

# The Multiethnic Placement Act

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## I. Background

### A. The Multiethnic Placement Act of 1994

The Multiethnic Placement Act (MEPA) was signed into law by President Clinton in 1994 as part of the Improving America's Schools Act. MEPA was enacted after much debate about transracial adoption and same-race placement policies. At the heart of this debate is the need to promote the best interests of children by ensuring that they have permanent, safe, stable, and loving homes suited to their individual needs. However, placement delays and denials increase the risk that the growing number of children, especially minority children, in the child protective system will never find a permanent home. It was the sense of Congress that some of the key factors contributing to the long waits experienced by these children are the racial and ethnic matching policies and practices of public agencies, which have generally discouraged minorities from becoming foster or adoptive families. MEPA was intended to remove the barriers faced by minorities wishing to become foster or adoptive parents by expressly prohibiting the use of a child's or a prospective parent's race, color, or national origin to delay or deny the child's placement and by requiring diligent efforts to recruit more racially and ethnically diverse prospective parents.

### B. The Interethnic Adoption Provisions of 1996

In 1996, MEPA was amended by the provisions for Removal of Barriers to Interethnic Adoption (IEP) included in the Small Business Job Protection Act. The IEP amendments were supposed to remove what some members of Congress felt was potentially misleading language in the original provisions of MEPA and to further clarify that discrimination against children in need of suitable homes or prospective adoptive parents is illegal. In addition, IEP strengthens compliance and enforcement procedures, including the withholding of federal funds and the right of individuals to bring an action in federal court against the state or other entity alleged to have violated MEPA.

## II. Purpose

The purpose of MEPA-IEP is to remove the barriers to permanency facing the many children involved in the child protective system. Specifically, the purposes of MEPA-IEP are to:

- decrease the length of time that a child waits to be adopted;

- facilitate the recruitment and retention of foster and adoptive parents who can meet the particular needs of children waiting to be placed;
- eliminate discrimination on the basis of the race, color, or national origin of the child or the prospective parent.

To achieve these purposes, MEPA-IEP sets out three substantive directives:

- A prohibition on states and other entities involved in foster care or adoption placements that receive federal financial assistance under Title IV-B or Title IV-E of the Social Security Act or any other federal program from delaying or preventing a child's foster care or adoptive placement on the basis of the child's or the prospective parent's race, color, or national origin;
- A prohibition on states and foster care or adoption entities from denying any person the opportunity to become a foster or adoptive parent on the basis of the prospective parent's or child's race, color, or national origin; and
- A requirement that states must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes in order to remain eligible for federal assistance for their child welfare programs.

### **III. Covered Entities**

Any state, agency, or other institution that receives funds from the federal government and is involved in some way with adoptive or foster care placements is covered by the provisions of MEPA-IEP. Thus, state and county child welfare agencies involved in adoption or foster care placements that receive funds under Title IV-B and Title IV-E of the Social Security Act are subject to MEPA-IEP.

MEPA-IEP also covers public or private agencies involved in adoptive or foster care placements that receive federal funds of any type, regardless of whether the funds come directly or through a subgrant from a state, county, or other agency. For example, a child placement agency that does not receive funds under Title IV-B or IV-E, but receives assistance under the Child Abuse Prevention and Treatment Act, is covered by MEPA-IEP.

### **IV. Prohibited Conduct**

#### **A. Delaying or Denying Adoptive or Foster Care Placement Based on Race, Color, or National Origin**

Covered entities are prohibited from (1) delaying or (2) denying the placement of a child for adoption or into foster care on the basis of race, color, or national origin of the adoptive or foster parent, or the child.

## 1. *Delay*

Any delay in placement based on race, color, or national origin is impermissible. For example, "holding periods" in order to make a same-race placement or agency declared search periods to find a same-race placement when a suitable transracial placement is available would violate MEPA-IEP. Similarly, agencies may not routinely permit same-race placements, while requiring that transracial placements be specially justified.

## 2. *Denial*

According to MEPA-IEP, race, color, or national origin cannot be used to make a child ineligible for foster care or adoption nor to deny a person the opportunity to become a foster or adoptive parent. In addition, an agency may not fail to pursue reunification efforts, concurrent planning, or the termination of parental rights because of the race, color, or national origin of the child.

Although race, color, and national origin may not be used to deny foster care or adoptive placements, MEPA-IEP does not prohibit consideration of these factors when making an assessment of a particular child to find a placement appropriate for the child's needs. Guidance published by the Department of Health and Human Services (DHHS) in 1997 and 1998 provides that in certain cases, the best interests of a child would support some consideration of the child's needs with respect to race or ethnicity so long as this consideration is based upon particular concerns relative to the specific circumstances of a child's case. Therefore, consideration of race, color, or national origin as part of an overall assessment of a child's best interests and needs would not violate the Constitution's Equal Protection Clause.<sup>1</sup>

With respect to a individual child's needs, earlier DHHS guidance provides that while the best interests of older children may justify limited attention to race or ethnicity, younger children and infants are unlikely to have developed such needs. The example given by DHHS is of an older child or adolescent who has the legal right to consent to an adoption and refuses placement with a family of a particular race. In this case, DHHS indicates that MEPA-IEP does not mandate that the child's wishes be ignored. In fact, the child's willingness to accept the prospective adoptive family is crucial to the success of the adoption and should be given serious consideration.

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<sup>1</sup> Under the Equal Protection Clause, racial classifications are generally held to be invalid unless they pass the "strict scrutiny" test. To survive this test, racial and other "suspect classifications" must be supported by a compelling governmental interest, must be necessary to achieve this interest, and must be the least restrictive means of achieving this interest.

## B. Denying The Opportunity to Become An Adoptive Or Foster Parent Based Race, Color, or National Origin

Entities covered by MEPA-IEP may not deprive any person of the general opportunity to become an adoptive or foster parent on the basis of race, color, or national origin of the person or of the child. Nevertheless, given that placement decisions are based on the individual needs of the child and the ability of the prospective parent to meet these needs, MEPA-IEP does not guarantee anybody the right to become an adoptive or foster parent.

With respect to compliance with this portion of MEPA-IEP, agencies should ensure that they do not systematically screen out transracial or interethnic placements in the selection process for foster and adoptive parents. Agencies should also ensure that certain placements are not screened out at specific stages in the adoption and foster care process. For example, are all prospective parents given the opportunity to get to know children of different racial and ethnic backgrounds? Are children matched with prospective parents of different racial and ethnic backgrounds? Agencies with an extremely low percentage of transracial or interethnic placements should review their screening and placement processes to determine whether discrimination is the cause of the low placement rate.

DHHS makes clear in its guidance that the prohibition on discrimination extends not only to overt denials based on race, color, or national origin, but also to the use of race-neutral, but arbitrary policies that have the effect of excluding groups of prospective parents on the basis of those factors in cases where less exclusionary standards can be employed. For example, policies and standards concerning income, age, education, home ownership, and family structure would constitute discrimination on the basis of race, color, or national origin unless shown to be necessary to achieve programmatic objectives or that no less restrictive alternatives exist. Unduly restrictive race-neutral criteria along with the lack of minority staff and management in child placement agencies and the failure to recruit prospective parents from minority communities are among the key barriers preventing greater diversity among the pool of potential adoptive and foster families.

## V. Required Action

Given the need to encourage greater participation by minority communities in adoption and foster care placements, MEPA-IEP requires states to diligently recruit "potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed."<sup>2</sup> With respect to developing successful recruitment plans, DHHS guidance provides that the suitable comprehensive recruitment plans should include the following:

- a description of the characteristics of waiting children;
- specific strategies designed to reach all parts of the community;
- diverse methods of disseminating both general and child specific information;

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<sup>2</sup> 42 United States Code §622(b).

- strategies for ensuring that all prospective parents have timely access to the home study process, including location and hours of services that promote access by all community members;
- training strategies for staff on working with diverse racial, cultural, and economic communities;
- strategies for coping with linguistic barriers;
- non-discriminatory fee structures;
- procedures for timely searches for prospective parents for waiting children, including the use of interagency efforts so long as the placement of a child with an appropriate family is not delayed by a search to place a child in a same race or ethnic household.

DHHS guidance emphasizes the importance of general and targeted recruitment activities, including using the media (television, radio, and print); directing information to particular community organizations, such as faith-based and neighborhood groups; partnering with community groups to make waiting children more visible and identify potential adoptive and foster parents. Recruitment efforts should also provide prospective parents with information about the needs of available children, specific details about the foster care and adoptive process, and the variety of services (financial, medical, etc.) and support for foster and adoptive families.

## **VI. Enforcement and Penalties**

MEPA-IEP is enforced either through administrative action by DHHS or through litigation brought by individuals or the U.S. Department of Justice (DOJ) against non-compliant entities. Failure to comply with MEPA-IAP may result in the loss of federal funds (a 2% reduction in quarterly Title IV-E funds for the first violation, a 5% reduction for the second, and a 10% reduction for the third or subsequent violation), injunctive relief,<sup>3</sup> or the award of monetary damages in certain cases.

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<sup>3</sup> Injunctive relief is a legal remedy requiring that a party to refrain from doing or continuing to do a particular act or activity.



ANSWERS TO SOME COMMON QUESTIONS ABOUT  
THE MULTIETHNIC PLACEMENT ACT OF 1994 AND  
THE INTERETHNIC ADOPTION PROVISIONS OF 1996 (MEPA-IEP)

**1. Can race ever be taken into consideration in making adoptive or foster care placements ?**

In certain circumstances, the particular needs of an individual child may justify consideration of the child's race, color, or national origin if doing so is necessary in order to make a placement that will serve the child's best interests. In determining whether race, color or national origin will be considered, the law requires that strict scrutiny (i.e., a very careful examination of the specific facts of the situation) be applied. If there is any more "narrowly tailored" means rather than the denial of placement by which a prospective foster parent's home can be made suitable for the child, then that means must be utilized. (E.g., if a child speaks only Spanish, and the prospective foster parent does not speak Spanish, this is not a reason to deny the placement of the child in the home. Rather, the agency must offer a more narrowly tailored prescription to help make the placement work, Spanish lessons for the parents may be one means of meeting the requirements of the law.) If it seems that a child has distinctive needs with respect to race, color, or national origin, caseworkers should ask the following questions:

- What are the child's special or distinctive needs based on race, color, or national origin ? Why is it in a child's best interests to take these needs into account ?
- Can the child's needs related to race, color, or national origin be taken into account without delaying placement and placing the child at risk of other harms ?
- Can these needs be met by prospective foster or adoptive parent who does not share the child's racial or ethnic background ?
- Can these needs be met only by a same/ethnic placement ? If so, is some delay justified in order to search for a parent of the same race or ethnicity, if an appropriate person is not currently available in the agency's files ?
- In a foster care placement, can the child's special needs be taken into account without denying the child an opportunity to be cared for in a readily available foster home ? (i.e., Placement workers should ask themselves, Is there some service that the agency can offer to a racially/color/national origin incongruent foster parent that would address any perceived deficit on the part of a prospective foster parent that would enhance that foster parent's ability to care for a racially/color/national origin incongruent child?)
- What are the child's other important needs ?

Even in those cases where race, color, or national origin may be taken into consideration, a child's other needs (age, relationship to siblings and other relatives, health and physical condition, educational, cognitive, and psychological needs, including religious, linguistic, dietary, musical, or athletic needs) must be given more weight. In addition, if a child has personal preferences that he or she can articulate and discuss, these should be taken into consideration.

Placement decisions must ultimately be made on the basis of the child's individual needs. Thus, any decisions based on unfounded generalizations about the child's needs will necessarily be suspect under MEPA-IEP.

**2. Can state law or agency policy include a preference for racial or ethnic matching so long as no child or prospective parent is precluded from being considered for placement on the basis of their race, color, or national origin ?**

MEPA-IEP prohibits state laws or policies based on generalized preferences for racial or ethnic matching. Any categorical policies that do not flow from the specific needs of the child are inconsistent with the individualized placement decisions mandated by MEPA-IEP.

**3. Does MEPA-IEP prevent states from having a preference for placing a child with a relative ?**

MEPA-IEP does not prohibit an agency from giving preference to a child's relatives so long as such a placement serves the child's best interests and is consistent with the primary concern for the child's health and safety as the most important factor in making placement decisions. While many states statutes or administrative regulations give preference for relatives in their adoption and foster care statutes and regulations, this general preference should not be used as a mechanism for escaping the requirements of MEPA-IEP.

**4. May public agencies decline to transracially place any child with an adoptive parent who has unsatisfactory cultural competency skills ?**

Public agencies should assess the capacity of potential foster or adoptive parents to fulfill the child's needs. It is possible, in certain cases, that race, color, or national origin would have to be considered in order to serve the child's best interests. However, such a decision must be made within a framework that provides for an assessment of the prospective parents' strengths and weaknesses with respect to their ability to meet the child's needs. If there is a means by which the prospective parent's competencies may be enhanced short of the denial of foster placement, that means must be utilized. (E.g., the agency may be required to provide the prospective foster parents with cultural sensitivity training.)

**5. May public agencies decline to transracially place a child with documented racial, national origin, ethnic, or cultural needs with an adoptive parent who has unsatisfactory cultural competency skills ?**

See the answer to number # 4 above. In addition, it is important that prospective parents be offered training and information to increase their understanding of the types of children for which they can provide the most suitable home.

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

No. Although a public agency may contract with a home finding agency to assist with overall recruitment efforts and may use certain home finding agencies because of their special knowledge or understanding of a particular community, targeted recruitment cannot be the only mechanism used by the state to find families for any subset of children in state care. Home finding agencies must consider any interested persons who respond to recruitment efforts.

**7. May a home finding agency that contracts with a public agency, but that does not place children, assess the racial, national origin, ethnic or cultural capacity of all adoptive parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses ?**

No. MEPA-IEP does not permit routine consideration of race, color, or national origin in any part of the adoption or foster care process. Assessments of an individual's ability to be a good parent for any child should be made on a case by case basis by the placement agency, not the home finding agency, and should be focused on the child's individual needs and the prospective parent's capacity to fulfill these needs.

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