

7. LGBTQ Policy

Anti-Harassment and Non-Discrimination Policy and Procedures Regarding People who are Lesbian, Gay, Bisexual, Transgender and/or Questioning (LGBTQ)

I. Purpose

In accordance with State and federal laws, each individual served by Hawaii's Child Welfare Services Branch (CWS) has the right to receive services in an environment free of harassment and discrimination. CWS is committed to providing a healthy and accepting setting for all individuals by training and evaluating staff, instituting policies, and educating individuals to respect each other. CWS does not tolerate harassment or discrimination by or toward employees, volunteers, contracted providers, resource caregivers, families, parents, children, youth, or young adults

The purpose of this policy is to:

- A. Establish operational practices that reinforce our commitment to respect the lesbian, gay, bisexual, transgender, questioning, asexual, 2-spirit, and gender non-conforming people (LGBTQIA2s, aka LGBTQ)
- B. Create a safe environment for all members of our CWS community; and to
- C. Ensure that all people have equal access to all available services, placement, care, treatment, and benefits provided by CWS

II. Definitions

For purposes of this policy, the definitions below apply.

2 Spirit: A modern umbrella term used by some indigenous North Americans to describe or label gender-variant individuals in their communities.

Asexual: The lack of sexual attraction to anyone, or low or absent interest in sexual activity. It may be considered the lack of a sexual orientation, or one of the four variations thereof, alongside heterosexuality, homosexuality, and bisexuality.

Bisexual: A person who is emotionally, romantically, and sexually attracted to both males and females.

Contractor: Any person who is employed directly by an agency or organization that has a contract, Memorandum of Understanding, or Memorandum of Agreement with CWS.

Employee: Any person who is employed directly by CWS (i.e., staff, workers, student

interns, trainees, and, volunteers).

Discrimination: Any act, policy, or practice that, regardless of intent, has the effect of subjecting any person to differential treatment as a result of the person's actual or perceived race, ethnicity, age, sex, immigration status, disability, national origin, marital status, sexual orientation, gender identity, or gender expression.

Family: Any of various social units, differing from, but regarded as equivalent to, the traditional family, such as birth or biological family, resource (caregiver) family (also known as foster family), extended family, identified family, chosen family, kin, and hanai family.

Gay: A person who primarily is emotionally, romantically, and sexually attracted to individuals of the same sex, sometimes in reference to boys or men.

Gender: The cultural classification of a species into male and female, as differentiated by social and cultural roles and behavior. It is the range of characteristics pertaining to masculinity and femininity. It is distinct from biological sex.

Gender Expression: The manner in which people express their gender through clothing, appearance, behavior, and speech. Gender expression is a separate concept from sexual orientation and gender identity.

Gender Identity: A person's internal, deeply felt sense of being male, female, both, neither, or other. A person's gender identity may or may not correspond with the person's sex at birth or the person's gender expression.

Harassment: Harassment includes, but is not limited to: name-calling; disrespectful gestures, jokes or comments; inappropriate touching; threats of physical or emotional harm or negative consequences (including religious condemnation); physical abuse; sexual abuse, including unwanted sex acts, touching, pantomime, and threats; emotional abuse, such as shunning or isolation; bullying; and cyber-bullying. Attempting to change a person's sexual orientation or gender identity is also a form of harassment, and could also be considered child abuse, when directed at a minor.

Intersex: A variation in biological sex characteristics including chromosomes, gonads, or genitals that do not allow an individual to be distinctly identified as biologically male or biologically female.

Lesbian: A female person who primarily is emotionally, romantically, and sexually attracted to females.

Protected Categories: A characteristic of a person which, by law and/or policy, cannot be targeted for discrimination. For the purpose of this policy, the following are protected categories: race, ethnicity, sex, immigration status, disability, national origin, sexual orientation, gender identity, and gender expression.

Questioning: A term used to describe those who are in the process of discovery and exploration about their sexual orientation or gender identity.

Sex: The biological classification of a species into male or female, as differentiated by genitalia and reproductive functions.

Sexual Orientation: A person's emotional, romantic, and sexual attraction, to individuals of the same sex or of a different sex.

SOGIE: An abbreviation for sexual orientation and gender identity and expression.

Transgender: A person whose gender identity (their understanding of themselves as male or female) does not correspond with his/her/their birth sex. A transgender girl is a girl whose birth sex was male but who understands herself to be female. A transgender boy is a boy whose birth sex was female but who understands himself to be male

III. Policy

A. General

1. CWS shall provide the highest quality of services to children, youth, adults, and families regardless of their actual or perceived race, ethnicity, sex, immigration status, disability, national origin, sexual orientation, gender identity, or gender expression.
2. All who are served by CWS and its contracted providers shall receive fair and equal treatment, without bias, and in a professional and confidential manner, based on principles of sound professional social work practice.
3. Employees, volunteers, and contractors that offer services to those served by CWS shall not discriminate against or harass anyone in their care based on their protected class, including a person's actual or perceived sexual orientation, gender identity or gender expression.
4. CWS employees and contracted providers shall protect those they serve from discrimination, physical and sexual harassment or assault, and verbal harassment by others, based on the individual's actual or perceived sexual orientation, gender identity, gender expression, or other protected categories.
5. CWS will take all reasonable steps within its control to meet the diverse needs of all children, youth, young adults, parents, caregivers, families, employees, and contractors, and provide an environment in which all individuals are treated with respect and dignity, regardless of protected categories, including sexual orientation, gender identity, or gender expression.

B. Operations

1. CWS understands that all people need to feel safe in their surroundings for their overall wellbeing. CWS shall establish and maintain a culture where the dignity of

everyone is respected and all children, youth, adults, families, staff, and others feel safe. Employees shall create opportunities for dialogue with children, youth, young adults, families, and staff about all forms of diversity to increase tolerance and respect.

2. CWS shall promote the positive child and adolescent development of all children and youth in its care. Actions that support positive child, adolescent, and young adult development include: modeling desired behavior, such as demonstrating respect for all people; reinforcing respect for differences among people; encouraging the development of healthy self-esteem; and helping children, youth, and young adults manage the stigma sometimes associated with difference.
3. Employees shall model positive behavior when interacting with LGBTQ individuals and remind everyone that anti-LGBTQ threats of violence, actual violence, or disrespectful or suggestive comments or gestures, will not be tolerated.
4. CWS shall provide a safe and non-discriminatory environment where individuals can learn and grow. Expressions of romantic or emotional attraction between children, youth, and young adults of the same sex (excluding sexual activity) are not prohibited and shall not result in punishment.
5. CWS shall provide LGBTQ children, youth, and young adults with access to educational, rehabilitative, recreational, and other programming on the same basis as other children, youth, and young adults. Individuals shall not be denied qualification for or access to programming based on sexual orientation, gender identity, or gender expression.

C. Confidentiality

1. Employees shall not disclose an individual's sexual orientation or gender identity to any outside parties, individuals, or agencies, such as health care or social service providers or an individual's family and friends, without the person's permission, unless such disclosure is necessary for safety or to comply with State or federal law.
2. Any disclosure of information related to an individual's LGBTQ identity shall be limited to information necessary to achieve the specific beneficial purpose of the disclosure.
3. This confidentiality restriction does not prevent individuals working at CWS from discussing an individual's needs or services with other staff members or when resolving a grievance.

D. Intake and Assessment

1. CWS understands that LGBTQ individuals are in various stages of awareness and comfort with their sexual orientation and gender identity. CWS Intake and Assessment workers shall sensitively inquire about fears the child, youth, or

young adult may have. Some people will disclose that they are LGBTQ. If an individual discloses his/her/their sexual orientation or gender identity, the worker shall talk with the person about it in an open and non-judgmental fashion and determine if this person has particular concerns or needs related to being LGBTQ.

E. Child and Youth Placement

1. Placement decisions for LGBTQ children and youth shall occur as soon as possible after intake. All classification and placement decisions for children and youth shall be individualized, based on best practices, and shall prioritize the children's and youth's physical and emotional well-being.
2. An LGBTQ child's or youth's emotional and physical safety are CWS' priority in placement.
3. CWS caseworkers shall engage with youth and support any potential disclosures of mistreatment, bullying, or lack of acceptance.
4. If a child or youth expresses that his/her/their home is not accepting of his/her/their gender identity, gender expression, or sexual orientation, or if information about potential non-accepting homes comes to CWS from another source, an inquiry will be initiated within five business days.
5. There will be a change in placement for any child who is in a home that has been determined to be unwelcoming of his/her/their sexual orientation, gender identity, or gender expression.
6. Education and training on LGBTQ-related issues shall be made available to all caregivers and parents in order to promote the wellbeing of children in their home.
7. For foster placements with identified LGBTQ youth, additional education, resources, training, and support shall be provided, as needed.
8. Statewide, CWS Resource Caregiver Licensing units and workers shall work to identify placements (i.e., resource homes, on-call shelters, and potential adoptive homes) that are particularly welcoming and embracing of LGBTQ youth.

F. Names and Language

1. CWS employees, volunteers, and contractors shall use respectful language and terminology that promotes healthy LGBTQ-identity and does not stereotype LGBTQ people. CWS staff, volunteers, and contracted providers shall not speak to or about children, youth, or young adults with derogatory language or in a manner that conveys negative bias or hatred of LGBTQ people. In particular, CWS staff and its contractors shall not imply to or tell LGBTQ children, youth, or young adults that they are abnormal, deviant, or sinful, or that they can or should change their sexual orientation or gender identity
2. A transgender child, youth, or young adult shall be referred to by his/her/their

preferred name and pronouns, even if his/her/their name has not been legally changed. Written documentation about a transgender child, youth, or young adult shall use his/her/their preferred name, and also note the child's, youth's, or young adult's legal name.

G. Clothing and Gender Expression

1. Children, youth, and young adults shall be allowed to express their gender through clothing, appearance, behavior, and speech. To express this more broadly, all children, youth, and young adults shall be encouraged to dress and present themselves in a manner that promotes their physical and psychological comfort and wellbeing
2. Any grooming rules and restrictions, including rules regarding hair, make-up, shaving, etc., shall be the same for males and females. Transgender girls shall not be required to have a male haircut, or to wear masculine clothing. Transgender boys shall not be required to maintain a female hairstyle, to wear make-up, or to wear feminine clothing.
3. CWS staff and contracted providers shall advocate for our young people as needed with clothing stores and others, so that they may purchase and wear the clothing of their choice, regardless of the gender of the wearer.

H. Medical and Mental Health Care

1. All medical and mental health care offered to LGBTQ youth shall be provided by practitioners who are knowledgeable and experienced in serving this population.
2. When making referrals for adult clients receiving services from CWS, the referring staff shall ensure that LGBTQ individuals receive referrals to agencies and providers who are knowledgeable and experienced in serving this population.
3. If a transgender child, youth, or young adult needs or requests assessment or treatment, CWS shall provide him/her/them with access to medical and mental health care providers who are knowledgeable about the health care needs of transgender children, youth, and young adults. CWS shall provide all recommended transgender- related treatments in accordance with the medical and mental health assessments performed by the child's, youth's, or young adult's health care provider and will provide transportation for the child, youth, or young adult to receive such treatments, if necessary.
4. In accordance with accepted health care practices, which recognize that attempting to change a person's sexual orientation or gender identity is harmful, CWS and its contracted providers shall not employ or contract with mental health providers who attempt to change a person's sexual orientation or gender identity.
5. All sex offender treatment shall not discriminate based on sexual orientation and gender identity and shall not criminalize or pathologize (i.e., regard or treat as psychologically abnormal) an individual's LGBTQ identity.

IV. Procedures

A. Training of Employees, Volunteers, Contractors, Resource Caregivers, and Families

1. For employees, volunteers, contractors, resource caregivers, and families to have the awareness and capacity to effectively work with and/or care for LGBTQ individuals and families, all CWS administrators, employees, volunteers, contractors, resource caregivers, and families are required to attend training on working with and/or caring for LGBTQ individuals. This training shall teach participants:
 - a. the goals and requirements of these *Anti-Harassment and Non-Discrimination Policy and Procedures Regarding People who are LGBTQ*;
 - b. how to work with and or care for LGBTQ individuals in a respectful and non- discriminatory manner; and
 - c. how to recognize, prevent, and respond to harassment against LGBTQ individuals.
2. All employees and administrators of CWS shall receive training about LGBTQ people during their orientation (i.e., New Hire or Core Training) and as part of their in-service training requirements. These trainings shall be taught by qualified trainers with expertise in working with LGBTQ people.
3. All new administrators, employees, volunteers, contracted providers, resource caregivers, and families shall receive a copy of these *Policy and Procedures* with their orientation materials. These *Policy and Procedures* have been distributed to current administrators, employees, volunteers, contractors, resource caregivers, and families and/or made available to them on-line as part of the *Hawaii Department of Human Services Child Welfare Services Procedures Manual*.

B. Responding to and Reporting Policy Violations

1. Contractors and resource caregivers shall promptly and appropriately intervene when a child, youth, or young adult physically, verbally, or sexually abuses or harasses another child, youth, or young adult, based on the child's, youth's, or young adult's actual or perceived sexual orientation or gender identity, when a child, youth, or young adult is in the contractor's and/or resource caregiver's custody or care.
2. Resource caregivers shall report all incidents to the caseworker and their assigned licensing worker.
3. CWS employees and contracted providers shall report conduct by other employees and contractors that may be in violation of this policy to the other individual's supervisor and CWS.

4. CWS staff shall report all violations of this policy to their supervisors. Supervisors shall report any violations that they are made aware of to their Section Administrators, to CWS Program Development, and to CWS Branch.

C. Reporting Procedures for CWS Clients

Individual clients shall be able to report violation of this policy following established agency and/or CWS grievance procedures. Grievance procedures shall protect confidentiality of reporting individuals and contain other measures to prevent retaliation. CWS administration shall promptly and effectively respond to grievances filed by individuals.

D. Enforcement

Supervisory and administrative staff shall treat all reports of violation of this policy seriously. CWS administration shall promptly and effectively respond to any reports of policy violation. All reported violations of this policy that are found to be credible shall result in action.

CWS staff found to be in violation of this policy shall be subject to disciplinary action, which may include: mandated individual or group education by a qualified individual on LGBTQ issues, reassignment of work duties, being placed on probation, or termination from employment.

Agencies contracted by CWS whose staff has been found to be in violation of this policy shall be subject to contractual remedies, which may include financial penalties and/or contract termination.

Resource caregivers found to be in violation of this policy may have children removed from their home and/or their licenses terminated.

When an individual employee, contracted agency, or resource caregiver is repeatedly found to be in violation of this policy, the disciplinary action shall be more severe with each infraction. A single violation of this policy, however, may result in termination of employment, contract, or license.

V. Scope

A. Application

This policy shall apply to all CWS employees, resource caregivers, and employees or representatives of any agency providing services on behalf of CWS children, youth, and young adults, including but not limited to the Department of Health, Department of Human Services, Department of Education, their contractors, volunteers, and any other relevant agencies or departments which have contact with individuals served by CWS.

B. Severability

The provisions of these *Policy and Procedures* shall be severable (i.e. capable of being divided into legally independent rights or obligations). If any provision or portion of this policy or its application to any person or circumstance is held invalid, the remainder of this policy or the application of the provision to other persons or circumstances is not affected.

VI. References

A. Federal Legislation

1. The First Amendment of the United States Constitution
2. The Fourteenth Amendment of the United States Constitution, Equal Protection Clause
3. The Fourteenth Amendment of the United States Constitution, Due Process Clause
4. Americans with Disabilities Act of 1990, Title II
5. Civil Rights Act of 1964, Title VI
6. Civil Rights Act of 1968, Title VII
7. Civil Rights Act of 1964, Education Amendments of 1972, Title IX Prohibits discrimination based on sex in schools, and has been applied to protect transgender students from discrimination in schools
8. Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (2009)

B. State of Hawaii

1. Discrimination/Harassment-Free Workplace Policy, State of Hawaii, Department of Human Resources Development Policies and Procedures, Policy number 601.001, October 15, 2013.
2. Nondiscrimination Notice. In accordance with federal and state laws, U.S. Department of Agriculture (USDA), and U.S. Department of Health and Human Services (USHHS) policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex/gender (expression or identity), age or disability.
3. **HRS §489-2, 3 Discriminatory practices prohibition.** Unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability are prohibited.

4. **HAR § 17-1625-42, Discipline and guidance.** “Discipline and guidance shall be carried out with kindness and understanding. No child shall be subjected to any physical punishment or action which would endanger the child’s physical, mental, or emotional well-being.”
5. **R.G. v. Koller, 415 F.Supp.2d 1129 (D. Haw. 2006)** Hawaii case brought by LGBTQ youth in a juvenile detention facility who claimed that staff violated their equal protection rights by tolerating harassment. Plaintiffs made accusations of “a relentless campaign of harassment based on their sexual orientation that included threats of violence, physical and sexual assault, imposed social isolation, and near constant use of homophobic slurs.” The court held that “This level of harassment and abuse in a juvenile facility, where the wards have not been convicted of crimes and are committed to the care of the state, falls below the minimum level of care required by the abuse plaintiffs faced from staff and other wards, supervisory defendants’ failure to take any minimally adequate remedial measures constitutes deliberate indifference.”

C. Department of Human Services

The Department of Human Services nondiscrimination policy does not include sexual orientation or gender identity; this policy attempts to address this.

1. **HAR § 17-1610-43, Adoption Services.** The Department of Human Services is not specifically prohibited from delaying or denying adoption services on the basis of sexual orientation or gender identity.
2. **HAR § 17-1625-40, Clothing and personal belongings.** A foster child’s clothing shall be clean, of the right size and appropriate for the child’s age, sex, and individual needs.
3. **HAR § 17-1625-42 Discipline and guidance.** “Discipline and guidance shall be carried out with kindness and understanding”. No child shall be subjected to any physical punishment or action which would endanger the child’s physical, mental, or emotional well-being

D. Resources

LGBTQ Resources can be on SHAKA and at: <https://shakatown.com>

Organizations should strive to provide all individuals with information about local social services that are LGBTQ-inclusive, including health and mental health services, community groups, family supportive services, and peer-support groups.