
National Resource Center for Adoption Webinar
Part 1: January 28, 2014 1:00–3:00 PM EST
The National Resource Center for Adoption (NRCA) is charged by the Children’s Bureau with the task of building the capacity of States, Tribes and Territories (STTs) to improve adoption systems; integrate policy and practice; and develop, expand, strengthen and improve the quality and effectiveness of adoption services provided to children and youth in the child welfare system.

The NRCA also helps jurisdictions improve the effectiveness and quality of permanency support and preservation services. This assistance is provided through tailored technical assistance as well as the development of tools that can be used by STTs to improve components of their child welfare system related to adoption.
Introduction of Panelists

- Rose Handon, PhD, LSW
- Meg Goldberg, MS, JD
- Deborah Goodman, MSW
Overview of Part I of the Webinar Presentation

• This is a 2-part webinar presentation
  • Part II will take place on February 4, 2014, from 1:00-3:00 pm Eastern Standard Time
  • Participants need to register for Part II
• Overview of agenda for Part I
• Overview of handouts
• Recording and handouts posted on NRCA website following the webinar
Part I: Areas to Discuss

Areas to cover in Part I:

- Federal Law and Policy
- History and State of MEPA
- Diligent Recruitment and Data
- Continuation of MEPA and SSA - title IV-E State Plan
- Individually Assessing a Child/Youth's Needs
- Culture and Cultural Competence
- Assessing and Preparing Prospective Resource Families
- Concerns about Prospective Resource Families
Objectives of the Training

- 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

- 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

- 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.
Competencies of the Training

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

- 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.
Law and Policy: Agenda for Discussion

- 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

- 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

- When we discuss “MEPA,” we are referring to MEPA, as amended by the IEP Amendments in 1996 (IEP).
- During Part II of the webinar, 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

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

- **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)

**RCNO means:**

- **Race** – Asian, Black or African American, White, Native Hawaiian or other Pacific Islander, and American Indian or Alaska Native
- **Color** – skin tone or complexion
- **National Origin** – 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”

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)

- 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

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

- 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)

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.
MEPA supplemented existing legal standards prohibiting discrimination on the basis of RCNO:

- The Equal Protection Clause of the 14th Amendment to the U.S. Constitution
- Title VI
“The State of MEPA”

- 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

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)

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

- 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.
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

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.
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.
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
397,122 children/youth were in out-of-home care at the end of fiscal year 2012. Of these children/youth, approximately:

- 42% were White;
- 26% were Black or African American;
- 21% were Hispanic (of any race);
- 6% were Two or More Races;
- 2% were American Indian/Alaskan Native;
- 3% were Unknown/Unable to Determine; and
- 1% were Asian
National Data

- 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 White;
  - 26% were Black or African American;
  - 23% were Hispanic (of any race);
  - 7% were two or more races;
  - 2% were American Indian/Alaskan Native; and
  - 2% were Unknown/Unable to Determine
- Approximately 44% were 5 years of age or younger; 58% were age 6 or older.

National Data

- There were 52,039 finalized adoptions from the public child welfare system in federal 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.
The 2010 racial breakdown of the general population, according to the U.S. Census Bureau:

- 72.4% White (16.3% of which are of Hispanic or Latino origin)
- 12.6% Black or African American
- 4.8% Asian
- 0.2% Native Hawaiian and Other Pacific Islanders
- 2.9% Two or More Races
- .9% American Indian/Alaska Native
- 6.2% Some Other Race

State Data

- 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
The Importance of Data

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

- 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.
Questions

At this juncture, we will review any questions posted from participants and open the phone lines for participants with questions.
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)

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

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

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).
Individually Assessing a Child/Youth's Needs

- 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

- 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

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

- 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.
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

- 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

- 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.
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.
Individualized Assessment, RCNO and Distinguishing Between Placements

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.
Culture and Cultural Competence

- 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

- 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.
Assessing Competence

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

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.
Assessing Prospective Resource Families

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

- 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.
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

- 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

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

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.
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

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

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.
Resources and Technical Assistance

- 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 any 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 websites.
Resources and Technical Assistance

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

- Resources and technical assistance regarding MEPA can be obtained from the National Resource Center for Adoption.
- E-mail: nrc@nrcadoption.org
- Phone: (248) 443-0306
Resources and Technical Assistance

For more information about the navigator tool or assistance developing recruitment programs, please contact the National Resource Center for Diligent Recruitment at AdoptUsKids.

- E-mail: NRCDR@adoptuskids.org
- Phone: (303) 726-0198
Questions

At this juncture, we will review any final questions posted from participants and open up the phone lines for participants with questions.
Wrap Up & Summary

- Need for on-going dialogue regarding MEPA.
- Please remember to register for Part II of this webinar which will take place on February 4, 2014, from 1:00-3:00 pm EST.
- Please complete the survey for this webinar. Survey responses are confidential and will be reported to the NRCA in group summary only.
- Thank you for your participation.