

TEXAS

Texas does not have express policies prohibiting discrimination in foster care services on the basis of sexual orientation. It also has little in the way of training or services to address the needs of LGBT youth in foster care. However, its sexual education programs are notably progressive and include information related to HIV prevention and modes of transmission.*

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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: There is no provision in the Department of Protective and Regulatory Services (“DPRS”) Policy Manual prohibiting discrimination on the basis of the sexual orientation of youth.

While the Texas Administrative Code (“TAC”) prohibits DPRS from discriminating on the basis of race, color, or national origin in the provision of services, it does not prohibit discrimination on the basis of sexual orientation.¹

Recommendation: Adopt express written policies prohibiting discrimination based on the sexual orientation of youth.

B. SEXUAL ORIENTATION OF FOSTER PARENTS AND OTHER FOSTER HOUSEHOLD MEMBERS

Assessment: Neither the DPRS Policy Manual nor the TAC expressly prohibits discrimination based on the sexual orientation of foster parents and other foster household members. Furthermore, DPRS has informed us that its practice is to place children in “traditional” families with a mother and father or a single parent. We are advised that in practice some locales license lesbian and gay foster parents, while others take the position that they are ineligible.

Recommendation: Adopt express written policies prohibiting discrimination on the basis of the sexual orientation of foster parents and other foster household members, not only in licensing and placement decisions but in all interactions with DPRS and its agents.

C. SEXUAL ORIENTATION OF FOSTER CARE STAFF

Assessment: There is no provision in the DPRS Policy Manual expressly prohibiting discrimination based on the sexual orientation of foster care staff.

Recommendation: Adopt express written policies prohibiting discrimination on the basis of the sexual orientation of foster care staff.

D. HIV/AIDS STATUS OF YOUTH

Assessment: The DPRS Policy Manual does not expressly prohibit discrimination based on the HIV/AIDS status of foster care youth.

The TAC, however, provides that, “no qualified handicapped individual will, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity conducted by” DPRS.²

Recommendation: DPRS should adopt express written policies prohibiting discrimination on the basis of the HIV/AIDS status of foster care youth.

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

Assessment: The DPRS Policy Manual does not expressly prohibit discrimination based on the HIV/AIDS status of foster parents and other foster household members.

The TAC, however, states that, “disabilities are evaluated in relation to the applicants’ adjustment to the disability and the limits, if any, the disability imposes on the applicants’ ability to care for a child.”³

Recommendation: DPRS should adopt express written policies prohibiting discrimination on the basis of 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: Neither the DPRS Policy Manual nor the TAC expressly prohibits discrimination based on the HIV/AIDS status of foster care staff.

Recommendation: Adopt express written policies prohibiting discrimination on the basis of the HIV/AIDS status of foster care staff.



II. FOSTER PARENT TRAINING

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

Assessment: We are informed by DPRS that foster parents are not provided information relating to sexual orientation and HIV/AIDS non-discrimination principles.

Recommendation: In addition to adopting sexual orientation and HIV/AIDS non-discrimination policies in the first instance, make training about such principles mandatory for all foster parents.

B. SENSITIVITY TO SEXUAL ORIENTATION

Assessment: We are informed by DPRS that sensitivity to sexual orientation is not included in training for foster parents.

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

C. SUPPORTING A FOSTER CARE YOUTH COMING OUT AS LGBT

Assessment: We are informed by DPRS that supporting a foster care youth coming out as LGBT is not included in training for foster parents.

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: The DPRS Policy Manual provides for annual training in universal precautions against HIV/AIDS transmission for all foster parents who care for children in DPRS care.⁴ We are informed by DPRS that foster parents

do not, however, receive training specifically on how to educate LGBT foster care youth about their sexual health, including about HIV/AIDS and other STD prevention.

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.
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III. FOSTER CARE STAFF TRAINING

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

Assessment: DPRS informed us that foster care staff are not provided information about sexual orientation and HIV/AIDS non-discrimination principles.

Recommendation:	In addition to adopting sexual orientation and HIV/AIDS non-discrimination policies in the first instance, make training about such principles mandatory for all foster care staff.
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B. SENSITIVITY TO SEXUAL ORIENTATION

Assessment: We are informed by DPRS that sensitivity to sexual orientation is not included in training for foster care staff.

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

Assessment: We are informed by DPRS that supporting a foster care youth coming out as LGBT is not included in training for foster care staff.

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: The DPRS Policy Manual provides for annual training to all foster care staff on universal precautions against HIV/AIDS transmission.⁵ There is no required training of foster care staff on how to educate LGBT foster care youth about their sexuality and sexual health, including prevention of HIV/AIDS and other STDs.

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

IV. LGBT YOUTH PROGRAMS AND SERVICES

A. SAFE GROUP HOMES

Assessment: Although Texas maintains group homes, none is geared specifically to LGBT youth. Furthermore, given the complete lack of training and services offered on LGBT issues by DPRS, existing group homes are ill-equipped to address the needs of these youth.

Recommendation: DPRS should consider whether, in the short term, the pressing needs of LGBT youth in group home settings would best be addressed by designating specific group facilities as safe havens for LGBT youth.

It should, however, be a priority to make every group facility in the state a safe, supportive environment for LGBT and questioning youth through strict enforcement of non-discrimination policies, staff training, sensitivity education for non-LGBT residents, and services and resources for LGBT youth.

B. IDENTIFY FOSTER PARENTS TO CARE FOR LGBT YOUTH

Assessment: DPRS did not respond to our requests for information on this topic.

Recommendation: DPRS, as well as contract agencies, should develop programs to identify and train foster parents, including lesbian and gay adults, interested in caring for LGBT youth.

C. COUNSELING PROGRAMS

Assessment: DPRS informed us that there are a limited number of sites around the state providing community support groups for youth concerning their sexual identity, but did not inform us further about these groups or whether they are available to youth in DPRS care.

Recommendation:	DPRS should ensure that one-on-one and group counseling services are available for LGBT youth.
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D. RESOURCES AND COMMUNITY CONTACTS FOR FOSTER CARE STAFF, FOSTER PARENTS, AND LGBT YOUTH

Assessment: DPRS did not respond to our requests for information on this topic.

Recommendation:	DPRS should distribute to DPRS offices, group facilities, and LGBT youth and their foster families, resource guides that include community contacts, support groups, reading lists and materials, hotlines, LGBT advocates in the foster care system, and other resources. These resources should also be available to biological families. All youth in foster care should have direct, ready, and confidential access to developmentally appropriate resources about LGBT issues.
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E. SEXUAL HEALTH EDUCATION, INCLUDING HIV/AIDS AND OTHER STD PREVENTION EDUCATION AND SERVICES

Assessment: The DPRS Policy Manual requires the DPRS to ensure that all children in its care receive “developmentally appropriate sex-education, whether the children are sexually active or not.”⁶ Sexually transmitted diseases and modes and prevention of HIV transmission are specifically required to be covered.⁷

This policy conforms to a TAC regulation mandating developmentally appropriate sex education, including regarding HIV transmission and prevention.⁸

Recommendation:	DPRS should ensure that its required sexual education is nonjudgmental and that it covers issues of concern to LGBT youth. Texas’ enlightened sexual education and HIV prevention education requirements should be vigilantly implemented, and an abstinence-only perspective avoided, to protect the sexual health of all foster youth.
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F. ACCESS TO HIV TESTING WITHOUT GUARDIAN CONSENT OR NOTIFICATION

Assessment: The DPRS Policy Manual provides for HIV testing of foster care youth if certain risk factors are met, a physician's physical exam indicates that a youth has symptoms of AIDS, a physician makes a written recommendation for testing, or the youth requests a test.⁹ Upon the youth's request, DPRS must ensure the youth is tested and must offer counseling.¹⁰

This policy implements a TAC regulation to the same effect.¹¹

There are no policies addressing whether parental or guardian consent may be required.

Recommendation:	Adopt policies that allow foster care youth to receive HIV testing without requiring parental or other guardian consent or notification.
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G. CONFIDENTIALITY OF HIV TESTING AND TEST RESULTS

Assessment: The DPRS Policy Manual has provisions relating to the confidentiality of HIV test results, but not testing status. The policies require disclosure of positive test results to the child's legal parents, foster parents, 24-hour child-care providers, prospective adoptive parents, and relatives with whom the child has been placed or with whom DPRS intends to place the child.¹² DPRS policy further provides that foster parents and 24-hour child-care providers are required to keep the child's HIV status confidential, but does not explicitly require the same of relatives caring for the child. Furthermore, it allows for disclosure of the information by the child's caretaker to schools and day care centers under certain circumstances.¹³

The DPRS policies on disclosure and confidentiality mirror those in the TAC.¹⁴

Recommendation:	Expand these policies to require that every person entitled to notification maintain the confidentiality of a foster care youth's HIV status, permitting disclosure on only a limited, need-to-know basis to provide for a youth's well-being. Amend or clarify the requirement of automatic disclosure to the biological parents of a child to allow for an individualized determination of the best interests of the child in each circumstance.
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Notes to Texas

1. 40 Tex. Admin. Code § 738.3002 (WESTLAW current through Dec. 31, 2000).
2. 40 Tex. Admin. Code § 738.3004 (WESTLAW current through Dec. 31, 2000).
3. 40 Tex. Admin. Code § 700.1502(2)(E) (WESTLAW current through Dec. 31, 2000).
4. Tex. DPRS Child Protective Services / CPS 96-8 § 6546, Caregiver Training.
5. *Id.*
6. Tex. DPRS Child Protective Services / CPS 94-14 § 6541, Sex Education and AIDS Prevention.
7. *Id.*
8. 40 Tex. Admin. Code §§ 700.1406(3)(A), (B), and (C) (WESTLAW current through Dec. 31, 2000).
9. Tex. DPRS Child Protective Services / CPS 94-14 § 6542, Testing Children in TDPRS's Conservatorship for HIV Antibodies.
10. *Id.*
11. 40 Tex. Admin. Code § 700.1401 (WESTLAW current through Dec. 31, 2000).
12. Tex. DPRS Child Protective Services / CPS 94-14 § 6545.
13. Tex. DPRS Child Protective Services / CPS 94-14 § 6547.
14. 40 Tex. Admin. Code § 700.1403 and 700.1404 (WESTLAW current through Dec. 31, 2000).