April 4, 2026

Alex J. Adams, Assistant Secretary
Administration for Children and Families (ACF)
U.S. Department of Health and Human Services
330 C Street, S.W.
Washington, DC 20201

Submitted via https://www.regulations.gov

Re: Designated Placement Requirements Under Title IV-E and IV-B for LGBTQI+ Children; Rescission, 91 Fed. Reg. 11017 (March 6, 2026) RIN 0970-AD19

AFA Action Supports removing the requirements issued in the final rule "Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children" (89 FR 34818) published on April 30, 2024

Dear Assistant Secretary Adams:

AFA Action strongly supports the proposed rule change removing the Biden-era requirements in the final rule "Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children" (89 FR 34818) published on April 30, 2024 (hereinafter the "Biden-era final rule").

AFA Action is the governmental and legislative affairs affiliate of the American Family Association (AFA). The mission of AFA is to inform, equip, and activate individuals and families to transform American culture and to give aid to the church, here and abroad. Central to that mission is supporting and strengthening families, including those in state foster care systems.

Fit parents should not be forced to choose between their sincerely held religious convictions and the opportunity to become foster parents. This false choice is exactly what the Biden-era final rule imposed on families.

As eighteen (18) state Attorneys General affirmed in opposing the Biden-era final rule, it is clearly unconstitutional under the Supreme Court's decision in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882 (2021) ("The refusal of Philadelphia to contract with [Catholic Social Services] for the provision of foster care services unless it agrees to certify same-sex couples as foster parents cannot survive strict scrutiny, and violates the First Amendment.").

Simply stated, the Biden-era final rule effectively established an official orthodoxy: "Bow to the LGBTQ+ agenda, or else you cannot be a foster parent." Such an imposition violates the First Amendment. ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

Indeed, devout parents from diverse religious traditions sincerely believe that affirming a child's claimed LGBTQ+ status would result in divine condemnation. Compelling Americans to make affirmations that result in "nothing for them but a fear of spiritual condemnation" advances no compelling or even substantial governmental interest; rather, it is merely "a handy implement for disguised religious persecution" (*Barnette*, 319 U.S. at 644 (Black, J. and Douglas, J., concurring)).

The Biden administration's final rule is a grievous invasion of religious liberty, and we support ACF's recension of this rule.

In addition, the Biden-era final rule poses a threat to good governance and to federalist principles by remaining in the Code of Federal Regulations, even though the rule has already been vacated by a federal district court. Over the past few decades, we have seen federal agencies use ostensibly non-binding guidance to impose various agendas upon states. An infamous example of such guidance is the 2011 "Dear Colleague" letter (and a follow up 2014 "Q and A") promulgated by the Obama administration regarding Title IX obligations. This guidance was not endowed with the force of law, but nevertheless set tone and policy for many higher-educational institutions.

Federal guidance avoids notice-and-comment requirements and can be transmitted to states via an email or blog or Q and A document. Guidance is also difficult to challenge in court, ironically because it does not possess the force of law. ("This theory of injury fails because it is based on a misunderstanding of the Memorandum. The Memorandum does not impose any restrictions on, or create any penalties against, entities subject to the Fair Housing Act. … The dissent favors a different theory of

injury – namely, that the College was deprived of a right to notice and opportunity for comment before HUD issued the internal directive. But even assuming that notice and comment was required, a plaintiff cannot establish injury in fact "on the basis of a 'procedural right' unconnected to the plaintiff's own concrete harm." *Lujan*, 504 U.S. at 573 n.8."" (*Sch. of the Ozarks, Inc. v. Biden*, 41 F.4th 992, 998 (8th Cir. 2022)).

Even though the final rule is not legally in effect or enforceable, it is conceivable that its continued existence in the Code of Federal Regulations could be cited by a future administration as justification for issuing "non-binding" guidance aimed at achieving the same unconstitutional ends as those sought by the final rule.

For this additional reason, we support AFC's proposal to remove the requirements issued in the final rule "Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children" (89 FR 34818).

Finally, the 2024 final rule relies on a premise harmful to children in foster care: namely, that foster parents should encourage children to choose and live out a sexual identity contrary to their biological sex – because doing so, in particular, will support the child's mental health. This premise is false. As researcher Dr. Jay Greene has demonstrated, the opposite is the case:

> In the past several years, the suicide rate among those ages 12 to 23 has become significantly *higher* in states that have a provision that allows minors to receive routine health care without parental consent than in states without such a provision. Before 2010, these two groups of states did not differ in their youth suicide rates. Starting in 2010, when puberty blockers and cross-sex hormones became widely available, elevated suicide rates in states where minors can more easily access those medical interventions became observable. Rather than being protective against suicide, this pattern indicates that easier access by minors to cross-sex medical interventions without parental consent is associated with higher risk of suicide. ("Puberty Blockers, Cross-Sex Hormones and Youth Suicide," Heritage Foundation, June 13, 2022).

Greene's research is supported by a rigorous June 2022 review of the medical literature by the Florida Division of Medicaid, "Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria." The report concludes:

> The available medical literature provides insufficient evidence that sex reassignment through medical intervention is a safe and effective treatment for gender dysphoria. As this report demonstrates, the evidence favoring "gender affirming" treatments, including evidence regarding suicidality, is either low or very low quality. … While clinical organizations like the APP endorse the above treatments, none of those organizations relies on high quality evidence. … To the contrary, the evidence shows that the above

treatments pose irreversible consequences, exacerbate or fail to alleviate existing mental health conditions, and cause infertility or sterility.

These conclusions support ACF's proposal to remove the requirements issued in the final rule. If anything, they support a new rule that would prohibit states from allowing children in foster care to undergo sex-reassignment surgery or use puberty blockers and cross-sex hormones.

Respectfully,

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