

# Understanding and Complying With Title VI of the Civil Rights Act of 1964 and the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions



NATIONAL RESOURCE CENTER  
for Adoption

— A Service of the Children's Bureau & —  
Member of the Training & Technical Assistance Network  
at Spaulding for Children



# Welcome and Overview

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- Housekeeping
  - Restrooms
  - Parking Lot
  - Index Cards for Questions
- Overview
- Introductions/Ice Breaker

# What Are MEPA and Title VI and How Are They Relevant to Child Welfare Agencies?

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- ❑ The Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions of 1996 (MEPA), is a Federal law that governs the manner in which title IV-B/IV-E agencies make placement decisions that involve race, color, or national origin (RCNO).
- ❑ Title VI of the Civil Rights Act of 1964 (Title VI) is a Federal law that prohibits discrimination on the basis of RCNO by recipients of Federal financial assistance.
- ❑ We will discuss these Federal laws and how agencies must practice in light of these laws.

# Objectives of the Training

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- ❑ To explore values and assumptions regarding RCNO in foster care and adoptive placements
- ❑ To explore the requirements of MEPA
- ❑ To explore the requirements of Title VI and how they are linked to MEPA
- ❑ To explore some MEPA and Title VI practice issues

# Objectives of the Training

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- ❑ To explore the impact of MEPA on recruiting foster parents/adoptive parents
- ❑ To increase knowledge of placement practices that comply with MEPA and Title VI
- ❑ To increase knowledge of corrective action and financial penalties related to noncompliance with MEPA and Title VI

# Competencies of the Training

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*Participants will be able to:*

- ▣ Identify their own personal values and how they impact their professional practice.
- ▣ Identify and explore examples of delay and denial in foster care and adoptive placements.
- ▣ Identify the impact of MEPA and Title VI on recruitment and placement activities.

# Competencies of the Training

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- ❑ Identify tools and techniques that help prepare families to make informed decisions and help agencies support them in those decisions.
- ❑ Define and implement action strategies to ensure that practice is compliant with MEPA and Title VI.

# Values and Assumptions Exercise: These Conversations Are Not Always Easy! (Handout 1)

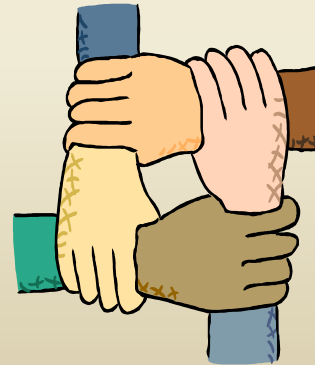
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# Law and Policy: Agenda for Discussion

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- ❑ Federal laws that apply to the consideration of RCNO and how they interrelate
- ❑ Practical guidance on how child welfare agencies and social workers can comply with MEPA and Title VI in their programs and daily practice
- ❑ Respective roles of the Administration for Children and Families (ACF) and the Office for Civil Rights (OCR), both of which are in the Department of Health and Human Services
- ❑ Enforcement of Title VI and MEPA
- ❑ Compliance tips
- ❑ Resources
- ❑ Legal, Regulatory, and Policy Authority



# PRACTICE CONSIDERATIONS

## Preview

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- Diligent recruitment
- Denying opportunities to foster or adopt based on RCNO; delaying or denying placements based on RCNO
- Individualized assessment
- Culture and cultural competence
- Assessing and preparing prospective parents
- Requests of parents
- Concerns about prospective parents
- Family and community ties
- Photo listings

# A Couple of Caveats

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- ❑ When we discuss “MEPA,” we are referring to MEPA, as amended by the IEP Amendments in 1996 (IEP).
- ❑ Throughout the training, we will present various examples of actions that could violate MEPA and Title VI. These examples are illustrative of issues and do not constitute all of the actions that could violate these laws.
- ❑ Title VI and MEPA apply to consideration of RCNO in *all* placements (e.g., same RCNO placements; different RCNO placements). Throughout the training, this principle applies, irrespective of whether an example discussed is a same-RCNO placement or different-RCNO placement.

# Federal Laws that Apply to the Consideration of RCNO in Foster Care and Adoptions

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## ■ The Laws:

- ▣ Title VI of the Civil Rights Act of 1964
- ▣ MEPA: Diligent Recruitment (title IV-B of the Social Security Act)
- ▣ MEPA, as amended: title IV-E of the Social Security Act

# Entities to Which These Laws Apply

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- Title VI: Any agency or entity, including State and county child welfare agencies and private agencies, that receives any Federal financial assistance and is involved in adoption or foster care placements.
- MEPA: Any State child welfare agency, or entity within the State that receives title IV-B or IV-E funds (i.e., contractors), and is involved in adoption or foster care placements or child welfare agency contracts. The State is subject to the title IV-B diligent recruitment provision.
- MEPA established that a violation of MEPA also is a violation of Title VI.
- Other laws may apply in other contexts, such as international adoptions or Indian children/youth who are subject to the Indian Child Welfare Act.

# Race, Color, and National Origin (RCNO)

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## RCNO means:

- ❑ **R**ace –Asian, Black or African American, White, Native Hawaiian or other Pacific Islander, and American Indian or Alaska Native
- ❑ **C**olor – skin tone or complexion
- ❑ **N**ational **O**rigin – a child's or parent's ancestry; for example, Hispanic, Ukrainian, Filipino
- ❑ Discrimination on the basis of ethnicity is encompassed by Title VI's prohibition against national origin discrimination.
- ❑ MEPA and Title VI do not address discrimination on the basis of religion, age, gender, culture, sexual orientation or any other characteristic.

# Title VI and “Strict Scrutiny” (Handout 2)

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Title VI prohibits discrimination on the basis of RCNO by recipients of Federal financial assistance. Below are examples of discrimination prohibited by Title VI:

- Denying a service or benefit based on RCNO
- Providing services in a different manner based on RCNO
- Restricting the enjoyment of an advantage based on RCNO
- Treating an individual differently on the basis of RCNO in determining whether he or she satisfies a requirement to be provided a service or benefit
- Affording an opportunity to participate in a program that is different based on RCNO
- Using methods or criteria that have the effect of discriminating on the basis of RCNO

# Title VI, Strict Scrutiny, and Child Welfare (cont'd)

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- Consideration of RCNO under Title VI is assessed under a strict scrutiny standard
- Under the strict scrutiny standard, consideration of RCNO must be narrowly tailored (i.e., justified as necessary) to achieve a compelling interest
- Advancing the best interests of a child/youth is the only compelling interest that satisfies the strict scrutiny standard
- Consideration of RCNO must be on an individualized basis

# Title VI and Strict Scrutiny In Brief

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- A child welfare agency may consider RCNO only if it has made an individualized determination that the facts and circumstances of the specific case require the consideration of RCNO in order to advance the best interests of the specific child/youth. Any placement policy or action that takes RCNO into account is subject to strict scrutiny.

# History of MEPA (Handout 3)

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- ▣ In 1994, Congress passed MEPA.
- ▣ The purposes of MEPA are to:
  - Decrease the length of time that children/youth wait to be adopted;
  - Facilitate identification and recruitment of families that can meet the child/youth's needs; and
  - Prevent discrimination on the basis of RCNO.

## History of MEPA (cont'd)

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- MEPA was amended in 1996 by the IEP to affirm and strengthen the prohibition against discrimination by:
  - Removing potentially misleading language regarding the consideration of RCNO.
  - Strengthening compliance and enforcement procedures by, among other things, requiring assessment of a penalty against a State or agency that violates MEPA.

# History of MEPA (cont'd)

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- ▣ MEPA supplemented existing legal standards prohibiting discrimination on the basis of RCNO:
  - The Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution
  - Title VI

# “The State of MEPA”

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- ❑ Agencies may not consider race, color or national origin on a routine basis when making placement decisions.
- ❑ We will discuss when agencies may or may not involve RCNO when making placement decisions.

# Title IV-B and Title IV-E of the Social Security Act

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- Two complementary State plan provisions address issues related to RCNO:
  1. Title IV-B addresses prospective parent recruitment.
  2. Title IV-E addresses consideration of RCNO during the placement process.

# MEPA: Diligent Recruitment (title IV-B of the Social Security Act)

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- ❑ As part of its title IV-B State plan, each State **must** provide for the **diligent recruitment** of prospective foster/adoptive parents who reflect the race and ethnicity of children/youth currently in the State foster care system for whom homes are needed.

# Diligent Recruitment

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- ❑ The State **may**:
  - Conduct recruitment activities for the purpose of recruiting parents who reflect the racial and ethnic diversity of the children/youth in care who need homes;
  - Develop its own diligent recruitment plan or utilize the services of a private recruitment agency that specializes in understanding a specific community or identifying families for specific groups of children/youth.
- ❑ The diligent recruitment provision does not require an agency to recruit prospective parents for the purpose of increasing the number of transracial placements.

# Diligent Recruitment

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- ▣ In conducting diligent recruitment activities, the State:
  - **Must allow** prospective parents to participate in general recruitment activities irrespective of RCNO.
  - **Must accept** applications from prospective parents who are not from one of the communities on which the agency currently is focusing its efforts and must include them in general recruitment activities.
  - **Must accept** applications from prospective parents who express interest in providing care to a child/youth whose race or ethnicity does not match their own.

# Diligent Recruitment (Handout 4)

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Components of a diligent recruitment plan may include:

- ❑ A description of the characteristics of the children/youth for whom homes are needed;
- ❑ Specific strategies to reach the individuals and communities that reflect the children/youth in care who need homes;
- ❑ Diverse methods of disseminating general and child-specific information;
- ❑ Strategies for ensuring that all prospective parents have access to the home study process;
- ❑ Strategies for training staff to work with diverse communities and for dealing with linguistic barriers.

# Diligent Recruitment Case

## Scenario (Handout 5)

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Agency B found that it had a large increase in Asian children/youth coming into care from the northern section of the county. The agency decided to specifically recruit for foster/adoptive parents in this area. A Caucasian family from a neighboring/contiguous area that is predominately Caucasian attended an orientation session and was told it would not be considered because the family did not live in the targeted area.

- Did this comply with MEPA/Title VI?
- Why or why not?
- If not, how should the agency have handled the family's request?

# Diligent Recruitment and Data

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Data informs practice and diligent recruitment. In order to design an effective diligent recruitment program that targets the communities in which children/youth in care need homes, States need to examine several factors:

- The number of children/youth in care;
- The breakdown of children/youth in care, by race;
- The exit from care, by race (both numbers and length of time to exit).

An effective diligent recruitment program compares the general population to the population of children waiting, by race, and targets the children who are overrepresented in care as compared to the general population.

# National, State, and Local Data (Handouts 6 & 7)

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- 397,122 children/youth were in out-of-home care at the end of fiscal year 2012. Of these children/youth, approximately:
  - 45% were Caucasian;
  - 22% were African American;
  - 21% were Hispanic;
  - 6% were Multiracial;
  - 2% were American Indian/Alaskan Native;
  - 4% were race unknown; and
  - 0% were Asian/Pacific Islander

# National, State, & Local Data (cont'd)

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- ❑ 101,666 children/youth in out-of-home care at the end of fiscal year 2012 were waiting to be adopted.
- ❑ Of these children/youth, approximately:
  - 41% were Caucasian;
  - 26% were African American;
  - 23% were Hispanic;
  - 7% were Multiracial;
  - 2% were American Indian/Alaskan Native; and
  - 2% were race unknown;
- ❑ Approximately 54% were under 6 years of age; 46% were age 6 and older

# National, State, & Local Data (cont'd)

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- ▣ There were 52,039 finalized adoptions from the public child welfare system in fiscal year 2012.
- ▣ Of these adoptions, 56% of the children/youth were adopted by their foster parents, 30% were adopted by relatives, and 14% were adopted by non-relative resource families.

# National, State, & Local Data (cont'd)

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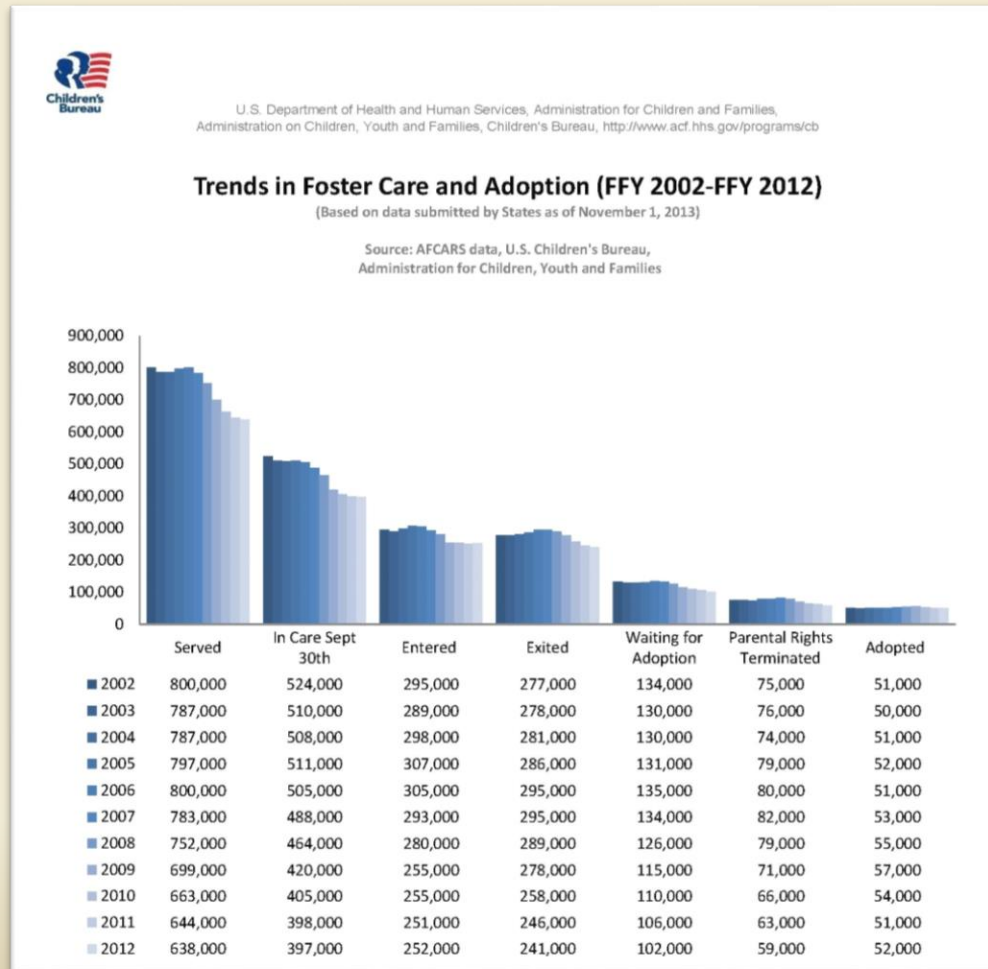
- 29,471 youth aged out of the child welfare system with no identified permanent resource at the end of FY 2008 approximately:
  - 40% were Caucasian;
  - 36% were African American;
  - 17% were Hispanic;
  - 3% were Multiracial;
  - 1% were American Indian/Alaskan Native; and
  - 1% were Asian

# National, State, & Local Data (cont'd)

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- The 2010 racial breakdown of children in the general population, according to the U.S. Census Bureau is:
  - 72% Caucasian
  - 16% Hispanic
  - 13% African American
  - 5% Asian
  - 3% Multiracial
  - .9% American Indian/Alaskan Native

# Trends in Foster Care and Adoption—FFY 2002-FFY 2012 (Based on data submitted by States as of November 1, 2013) Source: AFCARS data, U.S. Children's Bureau, Administration for Children, Youth and Families



# State Data

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- ❑ Number of children/youth in care, broken down by race
- ❑ Number of children/youth waiting to be adopted, by race
- ❑ Number of children/youth adopted, by race
- ❑ Types of adoption: % of foster parent adoption, % of relative adoption, and % of newly recruited family adoption
- ❑ Number of children/youth aging out without permanency, by race
- ❑ Racial breakdown of children/youth locally

# National, State, & Local Data (Large Group Discussion)

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- ❑ Is this information different than you expected?
- ❑ If so, what is different than you expected?
- ❑ What are the implications for our foster care and adoption practices based on this data?

# The Importance of Data

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## □ National, State, local data on:

- Number of children/youth in care, broken down by race
- Number of children/youth waiting to be adopted, by race
- Number of children/youth aging out without permanency, by race
- Comparing to general population determines if overrepresentation, by race exists
- Recruitment efforts follow the data

# Diligent Recruitment

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- ❑ Diligent recruitment should not be viewed as a separate system.
- ❑ It should be part of the overarching process for achieving permanency from the day that a child/youth enters care.

# MEPA, title IV-E of the SSA (State Plan)

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- ❑ As discussed during the previous segment, the purpose of diligent recruitment is to provide a broad base of permanency resources for children/youth in care who need homes.
- ❑ MEPA seeks to eliminate discriminatory barriers to placement.

# MEPA, title IV-E of the SSA (State Plan)

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- A State, or any other entity in a State that is involved in adoption/foster care placements and receives title IV-E funds from the Federal government, may not:
  - **Deny an individual the opportunity** to foster or adopt on the basis of the child/youth's or the prospective parent's RCNO.
  - **Delay or deny a child/youth's placement** into foster care or adoption on the basis of the child/youth's or the prospective parent's RCNO.

# Denial of Opportunity

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- ❑ If an appropriate placement for a child/youth exists, an agency **may not**:
  - Refuse to place a child/youth with a prospective parent because the parent's RCNO is different than the child/youth's RCNO;
  - Fail to place a child or youth with a prospective parent because the parent or child/youth is a specific RCNO;
  - Remove a child/youth from a prospective parent because the parent or child/youth is a specific RCNO; or
  - Refuse to conduct a home study because the parent or child/youth is a specific RCNO.

# Delay or Denial of Placement

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- ❑ If an agency has determined that an appropriate placement for a child/youth exists, the agency *may not*:
  - Allow the child/youth to remain in shelter care or another temporary placement, or require a holding period to find a particular RCNO foster care placement (impermissible delay).
  - Remove a child/youth who is doing well in a pre-adoptive placement in order to place the child/youth with a family of a particular RCNO (impermissible denial).
  - Switch a child/youth from one foster placement to another in an effort to place the child/youth into a particular RCNO placement (impermissible denial). Even if the agency reverses itself later and places the child/youth with the original pre-adoptive family, the agency would have impermissibly denied and delayed the child/youth's placement (impermissible denial and delay).

# MEPA Case Scenario A (Handout 8 )

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Joey, a 9-year-old boy, was taken into foster care and needed an emergency placement. Joey only spoke Spanish so the agency immediately began searching for a Hispanic family for placement. Mrs. Dierkson, Joey's former ESL teacher, expressed interest in providing temporary foster care for Joey. The agency advised Mrs. Dierkson that its first preference was a Hispanic family in which Joey would be comfortable. As such, the agency declined Mrs. Dierkson's offer and placed Joey in a shelter group home. Still unable to find a Hispanic family after several weeks, the agency began an extensive recruitment effort to find a Hispanic foster family home in which to place Joey.

- Is the agency's placement process for Joey consistent with Title VI and/or MEPA and its diligent recruitment requirement?
- What did the agency do correctly?
- What, if anything, did the agency do incorrectly?
- What issues can you identify?

# Individually Assessing a Child/Youth's Needs

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- ▣ Individual assessments are at the core of MEPA and Title VI and also are at the core of good social work practice: understanding the child/youth and his or her history, needs, family situation, and personality.
- ▣ Ultimately, MEPA and Title VI govern whether RCNO may be considered when making foster and adoptive placement decisions and, if so, how it may be considered.

# Individually Assessing a Child/Youth's Needs

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- An agency has the *flexibility* to determine which factors it will consider when individually assessing a child/youth, as long as it does so in accordance with the law; HHS does not prescribe those factors.
- However, when it becomes apparent that the agency might need to consider RCNO, the agency:
  - **Must** individually assess a child/youth to determine whether considering RCNO is in the best interests of the particular child/youth in light of the child or youth's unique circumstances.
  - **May not** rely or act upon generalizations about the child/youth's needs, based on the child/youth's membership in a particular RCNO group.
  - **May not** routinely consider RCNO during the individualized assessment.

# Individually Assessing a Child/Youth's Needs

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- Some factors that may be relevant to an individualized assessment include:
  - The child/youth's unique or unusual history related to RCNO (e.g., traumatic experiences).
  - Any other factors that the caseworker believes are relevant to the individualized assessment process based on the worker's knowledge and understanding of the child/youth.

# Individually Assessing a Child/Youth's Needs

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- ❑ Some States have a law or policy that establishes an age at which a youth may/must consent to adoption.
- ❑ If your State has such a law or policy and an agency is placing a youth who meets that age and either requests or refuses a placement on the basis of RCNO, the agency may honor such a request or refusal without violating MEPA or Title VI.
  - However, even if the youth meets the age to consent and wishes to consider RCNO, it is important that the agency conduct the individualized assessment process.
- ❑ The agency should document its determination of whether the youth's request/refusal is in the youth's best interest.

# Individually Assessing a Child/Youth's Needs

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- ❑ If the State does not have such a law or policy or if a child/youth does not meet a State's age to consent:
  - The child/youth's request may not determine the placement and the agency should be very cautious in considering such a preference.
  - The agency needs to look to all of the relevant circumstances as part of the individualized review to determine whether consideration of RCNO is appropriate.

# Individually Assessing a Child/Youth's Needs

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- ❑ MEPA and Title VI do not require agencies to seek or use outside professionals to conduct individualized assessments; however, securing a professional consultation from an independent psychologist, psychiatrist, or social worker may provide further insight into whether the agency should consider RCNO when making a child/youth's placement decision.
- ❑ In most cases, a child/youth's best interests can be served without consideration of RCNO. Consequently, it would be rare that an individualized assessment would reveal that the agency needs to consider RCNO.

# Individually Assessing a Child/Youth's Needs

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- ❑ If an individualized assessment reveals that it is necessary to consider RCNO in order to advance the best interests of a particular child, the agency may do so, but only to the extent necessary to advance the best interests of the child/youth.
- ❑ In applying this standard, consideration of RCNO should not predominate, unless the individualized assessment reveals that such consideration of RCNO is necessary to advance the child/youth's best interests. The agency also would examine any other factors it deems relevant (e.g., age, membership in a sibling group, health, education, cognitive, or psychological needs, etc.). The agency has the *flexibility* to determine how to weigh the factors.

# Individualized Assessment, RCNO and Distinguishing Between Placements

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- Unless the individualized assessment reveals the need to do so, the agency:
  - **May not** use RCNO to distinguish between two or more acceptable placements;
  - **May** identify differences between and among families who are equally well-suited to provide care to a child/youth that do not involve consideration of RCNO.

# MEPA Case Scenario B (Handout 9)

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Agency Y has many foster homes available. James J. has just been placed with them. At the time of placement, all that was known about James was that he was a 2-year-old white male who had been left with a neighbor for three days and his mother had never returned. The agency had several foster family homes with whom the agency was familiar, all of whom would have been excellent placements for James J. Two of the foster families were African American; two were Latino; one was Asian American; and one was Caucasian. Having worked with the families before, the agency concluded that they basically were indistinguishable in terms of their ability to care for James. Most of the children who came into the agency's care were African American and/or Latino, so the agency chose to place James with the Caucasian family. Because the agency acted efficiently, James was able to enter a loving, stable foster family home immediately and without delay.

- Are there any issues that you see in this case scenario?
- When an agency has several prospective families that might be suitable placements for a child/youth, how should the agency distinguish between and among families without considering RCNO in a way that violates the law?
- Are there any circumstances where the child/youth's RCNO would be an appropriate consideration?

# Culture and Cultural Competence

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- ❑ MEPA and Title VI do not address the consideration of culture in placement decisions and HHS does not define it.
- ❑ An agency may not use “culture” to replace or serve as a proxy for routinely considering RCNO, which is prohibited.
- ❑ Some acceptable, non-discriminatory cultural issues to discuss with a family during a home study may include holidays, ability to communicate, religion or food.

# RCNO and Culture Competence

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- ❑ An agency may not assess a family's or parent's ability to parent a child/youth of a particular RCNO through the use of a cultural competence test.
- ❑ An agency should be cautious when assessing or considering a child/youth's or family's "culture" on a home study form or elsewhere.

# MEPA Case Scenario C (Handout 10)

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Donnie, a 3-year-old–bi-racial (Hispanic and Asian) child, has lived with the Riveras for two years. Like Donnie’s, the Riveras’ ancestry is Mexican. The Riveras include Donnie in all of their family and community activities, many of which involve the Mexican-American community. Donnie became available for adoption but the Riveras were unwilling to adopt. The agency began looking for a Hispanic adoptive family that can provide cultural continuity to Donnie.

- Discuss the agency’s efforts to find a family for Donnie in the context of MEPA and Title VI.
- Would your thoughts change if Donnie was 15? If so, how?
- What information would be relevant to the agency?

# Assessing Competence

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- ❑ An agency **may not** assess, or ask prospective parents to assess, whether they are competent to parent a child/youth whose RCNO differs from that of the parents. Throughout a family's interaction with the agency, an agency may not ask or consider the following:
  - Why a family wants to parent across RCNO lines?
  - What a family knows about RCNOs different from its own?
  - Whether a family's activities reflect a knowledge of or appreciation for the RCNO of the child/youth the family wishes to parent?

# Assessing Competence

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- An agency:
  - **May not** require prospective parents to take different or extra steps in order to parent a child/youth who is in foster care on the basis of the parents' or the child/youth's RCNO.
  - **May not** single out parents who want to parent across RCNO lines or require them to learn about a different RCNO.

# MEPA Case Scenario D (Handout 11)

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Ms. Fisher may be interested in providing foster care to an older child. During a prospective foster parent information session, Ms. Fisher asked about trans-racial foster parenting. The worker responded that the agency sought parents who can address the child's cultural needs. Ms. Fisher understood the response to mean that children could not be placed transracially. Ms. Fisher now is completing her initial foster parent application. One of the questions asks the race of the child the prospective parent would like to parent. The options are "Black/Afro-American," "White," "Spanish" and "Oriental." Ms. Fisher, who is Caucasian, checked the "White" box. After going home and reading some of the agency's pre-printed literature, she learned that children can be placed in trans-racial placements. She informed the agency that she was willing to parent different age children and children from a different race or ethnicity. The agency discouraged her from fostering children of a different race, explaining that it is important to have a parent who can provide for cultural continuity and help the child feel pride in his or her heritage. She understood the agency's concern and waited until a Caucasian child was available.

- What are the issues you see in this case scenario?
- Did the agency violate MEPA/Title VI? If so, how?
- How could the agency improve its process?

# Assessing Prospective Resource Families

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- An agency may not create or allow a different child welfare process to which parents who wish to foster or adopt a child/youth of a different RCNO are subject, for example:
  - A longer or more invasive home study process; for example, examining issues for those who want to parent across RCNO lines that the agency does not examine for same-RCNO placements.
  - Requests that are specific to families who plan to parent across RCNO lines; for example, requiring parents to develop a trans-RCNO parenting plan.
  - Requests that a prospective parent learn about a different RCNO in advance of parenting such a child or youth; for example, requiring a family to purchase or review specific material or interact with individuals of a particular RCNO.

# Preparing Prospective Resource Families

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- An agency may offer training to prospective parents about parenting a child/youth of a different RCNO if:
  - It is offered to **all** parents, regardless of whether the parents plan to foster/adopt a child or youth of a different RCNO.
  - Participation in the training is not a precondition only for parents who want to pursue a trans-RCNO placement.
- Training **may** provide information to parents that will help them care for their child/youth, including information about hair care or other personal care issues.

# Preparing Prospective Resource Families

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- ❑ An agency may offer trans-RCNO parenting information to prospective parents **who request it** but the agency must ensure that:
  - Information is consistent with MEPA and Title VI.
  - Information is provided regardless of the prospective parent's or the child/youth's RCNO.
  - A prospective parent is not pressured to receive such information, even if the parent expresses interest in parenting across RCNO lines.
  - It is not used as an assessment or home study tool.

# Preparing Prospective Resource Families

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- An agency may offer trans-RCNO parenting information to prospective parents *at its own discretion* so long as:
  - The information is made available in the context of preparing a parent and not assessing a parent's capacity to parent a child/youth of a different RCNO.
  - Consideration of the information or participation in related services is not a precondition for parents who are of a certain RCNO or who want to pursue a trans-RCNO foster or adoptive placement.
- In such instances, an agency may prepare a prospective parent to foster or adopt a child/youth of a different RCNO by:
  - Asking parents to describe their questions or concerns.
  - Connecting parents with helpful resources.
  - Offering post-placement services or support for parents who would like such services; for example, support or social groups.

# Preparing Prospective Resource Families

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- An agency **may**:
  - Tell parents whether the children or youth in care do/do not have the characteristics that the parents are seeking; for example, age of available children/youth; RCNO of available children/youth; special needs of available children/youth.
  - Ask prospective parents whether they will consider providing a home for a child(ren) or youth whose characteristics reflect the children/youth for whom homes are needed.
  - Discuss with parents the challenges that may arise when parenting a child/youth whose characteristics differ from the characteristics that the parents originally sought.

# Preparing Prospective Resource Families

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- ❑ An agency **may not**:
  - Discourage parents from pursuing a trans-RCNO placement.
  - Require parents to participate in any training related to RCNO, unless such training is required of all parents.

# Home Study Exercise (Handout 12)

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- ❑ Turn to Handout 12, Home Study Exercise.
- ❑ We will assign each team the sample home study.
- ❑ Answer the following questions:
  - Do you see any issues with this home study?
  - Does the home study violate MEPA/Title VI? If so, how?
  - What improvements could be made to the home study?

# Concerns about Prospective Resource Families

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- ❑ An agency may decline to place a child/youth with prospective parents whose comments or beliefs make clear that placing children/youth of a specific RCNO with the prospective parent is not in the best interests of those children/youth.

# Concerns about Prospective Resource Families

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- Where a family expresses prejudice about people of a certain RCNO, but still wishes to foster or adopt children/youth of that RCNO:
  - An agency should delve further into the issues.
  - If the agency believes that the parent should not parent any children/youth of a certain RCNO, the agency should document the reasons for that belief or for its resulting placement decision.

# Concerns about Prospective Resource Families

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- A decision that is necessary to achieve the child/youth's best interest, including a decision to not place a child/youth of a certain RCNO with a family, does not violate MEPA or Title VI.

# Biological Parent Requests

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- ▣ For both voluntary and involuntary removals:
  - An agency **may not** consider or honor the request of parents or legal guardians to place their child/youth with foster or adoptive parents of a specific RCNO.
  - This applies to birth parents who are considering placing an infant for adoption.

# Prospective Parent Requests

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- ❑ Prospective parents may make requests about any characteristics they want in a child/youth, including RCNO.
- ❑ Agencies are not required to place a child/youth of a particular RCNO with a parent who has indicated that the parent does not want to parent a child/youth of that RCNO.
- ❑ Agencies must be as flexible with prospective parents' requests related to RCNO of a child/youth for whom they will provide a home as they are with parents' requests related to other characteristics of a child/youth. If an agency presents children/youth whose characteristics do not match the parent's requests, the agency must be similarly flexible with presenting children/youth whose RCNO does not match the parent's request.

# MEPA Case Scenario F (Handout 13)

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Dr. Humphrey, and Dr. Matthews-Humphrey, an African American couple, had completed the home study process and were ready to choose a child/youth to adopt. The Humphreys asked to see only African American children, age 1-7, with mild special needs. They stated that they have explored the various types of children in care and assessed their capacity to parent and decided they would best parent a same-race child/youth. June, the adoption worker, stated that she would love to show them children available for adoption, but that she would also need to show them children of all races to be fair to all of the children and to comply with the law.

- Must the agency show all children/youth in order to comply with MEPA/Title VI? Why or why not?

# Family and Community Ties

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- The Child and Family Services Review (CFSR) assesses whether a State is making concerted efforts to maintain a child/youth's important connections, which may include ties to his or her community, neighborhood and school. The Administration for Children and Families (ACF) recognizes that in many cases, it is a good idea to help a child/youth preserve those ties, especially when the child/youth is expected to be reunified with his or her parents or a family member in the same neighborhood.
- Making concerted efforts to maintain a child/youth's important connections does not violate MEPA or Title VI.

# MEPA Case Scenario G (Handout 14)

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- Mr. Richardson, a 34-year-old Caucasian man, lived in Pinkney. He had sole custody of his three children between the ages of 3 and 12. Nine months ago, the children were removed from his house due to substantiated neglect. Mr. Richardson had not complied with requirements set by the court to re-obtain custody so a TPR had been filed. Mr. Richardson decided to voluntarily terminate his parental rights with one stipulation—that the children must be placed with a Caucasian family. The agency decided to honor his wishes because it was at his request and because the agency had an opportunity to move the children quickly to permanency.
  
- How should the agency proceed?

# Photo Listings

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- An agency:
  - **May** identify or document the RCNO of a child/youth who is featured on an adoption web site, such as AdoptUsKids ([www.adoptuskids.org](http://www.adoptuskids.org)).
  - **May** design and administer adoption listing web sites that allow prospective adoptive parents to search for child/youth profiles based on a child/youth's RCNO.
  - **Must** treat RCNO in the same manner it treats other characteristics, including age, gender, and membership in a sibling group. For example, if an agency identifies a child/youth's RCNO on its web site, it must identify other characteristics, or if an agency allows prospective parents to search for children/youth by RCNO, it must allow prospective parents to search by other characteristics as well.

# MEPA Case Scenario H (Handout 15)

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Mr. and Mrs. Jones, a Caucasian family, have been working with Agency D to adopt a child. They both expressed an interest in a child, age 2-6, preferably a boy. Their original stated preference was for a Caucasian boy with Nordic features similar to their own features. However, after a 10 month wait, no such children were available for adoption. At that point, the Joneses told the agency that they would be willing to adopt a child of any race. Within a month, the agency identified William, an African American boy, age 3, who was available for adoption and who met the criteria the Joneses requested. During the family assessment process, the Joneses made derogatory statements about African Americans to the worker, on several occasions telling racially inflammatory jokes.

- Had there been a child available that matched the Jones' original requested characteristics, could the worker have honored the request without violating MEPA/Title VI? Why or why not?
- How should the worker that heard the Jones' comments proceed? What should the worker be considering?
- Can the worker decline to place William with the Joneses? If no, why not? If yes, why? Describe any actions the worker should take either way.
- Would your answers change if, instead of derogatory statements, the Joneses had said to the worker that they "love their neighborhood because all of the people look like we could be related to one another!" If not, why not? If so, why? Would the worker need to address these comments? If not, why not? If so, why and how?

## Respective Roles of the Office for Civil Rights (OCR) and the Administration for Children and Families (ACF)

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- ❑ OCR and ACF work in concert to help States ensure that their child welfare laws, policies, and practices do not result in discrimination against children/youth or families on the basis of RCNO.
- ❑ OCR and ACF administer different statutes and have different, complementary responsibilities.

# OCR

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## □ OCR:

- Enforces Title VI and the civil rights provisions of MEPA.
- Investigates complaints and conducts compliance reviews to ensure compliance with the law, e.g., interviews agency staff and prospective or current foster or adoptive parents and examines data systems and case records.
- Makes determinations of compliance or noncompliance and attempts to resolve noncompliance through voluntary means.
- May initiate proceedings to terminate Federal financial assistance or refer a case to the Department of Justice where compliance cannot be secured through voluntary means.
- Provides technical assistance to help ensure voluntary compliance with the law.

# ACF

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## ■ ACF:

- Administers titles IV-B and IV-E of the Social Security Act.
- Ensures that States comply with their title IV-B and IV-E State plan requirements, including the diligent recruitment provision and MEPA.
- Responds to questions from States about diligent recruitment and MEPA.
- Issues a penalty if it finds that a State has violated its MEPA State plan requirements.
- Helps States ensure that their child welfare systems are free from discrimination on the basis of RCNO.

# OCR and ACF

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- OCR and ACF can become involved in MEPA issues in several ways:
  - Child and Family Services Reviews
  - Internal State agency whistleblower
  - Prospective parent complaint
  - Civil rights compliance reviews
  - Private litigation
  - Other ways

# OCR and ACF

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- ❑ OCR investigates potential violations. OCR and ACF share information related to allegations of violations and OCR's investigations.
- ❑ If OCR's investigation reveals a violation(s), OCR may submit a Letter of Findings (LOF) to the State that details OCR's findings.
- ❑ ACF reviews OCR's investigative file and its LOF to determine whether the State has violated:
  - Its title IV-E State plan requirements or
  - The MEPA implementing regulations or policy.
- ❑ OCR and ACF coordinate on technical assistance, training and enforcement actions.

# Enforcement of Title VI and MEPA

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- There are two types of MEPA and Title VI violations:
  - An *individual violation*, which is discrimination against a specific and identified prospective parent or a child/youth in the State's care.
  - A *systemic violation*, which is a noncompliant law, policy, practice or procedure; for example, State law or policy that is inconsistent with MEPA; a home study form that requires or advises caseworkers to practice in a manner inconsistent with MEPA).

# Enforcement of Title VI and MEPA

## Individual Violations

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- If ACF and OCR find that a State has discriminated against an individual, ACF and OCR will require the State to enter into a Corrective Action and Resolution Plan (CARP).
- If ACF finds that a State has committed an individual MEPA State plan violation, ACF will assess a penalty against the State's:
  - Title IV-E foster care maintenance and adoption assistance funds
  - Administrative costs funds
  - Training funds
  - Chafee Foster Care Independent Living allotment
  - Private agency that violates MEPA must return to the Federal government all title IV-E funds that it has received for the quarter in which it was notified of the violation

# Enforcement of Title VI and MEPA

## Systemic Violations

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- If ACF and OCR find that a State has maintained laws, policies, practices, or procedures that do not comply with its title IV-E State plan or Title VI, ACF and OCR will require the State to enter into a CARP that is designed to remedy the violations.
- Elements of the CARP might include notifying past prospective parent applicants of the violations, training agency and contracting staff, providing regular data and reports to ACF and OCR, and revising their noncompliant laws and policies.

# Enforcement of Title VI and MEPA Appeals

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- ❑ A State may appeal ACF's finding of State-plan violations and penalties, and OCR's finding of civil rights violations to the Departmental Appeals Board (DAB).
- ❑ If a State disagrees with the DAB's decision, it may appeal to the U.S. District Court and avail itself of the full Federal appellate process.

# Enforcement of Title VI and MEPA

## Responsibility for Compliance

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- ❑ Some States have county-administered systems in which the States delegate responsibility to the counties to administer the State's title IV-B/IV-E plan.
- ❑ Under title IV-E, a State will be held responsible for county violations of State plan requirements. Under Title VI, counties are directly responsible for their violations of Title VI.
- ❑ States will be required to take steps to ensure compliance by county agencies that violate MEPA or Title VI.
- ❑ If a State violates MEPA or Title VI, the State will be responsible for ensuring that it successfully completes all corrective actions that OCR and ACF require.

# Enforcement of Title VI and MEPA Examples of Violations

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- ❑ OCR has found violations in cases where an agency:
  - Manipulated a data system to broaden the search for children/youth with respect to all characteristics but race, when children/youth meeting parents' requested characteristics were not available;
  - Adopted and implemented a policy that required workers to ask more questions or more detailed questions to families that were interested in transracial adoption, as part of the home study process;
  - Matched a child/youth to prospective parents based on complexion;
  - Honored the request of a young child to be placed with a parent based on RCNO, even though the State law age to consent was significantly older than the age of the child;

# Enforcement of Title VI and MEPA: Examples of Violations (cont'd)

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- Required prospective adoptive parents to attend a house of worship that had a different RCNO composition than the house of worship the family attended, in order to adopt a child/youth;
- Required prospective adoptive parents to subscribe to periodicals that workers believed reflected the child/youth's RCNO; and
- Generally subjected parents who were interested in transracial adoption to higher degrees of scrutiny.

# Compliance Tips

## Document, Document, Document

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- ❑ ACF and OCR will examine the facts of each case where a MEPA/Title VI violation may have occurred.
- ❑ Because each case is determined based on the specific facts and circumstance of each allegation, ACF and OCR cannot provide a list of documents that will insulate a State agency against the finding of a MEPA/Title VI violation.

# Compliance Tips

## Document, Document, Document

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- If the agency decides to consider RCNO when making a placement decision, the agency may want to consider creating a record of documents that relate to:
  - Who was involved in making the decision to consider RCNO, including any supervisors involved in making the decision;
  - The agency's process for deciding to consider RCNO; for example, whether the agency conducted the individualized assessment or sought the input of an outside professional;
  - Whether the agency advised outside professionals that Federal law prohibits the routine consideration of RCNO;
  - Whether the outside professional interviewed the child/youth and/or reviewed the case file;

# Compliance Tips

## Document, Document, Document (cont'd)

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- The results of the individualized assessment and the rationale for the conclusion or recommendation;
- How the decision to consider RCNO was narrowly tailored to advance the child/youth's best interests; and
- Any documents that reflect the details of the selection or placement committee, for example:
  - Who was present?
  - Which families were presented?
  - What discussions took place about families?
  - Why a family was/was not selected for a particular child/youth?

# Compliance Tips

## Document, Document, Document (cont'd)

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- ❑ When the agency declines to place a child/youth with prospective parents and the reason relates to RCNO (for example, the parents have made comments that cause concern) describe in the case file, in as much detail as possible, the RCNO-related reasons that makes the prospective parents an unsuitable placement option.

# Compliance Tips: Agency Actions

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- ❑ Agency staff should work together to ensure compliance with MEPA and Title VI. For example, the agency may want to consider:
  - Developing a peer-review process in circumstances in which a worker thinks it is necessary to consider RCNO as part of the placement process.
  - Developing a supervisory chain-of-command process for managers to review and advise on the issue.

# Compliance Tips: Training Public Agency Staff

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- ❑ Other actions the State may take to facilitate compliance may be to:
  - Train agency staff and contractors on MEPA and Title VI.
  - Consider providing MEPA and Title VI training to all new employees and offer or require that staff take refresher courses on the law and policy.
  - Ensure that all of the entities with which the State contracts know how to apply MEPA and Title VI to their daily practice.

# Resources and Technical Assistance

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- ❑ Contact your ACF or OCR Regional Office with any questions about how to implement MEPA and Title VI.
- ❑ Ask your ACF and OCR Regional Offices to review proposed training material or curricula before using it to ensure it complies with MEPA and Title VI.
- ❑ Keep current about information that ACF and OCR release about MEPA and Title VI on their web sites.

# Resources and Technical Assistance

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- Remember that ACF and OCR want to partner with your State to ensure that your child welfare system is:
  - Fair to the children/youth and families who are involved with the child welfare system.
  - Free from discrimination based on RCNO. We are here to help you prevent violations and help you correct them should they occur.

# Resources and Technical Assistance

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- ❑ Training and technical assistance are available through the National Resource Center for Adoption.
- ❑ E-mail: [nrc@nrcadoption.org](mailto:nrc@nrcadoption.org)
- ❑ Phone: (248) 443-0306

# Resources and Technical Assistance

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- ❑ Training and technical assistance on recruitment and retention is also available through the National Resource Center for Recruitment and Retention of Foster and Adoptive Parents at AdoptUsKids.
- ❑ E-mail: [NRCDR@adoptuskids.org](mailto:NRCDR@adoptuskids.org)
- ❑ Phone: (303) 726-0198

# Legal, Regulatory and Policy Authority

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- ❑ Section 422(b)(7) of the Social Security Act (Title IV-B)
- ❑ Section 471(a)(18) of the Social Security Act (Title IV-E)
- ❑ Section 1808(c) of The Small Business Job Protection Act of 1996, 42 U.S.C. § 1996b (Amendments to 1994 MEPA)
- ❑ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.
- ❑ 45 C.F.R. § 1355.38
- ❑ Child Welfare Policy Manual  
[http://www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/index.jsp](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp)
- ❑ ACYF-CB-PI-95-23 (10/22/95)  
[http://www.acf.hhs.gov/programs/cb/laws\\_policies/policy/pi/pi9523.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/pi9523.htm)

# Evaluation Time!

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- ❑ We are now passing out a Training Reflection Feedback Form to everyone.
- ❑ We ask that you please fill out this form before leaving.
- ❑ Thanks so much!