

KENTUCKY

Kentucky has no policies or laws expressly prohibiting discrimination on the basis of sexual orientation or HIV/AIDS status. In addition, the Cabinet for Families and Children (“CFC”) currently contracts with a private agency providing a substantial share of the state’s foster care services that not only overtly discriminates against lesbian and gay employees, but also maintains policies that have the effect of discriminating against LGBT foster youth. Furthermore, CFC maintains a policy barring “single persons who live together as spouses” from applying for foster parent licenses. CFC failed to respond to our questionnaire about training and services, a reflection of its inattention to LGBT issues.*

CONTENTS:

I. NON-DISCRIMINATION POLICIES	94
II. FOSTER PARENT TRAINING	96
III. FOSTER CARE STAFF TRAINING	97
IV. LGBT YOUTH PROGRAMS AND SERVICES	98

*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 CFC Policy Manual expressly prohibiting discrimination on the basis of the sexual orientation of youth.

Recommendation:	Adopt express written policies prohibiting discrimination based on the sexual orientation of youth.
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B. SEXUAL ORIENTATION OF FOSTER PARENTS AND OTHER FOSTER HOUSEHOLD MEMBERS

Assessment: There is no provision in the CFC Policy Manual prohibiting discrimination on the basis of the sexual orientation of foster parents and other foster household members. Indeed, it is CFC's policy that, "[s]ingle persons living together as spouses may not apply" to be foster parents.¹ As a result, same-sex couples may be prevented from becoming foster parents.

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 CFC and its agents. Rescind the marital requirement for foster parent licensing of couples so that otherwise qualified gay and lesbian couples may serve as foster parents.
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C. SEXUAL ORIENTATION OF FOSTER CARE STAFF

Assessment: There is no provision in the CFC Policy Manual prohibiting discrimination on the basis of the sexual orientation of foster care staff. Furthermore, a federal suit is currently challenging Kentucky's funding of a private agency, Kentucky Baptist Homes for Children ("KBHC"), which provides a significant portion of residential child care in the state, after KBHC fired a highly regarded youth counselor because she is a lesbian² and adopted a formal policy that it would not hire anyone who is openly gay or lesbian.³ KBHC claims that homosexuality is inconsistent with the religious values it attempts to instill in the youth in its care.⁴

Recommendation:	Adopt express written policies prohibiting discrimination on the basis of the sexual orientation of foster care staff.
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D. HIV/AIDS STATUS OF YOUTH

Assessment: There is no provision in the CFC Policy Manual prohibiting discrimination on the basis of the HIV/AIDS status of youth.

Recommendation:	Adopt express written policies 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: There is no provision in the CFC Policy Manual prohibiting discrimination on the basis of the HIV/AIDS status of foster parents and other foster household members.

Recommendation:	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.
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F. HIV/AIDS STATUS OF FOSTER CARE STAFF

Assessment: There is no provision in the CFC Policy Manual prohibiting discrimination on the basis of 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.
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II. FOSTER PARENT TRAINING

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

Assessment: We are informed by CFC that the training curricula it uses do not include any reference to sexual orientation or to non-discrimination principles regarding sexual orientation and HIV/AIDS status.

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

B. SENSITIVITY TO SEXUAL ORIENTATION

Assessment: CFC does not provide any training regarding sensitivity to sexual orientation.

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: CFC does not provide training on this subject.

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: CFC did not respond to our requests for descriptions of the training administered to foster parents.

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: CFC did not respond to our requests for written manuals or curricula describing the specific training administered to foster care staff. Given the absence of sexual orientation and HIV/AIDS non-discrimination provisions, it is clear that this subject is not covered in foster care staff training.

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

Assessment: CFC did not respond to our requests for information about the training administered to 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: CFC did not respond to our requests for information about the training administered to 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: CFC did not respond to our requests for information on training administered to foster care staff.

Recommendation:	Require mandatory training for all foster care staff on educating 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: CFC did not respond to our requests for information regarding safe group homes for LGBT youth. However, as the KBHC case makes clear, Kentucky permits placement of youth in group homes run by an organization that considers homosexuality to be immoral, equivalent to alcoholism, drug addiction, and adultery, and an appropriate basis for firing a highly regarded staff member.⁵ Furthermore, KBHC has publicly taken the position that reparative therapy and spiritual counseling should be used to convert LGBT youth to a heterosexual orientation.⁶

Recommendation:

CFC should require all private agencies with which it contracts to follow non-discrimination principles and ensure that LGBT youth are provided safe and supportive environments.

CFC should also 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 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: CFC did not respond to our requests for information regarding the identification of foster parents qualified and interested in caring for LGBT youth.

Recommendation:

CFC, as well as contract agencies, should identify and train qualified foster parents, including lesbian and gay adults, interested in caring for LGBT youth.

C. COUNSELING PROGRAMS

Assessment: CFC did not respond to our requests for information regarding counseling programs specifically for LGBT youth.

Recommendation:	CFC should ensure that one-on-one and group counseling programs are available for LGBT youth.
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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:	CFC should distribute to CFC 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: CFC did not respond to our requests for information about sexual health education for youth.

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: CFC did not respond to our requests for information about access to HIV testing for foster care youth. Kentucky provides by statute that the Cabinet for Health Services shall establish a network of voluntary, anonymous, or confidential HIV testing and counseling programs in every county in the state.⁷ However, the statute does not expressly require that these services be made available to youth who request them, and CFC did not inform us whether it provides foster care youth access to these services.

Recommendation:	CFC should adopt policies providing foster care youth access to free and confidential HIV testing without parent or guardian consent or notification.
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G. CONFIDENTIALITY OF HIV TESTING AND TEST RESULTS

Assessment: CFC did not respond to our requests for information relating to the confidentiality of HIV testing and test results of foster care youth.

By statute, Kentucky exempts from a general confidentiality requirement the HIV testing status and results of a minor, which may be disclosed to the minor’s parent, foster parent, or legal guardian.⁸

Recommendation:	CFC should adopt policies providing for the confidentiality of a foster care youth’s HIV testing status and test results. Furthermore, Kentucky should statutorily require confidentiality of HIV status and test results, with disclosure permitted on only a limited, need-to-know basis to provide for a youth’s well-being.
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Notes to Kentucky

1. Ken. CFC Foster Care Criteria, Standard of Practice, General Requirements.
2. *See Pedreira v. Kentucky Baptist Homes for Children, Inc.*, Civil Action No. 3:00 CV-210-S (W.D. Ky. April 17, 2000); Jeff Vessels, *Government Shouldn't Fund Religious Ventures*, Kentucky Post, Aug. 30, 2000 (available at <http://www.kypost.com/opinion/kguest083000.html>); Eyal Press, *Faith-Based Furor*, The New York Times Magazine, Apr. 1, 2001, at 64.
3. *Board Resolution Passed Today*, Site Bytes (Kentucky Baptist Homes for Children, Louisville, Ky.), Oct. 23, 1998.
4. *See Pedreira, supra* note 2, *and* Letter from William K. Smithwick, President & CEO Kentucky Baptist Homes for Children, to Anonymous (Sept 30, 1998) (on file with Lambda Legal Defense).
5. *Id.*
6. *See Pedreira, supra* note 2, *and* Letter from Dr. William K. Smithwick, President & CEO Kentucky Baptist Homes for Children, to Board of Aldermen (Jan. 15, 1999) (on file with Lambda Legal Defense). *See supra* at page 13 of this Report.
7. Ky. Rev. Stat. Ann. § 214.625(6) (WESTLAW current through end of 2000 Reg. Sess.).
8. Ky. Rev. Stat. Ann. § 214.625(5)(c)(9) (WESTLAW current through end of 2000 Reg. Sess.).