

CALIFORNIA

California's Department of Social Services, Child Welfare Services ("DSS-CWS") has responsibility for regulating and overseeing the child welfare programs of the state's 58 counties, which in turn have substantial autonomy in developing their own policies, training, and services. The following assessments and recommendations focus on DSS-CWS policies, which should set minimum standards for providing services to LGBT foster care youth statewide.

Moreover, it is particularly important that DSS-CWS mandate non-discrimination policies and LGBT services statewide, given the lack of attention to LGBT issues and inconsistency at the county level. This was made clear from our efforts to survey LGBT services in the child welfare agencies of twenty California counties. Of those twenty counties, only five responded.¹ And of those five, only San Luis Obispo maintains express non-discrimination provisions relating to the sexual orientation of foster care youth and staff. Only Sacramento and Santa Clara address sexual orientation issues even minimally in foster parent training, and only San Diego addresses these issues in foster care staff training. San Luis Obispo alone provides HIV/AIDS and other STD prevention information to youth in its foster care program. There were very few other LGBT services reported in any of the responding counties.

Although Los Angeles did not respond to our survey, Gay and Lesbian Adolescent Social Services ("GLASS"), one of only two private agencies in the country providing foster care services specifically to LGBT youth, operates there. In addition to helping the youth it serves directly, GLASS offers an important resource for LGBT-related training and programs that can be adopted statewide.*

CONTENTS:

I. NON-DISCRIMINATION POLICIES	42
II. FOSTER PARENT TRAINING	44
III. FOSTER CARE STAFF TRAINING	45
IV. LGBT YOUTH PROGRAMS AND SERVICES	47

*The following recommendations are modeled on and should be read in conjunction with the "Basic Reforms to Address the Unmet Needs of LGBT Foster Youth" described at pages 22-28 of this Report. "LGBT" is an acronym for lesbian, gay, bisexual, and transgender.



I. NON-DISCRIMINATION POLICIES

A. SEXUAL ORIENTATION OF YOUTH

Assessment: DSS-CWS expressly prohibits foster care agencies from discriminating in the provision of services on the basis of “race, color, national origin, religion, political affiliation, marital status, sex, age or handicap,” but not on the basis of sexual orientation.²

The omission of sexual orientation from DSS-CWS’s non-discrimination policy is inconsistent with California state law prohibiting sexual orientation discrimination in the provision of services to the public.³

Recommendation:	Amend the DSS-CWS Policy Manual to include sexual orientation as an expressly prohibited basis for discrimination.
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B. SEXUAL ORIENTATION OF FOSTER PARENTS AND OTHER FOSTER HOUSEHOLD MEMBERS

Assessment: DSS-CWS does not expressly prohibit discrimination based on the sexual orientation of foster parents and other foster household members. However, we are informed by DSS-CWS that sexual orientation is not an issue when considering whether foster parent applicants can provide adequate care to foster children.

Furthermore, the California Administrative Code (“CAC”) provides that any adult shall be permitted to apply for a foster parent license regardless of sexual orientation.⁴ In addition, all licensing boards in California are expressly prohibited from establishing “any . . . qualification for licensing that has an adverse impact on any class by virtue of its . . . sexual orientation . . . unless the practice can be demonstrated to be job related.”⁵

Recommendation:	DSS-CWS should adopt express written policies prohibiting discrimination based on the sexual orientation of foster parents and other foster household members, not only in licensing and placement decisions but in all interactions with DSS-CWS and its agents.
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C. SEXUAL ORIENTATION OF FOSTER CARE STAFF

Assessment: DSS-CWS prohibits discrimination in employment practices on the basis of “race, color, national origin, religion, political affiliation, sex, marital status, age or handicap,” but not on the basis of sexual orientation.⁶

The California Fair Employment and Housing Act (“FEHA”) was amended in 1999 expressly to prohibit discrimination and harassment in public and private employment on the basis of sexual orientation, in addition to the grounds listed



in the current DSS-CWS Manual.⁷ The FEHA further makes it unlawful for any employer to fail to take all reasonable steps necessary to prevent prohibited harassment from occurring.⁸

Recommendation: DSS-CWS should adopt express written policies prohibiting employment discrimination and harassment based on the sexual orientation of foster care staff and requiring compliance with the state mandate to take all reasonable steps necessary to prevent harassment from occurring.

D. HIV/AIDS STATUS OF YOUTH

Assessment: DSS-CWS prohibits discrimination in the provision of services on the basis of “handicap,” but does not make clear that discrimination on the basis of HIV/AIDS status is prohibited.⁹

Nonetheless, discrimination on the basis of HIV and AIDS in the provision of services by entities open to the public, including government entities, is unlawful in California.¹⁰

Recommendation: The DSS-CWS Manual should be amended to make clear that discrimination in the provision of services on the basis of HIV/AIDS status is prohibited.

E. HIV/AIDS STATUS OF FOSTER PARENTS AND OTHER FOSTER HOUSEHOLD MEMBERS

Assessment: DSS-CWS does not expressly prohibit discrimination based on the HIV/AIDS status of foster parents and other foster household members.

A CAC provision relating to foster parent qualifications provides that any adult shall be permitted to apply for a license regardless of “handicap.”¹¹ In addition, all licensing boards in California are expressly prohibited from establishing “any... qualification for licensing that has an adverse impact on any class by virtue of its... disability... unless the practice can be demonstrated to be job related.”¹²

Recommendation: Adopt express written policies prohibiting discrimination based on the HIV/AIDS status of foster parents able to perform foster care responsibilities and of other foster household members.



F. HIV/AIDS STATUS OF FOSTER CARE STAFF

Assessment: DSS-CWS prohibits discrimination in employment practices on the basis of “handicap” but does not make clear that discrimination on the basis of HIV/AIDS status is prohibited.¹³

The FEHA prohibits discrimination and harassment in public and private employment on the basis of HIV/AIDS status.¹⁴ The FEHA further makes it unlawful for any employer to fail to take all reasonable steps necessary to prevent prohibited harassment from occurring.¹⁵

Recommendation: DSS-CWS should adopt express written policies prohibiting employment discrimination and harassment based on the HIV/AIDS status of foster care staff and requiring compliance with the state mandate to take all reasonable steps necessary to prevent harassment based on HIV/AIDS status from occurring.

II. FOSTER PARENT TRAINING

A. EXPLAINING NON-DISCRIMINATION POLICIES REGARDING SEXUAL ORIENTATION AND HIV/AIDS STATUS

Assessment: DSS-CWS does not require California counties, which conduct foster parent training individually, to provide instruction to foster parents on any issues related to the sexual orientation or the HIV/AIDS status of foster youth, including non-discrimination principles.

Recommendation: In addition to adopting sexual orientation non-discrimination policies and clarifying those applicable to HIV/AIDS as recommended above, make training on such policies and applicable California law mandatory for all foster parents.

B. SENSITIVITY TO SEXUAL ORIENTATION

Assessment: DSS-CWS does not require instruction to foster parents on sensitivity to sexual orientation.

Recommendation: Require mandatory training statewide for all foster parents on sensitivity to sexual orientation and the challenges facing LGBT youth.



C. SUPPORTING A FOSTER CARE YOUTH COMING OUT AS LGBT

Assessment: DSS-CWS does not require instruction for foster parents on supporting a foster care youth coming out as LGBT.

Recommendation: Require mandatory training for all foster parents on supporting a foster care youth coming out as LGBT.

D. SEXUAL HEALTH EDUCATION, INCLUDING HIV/AIDS AND OTHER STD PREVENTION EDUCATION AND SERVICES

Assessment: In the 1990s, DSS-CWS mandated development of foster parent training curricula on such subjects as teenage pregnancy, HIV/AIDS, and other STDs.¹⁶ However, DSS-CWS did not require that the training be mandatory.¹⁷ Moreover, DSS-CWS did not provide us with information indicating that any training specifically addresses the sexuality and the sexual health of LGBT youth.

Recommendation: Require mandatory training for all foster parents on educating LGBT foster care youth about their sexuality and sexual health, including prevention of HIV/AIDS and other STDs.

III. FOSTER CARE STAFF TRAINING

A. EXPLAINING NON-DISCRIMINATION POLICIES REGARDING SEXUAL ORIENTATION AND HIV/AIDS STATUS

Assessment: DSS-CWS does not require instruction to foster care staff on issues related to the sexual orientation or the HIV/AIDS status of foster youth, including non-discrimination principles.

Recommendation: In addition to adopting or clarifying such policies in the first instance, make training about them and applicable state law mandatory for all foster care staff.



B. SENSITIVITY TO SEXUAL ORIENTATION

Assessment: DSS-CWS does not require training of foster care staff on sensitivity to sexual orientation.

Recommendation:	Require mandatory training for all foster care staff on sensitivity to sexual orientation and the challenges facing LGBT youth.
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C. SUPPORTING A FOSTER CARE YOUTH COMING OUT AS LGBT

Assessment: DSS-CWS does not require training of foster care staff on supporting a foster care youth coming out as LGBT.

Recommendation:	Require mandatory training for all foster care staff on supporting a foster care youth coming out as LGBT.
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D. SEXUAL HEALTH EDUCATION, INCLUDING HIV/AIDS AND OTHER STD PREVENTION EDUCATION AND SERVICES

Assessment: DSS-CWS does not require training of foster care staff on educating LGBT youth about their sexual health, including prevention of HIV/AIDS and other STDs.

Recommendation:	Require mandatory training for all foster care staff on educating LGBT foster care youth about their sexuality and sexual health, including prevention of HIV/AIDS and other STDs.
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IV. LGBT YOUTH PROGRAMS AND SERVICES

A. SAFE GROUP HOMES

Assessment: California has one of only two programs in the country focused on serving LGBT foster care youth. GLASS, a private agency that runs five group homes in Los Angeles, is the only organization in the state specifically working with sexual minority youth in foster care. Its five facilities provide residences for just 36 youth, most from Los Angeles County.

Recommendation: Thanks to the leadership of GLASS, Los Angeles is one of the few locales in the country with group programs dedicated to LGBT foster care youth. However, the need for LGBT-safe group homes statewide far exceeds GLASS's capacity. All group facilities should be made safe for LGBT youth, and additional specialized services are needed statewide.

B. IDENTIFY FOSTER PARENTS TO CARE FOR LGBT YOUTH

Assessment: We did not receive, in response to our requests, any information regarding the identification of foster parents to care for LGBT youth. We are informed, however, that GLASS does attempt to identify foster parents in Los Angeles qualified and interested in caring for LGBT youth.

Recommendation: DSS-CWS, as well as county and contract agencies, should identify and train qualified foster parents, including lesbian and gay adults, interested in caring for LGBT youth.

C. COUNSELING PROGRAMS

Assessment: GLASS offers counseling services specific to LGBT youth to the residents of its programs. However, DSS-CWS and county agencies did not report any other LGBT counseling services in the state.

Recommendation: DSS-CWS, as well as county agencies, should ensure that one-on-one and group counseling services are available for LGBT youth throughout California.



D. RESOURCES AND COMMUNITY CONTACTS FOR FOSTER CARE STAFF, FOSTER PARENTS, AND LGBT YOUTH

Assessment: We did not receive, in response to our requests, any information regarding resources and community contacts for LGBT youth.

Recommendation: DSS-CWS should mandate, and county agencies should maintain in each area office and distribute to youth, foster care staff, foster parents, and biological families, LGBT resource guides that include community contacts, support groups, reading lists and materials, hotlines, LGBT advocates in the foster care system, and other resources. All youth in foster care should have direct, ready, and confidential access to developmentally appropriate resources about LGBT issues.

E. SEXUAL HEALTH EDUCATION, INCLUDING HIV/AIDS AND OTHER STD PREVENTION EDUCATION AND SERVICES

Assessment: There is no mandated programming to educate LGBT youth about their sexual health, including prevention of HIV/AIDS and other STDs. In fact, sexual education of any kind is not mentioned in DSS-CWS's description of topics covered in independent living programs for older foster care youth.¹⁸

Recommendation: Provide all foster care youth with developmentally appropriate information and resources about sexuality and sexual health, including about LGBT issues and prevention of HIV/AIDS and other STDs.

F. ACCESS TO HIV TESTING WITHOUT GUARDIAN CONSENT OR NOTIFICATION

Assessment: There are no provisions in the DSS-CWS Manual regarding access for foster care youth to HIV testing. However, California law provides that minors aged 12 or older may consent to medical care related to the diagnosis or treatment of a communicable disease or a related STD¹⁹ and are deemed competent to give consent to an HIV test.²⁰ In counties designated by the California Director of Health Services to provide HIV tests at alternative test sites, confidential HIV testing is required to be made available in an accessible manner without charge.²¹

Recommendation: DSS-CWS should adopt policies that implement and extend state law to provide foster care youth access to free and confidential HIV testing without guardian consent or notification.



G. CONFIDENTIALITY OF HIV TESTING AND TEST RESULTS

Assessment: There are no provisions in the DSS-CWS Manual regarding confidentiality of a foster care youth's HIV testing and test results.

California, by statute, provides for the confidentiality of HIV related information by prohibiting the disclosure of any identifying information about an individual who is tested for HIV.²² There is no exception that would permit foster parents or staff to have access to HIV test results of a minor aged 12 or over.²³ Individuals who negligently or willfully disclose the result of an HIV test without proper written authorization are subject to fines, civil damage suits, and criminal prosecution.²⁴

Recommendation:

DSS-CWS should adopt policies consistent with state law providing for the confidentiality of foster care youths' HIV status.



Notes to California

1. Alameda, Sacramento, San Diego, San Luis Obispo and Santa Clara counties responded, while El Dorado, Humboldt, Lassen, Los Angeles, Merced, Orange, Riverside, San Bernardino, San Francisco, San Mateo, Santa Barbara, Santa Cruz, Shasta, Sutter, and Tulare counties did not.
2. Cal. DSS-CWS, Manual of Policies and Procedures § 21-109(.1), at 243.
3. See Cal. Civ. Code § 51 (Unruh Act) (West 1982); *Harris v. Capital Growth Investors XIV*, 805 P.2d 873, (1991) (approving cases holding that the Unruh Act prohibits discrimination based on sexual orientation); *Nicole M. v. Martinez Unified Sch. Dist.*, 964 F. Supp. 1369, 1388 (N.D. Cal. 1997) (collecting cases holding that public entities such as schools are subject to the Unruh Act).
4. Cal. Admin. Code tit. 22, § 87017(a) (current through Feb. 9, 2001).
5. Cal. Gov't. Code § 12944(a) (West 1992).
6. Cal. DSS-CWS, Manual of Policies and Procedures § 21-109(.3), at 244.
7. Cal Gov't. Code §§ 12940(a) and 12940(j)(1) (as amended by Stats 1999 ch 592 § 7.5 (AB 1001)).
8. Cal. Gov't. Code § 12940(j) (West 1992).
9. Cal. DSS-CWS Manual of Policies and Procedures § 21-109(.1), at 243.
10. See Cal. Civ. Code §§ 51(b) and 51(e) (West 1982) (prohibiting discrimination in the provision of services by entities open to the public on the basis of "disability," and defining disability as "any mental or physical disability as defined in Section 12926 of the Government Code"); Cal. Gov't. Code § 12926.1(c) (West 2001) (expressly defining physical and mental disabilities to include "HIV/AIDS"); Cal. Civ. Code § 51(f) (West 1982) (providing that any violation of the right of an individual under the Americans with Disabilities Act also violates the Unruh Act).
11. Cal. Admin. Code tit. 22 § 87017(a) (current through Feb. 9, 2001).
12. Cal. Gov't. Code § 12944(a) (West 1992).
13. Cal. DSS-CWS, *supra* note 6.
14. Cal. Gov't. Code §§ 12940(a) (West 1992), 12940(j)(1) (West 1992), 12926.1(c) (West 2001).
15. Cal. Gov't. Code § 12940(j) (West 1992).
16. Cal. Welf. & Inst. Code § 903.8 (West 1998).
17. Cal. Welf. & Inst. Code § 903.8(c) (West 1998).



18. Cal. DSS-CWS, Manual of Policies and Procedures § 677, at 262.
19. Cal. Fam. Code § 6926 (West 1994).
20. Cal. Health & Safety Code § 121020(a) (West 1996).
21. Cal. Health & Safety Code § 120895 (West 1996).
22. Cal. Health & Safety Code § 120975 (West 1996).
23. *See* Cal. Health & Safety Code §§ 121020(a)(1) and 121020(c)(1) (West 1996).
24. Cal. Health & Safety Code § 120980 (West 1996).