

MONTANA

Montana did not respond to our questionnaires or requests for excerpts from policy and training manuals. A representative of Montana’s Child and Family Services Division (“CFSD”) informed us that “there are no” LGBT youth in the state’s foster care system, despite the approximately 3,500 children in out-of-home care.¹ Given this lack of awareness on the part of CFSD, it is not surprising that Montana has no non-discrimination policies, training, or services for the benefit of LGBT youth.*

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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: CFSD does not have policies prohibiting discrimination on the basis of the sexual orientation of foster care youth.

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

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

Assessment: CFSD does not have policies prohibiting discrimination against foster parents on the basis of sexual orientation.

Recommendation: CFSD should adopt express written policies prohibiting 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 CFSD and its agents.

C. SEXUAL ORIENTATION OF FOSTER CARE STAFF

Assessment: CFSD does not have policies prohibiting discrimination against foster care staff on the basis of sexual orientation. However, Montana has a statewide administrative policy prohibiting discrimination in all state employment on the basis of sexual orientation.²

Recommendation: CFSD should adopt express written policies, consistent with Montana's statewide administrative rule, expressly prohibiting discrimination based on the sexual orientation of foster care staff.

D. HIV/AIDS STATUS OF YOUTH

Assessment: CFSD does not have policies prohibiting discrimination on the basis of the HIV/AIDS status of foster care youth.

Recommendation: CFSD 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: CFSD does not have policies 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 or of other foster household members.

F. HIV/AIDS STATUS OF FOSTER CARE STAFF

Assessment: CFSD does not have policies 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.

II. FOSTER PARENT TRAINING

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

Assessment: We are informed by CFSD that there is no instruction provided to foster parents on any issues regarding LGBT youth, including on non-discrimination principles.

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: We are informed by CFSD that there is no instruction provided to foster parents on any issues regarding LGBT youth.

Recommendation: Provide mandatory training to 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 CFSD that there is no instruction provided to foster parents on any issues regarding LGBT youth.

Recommendation: Provide mandatory training to 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: Although foster parents are required to participate with CFSD social workers to provide or arrange for “sex education” for foster care youth,³ there is no mandatory training provided to foster parents regarding LGBT sexual health or HIV/AIDS and other STD prevention education and services.⁴

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: We are informed by CFSD that there is no instruction provided to foster care staff on any issues regarding LGBT youth, including on non-discrimination principles.

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

Assessment: We are informed by CFSD that there is no instruction provided to foster care staff on any issues regarding LGBT 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: We are informed by CFSD that there is no instruction provided to foster care staff on any issues regarding LGBT youth.

Recommendation: Provide mandatory training to all foster care staff about supporting a foster care youth coming out as LGBT.

D. SEXUAL HEALTH EDUCATION, INCLUDING HIV/AIDS AND OTHER STD PREVENTION EDUCATION AND SERVICES

Assessment: There is no mandatory training provided to foster care staff on educating LGBT foster care youth about their sexuality and sexual health, including prevention of HIV/AIDS and other STDs.

Recommendation: Require mandatory training for all 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 Montana maintains group facilities, none is geared specifically to LGBT youth. Furthermore, given the complete lack of training and services offered on LGBT issues by CFSD, existing group facilities are ill-equipped to address the needs of LGBT youth.

Recommendation: CFSD 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 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: There are no specific efforts to identify and train foster parents to care for LGBT youth.

Recommendation:	CFSD and contract agencies should identify and train qualified foster parents, including lesbian and gay adults, interested in caring for LGBT youth.
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C. COUNSELING PROGRAMS

Assessment: CFSD does not offer counseling services specifically for LGBT youth.

Recommendation:	CFSD 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: CFSD does not maintain LGBT resources or community contacts for foster care staff, foster parents, LGBT youth, or birth families.

Recommendation:	CFSD should distribute to CFSD 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: CFSD did not respond to our requests for information about sexual health education for LGBT 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: CFSD did not respond to our requests for information on this topic.

Montana provides by statute that a minor may consent to medical care if the minor “professes or is found to be... afflicted with any reportable communicable disease, including a sexually transmitted disease.”⁵ Furthermore, “[a] minor may consent or refuse to consent to be the subject of an HIV-related test.”⁶ However, by statute, “[a] treating physician or other health professional may... inform the... parent, custodian, or guardian of any such minor... of any treatment given or needed” under circumstances ranging from preventing serious jeopardy to the minor’s health, to “benefit[ting] family harmony.”⁷

Recommendation:	CFSD should adopt express written policies providing foster care youth free and confidential HIV testing without guardian consent or notification.
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G. CONFIDENTIALITY OF HIV TESTING AND TEST RESULTS

Assessment: A general statewide administrative policy requires that youth care facilities maintain the confidentiality of records and personal information pertaining to children in their care.⁸

Montana provides by statute that “a person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test...”⁹

Recommendation:	CFSD should adopt express written policies requiring confidentiality of foster care youth’s HIV status, 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 Montana

1. See 1999 statistics reported by CFSD at <http://www.dphhs.state.mt.us/divisions/cfs/cfs.html>.
2. Mont. Admin. R. 2.21.4005(1) (2000).
3. Mont. Admin. R. 37.97.1002(2)(a) (current through Dec. 30, 2000).
4. See Mont. Admin. R. 37.97.1019 (current through Dec. 30, 2000).
5. Mont. Code Ann. § 41-1-402(1)(c) (WESTLAW current through 2000 Special Session).
6. Mont. Code Ann. § 50-16-1007(8) (WESTLAW current through 2000 Special Session).
7. Mont. Code Ann. § 41-1-403(1) (WESTLAW current through 2000 Special Session).
8. Mont. Admin. R. 37.97.128 (current through Dec. 30, 2000).
9. Mont. Code Ann. § 50-16-1009 (WESTLAW current through 2000 Special Session).