

NEW JERSEY

New Jersey is a leader in prohibiting sexual orientation discrimination under the statewide Law Against Discrimination. Nonetheless, the Division of Youth and Family Services (“DYFS”) still lags in adopting the range of LGBT non-discrimination policies, training, and programs needed to live up to the state’s mandate. In responding to our inquiries, DYFS has expressed a commitment to assess its current LGBT policies and programs and undertake necessary reforms.*

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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 DYFS Policy Manual prohibiting sexual orientation discrimination.

The non-discrimination policy of the Department of Human Services (“DHS”), of which DYFS is a division, codified in the New Jersey Administrative Code (“NJAC”), prohibits discrimination against a foster child or foster parent on the basis of race, color, or national origin, but not on the basis of sexual orientation.¹

The lack of express prohibitions against sexual orientation discrimination in both the DYFS Policy Manual and the NJAC is a striking deficiency given that New Jersey’s Law Against Discrimination, by which DYFS is bound, prohibits discrimination on the basis of “affectional or sexual orientation” in public accommodations, publicly assisted housing facilities, and the provision of services in the state.²

Recommendation:	Adopt non-discrimination policies consistent with the Law Against Discrimination.
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B. SEXUAL ORIENTATION OF FOSTER PARENTS AND OTHER FOSTER HOUSEHOLD MEMBERS

Assessment: The DYFS Policy Manual expressly protects foster parent applicants from sexual orientation discrimination.³ It also prohibits discrimination in the selection and placement of children into a particular foster home on the basis of the sexual orientation of the foster parents.⁴

The NJAC omits sexual orientation from its regulation otherwise prohibiting discrimination against foster parent applicants on the basis of race, color, national origin, handicapping condition, gender, religion, and marital, parental, or birth status.⁵

However, the NJAC does prohibit discrimination based on the marital status of foster parents – they may be “married, co-habiting, single, separated, widowed or divorced.”⁶ It also provides, in non-gendered terminology, that “when a couple lives together, both partners shall be considered to be foster parents who shall meet the standards” in order to become licensed.⁷ These provisions are commendably inclusive of lesbian and gay families. They are nonetheless no substitute for explicitly prohibiting discrimination on the basis of sexual orientation.

Recommendation:	Amend the NJAC expressly to prohibit 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 DYFS and its agents.
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C. SEXUAL ORIENTATION OF FOSTER CARE STAFF

Assessment: DYFS does not have a formal policy forbidding sexual orientation discrimination against foster care staff, despite state laws and regulations which do prohibit it. Specifically, New Jersey's Law Against Discrimination prohibits sexual orientation discrimination in public and private employment.⁸ In addition, an administrative order expresses the state's commitment to a discrimination-free workplace and includes sexual orientation as a prohibited basis for discrimination.⁹

Recommendation:	DYFS should, in keeping with state law, adopt a policy prohibiting discrimination based on the sexual orientation of employees.
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D. HIV/AIDS STATUS OF YOUTH

Assessment: An administrative order requires the DHS to serve all New Jersey citizens "eligible for services provided by the Department and its Divisions, including those with a suspected or confirmed diagnosis of HIV infection with or without AIDS symptoms."¹⁰

Recommendation:	Incorporate non-discrimination provisions outlined in the administrative order into the DYFS Policy Manual.
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E. HIV/AIDS STATUS OF FOSTER PARENTS AND OTHER FOSTER HOUSEHOLD MEMBERS

Assessment: A DYFS policy prohibits discrimination in the licensing of foster parents on the basis of disability.¹¹ The policy further provides that foster parents are not required to undergo HIV testing as part of their pre-service medical examination; however, they are required to inform DYFS if any member of the household is or becomes HIV-positive. Once informed, DYFS evaluates whether the individual's health allows him or her to care for a foster child.¹² The policy also provides that DYFS may not release HIV-related information pertaining to foster parents and members of the foster household to anyone, including to the parents of a child in the foster family's care, without written permission from the HIV-positive individual or a court order.¹³

The NJAC likewise prohibits discrimination in the licensing of foster parents on the basis of handicapping condition.¹⁴

Recommendation:	None.
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F. HIV/AIDS STATUS OF FOSTER CARE STAFF

Assessment: A statewide administrative memorandum prohibits discrimination in hiring and job assignments of DHS employees who have HIV.¹⁵ It further provides for reasonable accommodations for HIV-infected employees, confidentiality of employee medical information, and counseling, education, and disciplining of employees who refuse to work with HIV-infected individuals.¹⁶

Recommendation: None.

II. FOSTER PARENT TRAINING

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

Assessment: There is no mandatory instruction provided to foster parents on state and DYFS non-discrimination policies.

Recommendation: In addition to adopting sexual orientation and HIV/AIDS non-discrimination policies in the first instance, provide mandatory training to all foster parents on the Law Against Discrimination and sexual orientation and HIV/AIDS non-discrimination principles.

B. SENSITIVITY TO SEXUAL ORIENTATION

Assessment: While DYFS informs us that it requires “sensitivity training” generally geared toward meeting “all” foster children’s needs, it does not specifically train on sensitivity to sexual orientation of foster youth. DYFS’s provider agreements with foster parents make the parents responsible for “giving each child a home life that will meet his/her need to feel accepted, guided and secure; disciplining each child without the use of ridicule, threats, rejection, or other words or actions which are emotionally damaging; [and] supporting each child’s cultural and religious background.”¹⁷ While these provisions address the need for sensitivity to foster care youth generally, they do not specifically call for support and sensitivity to a foster youth’s sexual orientation.

Recommendation: Provide mandatory training to all foster parents on sensitivity to sexual orientation and the challenges confronting LGBT youth.

C. SUPPORTING A FOSTER CARE YOUTH COMING OUT AS LGBT

Assessment: DYFS does not specifically train foster parents to help a foster care youth coming out as LGBT.

Recommendation:	Provide mandatory training to all foster parents 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: DYFS did not respond to our request for training manuals or written policies concerning the specific training required of foster parents on providing sexuality and sexual health education to LGBT youth.

Recommendation:	Provide mandatory training to 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: Foster care staff receive no formal instruction on state and DYFS non-discrimination policies.

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

Assessment: According to DYFS, foster care staff are not given mandatory training on the importance of sensitivity to sexual orientation. DYFS has informed us that in the last year it did offer at a training conference an optional session entitled, "Training Staff to Work with Gay and Lesbian Youth."

Recommendation:	Provide mandatory training to 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: DYFS does not provide mandatory training on this subject.

Recommendation:	Provide mandatory training to all foster care staff on supporting 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: DYFS offers no formal instruction to foster care staff on educating LGBT youth about their sexuality and sexual health, including prevention of HIV/AIDS and other STDs.

Recommendation:	DYFS should provide mandatory training to 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: Although New Jersey maintains group homes, none is geared specifically to LGBT youth. Furthermore, given the lack of training and services offered on LGBT issues, existing group homes are currently ill-equipped to

address the needs of LGBT youth. Indeed, we are informed that on occasion LGBT youth in New Jersey’s foster care system have been sent to New York City group facilities for LGBT adolescents because New Jersey has been unable to provide an appropriate placement.

Recommendation:	<p>DYFS 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.</p> <p>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.</p>
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B. IDENTIFY FOSTER PARENTS TO CARE FOR LGBT YOUTH

Assessment: There are no specific efforts to identify foster parents to care for LGBT youth.

Recommendation:	<p>DYFS, as well as contract agencies, should identify and train qualified foster parents, including lesbian and gay adults, interested in caring for LGBT youth.</p>
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C. COUNSELING PROGRAMS

Assessment: According to DYFS, counseling services are tailored to meet the individual needs of clients. However, there are no specific programs designed to address the needs of LGBT youth (*e.g.*, support groups, referrals to counselors who specialize in the area).

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

Assessment: According to DYFS, these resources are not specifically addressed in training or routinely provided to foster care staff, parents, or youth. However, DYFS field offices are staffed with a Community Resource Development



Specialist (“RDS”) who assists caseworkers in locating community resources. Additionally, the RDS is responsible for developing relationships with community resource centers equipped to address specific children’s needs. We were not informed whether RDS’ maintain current master lists of LGBT community services and reading materials that can be easily accessed by foster care staff, foster parents, biological families, and LGBT youth.

Recommendation:	DYFS should distribute to DYFS 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: There is no mandated programming to educate LGBT foster youth about their sexuality and sexual health, including prevention of HIV/AIDS and other STDs.

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.
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F. ACCESS TO HIV TESTING WITHOUT GUARDIAN CONSENT OR NOTIFICATION

Assessment: DYFS has policies governing testing of children and youth in state care identified by caseworkers as meeting risk criteria, including being sexually active. DYFS itself does not, however, have policies making confidential testing available at the initiative of youth in foster care.¹⁸

DHS maintains a policy of providing free and confidential or anonymous HIV testing to anyone who requests it and maintains approximately 20 test sites throughout the state for this purpose, although it is unclear whether this service is available to a minor without the consent of an adult.¹⁹

There are no provisions in either the DYFS Policy Manual or the NJAC regarding foster youths’ access to HIV testing without consent or notification of a parent or guardian.

Recommendation:	Clarify policies and regulations to provide foster youth access to HIV testing without parent or guardian consent or notification.
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G. CONFIDENTIALITY OF HIV TESTING AND TEST RESULTS

Assessment: DYFS has extensive policies relating to the confidentiality of the HIV/AIDS status of youth in its care. These policies provide for the release of information to foster and adoptive parents and agencies only on a need-to-know basis for the care and treatment of the child.²⁰

The NJAC likewise permits disclosure of a child's HIV status to foster and adoptive parents and agencies only on a need-to-know basis, for the care and treatment of the child.²¹

Finally, New Jersey also prohibits disclosure of HIV/AIDS status by statute.²²

Recommendation:	None.
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Notes to New Jersey

1. N.J. Admin. Code tit. 10, § 122B-1.6 (1998).
2. *See e.g.*, N.J. Stat. Ann. § 10:5-12 (West 1993). *See also* N.J. Stat. Ann. § 10:5-1 *et seq.* (West 1993).
3. N.J. DHS II Field Operations Casework Policy and Procedures Manual § 1810.4 (1994).
4. N.J. DHS II Field Operations Casework Policy and Procedures Manual § 1502.1 (1984). *See also*, II Field Operations, *supra* note 3.
5. N.J. Admin. Code tit. 10, § 122C-2.1(b) (1998). Despite its silence on sexual orientation as an improper basis to discriminate against prospective foster parents, the NJAC does have a regulation expressly protecting adoptive parent applicants from sexual orientation discrimination. *See* N.J. Admin. Code tit. 10, §§ 121C-2.6(a) and 121C-4.1(c) (1998).
6. N.J. Admin. Code tit. 10, § 122C-1.8(a) (1998).
7. N.J. Admin. Code tit. 10, § 122C-1.8(b) (1998).
8. N.J. Stat. Ann. § 10:5-12 (West 1993).
9. N.J. DHS, Administrative Order 4:01, *New Jersey State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace*.
10. N.J. DHS, Administrative Order 2:08, *HIV Policy*, § V(B) (Feb. 1, 1983).
11. N.J. DHS II Field Operations, *supra* note 3.
12. N.J. DHS II Field Operations Casework Policy and Procedures Manual § 1804, Medical Reference (1998).
13. N.J. DHS II Field Operations Casework Policy and Procedures Manual § 2003 (1993).
14. N.J. Admin. Code tit. 10, § 122C-2.1(b) (1998).
15. N.J. DHS, Administrative Order 2:08, *HIV Policy*, § V(C) (Feb. 1, 1983).



16. N.J. DHS, Administrative Order 2:08, *HIV Policy*, §§ V(J)(2)(b), V(J)(3), and V(J)(5) (Feb. 1, 1983).
17. DHS, DYFS Foster Family Care Agreement.
18. N.J. DHS II Field Operations Casework Policy and Procedures Manual § 803.4 (1996).
19. N.J. DHS, Administrative Order 2:08, *HIV Policy*, Appendix B (Feb. 1, 1983).
20. N.J. DHS II Field Operations Casework Policy and Procedures Manual §§ 801.1, 1003.4, 1206.7, and 1502.10 (1999). *See also*, II Field Operations Casework Policy and Procedures Manual §§ 803.9 and 1502.10a (1999).
21. N.J. Admin. Code tit. 8, § 61-4.1 (current through April 16, 2001; 33 N.J. Reg. No. 8).
22. N.J. Stat. Ann. § 26:5C-7 (West 1993).