

Bulletin

December 5, 2007

Minnesota Department of Human Services - P.O. Box 64941 - St. Paul, MN 55164-0941

OF INTEREST TO

- County Directors
- Social Services Supervisors and Staff
- Tribal Social Services Staff
- Private Social Services Staff
- County Attorneys
- District Court Judges

ACTION/DUE DATE

Please review enclosed information to implement MEPA.

EXPIRATION DATE

December 5, 2009

Clarifying Culture in Placement Decisions

TOPIC

Consideration of culture in compliance with the federal Multiethnic Placement Act (MEPA) and Interethnic Adoption Provisions (IEPA) when making placement decisions.

PURPOSE

Provide clarification on consideration of culture when making placement decisions.

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Background

This bulletin reiterates the legal restrictions that govern consideration of race and culture in adoption and foster care recruitment and placement decisions.

Both federal and Minnesota state laws address consideration of race and culture in foster care and adoption recruitment and placement. These laws require child-placing agencies to recruit a *pool of prospective foster and adoptive parents* who reflect the racial and ethnic diversity of the children needing foster and adoptive families. Federal law requires states to document, in their state Child and Family Service's Plan, their diligent recruitment efforts for prospective families who reflect the ethnic and racial diversity of children who need foster and adoptive homes. Minnesota law requires local agencies to develop and implement a plan for diligent recruitment of foster care providers who reflect the ethnic and racial diversity of children in the state for whom foster homes are needed. Both federal and state laws prohibit the consideration of race in making *individual* decisions regarding foster or adoption placements.

Federal Laws

The Howard M. Metzenbaum Multiethnic Placement Act (MEPA) of 1994 [P.L. 130-382] and the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996, section 1808, entitled "Removal of Barriers to Interethnic Adoption" (commonly referred to as IEP, IEPA, Interethnic Adoption Provisions or Section 1808) [P.L. 104-188] were implemented to:

- Reduce the length of time that children wait to be adopted
- Facilitate the diligent recruitment and retention of foster and adoptive families
- Eliminate discrimination on the basis of race, color or national origin of either the prospective parent or the child.

The above federal laws direct that:

- Child-placing agencies are required to diligently recruit foster and adoptive families that reflect the racial and ethnic diversity of the children in need of out-of-home placement
- The denial or delay of adoption or foster care placement due to the race, color or national origin of either the parent(s) or child(ren) is prohibited. [See 42 U.S.C. § 671 (a) (18), 622 (b) (9)]

Minnesota Laws

Similarly, Minnesota laws [Minnesota Statute § 260C.215, subdivision 1; Minnesota Statute § 259.57, subdivision 2(c); Minnesota Statute § 260C.193, subdivision 3 (d); Minnesota Statute § 260C.212, subdivision 2(c); Minnesota Rules, part 9560.0670, subpart 1]

direct that:

- Diligent efforts should be made to recruit a diverse pool of foster and adoptive parents
- Local agencies must develop and implement a plan for diligent recruitment of foster care providers who reflect the ethnic and racial diversity of children for whom foster homes are needed
- Agencies must focus on a child's particular needs and the capacities of a particular parent to meet those needs in recruitment and placement
- Placement of a child cannot be delayed or denied based on race, color or national origin of the adoptive or foster parent or the child.

The only exception to these laws is for American Indian children eligible under the Indian Child Welfare Act of 1978.

Placement Decisions Based on the Best Interest of the Child

Federal law is very clear that race, color and national origin cannot be considered in making foster and adoption placement decisions. However, federal law is less clear about what criteria can be considered in making placement decisions. For guidance on acceptable considerations, consult the applicable Minnesota law listed below.

Minnesota Statute § 260C.212, subdivision 2 (a), requires that placement decisions be based on the best interest of the child. To ensure that each child's best interests are met, the law requires an *individualized* determination of the needs of the child, and of how the selected placement will serve the needs of the child being placed. Placement of children shall be considered with relatives and important friends in the following order:

1. with an individual who is related to the child by blood, marriage or adoption; or
2. with an individual who is an important friend with whom the child has resided or had significant contact.

According to Minnesota law [Minnesota Statute § 260C.212, subdivision 2 (b)], the agency shall consider the following factors in determining the individual needs of the child in order to make placement decisions:

1. the child's current functioning and behaviors;
2. the medical, educational and developmental needs of the child;
3. the child's history and past experience;
4. the child's religious and cultural needs;
5. the child's connection with a community, school and church (or synagogue, mosque, temple or other religious community);
6. the child's interests and talents;
7. the child's relationship to current caretakers, parents, siblings and relatives; and
8. the reasonable preference of the child, if the court, or other child placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences.

Minnesota Statute § 260C.212, subdivision 1(c) (1), requires that the Out-of-home Placement Plan document, utilizing the eight placement factors, how a child's placement in a specific home or facility is consistent with the child's best interest.

Minnesota Statute § 259.31 similarly requires documentation of adoption placement decisions.

According to Minnesota law [Minnesota Statute § 260C.212, subdivision 2 (d)], siblings should be placed together for foster care and adoption at the earliest possible time, unless it is determined not to be in the best interests of a sibling, or unless it is not possible after appropriate efforts by the responsible social services agency.

Considering a Child's Cultural Needs

The U.S. Department of Health and Human Services does not define culture. Section 1808 of the Small Business Job Protection Act of 1996 addresses only race, color or national origin, and does not directly address the consideration of culture in placement decisions. Therefore, a public agency is not prohibited from the nondiscriminatory consideration of culture in making placement decisions. However, race and culture are not the same. 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.**

Minnesota law does permit the consideration of culture in placement decisions. However, the cultural needs of a child are only one of the eight factors to consider in making placement decisions. Social workers must make an *individualized* determination of each child's needs, including cultural needs, and an *individualized* determination of the capacities of each prospective parent to meet the child's identified needs, rather than using broad generalizations. In addition, social workers must not equate culture with race, color or national origin.

Culture is a system of values, beliefs, attitudes, traditions and standards of behavior that governs the organization of people into social groups and regulates both individual and group behavior. Culture is not the same as skin color. Culture can be learned, developed and changed. Some have argued that the language in the Multiethnic Placement Act (MEPA) and Interethnic Adoption Provisions (IEPA) allow states to routinely take race into account in making placement decisions. MEPA clearly mandates that any decision to consider the use of race as a necessary element of a placement decision must be based on concerns arising out of the circumstances of an *individual* case. It is conceivable that an older child might express unwillingness to be placed with a family of a particular race. The agency is not required to dismiss the child's preference in evaluating placements. While the social worker might wish to counsel the child, one critical element to the success of the placement of an older child is that the child is involved in placement decisions. At the same time, the worker should not dismiss all families of a particular race as possible resources, because those families may be able to meet the unique needs of the child.

MEPA-IEPA acknowledges that it is impossible to delineate all the circumstances in which race or ethnicity can be taken into account in a placement decision. MEPA-IEPA mandates a strict scrutiny standard in considering race or ethnicity in placement decisions, in part because the law cannot anticipate in advance every situation. However, the primary message of the strict scrutiny standard is that only the most compelling reasons may serve to justify consideration of race and ethnicity as part of a placement decision. Such reasons are likely to emerge only in unique and individual circumstances. Accordingly, occasions where race or ethnicity may lawfully be considered in a placement decision will be rare. **MEPA-IEPA has clear sanctions for individuals and agencies that violate the law.**

Example

Consider an agency that is recruiting an adoptive family for an 11-year-old African American boy. It would be a MEPA-IEPA violation to address the child's cultural needs by saying, "I am looking for an African American family for this child." This decision is *family-focused* and would eliminate a large number of prospective adoptive families. MEPA-IEPA requires *child-*

focused recruitment. The social worker can say, “I am recruiting an adoptive family for an 11-year-old boy who is connected to his African American culture. He celebrates Kwanzaa every year and enjoys attending African American cultural celebrations such as Juneteenth and Rondo Days. I am looking for a family who is willing and able to meet his cultural needs.” This description is *child-focused* and has identified specific cultural needs, rather than eliminating a broad base of prospective adoptive families. This description would include families of the same culture as the child, as well as families able and willing to learn about and celebrate occasions and events that are culturally important to the child. The focus is on finding a family who can meet the needs of the child.

MEPA-IEPA Internal Evaluation Instrument

The U.S. Department of Health and Human Services, in partnership with the Office for Civil Rights, developed an internal evaluation instrument to be used by agencies as a self-assessment tool to evaluate or assess their compliance with MEPA-IEPA. The Minnesota Department of Human Services encourages county and private child-placing agencies to use this tool. It is available online through the U.S. Department of Health and Human Services and the Office for Civil Rights at <http://www.hhs.gov/ocr/mepa/interneval.html>.

Internet Resources Regarding MEPA and IEPA:

- Minnesota Minority Child Heritage Protection Act, available online through the Minnesota Legislative Reference Library at:
<http://www.leg.state.mn.us/lrl/issues/mmchpa.asp>
- A Guide to the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996, available online through the U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau at:
<http://www.acf.hhs.gov/programs/cb/pubs/mepa94/index.htm>.
- Protection from Racial Discrimination in Adoption and Foster Care, available online through the U.S. Department of Health and Human Services, Office for Civil Rights at:
<http://www.hhs.gov/ocr/mepa>.
- Memorandum, available online through the U.S. Department of Health and Human Services, Office for Civil Rights at:
<http://www.hhs.gov/ocr/IEPAGuide.htm>.
- Self-assessment Tool to Facilitate Non-Discrimination on the Basis of Race in Foster Care and Adoption, available online through the U. S. Department of Health and Human Services, Office for Civil Rights at:
<http://www.hhs.gov/ocr/mepa/interneval.pdf>.

Special Needs

This information is available in other forms to people with disabilities by contacting us at (651) 431-4660 (voice). TDD users can call the Minnesota Relay at 711 or (800) 627-3529. For the Speech-to-Speech Relay, call (877) 627-3848.