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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 96 ADM-2

TO: Commissioners of
 Social Services

DIVISION: Services and
 Community
 Development

DATE: January 16, 1996

SUBJECT: Multiethnic Placement Act of 1994

SUGGESTED

DISTRIBUTION: Adoption Staff
 Foster Care Staff
 Child Welfare Executive and Supervisory Staff
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ATTACHMENTS: Regulatory Amendment 18NYCRR 421.18 & 430.11
 Public Law 103-382
 ACF Recruitment Plans
 (Attachments are not available on line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
	90-LCM-11	421.18 (c) and (d) 430.11 (c)			Multiethnic Placement Act of 1994 (Public Law 103-382) 42 U.S.C. 5115a

I. PURPOSE

The purpose of this directive is to advise you of changes in Department regulation and policy on the use of race, color, or national origin as a consideration in foster care and adoptive placements and in the recruitment of foster and adoptive parents. These changes are in compliance with the provisions of the federal Multiethnic Placement Act of 1994 (MEPA), and the Civil Rights Act of 1964 (Title VI).

II. BACKGROUND

MEPA was signed into law on October 20, 1994. It is intended to prevent the denial of the opportunity for a person to become an adoptive parent or a foster parent, and the delay or denial of placement of a child or discriminate in the selection of a foster or adoptive placement solely on the basis of race, color, or national origin. In addition, MEPA is intended to decrease the length of time children wait to be adopted and to facilitate the identification and recruitment of foster and adoptive parents to ensure that families are available for children in need of placement.

MEPA is Congress's response to findings which indicate that there are "over 20 thousand children" in foster care waiting to be adopted with an average wait of 2 years and 8 months, and that it takes substantially longer for minority children to be adopted. Congress found that in addition to such barriers to adoption as lengthy termination processes, lack of financial resources, excessive caseloads, and difficulty in recruiting foster and adoptive families, the explicit or implicit use of race, color or national origin as the primary consideration for foster and adoptive placements, has increased the difficulty of finding qualified homes for waiting children. Through the non-discrimination and recruitment provisions of MEPA, Congress expects to substantially reduce unnecessary delays in the placement of waiting children and increase the number of children, particularly African-American and Hispanic children, who are adopted annually.

In April of 1995, the Administration for Children and Families (ACF) and the Office for Civil Rights (OCR) of the Department of Health and Human Services (DHHS) issued guidelines to assist States and agencies in voluntarily complying with the provisions of MEPA and Title VI of the Civil Rights Act of 1964. Also, DHHS conducted a review of the applicable adoption and foster care statutes, regulations and policies of all the States that receive federal funds in order to identify any policies and practices which in the opinion of DHHS, were not consistent with the provisions of MEPA. In a letter dated June 20, 1995, the Department was informed by DHHS that in their opinion, Department regulation 18NYCRR 421.18(c)

which required authorized agencies to "make an effort to place each child in a home as similar to and compatible with his or her ethnic, racial, religious, and cultural background as possible", implied a preference for same race placements and was inconsistent with the requirements of MEPA. The Department agreed to amend the regulation and to review all other pertinent policies and practices including those of any authorized agencies to ensure compliance with the provisions of MEPA by October 21, 1995 which is the effective date of the law. The Department amended these and other regulations, as discussed in the section on Regulatory Changes on page 4 of this directive.

III. PROGRAM IMPLICATIONS

Provisions of MEPA

MEPA prohibits any adoption or foster care agency that receives federal funds, from discriminating in the placement of a child for adoption or foster care based on the race, color, or national origin of the child or of the foster or adoptive parents. Specifically, federal law requires that an agency, or entity, that receives federal assistance and is involved in adoption or foster care placements may not:

(1) deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of race, color, or national origin of the adoptive or foster parent, or the child involved; or

(2) 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 parents or the child involved;

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

This means that all States and agencies required to comply with the provisions of MEPA, cannot have a stated or unstated policy that requires race, color or national origin to be the primary condition or determining factor when deciding on the best foster or adoptive home for a child, or when accepting or rejecting an applicant interested in becoming a foster or adoptive parent.

The provisions of MEPA do allow agencies when deciding if a placement is in the best interests of a child, to consider "the child's cultural, ethnic, and racial background 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 best interests of a child (42 U.S.C 5115a (a) (2)). However, it is important to note that race, color or national origin must be considered on a case by case basis only when the

agency determines that the facts of the particular case warrant it. Furthermore, race, color or national origin must be considered in conjunction with other factors relevant to the child's best interest and are not to be used in a manner that delays the placement decision.

MEPA also requires agencies that receive federal funds and provide foster or adoptive services, to actively recruit foster and adoptive parents who reflect the ethnic and racial diversity of the children in need of foster and adoptive homes. Along with other methods of recruitment, MEPA allows targeted recruitment to increase the pool of minority families. However, targeted recruitment programs must be open to all families regardless of race, color or national origin. An agency recruitment effort must generate in sufficient numbers, foster and adoptive parents who can meet the needs of the waiting children. Targeted recruitment for individual children based on race, color or national origin is not allowed by MEPA.

Implications for NYS Foster and Adoptive Placement Policies and Standards

Regulatory Changes

In compliance with the provisions of MEPA, 42 U.S.C 5115a, the provisions in Department regulation 18NYCRR 421.18 (c) which required an effort be made to place each child in a home as similar to and compatible with his or her ethnic, racial, and cultural background were repealed. The provisions related to placements compatible with the child's religious background were retained.

Also, paragraph (2) of subdivision (d) of section 421.18 was amended to read as follows:

(2) consideration of the physical and emotional needs of the child in relation to the characteristics, capacities, strengths and weakness of the adoptive parent(s). When making placement decisions, an authorized agency may consider the cultural, ethnic or racial background of the child and the capacity of the adoptive parent to meet the needs of the child with such a background as one of a number of factors used to determine best interests. Race, color or natural origin of the child or the adoptive parent may be considered only where it can be demonstrated to relate to the specific needs of an individual child. (emphasis added)

It is important to note that this language is similar to the language used in the federal statute and gives authorized agencies the option of considering cultural, ethnic or racial background in determining if a particular placement is in the best interests of a child. If an agency uses this option, it must do so in conjunction with other factors. Race, color or national origin cannot be the determining factor for choosing a particular placement.

In addition, 18NYCRR 430.11 (c) (2) (iv) relating to the placement of a child in foster care was repealed. This regulation previously stated:

(iv) if the setting is a foster family home or agency boarding home, show in the first uniform case record form required after the placement of the child in the current setting that the child is placed under the supervision of a person or persons of the same racial or ethnic background as that of the child, or show the reasons why such placement was not practicable or in the best interests of the child. (See section IV Required Action: Elimination of Documentation).

Note: The regulatory amendments were effective on October 18, 1995.

Department Publications and Training Projects

Department publication 90 LCM - 11, which previously outlined the Department's position on same race or transracial placement, has been cancelled. This administrative directive will serve as the Department's official release on the use of race and ethnicity in foster and adoptive placement decisions. Also, Chapter VII, Section C (ADOPTION STUDY), (2)(j) of the Adoption Services Program Manual, which also outlined the Department's policy on religion and race in adoptive placement decisions, is being amended to reflect the change in the Department's policy in compliance with MEPA.

There are a number of foster/adoption training curricula and technical assistance projects which incorporated training based on the Department's policy of first preference for same race/ethnic placements. The Department has notified contractors of the provisions of MEPA and the changes in the Department's regulations on same race placements. Training curricula/projects will be amended as soon as possible to reflect the changes in the Department's policy to comply with the provisions of MEPA.

Standards For Foster Care and Adoption Placements

Appropriateness of placement - With the exception of subparagraph (iv) of paragraph (2) of section 430.11, which was repealed in response to MEPA, Department standards for appropriateness of placement and continuity of care as outlined in section 430.11 of Department regulations still apply. Therefore, whenever possible, workers are expected to consider all the factors relevant to the needs of the child, and attempt to place a child in a foster care setting which allows the child to retain contact with persons, groups and institutions with which the child was involved when residing with his or her parents. Note: Compliance with these standards may result in same race placements, and race/ethnicity may be among the factors considered if the case warrants it, as long as it is not the primary or determining factor for placement. The best interests of the child are usually served by minimizing the adjustments the child has to make to the home.

As required in regulation, documentation in the Uniform Case Record (UCR) after the child's placement must demonstrate that the child has been placed in a setting which allows him or her to maintain ties to his or her previous school, neighborhood, peers and family members, or show why such a placement was not possible or not in the best interests of the child. If race was one of the factors which the worker considered, the narrative must clearly confirm that it was not the sole factor or the determining factor in deciding where to place a child.

The appropriateness of placement and the physical and emotional needs of a child also apply when deciding on the adoptive placement best suited to meet the needs of a particular child. This may be particularly important to the older child freed for adoption who has been in foster care for several years and maintains some connection with his/her birth family and other relatives. Depending on the child's age and capacity to understand, he or she may decide on what type of adoptive parent(s)/home they would like, including the race, color or national origin of the adoptive parents. However, the MEPA guidelines warn against the tendency to generalize about such cases. It is important to note the explanation provided by the guidelines for such situations:

"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."

Department policy has been and continues to be that all qualified applicants should be given an equal opportunity to adopt. Consequently, Department regulation, 18 NYCRR Section 421.16 (j), states that "race, ethnic group, and religion shall not be a basis for rejecting an adoption applicant." This means that an agency may not deny an application to become an adoptive parent because of race, ethnic origin or religion of the applicant. However, as stated in the Adoption Services Manual, it is important to recognize that families are different. Maturity, self-sufficiency, ability to parent, and availability of support systems are the critical assessments in identifying parents' appropriateness for specific children. It is in the process of conducting home study/assessment of parents that Department regulation 18NYCRR Section 421.18 (d)(2), as amended, is applicable. It provides that in making adoptive placement decisions, the capacity of the adoptive parent to meet the needs of a child of a particular cultural, ethnic or racial background may be considered. The guidelines are clear that an agency/worker must not 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.

Statutory placement requirements not impacted by MEPA's

Religion: The requirements for MEPA did not include any prohibition against making a placement based on a child's or the foster or adoptive parents' religious background. Authorized agencies must continue to comply with the provisions of Section 373(3) of the Social Services Law which requires that: "In appointing guardians of children, and in granting orders of adoption of children, the court shall, when practicable, appoint as such guardians, and give custody through adoption, only to a person or persons of the same religious faith as that of the child."

Indian Children: The provisions of MEPA expressly do not extend to foster and adoptive placements covered by the federal Indian Child Welfare Act of 1978 (see 42 U.S.C 5115a (f)). Placement decisions regarding Indian children must continue to be made in accordance with the placement preferences outlined in section 431.18 of Department regulation.

Siblings: The standards set forth in section 431.10 of Department regulations regarding placement of siblings together continue to apply. Such standards ensure that diligent efforts are made to secure foster and adoptive parents willing and able to accept such siblings placements. Since such placement decisions involve blood relationships, they are not superseded by MEPA.

Foster Parents: A foster parent who has cared for a foster child continuously for a period of 12 months or longer, has a right to preference and first consideration to adopt the child when the child becomes freed for adoption. The foster parent must indicate in writing his/her intent to adopt the child prior to the time-frame by which the child must be photo-listed to avoid the need for the referral of the child for photo-listing.

Surrenders: A birth parent who surrenders a child for adoption may name the person or married couple who they want to adopt his or her child. The parent cannot stipulate that the child be placed in a home with parents of a particular race, ethnicity, or culture.

IV. REQUIRED ACTION

All social services districts and voluntary authorized agencies in New York State that receive Federal financial assistance directly or indirectly through the State Block Grant program, Title IV-E of the Social Security Act, and discretionary grants must comply with the provisions of the MEPA.

Impermissible Policies and Practices: Social services districts and other authorized agencies impacted by MEPA must review all pertinent policies, publications, and training or practice guidelines that require the use of race/ethnicity as a basis for making a decision regarding the acceptance or rejection of a foster or adoptive applicant, suitable foster and adoptive placements or termination of parental rights, to ensure compliance with the

provisions of MEPA. In accordance with federal guidelines, agencies must eliminate any policies/standards 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.

Therefore, agencies that are authorized to place children in foster and adoptive homes cannot have general policies precluding placement of a child in an otherwise suitable home solely on the basis of race, color or national origin, nor can an agency deny an application to become a foster parent or an adoptive parent because of race, color or national origin.

Federal law provides for the person who is allegedly discriminated against to bring action in federal court to enforce the provisions of MEPA. Non-compliance with the provisions of MEPA are in violation of the Civil Rights Act of 1964.

Permissible Use of Race, Culture, or Ethnicity in Placement Decisions

Agencies may consider the use of race, culture or ethnicity when considering the foster or adoptive placement of a child if consideration of such factors is necessary to protect the best interests of the child who is to be placed. Such considerations will be necessary if (as previously discussed) the child indicates the desire to be placed in a home of a particular race, culture or ethnicity, or if a prospective parent indicates a preference for a child of a particular race or ethnicity. The federal guidelines state that agencies are not prohibited from considering the expressed preference of the prospective parents as one of several factors in making placement decisions. However, if race and ethnicity is used, the focus must be on the specific child's needs and the capacity of the prospective parent(s) to meet those needs. Specific to this very narrow focus, the federal guidelines provide that as part of the home study process and preplacement discussions, an agency may, among other factors related to the capacity to care for the child, discuss with the prospective parents:

- _ their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity;

- _ their ability to meet the emotional and psychological needs of the child;

_ their 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.

Additionally, considerations of race and ethnicity must be based on an individualized determination by the agency/worker that the facts and circumstances of the specific case require such consideration. The guidelines further state that any placement policy that takes race or ethnicity into account may be subject to strict scrutiny to determine whether it satisfies MEPA's requirements. Note: In order to support and defend placement decisions, it is vital for caseworkers to adequately document the actions taken and decisions made to support a placement decision pursuant to MEPA and corresponding Department standards.

Elimination of Documentation: Uniform Case Record (UCR) - As a result of the amendment to Department regulation 18NYCRR 430.11, the following documentation for continuity of racial or ethnic background in foster homes or agency operated boarding homes is no longer required in the UCR.

Note: The Department will not be revising the forms at this time. The new "Connections" system will not contain race and ethnic background as a "continuity of environment" factor.

_ UCR Initial Risk Assessment and Service Plan DSS 4340(1/92) - Section 3 part C Continuity of Environment: eliminate 3rd column checkbox (or related explanation below grid for this factor)

= UCR Initial Assessment and Service Plan DSS 3625 (10/86) Question 6c Continuity of Environment: eliminate 3rd column checkbox (or related explanation below grid for this factor)

_ UCR Plan Amendment - Rev. DSS 4343 (1/92) Section 7 part c Continuity of Environment: eliminate 3rd column checkbox (or related explanation below grid for this factor)

_ UCR Plan Amendment - DSS 3628 (12/84) Question 8c Continuity of Environment: eliminate 3rd column checkbox (or related explanation below grid for this factor)

Recruitment Requirements: Agencies must review/evaluate their recruitment processes to ensure that they utilize strategies that generate a sufficient number of potential foster and adoptive parents to achieve a timely and appropriate placement of all waiting children. The pool of parents must reflect the racial and ethnic diversity of the children waiting for placements. Both Department regulations and the MEPA guidelines require each agency to have a comprehensive recruitment plan that includes strategies to accomplish the following:

- dissemination of information to the community at large and targeted groups/communities on the characteristics and needs of waiting children; the foster care and adoption process; and supports available to foster and adoptive parents;
- generation of a sufficient number of potential parents that resemble the racial and ethnic diversity of the children in need of placement;
- provision of cultural sensitivity training to pertinent staff to enable them to work effectively with diverse cultural, racial and economic communities and language barriers;
- assurance that the home study/approval process is accessible and available during hours convenient to all interested parents;
- involvement of communities/groups not represented or under represented in the pool of available or approved foster and adoptive parents; and
- collaboration/partnership with community agencies and organizations that can assist with recruitment efforts.

Additionally, agencies cannot utilize other types of standards that otherwise have the effect of excluding certain racial, cultural, or ethnic groups of prospective parents.

In the near future, the Department will be reviewing the recruitment and placement standards of authorized agencies for compliance with Department regulations and MEPA's standards.

V. SYSTEMS IMPLICATIONS - NONE

VI EFFECTIVE DATE

This directive is effective January 19, 1996, retroactive to October 18, 1995.

Rose M. Pandozy
Deputy Commissioner
Division of Services and
Community Development