

Child Welfare Policy Manual

Questions & Answers

4.3 MEPA/IEAP, Guidance for Compliance

1. Question: What are examples of some impermissible activities under the Multiethnic Placement Act (MEPA)?

Answer: MEPA reflects Congress' judgement 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, ethnicity may result in delaying, or even preventing, the adoption of children by qualified families. It also is designed to ensure that every effort is made to develop a large and diverse pool of potential foster and adoptive families, so that all children can be quickly placed in homes that meet their needs.

In the context of child placement decisions, the United States Constitution and Title VI of the Civil Rights Act of 1964 (Title VI) forbid decision making on the basis of race or the 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.

Practices that clearly violate MEPA or Title VI include statutes or policies that:

- 1) establish time periods during which only a same race/ethnicity search will occur;
- 2) establish orders of placement preferences based on race, culture, or ethnicity;
- 3) require caseworkers to specially justify transracial placements; or
- 4) 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.

- **Source/Date:** "Policy Guidance: Race, Color, or National Origin As Considerations in Adoption and Foster Care Placements," United States Department of Health and Human Services (4/20/95)
- **Legal and Related References:** The Multiethnic Placement Act (MEPA) of 1994 (PL 103-382; Title VI of the Civil Rights Act of 1964)

2. Question: May public agencies allow foster or adoptive parents to specify the race, color, national origin, ethnicity or culture of children for whom they are willing to provide care?

Answer: In making decisions about placing a child, whether in an adoptive or foster setting, a public agency must be guided by considerations of what is in the best interests of the child in question. The public agency must also ensure that its decisions comply with statutory requirements. Where it comes to the attention of a public agency that particular prospective parents have attitudes that relate to their capacity to nurture a particular child, the agency may take those attitudes into consideration in determining whether a placement with that family would be in the best interests of the child in question.

The consideration of the ability of prospective parents to meet the needs of a particular child should take place in the framework of the general placement decision, in which the strengths and weaknesses of prospective parents to meet all of a child's needs are weighed so as to provide for the child's best interests, and prospective parents are provided the information they need realistically to assess their capacity to parent a particular child. An important element of good social work practice in this process is the individualized assessment of a prospective parent's ability to serve as a foster or adoptive parent. This assessment can include an exploration of the kind of child with whom a prospective parent might comfortably form an attachment. It is appropriate in the context of good practice to allow a family to explore its limitations and consider frankly what conditions (for example, disabilities in children, the number of children in a sibling group, or children of certain ages) family members would be able or willing to accept. The function of assessing the needs and limitations of specific prospective foster or adoptive parents in order to determine the most appropriate placement considering the various individual needs of a particular child is an essential element of social work practice, and critical to an agency's ability to achieve the best interests of that child. The assessment function is also critical, especially in adoptive placements, to minimizing the risk that placements might later disrupt or dissolve. The assessment function must not be misused as a generalized racial or ethnic screen; the assessment function cannot routinely include considerations of race or ethnicity.

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

Agencies are not prohibited from discussing with prospective adoptive and foster parents their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity, just as they discuss other individualized issues related to the child. However, as the Department has emphasized, any consideration of race or ethnicity must be done in the context of individualized placement decisions. An agency may not rely on generalizations about the needs of children of a particular race or ethnicity, or on generalizations about the abilities of prospective parents of one race or ethnicity to care for a child of another race or ethnicity.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

3. Question: May public agencies assess the racial, national origin, ethnic and/or cultural needs of all children in foster care, either by assessing those needs directly or as part of another assessment such as an assessment of special needs? May they do this for a subset of all children in foster care?

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

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

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

the cultural needs of all children in foster care, Section 1808 would prohibit an agency from using routine cultural assessments in a manner that would circumvent the law's prohibition against the routine consideration of race, color or national origin.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

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

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

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

5. Question: May public agencies honor the request of birth parents to place their child, who was involuntarily removed, with foster parents of a specific racial, national origin, ethnic and/or cultural group? What if the child was voluntarily removed?

Answer: No, not even if the child is voluntarily removed.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

6. Question: If an action by a public agency will not delay or deny the placement of a child, may that agency use race to differentiate between otherwise acceptable foster/adoptive placements?

Answer: No.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)

- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

7. Question: May public agencies decline to transracially place any child with a foster/adoptive parent who has unsatisfactory cultural competency skills?

Answer: Good practice requires an assessment of the capacity of potential foster/adoptive parents to accommodate all the needs of a particular child. It is conceivable that in a particular instance race, color or national origin would be a necessary consideration to achieve the best interests of the child. However, any placement decision must take place in a framework that assesses the strengths and weaknesses of prospective parents to meet all of a child's needs so as to provide for the child's best interests. Prospective parents should be offered, typically through training provided by an agency, information sufficient to confirm or broaden their understanding of what types of children for whom they might most appropriately provide a home.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

8. Question: How can public agencies assure themselves that they have identified an appropriate placement for a child for whom racial, national origin, ethnic and/or cultural needs have been documented?

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

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

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

Answer: No. A public agency may contract with a home finding agency to assist with overall recruitment efforts. Some home finding agencies may be used because of their special knowledge and/or understanding of a specific community and may even be included in a public agency's targeted recruitment efforts. Targeted recruitment cannot be the only vehicle used by a title IV-E agency to identify families for children in care, or any subset of children in care, e.g., older or minority children. Additionally, a home finding agency must consider and include any interested person who responds to its recruitment efforts.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98) (revised 07/14/10)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

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

Answer: No. No adoptive or foster placement may be denied or delayed based on the race of the prospective foster or adoptive parent or based on the race of the child. Dissuading or otherwise counseling a potential foster or adoptive parent to withdraw an application or not pursue foster parenting or adoption strictly on the basis of race, color or national origin would be a prohibited delay or denial.

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

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

11. Question: May a home finding agency that contracts with a public agency, but that does not place children, assess the racial, national origin, ethnic and/or cultural capacity of all adoptive parents, either by assessing that capacity directly or as part of

another assessment such as an assessment of strengths and weaknesses? May they do this for a subset of adoptive parents, such as white parents?

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

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

12. Question: How does HHS define "culture" in the context of MEPA guidance?

Answer: HHS does not define culture. Section 1808 of Public Law 104-188 addresses only race, color, or national origin, and does not directly address the consideration of culture in placement decisions. A public agency is not prohibited from the nondiscriminatory consideration of culture in making placement decisions. However, a public agency's consideration of culture must comply with Section 1808 in that it may not use culture as a replacement for the prohibited consideration of race, color or national origin.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

13. Question: Please provide examples of what is meant by delay and denial of placement in foster care, excluding situations involving adoption.

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

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

2) A minority relative with guardianship over four black children expressly requests that the children be allowed to remain in the care of a white neighbor in whose care the children are left. The title IV-E agency denies the white neighbor a restricted foster care license, which will enable her to care for the children. The agency's license denial is based on its decision

that the best interests of the children require a same-race placement, which will delay the permanent foster care placement. There was no individualized assessment or evaluation indicating that a same-race placement is actually in the best interests of the children.

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

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

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

6) There are placement delays and denials when title IV-E agencies expend time seeking to honor the requests of biological parents that foster parents be of the same race as the child.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98) (revised 07/14/10)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

14. Question: If a Tribal title IV-E agency places an Indian child in accordance with the Indian Child Welfare Act (ICWA), does that violate section 471(a)(18) of the Social Security Act (the Act)?

Answer: No. The Indian Child Welfare Act of 1978 (ICWA), Public Law 95-608, was passed in response to concerns about the large number of Indian children who were being removed from their families and Tribes and the failure of States to recognize the culture and tribal relations of Indian people. ICWA, in part, creates procedural protections and imposes substantive standards on the removal, placement, termination of parental rights and consent to adoption of children who are members of or are eligible for membership in an Indian tribe. ICWA and section 471(a)(18) of the Act work together to provide important protections for children. When a Tribal title IV-E agency places an Indian child (as defined by ICWA) according to the placement preferences established in ICWA, the agency is acting in accordance with section 474(d)(4) of the Act and 45 CFR 1355.38(a)(5). Therefore, it does not violate section 471(a)(18) of the Act.

However, Tribal title IV-E agencies must ensure that children achieve permanency in a timely manner (see section 471(a)(15)(C) of the Act). This is consistent with the Bureau of Indian Affairs' (BIA) guidance to State courts. The BIA has explained that if, after a diligent search has been completed for families in accordance with the ICWA preference criteria, and a

suitable prospective foster care, preadoptive, or adoptive family has not been identified, the agency has good cause to expand the search beyond the order of preference (BIA Guidelines for State Courts; Indian Child Custody Proceedings; 44 FR 67584).

As with State agencies, if a Tribal title IV-E agency places a child to whom the ICWA protections do not apply, then the agency must comply with section 471(a)(18) of the Act, which prohibits agencies from:

- delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective parent's race, color, or national origin; and
 - denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent's or the child's race, color, or national origin.
- **Source/Date:** 03/06/2012
 - **Legal and Related References:** Social Security Act - sections 471(a)(18) and 474; 45 CFR 1355.38(a)(5); The Indian Child Welfare Act of 1978; BIA Guidelines for State Courts on Indian Child Custody Proceedings; 44 FR 67584 (November 26, 1979)