July 19, 2017

ALL COUNTY LETTER NO. 17-64

TO: ALL COUNTY WELFARE DIRECTORS
    ALL COUNTY CHIEF PROBATION OFFICERS
    ALL TITLE IV-E AGREEMENT TRIBES
    ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
    ALL CDSS REGIONAL ADOPTION OFFICES
    ALL PRIVATE ADOPTION AGENCIES
    ALL FOSTER FAMILY AGENCIES
    ALL ILP COORDINATORS
    ALL GROUP HOME PROVIDERS

SUBJECT: CHANGES IN PLACEMENT PRACTICES FOR CHILDREN, YOUTH, AND NON-MINOR DEPENDENTS (NMDs) IN FOSTER CARE

REFERENCE: SENATE BILL (SB) 731 (STATUTES OF 2015, CHAPTER 805); HEALTH AND SAFETY (H&S) CODE SECTION 1502.8; WELFARE AND INSTITUTION CODE (W&IC) SECTIONS 16001.9 AND 16006

This All County Letter (ACL) is to notify all public child welfare and probation departments, Title IV-E tribes, private foster or adoption agencies group home providers of the changes to placement practices for children, youth and NMDs in out-of-home care resulting from SB 731. Newly added W&IC section 16006 requires that “children and non-minor dependents in out-of-home care shall be placed according to their gender identity, regardless of the gender or sex listed in their court or child welfare records.” Additionally, SB 731 amended the Foster Care Bill of Rights, by adding W&IC section 16001.9, subdivision (a)(24), to reference this change, and also requires the California Department Social Services to adopt regulations consistent with these changes.

Background:

Existing law requires child welfare social workers and probation officers to create case plans for children and NMDs in foster care. Existing law further provides that all foster youth in out-of-home care have specific rights, including among others, the right to have fair and equal access to all available services, placement care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group
identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

SB 731 specifies that all youth in foster care also have the right to be placed in their foster care placements according to their gender identity, not the gender listed in their case or court records. This law also impacts all youth who are on probation through the juvenile justice system but placed in foster care.

In order to ensure definitional clarity and consistency of application of this new legislation, definitions of gender and gender identity are provided below:

Gender\(^1\) refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for boys and men or girls and women. These influence the ways that people act, interact, and feel about themselves. Gender is different from Sex in that Sex is assigned at birth. Sex refers to one’s biological status as either male or female, and is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy.

Gender Identity\(^2\) - an internal understanding of one’s own gender (e.g. a person’s internal sense of being male, female or something else). Therefore, a transgender person’s gender identity does not match the sex assigned to him or her at birth. It is also important to note, gender identity and sexual orientation are separate aspects of a person’s identity: A transgender person may be bisexual, gay, or straight (or may identify in some other way).

Changes to placements and practices:

Effective January 1, 2016, child welfare social workers are required to make placement decisions for the foster children, youth, and NMDs in their care based on their client’s gender identity rather than the gender listed in their case or court records, if this is the desire of the foster youth. This means that biological males whose gender identity is female, or biological females whose gender identity is male, need to be accommodated in their foster care or group home placements. For some, a room change within their current placement may be necessary. If their present placement cannot accommodate their needs, a placement change may be required. Placement by gender identity is critical to a youth’s sense of safety, security, and well-being and needs to be respected. Furthermore, foster youth are not to be forced to conform through dress, pronoun usage, customs, room assignments etc. to the gender in their case or court record if it is different than how they perceive themselves.

It is also important to note that placement according to gender identity is a choice, not a requirement. Therefore, if a foster youth whose gender identity is different than the gender listed in the case or court record, is comfortable in their present placement and/or their present

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1 “Transgender People, Gender Identity and Gender Expression” http://www.apa.org/topics/lgbt/transgender.aspx
room situation the foster youth is allowed to remain in the placement where he or she feels accepted, safe and comfortable. When considering or making placement or room changes to accommodate a differing gender identity for a foster youth, it is always important to consider and account for the personal rights of any youth with whom they may be cohabitating. Placement workers should address these issues with caregivers and youth.

In order to best assist the placing child welfare social workers and applicable probation officers as well as the foster family and adoption agencies, group home and STRTC’s, the California Department of Social Services, Community Care Licensing Division (CCLD) has developed a document that provides further guidance regarding placement and rooming standards affected by SB 731 requirements: http://www.cdss.ca.gov/inforesources/Community-Care-Licensing/Policy/Appendices-and-Chaptered-Legislation.

Questions:

Questions concerning the gender identity placement policy should be directed to the Adoption Policy Unit at (916) 651-1858 or apu@dss.ca.gov. Questions regarding changes to CCLD licensing regulations should be directed to (916) 651-5380, or contact your local CCLD office.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

c: County Welfare Directors Association
    Chief Probation Officers of California
    Judicial Council of California