

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of 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:** The guidance is effective on April 25, 1995.

**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: April 20, 1995.

**Dennis Hayashi,**

*Director, Office for Civil Rights.*

Dated: April 20, 1995.

**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