



Written Statement
Thomas C. Atwood, President and CEO
National Council For Adoption

U.S. Commission on Civil Rights

Briefing on the Multiethnic Placement Act:
Minority Children in State Foster Care and Adoption

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My name is Thomas Atwood, and I serve as president and chief executive officer of the National Council For Adoption (NCFA). NCFA is an adoption research, education, and advocacy nonprofit whose mission is to promote the well-being of children, birthparents, and adoptive families by advocating for the positive option of adoption. Since its founding in 1980, NCFA has advanced adoption and child welfare policies that promote the adoption of children out of foster care, present adoption as a positive option for women with unintended pregnancies, reduce obstacles to transracial and intercountry adoption, and make adoption more affordable for families. On behalf of NCFA, I thank you for this opportunity to present at your briefing on the Multiethnic Placement Act (MEPA).

Transracial Adoption, Good for Children

Transracial adoption is a healthy, positive outcome for children, notwithstanding additional challenges that may arise due to a surrounding culture that finds it curious and also still contains strains of racism. Today an increasing number of families are multiracial or multicultural by adoption, as more and more parents have decided to adopt across racial, ethnic, and cultural lines, in our own country and abroad. According to the 2000 census, approximately one out of every six adopted children in America has a parent of another race.

Studies of transracially adopted children have not revealed any significant differences in terms of adjustment or development that diverge sharply from the patterns and outcomes of children adopted by parents of the same race. This has led such studies to conclude that transracial adoption does not harm the adjustment, family bonding, or normative development of children.¹ “Growing Up Adopted,” a massive Search Institute survey of 715 adoptive families, which included 881 adopted adolescents, reported that children adopted transracially fared as well as Caucasian adopted children in same-race families. The authors noted, “Transracially adopted youth are no more at-risk in terms of identity, attachment, and mental health than are their counterparts in same-race families.”²

¹ Burrow, A. L., and G.E. Finley, “Transracial, Same-Race Adoptions and the Need for Multiple Measures of Adolescent Adjustment,” *Journal of Orthopsychiatry* (2004), pp. 577-583.

² Benson, Peter L., Anu R. Sharma, and Eugene C. Roehlkepartain, *Growing Up Adopted: A Portrait of Adolescents & Their Families* (Minneapolis, MN: Search Institute, June 1994), pp. 7-8, 34.

Children who are adopted into a permanent family – including those adopted across racial or ethnic lines – fare better and experience far more positive outcomes than children who remain in foster care or institutions. Many transracially adopted individuals report feeling a deep connection and trust within their adoptive families, and not at the expense of their racial heritage. Transracial adoption also has a positive effect on American society and culture at large, promoting greater tolerance and diversity.

Additional Challenges in Transracial Adoptive Parenting

Adoption professionals agree that transracial adoption can present additional challenges to an adoptive family. When weighing the decision to adopt transracially, prospective parents should consider a number of important questions. How do they expect their family members will react to a child of another race? Are the schools in their area diverse, filled with children from a variety of cultures and backgrounds? What about their neighborhood, church, and social circle?

The decision to adopt transracially should not be made on the basis of reactions from others. But it is important for parents to consider and be aware of what their family may experience following a transracial adoption. Questions may be asked about the child's adoption that might not be asked in a same-race adoption, as other people will notice immediately that the child is not genetically related to his or her parents. It is up to the child's parents to be aware of how the child feels and to respond to questions in ways that help both curious outsiders and the child himself to better understand and appreciate adoption.

Adoption professionals also generally agree that parents of transracially adopted children should help to equip their children with a healthy sense of family belonging, personal and racial identity, and cultural connections. Age-appropriate opportunities for cultural exploration should be taken together, as a family. Children who know their background – including their racial and ethnic heritage, and how they joined their families – are more likely to grow in their understanding and acceptance of adoption than children whose families do not speak openly about adoption or racial differences. Many parents of transracially adopted children have found friendship and helpful advice by joining support groups of families affected by transracial adoption.

MEPA's Results

It is difficult to assess how much MEPA by itself has reduced the amount of time minority children spend in foster care or waiting to be adopted. The Department of Health and Human Services (HHS) does not provide data regarding the numbers of transracial adoptions. Moreover, the federal government itself does not place much confidence in national statistics prior to fiscal year 1998, as few states were in compliance with the current Adoption and Foster Care Reporting and Analysis System (AFCARS) standards at that time.³ However, it is likely that MEPA has succeeded in

³ Those in favor of MEPA based their arguments at the time on individual studies suggesting that inracial adoption practices correlated with longer wait times for African-American children.

expediting the placement of many African-American and minority children with loving, permanent families. For this reason, it should be applauded.

Since 1997, when the Adoption and Safe Families Act and MEPA's Interethnic Adoption Provisions (IEAP) went into effect, adoptions out of foster care have increased from 31,000 a year to more than 50,000 – and have remained at more than 50,000 for six years straight. While the level of detail in data collection by HHS is inadequate to prove conclusively that MEPA and IEAP contributed to those increases, such can be reasonably inferred. However, African-American children continue to be disproportionately represented in foster care, and this disproportion should be of great concern to child welfare advocates and policy makers.

While MEPA has contributed to addressing this problem, it certainly could never remove all barriers to the adoption of minority children from foster care. For example, African-American children are often more likely to be placed in kinship care, which, studies suggest, correlates with a longer stay in the foster care system. African-American parents also report difficulties in accessing the type of social services required for reunification more often than Caucasian parents, generally for cultural or socioeconomic reasons.⁴

Two Cheers for MEPA

The key MEPA language follows:

A person or government that is involved in adoption or foster care placements may not – (A) deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or (B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

The goal of MEPA – to reduce placement delays and denials based on racially discriminatory factors – is a complex and challenging goal. On the one hand, policy makers wanted to allow certain considerations of race in placements, including parent education and self-assessment regarding transracial adoption and the targeted recruitment of adoptive and foster parents from all racial and ethnic groups. On the other hand, policy makers sought to restrict race from being an obstacle to a child's placement and to protect children from arbitrary same-race placements even when it was in the child's best interests to remain with different-race parents with whom he or she had already bonded. MEPA, and the HHS guidelines regarding MEPA, are not perfect, but correctly interpreted they largely achieve this goal. However, based on misinterpretations of MEPA and the guidelines, states are abandoning good social work practices, for fear of violating MEPA.

⁴ United States Government Accountability Office, (July 2007). "African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care." Page 4

A common misinterpretation is the idea that state agencies can run afoul of MEPA from only discussing the issue of race with prospective parents, because a wrong word could be interpreted as discrimination. But to say that race should not “delay or deny” a child’s placement does not mean that the challenges that can be posed by transracial adoption may not be discussed. It does not mean that parents should not be asked to assess themselves regarding their suitability for transracial adoption. On the contrary, MEPA, correctly interpreted, allows social workers to educate parents regarding these challenges and how to meet them. Making parents aware of issues common to transracial adoption does not delay or deny placement, and this education is an important part of the social worker’s adoption counseling responsibility. Educating and counseling parents regarding transracial adoption can be managed in ways that neither delay nor deny placement and thus, are not prohibited by MEPA. Any regulation that indiscriminately prohibits such education is based on a misinterpretation of MEPA.

Ohio provides a typical example of this misinterpretation. The Ohio Administrative Code deems it illegal for an adoption agency to “steer” foster or prospective adoptive parents away from parenting a child of another race, color, or national origin. Caseworkers in Ohio are thus reluctant to raise the subject of race, lest a question or comment be misinterpreted as an attempt to “steer” the decision of a prospective adoptive or foster parent. This state regulation is too vague and unclear to guide caseworkers in ways that comply with MEPA. The regulation should make clear that caseworkers may and should educate parents regarding the potential challenges of transracial adoption.

MEPA serves the best interests of children in several ways:

- **Reduces obstacles to transracial adoptive and foster placements for children in need of families:** There are many children who need families, including a disproportionate number of minority children, and the record of transracial placements is very successful. Racial differences between prospective parent and child should not prevent or delay children from having families.
- **Prohibits consideration of the race of prospective parent and child when such consideration would delay or deny a child’s placement:** This is the most important language in MEPA and provides a clear standard to guide caseworkers. Clearly, parental self-assessments and parent education are allowed under this guideline. Including such good practices as part of agency’s preparation of prospective parents are not deemed to delay or deny placement.

HHS’s “Questions and Answers Regarding the Multiethnic Placement Act of 1994 and Section 1808 of the Small Business and Job Protection Act of 1996” (from here on referred to as HHS’s “MEPA Questions and Answers”) clarifies this point. Regarding parents’ self-assessment of their own suitability for transracial adoption, HHS states in answering question 2, “[P]rospective parents [should be] provided the information they need realistically to assess their

capacity to parent a particular child,” and “...[A]gencies 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...”

Regarding parent education and training for transracial placements, HHS states in answering question 7: “...[P]rospective parents should be offered, typically through training provided by an agency, information sufficient to confirm or broaden their understanding of what types of children they might most appropriately provide a home for.”

- **Allows children access to transracial placements in their best interests, but not as a right for adults:** By not allowing agencies to deny based on race any individual the opportunity to foster or adopt, MEPA protects children from arbitrarily imposed same-race placements when it would be in their best interest to remain with the different-race parents with whom they had already bonded. In providing this protection, however, part (A) does not create a right to adopt, as stated in HHS’s “A Guide to the Multiethnic Placement Act of 1994 as Amended by the Interethnic Adoption Provisions of 1996 Chapter 2: The Provisions of MEPA-IEP” (henceforth referred to as HHS’s “Guide to MEPA”): “Because placement decisions are based on the needs of the child, no one is guaranteed the ‘right’ to foster or adopt a particular child.”

Thus, part (A) prohibits the subjective application of generalizations regarding race to individualized placement decisions, per HHS’s “MEPA Questions and Answers”: “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.” This guidance does not in any way interfere with the agency’s professional responsibility to provide for parental self-assessment and parent education regarding transracial placements. Nor does it limit the agency’s responsibility to recruit prospective parents from all racial and ethnic groups.

- **Allows prospective adoptive and foster parents to indicate their willingness and ability to accept a transracial placement or not:** One of the agency roles allowed under MEPA is to discuss with parents their feelings, capacities, and preferences regarding caring for a child of a particular race or ethnicity. With appropriate counseling and education from the agency, prospective parents can best judge their suitability for a transracial placement (which MEPA provides for, with some exceptions).
- **Allows education of parents regarding the potential additional challenges and responsibilities of transracial placements:** The best interests of children and the professional code of social work require that prospective parents are educated regarding these issues.

- **Provides for exceptions to allow for generally prohibited consideration of race, according to the HHS’s “Guide to MEPA,” in “circumstances where the child has a specific and demonstrable need for a same-race placement”:** In answer to question 14, HHS’s “MEPA Questions and Answers” states that “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.” The most common example is the case of an older child who would prefer an inracial placement.
- **Requires states to make diligent efforts to recruit racially diverse parents:** MEPA requires states 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.” Fulfilling this requirement would help states to provide parents for same-race placements.

Needed Improvements to HHS Management of MEPA

In HHS’s “MEPA Questions and Answers,” question 10 reads: “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 placements?” Question 17 reads the same, only substituting the words “adoptive parents,” for “foster placements.” The HHS answer to both questions is one word, “No.” This answer flies in the face of a plain reading of the MEPA “delay or deny” language. In applying part (B) to this question, if considering race is disallowed in the case where a child’s placement is delayed or denied, then logically it is allowed if there were no delay or denial. Presumably, then, HHS has used part (A) to disallow such an action. In any case, HHS should explain its rationale for this negative one-word answer. Without further explanation, it leaves the workers and managers responsible for interpretation quite confused.

Another problem with HHS’s MEPA execution is that the department has apparently done little to enforce states’ requirement to conduct “diligent recruitment” of racially and ethnically diverse parents. Even though more than 20 percent of children in foster care are waiting to be adopted, 1.3 percent of all federal child welfare dollars available are spent on adoptive and foster parent recruitment and training combined, according to NCFA research. Given that spending pattern, states’ recruitment efforts could not have been as thorough as called for under MEPA.

Finally, HHS should count and report the numbers of transracial adoptions. Conducting these counts would not be inconsistent with MEPA and it would provide valuable information about how transracial adoption is benefiting children.

Conclusion

Some child welfare advocates assert that, “all things being equal” between prospective placements, caseworkers and agencies should choose inracial placements over transracial placements. This is a somewhat appealing argument, in theory.

However, there are always differences between placement options; “things” are rarely if ever “equal.” With few exceptions, MEPA appropriately does not allow race, color, or national origin to be the deciding factor in a placement, including when different-race prospective parents are similar in their qualifications. Another problem with the appealing concept of an “all things being equal” preference for same-race placements is that any language that could be drafted to provide for this discretion would leave a giant “loophole,” which would render placement decisions vulnerable to subjective inconsistency and ideologically driven manipulation.

The problems with the consideration of race in placement decision making today do not lie primarily with MEPA; nor do they lie mainly with HHS enforcement. They lie mainly with state agencies’ and caseworkers’ misinterpretations of MEPA itself and of HHS’s MEPA guidelines. MEPA allows for commonsense consideration of race and ethnicity in making placement decisions – including prospective parent counseling and education regarding transracial placements, and recruitment of prospective parents from America’s diverse racial and ethnic communities. It does not allow agencies to use generalizations regarding race and ethnicity in making individual placement decisions, nor should it. HHS should make greater efforts to clarify these issues, and states should reform their policies and guidelines to follow the actual meaning of MEPA, rather than the mistaken notion that MEPA prohibits any consideration of race.

The National Council For Adoption applauds the Commission on Civil Rights’ leadership in analyzing MEPA and its application, transracial foster and adoptive placements, and how adoption and child welfare policy and practice can better serve minority children in foster care. NCFCA appreciates this opportunity to work with you in these vital efforts to benefit children and families. Thank you very much.

Respectfully submitted,

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