

CR called: Amy Rossi Ark Advocs

generated - b soc wkcs

not en bl fams recruited

Force more recumbent; did more
Not med. before that; someone was prevented
might be sued

Dermis H.

Constance James - CR will call her

>87 Statute - pref to same race

By time Meigs passed,

mid-97

Pres so firm, thought long-est'd

501-221-2200
or 324-9652 pages 501-
377

Ray Scott - Dir H Svcs

who@cw

robodex

Hrs dep - Rich Howell - still there
any way

~~Galston - Justice + HHS~~

- effect on existing laws.

PHOTOCOPY
PRESERVATION

501-682-8650

Jim Fetig
6.9.276

5/10

Ray Scott -

Debbie Nye - not sure whether part of larger bill
reminded him

sponsored by bl state rep from Pine Bluff

Henry Williams deceased
wife succeeded him

Compared 1987 -
(1995 amendments -)

Not mandatory - hierarchy pts for court to consider
Highly charged issue ^{no penalty}

Didn't want to veto - not positive not Gov bill
stingy w/ label

Anderson - made in data base - on box in warehouse
has called ^{to} Sam Bratton

Sure not Gov bill

Will hv to go w/ it

**U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS****OFFICE OF THE DIRECTOR****FAX TRANSMISSION COVER SHEET**

TO**FROM**Name: DIALA FORTUNA

Name: _____

Address:

*Office for Civil Rights
Office of the Director
Room 5400, Cohen Building
330 Independence Avenue, SW
Washington, DC 20201*

Phone: (202) 619-0403

FAX: (202) 619-3437

Phone: _____

of Pages W/COVER _____

FAX #: 456-7431

MESSAGE:

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Civil Rights Division
Washington, D.C. 20201cc Dawn Cherna
Fyl - Diana Fortuna

JUL 9 1996

Phyllis
Anderson
632-0150
X133

Mr. Mark Traynor
Human Services Division
Office of the Attorney General
State of Minnesota
900 NCL Tower
445 Minnesota Street
St. Paul, Minnesota 55101

Dear Mr. Traynor:

On June 30, 1995, the Department wrote to the Commissioner of the Minnesota Department of Human Services (MDHS), informing her that various Minnesota statutes do not comply with the Multiethnic Placement Act (MEPA). The Department's Office for Civil Rights (OCR) requested that the state submit a corrective action plan. On September 13, 1995, Minnesota requested an extension of the October 21, 1995 date for compliance with MEPA. On October 19, 1995, OCR granted the state an extension until July 15, 1996, six weeks after the anticipated end of the legislative session. The extension was granted to allow Minnesota time to make changes in those statutes that are inconsistent with MEPA.

Subsequent to October 19, 1995, there have been numerous contacts between this Department and Minnesota regarding the outstanding MEPA issues. These have included discussions between the state and the Department's Director of Intergovernmental Affairs, as well as discussions that I have had with the state. These have also included additional correspondence, from LauraSue Schlatter, of your office, dated November 8, 1995 and March 21, 1996. In addition, the state presented its position to the Department of Justice. On February 13, 1996, Deval Patrick, the Assistant Attorney General for Civil Rights, wrote to Minnesota's Attorney General indicating that the state's same-race preferences violate MEPA.

On April 25, 1996, LauraSue Schlatter wrote to the Department indicating that on April 2, 1996, the Governor of Minnesota signed amendments to its child welfare laws, Chapter No. 416, S.F. No. 1885, which took effect on April 3, 1996. Minnesota's amendments do not resolve the problems that we identified in our June 30, 1995 letter to the State. In particular, the amendments do not address the problems we identified with the provisions in sections 257.071(1a), 259.29, and 259.57(2) that grant preference

Page 2 - Mr. Mark Traynor

to same-race adoptive and foster care placements.¹ Therefore, as of July 15, 1996, Minnesota will be out of compliance with MEPA.

Section 257.071(1a) of Minnesota's law had provided that, in making family foster care placements, child-placing agencies shall use the preferences described in section 260.181(3). Section 260.181(3) included the following order of preference:

an individual who (a) is the child's relative, or if that would be detrimental to the child or a relative is not available, who (b) is of the same racial or ethnic heritage as the child, or if that is not possible, who (c) is knowledgeable and appreciative of the child's racial or ethnic heritage.

The 1996 amendments added a new provision (b) to 260.181(3) giving preference to "an important friend with whom the child has resided or had significant contact, or if that is not possible." What was (b) became (c) and what was (c) became (d).² These changes do not remove the presumptive preference for same-race placements, although they do place them in lower order. Because this provision uses racial and ethnic generalizations about the needs of children, rather than using individualized determinations to make placements, it is not narrowly tailored to advance the particular interests of each child.

The 1996 amendments added the following language to section 257.071(1a):

When there is not a family foster home of the same race or ethnic heritage available that can meet the needs of the child, the agency must place the child in a home of a foster family that is of different racial or ethnic heritage that can meet the needs of the child. Placement of a child cannot be delayed or denied based solely on race.

This new language does not rectify the problems with this section. This language strongly implies that same-race placements should be given preference. More importantly, this

¹ The statutory amendments deleted provisions in sections 257.071(1a), 257.072(1) and 259.77, which established a period of time for the conduct of special efforts to find a same-race placement. These amendments correct the problems identified in sections 257.072(1) and 259.77 and only partially correct the problems with 257.071(1a).

² The 1996 amendments also changed section 260.181(3) by replacing the language "the child's relative" in (a) with "related to the child by blood, marriage, or adoption."

Page 3 - Mr. Mark Traynor

provision does not alter the preference, incorporated from section 260.181(3), for same-race placements. The statement that "[p]lacement of a child cannot be delayed or denied based solely on race" does not cure the MEPA concerns previously identified. This language does not modify the language discussed above, which requires that preference be given to same-race placements.

Section 259.29 addresses adoption placements and uses the same preferences found in 260.181(3). The 1996 amendment to section 259.29 added the same provision giving preference to "an important friend" as was added to 260.181(3). The problems we have noted above regarding 260.181(3) apply to 259.29. This amendment does not address OCR's concern with the preference given in this section to a family of a child's racial or ethnic group. Section 259.29 provides that these preferences shall be used in the absence of good cause to the contrary. As discussed below, this does not change the requirement that same-race placements should be considered before other placements.

Section 259.57(2) addresses court action reviewing adoptive placements. This section uses the same preference found in section 260.181(3). The 1996 amendments did not address this section. As we have already discussed, these preferences are inconsistent with MEPA.

Under the Constitution race or ethnicity can only be a basis for government decision making if it advances a compelling governmental interest. Moreover, the means chosen to effectuate this interest must be narrowly tailored to the achievement of that interest. Race or ethnicity can only be a basis for placement decisions if it is used to advance the compelling governmental interest in protecting the best interests of the child who is to be placed. Same-race placement preferences can only serve to advance a child's best interests if they are developed based on the facts and circumstances of the specific case.

The state's race-based placement statutes generally require placement agencies to give secondary consideration of the particular needs of individual children and the abilities of individual prospective parents to meet these needs. Rather than basing decisions on the individual needs of particular children, the statutes dictate that, for every child who cannot be placed with a family member or an important friend, a same-race placement is presumptively most appropriate and accordingly of primary importance. Because these statutes are not narrowly tailored to advance the particular interests of each child, they violate the equal protection clause of the Fourteenth Amendment and Title VI.

Minnesota's creation of a race-based presumption is not negated by the statutory "good cause" provisions in 259.29 and 259.57(2).

Page 4 - Mr. Mark Traynor

The statutes provide that a child will be placed in a same-race home "absent good cause to the contrary." This language does not change the statutes' command that placement agencies begin by only looking for same-race homes. Thus, the policy is not race neutral. Under the state's statutes, placement agencies are directed to place children in same-race homes unless there is some explicit reason why the available same-race homes will not work out. Meanwhile, because of race, homes that may actually be best for the children involved may not even be considered.

The November 8, 1995 letter from Ms. Laura Sue Schlatter argues that the Minnesota statutes in question are race neutral and, thus, not subject to rigid scrutiny under the Constitution. The Supreme Court rejected similar arguments in Loving v. Virginia, 375 U.S. 187 (1963). In Loving, the Court held that the state of Virginia's miscegenation statutes were unconstitutional. Virginia argued that their statutes forbidding persons of different races to intermarry were race neutral because they treated all races alike. The Court rejected the notion that the equal application of a statute containing racial classifications removes the classifications from the Constitution's proscription of all invidious racial discrimination.

Requiring the use of race and ethnicity as a basis for the placement of children violates MEPA because it would deny equal consideration for the placement of a child with parents who are of a different race from the child solely on the basis of race. The State of Minnesota has recognized that presumptions regarding the desirability of same-race placements for all children violate MEPA. Minnesota's November 8, 1995 letter states that "minimum required times to search for same-race placements are contrary to the language of MEPA prohibiting delay or denial of placement based on the race of the child, or the potential adoptive or foster parents." We hope that the Minnesota Department of Human Services will recognize that establishing orders of placement preferences based on racial or ethnic heritage are similarly contrary to this provision in MEPA.

The view that the language of MEPA supports Minnesota's same-race preference is based on a misreading of the statute. It is true that MEPA specifically permits consideration of a child's cultural, ethnic, or racial background and the capacity of the potential foster or adoptive parents to meet the needs of a child of this background. However, MEPA also provides that these factors may be considered "as one of a number of factors used to determine the best interests of the child." The Minnesota statutes do not consider the child's racial background and the capacity of prospective parents to meet the needs of a child of this background as one of a number of factors. The statutes elevate the consideration of race to the first principle to be used in all non-family placement decisions. By adopting a same-race preference they refuse to give equal consideration to the

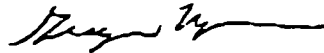
Page 5 - Mr. Mark Traynor

capacity of parents of a different background to meet the needs of a particular child. By doing so, they fail to allow consideration of other factors relevant to a child's best interest.

The language of the statute is clear. MEPA forbids the denial of placements on the basis of race and ethnicity. Minnesota's placement preferences on the basis of race and ethnicity require race-based actions. Because MEPA clearly prohibits these preferences, the legislative history cited in the November 8, 1995 letter is not due overriding weight. Moreover, MEPA gave this Department responsibility for developing guidance on MEPA. Section 553(c). That guidance specifically provides that statutes or policies that "[e]stablish orders of placement preferences based on race, culture, or ethnicity" violate MEPA.

As you know, the Department is committed to full enforcement of MEPA. We are available to meet with the state to develop a plan to achieve full compliance with MEPA, Title VI and the Constitution. In addition, I am available to discuss this matter further with you. I can be reached by telephone at (202) 619-0900. At this time, we urge the state not to enforce the racial and ethnic preferences found in sections 257.071(1a), 259.29, and 259.57(2). We appreciate the efforts that the state has made in response to the concerns that we have raised. We hope the state is willing to work with us to address the remaining issues.

Sincerely,



George Lyon
Associate General Counsel
Civil Rights Division

Date: 05/10/96 Time: 16:25

RTo: National Desk

To: National Desk

Contact: Maura Fisher of the Republican National Committee,
202-863-8550

WASHINGTON, May 10 /U.S. Newswire/ -- Following is a statement
by Republican National Committee Chairman Haley Barbour:

Thousands of children can count this Mother's Day as their last
without a family, thanks to today's passage of The Adoption
Promotion and Stability Act by the Republican-led Congress.

Reflecting the long-standing Republican commitment to
strengthening families, this bill breaks down financial and racial
barriers to adoption. It will open new doors to unite orphaned
children with loving families.

For many families who cannot afford the average \$20,000 in
adoption costs, the \$5,000 tax credit provided by the bill brings
adoption within their financial reach. The bill puts an end to
``race matching'' by adoption agencies that receive state or
federal funding, breaking down barriers for children whose adoption
has been prevented because of the color of their skin.

These barriers could have been struck down last year. This
adoption proposal was part of the Republican's ``Contract With
America'' and, as promised by the Republican-led Congress, passed
in 1995 as part of the Balanced Budget Act. But the president
vetoed it.

Now, President Clinton says he will sign the adoption bill. He
wrote in a letter to Speaker Gingrich that the bill is consistent
with ``my long-standing goal to end the historical bias against
interracial adoption, which too often has meant interminable waits
for children to be matched with parents of the same race.''

But Clinton's record on adoption reveals the typical flip-flop
Americans have come to expect from this president. As the governor
of Arkansas, Bill Clinton signed a 1987 law that stated, ``In the
placement or adoption of a child of minority racial or minority
ethnic heritage...The court shall consider preference...a family
with the same racial or ethnic heritage as the child.''

So much for
his ``long-standing goal'' to end bias against trans-racial
adoption.

While we welcome the president's reversal on this issue, it begs
the question, why the sudden change of heart? Perhaps the answer
lies in the fact that he faces an election in November and knows
pro-family policies are much higher on the voters' priority list
than the liberal agenda they've been given in Bill Clinton's
presidency.

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/U.S. Newswire 202-347-2770/

APNP-05-10-96 1627EST

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ADOPTION

9-9-102

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

9-9-101. Surrender of custody of minor by hospital.

9-9-102. Considerations of child's minor-

SECTION.

ity race or ethnic heritage
— Religious preference

9-9-103. Adoption home studies affidavit.

Cross References. Child placement
agency licensing, § 9-28-401 et seq.Interstate compact on placement of
children, § 9-29-201 et seq.

9-9-101. Surrender of custody of minor by hospital.

(a) At the time a petition to adopt or a petition for guardianship in a pending adoption is filed for a minor in the physical custody of a hospital within the State of Arkansas, the court shall issue an order directing the hospital to surrender physical custody of the minor to the petitioners or to the agency or attorney acting for either.

(b) If a court in an adoption proceeding or guardianship proceeding in which an adoption is pending orders a hospital to surrender custody of a child to the adoptive parents, or to the agency or attorney acting in their behalf, those entities obeying the order shall not be liable to any person because of their acts.

History. Acts 1971, No. 169, § 1;
C.S.A. 1947, § 56-125; Acts 1987, No.
1060, § 8.

9-9-102. Considerations of child's minority race or ethnic heritage — Religious preference.

(a) In all custodial placements by the Department of Human Services in foster care or investigations conducted pursuant to court order under § 9-9-212, due consideration shall be given to the child's minority race or minority ethnic heritage.

(b) In the placement or adoption of a child of minority racial or minority ethnic heritage, in reviewing the placement, the court shall consider preference, and in determining appropriate placement, the court shall give preference, in the absence of good cause to the contrary, to:

1. A relative or relatives of the child, or, if that would be detrimental to the child or a relative is not available;

2. A family with the same racial or ethnic heritage as the child, or, if that is not feasible;

3. A family of different racial or ethnic heritage from the child, if that family is knowledgeable and appreciative of the child's racial or ethnic heritage.

9-9-103.

FAMILY LAW

10

(c) If the child's genetic parent or parents express a preference for placing the child in a foster home or an adoptive home of the same or a similar religious background to that of the genetic parent or parents in following the preferences in subdivisions (b)(1) or (2) of this section the court shall place the child with a family that also meets the genetic parent's religious preference. Only if no family is available as described in subdivisions (b)(1) or (2) of this section may the court give preference to a family described in subdivision (b)(3) of this section that meets the parent's religious preference.

History. Acts 1987, No. 857, § 1.

9-9-103. Adoption home studies affidavit.

(a) Upon the request of any interested party, agency, or the court, the petitioner in any adoption proceeding shall file with the court an affidavit stating the number of adoption home studies conducted on the petitioner's home prior to the filing of the petition.

(b) A copy of each adoption home study performed shall be attached to the affidavit.

History. Acts 1993, No. 598, § 1.

SUBCHAPTER 2 — REVISED UNIFORM ADOPTION ACT

SECTION.

- 9-9-201. Short title.
- 9-9-202. Definitions.
- 9-9-203. Who may be adopted.
- 9-9-204. Who may adopt.
- 9-9-205. Jurisdiction — Venue — Inconvenient forum — Disclosure of name.
- 9-9-206. Persons required to consent to adoption — Consideration for relinquishing minor for adoption.
- 9-9-207. Persons as to whom consent not required.
- 9-9-208. How consent is executed.
- 9-9-209. Withdrawal of consent.
- 9-9-210. Petition for adoption.
- 9-9-211. Report of petitioner's expenditures.
- 9-9-212. Hearing on petition — Requirements.

SECTION.

- 9-9-213. Required residence of minor.
- 9-9-214. Appearance — Continuance — Disposition of petition.
- 9-9-215. Effect of decree of adoption.
- 9-9-216. Appeal from and validation of adoption decree.
- 9-9-217. Confidentiality of hearings and records.
- 9-9-218. Recognition of foreign decrees affecting adoption.
- 9-9-219. Application for new birth record.
- 9-9-220. Relinquishment and termination of parent and child relationship.
- 9-9-221. Uniformity of interpretation.
- 9-9-222. Repeal and effective date.
- 9-9-223. Termination of rights of non-parental relatives.
- 9-9-224. Child born to unmarried mother.

Cross References. Grandparent's visitation rights, § 9-13-103.

Effective Dates. Acts 1979, No. 599, § 6: Mar. 28, 1979. Emergency clause provided: "It is hereby found and deter-

mined by the General Assembly that technical and clerical errors were made in the 1977 Uniform Adoption Act and that it is immediately necessary to remedy such errors. Therefore, an emergency is



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

JUN 30 1996

Mr. Tom Dalton
Director
Arkansas Department of Human Services
P. O. Box 1437
Little Rock, Arkansas 72203-1437

SUBJECT: Compliance with the Multiethnic Placement Act of 1994

Dear Director:

Our letter to you dated April 25, 1995, issued pursuant to the Multiethnic Placement Act of 1994 (MEPA), transmitted our policy guidance on the use of race, color, or national origin as considerations in adoption or foster care placements. In the guidance, agencies that are involved in such placements were advised that the consideration of race, color, or national origin is permissible only as a part of individualized determinations that focus on the best interests of the child in need of placement. The guidance specifies that placement decisions may not be based on generalizations or presumptions regarding the relevance of race. The guidance identifies a number of policies or practices that would be violative of these requirements.

In that letter, we also advised you that we would conduct a review of applicable state statutes, regulations and published policies in the area of adoption and foster care to identify any that authorize practices that are inconsistent with the requirements of MEPA. In that regard, we have reviewed your state statutes, available regulations, and policy statements that affect the implementation of adoption and foster care placements in Arkansas.

Our review indicates that Arkansas Statute Ann. Section 9-9-102, which establishes a preference for a family of a child's racial or ethnic group, does not comply with MEPA. This generally applied consideration of race or ethnicity is inconsistent with the requirements of MEPA for individualized consideration of the best interest of a specific child. The existence of this preference raises the possibility that other policies or practices of the state of Arkansas or its sub-recipients also may violate MEPA.

We would be pleased to discuss our concerns further and to assist you in coming into compliance. We hereby request that you submit a corrective action plan that specifies how you intend to correct the above-mentioned deficiencies. It may be

Page 2 - Mr. Tom Dalton

that other similar policies and practices that are not reflected in the material we reviewed. If so, correction of these policies and practices should be included in the action plan. In addition to the necessary changes to statutes, regulations, and policies, the action plan should also describe specific activities to train agency staff, notify sub-recipients of the requirements of MEPA, and the state's role in monitoring their compliance.

The action plan should be submitted to the following address no later than August 15, 1995:

Ralph Rouse, Regional Manager
Department of Health and Human Services
Office for Civil Rights
1200 Main Tower Bldg., Room 1360
Dallas, TX 75202
(214) 729-4056

Mr. Rouse also may be contacted to discuss development of the action plan and other matters related to technical assistance on compliance with the nondiscrimination provisions of MEPA.

Agencies or entities are required to comply with MEPA by October 21, 1995. However, where a state can demonstrate that in order to change a practice inconsistent with MEPA, it is necessary to amend state statutory law, the Secretary of Health and Human Services 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. If a state statutory amendment is necessary, a request for extension of the compliance date should be addressed to:

Mr. Ronald G. Copeland
Associate Deputy Director
Office of Program Operations
Office for Civil Rights
330 Independence Avenue S.W.
Washington, D. C. 20201
Phone: (202) 619-0553
Fax: (202) 260-0581

As specified in the guidance, MEPA also requires that states not discriminate in the recruitment of prospective foster and adoptive parents and that states develop plans for recruitment of foster and adoptive families that reflect the ethnic and racial diversity of the children in the state for whom homes are needed. Such recruitment is necessary in order to have a pool of available families that can meet the needs of all children. Compliance with the foster care and adoption

Page 3 - Mr. Tom Dalton

recruitment provisions of MEPA is required for Federal approval of FY 1996 State Plans for child welfare services and family preservation and support, submitted under Title IV-B of the Social Security Act. State recruitment plans must be submitted by October 31, 1995. This may be accomplished by either of the options set out in our April 25 letter.

This Department also would be pleased to answer questions and provide technical assistance for coming into compliance with these requirements. Technical assistance on recruitment efforts and on other aspects of child welfare practice is available within the Administration for Children and Families (ACF). The contact persons are:

Ms. Ellen W. Carey
Adoption Specialist
Children's Bureau
P. O. Box 1182
Washington, D.C. 20013
Phone: (202) 205-8652
Fax: (202) 401-5917

Ms. Gerri Robinson
Foster Care Specialist
Children's Bureau
P. O. Box 1182
Washington, D.C. 20013
Phone: (202) 205-8575
Fax: (202) 260-9345

Please be reminded that public and private agencies that are involved in adoption or foster care placements and also are recipients of Federal financial assistance must comply with the requirements of MEPA and Title VI of the Civil Rights Act of 1964. Failure to do so could result in the termination of Federal financial assistance.

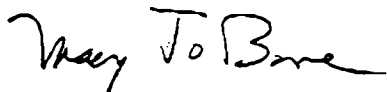
This Department intends to help states take full advantage of this opportunity to eliminate discrimination and strengthen child welfare practice. The best interests of children require that we eliminate delays in placement, and that we create a large enough pool of potential adoptive and foster parents to meet the needs of waiting children. We are equally committed to the provision of technical assistance and to vigorous enforcement of these statutes.

MEPA provides a mechanism for re-examining policies and procedures that relate to recruiting foster and adoptive families and making child placement decisions. Our goal is to ensure that foster and adoptive placements are made without

Page 4 - Mr. Tom Dalton

discriminatory acts or other delays or impediments to placing children in loving, permanent homes. We are certain of your commitment to these same goals, and we are available to assist you in your voluntary efforts to fulfill these requirements.

Sincerely,



Mary Jo Bane
Assistant Secretary
for Children and Families



Dennis Hayashi
Director
Office for Civil Rights

cc:

Mr. Ralph Rouse
Regional Manager
DHHS - Office for Civil Rights

Mr. Leon McCowan
DHHS - Regional Administrator
1299 Main Tower Building
Dallas, Texas 75202

Ms. Marisu Fenton
DHHS - Administration for Children,
Youth and Families
1200 Main Tower Building
Dallas, Texas 75202

April 13, 1995

Interview With Wolf Blitzer and Judy Woodruff on CNN

Mr. Blitzer: Just wrapping up this segment -- on abortion, all issue you just raised -- you have said repeatedly you would like to see abortion safe, legal, and rare. What have you done to make it rare?

The President: One of the things I've done to make it rare is to push very strongly for more adoptions, and for cross-racial adoptions. One of the things that the Republicans and I agree on, although we may have some minor differences about how to do it, is that we should not hang adoptions up for years and years and years when there are cross-racial adoptions involved. If parents of one race want to adopt a child of another, they shouldn't be delayed and hung up by a lot of bureaucratic redtape. I think that is very important.

February 1, 1995

Interview With Religious Journalists

On the other hand, most people think in most circumstances that abortion is wrong and that it shouldn't be done. So the abortion rate is going down in

America. It's still very much too high, and we've tried to do some things to make adoption more attractive. And there was a law signed last year that's gotten almost no notice because it was part of the Elementary and Secondary Education Act to try to remove the prohibitions or the discriminations in courts across the country in cross-racial adoptions to try to do whatever we could to just encourage more adoptions.

September 8, 1994

Remarks to the National Baptist Convention, USA, in New Orleans, Louisiana

There's a bill in the Congress I really believe in, sponsored by Senator Metzenbaum, to make adoptions easier and to make it possible for people to adopt children across racial lines if nobody else is there wanting to adopt the children. Don't leave kids in the limbo of foster care for years and years and years. Give them a chance to do it.

March 19, 1994

Remarks at a Children's Town Meeting

I think that abortion should be safe. It should be legal, but it should be rare. I think we should liberalize the adoption laws. I think we should encourage people to adopt children. I think we should make it easier for people to adopt children across racial lines. But I don't believe -- in my own view, I support the decision of the Supreme Court that this decision ought to be a matter between women and their doctors. I don't think everybody else in society can say with absolute certainty that they know that.

THE WHITE HOUSE

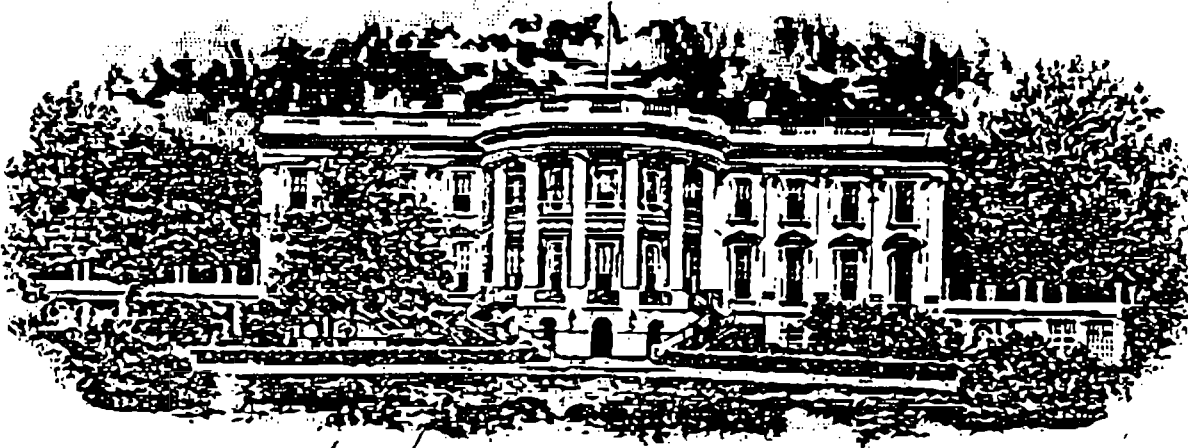
OFFICE OF COMMUNICATIONS RESEARCH

Old Executive Office Building, Room 197

Washington, D.C. 20500

Tel. (202) 456-7845

Fax (202) 456-2239



DATE: 6/10/91

TO: Diana Fortuna

AX NUMBER: 67431

FROM: Russell

Number of Pages to Follow: 2

NOTES: _____

Presidential Statements on Trans-Racial Adoption

November 1, 1995

Proclamation 6846 -- National Adoption Month, 1995

For many people across the United States, adoption provides a means for building and strengthening families. It places children into loving, permanent homes where they can flourish and grow up to become happy, healthy, productive members of our national community. Adoption also enables adults to experience the unique joys of parenthood.

As many as 70,000 children in America's foster care system may need adoptive families in the next few years -- young people of all ages and backgrounds who, for whatever reason, cannot return to their original homes. Many, but not all, are children with special needs. These young people long for the same affection, security, and stability that most of us take for granted, yet too many have waited -- and will continue to wait -- for years to be adopted.

My Administration has taken important actions to encourage adoption and to support the wonderful families that choose to open their hearts and homes to waiting children. The Multiethnic Placement Act, which I signed into law in October 1994, helps to facilitate adoption for all children and families, regardless of their race or ethnic origin. We will continue to champion and improve programs that break down barriers to adoption through aggressive recruitment of families, financial aid to support placements, and technical assistance to agencies committed to special needs adoption.

As we observe National Adoption Month, we celebrate these achievements and recognize the rewards of adoption, but we must also remember that much work remains to be done. Citizens from all communities and organizations from the public and private sectors must join together to renew our commitment to finding permanent homes for each one of America's children.

Now, Therefore, I, William J. Clinton, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1995, as National Adoption Month. I urge the people of the United States to observe this month with appropriate activities and programs and to participate in efforts to find permanent homes for waiting children.

In Witness Whereof, I have hereunto set my hand this first day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

WJC / Hunt

TO: Carol and Jeremy

FR: Diana

Here at last is the long-awaited MEPA update. I finally got the complete report from HHS. I think my asking them the status of state compliance got them to realize they had to get up to speed.

I hope the memo isn't too detailed. I know the President is very interested in the subject, so I went on the long side.

I don't think anyone else in the White House is up to date on this stuff, including counsel's office and intergovernmental. One possibility would be to run it by Chris Cerf since there are a number of legal issues -- but I am pretty confident of the facts.

I did my best on cc's, but you might want to look them over.

It will be on the i-drive under "mepaupd" if you make any changes.

THE WHITE HOUSE

WASHINGTON

October 10, 1995

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco

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.

MEPA was signed into law in October 1994, and it requires states to come into compliance by October 21 of this year. If this requires a change in state law, states are permitted to request an extension until after the close of their next state legislative session. The law also required HHS to issue enforcement guidelines in April of this year, and HHS did so.

HHS Approach to MEPA Enforcement: 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.

Progress on State Compliance: HHS reviewed the relevant laws, regulations, and policies of each state in order to identify practices that violate MEPA. In June, HHS informed 29 states and the District of Columbia that their practices did not comply with MEPA. Since then, HHS has worked with those states to educate them about the law and assist them in coming into compliance.

In general, states have cooperated with HHS in moving to comply with the law. At this time, nine states have compliance issues. Eight of them have indicated a willingness to comply with MEPA.

- o Four states (Arkansas, California, Kentucky, and Minnesota) have laws that violate MEPA. Three of these states have requested extensions: California expects state legislative action by January 1996, with Kentucky following by April 1996, and Minnesota by July 1996. HHS expects to grant these extensions prior to October 21.

Arkansas told HHS that it does not need an extension because state law allows the state to ignore or 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 problematic regulations that may not be amended by October 21. Two of these states (Iowa and Maryland) have requested extensions based on the length of time that it will take to make the regulatory change, but HHS does not have the authority to issue an extension for this reason. Maryland has promised to issue an interim policy that will require compliance with MEPA beginning 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 plans to issue an interim policy to enforce compliance, but the draft language the state has submitted to HHS permits race to be considered too broadly as a factor in adoptions. HHS is working with the State Attorney General to ensure that the language complies with MEPA.

HHS will inform each of these states that their regulations do not comply with MEPA and they must take action to alter them. HHS's enforcement authority requires them to work toward voluntary compliance before taking actions such as withholding Federal funds.

- o Tennessee is in the midst of a lawsuit on this issue that complicates enforcement. Prior to MEPA, an individual sued Tennessee over its policy of significantly limiting transracial adoption. After MEPA was enacted, the plaintiff added the Federal government as a defendant in the case. HHS lawyers say this action was based on a misunderstanding of the Federal position, and they have tried to persuade the plaintiff to drop us from the case.

HHS only recently contacted Tennessee to discuss compliance, because initially HHS lawyers felt that our involvement in the litigation precluded enforcement. That position was reversed a short time ago. It is quite possible that Tennessee will resist enforcing MEPA.

*Continue to work with HHS
to address concerns*

Of course, it is more difficult to know whether the actual practices of social workers who place children comply with MEPA, since they have considerable discretion in individual cases. The ambivalence and even hostility toward the policy on the part of many who have responsibility for adoption make it hard to gauge the status of enforcement with great certainty. It is possible that some state workers will attempt to circumvent MEPA and 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.

Congressional Interest in the Issue: ^{former?} Senator Metzenbaum, MEPA's sponsor, remains very interested in this issue. He has just asked HHS for an update on their enforcement efforts.

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 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.

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

Add sentence re spot checks
Ask HHS to hold
or let to hold?
Forum to bring in

**U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS****OFFICE OF THE DIRECTOR****FAX TRANSMISSION COVER SHEET****TO****FROM**Name: Diana FortunaName: Lisa Silverberg

Address:

Office for Civil Rights
Office of the Director
Room 5400, Cohen Building
330 Independence Avenue, SW
Washington, DC 20201

Phone: (202) 619-0403

FAX: (202) 619-3437

Phone: _____

of Pages w/Cover 3FAX #: 456-7431 / 456-7028**MESSAGE:**

Diana - I left you a message on your voice mail.
If you need to reach me over the weekend, I
am at home (703) 524-7495

Lisa

States Notified of Statutory or Regulatory/Policy Problems by DHHS

RECIPIENT

STATE CAP SUBMIT_DT APPROVE_DT EXT_REQ EXT_AP ONSITE TECH_DAT EXP_COMP

	DEP OF HEALTH & SOCIAL SERVICES	AK	Y	23-Aug-95	-	-	-	25-Jul-95	27-Sep-95	21-Oct-95	
Stat	AR DEP OF HUMAN SERVICES	AR	Y	20-Aug-95	-	-	statutory?	-	-	21-Oct-95	-?
	AZ DEP OF ECONOMIC SECURITY	AZ	Y	11-Aug-95	-	-	-	-	-	21-Oct-95	-
Stat	STATE DEP OF SOCIAL SERVICES	CA	Y	10-Aug-95	-	-	-	27-Nov-95	21-Jul-95	21-Oct-95	
	DEP OF CHILDREN & FAMILIES	CT	Y	31-Aug-95	-	-	01-Jun-95	06-Sep-95	31-Aug-95	01-Jan-96	
	DEP OF HUMAN SERVICES	DC	(N)	-	-	-	-	21-Jun-95	27-Sep-95	21-Oct-95	
	DEP OF SERVICES FOR CHILDREN, YOUTH & FAMI	DE	Y	01-Sep-95	-	-	-	26-Sep-95	-	21-Oct-95	-?
Reg	IA DEP OF HUMAN SERVICES	IA	Y	10-Aug-95	-	-	-	15-Aug-95	06-Oct-95	21-Oct-95	
	DEP OF CHILDREN & FAMILY SERVICES	IL	Y	24-Aug-95	-	-	11-Sep-95	-	-	31-Mar-96	
	IN FAMILY & SOCIAL SERVICES ADMINISTRATION	IN	Y	15-Aug-95	-	-	-	-	15-Aug-95	21-Oct-95	
	DEP OF SOCIAL & REHABILITATION SERVICES	KS	Y	15-Aug-95	-	-	-	-	21-Aug-95	21-Oct-95	
Stat	KY CABINET FOR HUMAN RESOURCES	KY	(N)	-	-	-	-	-	04-Oct-95	21-Oct-95	
	LA STATE DEP OF SOCIAL SERVICES	LA	Y	11-Aug-95	-	-	28-Sep-95	14-Jul-95	-	02-Apr-96	
	DEP OF SOCIAL SERVICES	MA	Y	28-Sep-95	-	-	-	11-Jul-95	-	21-Oct-95	
Reg	DEP OF HUMAN RESOURCES	MD	Y	11-Aug-95	-	-	-	19-Jul-95	11-Aug-95	21-Oct-95	
	DEP OF HUMAN SERVICES	ME	Y	28-Jul-95	-	-	11-Aug-95	19-Jul-95	30-Aug-95	21-Oct-95	-
Stat	MINNESOTA DEP OF HUMAN SERVICES	MN	Y	13-Sep-95	-	-	-	26-Jul-95	21-Sep-95	21-Oct-95	
	DEP OF SOCIAL SERVICES	MO	Y	11-Aug-95	-	-	18-Sep-95	27-Jul-95	29-Aug-95	15-Jul-96	
	DEP OF SOCIAL SERVICES	NB	Y	15-Aug-95	-	-	-	19-Jul-95	-	21-Oct-95	
	DEP OF HUMAN SERVICES	NM	Y	26-Sep-95	-	-	-	-	28-Sep-95	21-Oct-95	
	DEP OF HUMAN RESOURCES	NV	Y	11-Aug-95	-	-	-	09-Aug-95	30-Jun-95	21-Oct-95	
	NY STATE DEP OF SOCIAL SERVICES	NY	Y	15-Aug-95	-	-	-	12-Jul-95	02-Aug-95	21-Oct-95	
	OH DEP OF HUMAN SERVICES	OH	Y	11-Aug-95	-	-	-	21-Jul-95	18-Sep-95	21-Oct-95	
	DEP OF HUMAN SERVICES	OK	Y	10-Aug-95	-	-	-	-	27-Jul-95	21-Oct-95	
	DEP OF HUMAN RESOURCES	OR	Y	14-Aug-95	-	-	-	-	06-Oct-95	21-Oct-95	-?
	DEP OF HUMAN SERVICES	*TN	(N)	-	-	-	-	-	-	21-Oct-95	
	UT DEP OF HUMAN SERVICES	UT	Y	11-Aug-95	30-Aug-95?	-	-	-	-	-	-
	DEP OF WELFARE	VA	Y	03-Aug-95	-	-	-	21-Jul-95	29-Sep-95	21-Oct-95	
	WI DEP OF HEALTH & SOCIAL SERVICES	WI	Y	14-Aug-95	-	-	-	28-Sep-95	-	21-Oct-95	-?
	DEP OF HUMAN SERVICE	WV	Y	23-Aug-95	-	-	-	-	12-Jul-95	21-Oct-95	
								12-Sep-95	-	21-Oct-95	

OK - Gov must sign w/in 60 days
may or may not

30

IL - Gov did sign amend. veto.

Na - Bad reg - will slow eventually
interim policy
race may be considered -
HHS: add in best interests of
child

AR - Stat allows them to comply; RO checking don't nd extension
will change eventually

DC - did it in mtg; didn't send in plan

IA - regi monitor; enf action wld be do a reg

MD - letter will say; don't comply if unconst; renew practices; can't protect from
private lawsuit
No extension for reg A; but will issue policy in interim

Silverberg

10/11

Practice - invest complaints

- monitoring practices: first of year
fire on ex. child - spot check

- States liable

- Practitioner also liable

States are resistant - 2 states TA
infant face same color

Ex - Texas - Has had complaints

→ Tenn - 2 cases by plaintiff 1 consent decree

No written policy or reg, state in lawsuit
Court ordered race matching
Amended Court order to comply w/MEPA
State requested court to amend court order
So shows willingness to comply

Metzenbaum - Florida for 4 mos.
Bourdette -

* Tennessee is in litigation regarding transracial adoption issues. HHS is a defendant in this case. The Department of Justice (DOJ) is defending HHS. Recently, DOJ said that it would be okay if OCR/GC went forward with its MEPA implementation with Tennessee but to let DOJ know the content. OCR is doing so.

Note: MD and IA have requested extensions for Regulatory changes. Extensions cannot be granted for such changes. However, OCR will work with these States to ensure that they are in compliance.

Note: OK has Regulatory problems. The Revision with the Governor for signature may take up to 60 days.

Note: VA has Regulatory problems. Language consistent with MEPA is being discussed by the State Attorney General. The Regional Office is attempting to resolve these problems through technical assistance.

TN - called them Friday; web tom.

- fighting it

- suit for MEPA; very strict race-matching → modified to say 'best interests of c!' ??

- Best mepa -

- Come in; talked to plaintiff; he drop me

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE FOR CIVIL RIGHTS



FAX TRANSMISSION COVER SHEET

TO

FROM

Name: Diana FortunaName: Ron Copeland

Address:

Office for Civil Rights⁽²⁾, OPORoom 5037 Cohen Building
330 Independence Avenue, SW
Washington, DC 20201Phone: (202) 614-0553FAX: (202) 260-0581

Phone: _____

FAX #: 456-7431

MESSAGE:

These are incomplete. But, we thought that the information would still be useful. We will complete tomorrow.

States Notified of Statutory or Regulatory/Policy Problems by DHHS

DRAFT

RECIPIENT

STATE CAP SUBMIT_DT APPROVE_DT EXT_REQ EXT_AP ONSITE TECH_DAT EXP_COMP

DEP OF HEALTH & SOCIAL SERVICES	AK	Y	23-Aug-95	-	-	-	25-Jul-95	27-Sep-95	21-Oct-95
AR DEP OF HUMAN SERVICES	AR	Y	20-Aug-95	-	hunted	-	27-Nov-95	-	21-Oct-95
AZ DEP OF ECONOMIC SECURITY	AZ	Y	11-Aug-95	-	-	-	27-Nov-95	21-Jul-95	21-Oct-95
STATE DEP OF SOCIAL SERVICES	CA	Y	10-Aug-95	-	01-Jun-95	other prob	06-Sep-95	-	01-Jan-96
DEP OF CHILDREN & FAMILIES	CT	Y	31-Jul-95	-	-	leverage	21-Jun-95	-	21-Oct-95
DEP OF HUMAN SERVICES	DC	Y	-	-	-	-	26-Sep-95	-	21-Oct-95
DEP OF SERVICES FOR CHILDREN, YOUTH & FAMI	DE	Y	01-Sep-95	-	-	-	15-Aug-95	-	21-Oct-95
IA DEP OF HUMAN SERVICES	IA	Y	10-Aug-95	-	-	-	-	-	-
DEP OF CHILDREN & FAMILY SERVICES	IL	Y	-	-	-	-	-	-	-
IN FAMILY & SOCIAL SERVICES ADMINISTRATION	IN	Y	-	-	-	-	-	-	-
DEP OF SOCIAL & REHABILITATION SERVICES	KS	Y	15-Aug-95	-	-	-	-	-	21-Oct-95
KY CABINET FOR HUMAN RESOURCES	KY	N	-	-	28-Sep-95	statutory	14-Jul-95	-	02-Apr-96
LA STATE DEP OF SOCIAL SERVICES	LA	Y	11-Aug-95	-	-	-	-	-	21-Oct-95
DEP OF SOCIAL SERVICES	MA	Y	28-Sep-95	-	-	-	19-Jul-95	-	21-Oct-95
DEP OF HUMAN RESOURCES	MD	N	-	-	11-Aug-95	neg.	19-Jul-95	-	-
DEP OF HUMAN SERVICES	ME	Y	28-Jul-95	-	-	-	26-Jul-95	-	21-Oct-95
MINNESOTA DEP OF HUMAN SERVICES	MN	Y	-	-	18-Sep-95	stat.	27-Jul-95	-	15-Jul-96
DEP OF SOCIAL SERVICES	MO	Y	11-Aug-95	-	-	-	19-Jul-95	-	21-Oct-95
DEP OF SOCIAL SERVICES	NB	Y	15-Aug-95	-	-	-	-	28-Sep-95	21-Oct-95
DEP OF HUMAN SERVICES	NM	Y	26-Sep-95	-	-	-	-	-	21-Oct-95
DEP OF HUMAN RESOURCES	NV	Y	11-Aug-95	-	-	-	12-Jul-95	-	21-Oct-95
NY STATE DEP OF SOCIAL SERVICES	NY	Y	15-Aug-95	-	-	-	21-Jul-95	21-Jul-95	-
OH DEP OF HUMAN SERVICES	OH	Y	-	-	-	-	-	-	-
DEP OF HUMAN SERVICES	OK	Y	10-Aug-95	-	-	-	-	-	-
DEP OF HUMAN RESOURCES	OR	Y	14-Aug-95	-	-	-	-	-	21-Oct-95
DEP OF HUMAN SERVICES	*TN	N	-	-	-	-	-	-	-
UT DEP OF HUMAN SERVICES	UT	Y	-	-	-	-	21-Jul-95	-	-
DEP OF WELFARE	VA	N	-	-	-	-	28-Sep-95	-	-
WI DEP OF HEALTH & SOCIAL SERVICES	WI	Y	-	-	-	-	-	-	-
DEP OF HUMAN SERVICE	WV	N	-	-	-	-	12-Sep-95	-	-

* Tennessee is in litigation regarding transracial adoption issues. HHS is a defendant in this case. The Department of Justice is defending HHS. Recently, the Department of Justice said that it would be okay if OCR/GC went forward with its MEPA implementation with Tennessee but to let DOJ know the content. OCR is doing so.

Note: MD and IA have requested extensions for Regulatory changes. Extensions cannot be granted for such changes. However, OCR will work with these States to ensure that they are in compliance.

5 states - maybe not formal
Kentucky, MD

(30)

Worst remedy - what all
red &

Intermed - letters of finding
violation of Title 6
the public

GC initially sd
don't talk to them
would overrule
HHS talk to them
but now will
wants to
adopt for
case pre-MEPA
Cinderella plaintiff
TN - way off
mixed race
w/mr

not in section?

hunted

other prob

leverage

- need to fill in date

- Oct-95 - prob; neg too slow - get date

statutory

neg.

stat.

will find out;
prob OK

COPELAND

2022600581

06:56

10/05/95

002

DRAFT

10/05/95

States With No Identified Statutory Problem
State Reviews of Practices to be Conducted
Technical Assistance Available

Recipient	State
AL DEP OF HUMAN RESOURCES	AL
CO DEP OF SOCAIL SERVICES	CO
DEP OF HEALTH & REHABILITATIVE SERVICES	FL
GA DEP OF HUMAN RESOURCES	GA
HI DEP OF HUMAN SERVICES	HI
DEP OF HEALTH & WELFARE	ID
MI DEP OF SOCIAL SERVICES	MI
MISSISSIPPI DEP OF HUMAN SERVICES	MS
MT DEP OF FAMILY SERVICES	MT
DEP OF HUMAN RESOURCES	NC
ND DEP OF HEALTH SERVICES	ND
DEP OF HEALTH & WELFARE	NH
DEP OF HUMAN SERVICES	NJ
DEP OF PUBLIC WELFARE	PA
DEP OF SOCIAL SERVICES	PR
DEP OF SOCIAL SERVICES	SC
SD DEP OF SOCIAL SERVICES	SD
TX DEP OF PROTECTION & REGULATORY SERVICES	TX
VIRGIN ISLANDS DEP OF HUMAN SERVICES	VI
DEP OF SOCIAL AND REHABILITATION SERVICES	VT
DEP OF SOCIAL & HEALTH SERVICES	WA
WY DEP OF FAMILY SERVICES	WY

22

*Copeland: plans still coming in;
acknowledging that OK
extensions - requests coming in*

August 4, 1995

MEMORANDUM FOR THE FIRST LADY

FROM: Carol Rasco
SUBJECT: Transracial Adoptions

You asked for an update on the Multiethnic Placement Act of 1994 (MEPA).

Progress on Enforcement: MEPA was signed into law in October 1994. In April of this year, HHS published guidelines on enforcing MEPA and informed the states of its plans for enforcement. This included a review of all relevant state laws, regulations, and published policies in order to identify any practices that violate MEPA.

On June 20, HHS informed 30 states that their practices do not comply with MEPA. Three of these states (Arkansas, California, and Minnesota) have laws contrary to MEPA. These 30 states were told to submit plans to HHS by August 15 that demonstrate how they will comply with MEPA. By law, states must come into compliance by October 21, 1995; however, those states that require a change in state law can apply for an extension until after the close of the state legislative session.

To date, most states appear to be cooperating and taking action to come into compliance. HHS has provided technical assistance to each state with a compliance problem, and has encountered little or no resistance. State legislatures in California and Minnesota are currently considering changes to their statutes; California has requested and will receive an extension until January 1996. In Illinois, a bill that would violate MEPA is now on the Governor's desk awaiting signature. HHS has advised Governor Edgar of this problem and believes that he will issue an amendatory veto that will bring the bill into compliance. Some Democratic state legislators are unhappy with this development.

HHS has also provided technical assistance to state human service departments on training social workers to comply with the law, which is important given the strong opposition to MEPA by the National Association of Black Social Workers.

HHS Approach on Enforcement: The article you read in the Little Rock Free Press quoted Senator Metzenbaum's claim that HHS weakened the final version of MEPA, and charged that HHS is now preparing regulations that will make transracial adoption more difficult. It also notes that the House welfare reform bill would deny federal funding to agencies that use race as a factor in placing children and help recruit black families by offering a tax credit to lower income families who adopt.

HHS's guidelines take an aggressive approach on enforcement of MEPA, which we believe Senator Metzenbaum now acknowledges. MEPA identifies the cultural, racial, or ethnic background of the child, along with the capacity of the prospective parents to meet the child's needs, as one of a number of factors that can be considered in the adoption decision, as long as this does not delay or deny an adoption. 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. Some would read MEPA to allow a general preference for a family of the same race if that did not delay the adoption, but that is not HHS's reading of the law.

X A number of states have asked how to handle the hypothetical situation of a choice between a black and a white family where all things are equal except for race. HHS has responded that this hypothetical situation is unrealistic, and that all decisions must be based on the needs of the individual child in question. States have expressed particular concern about infants, who obviously can not be questioned about their needs. These concerns raise the question of whether state workers will attempt to circumvent MEPA and maintain the status quo by certifying in each individual case that that particular child would be better off with a family of the same race.

Update The House welfare reform bill includes language that is intended to prohibit consideration of race under any circumstances, even for any individual child. However, from a technical perspective HHS believes the language is actually consistent with its current guidelines. On the Senate side, it appears that key Republicans believe that MEPA and the HHS guidelines are satisfactory and have no plan to follow the House's lead.

cc: Melanne Verveer
Abner Mikva
Marcia Hale

Mary Bondette
690-6311

How to ch HHS?

**FACSIMILE TRANSMISSION**

**ADMINISTRATION FOR CHILDREN AND FAMILIES
OFFICE OF THE ASSISTANT SECRETARY
370 L'ENFANT PROMENADE, S.W.
WASHINGTON, D.C. 20447
September 29, 1995**

TO: *Diana Fortuna*

Telephone:
Fax: *456-7431 / 7028*
Number of Pages (excluding cover): *5*

FROM:

**Wendy Jacobson
Special Assistant to the
Deputy Assistant Secretary**

Telephone: (202) 260-1853
Fax: (202) 205-3848

MESSAGE:

*As requested.
Self-req / code
Was there heyday*

*619-0553
Ron Copeland*

*Lisa S.
619 0403*

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for Children and Families
Administration on Children, Youth and Families
330 C Street, S.W.
Washington, D.C. 20201

RECEIVED
AUG 31 1995
1995 SEP -1 P 4:39

TO: Olivia A. Golden, Commissioner, ACYF
Dennis Hayashi, Director, OCR
Michael Wald, Deputy General Counsel, OGC

FROM: Associate Commissioner
Children's Bureau

SUBJECT: Status Report on Implementation of the Multi-Ethnic
Placement Act

All the initial steps necessary to implement the Multi-Ethnic Placement Act (MEPA) were completed by the end of July. There has been an extraordinary amount of work done under tight deadlines by many staff in the Office of Civil Rights, the Office of General Counsel, and the Children's Bureau. In addition, the Regional Office staff of all three agencies have been very cooperative and responsive. Working together, we have achieved a solid and responsive first-stage success in implementing MEPA. This status report describes the major accomplishments to date.

Preparation of MEPA Information Materials and Public Information

In March and early April OGC, OCR and ACF staff, with the help of ACF's Office of Public affairs, developed a package of materials that described and explained MEPA, and that anticipated many of the questions and objections that later arose. This material was included in a package first made available to Congressional staff, and to the press and to advocates in public briefings. These materials were later made available to others as inquiries were received, and were provided to every State in a letter, dated April 20, signed by Mary Jo Bane and Dennis Hayashi.

In addition, a videotape was produced to explain MEPA, to place it in context of the overall child welfare responsibilities of the Department, and to respond to some of the more urgent MEPA questions. The videotape, which featured a number of senior Department officials, was sent to the Regional Offices for their information, and has been used as an integral part of the Regional MEPA Team training. Children's Bureau, OCR and OGC staff have also done a number of joint presentations at conferences, and participated in joint media interviews on MEPA.

- 2 -

Analysis of State MEPA Compliance Status

On the basis of information supplied by the Regional Offices, OGC and OCR staff assessed the MEPA compliance status of each State, the District, Puerto Rico and the Virgin Islands. The analysis covered State statutes, regulations, and official policy manuals or other guidance documents, and also considered related civil rights complaints or litigation, if any. The resultant assessment formed the basis for the State-specific letters signed by Mary Jo Bane and Dennis Hayashi, and was useful as well in making the final determination about which States should be given priority for an early MEPA site visit.

Development and Execution of a MEPA Implementation Plan

In late May the Children's Bureau assumed responsibility for developing a management plan and an organized approach to assure that no critical implementation steps were missed, and to help the various HHS organizational units coordinate their MEPA-related work. The Bureau convened a series of meetings to develop and reach agreement on a detailed plan.

The plan, developed and circulated in early June, was reviewed by senior officials of ACF, OGC and OCR. It covered four main areas: completion of the formal notification to States; Regional Office training and MEPA Team formation; conduct of State visits; and provision of technical assistance. The plan has been fully executed, accomplishing all the milestones to date.

Notification of States

States were first informed of the provisions of MEPA in an Information Memorandum (ACYF-IM-94-22) dated December 1, 1994, and sent to State Title IV-B/IV-E agencies and State Civil Rights Officers. This was followed by the April 20 letter, which was also sent to State child welfare agencies and civil rights agencies, and to ACF's Adoption Opportunities grantees. It provided policy guidance on MEPA, and notified every State of the basic provisions of the law, including dates for compliance. The letter also gave the names and phone numbers of HHS contacts for additional information on civil rights compliance issues and child welfare-related matters.

This was followed in June by a series of letters to States informing them of the results of our compliance analysis. First to go out were nine letters--followed shortly by a tenth--to States which presented some of the more severe potential compliance problems. Next, in late June, similar letters were sent to other States which appeared to have specific statutory,

- 3 -

regulatory, or written policy problems. Finally, letters were sent in early July to the remainder of the States and other jurisdictions, saying that no specific problems were uncovered in the compliance assessment, but urging them to examine their own guidance to be sure they are in compliance.

Training of Regional Office Staff

The training objectives and content for a one-day MEPA Team training session were identified by OCR and ACF staff, with assistance from OGC and input from the Regions. Recognizing that OCR and ACF staff have different methods of relating to States, and differences in their initial understanding of the purposes of MEPA, a key objective of the training was to air and resolve these differences in the Regional Offices, so that they would not pose a problem in working with the States.

Trainers included, in each Region, a child welfare-expert consultant supplied by a Children's Bureau contractor, and Central Office staff from OGC, OCR and ACF. The training was conducted in nine Regions, each of which also involved a MEPA site visit to a State. (Training for Region I staff was essentially accomplished in a joint Central Office/Regional Office site visit to CT.) All of the Regional MEPA Team training and the State visits were conducted in a little over two weeks.

Initial Site Visits to States

Following the June 21 MEPA visit to Connecticut, there was a joint conference call for OCR, ACF, and OGC staff in all the Regions, to brief them on the Connecticut experience and to discuss plans for Regional MEPA Team formation and training. Following the general conference call, we scheduled nine separate Regional conference calls, with OCR and ACF Central Office staff both on the line, to discuss MEPA implementation needs in more detail, including which States most needed a site visit.

With the addition of Regional Office knowledge of the needs and MEPA compliance status of their States, the list of States to be visited was revised, to give priority to States which needed or had requested technical assistance.

Responding to MEPA-related Questions

The initial set of MEPA Questions and Answers, which was prepared for the Regional training, will be converted to a formal issuance in the ACF issuance system, with the intention that it be issued jointly by OCR and ACF and sent to State civil rights and child

- 4 -

welfare offices. The basic MEPA Q&A material is now undergoing one final review in OGC before it is issued formally. Some MEPA policy questions require more discussion, so a MEPA Policy Group is being established, to provide a regular forum in which OGC, ACF and OCR can consider and resolve MEPA questions. The first meeting of this group is set for August 31.

Technical Assistance

Regions have begun to provide technical assistance to States on MEPA. The Children's Bureau's Resource Centers are available to supplement Regional efforts, and to provide technical assistance that Regions cannot provide. The director of the National Adoption Resource Center has been one of three key consultants in the Regional training sessions. In addition, the Adoption Resource Center is revising some key publications to conform to MEPA (OGC has assisted ACF in reviewing these documents) so that they can serve as technical assistance materials for use by OCR and ACF Regional staff and other TA providers. The Children's Bureau is developing a MEPA technical assistance plan and strategy.

Next Steps

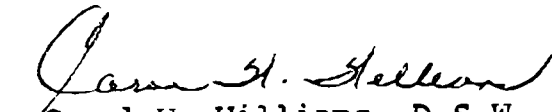
At an August 24 de-briefing for ACF, OCR and OGC staff, and the child welfare consultants, to consider the experience of the Regional MEPA Team training and State visits, a number of conclusions emerged:

- 1) It is clear that no State will fail, willfully, to comply with MEPA. Nor does there appear to be any dispute between the Department and any State over the basic interpretation of MEPA and whether in fact a State must change some statute, regulation or policy.
- 2) More training is needed for Regional Office staff on child welfare issues in general, and more work is needed on furthering the team approach to MEPA implementation.
- 3) A joint ACF/OCR workgroup will be formed, probably late in FY 1996, to devise procedures and instruments for compliance monitoring.
- 4) ACF will request reports from Regional Offices on the status of title IV-B Plan amendments, and OCR will continue tracking civil rights compliance, including preparation of a status report on extensions requested by States.

- 5 -

- 5) The Children's Bureau will develop technical assistance materials for the use of Regional MEPA Teams and State agencies, on recruitment of foster and adoptive parents.

The initial stages of implementing the Multi-Ethnic Placement Act have been accomplished in good time and with satisfactory results. We will need continued cooperation among ACF, OGC, and OCR staff to encourage and monitor actual compliance at the level of practice: Our successful experience to date provides a basis for optimism that future MEPA implementation work will be equally effective.


Carol W. Williams, D.S.W

cc: ✓ Ann Rosewater, Deputy Assistant
Secretary, PEA
Mary Jo Bane, Assistant Secretary, ACF

LITTLE ROCK

Free Press

News, Arts and Opinion — Biweekly

Black White



Love May Be Color Blind, But
Adoption Laws Aren't

by George Oxford Miller

NEFF

SWLR SAYS
NO TO FORTH

Falling Between The Cracks In Custody?

By [illegible]

A Black & White Decision?

Love may be color blind, but adoption laws aren't

By George Oxford Miller

In Arkansas today, 2,383 children are living in foster homes in court-mandated separation from their parents, primarily due to sexual and physical abuse. The majority will eventually return to their families when their home situation improves. But 186 will not. Though the actual number varies monthly, this group of 186 will wait in limbo while social workers search for families willing to adopt them.

The Department of Human Services currently has 20 black families and 77 white families waiting to adopt. But they can't make a match with the kids in foster care. Most of the available children are black. Most of the adoptive families are white. Most of these children are classified as "special needs" children. In Arkansas, the special needs designation applies to children of color over two years old, white children over nine years old, sibling groups and kids with emotional, intellectual or medical problems.

On an average, each of these young people will have to wait three years or longer before being adopted. Yet countless studies confirm, and every case worker agrees, that such inordinate delays in finding a permanent family can create a lifetime of emotional and behavioral problems.

The timely placement of children for adoption by the Division of Child and Family Services hasn't always been as bad as it is today. It's been worse. Fortunately, some of the administrative and procedural delays in finding willing families have changed, or soon will. Unfortunately, other problems remain as deeply entrenched in the system as ever.

Pulaski County Circuit/Chancery Judge Joyce Williams Warren described the procedure leading to the adoption of a child in foster care: "After the dependency neglect ruling, the child is placed in foster care and the state has 18 months to develop a case plan that recommends removal of parental rights and adoption, or return [the child] to the family. If adoption is recommended, an adoption packet is prepared. In the past, that has taken six to nine months. Then another 18 to 24 months may pass before a family is approved. By then, the child has been in foster care for three years or longer. I once had to tell a case worker that I'd like to get the child adopted before he's old enough to vote."

Indeed, the DCFS adoption portfolio lists a number of teenagers who will undoubtedly reach voting age before finding an adoptive family.

At least one procedural step in the shuffle from foster care to a loving family recently has been streamlined. The adoption packet, which describes the child's complete case history and the criteria for placement, now is being developed totally by placement specialists in the adoption unit instead of depending on communications back and forth with various county foster care units. Centralizing the responsibility will help close

one of the black holes in adoption that so frustrates Warren.

New computers also will help alleviate delays due to the perennial case overloads carried by placement workers. Billye Burke, Chief Administrator for the Central Offices of In-Home Services, the office which oversees adoption, anticipates a statewide computer network by the end of the year. "With complete information about each child on the main-frame computer," she said, "field workers will find it much easier to match families and children."

The current computer system is limited in the number of variables it can match between the child's and family's requirements. The new system, if approved, also will allow tracking and monitoring of each child's progress through the system before and after placement.

But the children in foster care in Arkansas and across the nation need more than high-tech solutions to get them into loving, permanent homes. Nationwide, 500,000 children are in foster care and 200,000 are available for adoption. Forty percent of those 200,000 are black, a disproportionately large number compared to the population. According to an Arkansas Department of Human Services document, "Too many children remain in foster care because of the disarray at every level of the child welfare delivery system."

Ironically, the problem isn't just bureaucracy, or even a lack of agency-approved families willing to adopt children with severe mental, emotional, and

physical handicaps. In many instances, the problem is race.

The consensus among adoption agency supervisors, social workers, and policy makers is that children should be placed with families of the same race. In Arkansas, the preference for same-race placement is dictated by law. After first considering the child's family, "the court shall give preference to... a family with the same racial or ethnic heritage as the child, or if that is not feasible, to a family of different racial and ethnic heritage..."

In 1991, a minority child eligible for adoption in Arkansas had to wait a full year in foster care before DCFS would even consider applications from white families. State Representative Pat Flanagan of Forrest City introduced a bill to limit the waiting period to six months. "The National Black Social Workers Association came out of nowhere and pressured black legislators to oppose the bill," Flanagan said. "Conservative whites also opposed it." Flanagan withdrew the bill and told the media that he would reintroduce it the day after racism died in Arkansas.

In a paradoxical twist of political and cultural correctness, many African-American activists have a new definition of a racist: a white person who wants to adopt a black child. So opponents the National Association of Black Social Workers. Since 1972, the organization has consistently opposed transracial adoption as "cultural genocide."

As recently as 1991, the group stated that "African American children should not be

placed with white parents under any circumstances," and further contended that even "the most sensitive, loving and skilled white parent could not avoid doing irreparable harm to an African-American child."

The Rev. Jesse Jackson, however, disagrees with the NABSW. Testifying before Congress in support of the Multiethnic Placement Act (see sidebar), he declared, "a sense of permanence and the right to be unconditionally loved are essential to the mental well-being of any human."

Various court rulings have also disagreed with the NABSW same-race family position. The Supreme Court

ruled in 1967 that states cannot prohibit interracial marriage and ruled in 1984 that a white child cannot be taken away from a white mother because she married a black man. The Court stated that a "core purpose of the Fourteenth Amendment was to do away with all governmentally-imposed discrimination based on race. Classifying persons according to race is more likely to reflect racial prejudice than legitimate public concern..." Whether the prohibition against state-mandated race preference extends specifically to adoption is being tested by pending cases.

Researchers who have studied mixed-race families for decades also disagree that transracial adoption robs children of their cultural identity and ethnic heritage. For 20 years, American University law and public service professor Rita Simon tracked 204 white families who had adopted black children. She found that minority children growing up in white families did not become confused about their racial identities. "The data in our study, indeed in all the studies that have been done, show that transracial adoptions serve the children's best interest," Simon reported.

Despite convincing scientific research and explicit constitutional law, most adoption advocates agree, in as much as the word "agree" can be applied to the thorny issue of adoption, that the fears expressed by the NABSW cannot and should not be dismissed. When available, black families should have first preference for black children.

But the problem, simply stated, is one of supply and demand. There are not enough black families in Arkansas, or the nation, to adopt the numbers of black children available. According to one adoption advocate in the private sector, some agencies are having to find homes in Europe for African-American babies because of the lack of black families willing to adopt.

The Arkansas Division of Child and Family Services, the NABSW and other national advocacy groups contend that the problem is not lack of black families but lack of recruitment. The DCFS maintains a Black Family Outreach unit with three placement specialists dedicated to finding black families. Besides advertising and publicity, DCFS has provided grant money specifically for recruitment programs, such as Project STARS, which lasted for two years.

Most people agree that, ideally, black children should be reared in black families and acculturated with the values of their black heritage. But in an ideal world, adoption would not exist at all and children wouldn't languish in foster homes while adults argue about the "irreparable harm" done to black children if they are socialized to think like white people.

In the meantime, thousands of black children nationwide and scores in Arkansas are forced to live indefinitely in foster homes.

Ironically, many of those foster homes happen to be headed by white families. And, though discouraged in the past, the current trend is to encourage foster parents to adopt their wards. "About 40 percent of the adoptions that DCFS handles are by foster parents," Burke reported.

But problems arise, as depicted in





Turnabout is unfair play

National legislation leaves transracial adoption in limbo, but bipartisan help (!) may be on the way

Last year, Sen. Howard Metzenbaum (D-Ohio) sponsored the Multiethnic Placement Act, which denied federal funding to any agency that used race, color or national origin to delay the placement of children for adoption. But in a typical Washington turnabout, instead of easing transracial adoptions, the final version bill made them more difficult. "Some bastards at HHS [Department of Health and Human Services] intervened and did the bill great harm," Metzenbaum told *Newsweek*.

However, the fine print in GOP's Con-

tract With America may Metzenbaum's grievances. The reform bill passed by the House Ways and Means Committee would deny funding to agencies that use race as in placing children for adoption. Besides restrictions against transracial adoption, the bill would help recruit black families giving tax credit to lower income families who adopt. In the meantime, HHS is preparing additional regulations to make transracial adoptions even more difficult.

— George O.

first child, a white baby with special needs. Since then we've had to go out of state to adopt. Even though our home study is kept current, the Department of Children and Family Services won't consider us for black children. I know of one child that we've applied for and another white couple has applied for that has been in foster care for more than a year, and they still won't consider us."

My work's closely with AASK (Ask About Special Kids), an organization that places children with special needs nationwide. "The last child we adopted was advertised on television nationally, but a black family applied. We took him because no one else wanted him. We're trying to adopt another child in Florida."

Private adoption agencies don't have theitudinal and legal constraints of state agencies. Most adoptions of healthy babies in Arkansas and the nation are handled by private agencies and lawyers.

"Most of our adoptions occur im-

✓ Read article

Scan letters

outline of memo — enforcement process
— too much on law/accepting HHS

TO Diana

THE WHITE HOUSE
WASHINGTON

OFFICE OF THE FIRST LADY

phone 202-456-6266
fax 202-456-6244

TO Carol

FROM Melanne

FAX # 62878

PHONE # 62216

OF PAGES (including cover) 4

COMMENTS Article you requested.

A Black & White Decision?

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but adoption laws aren't*

By George Oxford Miller

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TALKING IT OVER



By HILLARY RODHAM CLINTON

Making adoption easier

The first time I met Mother Teresa was not in an urban slum or a remote village in India but in the fancy ballroom of a Washington hotel. It was February 1984, and she had just delivered a speech against abortion at the National Prayer Breakfast. When she finished her remarks, she pulled me aside for a chat.

She told me about her homes for orphaned children in New Delhi and Calcutta and asked for my help in setting up a similar home for abandoned and neglected babies in Washington, D.C. I agreed to work on the project. Although we differ on some issues, we found common ground on adoption. So we sat and talked about how to find homes for the hundreds of thousands of American children who need loving families.

A year later, my daughter and I visited Mother Teresa's home for children in New Delhi. There were no many cribs and too few toilets, and there was too little space. There was no way the place could ever pass inspection in any American city. But there were also dozens of beautiful babies, mostly girls, being fed, clothed, sheltered and loved until they could be adopted.

Those images stayed with me when I returned home. I was even more determined to help Mother Teresa bring to Washington the compassion I had witnessed in India. But you cannot imagine how much red tape was getting in my way. Ironically, many regulations designed to protect children often overlook what kids need most: love and attention.

Finally, on a sweltering day this past June, the Mother Teresa Home for Children opened in an affluent residential neighborhood of the nation's capital. It is a two-story Tudor house with a swimming pool in the back yard, donated by a remarkably generous person who chose to remain anonymous. At the dedication ceremony, Mother Teresa — happy, enthusiastic and all business — took me on a tour. Grabbing my hand and leading me up the stairs, she walked me through brightly painted rooms filled with cribs, bassinets and stuffed animals.

Although it will accommodate only eight children at a time, this home is a crucial step in awakening Americans to the crisis of adoption.

We should worry less about how many cribs can be placed in a room and more about how many children can be placed with loving families. And instead of yelling at each other about abortion, we should spend our energy making adoptions easier. If that were to happen, there would be far fewer abortions and far

(See TALKING, Page B3)

TALKING

(Continued from Page B1)

more children in happy homes.

Today, there are about 450,000 children in the United States who need permanent families. There are tens of thousands of parents seeking to adopt.

Yet every day, complex regulations, outdated assumptions and wrong-headed laws stand in the way of bringing these parents and children together.

For some Americans, like a woman who wrote to me recently, cost is the biggest barrier. She and her husband, both musicians, spent thousands of dollars adopting a little boy six years ago. He is, she said, "the joy of our life." When her cousin's daughter recently became pregnant at age 18 and could not afford to keep the child, this same couple volunteered to adopt again.

As simple as this case should have been — the parents and baby were members of the same extended family and all parties agreed to the adoption — it still cost upward of \$4,000 because of legal fees and paperwork.

For others, there is a fear factor. Like many Americans, a 40-year-old newscaster I met recently in New Mexico was interested in adopting but was discouraged by highly publicized cases like Baby Richard's. However rare they are, cases in which birth parents seek to reclaim custody of adopted children undermine people's faith in the adoption system.

Decisions to give up children for adoption should be difficult to overturn, especially in the cases of children who become attached to their adoptive

families during their formative years, like Baby Richard. The decision to return the child to the biological parents or to uphold the adoption should be made as quickly as possible. No child should be left in limbo.

The whole process also is made more difficult because of a historical bias against interracial adoptions, which can mean endless waiting until children are matched with parents of the same race.

In a perfect world, most of us would choose parents who shared our cultural and racial identities. But our world is not perfect. Today, there are far more minority children needing homes than are being placed for adoption. To prevent these children from languishing in foster care, new guidelines are now in place that will prohibit federally funded agencies from using race as a factor in placing children.

Wouldn't it be wonderful if we did something dramatic about adoption? Why not set a goal of placing 100,000 children each year for the next five years? To do this, we would have to make adoption easier and enlist volunteer lawyers and judges to speed up the legal process. And we should also follow Mother Teresa's model, in which considerations like money, regulations and skin color do not outweigh the more important gift of love that adoptive parents want to offer.

Hillary Rodham Clinton's column will appear every Sunday in The Capital.

The Capital —

Annapolis

(7/30/95)

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6/27/95

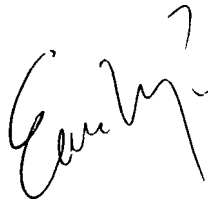
mepa - transracial adoption bill on gov desk that violates mepa

told dem leadership, gov; gov appreciated heads up; legislator
was trying to do metzenbaum; was modified

can do amendatory veto that would correct statute
will try to give woman cover that was mandated

mass: they're caving right and left
va: bruce, rahm by fri; sat radio address

immuniz: meeting with dem govs tomorrow; need to be candid; would
be great if they wrote letters to editor

A handwritten signature in cursive script, appearing to read "Gandy", with a small question mark above the final stroke.

Washington, D.C. 20201

JUL 7 1995

The Honorable Governor James Edgar
Governor of Illinois
State Capitol
Springfield, Illinois 62706

Pls. for package to
Diana F., Emily B., and
Chris Cerf of WH Councils
etc.

Dear Governor Edgar:

We are writing you with respect to the Howard R. Metzenbaum Multiethnic Placement Act of 1994 (MEPA), enacted by Congress last year. 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.

In April, 1995, the Department of Health and Human Services issued a guidance to all states indicating how the Department would be applying MEPA. We have attached a letter, which we have just sent to Director Jess McDonald of the Illinois Department of Children and Family Services, regarding the applicability of MEPA with respect to the laws and policies of the State of Illinois. The letter identifies one current DCFS policy that may not comply with MEPA. This Department looks forward to working with Director McDonald on revising this policy.

However, we are also writing you because it is our understanding that you currently have before you House Bill 1221, recently passed by the Illinois General Assembly, that prescribes two policies that would be inconsistent with MEPA.

HB 1221 would amend the Children and Family Services Act, Section 7(c), by including the following language:

The Department shall place a child with a foster family, or an adoptive family if the parental rights of the child's parents have been terminated, from among the child's relatives and among families of the same racial or ethnic heritage as the child, unless good cause is shown to the contrary. The Department shall make special efforts to place a child with a foster family, or an adoptive family if the parental rights of the child's parents have been terminated, from among the child's relatives and among families of the same racial or ethnic heritage as the child.

Page 2 - Governor Edgar James

The underlined references in these two sentences would establish a generalized preference for placement based on the race or ethnicity of the child. Such a general preference is inconsistent with the requirements of MEPA, which requires individualized consideration of the best interest of a specific child.

The proposed new Section 7(d) in HB 1221 raises similar issues. The new section states that "The Department shall not delay placement or approval of an adoption beyond 3 months on the grounds that a same race family is being recruited." While this section is designed to limit lengthy delays in placement, it implicitly allows delay for up to three months in order to find a same race placement. This is inconsistent with MEPA, which forbids any delays of placement based on race. Section 7(d) also supports the generalized preference for same race placements in Section (7)(c).

The conflicts with MEPA would be resolved if the references to racial and ethnic heritage in Section 7(c), and all of Section 7(d), were deleted from the legislation.

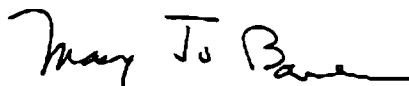
We are also attaching for your information a copy of MEPA and the HHS guidance. Although MEPA prohibits general preferences or delays of placement based on race, it does provide that an agency making individualized placement decisions "may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child."

We would be happy to provide any additional information you might need.

Sincerely,



Dennis Hayashi



Mary Jo Bane

cc: Lee Daniels
James Philip
Jess McDonald
Mary Flowers
Al Salvi
Michael Madigan
Emil Jones



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

JUL 7 1995

Mr. Jess McDonald
Director
Department of Children and Family Services
406 East Monroe
Springfield, Illinois 62701-1498

SUBJECT: Compliance with the Multiethnic Placement Act of 1994

Dear Mr. McDonald:

Our letter to you dated April 25, 1995, issued pursuant to the Multiethnic Placement Act of 1994 (MEPA) transmitted our policy guidance on the use of race, color, or national origin as considerations in adoption or foster care placements. In the guidance, agencies that are involved in such placements were advised that the consideration of race, color, or national origin is permissible only as a part of individualized determinations that focus on the best interests of the child in need of placement. The guidance specifies that placement decisions may not be based on generalizations or presumptions regarding the relevance of race. The guidance identifies a number of policies or practices that would be violative of these requirements.

In that letter, we also advised you that we would conduct a review of applicable state statutes, regulations and published policies in the area of adoption and foster care to identify any that authorize practices that are inconsistent with the requirements of MEPA. In that regard, we have reviewed your state statutes, available regulations, and policy statements that affect the implementation of adoption and foster care placements in Illinois.

Our review indicates that the Illinois Department of Children and Family Services Policy Transmittals (PT) 92.1 (January 1, 1992) and 92.20 e.3 (December 31, 1992), which establish an implied preference for placement based on race, culture, or ethnicity, do not comply with MEPA. This generally applied consideration of race, culture, or ethnicity is inconsistent with the requirements of MEPA for individualized consideration of the best interest of a specific child. The existence of this preference raises the possibility that other policies or practices of the state of Illinois or its sub-recipients may also violate MEPA.

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We would be pleased to discuss our concerns further and to assist you in coming into compliance. We hereby request that you submit a corrective action plan that specifies how you intend to correct the above-mentioned deficiencies. It may be that there are other similar policies and practices that are not reflected in the material we reviewed. If so, correction of these policies and practices should be included in the action plan. In addition to the necessary changes to statutes, regulations, and policies, the action plan should also describe specific activities to train agency staff, notify sub-recipients of the requirements of MEPA, and the state's role in monitoring their compliance.

The action plan should be submitted to the following address no later than August 15, 1995:

Ms. Charlotte Irons
Regional Manager
Dept. of Health and Human Services
Office for Civil Rights
105 West Adams - 16th Floor
Chicago, IL 60603
(312) 886-2359

Ms. Irons also may be contacted to discuss development of the action plan and other matters related to technical assistance on compliance with the nondiscrimination provisions of MEPA.

Agencies or entities are required to comply with MEPA by October 21, 1995. However, where a state can demonstrate that in order to change a practice inconsistent with MEPA, it is necessary to amend state statutory law, the Secretary of Health and Human Services 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. If a state statutory amendment is necessary, a request for extension of the compliance date should be addressed to:

Mr. Ronald G. Copeland
Associate Deputy Director
Office of Program Operations
Office for Civil Rights
330 Independence Avenue S.W.
Washington, D. C. 20201
Phone: (202) 619-0553
Fax: (202) 260-0581

As specified in the guidance, MEPA also requires that states not discriminate in the recruitment of prospective foster and adoptive parents and that states develop plans for recruitment of foster and adoptive families that reflect the ethnic and racial diversity of the children in the state for whom homes are needed.

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Such recruitment is necessary in order to have a pool of available families that can meet the needs of all children. Compliance with the foster care and adoption recruitment provisions of MEPA is required for Federal approval of FY 1996 State Plans for child welfare services and family preservation and support, submitted under Title IV-B of the Social Security Act. State recruitment plans must be submitted by October 31, 1995. This may be accomplished by either of the options set out in our April 25 letter.

This Department also would be pleased to answer questions and provide technical assistance for coming into compliance with these requirements. Technical assistance on recruitment efforts and on other aspects of child welfare practice is available within the Administration for Children and Families (ACF). The contact persons are:

Ms. Ellen W. Carey
Adoption Specialist
Children's Bureau
P. O. Box 1182
Washington, D.C. 20013
Phone: (202) 205-8652
Fax: (202) 401-5917

Ms. Gerri Robinson
Foster Care Specialist
Children's Bureau
P. O. Box 1182
Washington, D.C. 20013
Phone: (202) 205-8575
Fax: (202) 260-9345

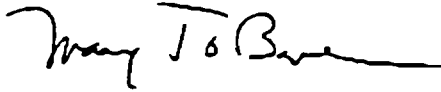
Please be reminded that public and private agencies that are involved in adoption or foster care placements and also are recipients of Federal financial assistance must comply with the requirements of MEPA and Title VI of the Civil Rights Act of 1964. Failure to do so could result in the termination of Federal financial assistance.

This Department intends to help states take full advantage of this opportunity to eliminate discrimination and strengthen child welfare practice. The best interests of children require that we eliminate delays in placement, and that we create a large enough pool of potential adoptive and foster parents to meet the needs of waiting children. We are equally committed to the provision of technical assistance and to vigorous enforcement of these statutes.

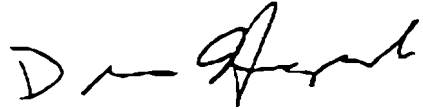
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MEPA provides a mechanism for re-examining policies and procedures that relate to recruiting foster and adoptive families and making child placement decisions. Our goal is to ensure that foster and adoptive placements are made without discriminatory acts or other delays or impediments to placing children in loving, permanent homes. We are certain of your commitment to these same goals, and we are available to assist you in your voluntary efforts to fulfill these requirements.

Sincerely,



Mary Jo Bane
Assistant Secretary
for Children and families



Dennis Hayashi
Director
Office for Civil
Rights

cc: Ms. Charlotte Irons
Regional Manager
DHHS - Office for Civil Rights

Ms. Kay Willmouth
Assistant RA/OFSS
DHHS Region V
105 West Adams Street, 21st Floor
Chicago, Illinois 60603