



# Bulletin

**NUMBER**

#15-68-12

**DATE**

July 13, 2015

**OF INTEREST TO**

County Directors

Social Services Supervisors  
and Staff

Tribal Social Services Staff

Private Social Services  
Staff

County Attorneys

District Court Judges

**ACTION/DUE DATE**

Please read and  
implement.

**EXPIRATION DATE**

July 13, 2017

## Clarifying Culture in Placement Decisions

**TOPIC**

Consideration of culture in compliance with the federal Multiethnic Placement Act (MEPA) and Interethnic Adoption Provisions (IEP), when making placement decisions.

**PURPOSE**

Reissue of bulletin #12-68-02. Provide clarification on consideration of culture when making placement decisions that comply with federal and state laws, and directions for accessing a MEPA-IEP web-based presentation.

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**SIGNED**

James G. Koppel, Assistant Commissioner  
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**TERMINOLOGY NOTICE**

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

## Background

This bulletin summarizes legal guidance for consideration of race and culture in the recruitment of adoptive and foster parents, and placement decisions.

Both federal and Minnesota state laws address consideration of race and culture in foster care and adoption recruitment and placement. These laws require child-placing agencies to recruit a pool of prospective foster and adoptive parents who reflect the racial and ethnic diversity of children needing foster and adoptive families. Federal law requires each state to document, in the state's Child and Family Services Plan, diligent recruitment efforts for prospective families who reflect the ethnic and racial diversity of children who need foster and adoptive homes. Minnesota law requires local agencies to develop and implement a plan for diligent recruitment of foster care providers who reflect the ethnic and racial diversity of children in the state for whom foster homes are needed. Both federal and state laws prohibit consideration of race in making individual decisions regarding foster or adoption placements as a general practice.

## Federal Laws

The Howard M. Metzenbaum Multiethnic Placement Act (MEPA) of 1994 [Public Law 130-382] and the Small Business Job Protection Act of 1996, section 1808, entitled "Removal of Barriers to Interethnic Adoption" (referred to as IEP, IEAP, Interethnic Adoption Provisions or Section 1808) [Public Law 104-188] were implemented to:

- Reduce the length of time that children wait to be adopted
- Facilitate diligent recruitment and retention of foster and adoptive families
- Eliminate discrimination on the basis of race, color or national origin of either the prospective parent or the child.

The above federal laws direct that:

- Child-placing agencies are required to diligently recruit foster and adoptive families that reflect the racial and ethnic diversity of the children in need of out-of-home placement
- The denial or delay of adoption or foster care placement due to race, color or national origin of either the prospective parent or the child is prohibited. [See: 42 U.S.C. § 671 (a)(18), 622 (b)(9)]

## Web-based Presentation on MEPA-IEP

"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 of 1996" is a web-based presentation sponsored by the Policy Division, Administration for Children and Families, Children's Bureau, in coordination with the National Resource Center for Adoption. The two-part video presentation focuses on:

- Federal laws that apply to the consideration of race, color and national origin in

- placement decisions and how they interrelate
- Practical guidance on how agencies and social workers can comply with MEPA-IEP in programs and practice
- Enforcement of Title VI and MEPA-IEP
- Compliance tips
- Resources
- Legal, regulatory and policy authority.

The Minnesota Department of Human Services encourages county and private child-placing agency staff to view this presentation. Access to the web-based presentation is available via the Spaulding for Children website. View [Part 1](#) and [Part 2](#).

## Minnesota Laws

Similarly, Minnesota laws direct that:

- Diligent efforts should be made to recruit a diverse pool of foster and adoptive parents that reflect the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed
- Local agencies must develop and implement a plan for diligent recruitment of foster care providers who reflect the ethnic and racial diversity of children for whom foster homes are needed
- Local agencies must focus on a child's specific needs and the capacities of a particular parent to meet those needs in recruitment and placement
- Placement of a child cannot be delayed or denied based on race, ethnicity, color or national origin of the adoptive or foster parent or the child.

The only exception to these laws is American Indian children eligible under the Indian Child Welfare Act of 1978.

[See: Minnesota Statutes § 259.57, subdivision 2(c); Minnesota Statutes, section 259.77; Minnesota Statutes, section 260C.193, subdivision 3 (f); Minnesota Statutes, section 260C.212, subdivision 2(c); Minnesota Statutes, section 260C.215, subdivision 1; Minnesota Rules, part 9560.0670, subparts 1, 5; Minnesota Rules, part 9560.0140, subpart 2 (c)]

## Placement Decisions Based on the Best Interest of the Child

Federal law is very clear that race, color and national origin cannot be considered in making foster and adoption placement decisions. However, federal law is less clear about what criteria can be considered in making placement decisions, referring instead to the need for individualized assessments for both prospective parents and children to inform

placement decisions. Minnesota law provides further guidance on acceptable considerations.

Minnesota Statutes, section 260C.212, subdivision. 2 (a), and section 259.29, subdivision 1 (a), require that foster and adoptive placement decisions be based on the best interest of the child. To ensure that each child's best interests are met, the law requires an *individualized* determination of the needs of the child, and how the selected placement will serve the needs of the child being placed. Placement of children shall be considered with relatives and important friends in the following order:

1. With an individual who is related to the child by blood, marriage or adoption
2. With an individual who is an important friend with whom the child has resided or had significant contact.

According to Minnesota law [Minnesota Statutes, section 260C.212, subdivision 2 (b)], the agency shall consider the following 10 factors in determining the individual needs of a child when making placement decisions:

1. The child's current functioning and behaviors
2. The medical needs of the child
3. The educational needs of the child
4. The developmental needs of the child
5. The child's history and past experience
6. The child's religious and cultural needs
7. The child's connection with a community, school and faith community
8. The child's interests and talents
9. The child's relationship to current caretakers, parents, siblings and relatives
10. The reasonable preference of the child, if the court, or the child-placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences.

Minnesota law also requires documentation of how foster and adoption placement decisions are made.

- Minnesota Statutes, section 260C.212, subdivision 1 (c)(1), requires that the out-of-home placement plan utilize the 10 placement factors to document how a child's placement in a specific home or facility is consistent with the child's best interests and special needs.
- Minnesota Statutes, sections 259.31 and 260C.611 similarly require

documentation of adoption placement decisions.

## **Considering a Child's Cultural Needs**

The U.S. Department of Health and Human Services does not define culture. Section 1808 of the Small Business Job Protection Act of 1996 addresses only race, color or national origin, and does not directly address the consideration of culture in placement decisions. Therefore, a public agency is not prohibited from the nondiscriminatory consideration of culture in making placement decisions. However, race and culture are not the same. Culture can be thought of as a system of values, beliefs, attitudes, traditions and standards of behavior that governs the organization of people into social groups, and regulates both individual and group behavior. Culture is not the same as skin color. Culture is fluid; it can be learned, developed and changed. A public agency's consideration of culture must comply with section 1808 in that it may not use culture as a replacement for the prohibited consideration of race, color or national origin.

Minnesota law does permit consideration of culture in placement decisions. However, the cultural needs of a child are only one of the 10 factors to consider in making placement decisions. Social workers must make an individualized determination of each child's needs, including cultural needs, and an individualized determination of the capacities of each prospective parent to meet a child's identified needs, rather than using broad generalizations. In addition, social workers must not equate culture with race, color or national origin.

The example below shows how child-focused recruitment is in compliance with MEPA-IEP.

Consider an agency that is recruiting an adoptive family for an 11-year-old African American boy. It would be a MEPA-IEP violation to recruit prospective adoptive families only on the basis of race, either by limiting prospective families to a specific race or eliminating from consideration all families of a specific race, such as stating "I am looking for an African American family for this child." This description is family-focused, too general and would eliminate a large number of prospective adoptive families. MEPA-IEP requires child-focused recruitment. The social worker can say, "I am recruiting an adoptive family for an 11-year-old boy who is connected to his African American culture. He celebrates Kwanza every year and enjoys attending African American cultural celebrations such as Juneteenth and Rondo Days. I am looking for a family who is willing and able to meet his cultural needs." This description is child-focused and has identified specific cultural needs, rather than eliminating a broad base of prospective adoptive families. This description would include families of the same culture as the child, as well as families able and willing to learn about and celebrate occasions and events that are culturally important to the child. The focus is on finding a family who can meet the needs of a child.

Some have argued that the language in the Multiethnic Placement Act and Interethnic Adoption Provisions allow states to routinely take race into account in making placement decisions. MEPA-IEP clearly mandates that any decision to consider the use of race as a necessary element of a placement decision must be based on concerns arising from circumstances of an individual case. It is conceivable that an older child, whose consent is required to be adopted, might express unwillingness to be placed with a family of a particular race. An agency is not required to dismiss a child's preference in evaluating placements. While a social worker may wish to counsel a child, one critical element to the success of a placement of an older child is that they be involved in placement decisions. At the same time, workers should not dismiss all families of a particular race as possible resources because those families may be able to meet the unique needs of a child.

MEPA-IEP acknowledges that it is impossible to delineate all the circumstances in which race or ethnicity can be taken into account in a placement decision. MEPA-IEP mandates a strict scrutiny standard in considering race or ethnicity in placement decisions, in part because the law cannot anticipate in advance every situation. However, the primary message of the strict scrutiny standard is that only the most compelling reasons may serve to justify consideration of race and ethnicity as part of a placement decision. Such reasons are likely to emerge only in unique and individual circumstances. Accordingly, occasions where race or ethnicity may lawfully be considered in a placement decision will be rare. MEPA-IEP has clear sanctions for individuals and agencies that violate the law.

## **Additional Internet Resources Regarding MEPA and IEP**

- [Resources on Minnesota Issues](#), Minnesota Minority Child Heritage Protection Act, available online through the Minnesota Legislative Reference Library
- [Child Welfare Policy Manual: MEPA/IEAP](#), available online through the Administration for Children and Families, Children's Bureau
- [Protection from Race, Color and National Origin Discrimination in Adoption and Foster Care](#), available online through the U.S. Department of Health and Human Services, Office for Civil Rights
- [Multiethnic Placement Act \(MEPA\) Program Resources](#), available online through the Administration for Children and Families, Children's Bureau.

## **Americans with Disabilities Act (ADA) Advisory**

This information is available in accessible formats for people with disabilities by calling (651) 431-4670 (voice) or toll free at (800) 627-3529 or by using your preferred relay service. For other information on disability rights and protections, contact the agency's ADA coordinator.