
OCFS INFORMATIONAL LETTER

TRANSMITTAL: 98 INF-8

TO: Commissioners of
 Social Services

OFFICE: Strategic Planning
 and Policy
 Development

DATE: April 22, 1998

SUBJECT: Multiethnic/Interethnic Adoption Provisions

SUGGESTED

DISTRIBUTION: Adoption Staff
 Foster Care Staff
 Child Welfare Executive and Supervisor Staff
 Staff Development Coordinators

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ATTACHMENTS: Log No. ACYF-IM-CB-97-04 (not available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
96 ADM-2		421.18			Multiethnic Placement Act of 1994
					The Small Business Job Protection Act of 1996

The purpose of this release is to advise you of changes in federal law 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. This release supplements the previous released 96 ADM-2 on the subject and does not replace it.

President Clinton signed "The Small Business Job Protection Act" on August 20, 1996. Section 1808, entitled "Removal of Barriers to Interethnic Adoption", amended several of the provisions of the Multiethnic Placement Act of 1994 (MEPA). The major changes involved the elimination of language explicitly permitting States to consider race and ethnicity as one of a number of factors used to determine the best interests of the child, and the imposition of fiscal penalties when a corrective action plan fails to bring a state or other entity into compliance with the law. In guidelines dated June 5, 1997, the Administration for Children and Families (ACF) provided guidance and clarification on the changes and new provisions.

SUMMARY OF CHANGES AND NEW PROVISIONS

_ Elimination of Key Terms: The terms "categorically", "solely", "or otherwise discriminate in making a placement decision, solely," were eliminated from the provisions in the Multiethnic Placement Act of 1994 that prohibited the denial or delay of the opportunity to become a foster or adoptive parent, or to have a child placed in foster or adoptive home on the basis of race, color, or national origin. According to the guidelines, the elimination from the statute of these terms stresses that any action meant to delay or deny placements on the basis of race, color, or national origin are prohibited. More specifically, the effect of the elimination from the statute of these terms is to "clarify that even where a denial is not based on a categorical consideration, which is prohibited, other actions that delay or deny placements on the basis or race, color or national origin are prohibited."

_ Repeal of the "permissible consideration" provision: The intent was to eliminate any language that could be misconstrued as allowing States and entities to "routinely" consider race, color or national origin when making a placement decision in the best interests of the child. According to the guidelines, Congress wants to ensure that the "strict scrutiny" standard is the only appropriate standard for evaluating the use of race, color or national origin in foster care or adoptive placements. Such consideration can only be made when necessary to protect the best interests of the child and when based on "concerns arising out of the circumstances of the individual case." "The primary message of the strict scrutiny standard in this context is that only the most compelling reasons may serve to justify consideration of race and ethnicity as part of a placement decision." The federal guidelines conclude that "occasions where race or ethnicity lawfully may be considered in a placement decision will be correspondingly rare."

_ Financial Penalties: The federal law also subjects States and other entities that receive federal funds to potentially significant graduated financial penalties that will vary for States according to their population. States or agencies found out of compliance may be given a corrective plan and a period of six months to voluntarily come into compliance. Continued noncompliance or failure to implement a corrective action plan can result in a reduction of federal funding of up to 5% in a fiscal year for a State. Other agencies and entities may lose all funds paid by the State during the quarter. In addition, an individual has a private right of action under the federal Civil Rights Act against the offending agency.

_ Recruitment: The requirements in MEPA for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of the children in the State in need of homes were retained.

IMPLEMENTATION

Department of Health and Human Services (DHHS): The two DHHS agencies, the Office of Civil Rights (OCR) and the Administration for Children and Families (ACF) are developing a common protocol and review standards that will be used in checking for compliance with MEPA and the Interethnic provisions, developing corrective action plans, and imposing penalties. In the interim, OCR will continue to conduct independent reviews for compliance by States with the provisions of MEPA, while ACF will begin their preliminary review for MEPA during the 1997 federal fiscal year.

State: The Office of Children and Family Services is disseminating this INF to social services districts and voluntary authorized agencies regarding the amendments to MEPA and the federal guidelines explaining the new interethnic provisions. We are proposing to further amend the regulations to ensure that the language provides no misconception of the use of race, color or national origin in placement decisions except as narrowly defined in the federal guidelines. Following publication of the regulatory amendment to 18NYCRR 421.18 (c), additional information explaining the amendment and any changes to 96 ADM-2 will be disseminated.

In the interim, as previously stressed in 96 ADM-2:

- State policy has been and continues to be that all qualified foster and adoptive applicants must be given an equal opportunity to foster or adopt a waiting child. 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 best interests of the child, consideration of race and ethnicity must be based on an individualized determination by the agency/worker that the needs of the child and facts and circumstances of the specific case require such consideration.

Any placement policy that takes race or ethnicity into consideration may be subject to the "strict scrutiny" standard to determine whether it satisfies federal law.

- Both State regulations and the federal guidelines require agencies involved in the recruitment of foster and adoptive parents to have a comprehensive recruitment plan. This plan must generate a pool of parents that reflect the racial and ethnic diversity of the children waiting for placements.

Note: Chapter 436 of the Laws of 1997 renames the Department of Social Services as the Department of Family Assistance comprised of two independent offices -- the Office of Children and Family Services and the Office of Temporary and Disability Assistance. Upon the execution of a Memorandum of Understanding and compliance with the Civil Services Laws, responsibility specified in that Chapter Law, will be transferred from the former Department of Social Services to the Office of Children and Family Services (OCFS) and fully integrated with the functions and duties of the former Division for Youth.

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