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INFORMATION MEMORANDUM

TO: State and Territorial Agencies Administering Title IV-B and Title IV-E of the Social Security Act

SUBJECT: INFORMATION ON IMPLEMENTATION OF FEDERAL LEGISLATION - Questions and answers that clarify the practice and implementation of section 471(a)(18) of title IV-E of the Social Security Act.

LEGAL AND RELATED REFERENCES: The Small Business Job Protection Act of 1996 (Public Law (P.L.) 104-188), the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (P.L. 103-382), and Titles IV-B (42 U.S.C. 620 et seq.) and IV-E (42 U.S.C. 670 et seq.) of the Social Security Act (the Act).

PURPOSE: The General Accounting Office (GAO) is conducting a study on States' implementation of the Interethnic provision of the Small Business Job Protection Act of 1996 and raised several questions. The purpose of this memorandum is to inform States, Tribes and private child placement agencies of the responses to these questions.

BACKGROUND: On August 20, 1996 President Clinton signed the Small Business Job Protection Act of 1996. Included in this new law was Section 1808, "Removal of Barriers to Interethnic Adoption," which repealed section 553 of MEPA and amended title IV-E of the Act by adding a State plan requirement at section 471(a)(18). On June 5, 1997 the Children's Bureau issued an Information Memorandum (ACFY-IM-CB-97-04) to State title IV-B/IV-E agencies and others providing them with guidance and clarification on Section 1808.

INFORMATION: The attached document, "GAO Questions and Answers," addresses a number of implementation and practice issues that States, Tribes, private child placement agencies and others may find helpful in achieving compliance with title IV-E of the Social Security Act.

INQUIRIES: Office for Civil Rights (OCR) and Administration for Children and Families (ACF) Regional Offices (lists attached).

/s/
James A. Harrell
Deputy Commissioner
Administration on Children, Youth, and Families
cc: OCR and ACF Regional Offices

Attachments:

[Attachment 1](#)- GAO Question and Answers
[Attachment 2](#)- OCR and ACF Regional Office Lists

**Answers to GAO QUESTIONS Regarding
the Multiethnic Placement Act, as Amended**

1. **May public agencies allow foster parents to specify the race, color, national origin, ethnicity or culture of children for whom they are willing to provide care'**
2. **May public agencies allow adoptive parents to specify the race, color, national origin, ethnicity or culture of children of whom they are willing to adopt'**
 - A. In making decisions about placing a child, whether in an adoptive or foster setting, a public agency must be guided by considerations of what is in the best interests of the child in question. The public agency must also ensure that its decisions comply with statutory requirements. Where it comes to the attention of a public agency that particular prospective parents have attitudes that relate to their capacity to nurture a particular child, the agency may take those attitudes into consideration in determining whether a placement with that family would be in the best interests of the child in question.

The consideration of the ability of prospective parents to meet the needs of a particular child should take place in the framework of the general placement decision, in which the strengths and weaknesses of prospective parents to meet all of a child's needs are weighed so as to provide for the child's best interests, and prospective parents are provided the information they need realistically to assess their capacity to parent a particular child.

An important element of good social work practice in this process is the individualized assessment of a prospective parent's ability to serve as a foster or

adoptive parent. This assessment can include an exploration of the kind of child with whom a prospective parent might comfortably form an attachment. It is appropriate in the context of good practice to allow a family to explore its limitations and consider frankly what conditions (for example, disabilities in children, the number of children in a sibling group, or children of certain ages) family members would be able or willing to accept. The function of assessing the needs and limitations of specific prospective foster or adoptive parents in order to determine the most appropriate placement considering the various individual needs of a particular child is an essential element of social work practice, and critical to an agency's ability to achieve the best interests of that child.

The assessment function is also critical, especially in adoptive placements, to minimizing the risk that placements might later disrupt or dissolve.

The assessment function must not be misused as a generalized racial or ethnic screen; the assessment function cannot routinely include considerations of race or ethnicity.

The Department generally does not distinguish between foster and adoptive settings in terms of an agency's consideration of the attitudes of prospective parents. However, it is possible that a public agency may attach different significance in assessing the best interests of a child in need of short term or emergency placement.

As noted in the Department's original guidance on MEPA, 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 other individualized issues related to the child. However, as the Department has emphasized, any consideration of race or ethnicity must be done in the context of individualized placement decisions. An agency may not rely on generalizations about the 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 a child of another race or ethnicity.

May public agencies assess the racial, national origin, ethnic and/or cultural needs of all children in foster care, either by assessing those needs directly or as part of another assessment such as an assessment of special needs'

Public agencies may not routinely consider race, national origin and ethnicity in making placement decisions. Any consideration of these factors must be done on an individualized basis where special circumstances indicate that their consideration is warranted. A practice of assessing all children for their needs in this area would be inconsistent with an approach of individually considering these factors only when specific circumstances indicate that it is warranted.

Assessment of the needs of children in foster care, and of any special needs they may have that could help to determine the most appropriate placement for a child, is an essential element of social work practice for children in out-of-home care, and critical to an agency's ability to achieve the best interests of the child.

Section 1808 of Public Law 104-188 by its terms addresses only race, color, or national origin, and does not address the consideration of culture in placement decisions. There are situations where cultural needs may be important in placement decisions, such as where a child has specific language needs. However, a public agency's consideration of culture would raise Section 1808 issues if the agency used culture as a proxy for race, color or national origin. Thus, while nothing in Section 1808 directly prohibits a public agency from assessing the cultural needs of all children in foster care, Section 1808 would prohibit an agency from using routine cultural assessments in a manner that would circumvent the law's prohibition against the routine consideration of race, color or national origin.

If no to question 3, may they do this for a subset of all children in foster care'

As noted above, Section 1808 prohibits the routine consideration of race. It permits the consideration of race on an individualized basis where circumstances indicate that it is warranted. The question suggests that assessment of race, color, or national origin needs would not be done for all children in foster care, but for a subset. If the subset is derived by some routine means other than where specific individual circumstances suggest that it is warranted, the same considerations discussed above would apply.

May public agencies assess the racial, national origin, ethnic and/or cultural capacity of all foster parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses'

No. Race, color and national origin may not routinely be considered in assessing the capacity of particular prospective foster parents to care for specific children. However, assessment by an agency of the capacity of particular adults to serve as foster parents for specific children is at the heart of the placement process, and essential to determining what would be in the best interests of a particular child.

If yes to question 5, may public agencies decline to transracially place any child with a foster parent who has unsatisfactory cultural competency skills'

Not applicable; the answer to question 5 is no.

If no to question 5, may public agencies decline to transracially place a child who has documented racial, national origin, ethnic and/or cultural needs with a foster parent who has unsatisfactory cultural competency skills'

As noted in the answer to questions No. 1 and 2 above, good practice requires an assessment of the capacity of potential foster parents to accommodate all the needs of a particular child. It is conceivable that in a particular instance race, color or national origin would be a necessary

consideration to achieve the best interests of the child. However, any placement decision must take place in a framework that assesses the strengths and weaknesses of prospective parents to meet all of a child's needs so as to provide for the child's best interests. As noted in the answer to Questions 1 and 2, prospective parents should be offered, typically through training provided by an agency, information sufficient to confirm or broaden their understanding of what types of children they might most appropriately provide a home for.

May public agencies honor the request of birth parents to place their child, who was involuntarily removed, with foster parents of a specific racial, national origin, ethnic and/or cultural group'

No.

- **Would the response to question 8 be different if the child was voluntarily removed'**

No.

If an action by a public agency will not delay or deny the placement of a child, may that agency use race to differentiate between otherwise acceptable foster placements'

No.

May public agencies assess the racial, national origin, ethnic and/or cultural capacity of all adoptive parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses'

No. The factors discussed above concerning the routine assessment of race, color, or national origin needs of children would also apply to the routine assessment of the racial, national origin or ethnic capacity of all foster or adoptive parents.

If yes to question 11, may public agencies decline to transracially place any child with an adoptive parent who has unsatisfactory cultural competency skills'

As noted in the answer to questions No. 1 and 2 above, good practice requires an assessment of the capacity of potential foster parents to accommodate all the needs of a particular child. It is conceivable that in a particular instance race, color or national origin would be a necessary consideration to achieve the best interests of the child. However, any placement decision must take place in a framework that assesses the strengths and weaknesses of prospective parents to meet all of a child's needs so as to provide for the child's best interests.

If no to question 11, may public agencies decline to transracially place a child who has documented racial, national origin, ethnic and/or cultural needs with an adoptive parent who has unsatisfactory cultural competency skills'

As noted in the answer to questions No. 1 and 2 above, good practice requires an assessment of the capacity of potential foster parents to accommodate all the needs of a particular child. It is

conceivable that in a particular instance race, color or national origin would be a necessary consideration to achieve the best interests of the child. However, any placement decision must take place in a framework that assesses the strengths and weaknesses of prospective parents to meet all of a child's needs so as to provide for the child's best interests. As noted in the answer to Questions 1 and 2, prospective parents should be offered, typically through training provided by an agency, information sufficient to confirm or broaden their understanding of what types of children they might most appropriately provide a home for.

If no to question 11, how can public agencies assure themselves that they have identified an appropriate placement for a child for whom racial, national origin, ethnic and/or cultural needs have been documented'

Adoption agencies must consider all factors that may contribute to a good placement decision for a child, and that may affect whether a particular placement is in the best interests of the child. Such agencies may assure themselves of the fitness of their work in a number of ways, including case review conferences with supervisors, peer reviews, judicial oversight, and quality control measures employed by State agencies and licensing authorities. In some instances it is conceivable that, for a particular child, race, color or national origin would be such a factor. Permanency being the *sine qua non* of adoptive placements, monitoring the rates of disruption or dissolution of adoptions would also be appropriate. Whereit has been established that considerations of race, color or national origin are necessary to achieve the best interests of a child, such factor(s) should be included in the agency's decision-making, and would appropriately be included in reviews and quality control measures such as those described above.

May public agencies honor the request of birth parents to place their child, who was involuntarily removed, with adoptive parents of a specific racial, ethnic and/or cultural group'

No.

Would the response to question 15 be different if the child was voluntarily removed'

No.

If an action by a public agency will not delay or deny the placement of a child, may that agency use race to differentiate between otherwise acceptable adoptive parents'

No.

May a home finding agency that contracts with a public agency, but that does not place children, recommend only homes that match the race of the foster or adoptive parent to that of a child in need of placement'

No. A public agency may contract with a home finding agency to assist with overall recruitment efforts. Some home finding agencies may be used because of their special knowledge and/or understanding of a specific community and may even be included in a public agency's targeted

recruitment efforts. Targeted recruitment cannot be the only vehicle used by a State to identify families for children in care, or any subset of children in care, e.g., older or minority children. Additionally, a home finding agency must consider and include any interested person who responds to its recruitment efforts.

May a home finding agency that contracts with a public agency, but that does not place children, dissuade or otherwise counsel a potential foster or adoptive parent who has unsatisfactory cultural competency skills to withdraw an application or not pursue foster parenting or adoption’

No. No adoptive or foster placement may be denied or delayed based on the race of the prospective foster or adoptive parent or based on the race of the child.

Dissuading or otherwise counseling a potential foster or adoptive parent to withdraw an application or not pursue foster parenting or adoption strictly on the basis of race, color or national origin would be a prohibited delay or denial.

The term "cultural competency," as we understand it, is not one that would fit in a discussion of adoption and foster placement. However, agencies should, as a matter of good social work practice, examine all the factors that may bear on determining whether a particular placement is in the best interests of a particular child. That may in rare instances involve consideration of the abilities of prospective parents of one race or ethnicity to care for a child of another race or ethnicity.

May a home finding agency that contracts with a public agency, but that does not place children, assess the racial, national origin, ethnic and/or cultural capacity of all adoptive parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses’

No. There should be no routine consideration of race, color or national origin in any part of the adoption process. Any assessment of an individual's capacity to be a good parent for any child should be made on an individualized basis by the child's caseworker and not by a home finding agency. Placement decisions should be guided by the child's best interest. That requires an individualized assessment of the child's total needs and an assessment of a potential adoptive parent's ability to meet the child's needs.

If no to question 20, may they do this for a subset of adoptive parents, such as white parents’

No.

If a black child is placed with a couple, one of whom is white and one of whom is black, is this placement classified as inracial or transracial’

If a biracial black/white child is placed with a white couple, is this placement classified as inracial or transracial’

Would the response to question 22 be different if the couple were black?

The statute applies to considerations of race, color or national origin in placements for adoption and foster care. The Department's Adoption and Foster Care Analysis and Reporting System (AFCARS) collects data on the race of the child and the race of adoptive and foster parents, as required by regulation at 45 CFR 1355, Appendix A. AFCARS uses racial categories defined by the United States Department of Commerce, Bureau of the Census. The Department of Commerce does not include "biracial" among its race categories; therefore no child would be so classified for AFCARS purposes. The Department of Health and Human Services does not classify placements as being "inracial" or "transracial."

How does HHS define "culture" in the context of MEPA guidance?

HHS does not define culture. Section 1808 addresses only race, color, or national origin, and does not directly address the consideration of culture in placement decisions. A public agency is not prohibited from the nondiscriminatory consideration of culture in making placement decisions. However, a public agency's consideration of culture must comply with Section 1808 in that it may not use culture as a replacement for the prohibited consideration of race, color or national origin.

Provide examples of what is meant by delay and denial of placement in foster care, excluding situations involving adoption.

Following are some examples of delay or denial in foster care placements:

A white newborn baby's foster placement is delayed because the social worker is unable to find a white foster home; the infant is kept in the hospital longer than would otherwise be necessary and is ultimately placed in a group home rather than being placed in a foster home with a minority family.

A minority relative with guardianship over four black children expressly requests that the children be allowed to remain in the care of a white neighbor in whose care the children are left. The state agency denies the white neighbor a restricted foster care license which will enable her to care for the children. The agency's license denial is based on its decision that the best interests of the children require a same-race placement, which will delay the permanent foster care placement. There was no individualized assessment or evaluation indicating that a same-race placement is actually in the best interests of the children.

Six minority children require foster placement, preferably in a family foster home. Only one minority foster home is available; it is only licensed to care for two children. The children remain in emergency shelter until the agency can recertify and license the home to care for the six children. The children remain in an emergency shelter even though a white foster home with capacity and a license to care for six children is available.

Different standards may be applied in licensing white versus minority households resulting in delay or denial of the opportunity to be foster parents.

Foster parent applicants are discouraged from applying because they are informed that waiting children are of a different race.

There are placement delays and denials when states or agencies expend time seeking to honor the requests of biological parents that foster parents be of the same race as the child.

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