



APR 21 1995

cc: Carol
Bill Galston } by 5pm
Kim Ross }
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LETTER TO ADDRESSEES:

SUBJECT: Guidance on the Multiethnic Placement Act of 1994 *file*

The Administration for Children and Families (ACF) and the Office for Civil Rights (OCR) of the Department of Health and Human Services (DHHS) are writing to transmit new policy guidance on the use of race, color, or national origin as considerations in adoption or foster care placements.

The guidance is designed to assist public and private agencies, that are involved in adoption or foster care placements and that receive Federal funds, in complying with Title VI of the Civil Rights Act of 1964 (Title VI) and the Multiethnic Placement Act of 1994 (MEPA).

The Multiethnic Placement Act, signed into law by President Clinton on October 20, 1994, is designed to: prevent discrimination in the placement of children in foster care and adoption on the basis of race, color, or national origin; decrease the length of time that children wait to be adopted; and facilitate the identification and recruitment of foster and adoptive parents that can meet children's needs. The Act prohibits states or agencies that receive Federal funds from delaying or denying the placement of any child solely on the basis of race, color or national origin.

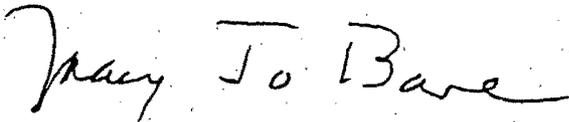
HHS is committed to assisting all covered agencies or entities to come into voluntary compliance with MEPA. Toward this end, within the next month, we will complete a review of the applicable state statutes, regulations and published policies in this area. We will contact you again if we believe your state is not in compliance with MEPA, and we will provide technical assistance on compliance at your request. In the meantime, we encourage states and agencies to begin their own review of statutes, regulations and policies.

Compliance with the non-discrimination provisions of MEPA is required no later than one year after the date of its enactment, or October 21, 1995. Agencies desiring technical assistance regarding compliance with the nondiscrimination provisions should contact Ron Copeland of OCR at (202) 619-0553, TDD 1-800-537-7697.

Compliance with the recruitment provisions of MEPA is required for Federal approval of FY 1996 title IV-B state plans. State recruitment plans must be submitted by October 31, 1995. Those states which are submitting consolidated state plans, including title IV-B, subparts 1 and 2, may include their recruitment plans in the consolidated state plan and submit them by the expected due date of June 30, 1995. For those states submitting separate title IV-B, subpart 1 plans, the recruitment plans must be submitted by October 31, 1995 even though the rest of the state plan may not be submitted until later. Technical assistance on recruitment efforts may be obtained by contacting Ellen Carey of ACF at (202) 205-8652 (adoption) and Gerri Robinson (202) 205-8575 (foster care), TDD (202) 401-4675.

The Department is committed to vigorous enforcement of MEPA to ensure that temporary foster care placements and permanent adoptive homes are readily available for children who need them, that children are not subject to discrimination in their placements, and that all children have the benefit of a loving, permanent home. Please be assured that in the coming months, we will assist covered agencies or entities in taking the actions necessary to fulfill these important statutory objectives.

Sincerely,



Mary Jo Bane
Assistant Secretary
for Children and Families



Dennis Hayashi
Director
Office for Civil Rights

Attachments

Addressees:

State agencies administering or supervising the administration of Titles IV-B and IV-E of the Social Security Act

Adoption Opportunities grantees

State agencies enforcing civil rights

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: 4/20/95 Dennis Hayashi

Dennis Hayashi,

Director,

Office for Civil Rights

Dated: 4/20/95 Mary Jo Bane

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.¹ 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

¹ MEPA applies to decisions regarding both foster care and adoption placements. In discussions regarding the bill, members of Congress focused primarily on problems related to adoption decisions.

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.² 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.³ The child is discussed with the family, and

² Among the child-related factors often considered are:

- the child's current functioning and behaviors;
- the medical, educational and developmental needs of the child;
- the child's history and past experience;
- the child's cultural and racial identity needs;
- the child's interests and talents;
- the child's attachments to current caretakers.

³ Among the factors that agencies consider in assessing a prospective parent's suitability to care for a particular child are:

- ability to form relationships and to bond with the specific child;
- the ability to help the child integrate into the family;
- the ability to accept the child's background and help the child cope with her or his past;

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

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- the ability to accept the behavior and personality of the specific child;
 - the ability to validate the child's cultural, racial and ethnic background;
 - the ability to meet the child's particular educational, developmental or psychological needs.

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.

B. 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 barriers;
- * 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 April 25, 1995. 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.

THE MULTIETHNIC PLACEMENT ACT (MEPA) Fact Sheet

What is MEPA?

- ▶ MEPA is the Multi-Ethnic Placement Act, signed into law by President Clinton in October, 1994. MEPA is designed to:
 - Prevent discrimination in the placement of children on the basis of race, color, or national origin.
 - Facilitate the diligent recruitment of foster and adoptive parents.
 - Increase the number of children who are adopted.
- ▶ MEPA prohibits states or public and private foster care and adoption agencies that receive Federal funds from delaying or denying the placement of any child solely on the basis of race, color or national origin.
- ▶ MEPA permits an agency to consider both a child's cultural, racial, and ethnic background and the capacity of the foster or adoptive parents to meet the needs of a child of a specific background, as one of a number of factors used in determining whether a placement is in the child's best interests. This factor must, however, be applied on an individualized basis, not by general rules.
- ▶ MEPA requires agencies 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.

Who are the children MEPA is designed to help?

- ▶ MEPA is intended to help children in foster care who are awaiting adoption. In 1990, approximately 69,000 children in foster care had a goal of adoption. Of those children, parental rights had been terminated for 20,000, so they were legally free to be adopted and awaiting placement in an adoptive home.
- ▶ In particular, MEPA is designed to help children who are harder to place, including minority children. Of the children awaiting adoption at the end of 1990, approximately 46% had already waited two years. It takes substantially longer to find homes for minority children.
- ▶ The great majority of the children awaiting adoptive placement have been abused or neglected and are in foster care. A determination has been made that it is unsafe for them to return to their parents.
- ▶ Most of the children are school age; few are infants. In 1990, approximately 4% were under one year old, 36% were ages 1-5, 43% were ages 6-12, and 17% were 12 years and older.

- ▶ Two out of three children legally free and awaiting adoption have special needs: medical, developmental, behavioral or psychological.

Why does it take so long for children to be adopted?

- ▶ Finding adoptive homes for older children and those with emotional or physical problems is difficult, yet most of the children waiting for adoption fall into these categories. While there are many families seeking to adopt, many of these families want young, healthy children.
- ▶ Lengthy processes to terminate parental rights, lack of financial resources for adoption, excessive caseloads and difficulty in recruiting foster and adoptive families contribute to the slow adoption of many of these children.
- ▶ Some states and agencies have policies that discourage transracial placements or that allow lengthy searches for same race families before authorizing transracial placements. Some families are informally discouraged from ever applying to adopt children of a different race or ethnicity. These policies can result in delaying or preventing adoption of children by reducing the number of available families.

How will MEPA help?

- ▶ By preventing discrimination that can cause delays in or denial of adoptive placements, and by increasing recruitment efforts, MEPA should increase the number of children who are adopted.

What are the next steps for states?

- ▶ MEPA allows states one year from enactment, or until October 21, 1995, to bring their policies into compliance with MEPA's non-discrimination provisions (extensions can be granted if additional time is needed to change state statutes). In 1996, states' Title IV-B Child Welfare Services state plans must demonstrate how they will meet the recruitment requirements of MEPA.
- ▶ On April 24, 1995 DHHS issued guidance to assist agencies that receive federal funds for adoption or foster care placements and help ensure compliance with Title VI of the Civil Rights Act of 1964 and MEPA.
- ▶ The Administration for Children and Families (ACF) and the Office for Civil Rights (OCR) of the DHHS will help states and agencies meet the requirements of MEPA and ensure that neither race, color or national origin is used to delay or deny placement of children.

Is MEPA an "unfunded mandate"?

- ▶ No. Under Title IV-E of the Social Security Act, the federal government will match 75% of any state funds used to train staff or foster and adoptive parents; the federal government will match 50% of state administrative funds used for recruitment and child placement activities.

ADOPTION Fact Sheet

How does the adoption system work?

- ▶ Under state and federal laws, before exploring adoption possibilities, state child welfare agencies are required to try to reunite children with their parents when a child's safety can be assured. States are required to make a determination regarding reunification or adoption within one year.
- ▶ Between 50 and 70% of all children initially placed in foster care eventually are returned to their parents.
- ▶ When reunification is not possible, state and federal laws require efforts to find a permanent home for a child, preferably through adoption. All state laws require that, before an adoption can take place, the legal rights of the biological parents be severed through a state court proceeding.

Who are the children who need adoptive homes?

- ▶ One group consists of children, primarily infants, whose parents voluntarily relinquish them for adoption; little is known about these children or the nature of their adoptive placements because their parents generally deal with private adoption agencies or make private placements with adoptive families.
- ▶ A second group of children are those who have been placed in foster care based on court determination that they were abused or neglected, and for whom reunification efforts have been unsuccessful.
- ▶ In December 1990, there were approximately 69,000 foster children in the country for whom state agencies had determined that adoption was the appropriate goal. Approximately 20,000 of these children were legally free to be adopted (their parents' legal rights to ever regain custody had been terminated) and were waiting to be adopted.
- ▶ Forty-four percent of the children awaiting adoption were white, 43% African American, 7% Hispanic. Only four percent of these children were under age 1; 36% were between the ages of 1 and 5; 43% were 6-12 years of age; and 17% were over the age of 12. The median age was 7.4 years.
- ▶ Two out of three waiting children have special needs: medical, developmental, behavioral or psychological.

How long do children wait for adoption?

- ▶ Of the children awaiting adoption at the end of 1990, approximately 46% had already waited two years.
- ▶ It takes substantially longer to find homes for minority children. Older children and sibling groups irrespective of race also have longer waits.

- ▶ Many children are never adopted, even though their biological parents' parental rights have been terminated.

Why does it take so long and why do so many children go unadopted?

- ▶ Finding adoptive homes for older children and those with emotional or physical problems requires aggressive action by agencies, and most of the children waiting for adoption fall into these categories.
- ▶ In 1990, 43% of the children waiting for adoption were 6 to 12 years old; only 4% were infants. Two out of three children -- a doubling since 1982 -- had some special need: they were disabled, older, had siblings, or were minority.
- ▶ Lengthy processes to terminate parental rights, lack of financial resources for adoption, excessive caseloads and difficulty in recruiting foster and adoptive families contribute to the slow adoption of many of these children.
- ▶ There is some evidence that the adoption of minority children is being slowed because some foster care and adoption agencies are unwilling or reluctant to place these children with non-minority families. Some state agencies have followed explicit or implicit policies that make race or ethnicity the primary consideration in placement thus reducing the pool of available families.

What is the Clinton Administration doing to increase adoptions?

- ▶ The Administration is ensuring that states make full and effective use of the Adoption Assistance program, which provides critical economic support to families who adopt special needs children, since they may have large medical and other expenses. Under the Clinton Administration, the number of children for whom adoption subsidies are provided has increased by about 30%.
- ▶ Grants have been provided to public and private agencies to develop successful models for recruiting families, provision of post-legal adoption services, support for parent groups, and the development of training curricula.
- ▶ The Administration has conducted national and regional leadership conferences to build the capacity of public and private agencies to facilitate the adoption of minority and special needs children.
- ▶ The Administration provides support for the National Adoption Exchange, the Adoption Clearinghouse, the National Resource Center for Special Needs Adoption, and the Interstate Compact on Adoption and Medical Assistance.
- ▶ The Administration is committed to fully enforcing the Multiethnic Placement Act, whose non-discrimination and recruitment provisions should increase the number of children who are adopted.
- ▶ The Clinton Administration has expressed strong concerns about "welfare reform" proposals that would jeopardize these programs and eliminate the guarantee of federal funds to help support adoptions.

**CURRENT STATE POLICIES AND PRACTICES
IN MULTIETHNIC ADOPTION
Fact Sheet**

Who sets policy and makes decisions about adoptive placements for children?

- ▶ Policies with respect to placement of children for adoption are established by each state.
- ▶ In most states, both public and private adoption agencies -- either run directly by the state or under contract with the state -- have authority to make decisions with respect to placing children in specific homes.
- ▶ Ultimately, these decisions must be approved by a court as part of the adoption process.

What do state laws provide?

- ▶ In most states, the state adoption statute states that children should be placed in homes that promote their best interests. Few state statutes define the term "best interests."
- ▶ Most states have adopted regulations or agency policies that identify some factors to be considered in choosing placements. These include: the relationship of the family to child; where siblings are placed; the physical and emotional needs of the child; the capacities of the prospective parents; the age, sex, racial, ethnic, and cultural identity of the child; and continuity and stability of the child's foster care placement, and the child's psychological attachment to the foster family.

How do some states currently consider race, culture or ethnicity in their adoption policies?

- ▶ The racial, ethnic, and cultural background of the child are now among the factors that many state statutes, regulations, or policy manuals specify as being relevant to placement decisions. A number of state policy manuals specify that placement with a family of the same background as the child is generally in a child's best interests.
- ▶ Some states specify a rank order of preferences for placements, which make placement in a family of the same race or ethnicity as the child a highly 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 or ethnicity before the child can be placed with a family of a different race 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.
- ▶ 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.
- ▶ In some states, available families, especially foster families, have been denied the right to adopt children of a different race or ethnicity.
- ▶ In some states, agency policies may also discourage some families from ever applying to adopt children of a different race or ethnicity.
- ▶ Some states prohibit discrimination in placements.

How will The Multiethnic Placement Act (MEPA) affect state laws and policies?

- ▶ MEPA prohibits states or foster care and adoption agencies that receive Federal funds from delaying or denying the placement of any child solely on the basis of race, color or national origin. HHS' Guidance identifies a number of policies that would be inconsistent with these requirements of MEPA, such as exclusively searching for families of a specific race or ethnicity.
- ▶ MEPA allows race or ethnicity to be considered only as it can be shown to relate to the specific needs of the individual child. For example, under MEPA an agency may look to see whether a prospective family has thought about the needs of the particular child, and is equipped to cope with these needs. Children who are older, disabled, or of a different race or ethnicity from the family may need special attention and therefore MEPA allows a placement agency to assess the capacity of the family to meet this child's needs.
- ▶ While an agency may assess any advantages that would be derived by the child from placement in a family of similar background, this would need to be considered along with the other advantages each prospective family might bring to the child. They may not use or rely on race-based generalizations in making their assessments.
- ▶ Neither MEPA nor the Guidance seek to regulate any state policies with respect to placement decisions that are not based on race or ethnicity. Agencies may not, however, use other factors as a proxy for race or ethnicity.

**THE MULTIETHNIC PLACEMENT ACT (MEPA)
CIVIL RIGHTS ENFORCEMENT PROCESS
Fact Sheet**

What is the general enforcement process of Title VI of the Civil Rights Act of 1964?

- ▶ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, prohibits discrimination on the basis of race, color, or national origin in programs receiving federal financial assistance.
- ▶ If the Department determines that a recipient of federal financial assistance has unlawfully discriminated on the basis of race, color, or national origin, it must notify the recipient of its finding and seek voluntary compliance. 42 U.S.C. § 2000d-1; 45 C.F.R. § 80.7(d).
- ▶ If attempts to obtain voluntary compliance are unsuccessful, the Department may enforce Title VI by initiating administrative proceedings to terminate federal financial assistance, or it may pursue other means, including referring the matter to the Department of Justice with a recommendation to pursue judicial proceedings. 42 U.S.C. § 2000d-1; 45 C.F.R. § 80.8(a).

How does a state or agency know whether it is impacted by MEPA?

- ▶ If a state or agency receives federal financial assistance, either directly from HHS or indirectly through a state administered HHS program, such as community services block grant funding, it is required to be in compliance with the Multiethnic Placement Act.

How does a state or agency know whether it is in compliance with MEPA?

- ▶ HHS officials are in the process of reviewing state statutes and published agency policies regarding adoption and foster care placement.
- ▶ In the event that the Department determines that a statute or policy authorizes practices inconsistent with MEPA or Title IV, it will notify the state or agency no later than a month after issuance of the guidance.
- ▶ States and agencies should also review their statutes, policies and practices to ensure that they are in compliance.

▶ In the meantime, representatives from the Office for Civil Rights and the Administration for Children and Families are available to provide technical assistance to states and agencies to help them come into compliance with the Multiethnic Placement Act.

What if a state or agency is notified that certain practices, statutes or policies are out of compliance?

▶ If a state or entity is notified that certain practices, statutes or policies might be out of compliance with the Multiethnic Placement Act, it will need to make necessary changes as soon as feasible. With some limited exceptions, MEPA requires that states and agencies be in compliance no later than October 21, 1995.

▶ HHS will work with states and agencies to assist in making the changes necessary for compliance.

▶ HHS is committed to assisting all covered agencies or entities to come into voluntary compliance with the Act.

▶ If an agency or state voluntarily complies, no enforcement action will be taken.

Internal Use Only

MEPA Questions and Answers

Q. What is the the Multiethnic Placement Act of 1994?

A. The Multiethnic Placement Act of 1994 was signed into law by the President in October 1994. It was designed to facilitate the adoption of children, especially minority children. The Act prohibits foster care and adoption agencies from denying or delaying placement of a child in a foster or adoptive home solely on the basis of race, color or national origin of the child or prospective parent. The new law does permit an agency to consider the child's cultural, racial and ethnic background and the capacity of the foster or adoptive parents to meet the needs of a child of a specific background, as one of a number of factors used in determining whether a placement is in the child's best interests. This factor must, however, be applied on an individualized basis, not by general rules and cannot be used to delay placements.

Q. How many children are awaiting adoptive placement?

A. There are two distinct groups of children awaiting placement. One group consists of infants or very young children whose parents give them up for adoption. In general, these children are placed quickly with adoptive families.

A second group consists of children who have been separated from their parents due to abuse and neglect and have been placed into foster care. If a child cannot be reunited with her or his parents, the state may terminate the parental rights of the biological parents, making the child available for adoption. The best available data indicate that, in 1990, approximately 69,000 children in foster care had a goal of adoption. Of those children, parental rights had been terminated for 20,000, so that they were legally free to be adopted and immediately available for adoption.

Q. What is the racial and ethnic breakdown of the children needing adoptive homes?

A. The best available data indicate that about half are white and half black. Children of Hispanic background comprise 7% of the children.

Q. How many children are placed transracially?

A. We do not know. Adoptions are not counted in a way that allows us to document the number of transracial or transcultural placements.

Q. What are the characteristics of waiting children?

A. In 1990, approximately 40 % were between the ages of 6 and 12 years and 36% aged 1 to 5. Only 4% were infants. About two-thirds had some special need: medical, psychological, or developmental. Many of the children were in sibling groups.

Q. How long does it take to place children in adoptive homes once it has been determined that they should be adopted?

A. In 1990, approximately 40% of the children in foster care who were legally free to be adopted had already waited two years for placement with adoptive families. It takes, on average, about twice as long to find homes for minority children.

Q. Why do children wait so long for placement?

A. There are a number of reasons. The children that are waiting are not the children we traditionally think about when we talk about adoption. Many of the children are not easy to place. In 1990, only 4% were infants. About two-thirds had some special need: medical, psychological, or developmental. Many of the children were in sibling groups.

Within the child welfare system, there are a number of barriers to the adoption of these children including:

- the need for adoption is not recognized early
- there are delays in taking legal action to terminate parental rights
- the families who wish to adopt children often do not want to adopt children with special needs or problems
- spending resources to support the adoption of waiting children are not always a priority of the state agency
- some states and agencies have policies that discourage transracial placements or that allow lengthy searches for same race families before authorizing transracial placements.

Within communities there are may be other major obstacles to the placement of children including:

- lack of knowledge of the waiting children
- the community perspective that the criteria for adoption is heavily weighted toward families with high incomes, homeownership, savings, etc.

Q. I hear that there are lots of adoptive families seeking children and that agencies will not place minority children with available families of a different race or ethnicity. Is this true?

A. While there are many families seeking to adopt children, many of these families want young, healthy children. By contrast, most of the minority children waiting for adoptive homes are older and/or have disabilities. The policies of some agencies with respect to racial matching contribute to the problem, although little is known about this. Some available families, especially foster families, have been denied the right to adopt children of a different race or ethnicity. Agency policies may also discourage some families from ever applying to adopt children of a different race or ethnicity.

Q. What types of laws or policies do states now have with respect to consideration of race or ethnicity?

A. 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.

Q. What is prohibited under the HHS Guidance?

A. Any practices that delay or deny placement on the basis of race or ethnicity. In particular, agencies may not conduct searches only for families of the same race or ethnicity as the child or have periods of time during which a search is made exclusively for a same race family, they may not have rules or policies that say a same race placement is preferred over other placements, and they may not engage in other practices that make it difficult to make transracial placements.

Q: How will it be determined if a state or agency is currently in compliance with the Multiethnic Placement Act requirements?

A: HHS officials are in the process of reviewing statutes and published policies regarding adoption and foster care placement. In the event that this review indicates that a state may need to alter its policies or statutes, the state will be notified within a month. States and agencies are being encouraged to review their statutes, policies and practices to ensure that they are in compliance.

Q: How many states are not in compliance with the Multiethnic Placement Act?

A: Our preliminary review indicates that a number of states have statutes or policies that are not in compliance with the requirements of MEPA but a full examination of state statutes and policies is needed before a final determination is made.

Q: What happens if a state or agency is notified that it is out of compliance with the Multiethnic Placement Act?

A: With some exceptions in cases where statutory changes are needed, all entities must be in compliance by October 21, 1995. HHS will work with affected entities to assist in making the necessary changes in order for the state or agency to be in compliance. HHS is committed to assisting all covered agencies or entities into coming into voluntary compliance with the Act. If an agency or state voluntarily complies, no enforcement action will be taken. We plan to work closely with states to make sure that the intent of MEPA is fully realized and that race or ethnicity is not used to delay or deny placements, while respecting the states' role in running these systems.

Q: What if, as a result of state statutory law, a state is out of compliance with the Multiethnic Placement Act, thereby making it impossible to come into compliance within six months?

A: If a state statute must be amended to change a particular practice that is inconsistent with the Multiethnic Placement Act, the Secretary may extend the deadline for compliance on a case-by-case basis. This extension may be for a reasonable number of days after the close of the first state legislative session.

Q. What are the penalties if a state or agency fails to comply?

A. If attempts to obtain voluntary compliance are unsuccessful, the Department may enforce Title VI by initiating administrative proceedings to terminate federal financial assistance, or it may pursue other means, including referring the matter to the Department of Justice with a recommendation to pursue judicial proceedings.

Q. Many of the cases where race has seemed to play a role involve foster parents who want to adopt a child of a different race who has been placed with them. How are such situation affected by the new guidelines?

A. These are the situations that often receive the most publicity and reflect the greatest problems with current policies in some states. Under the guidance, all decisions must focus on the needs of the individual child. When foster parents who have cared for a child wish to adopt the child and are qualified to do

so, it would be illegal to remove children from these parents solely to place them with same race families.

Q. The Multiethnic Placement Act allows the consideration of race as one of a number of factors in selecting a placement for a child. Does this consideration allow agencies to avoid transracial placements?

A. No. The legislation specifically prohibits the use of race to deny or delay the placement of a child. Placement decisions must be guided by the child's best interest. MEPA allows race or ethnicity to be considered only as it can be shown to relate to the specific needs of the individual child. For example, under MEPA, an agency may look to see whether a prospective family has thought about the needs of the particular child and is equipped to cope with these needs. Children who are older, disabled, or of a different race or ethnicity from the family may need special attention and therefore MEPA allows a placement agency to assess the capacity of the family to meet this child's needs.

Agencies may not use or rely on race-based generalizations, however, in making these assessments.

Q. Can race be the deciding factor between two qualified families?

A. In cases where more than one qualified family is available, the strengths and weaknesses of each placement would be individually considered. In such situations, an agency may assess any advantages that would be derived by the child from placement in a family of similar background. This would need to be considered along with any other advantages that each prospective family can offer the child.

Q. How does the guidance affect policies of trying to place children with relatives, if they cannot remain with or be returned to their biological parents?

A. Many states have concluded that placement with members of a child's extended family often is best for a child who needs foster care or an adoptive home, since such placements may facilitate ties with siblings and a sense of belonging for the child. Neither MEPA nor the guidance seek to regulate any state policies with respect to placement decisions that are not based on race or ethnicity. Agencies may not, however, use other factors as a proxy for race or ethnicity.

Q. Are there special considerations when a family is adopting a child who is of a different background?

A. Adoption works best when a families love and nurture children and make them feel good about themselves. When a family is

considering a child of a different race, culture or ethnicity, the family should be able to recognize the importance of the child's background and be that it can help the child appreciate and value her or his background and current experience.

Q. Does MEPA require that persons wishing to adopt or care for a child of a different race or ethnicity have to undergo special multicultural sensitivity training?

A. No. However, many agencies do try to assess a prospective caretaker's ability and willingness to recognize each of a child's attributes and needs so that the agency can place children in settings sensitive to their needs. This is permissible under MEPA, provided it is not done with an intent to discourage transracial placements.

Q. What can be done to increase the number and speed of placements?

A. Programs that are effective in speeding up adoptive placements provide timely service to birth parents to determine the need for adoption; aggressively work to bring termination of parental rights proceedings when children cannot be returned to their biological parents; actively recruit families accepting of children with diverse and special needs; and work closely with community groups to identify potential placements. These programs also provide material and emotional support to families.

Q. What will an agency be expected to do to meet MEPAs requirement that states make diligent efforts to recruit potential foster and adoptive families who reflect the diversity of the children needing placement?

A. There are a number of things agencies can do develop a successful recruitment program. Important aspects of a comprehensive recruitment plan would include:

- o a description of the waiting children and their characteristics ;

- o specific strategies to reach all parts of the community;

- o diverse methods of disseminating information about adoption and foster care, as well as information about specific children needing placements;

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

- o strategies for training staff to work with diverse cultural, racial, and economic communities;
- o strategies for dealing with linguistic barriers of potential families;
- o non-discriminatory fee structures; and
- o procedures for a timely search for prospective parents for a waiting child, including the use of exchanges and other interagency efforts;
- o financial, staff, and community support for adoptive families after the adoption is finalized.

Q. Can recruitment target certain communities?

A. Yes, but it cannot exclude members of other communities who respond to the recruitment efforts.

Q. Isn't recruitment expensive? Are Federal resources available to pay for these costs?

A. Under Title IV-E of the Social Security Act, the federal government will match 75 percent of any state funds used for staff training and for foster and adoptive parent training; the federal government will match 50% of state administrative funds used for recruitment and child placement activities.

Q. What is a non-discriminatory fee structure?

A. A number of policies might be discriminatory. For example, a fee structure that uses classifications based on the race or ethnicity of the child would be subject to strict scrutiny as to its legality.

Q: Does MEPA mean that large numbers of minority children will be placed transracially?

A: Our goal is to assure that every child has a family that will make a commitment to nurture and care for her or him on a permanent basis. We hope that this legislation enhances our goal. The bill both prohibits denial and delay of placement based on race, culture and ethnicity and requires diligent efforts to recruit families from the communities from which children come. Under these provisions, the number of children placed in adoptive homes and the speed with which they are placed should increase.

Q. Can you comment on allegations regarding HHS gutting the Multiethnic Placement Act?

A. HHS and the Clinton Administration strongly supported passage of MEPA and is on record as opposing all forms of discrimination with respect to placement decisions. In a letter published by the Wall Street Journal on March 16, 1995, Secretary Shalala indicated that "Administration and the Department are committed to moving all children into loving homes as quickly as possible regardless of the race of the child or family....." She further indicated that DHHS had worked with Senator Metzenbaum, the author of the bill, to allow enforcement under Title VI of the Civil Rights Act and to assure that the permissible consideration of race as a factor in decision-making was constitutional.

Q. Did HHS suggest changes in the bill while it was being considered?

A. HHS, on behalf of the Administration, suggested three changes in the bill, all of which were adopted by the conferees. One change involved the language regarding how race could be considered by an adoption or foster care agency. From the time Senator Metzenbaum introduced the bill, he included a section allowing race to be one of a number of factors taken into account in making decisions. HHS suggested changes in the original language in order to clarify, not expand, this provision and to insure that the bill would be constitutional. HHS also suggested adding the provisions regarding recruitment. Finally, HHS suggested using Title VI of the Civil Rights Act as the enforcement mechanism since this was the most effective and flexible way to bring states into compliance.

Q. Why hasn't HHS acted sooner to implement the Act?

A. We are proud of the speed with which the Department moved to develop this guidance. We have published the guidance within the six months specified by the statute. In addition, shortly after the Act was passed, the Department issued an Information Memorandum (IM) about the Act to all States. The IM informed States of the passage of the legislation and alerted them to its new requirements.

Q: Why have states like Texas been permitted to carry-out policies like those that led to the recent lawsuit by the Mullens?

A. Decisions with respect to placement of children in foster or adoptive homes are basically a matter of state policy. The federal government can only get involved when a state's policies or practices violate Title VI of the Civil Rights Act of 1964. Because most allegations of discrimination with respect to adoption involve claims that an agency acted discriminatorily in a specific case, not that a state's law is illegal, such

situations generally come to the attention of the federal government only when a complaint of discrimination is filed with HHS' Office for Civil Rights.

Q. It has been reported that HHS was considering allowing agencies to do exclusively same race\ethnicity searches for up to a year. Is that true?

A. No. As the guidance makes clear, states may not have policies authorizing exclusively same race searches for a period.

Q. What is the difference between the Multiethnic Placement Act as passed in 1994 and the transracial adoption provisions in the HR 4, the welfare bill approved by the House?

A: Both MEPA and HR 4 forbid states from denying or delaying placements on the basis of race, color, or national origin. There are several significant differences:

- (1) Under the Multiethnic Placement Act of 1994, noncompliance with the provisions of the law is deemed a violation of Title VI of the Civil Rights Act of 1964. That law allows HHS to use a variety of compliance mechanisms, tailored to the specific situation. The remedies range from asking states to take corrective action requirements to requesting court orders to enforce compliance to financial penalties, including a termination of all program funds.

Under HR 4, a state that violates the provisions of the law would be required to pay back to the Secretary all funds that were paid to the state under "this part." While the language is not entirely clear, it appears that under HR 4 a state that is found to have discriminated would lose all of its child protection block grant funds, retroactively, for the period during which the discrimination occurred.

- (2) HR 4 does not contain a permissible consideration section. The implications of this are not clear.

Q. In "Losing Isaiah" the dispute seems to be focused on race. How does the Department see it ?

A. We see this as a dispute over parental rights rather than race. There is a presumption in state law and tradition that the birth parent is the preferred caretaker for a child unless the parent has demonstrated a permanent inability to care for the child.

Questions By State Officials

Q: How do I know if the Multiethnic Placement Act of 1994 impacts my agency or state?

A: If your agency/state receives federal assistance either directly from HHS or indirectly through a state administered HHS program, such as community development block grant funding, your agency/state and agencies with whom it contracts with for placement services are required to be in compliance with the Multiethnic Placement Act.

Q: How do I know whether my agency is currently in compliance with the Multiethnic Placement Act requirements?

A: HHS officials are in the process of reviewing statutes and published policies regarding adoption and foster care placement. In the event that this review indicates that your state may need to alter its policies or statutes, your state will be notified within a month. States and agencies should also review their statutes, policies and practices to ensure that they are in compliance. In the meantime, representatives from the Office for Civil Rights and the Administration on Children and Families are available to provide technical assistance to states and agencies to help them come into compliance with the Multiethnic Placement Act.

Q: What happens if my state/agency is notified that it will be out of compliance with the Multiethnic Placement Act?

A: With some exceptions in cases where statutory changes are needed, all entities must be in compliance by October 21, 1995. Should your state or agency be notified that certain practices, statutes or policies might be out of compliance with the Multiethnic Placement Act, HHS will work with your state or agency to assist in making the necessary changes in order for the state or agency to be in compliance. HHS is committed to assisting all covered agencies or entities into coming into voluntary compliance with the Act. If your agency or state voluntarily complies, no enforcement action will be taken. The goal of the Multiethnic Placement Act is to ensure that all children who are in need of adoptive or foster families will not be subject to discriminatory placement practices and that there will be an adequate pool of prospective foster and adoptive parents. HHS wants to work with you to achieve this goal.

Q: What if, as a result of state statutory law, my agency or state is out of compliance with the Multiethnic Placement

Act, thereby making it impossible to come into compliance within six months?

A: If a state statute must be amended to change a particular practice that is inconsistent with the Multiethnic Placement Act, the Secretary may extend the deadline for compliance on a case-by-case basis. This extension may be for a reasonable number of days after the close of the first state legislative session. It should be noted that where state statutory law is unconstitutional, the state need not enforce the provisions that are unconstitutional. Some of the requirements under the Multiethnic Placement Act are constitutionally required.

COPY

THE WHITE HOUSE

WASHINGTON

October 12, 1995

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco *CHR*

SUBJECT: Update on Transracial Adoptions

The deadline for state compliance with the Multiethnic Placement Act (MEPA) is approaching, so I thought it would be useful to provide you with an update on state compliance and the Department of Health and Human Services' enforcement of the law.

In general, the states are agreeing to come into compliance. However, it is more difficult to know whether the actual practices of social workers are changing, and so we will continue to work with HHS to ensure that the law is vigorously enforced.

Progress on State Compliance: States must comply with MEPA by October 21 of this year. If this requires a change in state law, a state may request an extension.

HHS met the law's requirement to issue enforcement guidelines by April of this year. HHS then reviewed the laws, regulations, and policies of each state, and in June informed 29 states that their practices did not comply with MEPA. Since then, HHS has worked with those states to help them come into compliance. At this point, nine states have compliance issues, but each of them has indicated a willingness to comply with MEPA.

- o Four states (Arkansas, California, Kentucky, and Minnesota) have laws that violate MEPA. Three have requested extensions: California expects state legislative action by January 1996, with Kentucky following by April 1996, and Minnesota by July 1996. HHS will grant these extensions prior to October 21. Arkansas states that it does not need an extension because state law allows the state to override laws that conflict with Federal law. HHS is verifying this. Arkansas does plan to change its statute at some point.
- o Four states (Iowa, Maryland, Oklahoma, and Virginia) have regulations that may not be changed by October 21. Iowa and Maryland have requested extensions based on the length of time needed to make a regulatory change, but HHS does not have the authority to issue an extension for this reason. Maryland will issue an interim policy complying with MEPA on October 21.

Oklahoma's new regulation is now on the Governor's desk, and HHS will urge him to sign it before October 21. Virginia will issue an interim policy to enforce compliance, but its draft language permits race to be considered too broadly as a factor in adoptions. HHS is working with the State Attorney General to ensure compliance with MEPA.

HHS will inform these states that their regulations do not comply with MEPA and they must alter them. HHS is required to work toward voluntary compliance before taking actions such as withholding Federal funds.

- o Tennessee is being sued by an individual over its policy of significantly limiting transracial adoption. After MEPA was enacted, the plaintiff also sued the Federal government, but the court has just agreed to drop us from the case.

Initially HHS lawyers felt that the litigation precluded enforcement. HHS recently reversed that position, and so has only just contacted Tennessee to discuss compliance. There are some signals that the state will agree to comply.

As you know, the ambivalence and even hostility toward the policy that many social workers feel make it hard to gauge the status of compliance with great certainty. Individuals may try to maintain the status quo by certifying in each individual case that a particular child would be better off with a family of the same race. To combat this, early next year HHS will begin spot checks of records to monitor the practices of social workers, especially in states with large numbers of complaints. HHS also investigates all complaints. My staff will continue to work with HHS on enforcement.

HHS's Interpretation of MEPA: The MEPA statute itself identifies the cultural, racial, or ethnic background of the child as one of a number of factors that can be considered in the adoption decision, along with the capacity of the prospective parents to meet the child's needs, as long as this does not delay or deny an adoption.

Although some would interpret MEPA to allow a general preference for a family of the same race if that did not delay the adoption, that is not HHS's reading of the law. HHS's guidelines prohibit the use of race as a general criterion in the decision; and prohibit a number of practices that could elevate the importance of race as a factor, such as preferences or time limits. They permit race to be considered only as part of the individualized evaluation of each child, and require a specific showing as to how the consideration of race in the adoption decision would promote that child's interests.

Congressional Interest in the Issue: The House welfare reform bill attempts to prohibit consideration of race under any circumstances, even for any individual child. It would automatically deny federal funding to state agencies that use race as a factor in placing children. However, from a technical perspective HHS believes the language is actually consistent with its current guidelines. In the Senate, it appears that key Republicans have no plan to follow the House's lead because they believe that MEPA and the HHS guidelines are satisfactory.

Former Senator Metzenbaum, MEPA's sponsor, remains interested in this issue. He has just asked HHS for an update on their enforcement efforts.

cc: Leon Panetta
Melanne Verveer
Abner Mikva
Marcia Hale
Pat Griffin