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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children, Youth and Families

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4. **Key Words:** Multiethnic Placement Act: Submission of Recruitment Plans

PROGRAM INSTRUCTION

TO: State Agencies and Insular Areas Administering the Title IV-B Child and Family Services Program

SUBJECT: The Multiethnic Placement Act; Requirement to submit recruitment plans as an amendment to title IV-B, subpart 1 plans.

LEGAL AND RELATED REFERENCES: Public Law 103-382, the Howard M. Metzenbaum Multiethnic Placement Act of 1994; Title IV-B of the Social Security Act; Title VI of the Civil Rights Act.

PURPOSE: The Multiethnic Placement Act (MEPA), enacted October 21, 1994, requires States to provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed. This issuance provides a background discussion of child placement and the creation of this provision; instructions to States; and technical assistance resources.

BACKGROUND: The Multiethnic Placement Act

On October 20, 1994 President Clinton signed the "Improving America's Schools Act of 1994," Public Law 103-382, which includes among other provisions, Section 551, titled "The Multiethnic Placement Act of 1994" (MEPA). Section 554 of the Act amends Section 422(b) and Part A of Title XI of the Social Security Act. By October 21, 1995 all States are required to bring their laws and written policies into compliance with MEPA and by October 31, all States are required to have in place recruitment plans responsive to this instruction. The statute and conference report is provided as attachment A.

The purposes of that Act are: to decrease the length of time that children wait to be adopted; to prevent discrimination in the placement of children on the basis of race, color, or national origin; and to facilitate the identification and recruitment of foster and adoptive parents who can meet children's needs.

To accomplish these goals the law prohibits agencies which receive Federal assistance and which are involved in foster care or adoption placement from "categorically denying to any person the opportunity to become an adoptive or foster parent solely on the basis of the race, color, or national origin of the adoptive or foster parent or the child" and "from delaying or denying the placement of a child solely on the basis of race, color, or national origin of the adoptive or foster parent or parents involved."

Under the Act, these prohibitions also apply to the failure to seek termination of parental rights or otherwise make a child legally available for adoption.

The law does permit an agency to consider, in determining whether a placement is in a child's best interests, "the child's cultural, ethnic, and racial background and the capacity of prospective foster or adoptive parents to meet the needs of a child of this background."

The Act also seeks to ensure that agencies engage in active recruitment of potential foster and adoptive parents who reflect the racial and ethnic diversity of the children needing placement.

The Multiethnic Placement Act should be viewed in conjunction with Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits recipients of Federal financial assistance from discriminating based on race, color, or national origin in their programs and activities.

In enacting MEPA, Congress was concerned that many children, in particular those from minority groups, were spending lengthy periods of time in foster care awaiting placement in adoptive homes. At present, there are over twenty thousand children who are legally free for adoption but who are not in preadoptive homes. While there is no definitive study indicating how long children who have the goal of adoption have to wait until placement, the data available at the time of this issuance indicate the average wait may be as long as two years after the time that a child is legally free for adoption, and that minority children wait, on average, twice as long as non-minority children before they are placed. Both the number of children needing placements and the length of time they await placement increase substantially when those children awaiting termination of parental rights are taken into account.

MEPA reflects Congress' judgment that children are harmed when placements are delayed for a period longer than is necessary to find qualified families. The legislation seeks to eliminate barriers that delay or prevent the placement of children into qualified homes. In particular, it focuses on the possibility that policies with respect to matching children with families of the same race, culture, or ethnicity may result in delaying, or even preventing, the placement for foster care or adoption of children by qualified families. It also is designed to ensure that every effort is made to develop a large and diverse pool of potential foster and adoptive families, so that all children can be quickly placed in homes that meet their needs.

MEPA provides that "nothing in this section shall be construed to affect the application of the Indian Child Welfare Act."

Placement

The Department recognizes that States seek to achieve a variety of goals when making foster or adoptive placements. In addition, section 422 of title IV-B of the Social Security Act affords children in care certain protections designed to emphasize and speed permanency for children including a case plan which describes, among other things, the efforts to place the child in close proximity to the parents' home; efforts to place the child in a family-like setting; and procedural safeguards for parents.

For example, in making a foster care placement, agencies generally are concerned with finding a home that the child can easily fit into, that minimizes the number of adjustments that the child, already facing a difficult situation, must make, and that is capable of meeting any special physical, psychological, or educational needs of the child. In making adoption placements, agencies seek to find homes that will maximize the current and future well-being of the child. They evaluate whether the particular prospective parents are equipped to raise the child, both in terms of their capacity and interests to meet the individual needs of the particular child, and the capacity of the child to benefit from membership in a particular family.

Establishing standards for making foster care and adoption placement decisions, and determining the factors that are relevant in deciding whether a particular placement meets the standards, generally are matters of state law and policy. Agencies which receive Federal assistance, however, may use race, culture, or ethnicity as factors in making placement decisions only insofar as the Constitution, MEPA, and Title VI permit. Agencies may consider, on an individualized basis, "the child's cultural, ethnic, and racial background and the capacity of prospective foster or adoptive parents to meet the needs of a child of this background" among the factors in determining whether a particular placement is in a child's best interests.

Recruitment

As recognized in the Multiethnic Placement Act, in order to achieve timely and appropriate placement of all children, placement agencies need an adequate pool of families capable of promoting each child's development and case goals. This requires that each agency's recruitment process focuses on developing a pool of potential foster and adoptive parents willing and able to foster or adopt the children needing placement. The failure to conduct recruitment in a manner that seeks to provide all children with the opportunity for placement, and all qualified members of the community an opportunity to adopt or foster, is inconsistent with the goals of MEPA and could create circumstances which would constitute a violation of Title VI.

An adequate recruitment process has a number of features. Recruitment efforts should be designed to provide to potential foster and adoptive parents throughout the community information about the characteristics and needs of the available children, the nature of the foster care and adoption processes, and the supports available to foster and adoptive families.

Both general and targeted recruitment should be used. When using targeted recruitment a State must insure that the children being recruited for are also included in the State's general

recruitment activities. Additionally, if families apply that are not being targeted, they must be given full consideration to become adoptive or foster parents under the State's program.

INSTRUCTION: By October 31, 1995 all States and Insular areas must submit to the appropriate Regional Administrator for Children and Families (see attachment B) an amendment to their title IV-B plan for child and family services outlining their recruitment plan which provides for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.

In subsequent State title IV-B plan annual updates, States must describe how their recruitment plans are in compliance with MEPA.

To meet MEPA's diligent efforts requirements, an agency should have a comprehensive recruitment plan that includes, among other things:

- specific strategies to reach all parts of the community;
- diverse methods of disseminating both general and child specific information;
- strategies for assuring that all prospective parents have access to the home study process, including location and hours of services that facilitate access by all members of the community; and
- procedures for a timely search for prospective parents for a waiting child, including the use of exchanges and other interagency efforts, provided that such procedures must insure that placement of a child in an appropriate family is not delayed by the search for a same race or ethnic placement.

The plans should also provide, among other things, for the following features:

- accurate and complete descriptions of children waiting for adoption;
- strategies for training staff to work with diverse cultural, racial, and economic communities;
- strategies for dealing with linguistic barriers; and
- non-discriminatory fee structures.

To comply with the "diligent recruitment" provision, MEPA allows for targeted recruitment to increase the number of minority families in the pool of families available to provide adoptive or foster care. A State agency may conduct targeted recruitment activities for a special population itself and/or it may utilize the services of a private recruitment agency based on that agency's understanding of the needs of a specific community. However, targeted recruitment activities cannot be the only vehicle used by a State for identifying families for minority children. The overall recruitment program of the State must be open to all qualified families regardless of race, color, or national origin.

TECHNICAL ASSISTANCE RESOURCES: While all States have extensive experience with recruitment activities, we recognize that some States may be interested in learning more about how MEPA affects recruitment. A number of resources are available to provide technical assistance to States. Attached we have provided a short reference of suggestions for designing a comprehensive recruitment plan; a paper on effective recruitment prepared by the National Resource Center on Special Needs Adoption and the National Resource Center on Permanency Planning; and a monograph on MEPA prepared by the ABA National Resource Center on Legal and Court Issues.

In addition, States may request assistance from the following Resource Centers through the ACF Regional Offices (attachment B).

National Resource Center on Special Needs Adoption
National Resource Center on Permanency Planning
National Resource Center on Legal and Court Issues

INQUIRIES: Regional Administrators, ACF
Regions I-X
Olivia A. Golden
Commissioner

Attachments:

[Attachment A:](#) Statute and Conference Report
[Attachment B:](#) List of Regional Administrators, ACF
[Attachment C:](#) Exemplary IV-B Recruitment Plan Elements
[Attachment D:](#) Necessary Components of Effective Foster Care and Adoption Recruitment
[Attachment E:](#) ABA Monograph on the Multiethnic Placement Act

Some of the attachments to the Monograph are also available, they are named [Attachment F](#) and [Attachment G](#)

TITLE VI MULTIETHNIC PLACEMENT ACT of 1994

Part E Multiethnic Placement Subpart 1 Multiethnic Placement

SEC. 551. SHORT TITLE.

This subpart may be cited as the "Multiethnic Placement Act of 1994".

SEC. 552. FINDINGS AND PURPOSE.

- a. **Findings.** Congress finds that (1) nearly 500,000 children are in foster care in the United States; (2) tens of thousands of children in foster care are waiting for adoption; (3) 2 years and 8 months is the median length of time that children wait to be adopted; (4) child welfare agencies should work to eliminate racial, ethnic, and national origin discrimination and bias in adoption and foster care recruitment, selection, and placement procedures; and (5) active, creative, and diligent efforts are needed to recruit foster and adoptive parents of every race, ethnicity, and culture in order to facilitate the placement of children in foster and adoptive homes which will best meet each child's needs.
- b. **Purpose.** It is the purpose of this subpart to promote the best interests of children by (1) decreasing the length of time that children wait to be adopted; (2) preventing discrimination in the placement of children on the basis of race, color, or national origin; and (3) facilitating the identification and recruitment of foster and adoptive families that can meet children's needs.

SEC. 553. MULTIETHNIC PLACEMENTS.

- a. **Activities.**
 1. **Prohibition.** An agency, or entity, that receives Federal assistance and is involved in adoption or foster care placements may not (A) categorically deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved; or (B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.
 2. **Permissible consideration.** An agency or entity to which paragraph (1) applies may consider the cultural, ethnic, or racial background of a child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of such background as one of a number of factors used to determine the best interests of a child.
 3. **Definition.** As used in this subsection, the term "placement decision" means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of the agency or entity involved to seek the termination of birth parent rights or otherwise make a child legally available for adoptive placement.

- b. **Equitable Relief.** Any individual who is aggrieved by an action in violation of subsection (a), taken by an agency or entity described in subsection (a), shall have the right to bring an action seeking relief in a United States district court of appropriate jurisdiction.
- c. **Federal Guidance.** Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall publish guidance to concerned public and private agencies and entities with respect to compliance with this subtitle.
- d. **Deadline for Compliance**
 - 1. In General Except as provided in paragraph (2), an agency or entity that receives Federal assistance and is involved with adoption or foster care placements shall comply with this subtitle not later than six months after publication of the guidance referred to in subsection (c), or one year after the date of enactment of this Act, whichever occurs first.
 - 2. Authority to Extend Deadline If a State demonstrates to the satisfaction of the Secretary that it is necessary to amend State statutory law in order to change a particular practice that is inconsistent with this subpart, the Secretary may extend the compliance date for the State a reasonable number of days after the close of the first State legislative session beginning after the date the guidance referred to in subsection (c) is published.

Noncompliance Deemed a Civil Rights Violation Noncompliance with this subtitle is deemed a violation of title VI of the Civil Rights Act of 1964.

No Effect on Indian Child Welfare Act of 1978 Nothing in this section shall be construed to affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

SEC. 554 REQUIRED RECRUITMENT EFFORTS FOR CHILD WELFARE SERVICES PROGRAMS.

Section 422(b) of the Social Security Act (42 U.S.C. 622(b)) is amended

- 1. by striking "and" at the end of paragraph (7);
- 2. by striking the period at the end of paragraph (8) and inserting "; and"; and

by adding at the end the following:

"(9) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed."

Subpart 2
Other Provisions

SEC. 555 EFFECT OF FAILURE TO CARRY OUT STATE PLAN

In General Part A of title XI of the Social Security Act (42 U.S.C. 13011320b13) is amended by inserting after section 1122 the following:

"SEC. 1123. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

"In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan.

This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in *Suter v.*

Artist M. that section 471(a)(15) of the Act is not enforceable in a private right of action.

Applicability The amendment made by subsection (a) shall apply to actions pending on the date of the enactment of this Act and to actions brought on or after such date of enactment.

IMPROVING AMERICA'S SCHOOLS ACT OF 1994

P.L. 103-382, see page 108 Stat. 3518

Dates of Consideration and Passage

House: February 24, March 2, 3, 9, 21, 22, 24, September 30, 1994

Senate: July 27, 28, August 1, 2, October 5, 1994

Cong. Record Vol. 140(1994)

House Report (Education and Labor Committee)

No. 103-425, Feb. 16, 1994

(To accompany H.R. 6)

Senate Report (Labor and Human Resources Committee)

No. 103-292, June 24, 1994

(To accompany S. 1513)

Senate Report (Indian Affairs Committee)

No. 103-314, July 15, 1994

(To accompany S. 1513)

House Conference Report No. 103-761, Sept. 28, 1994

(To accompany H.R. 6)

The House bill was passed in lieu of the Senate bill. The House Report is set out below and the House Conference Report follows.

House Report 103-425

The Committee on Education and Labor, to whom was referred the bill H.R. 6 to extend for six years the authorization of appropriations for the programs under the Elementary and Secondary Education Act of 1965, and for certain other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

Purpose

The purpose of the act is to reauthorize most of the Federal Government's programs providing aid to elementary and secondary education so that they better assist states and local school districts as they reform public education. The authorization for 12 programs under Elementary and Secondary Education Act are not extended.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6) to extend for five years the authorizations of appropriations for the programs under the Elementary and Secondary Education Act of 1965, and for certain other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

STATEMENT OF MANAGERS

The Managers on the part of the House and the Senate wish to recognize the extraordinary contributions of John (Jack) Jennings to the Congress and to the Federal programs in support of education. Jack Jennings is retiring at the end of this Congress having served for over a quarter century as counsel to the Education and Labor Committee and its Subcommittee on Elementary, Secondary, and Vocational Education. During his service, Jack Jennings has been a model of staff professionalism, striving always to produce high quality education laws that faithfully reflect the policy decisions of the Members of Congress. The Members of Congress who have worked with Jack Jennings have benefited from his thoughtful counsel and diligence as have millions of students in America's schools.

TITLE I, PART A SHORT TITLE; TABLE OF CONTENTS

The House bill contains a table of contents for the Improving America's Schools Act, which includes the Elementary and Secondary Education Act; the Senate amendment outlines the

organization of the Improving America's Schools Act and includes a table of contents for the Elementary and Secondary Education Act. The Senate recesses.

EFFECTIVE DATES; TRANSITION

The House bill refers to "Except as provided in subparagraph (B), the provisions of title I"; the Senate amendment entitles the paragraph "Title I" and refers to "The amendment made by title I".Legislative counsel.

Both the House bill and the Senate amendment have an exception for the Impact Aid provisions, but the cites are different.Legislative counsel.

EQUITABLE RELIEF

The Act would provide a right to bring an action seeking relief in U.S. district court to any individual who is aggrieved by a violation of the anti-discrimination policy outlined above.

CONSTRUCTION

Nothing in the Multiethnic Placement Act shall be construed to affect the application of the Indian Child Welfare Act.

CONFERENCE AGREEMENT

SUBTITLE AMULTIETHNIC PLACEMENT

MULTIETHNIC FOSTER CARE AND ADOPTION PLACEMENTS

The conference agreement follows the Senate amendment with the following modifications:

Purpose

Change the purpose to read: It is the purpose of this Act to promote the best interests of children by: (1) decreasing the length of time that children wait to be adopted; (2) preventing discrimination in the placement of children on the basis of race, color, or national origin; and (3) facilitating the identification and recruitment of foster and adoptive families that can meet children's needs.

Permissible Consideration

Change permissible consideration to read: An agency or entity to which the prohibition against discrimination applies may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of the child of this background as one of a number of factors used to determine the best interests of a child.

Limitation

Substitute the following language: Noncompliance with this Act constitutes a violation of Title VI of the Civil Rights Act of 1964.

Amendment to Title IVB Child Welfare Services program

Add the following Title IVB State plan requirement: The State plan must provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.

Federal Guidance and Deadline for Compliance

Add the following: Not later than 6 months after enactment the Secretary of HHS must publish guidance to concerned public and private agencies and entities with respect to compliance with the Multiethnic Placement Act. An agency or entity that receives Federal assistance and is involved with adoption or foster care placements shall comply not later than 6 months after publication of guidance or 1 year after enactment, whichever is sooner. In cases where a State demonstrates to the Secretary's satisfaction that a particular practice cannot be changed without amending State law, the Secretary may extend the compliance date for such State a reasonable number of days after the closing of the first State legislative session beginning after the Federal guidance is published.

SUBTITLE BOTHER PROVISION

EFFECT OF FAILURE TO CARRY OUT STATE PLAN

The provision would amend Title XI of the Social Security Act by adding a new section that reads as follows: "In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in *Suter v. Artist M.* that section 471(a)(15) of the Act is not enforceable in a private right of action."

The intent of this provision is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to the decision in *Suter v. Artist M.*, while also making clear that there is no intent to overturn or reject the determination in *Suter* that the reasonable efforts clause to Title IVE does not provide a basis for a private right of action. The amendment would apply to actions pending on the date of enactment and to actions brought on or after the date of enactment.

For consideration of the House bill and the Senate amendment (except for sections 601603 and 801805):

William D. Ford, George Miller, Dale E. Kildee, Pat Williams, Major R. Owens, Tom Sawyer, Donald M. Payne, Jolene Unsoeld, Patsy T. Mink, Jack Reed, Tim Roemer, Eliot L. Engel, Xavier Becerra, Gene Green, Lynn C. Woolsey, Carlos RomeroBarcelo, Karan English, Ted Strickland, Robert A. Underwood

From the Committee on Education and Labor for consideration of sections 601603 of the Senate amendment:

William D. Ford, Major R. Owens, Donald M. Payne,

From the Committee on Ways and Means for consideration of sections 601603 of the Senate amendment:

Sam Gibbons, Harold Ford

From the Committee on Education and Labor for consideration of sections 801805 of the Senate amendment:

William D. Ford, Pat Williams, Tom Sawyer

From the Committee on Agriculture for consideration of sections 801805 of the Senate amendment:

Kika de la Garza, Charlie Stenholm, Pat Roberts, Managers on the Part of the House.

Edward M. Kennedy, Clairborne Pell, Howard M. Metzenbaum, Christopher J. Dodd, Paul Simon, Tom Harkin, Barbara A. Mikulski, Jeff Bingaman, Paul Wellstone, Harris Wofford, Nancy Landon Kassebaum, James M. Jeffords, Orrin Hatch, Dave Durenberger, Managers on the Part of the Senate.

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**DEPARTMENT OF HEALTH & HUMAN SERVICES
ADMINISTRATION FOR CHILDREN AND FAMILIES
Administration on Children, Youth and Families**

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EXEMPLARY TITLE IV-B RECRUITMENT PLAN ELEMENTS

States are to provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed. Both general and targeted recruitment should be used. When using targeted recruitment a State must insure that the children being recruited for are also included in the State's general recruitment activities.

An adequate recruitment process has a number of features. Recruitment efforts should be designed to provide to potential foster and adoptive parents throughout the community information about the characteristics and needs of the available children, the nature of the foster care and adoption processes, and the supports available to foster and adoptive families.

To help States to meet MEPA's diligent efforts requirements, the following examples of Recruitment Plan features are offered for State consideration:

RECRUITMENT PLAN ELEMENTS

Characteristics of the waiting children should be clearly described, including:

- age
- gender
- membership in a sibling group
- culture and ethnicity
- special developmental, behavioral or medical needs
- child's attitudes, habits, and daily routines

Recruitment strategies could include but not be limited to the following recruitment methods:

- decals
- bus and taxi cab placards
- slogans or themes on bookmarks, pencils, balloons, key chains, rain hats, t-shirts, etc.
- displays in store windows and libraries
- information booths at meetings or gatherings
- placemats in restaurants
- flyers, handouts, and bill inserts
- notices in congregational and community bulletins
- calendars
- newsletters
- special events, carnivals or fairs

- picnics and ice cream socials
- theme night activities
- puppet shows
- speakers' bureau, scheduling presentations
- awards programs
- appreciation nights and banquets
- welcome wagon packets
- teas, drop-ins, or open houses
- door to door canvassing
- surveys in shopping malls
- television and newspaper feature stories
- television public service announcements or community interest stories
- interview programs
- radio spot announcements
- direct mailing and ad coupons
- display ads in the phone book
- recruitment films
- messages on business marquees
- adoption day in court
- adoptive mother and father of the year

Methods of disseminating both general and targeted recruitment information should utilize mass media and printed materials. Public service announcements, talk shows and news programs should be utilized to illuminate the needs and provide foster children with visibility and delineate their unique characteristics.

Efforts could be undertaken to develop ongoing newspaper columns concerning the plight of children and the need for adoptive and foster families. This should include both major dailies and local weeklies. Ongoing columns have been effective because of their predictability.

Work with reporters and editors to stimulate relevant news and feature articles. Press releases could be prepared and disseminated to weeklies, neighborhood newspapers, trade papers, employee magazines, and the newsletters of unions, clubs, fraternities, sororities, and churches.

Posters, flyers and brochures could be developed for distribution throughout communities. They could be distributed through churches, clubs and other organizations and to doctors' offices, hospital and clinic waiting rooms, libraries, beauty parlors, barber shops, laundromats, community centers, etc.

Agencies could consider decentralizing services so that prospective parents may have physical access to the agency. Agency procedures and practice should be congruent with the cultural and social values of the target population. Adoption agencies should have hours of service that facilitate access by all members of the community.

Agencies should have a fee structure that is non-discriminatory. It should allow families of various income levels the opportunity to adopt. Fees should be charged according to a sliding

scale, based on a family's ability to pay. The ability to pay a fee should not influence the choice of the most appropriate family for a child.

Necessary Components of Effective Foster Care and Adoption Recruitment

Recruitment of families to care for children and youth is a complex process. It involves the assessment of a variety of factors to inform agency planning and the construction of an effective recruitment strategy. Preliminary planning of external and internal factors must be addressed in order to reach interested families and actually place children with foster and adoptive parents.

External Factors

The agency must be aware of its reputation in the communities that it serves and from which parents will be recruited. If the perception of the agency is a negative one, people in the community will not respond to recruitment efforts. Regardless of agency auspice, the agency is a part of the child welfare system, and might not have a good reputation in many communities. The television and press have often presented a one-sided view of foster care and child welfare -- only reporting failures and not successes.

Media coverage about a child who was abused because the system did not respond as expected, or presenting child welfare workers as only removing children from their families does not lead to positive perceptions. Consequently, perceptions will have to be addressed in designing recruitment programs. Strategies involving public relations and building community relationships will be described later in this paper.

Internal Factors

The agency must identify resources needed for recruitment effort. These resources include the agency's philosophical and policies, and staff resources. An agency's policies and procedures, and general philosophical approach to services will have a tremendous impact on the effectiveness of recruitment. An agency that views families as resources who are *empowered* throughout the intake and preparation process and prepares and supports families to parent children who have been abused or neglected will get a different result than one that begins screening families out from the initial contact and takes an investigatory approach to assessment and preparation. Agencies serving children of color must determine whether their policies, procedures and practices are *culturally competent*. *Accessibility* of offices and services to families in targeted communities and staff who are competent to serve the population are important to recruiting and retaining families in the foster care and adoption process. Using staff members who are from the community may enhance this accessibility. Empowerment, competency and accessibility are important from the time of initial contact and throughout the process that results in foster care placement and finalization of adoption.

Also important are the agency's staff resources. The agency must have a commitment to staff training to ensure that staff have appropriate knowledge and skills needed for recruitment. This includes an understanding and commitment to the agency's philosophy about bringing families into the process, rather than screening them out. An assessment of external and internal factors is an ongoing process. After an initial organizational assessment is done, and revisions implemented, planning for recruitment can begin.

Recruitment Planning

Organizations must clearly identify the children who need care, are in care, and awaiting foster care or adoptive placements. This is important because recruitment efforts must accurately depict the children who need foster or adoptive families. This information on children should include age, gender, race, ethnicity, health status and history, educational level, special challenges and capabilities, and other relevant descriptors. The population of children coming into child welfare placements has changed in recent years. Children coming into care need many more services and skilled foster parents and adoptive parents. These parents may have to assist children who have experienced sexual abuse, serious child abuse and neglect, or been affected by their parents' substance abuse. A recruitment effort is designed to increase general interest in foster parenting and adoption, and create interest in and support for caring for the specific children served by the agency.

One general strategy is a public information initiative. This public information component serves to inform the community of the general need for foster parents and adoptive parents as well as bringing specific children and types of children to the public's attention. A public information strategy might include:

1. Creating recruitment brochures, posters or booklets for display in community settings such as churches, day care centers, barber shops and beauty shops, medical care facilities, and grocery stores.

The construction of these materials may be challenging as an agency attempts to introduce itself, and its services, describe children in need, and describe foster parenting and adoption in an attractive manner that also catches one's attention and communicates accurate information. Graphics, pictures, and wording need to be carefully selected to provide a culturally accurate and inviting message, using the language of the prospective parents.

2. Developing a media campaign using large posters, billboards, radio spots or television to introduce the need for caregivers and the agency. Such initiatives often require a partnership between the agency staff, who understand the nature of the children in care and the requirements for foster and adoptive parenting, and public information specialists within the agency and marketing and advertising professionals outside the agency. This partnership might be expanded to include community representatives to increase the probability of a message that is properly targeted to the community. It may be possible to find advertising professionals who will work pro bono or at reduced cost for this family and child-centered campaign.
3. Exploring opportunities to present the agency's recruitment needs to an audience through community-oriented programming. This would include having staff appear on local media shows to discuss their work. For example, cable television that targets local communities where the demographics meet the needs of the child welfare population is a good recruitment tool, as are local newspapers that target specific communities. Community level programming may be provided free of charge or at reasonable rates. It

may also include participating in community fairs, and other events that allow a booth or display or the distribution of materials for social and charitable purposes.

A public service campaign will accomplish two purposes. First, it identifies a number of persons who are willing to take the next steps to find out about foster care and adoption. Some agencies have found that such campaigns generate a high volume of inquiries but a smaller number of more serious persons. But these are still persons recruited who might not have been identified through other means. The second purpose of public information is to provide a positive picture of foster care and adoption, and of child welfare in general. The negative perceptions, noted as external factors hindering recruitment, can be counterbalanced by positive images and human interest success stories provided by agency representatives through the media, community forums, and popular publications.

In addition to general strategies for recruitment, there can be initiatives that feature specific children in need of homes and parents.

For example, New York's Family Album is a booklet that features pictures and brief descriptions of children in need of adoptive families. It is a high quality piece done with much color that portrays the children in a positive way and demonstrates respect for the cultures of the children and a commitment to finding families for them. Such material can be useful when addressing groups that may help let others know about adoption, as well as to groups of people who have expressed an interest in adoption.

Such tools can increase public awareness as well as serve to focus on the needs of actual children waiting to be adopted. Organizations have found that in addition to the public information approach they need to simultaneously use child specific approaches for recruitment. These approaches serve to highlight actual children that personally engage interested families. "Waiting Children" newspaper, television and radio features continue to be effective. Some organizations have also begun to explore paid advertising on radio and television. Free public service announcements may serve a public information purpose, but organizations cannot control when they are played. Consequently, they may not reach the desired audience. Paid advertising allows for selection of particular time slots. Radio advertising can often be purchased at a relatively modest rate.

Another specific child adoption recruitment approach involves a variety of ways that interested families can actually meet children waiting to be adopted. Many agencies or organizations now sponsor adoption parties, picnics or other social events where the children can have fun and interested families can meet children in need of adoptive families. Staff are available to provide materials, answer questions that families may have, and support the children. Such gatherings can give prospective adoptive parents a much better understanding of who these "waiting children" are than does a picture and a written description.

Child specific strategies are more difficult to implement in foster care. It is often not possible to identify specific children before placement is needed and there are confidentiality requirements that might limit an agency's ability to showcase a child in foster care or in need of a foster home. It is possible to discuss types of children in need of care, for example newborns and infants in

hospitals whose mothers may have used crack or other substances that placed the child at risk ("boarder babies"). The ability to gain an accurate picture of children in need of foster care and to begin to consider oneself as a child's caregiver may be enhanced by actively involving veteran foster parents and introducing them to prospective foster parents.

This would allow prospective parents to meet foster parents who could share some of their experiences and to meet children who might be similar to children they might be asked to foster. Another approach for recruitment may be called a community approach. If the organization has been actively engaged with targeted communities, it may collaborate with community leaders, institutions, and organizations to help "spread the word" about children needing foster and adoptive families. This may be done by simply leaving written material with interested individuals and organizations. Formal partnerships can be developed such as that between agencies and African American churches such as in the One Church, One Child programs throughout the nation or Spaulding for Children's Bandele project in which adoption recruitment and parent preparation classes are presented in each of the African American churches participating in the project. Other states and organizations have collaborated with organizations such as the Urban League, local arms of the National Association of Black Social Workers, various labor unions, and fraternal and social organizations with high community visibility and respect.

One final form of recruitment that is one of the most effective is word of mouth. Prospective and present foster parents and adoptive parents can be key to recruitment. Word of mouth is a powerful tool as a prospective foster or adoptive parent may or may not respond to recruitment efforts depending on what they hear from others who have had this contact with the agency. This underscores the importance of an internal agency assessment. Agency policies, procedures, and ways of engaging inquiring families and veteran families set the tone for this natural means of recruitment. The internal organization must be consumer friendly. For the Executive Director to line staff, the agency must be foster parent and adoptive parent friendly. Parents need to be rewarded, respected, and most of all, their opinions need to be heard and valued. A family that has been pleased with the service it received from an agency will let others know this. Many potential resource families contact an agency because their friend, neighbor, or a relative is a foster parent with or adopted through that agency.

Some agencies have formalized this natural recruitment method by involving foster and adoptive parents in their recruitment programs. This involvement includes assisting potential resource families in complex agency applications, telling them about procedures, providing parent training and serving as a support or leading a family to other foster or adoptive families. In addition to extensive use of foster and adoptive parents as informal and volunteer recruiters, some agencies have encouraged their foster parents as recruiters by offering monetary rewards for bringing in friends and family members to be foster parents, or contracting with them as recruiters, supporters, and parent trainers.

As informal conversations and sharing by foster parents with their own networks in a powerful means of recruitment, the issue of foster parent retention is crucial. Retaining foster parents that have already been recruited is critical because this will reduce the number of new homes needed, and the expense of training new parents, as well as focuses agency attention on the treatment of

veteran foster parents. To address recruitment without assessing and improving retention may be potentially self-defeating for an agency. Foster parents need to be treated as valuable agency resources whose significant contribution to children and families is recognized and rewarded in a variety of ways. This respect for veteran parents will engage them as effective informal and formal recruiters. The satisfied, experienced foster parent is the foundation for any recruitment strategy. The satisfaction of adoptive parents and their role as references for an agency and recruiters for waiting children is also significant.

There are several issues to highlight with regard to foster care and to adoption: (1) the importance of cultural competency in recruitment strategies; (2) the linkages between foster care parenting and becoming an adoptive parent; and (3) the central role of recruitment in agency service delivery.

1. Cultural Competency

With an over representation of children of color in out of home care, the child welfare system must do more to provide culturally competent services to communities of color. Cultural competence respects the culturally-defined needs of the populations served and acknowledges culture as a force that shapes behavior, values and institutions. It recognizes natural support systems such as the family, community, church, and healers in various populations. It acknowledges that the concepts of family and community are different for various cultures and even for subgroups within cultures. (Cross, et.al.)

Within a system cultural competence requires a congruent set of behaviors, attitudes and policies that come together in away that enable that systems to work effectively in cross-cultural situations. Cultural competence calls for the awareness of the dynamics that result from cultural differences and expands cultural knowledge while being vigilant in adapting services to meet culturally unique needs. It requires that staff are committed to providing culturally competent services with an awareness and acceptance of cultural differences, an awareness of their own cultural values, that they understand what occurs in cross-cultural interactions, have basic knowledge of the culture of the people with whom they are working and an ability to adapt practice skills to fit that culture. (Cross, et.al.)

For example, programs such as Tayari and Nuestros NiZos in San Diego have been successfully linked to and obtained support from the communities they serve. They have adapted policy, program and practice to meet the needs of children served. Tayari and Nuestros NiZos are satellite offices of the San Diego County Adoption program located in the African American and Latino communities with staff representative of those communities. Staff speak the language and dialects spoken in the community. Nuestros NiZos has recruitment brochures and posters, applications and other written materials in Spanish.

These agencies, and other programs such as One Church One Child and Friends of Black Children in North Carolina and Tennessee, recognize the strengths of the communities they serve and reach out to leaders in the community. These leaders can serve as

gatekeepers to the community. With these leaders sanctioning the agency's recruitment effort, entry into the community is possible. The Institute for Black Parenting in Los Angeles has also worked with community leaders and celebrities as spokespersons for their recruitment efforts. These leaders facilitate the agency's access to people in the community. They can also help to shape policies and procedures that are congruent with the culture and traditions of their communities.

Such successful programs have worked with institutions in the community that have historically served the communities such as the African American church. Ministers have made it possible for agencies to present the need for resource families to their congregations. In some states press conferences are held at each meeting of the Board of Directors of One Church One Child which bring the media into the communities. The media in turn relay the message that children need families and the ministers support the recruitment effort in the communities they represent. Churches have also sponsored adoption parties in the community.

In order to reach the Latino community in Southwest Detroit, the Michigan Department of Social Services staff have reached out to grass roots organizations in their recruitment effort. A contract for recruitment of foster and adoptive families was developed with such a community organization.

These programs have built upon traditions in their communities whereby families cared for their children by simply taking in other families' children in time of need or through informal adoptions. Programs which build on these traditions let the communities they serve know that in fact there are children from their communities in the system and have explored both blood and non-blood kin as resources for children that come to the agencies' attention. They incorporate the history and language of the culture of these communities into their work and celebrate and seek to preserve the culture of the communities. They recognize the importance of cultural identity for children and children's needs for continuity not only with family but also with the community.

In the arena of adoption, successful programs have worked with the knowledge that research has documented: that families of color are meeting the needs of adopted children with special needs, (Rosenthal and Groze) and that families of color do adopt and some groups adopt a rate higher to their representation in the general population than do European Americans. (Mason and Williams)

2. Foster Care and Adoption Linkages

Generally, there has been more of a focus on adoption recruitment but research points out the need for collaboration between foster care and adoption programs. Recruitment efforts successfully used in adoption programs can be used in foster parent recruitment. It is estimated that 40% to 90% of children with special needs are adopted by their foster parents. Foster parent adoptions have been found to be an effective avenue to permanency through adoption for children of color. (Minority Adoptions)

In fact the Westat study indicated two ways of reducing or eliminating the gap between the adoption placement rates of white children and children of color. The gap was reduced in communities with a positive attitude toward the local public adoption agency. Agencies reported efforts to reach out to communities and develop public awareness programs designed to improve community attitudes and knowledge of the adoption process. They had broadened their recruitment efforts to encourage families of color, single persons and modest income families to adopt. The second way the gap between adoption placement rates of white children and children of color was eliminated was with an active adoption recruitment program in the agency coupled with the presence of a foster family willing to adopt. This was despite the fact that children of color were less likely to have a foster family interested in adopting them.

Certainly if permanency planning is the goal for children, the need to consider foster families as potential adoptive families is apparent. Agencies need families who can accept a child who will be reunited with the family but also who are prepared to adopt the child if the child becomes available for adoption. As agencies do this, they need to consider whether they are making foster care placements appropriate to meet the life long needs of children. These needs include ongoing developmental needs, safety and health needs, a sense of belonging, and family and cultural continuity and connectedness. Many agencies have begun to do joint foster and adoptive parent recruitment and preparation for fostering and adopting. Agencies that consider families as resources for children seek to help these families determine whether they want to act as a foster parent who will work with the agency only to return children to their birth family or move to an adoptive family; whether they could foster a child but be willing to adopt the child if the child becomes available for adoption; are wanting to adopt but are willing to take a child who is not legally free for adoption; or only will consider adopting a child already free for adoption.

If agencies have foster parents that could adopt, but are not, it is important to identify the reasons why this is so. In the past agencies prohibited foster parents from adopting. Today most states have policies that allow foster parents to adopt children who have been in the home for a period of time and have formed an attachment with the foster family. However, there may be agency barriers to foster parent adoptions. For example, foster parents caring for children with complex emotional, developmental or medical needs may be discouraged from adopting because of the state's policy on adoption assistance. The family may be receiving a special foster care rate due to the child's complex needs, but if they adopt, the adoption assistance rate would not exceed the regular foster care rate. Some states have changed such policies so the adoption assistance payment is comparable to the special foster care rate. This has facilitated the adoption of children who otherwise would not have been adopted.

3. Agency Recruitment Initiatives

In order to focus recruitment efforts, recruiters must clearly be aware of the type of children who are in need of foster and adoptive families and the families who are likely to foster and adopt in order to focus recruitment efforts. This means that recruitment

must be an integral part of the entire out of home care program. Only in this way is it possible to adapt recruitment efforts in a timely fashion to any changes in the population of children needing services. If there are now younger children entering care, the recruitment program and materials will have to reflect these children. Further, those placing children need to inform the recruitment effort about the types of families that need to be recruited. Historically the middle class, college educated, two parent family has been held out as the ideal family. Research now has begun to confirm what practitioners have known for years. Families with modest incomes, lower educational levels or where there is only one parent are doing fine as foster and adoptive parents. They may be the parents of choice in many instances. (Rosenthal, Groze, Curiel)

The integration of recruitment into the total out of home care program emphasizes the need for staff to be ready, willing and able to help viable, committed families through the process. Those staff charged with preparing and assessing families must respond promptly and with a welcoming approach to those families who can become resources for children. Failure to do so undermines recruitment efforts. Families who do not receive such a response will question the agency's sincerity about their stated recruitment objective of finding families for children.

This may begin with the first telephone call a family makes to the agency in response to some recruitment effort. It is crucial that staff who are knowledgeable about the children and the procedures of the agency are available to take these calls. It is particularly important when children are featured in the media or when particular recruitment campaigns are in progress that staff be available when calls come in. There must also be sufficient telephone lines to ensure that calls get through.

In addition, staff who work with the children awaiting adoption must prepare them for any specific child recruitment efforts as well as the children's caretakers so that they can support the child as these efforts are being made. Such preparation requires that the children fully understand the plan for adoption, are willing to participate in recruitment efforts, and that there are no surprises if friends, school mates, teachers or others see the recruitment material. Children must not be given false expectations about the outcome of recruitment efforts, and workers and care takers must be available to support children following recruitment efforts, regardless of outcome.

Staff must be available to begin the preparation and assessment process in a timely fashion following family's initial inquiry. The process and the procedures need to support, educate and engage prospective families in a process of self-assessment that will allow them to make an informed decision about fostering or adopting and about parenting a specific child. Procedures that do not take into account family work schedules or child care needs will not help families get through the process. A process that is lengthy and focuses primarily on difficulties families have faced rather than how they coped with these difficulties or the strengths they have, may discourage families who actually have what it takes to parent a child who has been abused or neglected.

Values and attitudes of practitioners are also important. For example, workers may hold out for a two parent family for a child on their caseload regardless of whether their assessment of the child specifically documents such a need. The two parent family still is a value even though half the children in this country are likely to spend part of their lifetime in a single parent household. A worker's values in this regard can delay or prevent a child from placement with a family who may be well qualified to parent the child.

Workers' attitudes about children's behavior and needs are also important. If the worker is overwhelmed by a child's behavior or questions the ability of the child to live in a family setting or does not understand how a family can care for a child with complex medical or emotional needs, that worker will have difficulty recruiting a family for that child or preparing a family to foster or adopt the child. Training and supportive supervision can help workers to make decisions that go beyond individual perceptions of the complexity of certain children's needs. Peer team work and consultation can also help workers focus on the permanency needs of children, as well as support difficult decisions. Collaboration between professionals of different service systems can also assist workers in truly understanding children's medical, emotional, behavioral, and developmental needs as well as becoming familiar with services families may need to access.

Collaboration between agencies and jurisdictions is also necessary. An agency that has a child needing a foster or adoptive family must be willing to place the child with a family prepared by another agency, county, or state. Usually such placements occur when trust has been established between individuals in the various organizations, jurisdictions and agencies. It is critical that agencies explore strategies to establish relationships and network with other organizations that may be resources for children who need families. Statewide, region-wide, or national child welfare conferences help develop networks that allow staff to put faces to names and establish trust. Various networks such as the local consortium of public and private foster care agencies, regular meetings of foster care staff from different counties, local and regional adoption networks such as the Northwest Adoption Exchange, the Rocky Mountain Adoption Exchange and meetings of representatives for the Interstate Compact for Adoption and Medical Assistance also encourage collaboration. They allow for the development of relationships in which all recognize that such collaboration cannot end at the time of placement. The placing agency has the responsibility to ensure that the family receives services necessary, such as adoption assistance, to support the adoptive placement.

All of this requires commitment from every level of the organization. Staff must have adequate training to prepare and assess children and families for fostering and adopting and to provide support to families. There must be policy and procedures to guide them in their work. Funds must be committed in order for staff to do recruitment and to promptly respond to families who respond to recruitment efforts. Administrators must provide leadership in developing positive working relationships with communities of color and encouraging the development of more culturally competent responses to these communities.

Recruitment and retention efforts cannot be a one time campaign or a two year demonstration project. Recruitment must be ongoing and must be systematized in the child welfare program. It requires the development of skills in marketing and working with the media. Agencies have become aware of the need to involve their public information office in recruitment or to hire public relations staff or consultants.

All recruitment efforts need to be evaluated to determine their effectiveness. Such evaluations must go beyond how many recruitment presentations were made or how many children were featured in how many radio or television spots. Even the numbers of families responding to recruitment efforts or the number of children placed cannot stand alone as measures of effectiveness. Recruitment efforts must be evaluated in the context of the total out of home care program. Recruitment efforts must be guided by objectives established for the total foster care and adoption program that focus on outcomes such as retention of families who enter the process and appropriate placement of children. How many families got through the process is more important than the numbers recruited. The number of children placed for adoption is dependent upon the numbers of children available for adoption, but factors such as how and when children are identified as needing adoption are important issues to be evaluated. The various factors that effect outcomes must be included in evaluations to determine the effectiveness of particular approaches and ways of improving recruitment and retention practices in order to increase children's opportunities for permanency whether through reunification with their birth families or adoption.

Summary

In summary, successful foster and adoptive family recruitment does the following:

- ensures necessary preparation of children and their caretakers
- realistically portrays the children who are need foster and adoptive families and advocates for the child
- gains community support and participation and is community-based
- develops as an integral component of the total foster care/adoption program
- takes risks to present waiting children to the public in attempts to achieve permanency for them and recognizes all kinds of families as potential resources for waiting children
- takes advantage of every opportunity to highlight the needs of the children and the process
- obtains commitment from all levels of the organization
- requires regular review for quality improvements and results effectiveness by agency and community persons
- occurs on many levels - public awareness, public information, in behalf of a specific child or specific children
- facilitates collaboration with various systems and agencies that impact a child's permanence
- requires cultural competence and utilizes the natural community mechanisms to provide the message regarding the need

Agencies which have been found to be successful in placing children of color for adoption have demonstrated cultural competence which is essential to the opportunities available to the disproportionate numbers of children color awaiting adoption. many of these agencies are also successful in recruiting foster families who reflect the population of children served. Characteristics of these agencies are that they:

- Have staff of the same cultural/racial heritage as the children and families
- Take a welcoming approach to applicants
- Minimize bureaucratic procedures
- Locate offices so they are readily accessible to members of the community and are in the community
- Have persons who are culturally competent and sensitive in decision-making positions in the agency
- Facilitate and encourage community involvement and control in the agency
- Have written materials in the language of the community and staff able to communicate in the language and dialect of the community
- Seek blood and non-blood kin as potential resource families
- Encourage and support foster parent adoptions

References

Cross, Terry I; Bazron, Barbara J.; Dennis, Karl W.; Issacs, Mareasa R., *Effective Services for Minority Children Who Are Severely Emotionally Disturbed*, CASSP Technical Assistance Center, Georgetown University, 1989

Mason, Janet; Williams, Carol W.; "Adoption of Children with Special Needs: Issues in Law and Policy. Ellen c. Segal, Ed. American Bar Association, 1985.

_____, *Minority Adoptions*, Inspector General of the US Department of Health and Human Services, 1988

Rosenthal, James A.; Groze, Victor; Curiel, Herman, "Race, Social Class and Special Needs Adoption," *Social Work*, Vol. 35, No. 6, 481-576, Nov. 1990

Rosenthal, James A.; Groze, Victor K., *Special Needs Adoption: A Study of Intact Families*. New York, Praeger Press, 1992.

The Study of Adoption Services for Waiting Minority and Nonminority Children, Executive Summary: Westat, Inc. Rockville, Maryland, 1986.

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A Guide to The Multiethnic Placement Act of 1994

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Chapter 1: Introduction

The Multiethnic Placement Act (MEPA) was passed amid spirited and sometimes contentious debate about transracial adoption and same-race placement policies. At the heart of this debate is a concern about the best interests of children and a desire to ensure children have permanent and stable homes that will meet their needs. The growing number of children in foster care who are waiting for adoptive homes and the over-representation of minority children, particularly African American children, in out-of-home care demand our attention. At the same time, placement decisions must be made carefully to consider the best interest of the child being placed. MEPA attempts to address these concerns by prohibiting discrimination in placement decisions and by expanding the number of families available for foster care or adoption.

Although states are required to comply with MEPA by October 21, 1995, debate is likely to continue. This monograph will not resolve all the issues. Rather it will describe the Act and the current state of the law. It will provide a guide for determining what the law does and does not require and offer some practical suggestions for child welfare administrators and social workers who must implement the Act in the best interest of the children whom they serve.

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A. Overview of the Act

The Howard Metzenbaum Multiethnic Placement Act of 1994 (MEPA) was signed into law by President Clinton on October 20, 1994 as part of the Improving America's Schools Act. It is designed to: 1) decrease the time children wait for adoption, 2) prevent discrimination in the placement of children, and 3) facilitate the identification and recruitment of foster and adoptive families that can meet children's needs.

MEPA has three basic requirements to achieve these goals:

1. It prohibits foster care and adoption agencies and other entities that are involved in the placement of children and that receive federal funds from delaying or denying or otherwise discriminating in making a placement decision on the basis of race, color or national origin.
2. It prohibits those federally assisted agencies and entities from categorically denying the opportunity for any person to become an adoptive or foster parent solely on the basis of the race, color, or national origin of the adoptive or foster parent or the child.
3. It requires states to develop plans for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed.

States and affected agencies must comply with the Act by October 21, 1995.

Recruitment plans must be submitted no later than October 31, 1995. The Department of Health and Human Services (HHS) has issued a written "Guidance" to assist agencies in complying with MEPA and with related provisions of the United States Constitution and Title VI of the Civil Rights Act. HHS is also available for technical assistance to help affected agencies determine how to comply with the law.

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B. Children in Foster Care

Although MEPA applies to all child placement agencies receiving federal funds, its primary focus is on children in foster care. In enacting MEPA, Congress found there are nearly 500,000 children in foster care in the United States, that tens of thousands of children are waiting for adoption, and that children who are adopted wait an average of two years and eight months for adoption. HHS statistics indicate that in December, 1990 approximately 69,000 children in foster care had a goal of adoption and about 20,000 of these children were legally free to be adopted. Of these children 44% were white, 43% were African American, and 7% were Hispanic. The median age of waiting children was 7.4 years. 43% were 6-12 years old, 36% were 1-5 years old, 17% were over 12 and 1% were under 1.

Minority children, particularly those of African descent, are over-represented among children in foster care in relationship to their proportion in the population as a whole. Studies also indicate that African American children wait longer to be adopted than other children. The reasons for these trends are not limited to adoption placement policies, however. Experts have suggested that the over-representation of African American children is due to a number of factors including the high level of minority children who come into contact with the child welfare system, disproportionate foster care placement rates, low reunification rates, historic racism in the child welfare system, and the economic status of African Americans, including both those whose children are involved in the child welfare system and those who might be able to provide adoptive homes. Regarding length of stay in foster care and waiting time for adoption, the child's age on entry into care is the greatest predictor of the time a child will wait for adoption, and other factors, such as the child's age at the time he or she becomes free for adoption, reason for entry into care, the child's placement with relatives, and the services offered to the birth family may affect how long a child remains in foster care.

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C. The Law Before MEPA

Discrimination based on race or national origin was clearly illegal before MEPA was passed. The Constitution bars discrimination based on race unless there is a compelling reason for treating people differently and the disparate treatment is necessary to achieve a legitimate purpose. Title VI of the Civil Rights Act prohibits discrimination based on race, color, or national origin in all federally funded programs. Applying discrimination principles to child welfare decisions demands some care however. Unlike decisions made in other areas, such as credit or housing, where general qualifications determine whether an individual is entitled to certain goods and services, a child welfare decision requires an individualized determination concerning whether a particular placement is in the best interest of the child. Generally a placing agency will consider the needs of the child and

the abilities of a prospective foster or adoptive family to meet those needs and will match the child to the family that can best meet his or her needs.

Courts have met the challenge of applying the law on discrimination to placement decisions by distinguishing between the use of race as one factor in considering the best interest of an individual child and the use of race as a single sufficient criterion for denying a placement. Courts have overturned statutes that prohibited transracial adoption where race was the sole factor used to deny placement, but they have not ruled out race as one of the acceptable considerations that can be used in making placement decisions. Consideration of a family's ability to parent a child of another race has been found to be permissible when consideration of the parents' racial attitudes and ability to address issues of the child's identity and self-esteem are necessary to meet the child's best interest, but blanket policies favoring same-race placements have generally been disfavored, and in individual cases, consideration of a child's need for a permanent home may predominate over considerations based on race and culture.

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D. Same-Race Placement Policies

Pre-MEPA policies on same race and transracial placement varied among the states. States generally require that foster care and adoptive placements be made in the best interest of the child. However states differed in the amount of direction given, both in making the best interest determination and in whether and to what extent race, culture and ethnicity should be taken into consideration. Some states specified that children should be placed with families of the same race, ethnicity or cultural background consistent with the best interest of the child; some states specified that placement with a family of the same race, ethnicity or cultural background is preferred; some states created an order of preference that included race, ethnicity and culture; and some states prescribed specific time periods in which agencies must attempt to place a child with a family of the same race ethnicity or cultural background. As described above, statutes and policies prohibiting transracial placements have been struck down as unconstitutional. Critics of less restrictive same race placement policies say that the implementation of these policies sometimes makes race an overwhelming factor that virtually prohibits multiethnic foster care and adoptive placements.

Same race placement policies are based on the generally accepted assumption that children have needs related to their cultural, ethnic and racial background. Most child welfare experts agree that it is preferable to place children in families with a similar background, if that placement is best suited to meet the child's needs and the placement decision does not delay the child's opportunity for a stable home. This preference assumes that children raised in families of the same race or ethnic background will more easily develop a sense of identity and self-esteem and that minority children raised in minority families will have a better opportunity to learn the skills they need to cope with the racism they will encounter in the general society.

Some commentators disagree with these assumptions citing the success of transracial placements. However, a wide spectrum of experts agree that transracial placements present specific issues that must be addressed and that parents who do adopt transracially must be able to meet the child's needs related to race, culture or ethnicity. While a few commentators would prohibit any consideration of race in making placement decisions, same race policies and practices have usually been attacked when the preference for same race placement interferes with a placement that best meets all of the child's needs or causes a delay in permanency for children.

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E. **Legislative History**

Senator Metzenbaum introduced MEPA in order to encourage transracial adoption when an appropriate same race placement is not available:

- I introduced the Multiethnic Placement Act, S. 1224, with one goal in mind - encouraging transracial adoption when an appropriate same race placement is not available. I strongly believe that it is better for children to be adopted by parents of another race than not to be adopted at all. Policies that virtually prohibit multiethnic foster care and adoption are unconstitutional, harmful and must be stopped.

He recognized the concerns on all sides of the debate and emphasized the individual needs of the child in further explaining the bill:

- Although an appropriate transracial placement is often a positive experience, it is also true that a same race, language or ethnic group placement can go a long way in helping children make the psychological, social, and cultural adjustment to their new family. Given the obvious benefits of same race placement, the Multiethnic Placement Act also makes it clear that race, color or national origin can be a factor in making foster care and adoptive placements, if and only if: First, the consideration of these factors are in the child's best interest, and second, race, color, or national origin is considered along with other factors, such as age, sex, member of a sibling group, religion, disability, language, and whether the child has already bonded with the prospective parents.

This common sense approach to the consideration of race in making foster care and adoption placements is in keeping with long standing Federal adoption legislation that encourages the recruitment of prospective parents of all races.

Looking at the recruitment process, he stressed that child welfare agencies are encouraged "to use active, creative, and diligent efforts to recruit parents from every race and culture for children needing out of home placements."

Senator Coats, a cosponsor of MEPA, also laid out the basic principles behind the Act in a colloquy with Senator Metzenbaum:

- Although the issue of transracial adoption is both controversial and complicated, you and I agree on certain basic principles. First, that it is generally preferable for children to be placed with families of their own ethnic origin when homes are available and in the child's best interest. Second, that transracial placement is a positive and effective means of providing a child with a loving and permanent home, particularly when faced with the alternative of long term foster care. Finally, that children should not be forced into prolonged temporary care when good stable families are ready, willing and able to adopt.

Thus MEPA has multiple goals: to eliminate discriminatory policies and practices, to ensure that placement decisions are based on the individual needs of the child, and to expand the families available to provide stable homes for children and thus reduce the length of foster care stays. The provisions of MEPA should be interpreted with these goals in mind.

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Chapter 2: Description of MEPA Provisions

A. Substantive Provisions

1. To Whom the Act Applies

The nondiscrimination provisions of MEPA apply to:

- any agency or entity that receives federal assistance and is involved in adoption or foster care placements

All state and county child welfare agencies involved in placements are covered because they receive Title IV-E and Title IV-B funds. MEPA also applies to any private agencies involved in placements that receive federal funds from any source. MEPA does not limit its coverage to agencies receiving federal foster care or child welfare funds. Therefore a placement agency that does not receive IV-E or IV-B funds but does receive federal funds from another source such as the Adoption Opportunities Act, the Child Abuse Prevention and Treatment Act (CAPTA), or Title XX is covered by MEPA. Agencies are covered whether they receive the federal assistance directly or through a subgrant from a state, a county, or another agency.

2. Nondiscrimination in Placement Decisions

a. What is a placement decision?

MEPA prohibits discrimination in making placement decisions. "Placement decision" is defined broadly to include:

- the decision to place, or to delay or deny the placement of a child in foster care or an adoptive home, and includes the decision of the agency or entity involved to seek the termination of birth parent rights or otherwise make a child legally available for adoptive placement.

Therefore MEPA comes into play throughout the child welfare process. For example, an emergency placement, the development of a case plan, a regular case review that considers placement issues, and a permanency planning or dispositional decision are all likely to include a decision about whether to make or delay a placement. "Placement decision" also explicitly includes the decision to terminate parental rights. Therefore, the fact that a child is not free for adoption does not relieve the agency of its responsibility to proceed in a nondiscriminatory manner.

b. What is prohibited?

Any agency covered by MEPA may not:

- delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved.

However, the agency may:

consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interest of a child.

2. What is discrimination in decision making?

The HHS guidance specifies that consideration of race, color, or national origin is permissible only as a component of individualized decisionmaking. This is consistent with the court decisions, described above, that have struck down blanket same race placement policies and individual placement decisions where race was the sole or predominant factor in denying a placement, but have upheld the use of race as one of a number of factors that can be considered in determining the best interest of the child. The HHS Guidance says that consideration of race, color or national origin is permissible only if the agency:

- has made a narrowly tailored, individualized determination that the facts and circumstances of a particular case require

consideration of race, color, or national origin in order to advance the best interest of the child in need of placement.

Therefore, race, ethnicity, and culture may be taken into consideration in making an individual decision about the needs of a particular child but may not be the subject of blanket policies that apply to all children. Agencies may not assume that race, ethnicity or culture is an issue in every case. These factors may be considered only when necessary to meet the needs of an individual child and as one of a number of factors used to determine the best interest of the child. The HHS Guidance specifies that certain policies are prohibited by MEPA or Title VI. These include policies that establish periods during which only a same race/ethnicity search will occur; create orders of placement preferences based on race, culture, or ethnicity; require caseworkers to specially justify transracial placements; or have the effect of delaying placements, either before or after termination of parental rights, in order to find a family of a particular race, culture, or ethnicity.

These policies are prohibited by MEPA or Title VI:

- Policies that establish periods during which only a same race/ethnicity search will occur.
- Policies that establish orders of placement preferences based on race, culture, or ethnicity.
- Policies that require caseworkers to specially justify transracial placements.
- Policies that have the effect of delaying placements, either before or after termination of parental rights, in order to find a family of a particular race, culture, or ethnicity.

In making individual decisions an agency may assess the ability of the prospective family to meet the child's needs related to his or her racial, ethnic, or cultural background. As part of this assessment, the agency may examine the attitudes of the prospective family that affect their ability to nurture a child of a particular background and consider the family's ability to promote development of the child's positive sense of self. The agency may assess the family's ability to nurture, support, and reinforce the racial, ethnic, or cultural identity of the child, the family's capacity to cope with the particular consequences of the child's developmental history, and the family's ability to help the child deal with any forms of discrimination the child may encounter. The agency may also consider the prospective parents' expressed preferences as one factor in making the decision and discuss with

the family their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity, just as they discuss other issues, such as sex, age, or disability. In making the placement decision, the agency may make a selection among various families by identifying which family is most likely to meet all of the child's needs.

However an agency may not rely on general assumptions about the needs of children of a particular race or ethnicity or about the ability of parents of a particular race or ethnicity to care for or to nurture the sense of identity of a child of another race, culture or ethnicity, and they may not presume from the race or ethnicity of prospective parents that they would be unable to maintain the child's ties to another racial, ethnic, or cultural community.

In making individual decisions an agency may:

- Discuss the child's needs with the family.
- Examine the capacity of the prospective family to meet the child's psychological needs including those related to the child's racial, ethnic, or cultural background.
- Assess the attitudes of the prospective family as they relate to their capacity to nurture a child of a particular background
- Discuss with the family their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity, just as they discuss issues related to other characteristics, such as sex, age, or disability
- Consider the prospective parents'expressed preferences as one factor in making the decision.
- Consider the ability of the prospective parents to cope with the particular consequences of the child's developmental history and to promote the development of a positive sense of self, which often has been compromised by maltreatment and separations.
- Assess the family's ability to nurture, support, and reinforce the racial, ethnic, or cultural identity of the child and help the child cope with any forms of discrimination the child may encounter.
- Make a selection among various families by identifying which family is most likely to meet all of the child's needs.

However an agency may not:

- Rely on general assumptions about the needs of children of a particular race or ethnicity.

- Rely on general assumptions about the ability of parents of a particular race or ethnicity to care for or to nurture the sense of identity of a child of another race, culture or ethnicity.
- Presume from the race or ethnicity of prospective parents that they would be unable to maintain the child's ties to another racial, ethnic, or cultural community.

The Guidance goes on to give examples of the narrow circumstances when race or ethnicity can be considered in making the best interest determination:

For example, for children who have lived in one racial, ethnic, or cultural community, the agency may assess the child's ability to make a transition to another community. A child may have a strong sense of identity with a particular racial, ethnic or cultural community that should not be disrupted.

The Guidance suggests that these considerations would probably not be generally applicable to infants or very young children but stresses that the cases must be evaluated on the needs of the individual child.

MEPA and the Guidance also make clear that the child's needs related to race, ethnicity, or culture must be evaluated along with the child's other needs, such as the child's developmental, educational, medical, and psychological needs; the child's attachment to current caretakers; and the child's interests, personality, and abilities. For example, in an individual case the child's attachment to a foster family of another race may predominate over his or her need for placement with a family of the same race.

3. What is delay'

It is generally recognized that instability is harmful to children and that children who cannot return home should be placed in a permanent home as soon as possible. However, the foster care system has not been fully successful in moving children into permanent homes in a timely fashion.

A number of factors contribute to delay in achieving permanence for children, including high caseloads that do not permit social workers to move quickly, overworked attorneys who push back filing petitions to terminate parental rights, court delays that prolong the dependency process, difficulty in terminating parental

rights, the special needs of many children who require homes, financial disincentives to adopt, and attitudes about whether certain children are adoptable. MEPA clearly outlaws delaying a placement for the sole purpose of finding a racial or ethnic match. However, in other cases it may be difficult to isolate the role that concerns for a child's race, culture, or ethnicity play in causing delay because there are so many factors that contribute to delays.

The HHS Guidance advises that policies imposing a period of delay to search for a same race placement are clearly illegal. However, the Guidance provides little information on what constitutes delay in an individual case. Clearly, an agency may not delay any period of time to search for a same race placement if an appropriate transracial placement is available. However, Senator Coats made it clear that the prohibition on delay does not relieve agencies from making an aggressive effort to identify families that can meet the needs of the waiting children:

[MEPA] also prohibits any delay in making an adoption placement. While I have expressed concern about the effect of this prohibition I have determined that it is the best legislative approach we can take at this time. I do however want to reiterate my concern that this not be perceived as an excuse for agencies not to aggressively recruit prospective adoptive parents. Agencies should, on an ongoing basis-consistently, creatively, and vigorously recruit and study families of every race and culture of children needing adoptive families.

The best ways to guard against violations of the law are to assess whether the child has any needs related to race, ethnicity and culture as soon as the child comes into contact with the child welfare system; to make each placement, including, to the extent possible, emergency placements, with those needs in mind; and to recruit a sufficient number of families who are available to meet the needs of children in care.

4. Nondiscrimination in the opportunity to become an adoptive or foster parent

Although the debate surrounding MEPA has usually focused on discrimination against white parents who wish to adopt African American children, researchers have also pointed out discriminatory practices that keep African American and other minority families from becoming foster and adoptive parents.

The central legal issue in discrimination against white parents is whether same race placement policies unfairly deprive them of the right to become foster or adoptive parents. However, the controversies usually have arisen in the context of a particular family who wants to adopt or foster a particular child. MEPA bars discrimination in the opportunity to foster or adopt a child but does not give prospective parents the right to foster or adopt a particular child. This is consistent with the court decisions issued before Congress passed MEPA. For example, in a Louisiana case, the federal court of appeals said that parents do not have an absolute right to adopt a particular child because the placement decisions also must take into consideration the parent's ability to rear the child. At the same time, the equal protection clause and Title VI prohibit agencies from using race or ethnicity to deprive parents of the general opportunity to adopt or foster a child if they are qualified to do so. Therefore MEPA prohibits discrimination that deprives prospective parents of the opportunity to foster or adopt a child, but in individual placement decisions MEPA focuses on the child's needs and the ability of the particular parent or parents to meet those needs.

Specifically, agencies or entities covered by MEPA may not:

- categorically deny the opportunity to become an adoptive or foster parent solely on the basis of race, color, or national origin.

The HHS Guidance makes clear that this includes not only denials overtly based on race, color, or national origin but also using standards that exclude groups of prospective parents on the basis of race, color, or national origin, where those standards are arbitrary or unnecessary or where less exclusionary standards are available. Prohibited standards may include those related to income, age, education, family structure, and size or ownership of housing, when they do not have an impact on the ability of the prospective parents to care for a child. Restrictive criteria such as these have been cited as barriers to the inclusion of African American and other minority families in the pool of prospective foster and adoptive parents who are available to provide homes for children. Other barriers to participation include lack of minority staff and management in placement agencies, lack of recruitment in appropriate communities, lack of communication about the need for families in appropriate communities, systemic racism that results in policies and practices from a white middle class perspective, fees and costs that make adoption difficult or impossible for low income families, negative perceptions about

child welfare agencies in minority communities, and the traditional use of informal rather than formal adoption in certain communities. Barriers to participation can be addressed in an appropriate recruitment plan.

5. Diligent Recruitment

MEPA requires states to recruit potential families that reflect the ethnic and racial diversity of children needing placement. States must develop plans that:

- provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.

Experience demonstrates that minority communities respond when they are given information about the need for homes, and there are many successful models for successful recruitment efforts.

The HHS guidance explains that the recruitment plan must focus on developing a pool of potential foster and adoptive parents willing and able to foster or adopt the children needing placement. Recruitment must seek to provide all children with the opportunity for placement and to provide all qualified members of the community with an opportunity to adopt or foster a child.

The Guidance specifies that an appropriate comprehensive recruitment plan includes:

2. A description of the characteristics of waiting children.
3. Specific strategies to reach all parts of the community.
4. Diverse methods of disseminating both general and child specific information.
5. Strategies for assuring that all prospective parents have timely access to the home study process, including location and hours of services that facilitate access by all members of the community.
6. Strategies for training staff to work with diverse cultural, racial and economic communities.
7. Strategies for dealing with linguistic barriers.
8. Non-discriminatory fee structures.
9. Procedures for a timely search for prospective parents for a waiting child, including the use of exchanges and other interagency efforts, provided that such procedures must insure that placement of a child in an appropriate household

is not delayed by the search for a same race or ethnic placement.

The Guidance recognizes that both general and targeted recruitment activities are important. These include use of the general media (radio, television and print), dissemination of information to targeted community organizations, such as religious groups and neighborhood centers, and the development of partnerships with community groups to make waiting children more visible and to identify and support prospective adoptive and foster parents.

Recruitment activities should provide potential foster and adoptive parents with information about the characteristics and needs of the available children, the nature of the foster care and adoption process, and the supports available to foster and adoptive families.

6. Interaction with Indian Child Welfare Act

MEPA specifically provides that it has no effect on the Indian Child Welfare Act (ICWA). ICWA was passed in 1978 in response to concerns about the large number of Native American children who were being removed from their families and their tribes and the failure of states to recognize the tribal relations of Indian people and the cultural and social standards of Indian communities. ICWA creates procedural protections and imposes substantive standards on the removal, placement, termination of parental rights and consent to adoption of children who are members of or are eligible for membership in an Indian tribe. The Act gives Tribal Courts a preference to hear custody cases involving Indian children who reside or are domiciled within the reservation of the tribe. It also gives tribes and Indian custodians of a child the right to participate in state court proceedings if custody proceedings are conducted there. MEPA does not interfere with these rights and protections. For example, the placement preferences of ICWA are not altered by MEPA. However, other provisions of MEPA that do not conflict with ICWA do apply to Native Americans. For example, MEPA prohibits discrimination against Native American adults who wish to foster or adopt a child.

7. Implementation

Compliance with the nondiscrimination provisions of MEPA is required within one year after enactment or by October 21, 1995. However, if a change in state law is required in order to bring practices into compliance, HHS may extend the deadline for

compliance to a reasonable number of days after the close of the first state legislative session that is held after HHS issues its guidance. HHS notes that states are not required to enforce unconstitutional statutes, and that this will be taken into consideration in deciding whether to extend the deadline. Therefore, states should not anticipate automatic extensions when a change of law is required.

States must submit their recruitment plans to HHS by October 31, 1995. They have the option of doing so as part of a consolidated state plan that includes the plans submitted under Title IV-B subparts 1 and 2 or, for states submitting a separate Title IV-B subpart 1 plan, as a separate plan amendment that must be submitted before October 31, 1995 even though the rest of the subpart 1 IV-B plan may be submitted later.

The Administration for Children and Families (ACF) and the Office for Civil Rights (OCR) in the Department of Health and Human Services (HHS) have joined together to provide legal and social work expertise to assist the states and agencies in implementing MEPA. HHS issued its MEPA Guidance on April 20, 1995. It has also developed several Fact Sheets that provide answers to some of the basic questions about MEPA. The Guidance was published in the Federal Register, and HHS mailed the Guidance and Fact Sheets to officials in each state. The Guidance and Fact Sheets are available from HHS or any HHS Regional Office. They are also available on the Internet along with OCR regulations and information about how to file an OCR complaint. The Internet address of the HHS Home Page is <http://www.hhs.gov/>. Click on "HHS Agencies on the Internet" and then click on "Office for Civil Rights."

HHS has reviewed the state statutes, regulations, and policies to which it has access and has advised states when it appears that state law or policy violates MEPA. Because they have been able to review only those laws and policies that are readily available, HHS staff have advised states that have not been notified of MEPA problems to review their own policies for MEPA difficulties. States should also take steps to ensure that actual practices do not violate MEPA as well. Staff from ACF and the Office for Civil Rights (OCR) are available for technical assistance, and teams from ACF and OCR have gone to at least one state in each region to provide technical assistance. They are also available to respond to requests from other states. In addition, states may request the assistance of groups like the American Bar Association Center on Children and the Law and the National Resource Center on Special

Needs Adoption and the National Resource Center on Permanency Planning through a request to their regional Administration on Children and Families (ACF) office. For more information on this, please contact Debra Ratterman Baker at (202) 662-1748.

8. Enforcement

MEPA can be enforced through administrative action by HHS or through litigation by individuals or the Justice Department. Noncompliance may result in loss of federal funds, injunctive relief, and, in certain cases, in an award of money damages.

. Administrative enforcement

1. *Title VI*

Noncompliance with the nondiscrimination provisions of MEPA is a violation of Title VI of the Civil Rights Act. The HHS Guidance suggests that the failure to engage in appropriate recruitment efforts could also create circumstances which would constitute a violation of Title VI. Title VI prohibits discrimination on the basis of race, color, or national origin in programs receiving federal assistance. Anyone who believes he or she has been subjected to discrimination in a program funded by HHS may file a complaint with the Office for Civil Rights (OCR). Information about how to file a complaint is available from HHS or any of its regional offices. OCR can also initiate compliance reviews to determine whether any Title VI violations have occurred. OCR must investigate promptly whenever it receives a complaint or other information indicating that a violation of Title VI has occurred. OCR staff review the policies and practices of the entity receiving federal funds and the circumstances that led to the complaint or other indication of violation. If OCR determines that a violation of Title VI has occurred, it will notify the entity involved and seek voluntary compliance. If voluntary compliance is not forthcoming, HHS may bring administrative proceedings to terminate federal assistance. These proceedings provide the state or the agency with a formal due process hearing to determine whether a violation has occurred and whether fiscal sanctions should be imposed. In the alternative, OCR may refer the

matter to the Justice Department with a recommendation to pursue judicial proceedings.

HHS is required to seek the cooperation of recipients of federal funds in obtaining compliance with Title VI, and HHS is committed to work closely with covered agencies to promote voluntary compliance.

An agency may agree to come into voluntary compliance at any point during the investigation or any action to terminate funding.

2. *Title IV-B*

In order to receive Title IV-B funds for child welfare and family preservation and support services, states must develop a plan that meets the requirements of IV-B including the requirements for a recruitment plan. Therefore, failure to develop an appropriate recruitment plan could result in the loss of Title IV-B funding. Before granting federal assistance, HHS must determine whether a state plan complies with federal statutes, regulations and guidelines. This determination must be completed within ninety days of the date the state submits the plan. After the initial plan is approved, HHS may withhold future payment of federal funds if the plan no longer complies with federal law, either because of changes in federal requirements or because of plan amendments submitted by the state, or if the state has failed to administer the plan in substantial compliance with federal law.

HHS is working jointly with States to achieve voluntary compliance.

9. Private law suits

MEPA expressly provides a federal cause of action for any person who is aggrieved by a violation of the nondiscrimination provisions.

This gives anyone who is adversely affected by a violation the right to file a lawsuit. Another provision removes an obstacle to bringing an action for failure to comply with the recruitment plan

requirements under Title IV-B. Although the Act does not expressly provide a right to bring a lawsuit for failure to implement a recruitment plan, such an action may be available if all other requirements for such a case are met. In addition, the HHS Guidance suggests that the failure to implement an appropriate recruitment plan could give rise to a discrimination claim under Title VI. Other violations of MEPA that constitute discrimination may also give rise to civil rights claims based on the Constitution and Title VI.

Litigation can result in court orders requiring the defendant state or agency to comply with the law and an award of attorneys fees if the person bringing the lawsuit is successful. Money compensation, known as "damages", may also be available in certain circumstances to individuals who are harmed by discriminatory policies and practices.

c. Barriers to Implementation

Agency administrators should anticipate barriers to implementation of MEPA and make plans for reducing those barriers. Some of the potential barriers are discussed below.

. Confusion

Confusion about the requirements of MEPA is likely to exist among child welfare workers and the general public as a result of the public debate about transracial adoption and same race placement policies. Confusion is also likely to result from the changes MEPA will require in law and policy in some states. It is important that administrators act quickly to say what is and what is not required by the law and to specify which current policies and practices must change and which are not affected. Administrators should develop clear written guidelines that detail mandatory requirements, and areas where professional judgment is to be applied.

Agency staff must be given an opportunity to discuss and understand how the law will apply to their daily practice and to clarify issues. Training sessions and meetings in which the law and policies are applied to facts of real or simulated cases can be helpful in translating the provisions of MEPA into actual practice. A supervision system encouraging review of decisions and dialogue among agency staff will also be helpful in implementing MEPA to best meet the needs of children.

Administrators should also develop ways of informing the general public and prospective foster and adoptive parents about the law and the policy and practices of the agency. Recruitment materials, communications between workers and individual parents, and information provided to the general public should provide a consistent message about what the law requires and what the agency is doing. Including information about the reasons for the law and the way that the agency plans to meet the best interest of the children will help the public and prospective parents understand the agencies' policies and practices.

a. Lack of resources

Child welfare agencies have faced increased responsibilities and decreasing resources in recent years. Implementation of MEPA may be viewed as another unfunded mandate that will take time away from issues that affect the lives of children.

Since MEPA incorporates good social work practice, much of the implementation should be consistent with the work administrators, supervisors, and workers are doing on a regular basis.

Administrators should look for ways to incorporate MEPA implementation into ongoing activities, such as supervision, training, and case reviews.

It is clear however, that some additional resources will be needed for implementation. Administrators should identify all potential sources of support and make use of them. In addition to Title IV-E administrative funds and Adoption Opportunities Grants, administrators should make use of HHS technical assistance and the services available from the federal resource centers listed in the appendix.

They should also explore the resources available from nongovernmental sources, such as private foundations. Permanence, the problems of children in foster care, and the effects of discrimination are among the priorities of many foundations, and agencies should be able to develop fundable projects that include MEPA implementation.

Agencies should also be creative in using free community resources, such as churches and community groups in collaborative implementation activities.

b. Resistance

Agencies may also encounter resistance from individual workers either because of their personal views or because of a perception that the federal law is dictating decisions in individual cases where professional discretion should be exercised. Administrators can reduce this resistance by discussing with the workers not only the provisions of the law but also the goals and values behind it. Staff meetings or discussion groups can provide an opportunity for value clarification that will promote consistent decisionmaking in individual cases. Open discussion is particularly important because implementation of MEPA can raise explosive and emotional issues such as the best interests of children and charges of racism and discrimination.

c. Fear of litigation

Fear of litigation can create a climate in which social workers or supervisors are fearful of exercising their discretion in the best interest of the children. Administrators should provide their staff with competent legal advice about what is and what is not legal, and agencies should be prepared to back up appropriate worker decisions when they create difficulties or result in litigation.

Workers must clearly understand what the law requires of them, but must be free to exercise their professional judgment within the requirements of the law.

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Chapter 3: Common Questions About MEPA

1. Given that the Constitution and Title VI already prohibit discrimination, what difference will MEPA make?

Congress felt that MEPA was necessary in light of reports about discriminatory policies and practices that delayed permanence for children, particularly African American children. Reported practices include specific waiting periods to search for a same race placement and requiring social workers to justify a transracial placement. MEPA has focused attention on those policies and practices, and some of them will have to be changed. In addition, as a result of MEPA, HHS has devoted resources to reviewing state statutes and policies and providing technical assistance through OCR and ACF staff. MEPA also requires states to develop and submit comprehensive recruitment plans that will include diligent efforts to involve families reflecting the ethnic and racial diversity of children in foster care. These activities should result in increased efforts by state, local and private agencies to provide appropriate permanent and stable placements for children who cannot return home.

2. Can I take race into consideration in making placements' When'

Race may be taken into consideration as one of the factors in making an individual decision based on the needs of the specific child to be placed. MEPA permits agencies to consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of the child of this background as one of a number of factors used to determine the best interest of the child. The HHS Guidance explains that an agency may take race into account only if it has made an individual determination that the facts of the case require considering race to advance the best interest of the specific child and only if race, culture or ethnicity is considered one of a number of factors affecting the best interest of the child.

MEPA also prohibits delay in placement solely on the basis of race, color, or national origin. Therefore, considering these factors may not result in a delay in placement.

Individualized decisionmaking and timely planning to meet the needs of the child are the keys to the appropriate consideration of race, culture or ethnic background. The worker should ask 1) Does this particular child have a need based on his or her race, culture or ethnic background that should be considered in making a placement' 2) How should that need be met' and 3) How can we meet that need without delaying the placement' The worker also must take into account the other needs of the child; consideration of race cannot predominate over other concerns.

3. Can state law or policy include a preference for placement based on race'

As described above, any consideration of race, color, or national origin must be part of an individual decision process. Blanket policies not based on the needs of a specific child are not consistent with individualized decisions. The HHS Guidance says statutes or policies that establish orders of preference based on race, culture, or ethnicity or that require workers to justify transracial placements violate MEPA or Title VI.

4. Can agencies honor parental preferences for placement based on race, color, or national origin'

Covered agencies may not discriminate in placement decisions solely on the basis of race, color, or national origin. Therefore they cannot categorically honor a parent's preference. However, agencies may consider the cultural, ethnic, or racial background of the child and the capacity of prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of the child. Therefore, information from the parent about the child's needs should be considered. The worker should explore with the parent reasons for the preference and determine whether the child has any placement needs based on race, culture or ethnic background.

5. Does MEPA prohibit relative placement preferences'

MEPA does not prohibit a preference for relative placements in the best interest of the child. Courts have recognized the right to live with relatives as a constitutionally protected right, and availability of relatives willing and able to care for a child is a significant factor that should be considered in making a placement decision.

6. Can I evaluate the ability of adoptive parents to meet the cultural needs of a child?

MEPA specifically permits agencies to consider the ability of the prospective foster or adoptive parents to meet the needs of the individual child of a particular cultural, ethnic, or racial background as one of the factors in determining the best interest of the child. The HHS Guidance says this evaluation may include an assessment of the attitudes of prospective parents that relate to their capacity to nurture a child of a particular background. Agencies may discuss with prospective adoptive and foster parents their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity, just as they discuss issues such as sex, age or disability. Agencies may also consider the preference of the prospective parents as one of several factors in making placement decisions. However, agencies may not use standards or practices that deny the opportunity to adopt or foster a child to prospective adoptive or foster parents who qualify, and the consideration of factors related to race, culture and ethnicity must not predominate over the other factors the agency considers.

7. Does MEPA apply to white children?

MEPA applies to all children regardless of race or ethnicity. For example, if a worker determines an African American family can best meet the needs of a white child, denying the child that placement on account of race would be illegal.

8. How does MEPA apply to infants?

MEPA applies to all children being placed for foster care or adoption by covered agencies and entities regardless of the age of the child. The HHS Guidance suggests that the age of the child may be a factor in determining the effect of race or ethnicity on the best interest of the child. For example, an older child may have a strong sense of identity with a particular racial, ethnic, or cultural community that should not be disrupted; an infant may not have developed such needs. However, the Guidance emphasizes each decision must be individualized.

9. Does MEPA apply to private agencies and independent adoptions?

MEPA applies to all agencies and entities receiving federal assistance directly or as a subrecipient from another entity. Agencies or entities that do not receive federal assistance are not covered by MEPA, provided no federally assisted agency is involved in the placement decision. However, these entities may be covered by other statutes or policies prohibiting discrimination.

10. How should biracial/bicultural and multiracial/multicultural children be treated?

MEPA requires individualized decisionmaking based on the specific needs of the child. A social worker should evaluate the needs of the child including all aspects of the child's heritage and the impact of those aspects on the child. This may present additional issues when a child has a multiracial or multiethnic background, but the evaluation and decisionmaking process is the same.

11. Can agencies conduct targeted recruitment?

MEPA requires diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of the children who need homes. Therefore, states must develop strategies that reach the communities of these families. The federal Guidance expressly approves targeted recruitment efforts as part of a comprehensive strategy aimed at reaching all segments of the community. The Guidance provides that information should be disseminated to targeted communities through organizations such as churches and neighborhood centers. The Guidance suggests agencies develop partnerships with community groups that can help spread the word about waiting children and identify and support prospective adoptive and foster parents. Covered agencies may not, however, categorically deny the opportunity to become a foster or adoptive parent to anyone based on race, color, or national origin.

12. Do prospective adoptive parents have the right to adopt a particular child?

Prospective adoptive parents have the right to be provided with the opportunity to adopt. However they do not have an absolute right to adopt a particular child. In making an adoptive placement, the social worker must evaluate the ability of the parent or parents to meet the needs of the child needing an adoptive home. When foster parents seek to adopt a child who has been in their care for a significant period of time, the child's attachment to them and the child's need for permanence may dictate that they are the appropriate adoptive family for the child. However, this decision is based on the child's best interest and not the right of the foster parents to adopt.

13. What funds are available to implement MEPA?

Implementation of MEPA is an administrative cost of implementing federal foster care mandates. Therefore, states are entitled to claim MEPA implementation expenses as part of their administrative costs under Title IV-E. Discretionary funds for innovative projects, such as recruitment programs, are also available under the Adoption Opportunities Act.

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Chapter 4: Checklists for Implementation of MEPA

A. Things agencies can do

1. Promote good child welfare practice

MEPA is consistent with good child welfare practice. Both MEPA and good practice require: individual decisionmaking; consideration of all of the child's needs (including, but not limited to, needs related to permanency and needs related to race, ethnicity, and culture) from the time the child first comes into contact with the child welfare system; consistent attention to all those needs throughout the child's relationship with the agency and in each placement decision; active recruitment of potential foster and adoptive parents from all segments of the community; development of a pool of foster and adoptive parents that reflect the needs of the children in care; eligibility criteria for foster and adoptive parents that are related to their ability to care for a child; and support and respectful treatment of all prospective parents. Good practice will improve permanence for children and decrease the chances that MEPA will be violated.

2. Decrease delays in permanence.

A number of the controversies concerning transracial placements arise because the child has been in foster care for too long. Frequently the delay in obtaining a permanent placement for the child is due to other factors such as inadequate reunification efforts, timely search for relatives who are willing and able to care for the child, high social worker caseloads, bureaucratic inertia, and court delays. Decreasing these delays in permanence will be in the best interest of the children and will decrease the chances that the agency will be accused of delaying a child's placement for any reason including racial discrimination.

3. Review current state law and agency policies for compliance with MEPA.

HHS has reviewed the statutes and policies that are readily available, but state agencies should conduct their own review of all state laws and written policies as well as informal policies and practices to ensure violations of MEPA do not occur in written policy or in practice.

Other public and private agencies are required to comply with MEPA as well. All covered agencies should thoroughly review policies and practices to ensure compliance. When state statutes or policies appear to be in conflict with MEPA, agencies should seek clarification from the state child welfare agency or HHS or both.

4. Implement a comprehensive recruitment plan.

States are required to submit an appropriate comprehensive recruitment plan to HHS no later than October 31, 1995. States should take into consideration both the mechanisms they will use to reach all segments of the community and the protections they will implement to ensure compliance with the nondiscrimination provisions of MEPA. For example, the state may choose to use targeted efforts to reach minority communities, but these efforts may not exclude white families who wish to become foster or adoptive parents.

Public and private agencies should assist the state in developing an appropriate recruitment plan that meets the needs of the children they serve. Agencies should ensure state plans include creative affirmative efforts to reach communities that reflect the ethnic and racial diversity of children who need homes. Strategies should include issues such as the diversity and cultural competencies of the recruitment staff as well as the activities that will occur. Recruitment efforts should also address how parents are treated in the home study and placement process. Recruitment is wasted if the system does not make appropriate use of interested parents who respond, or if such efforts are not timely.

Agencies should also collaborate in developing comprehensive community services to ensure that prospective parents are not denied the opportunity to become foster or adoptive parents. Targeted recruitment programs, placement agencies, and others should cooperate to ensure all individuals who are interested in foster care and adoption are encouraged and supported.

Submission of the plan does not end the responsibility of the state or the other agencies involved in recruitment.

Implementation, evaluation, and appropriate adjustment are necessary to serve the best interests of children and families and to avoid violations of law. HHS has made clear that the failure to conduct adequate recruitment may be a potential violation of Title VI as well as a violation of the IV-B state plan requirements.

5. Issue clear policies and standards for placement.

All agencies should develop clear written policies and standards that implement MEPA. These policies and standards should define prohibited practices and identify the areas where professional judgment is appropriate. Vague or ambiguous policies invite confusion and create barriers to implementation. Agencies can use the federal Guidance in formulating these policies. Additional assistance is available from the resource centers listed in the appendix.

6. Provide training for workers.

Training on the provisions of MEPA and discussion of how those provisions apply in individual situations is important to ensure that workers understand and implement MEPA properly. Appropriate training will also help protect agencies from claims they have engaged in discriminatory patterns of practice.

Training should also include practice issues that increase the cultural competency of staff and help them to make appropriate assessments of a child's needs related to race, culture and ethnicity and the ability of parents to meet those needs.

7. Provide opportunities for discussion and value clarification.

Discussing the goals of the agency, of MEPA, and of child welfare services will be helpful in reducing misunderstanding of MEPA requirements and resistance to implementing them. It will also promote consistent decisionmaking in the best interest of the children. Workers who understand the reasons for policies are more likely to implement them correctly and will be more confident in exercising their professional judgment.

8. Develop a system for supervision and technical assistance for workers to promote compliance that meets the best interests of the children.

Ongoing attention will be necessary not only to ensure that MEPA is followed but also to ensure that misunderstandings about what MEPA requires do not interfere with fulfilling the best interest of the child. As with adequate training, appropriate supervision will help protect agencies from claims they have engaged in discriminatory patterns of practice.

9. Get good legal advice.

Given the controversial nature of these issues, agencies can anticipate litigation if difficult cases arise. However, the fear of litigation should not prevent workers from making appropriate decisions. Workers can best exercise their professional judgment if agency policies and practices have been reviewed for compliance with the law. A good review will also prepare the agency to defend their practices if litigation should occur. If the attorneys who usually work with the agency are not familiar with civil rights issues, they may wish to arrange for a consultation with experts.

10. Get help.

Assistance is available from ACF, OCR, HHS Regional Offices, and the Resource Centers. States should take advantage of the resources listed in the Appendix.

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C. **What workers should do**

1. Make individual decisions based on sound child welfare practice and the best interest of the child.

The focus of MEPA is the best interest of children. Workers should keep in mind that the primary concern of child welfare services, including adoption, is the well-being of children. MEPA emphasizes the use of professional judgment in making individualized decisions in the best interest of each child. Workers who base their decisions on sound child welfare practice and the needs of the individual child will be unlikely to run afoul of the law.

2. Assess the racial, ethnic, and cultural needs of the child as soon as the child comes into contact with the child welfare system.

The assessment as to whether a child has any needs related to race, ethnicity, and culture should be conducted at the beginning of the case. These needs should be considered in providing services and in making every placement decision. All too often these needs are not addressed until a decision has to be made about adoption or another permanent plan. Waiting until this late is problematic for two reasons. First, it means the child's needs are not met for a significant period of time. Second it creates difficulties in balancing interests at the time of adoption or other permanent placement if the child's current caretakers cannot meet the child's identified needs.

3. Consider permanence from the first contact with the child.

Early attention to permanence is especially important. All too often emergency placements or other temporary arrangements become long term. Even when race or ethnicity is not an issue, these placements can create difficulties if the foster parents are not willing to make a long term commitment to the child or are not appropriate adoptive parents. Appropriate planning and action can ensure that children do not remain in foster care drift and can reduce the controversies that arise when children are moved from one placement to another. Early identification of relatives, including absent parents, comprehensive reunification efforts, attention to all of the child's needs in making placement decisions, and other good child welfare practices will reduce the time a child waits for permanence and the chance that problems will arise in making an appropriate permanent placement for children who cannot return home.

4. Read the statute and the federal guidance.

A lot of questions can be resolved by referring to the HHS Guidance or the language of the Act itself. Workers should read the federal law and policy for themselves and not rely on written or oral summaries provided by others. When in doubt, workers and their supervisors should review the language of the federal law, the HHS Guidance, and state laws and policies before making a decision. If questions remain, staff should get legal advice.

5. Review state law and agency policy and ask for clarification.

Where state law or agency policies are unclear or appear to conflict with the federal law, workers should ask for clarification. It may take some time for the states and agencies to resolve all of the issues that MEPA presents. However, workers need to be able to make decisions for children while this process is going on. Workers should insist upon clarification to the extent possible.

Questions from workers can also assist the states and the agencies in identifying issues that need to be resolved.

6. Document the reasons for decisions.

MEPA emphasizes individualized decision making based on the needs of the child. Workers should document the basis for their decisions including all the factors they considered in reaching that decision. Documentation will help the worker clarify for himself or herself the factors taken into consideration and the reasons for the decision. It will provide a record a supervisor or another worker can refer to in understanding the case, and it will provide evidence of appropriate action in the event the worker is charged with violation of the law.

7. Be honest with prospective adoption and foster parents and treat them with respect.

Good communication and respectful treatment will decrease misunderstandings and improve recruitment and retention of prospective parents. Open discussion can also help the agency learn about potential problems and ways to address them.

D. [TOP](#)

Conclusion

The overriding goal of MEPA is to reduce the length of foster care for children. However, we should have realistic expectations about what MEPA can accomplish. The waiting children in the child welfare system have multiple needs, and the child welfare system faces multiple challenges in achieving permanence for children. MEPA is only part of a comprehensive effort that is needed to improve the lives of children who are waiting for permanent homes.

Implementation of MEPA will provide an opportunity for states and agencies to improve permanency for children. Agencies and social workers will need to have a clear understanding of the requirements of MEPA and Title VI and of good social work practice to avoid the problems and controversies that can arise. Attention to the goals of MEPA and the best interest of the individual children being served will be the keys to successful implementation.

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Endnotes

- . See, e.g., *Transracial Adoption Generates Controversy*, Meeting, Legislation ADOPTION LINK (Children Awaiting Parents, Inc. New York: Spring 1994).
- . P.L. 103-382, sec. 551-555; 108 Stat. 4056.
- . P.L. 103-382, sec. 552(b).
- . 42 U.S.C. §5115a(d).
- . 60 Fed. Reg. 20272 - 20775 (April 25, 1995). Although the Guidance has not been promulgated in the form of regulations agency interpretations of statutes they administer are given great weight by the courts. *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S.837, 843 (1984).
- . P.L. 103-382, sec. 552.
- . Adoption Fact Sheet [Get better cite.]

. Children's Defense Fund, PROGRESS AND PERIL: BLACK CHILDREN IN AMERICA, 42-43 (1993) [hereinafter PROGRESS AND PERIL]; Richard Barth, Mark Courtney, Jill Duerr Berrick, & Vicky Albert, FROM CHILD ABUSE TO PERMANENCY PLANNING, 7, 36, 235 (1994). This over-representation has existed historically. Children's Defense Fund, KEY FACTS: BLACK AND WHITE CHILDREN IN AMERICA [hereinafter KEY FACTS], 33-36 (1985); Select Committee on Children, Youth and Families, NO PLACE TO CALL HOME: DISCARDED CHILDREN IN AMERICA, H. Rep. No. 395, 101st Cong. 2d Sess. 5, 38 (1990); Janet Mason & Carol Williams, The Adoption of Minority Children: Issues in Developing Law and Policy in ADOPTION OF CHILDREN WITH SPECIAL NEEDS: ISSUES IN LAW AND POLICY, 83 (Ellen C. Segal, Ed., American Bar Association 1985).

. PROGRESS AND PERIL, 43; Barth, et al., 82-83, 154, 158-163, & 267 (1994); Andrea J. Sedlak & Diane D. Broadhurst, STUDY OF ADOPTION ASSISTANCE IMPACT AND OUTCOMES: FINAL REPORT, 2-20 (Westat, Inc. 1993); Maximus, Inc., Child Welfare Statistical Fact Book, 1984: Substitute Care and Adoption (1984).

. Mason & Williams, 84; Barth, et al., 267.

. Mason & Williams, supra. See also, PROGRESS AND PERIL, 42-43; Barth, et al., 36, 72, 267; Robert L. Hampton & Eli H. Newberger, Child Abuse Incidence and Reporting by Hospitals: Significance of Severity, Class, and Race, 75 American Journal of Public Health 56 (January 1985).

. Mason & Williams, supra, Barth, et al., 267. See also PROGRESS AND PERIL: BLACK CHILDREN IN AMERICA, 42-43.

. Mason & Williams, supra. See also, Barth, 127

. Andrew Billingsley, and Jeanne M. Giovanni, CHILDREN OF THE STORM: BLACK CHILDREN AND AMERICAN CHILD WELFARE (1972).

. Mason & Williams, 84; Barth, et al, 131.

. Barth, et al., 158-159.

. Barth, et al. 94, 99, 154, 176; Sedlak & Broadhurst, 2-16 - 2-17, 2-20 - 2-21.

. *Palmore v. Sidoti*, 466 U.S. 429 (1984).

. 42 U.S.C. §2000d.

. See, e.g., Child Welfare League of America, STANDARDS OF EXCELLENCE FOR FAMILY FOSTER CARE SERVICES, 2.29 (1975); Child Welfare League of America, STANDARDS FOR ADOPTION SERVICE, 4.1, 4.2, 5.4 (1988).

. For a complete discussion of the case law, see Mark A. Hardin & Jane Nusbaum Feller, Transracial Adoption: Same-Race Placement Policies Are Tested in the Courts, 11 ABA JUV. & CH. WELF. L. RPTR. 44 (May 1992).

. *In re Gomez*, 424 S.W. 2d 656 (Tex. Civ. App. 1967); *Compos v. McKeithen*, 341 F. Supp. 264 (E.D. La 1972).

. *Drummond v. Fulton County Department of Family and Children's Services*, 563 F. 2d 1200 (5th Cir. 1977); *Tallman v. Tabor*, 859 F. Supp. 1078, 1085-1086 (E.D. Mich. 1994); *Compos v. McKeithen*, 341 F. Supp. 264, 266 (E.D. La 1972); *In re Adoption No. 2633*, 646 A. 2d 1036 (Md. Ct. Spec. App. 1994); *In re Davis*, 465 A, 2d 614 (PA 1983).

. *DeWees v. Stevenson*, 779 F.Supp. 25 (E.D. Pa. 1991).

. *McLaughlin v. Pernsely*, 693 F. Supp. 318, 323-24 (E.D. Pa. 1988), *aff'd* on other grounds, 876 F. 2d 308 (3d Cir. 1989); *In re: Adoption of a Minor*, 228 F. 2d 446 (DC

Cir. 1955); Matter of Welfare of D.L. 479 N.W. 2d 408 (Min. App. 1991). For further discussion see, Hardin & Feller.

. See, Adoption of Baker, 185 N.E. 2d 51 (Ohio App. 1962).

. 60 Fed. Reg. 20273; Mason & Williams, 86-88.

. Compos v. McKeithen, 341 F. Supp. 264, 268 (E.D. La. 1972); In re: Gomez, 424 S.W. 2d 656 (Tex. Civ. App. 1967).

. Elizabeth Bartholet, Where Do Black Children Belong? The Politics of Race Matching in Adoption' 139 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 1663, 1188 (1991).

. 140 Cong. Rec. S10281-01, S10303 (August 2, 1994) (statement of Senator Metzenbaum).

. Child Welfare League of America, STANDARDS FOR ADOPTION SERVICE, 4.5 (1988); Mason & Williams, 86; Rita J. Simon, Responses to Where Do Black Children Belong? 1 RECONSTRUCTION 51 (1992); 104 Cong. Rec. S10281-01, S10303 (August 2, 1994) (statement of Senator Metzenbaum); but see Bartholet, Where Do Black Children Belong? The Politics of Race Matching in Adoption, 139 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 1163, 1221-1223 (1991).

. See, e.g. discussion in In re Davis, 465 A. 2d 614, 623-625 (PA 1983) and James S. Bowen, Cultural Convergences and Divergences: The Nexus Between Putative Afro-American Family Values and the Best Interest of the Child, 26 JOURNAL OF FAMILY LAW 487 (1987-88).

. See, e.g., Leora Neal & Al Stumph, Transracial parenting: If It Happens, How White Parents and the Black Community Can Work Together, ADOPTALK (Winter 1993); L. Grow & D. Shapiro, Transracial Adoption Today: Views of Adoptive parents and Social Workers (Child Welfare League of America 1975); Lena Williams, Transracial Adoption: The Truth Comes in Shades of Gray, NEW YORK TIMES March 23, 1995 at pp. B1, B5.

. See, e.g., Leora Neal & Al Stumph, TRANSRACIAL ADOPTIVE PARENTING: A BLACK/WHITE COMMUNITY ISSUE (Haskett-Neal Publications 1993); Joan Heifetz Hollinger, Responses to Where Do Black Children Belong', 1 RECONSTRUCTION 49 (1992); T.L. Perry, Race and Child Placement: The Best Interest Test and the Cost of Discretion, 29 JOURNAL OF FAMILY LAW 51, 98-115 (1990-1991); Bowen, 496-504.

. For an overview of the arguments concerning transracial and same race placements, see, Emily Jean McFadden, Placement of Sibling Groups, Single-parent Adoptions, and Transracial Adoption: An Analysis in FOSTER CHILDREN IN THE COURTS, 399, 410-415 (Mark Hardin, ed. 1983).

. 140 Cong. Rec. S10281-01, S10303 (August 2, 1994) (statement of Senator Metzenbaum). Senator Metzenbaum identified MEPA as his highest legislative priority of his remaining time in the Senate. He said, "I realize that this bill will not solve all of the problems of the child welfare system, but S. 1224 can make a difference in the lives of thousands of children who languish in foster care and temporary placements because of policies against transracial adoptions." Id.

. 140 Cong. Rec. S10281-01, S10303-4 (August 2, 1994) (statement of Senator Metzenbaum).

. Id.

. 140 Cong. Rec. S10281-01, S10300 (August 2, 1994) (statement of Senator Coats).

- . 42 U.S.C. §5115a(a)(1).
- . 60 Fed. Reg. 20273.
- . 42 U.S.C. §5115a(a)(3).
- . 42 U.S.C. 5115a(a)(1)(B).
- . 42 U.S.C. §5115a(a)(2).
- . 60 Fed. Reg. 20273.
- . 60 Fed. Reg. 20273.
- . 60 Fed. Reg. 20273.
- . 60 Fed. Reg. 20274.
- . 60 Fed. Reg. 20274.
- . 60 Fed. Reg. 20274.
- . 60 Fed. Reg. 20274.
- . 60 Fed. Reg. 20274.
- . 60 Fed. Reg. 20274.
- . 60 Fed. Reg. 20274.
- . 60 Fed. Reg. 20274.
- . See, e.g., Adoption of Baker, 185 N.E. 2d 51 (Ohio App. 1962).
- . See, e.g., Linda Katz, Effective Permanency Planning for Children in Foster Care 35 SOCIAL WORK 220 (1990) and authorities cited therein.
- . See, e.g., Judith McKenzie, Adoption of Children with Special Needs in THE FUTURE OF CHILDREN: ADOPTION (The David and Lucille Packard Foundation Center for the Future of Children Spring 1993); Barth, et al., 261 -264.
- . See, e.g., Barth, et al., 262-264; Office of Inspector General, Department of Health and Human Services, BARRIERS TO FREEING CHILDREN FOR ADOPTION (February 1991); Debra Ratterman, TERMINATION BARRIERS: SPEEDING ADOPTION IN NEW YORK STATE THROUGH REDUCING DELAYS IN TERMINATION OF PARENTAL RIGHTS (American Bar Association 1991).
- . 140 Cong. rec. S10281-01, S. 10300-10301. (August 2, 1994) (statement of Senator Coats).
- . E.g., Tom Gilles, and Joe Kroll, BARRIERS TO SAME RACE PLACEMENT (North American Council on Adoptable Children 1991); Mason & Williams, 87.
- . Drummond v. Fulton County Department of Family and Children's Services, 563 F. 2d 1200, 1205 (5th Cir. 1977).
- . 42 U.S.C. §5115a(a)(1)(A).
- . 60 Fed. Reg. 20275.
- . Gilles & Kroll, Mason & Williams, 87.
- . Gilles & Kroll.
- . 60 Fed. Reg. 20274.
- . 42 U.S.C. §622(b)(9).
- . Kinship Center, PARTNERS IN PLACEMENT SPECIAL REPORT (Kinship Center 1995); National Urban League, FACILITATING BLACK ADOPTIONS: THE FINAL REPORT OF THE INTERAGENCY ADOPTION PROJECT (1979).
- . E.g. Kinship Center, National Urban League, Friends of Black Children Project, CREATING NEW LINKAGES FOR THE ADOPTION OF BLACK CHILDREN: A GUIDEBOOK (1984). Information about successful recruitment programs is also available from the Administration for Children and Families (ACF) or the National Resource Center for Special Needs Adoption.

- . 60 Fed. Reg. 20274.
- . 60 Fed. Reg. 20274.
- . 60 Fed. Reg. 20274.
- . 42 U.S.C. §5115a(f).
- . 25 U.S.C. §1901, et seq.
- . 25 U.S.C. §1901(4)&(5).
- . 42 U.S.C. §5115a(d)(1).
- . 42 U.S.C. §5515a(d)(2).
- . 60 Fed. Reg. 20275.
- . 60 Fed. Reg. 20272.
- . 42 U.S.C. §5115a(e); 45 C.F.R. §80.3.
- . 60 Fed. Reg. 20274.
- . 42 U.S.C. §2000d.
- . 45 C.F.R. §80.7(b).
- . 45 C.F.R. §80.7(a) & (c).
- . 45 C.F.R. §80.7.
- . 45 C.F.R. §80.7.
- . 42 U.S.C. §2000d-1; 45 C.F.R. §80.7(d).
- . 42 U.S.C. §2000d-1; 45 C.F.R. §80.8a
- . 45 C.F.R. §80.6(a).
- . 60 Fed. Reg. 20275.
- . 45 Fed. Reg. 80.7(d) & 80.11(g).
- . 42 U.S.C. §623(a).
- . 45 C.F.R. §201.3(d).
- . 45 C.F.R. §201.3(e).
- . 45 C.F.R. §201.6(a).
- . 42 U.S.C. §5115a(b).
- . 42 U.S.C. §1320a-2.
- . 60 Fed. Reg. 20274.
- . 42 U.S.C. §1983.
- . 42 U.S.C. §1988. The plaintiff must be the prevailing party.
- . 42 U.S.C. §5115a(a)(2).
- . 60 Fed. Reg. 20273-20274.
- . 42 U.S.C. §5115a(a)(1)(2).
- . 60 Fed. Reg. 20273.
- . 42 U.S.C. §5115a(a)(1)(B).
- . See 140 Cong. Rec. S10281-01, S10300 (colloquy between Senator Durenberger and Senator Metzenbaum) (August 2, 1994).
- . Moore v. City of East Cleveland, 431 U.S. 494 (1977); Lipscomb by and through Defeher v. Simmons, 884 F. 2d 1242, 1244 (9th Cir).
- . 42 U.S.C. §5115a(a)(2).
- . 60 Fed. Reg. 20274.
- . 60 Fed. Reg. 20275.
- . See, In re Gomez, 424 S.W. 2d 656 (Tex. Civ. App. 1967).
- . 60 Fed. Reg. 20274.
- . 42 U.S.C. §5115a(a)(1).

- . 60 Fed. Reg. 20273-20274.
- . See, Gail Folaron & Peg McCartt Hess, Placement Considerations for Children of Mixed African American and Caucasian Parentage," LXXII CHILD WELFARE 113 (March/April 1993)
- . 42 U.S.C. 422(b)(9).
- . 60 Fed. Reg. 20274.
- . 60 Fed. Reg. 20274.
- . 42 U.S.C. §5115a(a)(1)(A).
- . 42 U.S.C. §5115a(a)(1)(A).
- . Drummond v. Fulton County Department of Family and Children's Services, 563 F. 2d 1200 (5th Cir. 1977); DeWees v. Stevenson, 779 F. Supp. 25, 28 (E.D. Pa. 1991) and cases cited therein.
- . 60 Fed. Reg. 20274.
- . STANDARDS FOR ADOPTION SERVICE, 1.1.
- . See e.g.. Linda Katz, Norma Spoonemore, and Chris Robinson, CONCURRENT PLANNING: FROM PERMANENCY PLANNING TO PERMANENCY ACTION (Lutheran Social Services of Washington and Idaho 1994); Linda Katz, Effective Permanency Planning for Children in Foster care, 35 SOCIAL WORK 220 (1990).

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights
Administration for Children and Families

Policy Guidance on the Use of Race, Color or National Origin as Considerations in Adoption and Foster Care Placements

AGENCY: Office for Civil Rights; Administration for Children and Families; HHS

ACTION: Policy Guidance

SUMMARY: The United States Department of Health and Human Services (HHS) is publishing policy guidance on the use of race, color, or national origin as considerations in adoption and foster care placements.

DATES: This guidance is effective immediately.

FOR FURTHER INFORMATION CONTACT: Carol Williams or Dan Lewis (ACF) at 202-205-8618 or Ronald Copeland (OCR) at 202-619-0553; TDD: 1-800-537-7697. Arrangements to receive the policy guidance in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: The Improving America's Schools Act, Pub. L. No. 103-382, 108 Stat. 3518, contains the Multiethnic Placement Act of 1994 (hereinafter referred to as "the Act"). The Act directs the Secretary to publish guidance to concerned public and private agencies and entities with respect to compliance with the Act. Section 553, 108 Stat. 4057 (to be codified at 42 U.S.C. § 5115a). This guidance carries out that direction.

The policy guidance is designed to assist agencies which are involved in adoption or foster care placements and which receive Federal assistance in complying with the Act, the U.S. Constitution and Title VI of the Civil Rights Act of 1964. The guidance provides, consistent with those laws, that an agency or entity that receives Federal financial assistance and is involved in adoption or foster care placements may not discriminate on the basis of the race, color or national origin of the adoptive or foster parent or the child involved. The guidance further specifies that the consideration of race, color, or national origin by agencies making placement determinations is permissible only when an adoption or foster care agency has made a narrowly tailored, individualized determination that the facts and circumstances of a particular case require the consideration of race, color, or national origin in order to advance the best interests of the child in need of placement.

In addition to prohibiting discrimination in placements on the basis of race, color or national origin, the Act requires that agencies engage in diligent recruitment efforts to ensure that all children needing placement are served in a timely and adequate manner. The guidance sets forth a number of methods that agencies should utilize in order to develop an adequate pool of families capable of promoting each child's development and case goals.

Covered agencies or entities must be in full compliance with the Act no later than six months after publication of this guidance or one year after the date of the enactment of this Act, whichever occurs first, i.e., October 21, 1995. Under limited circumstances outlined in the guidance, the Secretary of HHS may extend the compliance date for states able to demonstrate that they must amend state statutory law in order to change a particular practice that is inconsistent with the Act. The guidance explains in detail the vehicles for enforcement of the Act's prohibition against discrimination in adoption or foster care placement.

The text of the guidance appears below.

Dated: _____
Dennis Hayashi, Director
Office for Civil Rights

Dated: _____
Mary Jo Bane,
Assistant Secretary,
Administration for Children and Families

POLICY GUIDANCE

Race, Color, or National Origin As Considerations in Adoption and Foster Care Placements

BACKGROUND

On October 20, 1994 President Clinton signed the "Improving America's Schools Act of 1994," Public Law 103-382, which includes among other provisions, Section 551, titled "The Multiethnic Placement Act of 1994" (MEPA).

The purposes of that Act are: to decrease the length of time that children wait to be adopted; to prevent discrimination in the placement of children on the basis of race, color, or national origin; and to facilitate the identification and recruitment of foster and adoptive parents who can meet children's needs.

To accomplish these goals the Act identifies specific impermissible activities by an agency or entity (agency) which receives Federal assistance and is involved in adoption or foster care placements. The law prohibits such agencies from "categorically denying to any person the opportunity to become an adoptive or foster parent solely on the basis of the race, color, or national origin of the adoptive or foster parent or the child" and "from delaying or denying the placement of a child solely on the basis of race, color, or national origin of the adoptive or foster parent or parents involved." Under the Act, these prohibitions also apply to the failure to seek termination of parental rights or otherwise make a child legally available for adoption.

The law does permit an agency to consider, in determining whether a placement is in a child's best interests, "the child's cultural, ethnic, and racial background and the capacity of prospective foster or adoptive parents to meet the needs of a child of this background." If an agency chooses

to include this factor among those to be considered in making placement decisions, it must be considered in conjunction with other factors relevant to the child's best interests and must not be used in a manner that delays the placement decision.

The Act also seeks to ensure that agencies engage in active recruitment of potential foster and adoptive parents who reflect the racial and ethnic diversity of the children needing placement. Section 554 of the Act amends Section 422(b) and Part A of Title XI of the Social Security Act. The amendment specifies the following requirements for child welfare services programs: "[Each plan for child welfare services under this part shall . . .] (9) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed."

The Multiethnic Placement Act is to be viewed in conjunction with Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits recipients of Federal financial assistance from discriminating based on race, color, or national origin in their programs and activities and from operating their programs in ways that have the effect of discriminating on the basis of race, color, or national origin.

The Administration for Children and Families (ACF) and the Office for Civil Rights (OCR) in the Department of Health and Human Services (HHS) have the responsibility for implementing these laws. OCR has the responsibility to enforce compliance with Title VI and its implementing regulation (45 CFR Part 80), as well as other civil rights laws. ACF administers programs of Federal financial assistance to child welfare agencies and has responsibility to enforce compliance with the laws authorizing this assistance.

Private, as well as public, adoption and foster care agencies often receive Federal financial assistance, through State Block Grant programs, programs under Title IV-E of the Social Security Act, and discretionary grants. The assistance may reach an agency directly, or indirectly as a subrecipient of other agencies. Receipt of such assistance obligates recipients to comply with Title VI and other civil rights laws and regulations and with the requirements of the Social Security Act. Further, the Civil Rights Restoration Act of 1987 confers jurisdiction over entities any part of which receive any Federal funds.

This guidance is being issued jointly by ACF and OCR, pursuant to Section 553(a) of MEPA, to enable affected agencies to conform their laws, rules, and practices to the requirements of the Multiethnic Placement Act and Title VI.

DISCUSSION

A. Race, Culture, or Ethnicity As A Factor In Selecting Placements

1. Impermissible Activities

In enacting MEPA, Congress was concerned that many children, in particular those from minority groups, were spending lengthy periods of time in foster care awaiting placement in adoptive homes. At present, there are over twenty thousand children who are legally free for adoption but who are not in preadoptive homes.

While there is no definitive study indicating how long children who are adoptable must wait until placement, the available data indicate the average wait may be as long as two years after the time that a child is legally free for adoption, and that minority children spend, on average, twice as long as non-minority children before they are placed. Both the number of children needing placements and the length of time they await placement increase substantially when those children awaiting termination of parental rights are taken into account.

MEPA reflects Congress' judgment that children are harmed when placements are delayed for a period longer than is necessary to find qualified families. The legislation seeks to eliminate barriers that delay or prevent the placement of children into qualified homes. In particular, it focuses on the possibility that policies with respect to matching children with families of the same race, culture, or ethnicity may result in delaying, or even preventing, the adoption of children by qualified families. It also is designed to ensure that every effort is made to develop a large and diverse pool of potential foster and adoptive families, so that all children can be quickly placed in homes that meet their needs. In developing this guidance, the Department recognizes that states seek to achieve a variety of goals when making foster or adoptive placements. For example, in making a foster care placement, agencies generally are concerned with finding a home that the child can easily fit into, that minimizes the number of adjustments that the child, already facing a difficult situation, must face, and that is capable of meeting any special physical, psychological, or educational needs of the child. In making adoption placements, agencies seek to find homes that will maximize the current and future well-being of the child. They evaluate whether the particular prospective parents are equipped to raise the child, both in terms of their capacity and interests to meet the individual needs of the particular child, and the capacity of the child to benefit from membership in a particular family.

Among the factors that many state statutes, regulations, or policy manuals now specify as being relevant to placement decisions are the racial, ethnic, and cultural background of the child. Some states specify an order of preference for placements, which make placement in a family of the same race, culture, or ethnicity as the child a preferred category. Some states prescribe set periods of time in which agencies must try to place a child with a family of the same race, culture, or ethnicity before the child can be placed with a family of a different race, culture, or ethnicity. Some states have a general preference for same race or ethnicity placements, although they do not specify a placement order or a search period. And some states indicate that children should be placed with families of the same race or ethnicity provided that this is consistent with the best interests of the child.

Establishing standards for making foster care and adoption placement decisions, and determining the factors that are relevant in deciding whether a particular placement meets the standards, generally are matters of state law and policy. Agencies which receive Federal assistance, however, may use race, culture, or

ethnicity as factors in making placement decisions only insofar as the Constitution, MEPA, and Title VI permit.

In the context of child placement decisions, the United States Constitution and Title VI forbid decision making on the basis of race or ethnicity unless the consideration advances a compelling governmental interest. The only compelling governmental interest, in this context, is protecting the "best interests" of the child who is to be placed. Moreover, the consideration must be narrowly tailored to advancing the child's interests and must be made as an individualized determination for each child. An adoption agency may take race into account only if it has made an individualized determination that the facts and circumstances of the specific case require the consideration of race in order to advance the best interests of the specific child. Any placement policy that takes race or ethnicity into account is subject to strict scrutiny by the courts to determine whether it satisfies these tests. **Palmore v. Sidoti**, 466 U.S. 429 (1984).

A number of practices currently followed by some agencies clearly violate MEPA or Title VI. These include statutes or policies that:

- establish time periods during which only a same race/ethnicity search will occur;
- establish orders of placement preferences based on race, culture, or ethnicity;
- require caseworkers to specially justify transracial placements; or
- otherwise have the effect of delaying placements, either before or after termination of parental rights, in order to find a family of a particular race, culture, or ethnicity. Other rules, policies, or practices that do not meet the constitutional strict scrutiny test would also be illegal.

2. Permissible Considerations

MEPA does specifically allow, but not require, agencies to consider "the child's cultural, ethnic, and racial background and the capacity of prospective foster or adoptive parents to meet the needs of a child of this background" as one of the factors in determining whether a particular placement is in a child's best interests.

When an agency chooses to use this factor, it must be on an individualized basis. Agencies that provide professional adoption services usually involve prospective parents in an educative family assessment process designed to increase the likelihood of successful placements. This process includes providing potential adoptive parents with an understanding of the special needs of adoptive children, such as how children react to separation and maltreatment and the significance of the biological family to a child. Adoption specialists also assess the strengths and weaknesses of prospective parents. They help them decide whether adoption is the right thing for them and identify the kind of child the family thinks it can parent. Approved families are profiled, as are the waiting children.

When a child becomes available for adoption, the pool of families is reviewed to see if there is an available family suitable for the specific child. Where possible, a number of families are identified and the agency conducts a case conference to determine which family is most suitable. The goal is to find the family which has the greatest ability to meet the child's psychological needs. The child is discussed with the family, and decisions are made about the placement of the specific child with the family. This process helps prevent unsuccessful placements, and promotes the interest of children in finding permanent homes.

To the extent that an agency looks at a child's race, ethnicity, or cultural background in making placement decisions, it must do so in a manner consistent with the mode of individualized decision-making that characterizes the general placement process for all children. Specifically, in recruiting placements for each child, the agency must focus on that child's particular needs and the capacities of the particular prospective parent(s).

In making individualized decisions, agencies may examine the capacity of the prospective parent(s) to meet the child's psychological needs that are related to the child's racial, ethnic, or cultural background. This may include assessing the attitudes of prospective parents that relate to their capacity to nurture a child of a particular background. Agencies are not prohibited from discussing with prospective adoptive and foster parents their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity, just as they discuss issues related to other characteristics, such as sex, age, or disability; nor are they prohibited from considering the expressed preference of the prospective parents as one of several factors in making placement decisions.

Agencies may consider the ability of prospective parents to cope with the particular consequences of the child's developmental history and to promote the development of a positive sense of self, which often has been compromised by maltreatment and separations. An agency also may assess a family's ability to nurture, support, and reinforce the racial, ethnic, or cultural identity of the child and to help the child cope with any forms of discrimination the child may encounter. When an agency is making a choice among a pool of generally qualified families, it may consider whether a placement with one family is more likely to benefit a child, in the ways described above or in other ways that the agency considers relevant to the child's best interest.

Under the law, application of the "best interests" test would permit race or ethnicity to be taken into account in certain narrow situations. For example, for children who have lived in one racial, ethnic, or cultural community, the agency may assess the child's ability to make the transition to another community. A child may have a strong sense of identity with a particular racial, ethnic, or cultural community that should not be disrupted. This is not a universally applicable consideration. For instance, it is doubtful that infants or young children will have developed such needs. Ultimately, however, the determination must be

individualized. Another example would be when a prospective parent has demonstrated an inability to care for, or nurture self-esteem in, a child of a different race or ethnicity. In making such determinations, an adoption agency may not rely on generalizations about the identity needs of children of a particular race or ethnicity or on generalizations about the abilities of prospective parents of one race or ethnicity to care for, or nurture the sense of identity of, a child of another race, culture, or ethnicity. Nor may an agency presume from the race or ethnicity of the prospective parents that those parents would be unable to maintain the child's ties to another racial, ethnic, or cultural community.

Recruitment Efforts

As recognized in the Multiethnic Placement Act, in order to achieve timely and appropriate placement of all children, placement agencies need an adequate pool of families capable of promoting each child's development and case goals. This requires that each agency's recruitment process focuses on developing a pool of potential foster and adoptive parents willing and able to foster or adopt the children needing placement. The failure to conduct recruitment in a manner that seeks to provide all children with the opportunity for placement, and all qualified members of the community an opportunity to adopt, is inconsistent with the goals of MEPA and could create circumstances which would constitute a violation of Title VI.

An adequate recruitment process has a number of features. Recruitment efforts should be designed to provide to potential foster and adoptive parents throughout the community information about the characteristics and needs of the available children, the nature of the foster care and adoption processes, and the supports available to foster and adoptive families.

Both general and targeted recruiting are important. Reaching all members of the community requires use of general media- radio, television, and print. In addition, information should be disseminated to targeted communities through community organizations, such as religious institutions and neighborhood centers. The dissemination of information is strengthened when agencies develop partnerships with groups from the communities from which children come, to help identify and support potential foster and adoptive families and to conduct activities which make the waiting children more visible.

To meet MEPA's diligent efforts requirements, an agency should have a comprehensive recruitment plan that includes:

a description of the characteristics of waiting children;

specific strategies to reach all parts of the community;

diverse methods of disseminating both general and child specific information;

strategies for assuring that all prospective parents have access to the home study process, including location and hours of services that facilitate access by all members of the community;

strategies for training staff to work with diverse cultural, racial, and economic communities;

strategies for dealing with linguistic carriers;

non-discriminatory fee structures; and

procedures for a timely search for prospective parents for a waiting child, including the use of exchanges and other interagency efforts, provided that such procedures must insure that placement of a child in an appropriate household is not delayed by the search for a same race or ethnic placement.

Agencies receiving Federal funds may not use standards related to income, age, education, family structure, and size or ownership of housing, which exclude groups of prospective parents on the basis of race, color, or national origin, where those standards are arbitrary or unnecessary or where less exclusionary standards are available.

ENFORCEMENT

As provided in Section 553(d)(1) of MEPA, covered agencies or entities are required to comply with the Act no later than six months after publication of this guidance or one year after the date of the enactment of this Act, whichever occurs first, i.e., October 21, 1995. Pursuant to Section 553(d)(2) of MEPA, if a state demonstrates to the satisfaction of the Secretary of HHS that it is necessary to amend state statutory law in order to change a particular practice that is inconsistent with MEPA, the Secretary may extend the compliance date for the state a reasonable number of days after the close of the first state legislative session beginning after [*insert date of publication of this guidance*]. In determining whether to extend the compliance date, the Secretary will take into account the constitutional standards described in Part A of this guidance. Because states need not enforce unconstitutional provisions of their laws, statutory amendments are not an essential precondition to coming into compliance with respect to any such provisions.

HHS emphasizes voluntary compliance with the law and recognizes that covered agencies may want further guidance on their obligations under these laws. Accordingly, HHS is offering technical assistance to any covered agency seeking to better understand and more fully comply with the Multiethnic Placement Act. Organizations wishing to be provided with technical assistance on compliance with the nondiscrimination provisions of MEPA should contact Ronald Copeland of OCR at 202-619-0553. Organizations wishing to be provided with technical assistance regarding required recruitment efforts should contact Carol Williams or Dan Lewis of the Administration on Children and Families at 202-205-8618.

The Multiethnic Placement Act provides two vehicles for enforcement of its prohibition against discrimination in adoption or foster care placement. First, pursuant to Section 553(b), any individual who is aggrieved by an action he or she believes constitutes discrimination in violation of the Act has the right to bring an action seeking equitable relief in a United States district court of appropriate jurisdiction. Second, the Act provides that noncompliance with the prohibition is deemed a violation of Title VI.

OCR has published regulations to effectuate the provisions of Title VI. 45 CFR Part 80. Any individual may file a complaint with OCR alleging that an adoption or foster care organization funded by HHS makes placement decisions in violation of the Multiethnic Placement Act and Title VI. OCR may also initiate compliance reviews to determine whether violations have occurred. If OCR determines that an adoption or foster care organization makes discriminatory placement decisions, OCR will first seek voluntary compliance with the law. Should attempts at voluntary compliance prove unsuccessful, OCR will take further steps to enforce the law.

These steps may involve referring the matter to the Department of Justice with a recommendation that appropriate court proceedings be brought. HHS may also initiate administrative proceedings leading to the termination of the offending agency's Federal financial assistance. These proceedings include the opportunity for a covered agency or entity to have a hearing on any OCR findings made against it. 45 CFR 80.8.

At any point in the complaint investigation process or during the pendency of fund termination proceedings, organizations may agree to come into voluntary compliance with the law. OCR will work closely with organizations to develop necessary remedial actions, such as training of staff in the requirements of Title VI and MEPA, to ensure that their efforts at compliance are successful.

When a state fails to develop an adequate recruitment plan and expedite the placement of children consistent with MEPA, the Secretary through ACF and OCR will provide technical assistance to the state in the development of the plan and where necessary resolve through corrective action major compliance issues. When these efforts fail the Secretary will make a determination of appropriate proportional penalties.

Resource Centers

Child Welfare National Training, Technical Assistance, Clearinghouse and Research Center Projects

Children's Bureau Training and Technical Assistance Resource Centers

National Resource Center on Legal and Court Issues

ABA Fund for Justice and Education

740 15th Street, N.W.

9th Floor

Washington, DC 20005-1009

Director: Mark Hardin

(202) 662-1750

(202) 662-1755 (fax)

Assistant Director: Debra Ratterman Baker

(202) 662-1748

(202) 662-1755 (fax)

Project Officer: Cecelia Sudia

(202) 205-8764

(202) 401-5917 (fax)

Back-up Project Officer: Marc Mannes

(202) 401-7626

(202) 205-8221 (fax)

National Resource Center for Permanency Planning

Hunter College School of Social Work

129 East 79th Street

New York, New York 10021

Director: Gary Anderson

(212) 452-7053

(212) 452-7150 (fax)

Project Officer: Geri Robinson

(202) 205-8575

(202) 205-8221 (fax)

Back-up Project Officer: Jake Terpstra

(202) 205-8810

(202) 401-5917 (fax)

National Resource Center for Organizational Improvement

University of Southern Maine
96 Falmouth Street
Portland, Maine 04103

Acting Director: Sabra Burdick
(207) 780-4430
(207) 780-4417 (fax)

Project Officer: Marc Mannes
(202) 401-7626
(202) 205-8221 (fax)

Back-up Project Officer: Gerri Robinson
(202) 205-8575
(202) 205-8221 (fax)

National Resource Center for Family-Centered Practice

The University of Iowa School of Social Work
112 North Hall
Iowa City, Iowa 52242

Director: Marcia Allen
(319) 335-2200
(319) 335-2204 (fax)

Project Officer: Al Durham
(202) 205-8764
(202) 401-5917 (fax)

Back-up Project Officer: Cecelia Sudia
(202) 205-8903
(202) 401-5017 (fax)

National Resource Center for Youth Development

University of Oklahoma
202 West 8th Street
Tulsa, Oklahoma 74119-1419

Director: James Walker
(918) 585-2986
(919) 592-1841 (fax)

Associate Director: Peter Correia
(918) 585-2986
(918) 592-1841 (fax)

Project Officer: Jake Terpstra
(202) 205-8810
(202) 401-5917 (fax)

Back-up Project Officer: Al Durham
(202) 205-8903
(202) 401-5917 (fax)

National Resource Center for Special Needs Adoption
Spaulding for Children
16250 Northland Drive
Southfield, Michigan 48075

Director: Drenka Lakin
(810) 443-7080
(810) 443-7099 (fax)

Project Officer: Delmar Weathers
(202) 205-8671
(202) 401-5917

National Network Project for Children with Special Needs
Georgetown University
Child Development Center, National
Technical Assistance Center for Children's Mental Health
3307 M Street, N.W.
Washington, DC 20007-3935

Associate Director: Sybil Goldman
(202) 687-5000
(202) 687-8899 (fax)

Senior Policy Analyst: Joan Dodge
(202) 205-8764
(202) 401-5917 (fax)

Project Officer: Cecelia Sudia
(202) 205-8764
(202) 401-5917

ARCH National Resource Center for Respite and Crisis Care Services
Chapel Hill Training-- Outreach Project
800 Eastowne Drive, Suite 105
Chapel Hill, North Carolina 27514

Director: Belinda Hardin
(919) 490-5577
(919) 490-4905 (fax)
(800) 473-1727

Project Officer: Ory Cuellar
(202) 205-8899
(202) 401-5917 (fax)

**National Abandoned Infant Assistance Resource Center for
Drug-,HIV, and Medically Involved Children**

University of California at Berkeley
Family Welfare Research Group
School of Social Welfare
1950 Addison, Suite 104
Berkeley, California 94704

Principal Investigator: Richard Barth
(510) 642-8535
(510) 643-6126 (fax)

Director: Jeanne Pietrzak
(510) 643-8390
(510) 643-7019 (fax)

Project Officer: Patricia Campiglia
(202) 205-8657
(202) 401-5917 (fax)

National Training and Technical Assistance Coordination Center

National Training and Technical Assistance
Coordination Center c/o
The CDM Group, Inc.
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