity. The child welfare agencies should require mandatory training for staff and foster parents on nondiscrimination policies regarding sexual orientation, gender identity, and the challenges facing LGBT youth.¹⁶³

XIV. PROPOSED LEGISLATION TO AID LGBT CHILDREN

Although organizations have developed guidelines to improve the conditions of the LGBT youth in state custody, many child welfare agencies have not implemented these policies. State legislatures should enact legislation similar to California's Foster Care Non-Discrimination Act that explicitly protects a foster child's right to express his or her gender identity while residing in a group foster home.¹⁶⁴ Such legislation should require foster care agencies to adopt policies that specifically prohibit discrimination against the LGBT youth in their care. These policies should require all foster care employees to undergo training to ensure that they understand the rights of LGBT youth in foster care. Additionally, legislation that enhances the physical and emotional safety of LGBT youth in foster care should also be passed.¹⁶⁵

Furthermore, certain pieces of legislation already designed to protect LGBT youth should be passed by Congress. The 113th Congress reintroduced Every Child Deserves a Family Act, a bill intended to prevent discrimination against any foster youth because of their actual or perceived sexual orientations or gender identities.¹⁶⁶ In addition, this Act would prohibit any adoption or foster care agency that receives federal money from discriminating against potential adoptive or foster parents based on sexual orientation, gender identity, or marital status.¹⁶⁷ This legislation would open thousands of new foster and adoptive homes to children.¹⁶⁸

Another bill that Congress should pass is the Student Non-Discrimination Act of 2010,. This Act provides that "no student shall, on the basis of actual or perceived sexual orientation or gender identity of such individual or of a person with whom the student associates or has associated, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving

¹⁶³ GERALD P. MALLON, LET'S GET THIS STRAIGHT: A GAY-AND LESBIAN-AFFIRMING APPROACH TO CHILD WELFARE 112 (1999).

¹⁶⁴ Olson, *supra* note 4, at 55.

¹⁶⁵ *Id.* at 56.

¹⁶⁶ Christopher Frost & Katie Miller, *Congress Reintroduces Bill to End LGBT Discrimination in Adoption and Foster Care*, <http://www.thinkprogress.org/lgbt/2013/05/08/1979891/congress-reintroduct>.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

federal financial assistance.”¹⁶⁹ The Obama Administration has officially endorsed the Student Non-Discrimination Act.¹⁷⁰ Although the Act’s main purpose is to prevent discrimination in public schools, the Act would also improve the safety and well-being of LGBT children who are living in foster care facilities that receive federal financial assistance.¹⁷¹

XV. CONCLUSION

Although the state has an obligation to protect the constitutional rights of LGBT children, it has often failed to take action when a child has been abused in foster care. The LGBT children in foster care face many challenges because they suffer discrimination based on their sexual orientations and gender identities. Recent litigation has brought increased attention to the abuse and discrimination of LGBT youth, but there has been little case law regarding the discrimination of LGBT youth in foster care. National advocacy organizations have published educational tools and materials to help foster care facilities comply with professional standards of care and to ensure that the LGBT youth are provided with the care and protection that they deserve. Despite the progress of the advocacy groups and the lawyers who represent the LGBT youth, Congress and the state legislatures need to pass legislation that will categorize LGBT persons as a protected class and will guarantee the LGBT youth their basic human rights afforded to them by the Constitution.

¹⁶⁹ Jason A. Wallace, *Bullicide in American Schools: Forging a Comprehensive Legislative Solution*, 86 IND. L.J. 735, 759 (2011).

¹⁷⁰ Ian Thompson, *Obama Administration Endorses Student Non-Discrimination Act*, HUFFINGTON POST, Apr. 20, 2012.

¹⁷¹ *Id.*