

LGBTQ YOUTH IN THE CALIFORNIA FOSTER CARE SYSTEM

A QUESTION AND ANSWER GUIDE



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This question and answer guide is designed to address many of the frequently asked questions about protecting lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth in the California foster care system from harassment and discrimination.

1 ARE THERE LGBTQ YOUTH IN FOSTER CARE?

Yes. At any one time there are approximately 260,000 youth in the foster care system in the United States¹ and approximately 40,000 youth in the California foster care system.² While it is impossible to determine precisely the number of LGBTQ youth in the foster care system, recent studies suggest that LGBTQ youth make up between 5 and 10 percent of the total foster youth population.³ The actual percentage may be even higher since LGBTQ youth are over-represented in the foster care pool due to discrimination and abuse many of these youth face in their families of origin and in their schools.⁴

2 ARE LGBTQ YOUTH IN THE FOSTER CARE SYSTEM AT RISK OF BEING HARASSED OR DISCRIMINATED AGAINST?

Yes. LGBTQ youth are disproportionately targeted for harassment and discrimination in the foster care system. In one of the only studies of its kind, a New York Task Force found:

- 100% of LGBTQ youth in New York City group homes reported that they were verbally harassed on the basis of their sexual orientation or gender identity while at their group home.⁵
- 70% reported physical violence due to their sexual orientation or gender identity.⁶
- 78% were removed or ran away from their foster placements as a result of hostility toward their sexual orientation or gender identity.⁷
- 56% spent time living on the streets because they felt “safer” there than they did living in their group or foster home.⁸

This abuse is perpetrated not only by youth peers, but also by facility staff and other service providers. When the abuse is between peers, often it is condoned by facility staff or goes unaddressed.

3

WHAT ARE SOME EXAMPLES OF DISCRIMINATION THAT LGBTQ YOUTH MIGHT ENCOUNTER IN THE FOSTER CARE SYSTEM?

Examples of unlawful discrimination include:

- Failing or refusing to take steps to protect an LGBTQ youth from harassment based on their actual or perceived sexual orientation or gender identity;
- Failing to use the requested name and pronoun that is in accordance with a transgender youth's gender identity;
- Treating displays of affection by same-sex couples differently than displays of affection by different-sex couples;
- Refusing to allow a youth to wear clothing that is consistent with their gender identity;
- Not allowing an LGBTQ youth to attend a gay prom;
- Confiscating LGBTQ supportive materials.

4

DO FOSTER CARE PROVIDERS HAVE A LEGAL RESPONSIBILITY TO PROTECT LGBTQ YOUTH FROM HARASSMENT AND DISCRIMINATION?

Yes. California law specifically protects foster children from harassment and discrimination based on actual or perceived sexual orientation or gender identity. All LGBTQ youth in foster care must be provided with equal access to all available services, placement, care, treatment and benefits. The law covers all aspects of foster care, including services, placement, care, treatment, and benefits, and the right to not be subjected to discrimination or harassment.⁹

In addition, all foster youth have a constitutional right to equal protection under the law. This means that all group home facilities must protect LGBTQ youth, and those perceived to be LGBTQ, from harassment, just as they must protect all foster youth from harassment on the basis of race, religion, and sex. If group home providers ignore incidents of harassment because they believe LGBTQ youth should expect to be harassed or that they have brought the harassment upon themselves by being open about their sexual orientation or gender identity, they have violated the youth's right to equal protection.

In addition, all youth have constitutional rights to freedom of expression, which may include the right to be open about their sexual orientation or gender identity. The First Amendment and the Federal Due Process and Equal Protection Clauses may also protect the right of a transgender youth to dress in accordance with his or her gender identity in a group home.¹⁰

5 DOES THE LAW REQUIRE FOSTER CARE PROVIDERS TO RECEIVE TRAINING ABOUT THIS NONDISCRIMINATION REQUIREMENT?

Yes. Under the California Foster Care Nondiscrimination Act **all group home administrators, foster parents, and department licensing personnel** must receive initial and ongoing training on the rights of a foster child to have fair and equal access to all available services and the right to not be subjected to harassment or discrimination based on their actual or perceived sexual orientation or gender identity.¹¹

In addition, all community college districts that provide orientation and training to relative caregivers must make available to these caregivers orientation and training courses that cover the rights of a foster child to have fair and equal access to all available services and to not be subjected to harassment or discrimination on the basis of actual or perceived sexual orientation or gender identity.¹²

6 IN ADDITION TO THE REQUIRED TRAININGS, WHAT OTHER STEPS CAN SERVICE PROVIDERS TAKE TO ENSURE THEY COMPLY WITH THE NONDISCRIMINATION REQUIREMENTS?

Foster care programs should adopt and enforce written anti-harassment/anti-discrimination policies that explicitly prohibit harassment and discrimination on the basis of actual or perceived sexual orientation or gender identity. Both the policy and the forms for filing complaints under the policy should be readily available to foster youth.

Programs should also provide anti-bias training for youth and any other persons involved in the foster care system who are not mandated to receive training under the law, including child welfare workers and other group home staff. All facilities should have information and materials about LGBTQ issues available for staff and youth.

7 ARE FOSTER PARENTS REQUIRED TO TAKE IN A FOSTER CHILD WHO IS LGBTQ EVEN IF THEY FEEL THAT HOMOSEXUALITY IS MORALLY WRONG?

Foster parents are free to hold any beliefs they choose about homosexuality. Foster parents and relative caregivers are not paid employees of the state. Instead, they care for foster children in their own homes and are permitted under current practice to decide on an individual basis whether to accept and retain an individual child in their care. But once a foster parent or relative caregiver accepts a child into their home, they have a legal responsibility to provide care to the child without discrimination on the basis of actual or perceived sexual orientation, gender identity, HIV status, and other protected categories.

Because a change in living environment is traumatic for any child, if a foster parent or relative caregiver cannot fulfill their responsibility of caring for a particular child, then they should notify the child's social worker and seek additional training, counseling, or other assistance with the goal of keeping the child in the home. Only as a last resort should a foster parent or relative caregiver request that a child be removed from their home.

8

HOW DO WE PROTECT LGBTQ YOUTH IN FOSTER CARE FROM HARASSMENT AND DISCRIMINATION AND STILL RESPECT THE RELIGIOUS AND CULTURAL DIVERSITY OF FOSTER PARENTS AND YOUTH?

It does not violate any person's religious beliefs or disrespect any person's cultural background to teach young people or adults that violence, name calling, and other harassment are wrong and to ensure that all youth are treated equally. Everyone is free to hold any beliefs they choose regarding homosexuality and gender, so long as they do not harass, threaten, or discriminate against foster youth because of their sexual orientation or gender identity. Developing an atmosphere of respect for diversity in all foster care placements provides the necessary space for all foster youth to feel comfortable and safe.

In addition, it does not violate the religious freedom of staff or administrators to require that staff appropriately respond to violence, discrimination, and harassment.

Adopting and enforcing inclusive anti-harassment and non-discrimination policies and training all staff on these non-discrimination requirements will help service providers ensure that all of their youth are provided with the safe and affirming placements to which they are entitled.

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ENDNOTES

¹ According to the U.S Department of Health and Human Services, Administration on Children, Youth, and Families, and the Children's Bureau on September 30, 2003 there were 523,000 kids in foster care in the United States. The median age for these kids was 10.9 years old. Approximately 50% or 258,470 were over the age of 11. Statistics available at:

http://www.acf.dhhs.gov/programs/cb/stats_research/afcars/tar/report10.htm (last visited May 31, 2006).

² According to the Child Welfare Research Center Child Welfare Services report, there were 79,065 children in foster care in California on January 1, 2006. Of these children, 37,915 were over the age of 11. Statistics available at:

http://cssr.berkeley.edu/CWSCMSreports/Pointintime/fostercare/childwel/frequencies/data/CWf_PAo_jan2006_o.html (last visited May 31, 2006).

³ See Lambda Legal Defense and Education Fund, *Youth in the Margins: A Report on the Unmet Needs of Lesbian, Gay, Bisexual, and Transgender Adolescents in Foster Care* 11 (2001).

⁴ *Id.*

⁵ See Urban Justice Center, *Justice for All? A Report on Lesbian, Gay, Bisexual and Transgendered Youth in the New York Juvenile Justice System* 16 (2001) (citing Joint Task Force of New York City's Child Welfare Administration and the Council of Family and Child Caring Agencies, *Improving Services for Gay and Lesbian Youth in NYC's Child Welfare System: A Task Force Report*, (1994)).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Cal. Welfare & Inst. Code § 16001.9(a)(22).

¹⁰ See, e.g., *Doe v. Yunits*, 2000 WL 33162199, at * 3-4 (Mass. Super.), *aff'd sub nom, Doe v. Brockton Sch. Comm.*, No. 2000-J-638 (Mass.App.2000).

¹¹ Cal. Health & Safety Code § 1522.41(c)(1)(H); Cal. Health & Safety Code § 1529.2(b)(3)(F); § 1529.2(b)(4)(F); Cal. Health & Safety Code § 1563(c)(5).

¹² Cal. Welfare & Inst. Code § 16003(a)(1).

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YOUTH PROJECT has been advocating for LGBTQ youth in schools, foster care, juvenile justice settings, and the mental health system since 1993. The Project provides direct, free legal information to youth, legal advocates, and activists through a toll-free line; advocates for policies that protect and support LGBTQ youth in these different arenas; and litigates cases that are creating new legal protections for youth in schools, foster care, juvenile justice, and other settings.

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