

NEW YORK

Of the 14 states surveyed, New York was the least responsive to our requests for information. The Office of Children and Family Services's ("OCFS") failure to respond to our requests is emblematic of its inattention to the needs of LGBT foster care youth. We urge OCFS to review its policies, practices, and programs relative to LGBT youth and to address the needs of this population without delay.

In contrast to OCFS, its New York City division, the Administration for Children's Services ("ACS"), was far more cooperative in supplying us with information and has taken a number of positive steps to recognize and serve the needs of LGBT youth in its jurisdiction.

Because OCFS has made little information available, this assessment focuses primarily on ACS's policies and practices in New York City, where roughly 65% of the state's children in foster care reside.¹ OCFS, and other local child welfare divisions, should look to ACS's measures on behalf of LGBT youth as a starting point for reform. OCFS should mandate LGBT policies and programs for all foster care divisions statewide.*

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*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: A New York executive order prohibits sexual orientation discrimination in the provision of services by state agencies.²

Inconsistent with this executive order, the State of New York Code of Rules and Regulations (“NYCRR”) prohibits discrimination in the provision of child welfare services by state and private contracting agencies on the basis of race, color, national origin, age, sex, religion, or handicap, but not on the basis of sexual orientation.³ The NYCRR similarly prohibits employees of child-care agencies from “behav[ing] in a discriminatory manner toward children receiving care,” but nowhere specifies sexual orientation as an impermissible ground on which to discriminate.⁴

The NYCRR generally prohibits any act by staff of authorized agencies that would be detrimental to children in a residential facility,⁵ including “language or gestures which can cause emotional harm to children.”⁶ ACS has issued a policy bulletin to all ACS and contract agency staff expressing its strong non-discrimination policy with regard to sexual orientation and stating that it interprets this provision of the NYCRR to prohibit “discrimination based on sexual orientation, whether by a staff member, a child in care, or a member of the community.”⁷

The ACS bulletin also makes the important statement that “ACS is committed to providing the highest quality services to all children in our care, regardless of their race, color, ethnicity, religion, national origin, cultural heritage, disability, special needs, gender, age or sexual orientation. The purpose of this policy statement is to reinforce ACS’s commitment to respect the dignity of lesbian, gay, bisexual and transgender youth.”⁸

Recommendation:	Amend the NYCRR non-discrimination regulation to include sexual orientation as an expressly prohibited basis for discrimination. OCFS should adopt express written policies prohibiting sexual orientation discrimination statewide.
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B. SEXUAL ORIENTATION OF FOSTER PARENTS AND OTHER FOSTER HOUSEHOLD MEMBERS

Assessment: The NYCRR prohibits social services districts or officials from establishing or applying any policy or practice discriminating against an individual on the basis of race, color, national origin, age, sex, religion, or handicap, but does not include sexual orientation as an impermissible basis on which to discriminate.⁹ Nor does the NYCRR expressly prohibit sexual orientation discrimination against foster parent applicants.¹⁰

Although ACS did not provide us with any written policies on this issue, we are advised that it does license gay and lesbian foster parents.

Recommendation:	The NYCRR should be amended to include a provision expressly prohibiting sexual orientation discrimination against foster parents and other foster household members, not only in licensing and placement decisions but in all interactions with OCFS, ACS, and their agents. OCFS and ACS should adopt express non-discrimination policies as well.
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C. SEXUAL ORIENTATION OF FOSTER CARE STAFF

Assessment: The NYCRR prohibits establishment by any social services district or official of “any employment policy or practice which would have the effect of discriminating against an individual because of race, color, national origin, age, sex, religion or handicap,”¹¹ but does not provide protection from sexual orientation discrimination.

This is inconsistent with a New York State executive order, which prohibits discrimination based on sexual orientation in public employment.¹²

Recommendation:	Amend the NYCRR non-discrimination provision to include sexual orientation as an expressly prohibited basis for discrimination. OCFS and ACS should also adopt express prohibitions against sexual orientation discrimination in employment.
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D. HIV/AIDS STATUS OF YOUTH

Assessment: The NYCRR prohibits discrimination in the provision of child welfare services on the basis of handicap,¹³ including HIV and AIDS.¹⁴

ACS does not expressly prohibit discrimination on the basis of the HIV/AIDS status of foster youth.

Recommendation:	OCFS and ACS should adopt policies expressly prohibiting discrimination based on the HIV/AIDS status of youth.
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E. HIV/AIDS STATUS OF FOSTER PARENTS AND OTHER FOSTER HOUSEHOLD MEMBERS

Assessment: The NYCRR prohibits discrimination on the basis of handicap,¹⁵ including HIV and AIDS.¹⁶ More specifically, the NYCRR provides that “physical handicaps or illness of foster parents or members of their household must be a consideration [in licensing] only as they affect the ability to provide adequate care to foster children.”¹⁷

ACS does not expressly prohibit discrimination on the basis of the HIV/AIDS status of foster parents.

Recommendation:	OCFS and ACS should adopt policies consistent with the NYCRR’s prohibitions against discrimination based on the HIV/AIDS status of foster parents and foster household members.
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F. HIV/AIDS STATUS OF FOSTER CARE STAFF

Assessment: The NYCRR generally prohibits discrimination on the basis of handicap,¹⁸ including HIV and AIDS.¹⁹ ACS does not expressly prohibit discrimination on the basis of the HIV/AIDS status of foster care staff.

Recommendation:	OCFS and ACS should adopt policies expressly prohibiting discrimination based on the HIV/AIDS status of foster care staff.
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II. FOSTER PARENT TRAINING

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

Assessment: According to ACS, it provides all staff, and requires that all contract agencies provide their staff and foster parents, diversity training that includes sensitivity to sexual orientation. It is unclear whether this includes explanation of non-discrimination policies. Although ACS’s policy bulletin on HIV/AIDS outlines basic information required to be provided to foster parents, explanation of non-discrimination policies is not included.²⁰

Recommendation:	OCFS should in the first instance adopt statewide sexual orientation and HIV/AIDS non-discrimination policies. OCFS and ACS should provide mandatory training to educate foster parents about non-discrimination principles and governing New York law.
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B. SENSITIVITY TO SEXUAL ORIENTATION

Assessment: ACS has informed us that it provides all its staff, and requires that all contract agencies provide their staff and foster parents, diversity training that includes sensitivity to sexual orientation.

Recommendation:	Mandatory training should be provided to foster parents statewide 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: We did not receive information from ACS or OCFS on this subject.

Recommendation:	Train foster parents statewide to assist 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: ACS, in its policy bulletin on HIV, directs each foster care agency to provide information to all foster parents about HIV infection, including HIV testing, as part of the standard orientation.²¹ However, while ACS requires that all foster parents be given some basic information on HIV, it does not appear to require training of foster parents on educating LGBT youth about their sexuality and sexual health, including prevention of HIV/AIDS and other STDs.

Recommendation:	Provide mandatory training to all foster parents statewide on educating LGBT foster care youth about their sexuality and sexual health, including prevention of HIV/AIDS and other STDs.
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III. FOSTER CARE STAFF TRAINING

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

Assessment: According to ACS, it provides all staff, and requires that all contract agencies provide their staff, diversity training that includes sensitivity to sexual orientation; however, it is unclear whether the training includes



explanation of non-discrimination principles. Likewise, ACS’s policy bulletin on HIV/AIDS outlines basic information required to be provided to foster care staff but does not specify explanation of non-discrimination policies.

Recommendation:	OCFS should in the first instance adopt sexual orientation and HIV/AIDS non-discrimination policies. OCFS and ACS should require mandatory training to educate foster care staff about non-discrimination principles and governing New York law.
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B. SENSITIVITY TO SEXUAL ORIENTATION

Assessment: According to ACS, it provides all staff, and requires that all contract agencies provide their staff, diversity training that includes sensitivity to sexual orientation.

Recommendation:	OCFS should require mandatory training to foster care staff statewide 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: We did not receive information from ACS or OCFS on this topic.

Recommendation:	Train foster care staff statewide to assist 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: ACS, in its policy bulletin on HIV, mandates each foster care agency to “provide or arrange for the provision of information and training of their staff on HIV-related laws, regulations, directives, policies and procedures.” Although a mandated component of training is entitled “HIV infection and AIDS,” it is unclear if this includes prevention information.²² It is also unclear whether training is provided on educating LGBT youth about this and other issues regarding their sexual health.

Recommendation:	Provide mandatory training and ongoing staff development programs statewide on educating LGBT foster 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: New York City has some of the only group homes in the country specifically serving LGBT youth. These homes are run by Green Chimneys Children’s Services, whose LGBT programs were founded by Gerald Mallon, a leader in developing foster care services for LGBT youth. The Gramercy Life Skills Residence, in existence for several years, serves 25 gay, bisexual, transgender, and questioning males ages 16 to 21 years. Until recently, there were no residential services available for lesbian teens in New York City. In the past year, however, Green Chimneys founded several programs open to lesbian youth, as well as to gay, bisexual, transgender, and questioning young people. These include a Supervised Independent Living Program, with 7 apartments for 14 young people ages 16 to 21, and a Transitional Living Apartment Program for 10 runaway and homeless youths ages 16 to 21. In addition, Green Chimneys will shortly open two Agency Operated Boarding Homes, one for youth ages 12 to 15, and another for 6 “hard-to-place” youths with histories of multiple placements and psychiatric hospitalizations, who require a higher level of care.

In addition, ACS recently issued a request for additional agencies to provide beds specifically for lesbian, gay, bisexual, transgender, and questioning youth. In response, the Louise Wise, St. Christopher Otille, and Heartshare agencies have committed to providing services to this population, which should soon lead to additional placements for LGBT adolescents.

Recommendation:

Thanks to Green Chimneys’ leadership and ACS’s growing commitment to serving LGBT youth, New York City 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 in the city and statewide far exceeds the limited supply. 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: ACS, as well as contract foster care agencies in the New York City area, including the Salvation Army, Green Chimneys, Seaman’s Society, and Talbot Perkins, are actively identifying foster parents for LGBT youth.

Recommendation:

Foster care agencies statewide should identify and train qualified foster parents, including lesbian and gay adults, interested in caring for LGBT youth. The need for these foster parents far exceeds the current supply.



C. COUNSELING PROGRAMS

Assessment: ACS is in the process of establishing support groups for LGBT youth in its direct care, and several of its contract agencies currently run such groups.

Recommendation:	ACS should continue its efforts to form support groups for LGBT youth in its care and should require all its contract agencies to do the same. Furthermore, ACS and contract agencies should offer one-on-one counseling by specialists in LGBT youth issues. OCFS should mandate these programs statewide.
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D. RESOURCES AND COMMUNITY CONTACTS FOR FOSTER CARE STAFF, FOSTER PARENTS, AND LGBT YOUTH

Assessment: ACS has recently appointed a staff person to gather information about local resources for use by foster care staff, foster parents, and LGBT youth.

Recommendation:	ACS has taken an important first step toward developing a master list of community resources and reading materials specifically related to LGBT issues. This information should be disseminated throughout the system, so that all foster care staff are knowledgeable about available resources and can advise foster parents and LGBT youth. Foster parents should also be provided with materials and resource lists at the inception of their certification. These resources should be available to biological families as well. All youth in foster care should have direct, ready, and confidential access to materials and resource lists about LGBT issues. OCFS should mandate these services statewide.
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E. SEXUAL HEALTH EDUCATION, INCLUDING HIV/AIDS AND OTHER STD PREVENTION EDUCATION AND SERVICES

Assessment: In its policy bulletin on HIV, ACS mandates that “designated staff must be prepared to counsel children possessing capacity to consent regarding prevention, risk factors, and risk behavior reduction related to HIV infection.”²³ In addition, all youth in independent living programs are required to take a course entitled “Adolescent

Sexuality.” Furthermore, we are informed by ACS that all children over age 12 receive education on risk reduction for transmission of HIV and other STDs.

Recommendation:	In addition to the programs offered by ACS, all foster care youth should receive developmentally appropriate information and resources about sexuality and sexual health, including about LGBT issues and prevention of HIV/AIDS and other STDs. OCFS should mandate these policies and programs statewide.
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F. ACCESS TO HIV TESTING WITHOUT GUARDIAN CONSENT OR NOTIFICATION

Assessment: ACS’s policy bulletin on HIV provides that if a child has been determined to have the capacity to consent and has requested an HIV test, he or she may be tested either through agency-supervised confidential testing or anonymous testing. It further provides that the youth must be given information about these options.²⁴

A foster care youth deemed capable of consent may be tested for HIV without consent from the Commissioner of ACS or a birth parent.²⁵ ACS policy also provides that, “[w]hen a foster child has been determined by the authorized agency to have the capacity to consent, and HIV risk has been identified, the child or youth has the right to make all decisions regarding an HIV test, the type of test, and a limited right to make certain decisions regarding disclosure of information related to an HIV test.”²⁶

Furthermore, each child in foster care is required to be assessed for risk of exposure to HIV and to be tested if certain risk factors are present.²⁷

Recommendation:	OCFS should mandate these policies statewide.
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G. CONFIDENTIALITY OF HIV TESTING AND TEST RESULTS

Assessment: ACS has clear policies regarding confidentiality of HIV-related information: “[a]ll records and information regarding HIV testing, including the identity of children who are tested and the test results, must be held confidential by the foster care agency, ACS staff and the Pediatric AIDS Unit.”²⁸ Information may be released to agency staff only on a “need to know” basis and must be accompanied by forms warning against re-disclosure of the information.²⁹ Furthermore, a foster child deemed capable of consent has a limited right to make decisions regarding disclosure of information.³⁰

Recommendation:	OCFS should mandate these policies statewide.
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Notes to New York

1. Approximately 53,500 children were in foster care in New York State as of September 30, 1998. U.S. Dep. of Health and Human Services, *Children Entering And Exiting Care In Fiscal Year 1998, And Children In Care On September 30, 1998, By State*. New York City had nearly 35,000 children in foster care in 1999. Bureau of Management Information and Research, NYS OCFS, *1999 Foster Care and Adoption Profiles (NYC Data Only)*, in MAPS With Selected Trend Data: 1995-1999 (July 31, 2000).
2. N.Y. Executive Order No. 28 (Nov. 18, 1983), No. 33 (April 9, 1996).
3. N.Y. Comp. Codes R. & Regs. tit. 18, §§ 303.1(a) and (b) (current through Jan. 15, 2001).
4. N.Y. Comp. Codes R. & Regs. tit. 18, § 441.19(d) (current through Jan. 15, 2001).
5. N.Y. Comp. Codes R. & Regs. tit. 18, § 441.19(h) (current through Jan. 15, 2001).
6. N.Y. Comp. Codes R. & Regs. tit. 18, § 441.19(c) (current through Jan. 15, 2001).
7. Policy Bulletin from Nicholas Scopetta, Commissioner of NYC Administration for Children's Services, to all ACS and Contract Agency Staff (July 22, 1999) (on file with Lambda Legal Defense).
8. *Id.* (emphasis added).
9. N.Y. Comp. Codes R. & Regs. tit. 18 § 303.1(a) (current through Jan. 15, 2001).
10. The NYCRR does, however, provide that adoptive parent applicants "shall not be rejected solely on the basis of homosexuality. A decision to accept or reject when homosexuality is at issue shall be made on the basis of individual factors as explored and found in the adoption study process as it relates to the best interests of adoptive children." N.Y. Comp. Codes R. & Regs. tit. 18, § 421.16(h)(2) (current through Jan. 15, 2001). Although this provision is a step in the right direction, sexual orientation should be treated no different than race, ethnicity and religion, which, under the NYCRR "shall not be a basis for rejecting an adoption applicant." N.Y. Comp. Codes R. & Regs. tit. 18, § 421.16(j) (current through Jan. 15, 2001).
11. N.Y. Comp. Codes R. & Regs. tit. 18, § 303.1(c) (current through Jan. 15, 2001).
12. N.Y. Executive Order No. 28, *supra* note 2.



13. N.Y. Comp. Codes R. & Regs., *supra* note 9.
14. N.Y. Comp. Codes R. & Regs. tit. 18, § 303.7 (current through Jan. 15, 2001).
15. N.Y. Comp. Codes R. & Regs., *supra* note 9.
16. N.Y. Comp. Codes R. & Regs., *supra* note 14.
17. N.Y. Comp. Codes R. & Regs. tit. 18, § 443.2(c)(1)(ii) (current through Jan. 15, 2001).
18. N.Y. Comp. Codes R. & Regs., *supra* note 9.
19. N.Y. Comp. Codes R. & Regs., *supra* note 14.
20. Pediatric AIDS Unit, NYC ACS, ACS Bulletin No. 98-2, *HIV-Related Assessment, Testing, Counseling and Clinical Trial Enrollment of Children and Youth in Foster Care* 33-34 (Dec. 30, 1998).
21. Pediatric AIDS Unit, *supra* note 20.
22. *Id.* at 33.
23. *Id.* at 25.
24. *Id.* at 24.
25. *Id.*
26. *Id.* at 29.
27. *Id.* at 21.
28. *Id.* at 32.
29. *Id.*
30. *Id.* at 29.