
II. BASIC REFORMS TO ADDRESS THE UNMET NEEDS OF LGBT FOSTER YOUTH

What emerges from our state-by-state survey is a picture of lesbian, gay, bisexual, and transgender youth under-served by foster care systems. These youth remain in the margins, their best interests ignored and their safety in jeopardy. To remedy LGBT invisibility, prevent abuse, and improve care for these adolescents, we propose the following crucial, basic reforms in the areas of non-discrimination policies, training for foster parents and foster care staff,⁴⁸ and LGBT youth services and programs.

A. Non-discrimination policies

States should adopt and enforce explicit, systemwide policies prohibiting discrimination. Specifically, these should include prohibitions against discrimination on the basis of:

- **the sexual orientation of foster care youth,**
- **the sexual orientation of foster parents and other foster household members,**
- **the sexual orientation of foster care staff,**
- **the HIV/AIDS status of foster care youth,**
- **the HIV/AIDS status of foster parents and other foster household members, and**
- **the HIV/AIDS status of foster care staff.**

These policies should encompass “actual or perceived” sexual orientation or HIV/AIDS status. Discrimination prohibitions should also forbid discrimination on the basis of gender identity. Sex discrimination provisions should be interpreted to bar such discrimination, and that scope can be made explicit by enumerating “sex, including gender identity,” among forbidden bases of discrimination in agency policies.

Adopting LGBT non-discrimination policies is an important acknowledgment that LGBT youth are present in the foster care system in significant numbers and that they

often face prejudice, neglect, and abuse. The proposed non-discrimination policies enhance and clarify important legal protections for LGBT youth, foster parents, and child welfare workers. They also embody the vital principles that LGBT foster youth are entitled to dignity, respect, and support, and that discrimination will not be tolerated. These policies should be written into all states' child welfare agency policy manuals — including in those states that already have broader state laws prohibiting sexual orientation discrimination — and incorporated into foster parent and staff training, to ensure that professionals and foster parents are well-informed of and guided by these principles. Only if the rules become part of the day-to-day provision of foster care can they prevent harm to young people and others; enforcing an obligation after the fact is a very limited solution at best.

Non-discrimination policies must govern not only state child welfare agencies and their employees, but also the many private agencies that participate in the provision of foster care services and that play a large role in the experiences of LGBT foster youth. States should not end-run their obligations to LGBT youth in their care by contracting for foster care services with private providers that discriminate on the basis of sexual orientation or ignore the presence of LGBT youth.⁴⁹ States should therefore adopt policies (1) prohibiting contracting for foster care services with private providers that discriminate on any of the prohibited bases, and (2) requiring that adoption of and compliance with non-discrimination policies that mirror the states' be an express term of provider contracts.

Although the significant, special concerns of foster children with HIV or AIDS are beyond the scope of this Report, these conditions have been closely associated in the public mind with a gay sexual orientation and have been connected with stigma and discrimination against LGBT individuals. Foster care systems should adopt HIV/AIDS non-discrimination policies to help ensure that neither a gay sexual orientation nor actual or perceived HIV infection is the trigger for bias or abuse. Non-discrimination rules will also help dispel myths about these conditions and underscore that HIV infected individuals can be fully participating members of society.⁵⁰

The necessary policies should prohibit discrimination not only against foster youths themselves, but also against the foster parents and social service staff who may care for them. This is crucial to prevent anti-gay prejudice from violating the rights of these adults, and, even more important, because the best interests of LGBT youth are served by supportive, openly LGBT adult role models and advocates in a caring atmosphere.⁵¹

Furthermore, qualified and caring foster parents should not be turned away because of their sexual orientation or HIV status, particularly in light of the nationwide shortage of foster homes for children in need.

Finally, the states should take steps to enforce and monitor ongoing compliance with these non-discrimination policies.

States should not end-run their obligations to LGBT youth in their care by contracting for foster care services with private providers that discriminate on the basis of sexual orientation or ignore the presence of LGBT youth.

B. Training foster parents and staff

Non-discrimination policies alone cannot change the attitudes and conduct of child welfare professionals, foster parents, and foster peers. All foster parents and staff who care for adolescents, and hence encounter LGBT youth, should be educated and equipped to relate to these young people with sensitivity and support.

Specifically, foster care systems should mandate and provide high quality training of foster parents and foster care staff in these areas:

The purpose and operation of non-discrimination policies regarding sexual orientation, gender identity, and HIV/AIDS status.

Sensitivity to sexual orientation and gender identity, including,

- recognizing that homosexuality is a natural variation of human sexuality and not a moral failing or disease to be “cured,”
- recognizing that all foster youth are not heterosexual, and being receptive to cues that a young person is LGBT,
- signaling that it is safe for a youth to be LGBT and “out,”
- eliminating anti-gay slurs and adopting inclusive, gender-neutral language (e.g., rather than ask a teenage boy if he has a girlfriend, ask if he has someone special in his life),
- responding with support to a youth’s developmentally appropriate same-sex attraction,
- responding with support to a youth’s nonconformity with traditional gender stereotypes,
- protecting LGBT youth from bias and harassment by peers, schools, and others,
- working with birth families to overcome bias, and
- respecting confidentiality.

The need for nonjudgmental support to foster care youth coming out as LGBT or questioning their sexual orientation, and how to provide that support.

The need to provide developmentally appropriate sexual health education to foster care youth, including on HIV/AIDS and other STD prevention, and how to provide that education.

This training should be required as a threshold condition of foster parent licensing or foster care employment, and should also be required on an ongoing basis for license renewal and as part of foster care staff development.⁵² Foster parents and staff, who should be prepared to deal with issues of sexuality that arise for all adolescents, should be sensitive to the particular problems and concerns of LGBT youth. Adults caring for foster care youth should be taught to recognize and overcome their own heterosexist assumptions and biases. They need training and resources to provide nonjudgmental and knowledgeable support to LGBT adolescents. Adults should be trained to provide all foster care adolescents, including LGBT youth, with accurate sexual health education and resources as an essential part of protecting the health and welfare of these adolescents.⁵³

Foster care parents and professionals must also recognize that it is their responsibility to protect these youth from discrimination by others. These adults should be given the tools to advocate actively to ensure that LGBT foster children are safe in their foster families, group homes, schools, and communities.

A handful of organizations and locales have already developed training programs designed to address the needs of LGBT youth in foster care. These programs can offer models and resources for elements of the training recommended in this Report. For example, the Casey Family Program, a private provider of foster care and long-term placement services, recently gave comprehensive on-site training in its Western Regional offices in California, Arizona, and Hawaii, to 111 staff members on issues and challenges facing LGBT youth and on providing enhanced care to these adolescents. The two-day trainings were conducted by the Gay and Lesbian Youth Support Project of Health Care of Southeastern Massachusetts. Casey also engaged an independent evaluator to assess the immediate results of the training on the attitudes, knowledge, and behavior of the participants. The evaluation revealed a significant statistical positive change in indicators for increased sensitivity and enhanced ability to provide more culturally appropriate services for LGBT youth.⁵⁴ In addition to the improvements already measured in the assessment, Casey saw numerous other positive effects flow from the training. For example, following the training, caseworkers recognized adolescents already in their caseloads to be gay or lesbian, and several staff members felt safe to disclose their sexual orientation to their co-workers.

Several other organizations also have strong track records providing training and resources on LGBT youth issues, including Green Chimneys in New York City, GLASS in Los Angeles, and True Colors in Connecticut.

To state the obvious (yet ignored) point: Child welfare staff equipped with information, training, and resources will provide more effective and sensitive services to LGBT youth.

Adults should be trained to provide all foster care adolescents, including LGBT youth, with accurate sexual health education and resources as an essential part of protecting the health and welfare of these adolescents.

Even a step as small as displaying in a group home or foster care office a poster about LGBT rights and services carries the powerful benefit of signaling to LGBT youth — and to those who work with them — that in this place LGBT youth are acknowledged, accepted, and supported.

C. Programs and services for LGBT youth

Beyond foster parent and staff training, foster care systems should provide concrete programs and services designed to address directly the needs of LGBT youth. These should include safe and supportive group and foster homes, counseling and community resources, sexual health education, and confidential HIV/AIDS prevention materials and testing. The following steps are vitally needed to support LGBT foster care youth:

Immediately designate and equip specific foster and group homes as safe havens for LGBT youth as a short term measure until these adolescents can be cared for safely throughout the foster care system.

Make *all* group homes safe for LGBT adolescents, so that openly LGBT youth need not be segregated and to protect those not yet identified as LGBT, by

- adopting strict policies against verbal and physical harassment of LGBT youth,
- educating group staff and residents about the importance and operation of these policies,
- enforcing these policies by disciplining the wrongdoers rather than their LGBT victims, and by following up with counseling and education,
- engaging in group counseling sessions with non-LGBT residents and staff to dispel myths and bias against LGBT youth,
- creating LGBT-supportive environments by, for example, using inclusive language and displaying LGBT-related signs, literature, and materials that are themselves useful resources on LGBT issues and that also signal safety to be LGBT and “out,” and
- hiring openly LGBT staff to serve as role models and ready advocates.

Identify and train foster parents, including lesbian or gay individuals or couples, to care for LGBT foster youth.

Designate an LGBT “ombudsperson” in child welfare offices to respond to questions and problems and to advocate for LGBT foster youth.

Offer counseling for LGBT and questioning youth that is confidential, nonjudgmental, and supportive.

Offer counseling and resources to birth families to overcome any homophobia and develop their sensitivity to LGBT issues.

Provide resources and community contacts for caseworkers, foster parents, birth families, and LGBT youth, including support and peer groups, reading lists and materials, and hotlines.

Identify and train foster parents to care for foster youth who have HIV or AIDS.

Offer sexual health education, including HIV/AIDS and other STD education and prevention services, directly to youth and to those who care for them, which

- is guided by professional standards and supported by professional peer-reviewed research and data,
- recognizes that “abstinence-only” programs have not proven effective in deterring adolescents from engaging in unsafe behaviors,
- gives accurate, nonjudgmental information about sexual orientation, sexual behavior, how STDs are contracted, and how they are prevented, and
- provides information about and access to latex barriers.⁵⁵

Offer access to confidential HIV or other STD testing without parental or guardian consent or notification, including,

- through referrals based on thorough, nonjudgmental risk assessments by caseworkers experienced with LGBT foster youth, or
- at the initiative of foster care youth themselves.

These programs and services offer much needed support for LGBT foster care youth. They seek to create designated safe foster and group homes immediately, while the neglect, myths, and biases that make so many foster and group homes unwelcoming, and even dangerous, are addressed through anti-discrimination policies, education, and training. They give LGBT foster care youth access to information, peer support, and counseling to relieve their feelings of rejection and isolation. They offer these adolescents informed adult advocates and mentors who can help shield them from discrimination. These services also acknowledge and address the risks LGBT (and all) youth face of infection with HIV and other STDs, and provide responsible sexual health education and access to confidential testing.

Even a step as small as displaying in a group home or foster care office a poster about LGBT rights and services carries the powerful benefit of signaling to LGBT youth — and to those who work with them — that in this place LGBT youth are acknowledged, accepted, and supported.⁵⁶

Conclusion

Overall, these proposals offer a workable blueprint for beginning to remedy the nationwide neglect of LGBT foster care youth. LGBT adolescents, like all children in the foster care system, are entitled to safety, support, and respect, with their best interests always in mind. It is the responsibility of all states and their child welfare agencies to ensure that these basic standards for the humane treatment of the LGBT youth in their care are achieved.

Lambda Legal Defense has developed a poster that affirms for LGBT youth that they have basic rights in foster care. The poster also disseminates Lambda’s toll-free foster care help line for LGBT youth facing discrimination — 1-866-LGBTTeen.

Notes to Basic Reforms to Address the Unmet Needs of LGBT Foster Youth

48. "Foster care staff" refers to workers at every level of the foster care system, including supervisors, case workers, inspectors, counselors, group home staff, and others.
49. The importance of binding private foster care providers to adhere to non-discrimination principles is well-illustrated by the practices and beliefs of Kentucky Baptist Homes for Children ("KBHC"). KBHC, which receives most of its funding from the state and is the largest private residential child care provider in Kentucky, claims that homosexuality is contrary to the religious morals that it attempts to instill in the youth in its care. Indeed, KBHC fired a highly regarded youth counselor because she is a lesbian. That decision is under challenge in federal court. *See Pedreira v. Kentucky Baptist Homes for Children, Inc.*, Civil Action No. 3:00 CV-210-S (U.S.D.C., W.D. Ky). Moreover, Kentucky is sorely failing LGBT youth relegated to the care of KBHC. *See also* Kentucky report, *infra*.
50. Qualified HIV-positive foster care parents and staff whose conditions do not prevent them from caring for foster children should thus not be barred from service.
51. *See, e.g.*, Mallon, Let's Get This Straight, *supra* note 9, at 93-108; Mallon, Welcome Wagon, *supra* note 3, at 136-39.
52. Social workers have a professional responsibility to train in sensitivity to LGBT concerns. The Code of Ethics of the NASW provides that social workers should "demonstrate competence in the provision of services that are sensitive to . . . differences among people," 1.05(b), and should "obtain education about and seek to understand the nature of social diversity and oppression with respect to . . . sexual orientation," 1.05(c), at <http://www.naswdc.org/Code/ethics.htm> (last visited March 23, 2001).
53. Susan M. Blake, et al., *Preventing Sexual Risk Behaviors Among Gay, Lesbian, and Bisexual Adolescents: The Benefits of Gay-Sensitive HIV Instruction in Schools*, 91 Am. J. Public Health 940 (2001).
54. An additional assessment will be conducted six months following the training to measure its longer-term impact. Casey Family Program, Western Region, *Preliminary Report on the Independent Evaluation of the Gay and Lesbian Youth Support Trainings*, conducted by John Snow Inc. (March 2001) (unpublished, on file with Lambda Legal Defense).
55. *See, e.g.*, David Satcher, Surgeon General, U.S. Dept. of Health and Human Services, *The Surgeon General's Call to Action to Promote Sexual Health and Responsible Sexual Behavior*, at <http://www.surgeongeneral.gov/library/sexualhealth/call.htm> (June 2001); Ralph J. DiClemente, *Preventing Sexually Transmitted Infections*, *supra* note 43; John B. Jemmott et al., *Abstinence and Safer Sex HIV Risk-Reduction Interventions for African American Adolescents*, 279 JAMA 1529 (1998); Mary L. Kamb et al., *Efficacy of Risk-Reduction Counseling to Prevent Human Immunodeficiency Virus and Sexually Transmitted Diseases*, 280 JAMA 1161 (1998).
56. To help child welfare agencies with this step, Lambda Legal Defense has developed a poster that affirms for LGBT youth that they have basic rights in foster care. The poster also disseminates Lambda's toll-free foster care help line for LGBT youth facing discrimination — 1-866-LGBTTeen.