

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 Webinar

Part II: February 4, 2014

1:00–3:00 PM EST



NATIONAL RESOURCE CENTER
for Adoption

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





NATIONAL RESOURCE CENTER for Adoption

A Service of the Children's Bureau & Member of the T/TA Network

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, Ph.D., LSW**
- ❑ **Meg Goldberg, MS, JD**
- ❑ **Deborah Goodman, MSW**

Overview of Part II of the Webinar Presentation

- **This is a 2-part webinar presentation**
 - **Part I took place on February 4, 2014 from 1:00-3:00 pm Eastern time**
 - **This webinar is part II**
 - **If you did not participate in Part I you are strongly encouraged to watch the video presentation on the NRCA website**
- **Overview of agenda for Part II**
- **Overview of handouts**
- **Recording and handouts posted on NRCA website following the webinar**

Part II: Areas to Discuss

Areas to cover in Part II:

- ▣ Biological and Prospective Parents Requests
- ▣ Respective Roles of OCR and ACF
- ▣ Enforcement of Title VI and MEPA
- ▣ Compliance Tips
- ▣ One States Perspective: Oklahoma Experience

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.

Biological Parent Requests

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

- ❑ 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.

Family and Community Ties

- ❑ 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.

Slide 12

RH1

Rose Handon, 1/16/2014

Photo Listings

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).
- **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.

Questions

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

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

- ❑ 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

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

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

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

- ❑ 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

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

- 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

- ❑ 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

- ❑ 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

- ❑ 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

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)

- 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

- ❑ 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

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)

- 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)

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

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

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.

Questions

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Legal, Regulatory and Policy Authority

- ❑ 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
- ❑ ACYF-CB-PI-95-23 (10/22/95)
http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/pi9523.htm

Oklahoma Experience

- ❑ State's decision to make proactive changes based on concerns regarding MEPA violations.
- ❑ Overview of the proactive changes made in OK
- ❑ Improvements seen in OK based on the proactive changes
- ❑ Challenges OK continues to experience related to MEPA and process implemented to alleviate these challenges

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 web sites.

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.

Conclusion of the MEPA Webinar

- ❑ Need for on-going dialogue regarding MEPA.
- ❑ Please complete the survey for this webinar. **Need to add how participants will be informed of the survey to fill out.**
- ❑ Thank you for your participation.



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*— A Service of the Children's Bureau & —
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at Spaulding for Children*

**16250 Northland Drive, Suite 120
Southfield, MI 48075
Telephone: 248.443.0306**

**Fax: 248.443.7099
E-mail: nrc@nrcadoption.org
Web site: www.nrcadoption.org**

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