



DEPARTMENT OF HEALTH & HUMAN SERVICES

Voice - (202) 619-0403 TDD - (202) 619-3257 Fax - (202) 619-3818

[Http://www.hhs.gov/ocr/](http://www.hhs.gov/ocr/)

OFFICE OF THE SECRETARY

Director

Office for Civil Rights

200 Independence Ave., SW Rm 506F

Washington, DC 20201

JUL 10 2003

TO: OCR Regional Managers and ACF Regional Administrators

FROM: Richard M. Campanelli, J.D., Director, Office for Civil Rights

Wade F. Horn, Ph.D., Assistant Secretary, Administration for Children and Families

SUBJECT: Internal Evaluation Instrument

Since the enactment of the Multi-Ethnic Placement Act (MEPA) of 1994 and the Inter-Ethnic Adoption Provisions of the Small Business Job Protection Act of 1996 (Section 1808), the Office for Civil Rights (OCR) and the Administration on Children, Youth and Families (ACYF) have taken steps to ensure that delays or denial in the placement of a child for adoption or foster care are eliminated. We have done so by utilizing various approaches to ascertain State compliance with applicable Federal statutes, as well as through the issuance of guidance and provision of technical assistance to States. Protection from discriminatory practices or activities associated with adoption and foster care is an issue that warrants our continuous attention. Toward that end, we are continuing to develop common protocols that will assist States in their efforts to implement policies and procedures that ensure non-discriminatory practice in the placement of children.

The attached Internal Evaluation Instrument (Instrument) was developed by a joint OCR and ACYF workgroup as a self-assessment tool that can be used by States and other entities to evaluate or assess their compliance with MEPA/Section 1808. Completion of this Instrument is intended to be voluntary and does not guarantee MEPA/Section 1808 compliance. States and other entities that use the Instrument may still be the subject of OCR complaint investigations and compliance reviews and ACF reviews.

This Instrument was piloted in several States during 2000. Based upon feedback and comments from the States, the Instrument has been restructured in the areas of its applicability, usefulness and content.

We are asking that the OCR Regional Managers and ACF Regional Administrators coordinate and disseminate this Instrument to your contacts in State and local child welfare agencies. As it is intended for voluntary use, it should not be returned to ACF or OCR. We ask that you encourage States to consider using it as an internal tool to ascertain the degree and manner in which they are complying with MEPA/Section 1808, and how and in what ways they need to improve.

MEPA/SECTION 1808 Internal Evaluation Instrument

INTRODUCTION

The Internal Evaluation Instrument (Instrument) is a document produced by the Department of Health and Human Services' Administration for Children and Families, Children's Bureau (ACF) and Office for Civil Rights (OCR) that provides a process by which States and agencies may voluntarily review programs, policies, procedures and practices for compliance with the Multiethnic Placement Act of 1994, and the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 (MEPA/Section 1808). This Instrument is intended for internal use by States and agencies, and they are not in any way required to complete it. Therefore, States **should not** return it to ACF or OCR. Rather, it may serve as a useful tool for States to ascertain the degree and manner in which they are complying with MEPA/Section 1808, and how and in what ways they need to improve.

States may also wish to assess their compliance in other ways. For instance, States may wish to conduct focus groups, surveys and/or interviews with staff in pertinent roles, as well as current and prospective foster and adoptive parents, since the information from these activities may prove useful in determining how the agency's actions are perceived by some of the stakeholders in the foster care/adoption process.

As part of this process, we suggest that State agencies review their written policies and procedures that may directly or indirectly impact MEPA/Section 1808 implementation. We further suggest that agencies completing this document consult with their counsel, as issues around MEPA/Section 1808 can be legally complex.

The Instrument is structured in a manner that recognizes that different steps in the foster and adoptive parent approval process are frequently contracted out or assigned to different agencies or associations. Since similar issues may apply during different steps of the process, there is some repetition in the Instrument. This is to ensure that each different agency or each contractor assessed for compliance with MEPA/Section 1808 is assessed for possible actions in their area of responsibility, both required and prohibited. To this end, although Section 1808 refers only to race, color and national origin, the term "ethnicity" is used when referring to issues related to the diligent recruitment provision of MEPA. Information required to be collected for AFCARS reporting is consistent with the Federal census and focuses on race and ethnicity rather than color or national origin. This data may be useful to States in analyzing the correlation between the ethnic and racial diversity of potential foster and adoptive families and the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.

Finally, please note that throughout the document, the phrase "race, color and/or national origin" is abbreviated as "RCNO."

We encourage States and agencies to contact their respective Regional Offices of the Administration for Children and Families or the Office for Civil Rights if they have any questions or concerns involving compliance with MEPA/Section 1808. Contact information for ACF Regional Offices can be located at www.acf.hhs.gov/programs/oro/contacts/regions.htm. For further information on implementation, please refer to the MEPA/Section 1808 section of the Children's Bureau on-line policy manual at

<http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy.jsp?id=4>. Contact information for OCR Regional Offices can be located at www.hhs.gov/ocr/. More information about OCR's work in enforcing Section 1808 and Title VI of the Civil Rights Act of 1964 in the context of foster care and adoption can be located at <http://www.hhs.gov/ocr/mepaipp.htm>.

Completion of this Instrument does not guarantee MEPA/Section 1808 compliance. States and other entities that use the Instrument may still be the subject of OCR complaint investigations and compliance reviews pursuant to Section 1808 and Title VI of the Civil Rights Act of 1964 and ACF Title IV-E reviews. Both Section 1808 and Title VI impose significant legal penalties for race-based discrimination in adoption and foster care. Penalties for violations of Section 1808 can include the imposition of a penalty of up to five percent of a State's Title IV-E funds for a fiscal quarter. Remedies for violations of Title VI can include suspension or termination of, or the refusal to grant, Federal financial assistance. The following requirements will continue to be monitored by ACF and OCR:

- The State has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed. (Section 422(b)(9) of the Social Security Act (the Act))
- The State may not deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved. (Section 471(a)(18) of the Act)
- The State may not delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved. (Section 471(a)(18) of the Act)
- The State does not maintain any statute, regulation, policy, procedure or practice that, if applied, would likely result in a violation against a person as defined in the above bullets. (45 CFR 1355.38(a)(2), (3))

State: _____ County: _____ Agency: _____ Date: _____

I. Recruitment of Foster and Adoptive Parents

A. Race and Ethnicity Data on Current Foster and Prospective Adoptive Parents

- 1) Review the number of people in the following populations and the demographic information related to the race and ethnicity of these populations:
 - children in foster care under the responsibility of your agency
 - children under the responsibility of your agency with a goal of adoption
 - current pool of foster parents
 - current pool of prospective adoptive parents
- 2) Do the racial and ethnic percentages of the foster parent population differ significantly from those of the children in foster care?
- 3) Do the racial and ethnic percentages of the prospective adoptive parent population differ significantly from those of the children awaiting adoption?

B. Recruitment Efforts

- 1) Does the agency have a comprehensive foster and adoptive home recruitment plan that indicates it is making diligent efforts to recruit foster and adoptive parents that reflect the racial and ethnic backgrounds of the population of children in foster care?
- 2) What recruitment strategies are being employed to ensure that all members of the community are provided with information about the opportunity to foster or adopt children in the care of the agency?

Y N Are marketing and recruitment efforts made throughout the State or locality?

Y N If respondent is a State agency, are there local diligent recruitment plans as well as a State plan?

Y N Are recruitment plans for foster/adoptive parents generalized to families of all racial and ethnic groups, as well as targeted toward those racial or ethnic groups that are under-represented in the approved foster/adoption parent population when compared to the children in care?

Y N When doing diligent foster/adoptive recruitment of racial or ethnic groups that are under-represented in the approved foster/adoption parent population, does the agency ensure that families of other racial or ethnic groups are not excluded?

II. Screening, Orientation, Preparation, and Assessment of Prospective Foster and Adoptive Parents

A. Screening and Orientation

- 1) How does the agency ensure that persons of diverse RCNO are provided access to information on how to become a foster or adoptive parent?

Y N Does the agency keep a log or database of all inquiries from persons interested in being foster and/or adoptive parents and the disposition?

If not, describe how the agency keeps track of inquiries and their disposition.

Y N Does the log (or alternative method) indicate that follow-up occurred and when with every caller?

If not, why is there no follow-up?

Y N Was the follow-up equally timely for all callers?

If not, why not?

Y N Does the agency request information from prospective foster or adoptive parents about their RCNO?

Y N Does the log (or alternative method) show an under-representation from any specific racial or ethnic group of persons interested in becoming foster or adoptive parents?

If yes, does the agency have a strategy for dealing with this issue, e.g., more targeted recruitment?

Describe the strategy that is being used.

Y N Does the agency record the RCNO of persons who are interested in being a foster or adoptive parent?

Why or why not?

- 2) If applicants for foster care or adoptive parenting are screened prior to orientation or training, what screening criteria are used?

Why is such screening criteria used?

How does the agency ensure that these criteria comply with MEPA/Section1808

(i.e., that they do not “screen out” or discourage individuals from any particular racial or ethnic group interested in parenting children who are in the responsibility of the agency regardless of whether prospective applicants are interested in parenting within or across race, color and/or national origin?)

- 3) What are the steps involved in the foster or adoptive parent screening and orientation process and what purpose does each serve?

How does the agency ensure that each step in this process complies with MEPA/Section 1808, e.g., that additional steps are not being required for persons expressing interest in foster or adoptive parenting across RCNO lines?

- 4) Are **all** applicants for foster or adoptive parenting given complete information on the characteristics of **all** children who are in foster care waiting to be adopted, including select groups of children, such as medically fragile infants and teens?

How and when is this done?

If not, under what circumstances would the agency not provide this information to applicants?

- 5) How does the agency assist applicants to determine whether they are interested in fostering or adopting children from the public child welfare system?

Does this include:

Y N provision of data on the demographics and characteristics commonly found in the child welfare population (i.e., specific behaviors, common medical problems, common disabilities)?

Y N individual interviews?

Y N group training sessions?

Y N meetings/mentoring with current foster/adoptive parents?

Y N provision of self-assessment and preparation guides?

How does the agency ensure that each step in this process complies with MEPA/Section 1808, e.g., that additional steps are not being required for persons expressing interest in foster or adoptive parenting across RCNO lines?

- 6) During orientation, does the agency provide a comprehensive overview of each of the steps that are required for the applicant to become a foster or prospective adoptive parent (including the steps involved in the assessment, preparation, training, licensing or home study, and the selection and child placement processes)?

If not during orientation, why and when is the overview done?

If yes, do these steps comply with MEPA/Section 1808, e.g., does the agency ensure that this explanation does not include additional activities/ steps or discourage those wishing to foster or adopt across RCNO lines?

- 7) Are prospective foster and adoptive parents apprised of their right not to be denied the opportunity to foster or adopt a child based on the prospective parent's RCNO?

If not, why not?

- 8) Are prospective foster and adoptive parents advised of what they should do, or whom they should contact within or outside of the agency, if they believe they are being denied the opportunity to foster or adopt a child based on the prospective parent's RCNO?

If not, why not?

B. Assessment and Preparation of Prospective Foster and Adoptive Parents

- 1) In exploring prospective parents' preferences regarding the characteristics of the children in foster care that the parents would feel comfortable fostering or adopting, does the agency:

Y N describe **all** the types of children available and the care needed by these children regardless of RCNO?

Y N describe only select groups of children?

If so, is it based on the need for families for that specific population, such as medically fragile infants or teens, as opposed to being based on the RCNO of the child or prospective parent?

- 2) How does the agency ensure that the description of the assessment, licensing/home study, selection and placement process and what is entailed in each step of these processes does not differ for families who are interested in fostering or adopting children of a different RCNO?

- 3) In what manner is an individual or family given the opportunity to express preferences regarding the type of children they are willing to parent?

How does the agency document the prospective parents' preferences?

Does the agency give prospective parents the opportunity to change their preferences as the family learns more about parenting the various children in the care of the agency?

- 4) How does the agency assess each prospective parent's ability to foster or adopt?
- 5) Do all staff use a standardized assessment method or tool, such as genograms, eco-maps, or a consistent home study outline to assess the parent's ability?

If there are variations in the assessment method or tool used, how does the agency determine which method or tool will be used?

How does the agency ensure that the same type of information is being collected on all prospective parents regardless of the method or tool used?

- 6) For whatever assessment method or tool being used, how does the agency ensure that the questions asked comply with MEPA/Section 1808, e.g., that the assessment process only includes questions regarding the capacity of the prospective parent to foster or adopt a child of a different RCNO when supported by an individual assessment of the needs of the child?
- 7) How does the agency ensure that staff do not provide information to prospective families that suggests that all children of the same RCNO have the same needs?
- 8) How does the agency ensure that staff do not make decisions during the assessment process that are based on unsubstantiated generalizations about the capacity of a prospective parent of one RCNO to care for a child of a different RCNO?

III. Foster/Adoptive Parent and Staff Training

A. Are MEPA/Section 1808 requirements integrated into training curricula for:

- Y N foster and adoptive parents?
- Y N new staff (including social workers, supervisors, recruitment, licensing and management staff)?
- Y N current staff (including social workers, supervisors, recruitment, licensing and management staff)?
- Y N other staff whose area of responsibility includes foster care or adoption (e.g., ombudspersons, hotline staff, clinical staff)?
- Y N contract or subcontract agencies?

B. Do these curricula accurately address current law in the following areas?

- Y N purpose of MEPA/Section 1808?
- Y N prohibited activities?

Y N diligent recruitment requirements for staff involved in foster/adoptive parent recruitment, policy development, and program monitoring of foster and adoption programs?

Y N penalties for violations?

C. Is each foster and adoptive parent provided the same information regarding policies and procedures about licensing/approval and/or other agency procedures regardless of the parent's RCNO?

D. How does the agency ensure that all training complies with MEPA/Section 1808?

1) Does training clearly communicate to agency staff that an individual cannot be denied the opportunity to become a foster or adoptive parent on the basis of the RCNO of the individual or the child?

If so, how?

If not, why not?

2) Does training similarly communicate the foregoing to prospective foster and/or adoptive parents?

If so, how?

If not, why not?

3) Does training clearly communicate to agency staff that a child's foster and/or adoptive placement may not in any manner be delayed or denied based upon the RCNO of the prospective parent or the child involved?

If so, how?

If not, why not?

4) Does training similarly communicate the foregoing to prospective foster and/or adoptive parents?

If so, how?

If not, why not?

IV. Licensing/Approval of Foster and Adoptive Parents

A. Are uniform licensing and home study questions routinely applied throughout the State or locality?

B. Is there a formal mechanism within the agency by which prospective foster and adoptive parents can comment or express concern about the licensing process?

C. How does the agency ensure that the following practices do not occur?

Persons interested in adopting or fostering across RCNO lines are required to:

- Y N answer additional questions because of the interest in adopting or fostering across RCNO lines?
- Y N take additional training courses because of the interest in adopting or fostering across RCNO lines?
- Y N move to a more diverse community?
- Y N write additional narratives, such as a transracial adoption plan, because of the interest in adopting or fostering across RCNO lines?
- Y N have additional caseworker visits because of the RCNO context?
- Y N justify their interest in children of a different RCNO?
- Y N meet different or higher licensing or approval standards in order to become a foster or adoptive parent of a child of a different RCNO?
- Y N because of the interest in adopting or fostering across RCNO lines, go through any other additional steps not required for same RCNO placements?

D. How do families that have applied to foster or adopt view the following:

- 1) Do prospective foster and adoptive parents believe that the licensing policies provide an opportunity for all RCNO groups to foster or adopt?
- 2) How do prospective parents from different RCNO groups perceive the licensing process?
- 3) Do the prospective parents believe or express concerns that the licensing process considers their RCNO?

If so, what steps have been taken to address this problem?

Note: You may want to consider gathering this information through surveys, focus groups, or other similar methods.

E. Is information about a prospective family's preferences regarding the RCNO of children documented in the licensing or adoptive home study?

If so, how is this information recorded and used?

F. How are licensing and home studies assigned?

Is there any prioritization of which families get studied first?

If so, what are the criteria for this prioritization?

How does the agency ensure that the prioritization does not violate MEPA/Section 1808?

Are persons interested in adopting across RCNO lines singled out or listed as low priority?

Are some RCNO resources routinely considered as a strength and/or otherwise given preferential treatment?

V. Assessment of Foster and Adoptive Children

A. How does the agency ensure that the process by which it assesses the children's needs complies with MEPA/Section 1808?

- 1) Does the agency conduct individualized assessments of children's needs?
- 2) How does the agency ensure that its assessment process is not based on the assumption that children in foster care all have the same needs based on their RCNO?
- 3) Consider the rare circumstances where the agency has determined that based on an individualized assessment of a child's needs, that child has particular needs that require consideration of RCNO.
 - What were those needs?
 - How were they determined, and by whom?
 - Did supervisors review such a decision?
- 4) Are the needs of each child in foster care properly documented in the case record?

B. By its terms, Section 1808 of Public Law 104-188 addresses only RCNO, and does not address the consideration of culture in placement decisions. There are situations where a child's cultural needs may be important in placement decisions, such as where a child has specific language needs. However, a public agency's consideration of culture raises Section 1808 issues if the agency uses culture as a proxy for RCNO. While nothing in Section 1808 directly prohibits a public agency from assessing the cultural needs of all children in foster care, Section 1808 prohibits an agency from considering culture in a manner that circumvents the law's prohibition against the routine consideration of RCNO.

- 1) Under what circumstances are a child's cultural needs evaluated?
- 2) What are some of the cultural needs that the agency may consider when determining an appropriate placement for a child?

- 3) How does the agency ensure that it is not confusing RCNO with culture when assessing a child's needs?

VI. Selection Process and Placement of Foster and Adoptive Children

- A. How is information on the pools of adoptive and available foster parents organized or maintained?

Does the agency ensure that this complies with MEPA/Section 1808, i.e., that the applicant pools are not separated by RCNO?

- B. Do prospective foster and adoptive parents have the opportunity to meet children in need of an adoptive/foster home, regardless of RCNO, e.g., through adoption parties?
 - 1) How are photo listings of children who are waiting to be adopted maintained?
 - 2) Do the listings provide a description of the child's strengths, challenges, and needs?
 - 3) How does the agency ensure that any preference for an adoptive family of a particular RCNO indicated in a photo listing is supported by an assessment of the child showing the need for a family of this RCNO?
- C. What are the procedures and resources used to locate and select potential, appropriate foster/adoptive families for a particular child?
 - 1) What factors are taken into consideration when making the final selection of a family for a particular child among the appropriate families?
 - 2) How does the agency ensure that the family location and selection process complies with MEPA/Section 1808, i.e., that RCNO is not considered in foster/adoptive family selection and child placement decisions except in individual situations where consideration of RCNO is necessary to meet the best interests of the child?
- D. According to the agency's family selection and child placement policies and practices, under what circumstances would it be appropriate to consider the RCNO of the child or the foster or adoptive parent in making decisions on the most appropriate family for a particular child?
 - 1) How does the agency ensure that such circumstances comply with MEPA/Section 1808, i.e., that when RCNO is a factor in this decision, that it is rare and is based on the individualized needs of a particular child as documented in the case record?
 - 2) Has the agency ever moved a child into another home when the agency changes the goal to adoption even when the current foster parent desires to adopt the child?

- 3) If a child were moved under these circumstances, how does the agency ensure that RCNO are not factors in this move?

VII. Quality Assurance and Compliance Monitoring

A. Quality Assurance

- 1) Does the agency track the results of foster/adoptive recruitment efforts?

If yes, are there significant differences, based on RCNO in response times between:
 - the first call from a prospective parent and agency contact?
 - parent contact and agency scheduling of orientation training?
 - orientation/training and completion of licensing/home study?
 - final approval for foster/adoptive license/home study and placement licensing?
- 2) Are there any significant differences based on RCNO in the percentage of families that complete training and those who are approved/licensed?
- 3) How has the agency ensured that all staff (caseworkers, hotline and legal staff, ombudspersons, etc.) and interested parties (e.g., foster parents) have been trained in the provisions of MEPA/Section 1808, including types of situations that constitute violations?
- 4) Is there post-testing of trainees on their understanding of MEPA/Section 1808?
- 5) Is there a widely publicized mechanism by which workers can ask questions about MEPA/Section 1808 when the worker has a question about MEPA/Section 1808?
- 6) Are supervisors required to assess staff compliance with MEPA/Section 1808 as a routine aspect of staff performance evaluation?
- 7) Does the agency track the timeliness of data for the following events:
 - average length of time from a child's initial placement into foster care until adoption is selected as the child's permanency plan?
 - (by age) average length of time from the change in a child's permanency plan to termination of parental rights?
 - (by age) average length of time from termination of parental rights to placing the child in his/her permanent adoptive home?

If so, are there any significant differences among children of different RCNO of the same age in the average length of time for any of these events?

Is there any indication that any delays are based on activities prohibited by MEPA/Section 1808, e.g., the delays are due to agency staff spending time trying to make same RCNO placements even though approved, appropriate families interested in placements across RCNO lines are available?

- 8) Are there placements across RCNO lines in the areas of foster care and adoption?
- 9) Have foster parents complained that they are not being allowed to adopt across RCNO lines?
- 10) How does the agency ensure that concerns about MEPA/Section 1808 will be adequately addressed?
 - What process is in place to allow staff and interested parties to report potential MEPA/Section 1808 violations?
 - Does the agency conduct a review of foster and adoptive parents' files and the child's file in order to ensure that staff have completed applicable paperwork and made decisions in accordance with the requirements of MEPA/Section 1808?

B. Monitoring

- 1) Does the agency perform internal monitoring to ensure its compliance with MEPA/Section 1808?

If so, how?
- 2) If foster care and adoption services are county administered and/or the agency contracts or subcontracts with other agencies for foster care or adoption services, does the agency monitor the counties and/or contractors/vendors for compliance with MEPA/Section 1808?

If so, how?
- 3) Describe the agency's monitoring process used to ensure the agency's compliance with MEPA/Section 1808.
 - Has the agency developed any instruments to conduct these monitoring activities?
 - Is the monitoring process integrated into pre-existing review processes, or is it a separate process?
- 4) What happens with the results of the monitoring?

- Where and how expeditiously are the results forwarded to the appropriate staff?
- What is the process and time frame for addressing any problems?