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**COMMENTS RELATING TO DCYF RULES AND REGULATIONS – SEXUAL  
ORIENTATION, GENDER IDENTITY AND EXPRESSION  
February 5, 2015**

The ACLU of Rhode Island wishes to commend the Department for proposing these regulations to prohibit discrimination against LGBTQQI youth. The regulation’s goals of preventing harassment of such youth and ensuring that they “receive fair and equal treatment in a professional and confidential manner” are critical ones, and this proposal will be a very helpful tool in protecting youth from discrimination on the basis of their sexual orientation, gender identity or expression.

However, in one respect, we believe that the regulations go too far. In a few other respects, though, we would urge that the scope of the regulations be expanded to provide more comprehensive protection to LGBTQQI youth.

Addressing the second issue first: we would encourage the Department to expand the scope of these regulations to cover areas beyond day-to-day interaction with youth. We note that a policy on this subject promulgated last year by the Massachusetts Department of Youth Services covers such matters as non-discrimination in housing placement, searches and medical care. The Massachusetts regulations also contain other specific provisions helpful in the youth care context, governing such topics as bathroom and shower facilities and grooming rules. We urge the Department to consider adding sections to this policy that address those issues, as this would make these very good regulations even better. We would be happy to offer proposed language in that regard.

Our specific concern about regulatory overreach involves Sections C(1)(a) and C(2). The first section bars staff and service providers from “tolerat[ing] disrespectful comments or gestures” against youth based on sexual orientation, gender identify or expression. Section C(2) contains a similar provision and requires the agency and service providers to take “swift action” against any youth who make “a general statement disparaging any sexual orientation, gender identity or expression,” and to further have a policy that failure to report such “incidents” “may result in disciplinary or other consequences.”

While we appreciate the purpose of these provisions, we believe that they are overly broad and raise basic First Amendment concerns. It is important to note that the proposal already appropriately bars any discrimination, bullying or verbal or physical harassment against youth based on their status. However, punishing youth for making “disrespectful” or “disparaging” statements goes far beyond what is necessary or appropriate. In the absence of other conduct prohibited by these regulations, it is improper to impose disciplinary consequences against a youth who, for example, claims that the Bible condemns homosexuality, or against a service provider who fails to report such comments. The First Amendment simply does not allow the state to ban “disrespectful” or “disparaging” comments, no matter how worthy the goal. We urge that the restrictions on those comments, and the requirement that providers address them, be stricken.

We appreciate your attention to our views. If the suggestions we have made are not adopted, we request that, pursuant to R.I.G.L. §42-35-3(a)(2), you provide us with a statement of the principal reasons for and against adoption of these rules, incorporating therein your reasons for overruling the suggestions urged by us.

Submitted by: Steven Brown, Executive Director