Panelists' Biographies and Statements

For The Briefing On

The Multiethnic Placement Act: Minority Children in State Foster Care and Adoption

September 21, 2007

Panelists for the Multiethnic Placement Act Briefing
Friday, September 21, 2007

Panel 1 - **Enacting and Enforcing MEPA and an Assessment of Minority Children in Foster Care**

(1) Commissioner Joan Ohl, Children's Bureau,
US Department of Health and Human Services

(2) Kay Brown, Government Accountability Office

Panel 2 - **The Best Interest of Children and the Role of Race**

(1) Joseph Kroll, North American Council on Adoptable Children

(2) Dr. Rita Simon, American University

(3) J. Toni Oliver, National Association of Black Social Workers

Panel 3 - **Has MEPA Achieved its Goal?**

(1) Thomas Atwood, National Council on Adoption

(2) Dr. Ruth McRoy, Evan B. Donaldson Adoption Institute

(3) Dr. Elizabeth Bartholet, Harvard School of Law

(4) Linda Spears, Child Welfare League of America

THOMAS C. ATWOOD
President and Chief Executive Officer
National Council For Adoption
Alexandria, Virginia

Thomas Atwood serves as President and Chief Executive Officer of the National Council For Adoption (NCFA). Founded in 1980, NCFA is an adoption research, education, and advocacy nonprofit organization, whose mission is to promote the well-being of children, birthparents, and adoptive families by advocating for the positive option of adoption. NCFA addresses all aspects of the adoption issue, devoting its efforts roughly equally among the areas of infant, foster care, and intercountry adoptions.

Mr. Atwood is NCFA's chief spokesperson and directs all aspects of NCFA's work, including government and media relations; policy analysis, research, and publications; adoption agency training and services; and development, administration, and strategic planning. For four years he has served as executive director of NCFA's Infant Adoption Awareness Training Program. He leads NCFA's ongoing efforts to ensure sound, ethical adoption policies and practices – such as promoting adoptions out of foster care through financing and court reforms; finding families for foster children through parent recruitment and private agencies; presenting adoption as an option for unplanned pregnancies; serving birthmothers through sound counseling; advancing a global culture of adoption and child welfare through international advocacy; making adoption more affordable through the adoption tax credit; and raising adoption awareness and understanding through the media.

Mr. Atwood has directed national research, education, and advocacy nonprofits for 20 years as chief executive, director of government and media relations, research director, editor, publisher, coalition builder, fundraiser, and strategic planner. During his eleven-year tenure at The Heritage Foundation, he served as Director of Coalition Relations and Executive Editor of *Policy Review*. He was Vice President, Policy and Programs for Family Research Council. He is the founding President of the Board of Directors of the National Safe Haven Alliance. He serves on the Board of Trustees of the Council on Accreditation.

Thomas Atwood frequently testifies on adoption, foster care, and child welfare issues before Congress and state legislatures, and advocates adoption and child welfare in capitals around the world. His media appearances and citations include the *Washington Post*, *Wall Street Journal*, *Washington Times*, *USA Today*, *Boston Globe*, *Dallas Morning News*, *Isvestia*, *Pravda*, Black Entertainment Television, Radio Free Europe, Voice of America, E!, "Today Show," "The Early Show," "Good Morning America," "Primetime," "Fox and Friends," "Larry King Live," CNN International, MSNBC, National Public Radio, Russia Channel One, and many other media. He is Executive Editor of *Adoption Factbook IV*, NCFA's comprehensive reference on adoption policy and practice.

Mr. Atwood graduated from Roxbury Latin School in 1969 and from Brandeis University in 1973 with a Bachelors degree in Psychology. He earned his Masters in Public Policy and Masters in Business Administration from Regent University in 1986, both *summa cum laude*. An adoptive father himself, Mr. Atwood resides in Virginia, with his wife of 26 years Eileen and their 17-year old son Christopher.

National Council
For Adoption

Written Statement
Thomas C. Atwood, President and CEO
National Council For Adoption

U.S. Commission on Civil Rights

Briefing on the Multiethnic Placement Act: Minority Children in State Foster Care and Adoption

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My name is Thomas Atwood, and I serve as president and chief executive officer of the National Council For Adoption (NCFA). NCFA is an adoption research, education, and advocacy nonprofit whose mission is to promote the well-being of children, birthparents, and adoptive families by advocating for the positive option of adoption. Since its founding in 1980, NCFA has advanced adoption and child welfare policies that promote the adoption of children out of foster care, present adoption as a positive option for women with unintended pregnancies, reduce obstacles to transracial and intercountry adoption, and make adoption more affordable for families. On behalf of NCFA, I thank you for this opportunity to present at your briefing on the Multiethnic Placement Act (MEPA).

Transracial Adoption, Good for Children

Transracial adoption is a healthy, positive outcome for children, notwithstanding additional challenges that may arise due to a surrounding culture that finds it curious and also still contains strains of racism. Today an increasing number of families are multiracial or multicultural by adoption, as more and more parents have decided to adopt across racial, ethnic, and cultural lines, in our own country and abroad. According to the 2000 census, approximately one out of every six adopted children in America has a parent of another race.

Studies of transracially adopted children have not revealed any significant differences in terms of adjustment or development that diverge sharply from the patterns and outcomes of children adopted by parents of the same race. This has led such studies to conclude that transracial adoption does not harm the adjustment, family bonding, or normative development of children.[1] "Growing Up Adopted," a massive Search Institute survey of 715 adoptive families, which included 881 adopted adolescents, reported that children adopted transracially fared as well as Caucasian adopted children in same-race families. The authors noted, "Transracially adopted youth are no more at-risk in terms of identity, attachment, and mental health than are their counterparts in same-race families."[2]

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[1] Burrow, A. L., and G.E. Finley, "Transracial, Same-Race Adoptions and the Need for Multiple Measures of Adolescent Adjustment," *Journal of Orthopsychiatry* (2004), pp. 577-583.

[2] Benson, Peter L., Anu R. Sharma, and Eugene C. Roehlkepartain, *Growing Up Adopted: A Portrait of Adolescents & Their Families* (Minneapolis, MN: Search Institute, June 1994), pp. 7-8, 34.

Children who are adopted into a permanent family – including those adopted across ethnic or cultural lines – fare better and experience far more positive outcomes than children who remain in foster care or institutions. Many transracially adopted individuals report feeling a deep connection and trust within their adoptive families, and not at the expense of their racial heritage. Transracial adoption also has a positive effect on American society and culture at large, promoting greater tolerance and diversity.

Additional Challenges in Transracial Adoptive Parenting

Adoption professionals agree that transracial adoption can present additional challenges to an adoptive family. When weighing the decision to adopt transracially, prospective parents should consider a number of important questions. How do they expect their family members will react to a child of another race? Are the schools in their area diverse, filled with children from a variety of cultures and backgrounds? What about their neighborhood, church, and social circle?

The decision to adopt transracially should not be made on the basis of reactions from others. But it is important for parents to consider and be aware of what their family may experience following a transracial adoption. Questions may be asked about the child's adoption that might not be asked in a same-race adoption, as other people will notice immediately that the child is not genetically related to his or her parents. It is up to the child's parents to be aware of how the child feels and to respond to questions in ways that help both curious outsiders and the child himself to better understand and appreciate adoption.

Adoption professionals also generally agree that parents of transracially adopted children should help to equip their children with a healthy sense of family belonging, personal and racial identity, and cultural connections. Age-appropriate opportunities for cultural exploration should be taken together, as a family. Children who know their background – including where they came from, and how they joined their families – are more likely to grow in their understanding and acceptance of adoption than children whose families do not speak openly about adoption or racial differences. Many parents of transracially adopted children have found friendship and helpful advice by joining support groups of families affected by transracial adoption.

MEPA's Results

It is difficult to assess how much MEPA by itself has reduced the amount of time minority children spend in foster care or waiting to be adopted. The Department of Health and Human Services (HHS) does not provide data regarding the numbers of transracial adoptions. Moreover, the federal government itself does not place much confidence in national statistics prior to fiscal year 1998, as few states were in compliance with the current Adoption and Foster Care Reporting and Analysis System (AFCARS) standards at that time.[3] However, it is likely that MEPA has succeeded in

[3] Those in favor of MEPA based their arguments at the time on individual studies suggesting that inracial adoption practices correlated with longer wait times for African-American children.

expediting the placement of many African-American and minority children with loving, permanent families. For this reason, it should be applauded.

Since 1997, when the Adoption and Safe Families Act and MEPA's Interethnic Adoption Provisions (IEAP) went into effect, adoptions out of foster care have increased from 31,000 a year to more than 50,000 – and have remained at more than 50,000 for six years straight. While the level of detail in data collection by HHS is inadequate to prove conclusively that MEPA and IEAP contributed to those increases, such can be reasonably inferred. However, African-American children continue to be disproportionately represented in foster care, and this disproportion should be of great concern to child welfare advocates and policy makers.

While MEPA has contributed to addressing this problem, it certainly could never remove all barriers to the adoption of minority children from foster care. For example, African-American children are often more likely to be placed in kinship care, which, studies suggest, correlates with a longer stay in the foster care system. African-American parents also report difficulties in accessing the type of social services required for reunification more often than Caucasian parents, generally for cultural or socioeconomic reasons.[4]

Two Cheers for MEPA

The key MEPA language follows:

> A person or government that is involved in adoption or foster care placements may not – (A) deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or (B) 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.

The goal of MEPA – to reduce placement delays and denials based on racially discriminatory factors – is a complex and challenging goal. On the one hand, policy makers wanted to allow certain considerations of race in placements, including parent education and self-assessment regarding transracial adoption and the targeted recruitment of adoptive and foster parents from all racial and ethnic groups. On the other hand, policy makers sought to restrict race from being an obstacle to a child's placement and to protect children from arbitrary same-race placements even when it was in the child's best interests to remain with different-race parents with whom he or she had already bonded. MEPA, and the HHS guidelines regarding MEPA, are not perfect, but correctly interpreted they largely achieve this goal. However, based on misinterpretations of MEPA and the guidelines, states are abandoning good social work practices, for fear of violating MEPA.

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[4] United States Government Accountability Office, (July 2007). "African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care." Page 4

A common misinterpretation is the idea that state agencies can run afoul of MEPA from only discussing the issue of race with prospective parents, because a wrong word could be interpreted as discrimination. But to say that race should not "delay or deny" a child's placement does not mean that the challenges that can be posed by transracial adoption may not be discussed. It does not mean that parents should not be asked to assess themselves regarding their suitability for transracial adoption. On the contrary, MEPA, correctly interpreted, allows social workers to educate parents regarding these challenges and how to meet them. Making parents aware of issues common to transracial adoption does not delay or deny placement, and this education is an important part of the social worker's adoption counseling responsibility. Educating and counseling parents regarding transracial adoption can be managed in ways that neither delay nor deny placement and thus, are not prohibited by MEPA. Any regulation that indiscriminately prohibits such education is based on a misinterpretation of MEPA.

Ohio provides a typical example of this misinterpretation. The Ohio Administrative Code deems it illegal for an adoption agency to "steer" foster or prospective adoptive parents away from parenting a child of another race, color, or national origin. Caseworkers in Ohio are thus reluctant to raise the subject of race, lest a question or comment be misinterpreted as an attempt to "steer" the decision of a prospective adoptive or foster parent. This state regulation is too vague and unclear to guide caseworkers in ways that comply with MEPA. The regulation should make clear that caseworkers may and should educate parents regarding the potential challenges of transracial adoption.

MEPA serves the best interests of children in several ways:

- **Reduces obstacles to transracial adoptive and foster placements for children in need of families:** There are many children who need families, including a disproportionate number of minority children, and the record of transracial placements is very successful. Racial differences between prospective parent and child should not prevent or delay children from having families.

- **Prohibits consideration of the race of prospective parent and child when such consideration would delay or deny a child's placement:** This is the most important language in MEPA and provides a clear standard to guide caseworkers. Clearly, parental self-assessments and parent education are allowed under this guideline. Including such good practices as part of agency's preparation of prospective parents are not deemed to delay or deny placement.

  HHS's "Questions and Answers Regarding the Multiethnic Placement Act of 1994 and Section 1808 of the Small Business and Job Protection Act of 1996" (from here on referred to as HHS's "MEPA Questions and Answers") clarifies this point. Regarding parents' self-assessment of their own suitability for transracial adoption, HHS states in answering question 2, "...[P]rospective parents [should be] provided the information they need realistically to assess their

capacity to parent a particular child," and "...[A]gencies are not prohibited from discussing with prospective adoptive and foster parents their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity...."

Regarding parent education and training for transracial placements, HHS states in answering question 7: "...[P]rospective parents should be offered, typically through training provided by an agency, information sufficient to confirm or broaden their understanding of what types of children they might most appropriately provide a home for."

- **Allows children access to transracial placements in their best interests, but not as a right for adults:** By not allowing agencies to deny based on race any individual the opportunity to foster or adopt, MEPA protects children from arbitrarily imposed same-race placements when it would be in their best interest to remain with the different-race parents with whom they had already bonded. In providing this protection, however, part (A) does not create a right to adopt, as stated in HHS's "A Guide to the Multiethnic Placement Act of 1994 as Amended by the Interethnic Adoption Provisions of 1996 Chapter 2: The Provisions of MEPA-IEP" (henceforth referred to as HHS's "Guide to MEPA"): "Because placement decisions are based on the needs of the child, no one is guaranteed the 'right' to foster or adopt a particular child."

  Thus, part (A) prohibits the subjective application of generalizations regarding race to individualized placement decisions, per HHS's "MEPA Questions and Answers": "An agency may not rely on generalizations about the needs of children of a particular race or ethnicity, or on generalizations about the abilities of prospective parents of one race or ethnicity to care for a child of another race or ethnicity." This guidance does not in any way interfere with the agency's professional responsibility to provide for parental self-assessment and parent education regarding transracial placements. Nor does it limit the agency's responsibility to recruit prospective parents from all racial and ethnic groups.

- **Allows prospective adoptive and foster parents to indicate their willingness and ability to accept a transracial placement or not:** One of the agency roles allowed under MEPA is to discuss with parents their feelings, capacities, and preferences regarding caring for a child of a particular race or ethnicity. With appropriate counseling and education from the agency, prospective parents can best judge their suitability for a transracial placement (which MEPA provides for, with some exceptions).

- **Allows education of parents regarding the potential additional challenges and responsibilities of transracial placements:** The best interests of children and the professional code of social work require that prospective parents are educated regarding these issues.

- **Provides for exceptions to allow for generally prohibited consideration of race, according to the HHS's "Guide to MEPA," in "circumstances where the child has a specific and demonstrable need for a same-race placement":** In answer to question 14, HHS's "MEPA Questions and Answers" states that "Where it has been established that considerations of race, color or national origin are necessary to achieve the best interests of a child, such factor(s) should be included in the agency's decision-making." The most common example is the case of an older child who would prefer an inracial placement.

- **Requires states to make diligent efforts to recruit racially diverse parents:** MEPA requires states to "provide for 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." Fulfilling this requirement would help states to provide parents for same-race placements.

Needed Improvements to HHS Management of MEPA

In HHS's "MEPA Questions and Answers," question 10 reads: "If an action by a public agency will not delay or deny the placement of a child, may that agency use race to differentiate between otherwise acceptable foster placements?" Question 17 reads the same, only substituting the words "adoptive parents," for "foster placements." The HHS answer to both questions is one word, "No." This answer flies in the face of a plain reading of the MEPA "delay or deny" language. In applying part (B) to this question, if considering race is disallowed in the case where a child's placement is delayed or denied, then logically it is allowed if there were no delay or denial. Presumably, then, HHS has used part (A) to disallow such an action. In any case, HHS should explain its rationale for this negative one-word answer. Without further explanation, it leaves the workers and managers responsible for interpretation quite confused.

Another problem with HHS's MEPA execution is that the department has apparently done little to enforce states' requirement to conduct "diligent recruitment" of racially and ethnically diverse parents. Even though more than 20 percent of children in foster care are waiting to be adopted, 1.3 percent of all federal child welfare dollars available are spent on adoptive and foster parent recruitment and training combined, according to NCFA research. Given that spending pattern, states' recruitment efforts could not have been as thorough as called for under MEPA.

Finally, HHS should count and report the numbers of transracial adoptions. Conducting these counts that would not be inconsistent with MEPA and it would provide valuable information about how transracial adoption is benefiting children.

Conclusion

Some child welfare advocates assert that, "all things being equal" between prospective placements, caseworkers and agencies should choose inracial placements over transracial placements. This is a somewhat appealing argument, in theory.

However, there are always differences between placement options; "things" are rarely if ever "equal." With few exceptions, MEPA appropriately does not allow race, color, or national origin to be the deciding factor in a placement, including when different-race prospective parents are similar in their qualifications. Another problem with the appealing concept of an "all things being equal" preference for same-race placements is that any language that could be drafted to provide for this discretion would leave a giant "loophole," which would render placement decisions vulnerable to subjective inconsistency and ideologically driven manipulation.

The problems with the consideration of race in placement decision making today do not lie primarily with MEPA; nor do they lie mainly with HHS enforcement. They lie mainly with state agencies' and caseworkers' misinterpretations of MEPA itself and of HHS's MEPA guidelines. MEPA allows for commonsense consideration of race and ethnicity in making placement decisions – including prospective parent counseling and education regarding transracial placements, and recruitment of prospective parents from America's diverse racial and ethnic communities. It does not allow agencies to use generalizations regarding race and ethnicity in making individual placement decisions, nor should it. HHS should make greater efforts to clarify these issues, and states should reform their policies and guidelines to follow the actual meaning of MEPA, rather than the mistaken notion that MEPA prohibits any consideration of race.

The National Council For Adoption applauds the Commission on Civil Rights' leadership in analyzing MEPA and its application, transracial foster and adoptive placements, and how adoption and child welfare policy and practice can better serve minority children in foster care. NCFA appreciates this opportunity to work with you in these vital efforts to benefit children and families. Thank you very much.

Respectfully submitted,

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Elizabeth Bartholet: Biographical Sketch

Elizabeth Bartholet is the Morris Wasserstein Public Interest Professor of Law at Harvard Law School, and Faculty Director of the Child Advocacy Program (CAP) which she founded in the fall of 2004. She teaches civil rights and family law, specializing in child welfare, adoption and reproductive technology. Before joining the Harvard Faculty, she was engaged in civil rights and public interest work, first with the NAACP Legal Defense Fund, and later as founder and director of the Legal Action Center, a non-profit organization in New York City focused on criminal justice and substance abuse issues. Bartholet graduated *cum laude* from Radcliffe College in 1962, and *magna cum laude* from Harvard Law School in 1965. Professor Bartholet's publications include: NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE (Beacon Press, 1999); FAMILY BONDS: ADOPTION, INFERTILITY, AND THE NEW WORLD OF CHILD PRODUCTION (Beacon Press, 1999); "Where Do Black Children Belong? The Politics of Race Matching in Adoption," 139 Penn L. Rev. 1163 (1991); "Beyond Biology: The Politics of Adoption & Reproduction," 2 Duke J. Gender L. & Pol'y 5 (Spring 1995); and "Application of Title VII to Jobs in High Places," 95 Harv. L. Rev. 945 (1982).

Professor Bartholet has won several awards for her writing and her related advocacy work in the area of adoption and child welfare. Other awards include a "Media Achievement Award" in 1994 and the Radcliffe College Humane Recognition Award in 1997.

Testimony before
United States Commission on Civil Rights

Sept. 21, 2007

by

Elizabeth Bartholet
Morris Wasserstein Professor of Law
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My name is Elizabeth Bartholet.

I am on Faculty at HLS and have specialized for over 20 years in child welfare & adoption. Have in recent years founded at HLS new program, CAP, committed to advancing children's interests.

I have focused a huge amount of my professional time over these last decades on TRA & MEPA. Was one of those who fought for passage of MEPA in the form took by virtue of the amendments in 96, form it now takes. I have written two books and many articles addressing TRA and MEPA issues all of which can be accessed on my website, www.law.harvard.edu/faculty/bartholet.

I am also a civil rights lawyer: worked as such for a dozen years after graduation from HLS. Have taught civil rights in employment field my entire time at HLS.

I believe that MEPA is a very important law, and a very important part of the panoply of civil rights laws in the U.S. I believe this for two different kinds of reasons:

(1) because it knocks down barriers to the placement of children in foster care, and thus helps expedite placement – something that is terribly important for children, since early placement in adoption has been shown to be the central factor in predicting successful adjustment.

(2) because it sends the message that the State should not be in the business of insisting on same-race families – that was the message of the race-matching era that MEPA ended, and I think that message was as deeply wrong as was the message that inter-racial couples should not be allowed to marry, a message that was of course outlawed in *Loving v. VA.*

I think also that *this Briefing* is important, because we must ensure that this law is being appropriately enforced – that it's not just a law on paper, but is a law that actually makes the difference that Congress intended it to make.

Initially there were very significant enforcement problems: HHS just did not do the job needed to get word out appropriately about the meaning and significance of this law, a law which was after all designed to change the systematic race matching practices which existed in powerful form in all 50 states.

However I think you should take comfort in fact that HHS has finally done some important investigations of MEPA violations and issued some important enforcement decisions. I write in some detail about these decisions in the short article I submitted to the Commission which is in your Briefing book, *Cultural Stereotypes Can and Do Die.* (Please treat that article, also accessible on my website, as an Attachment to this Statement.) These are quite terrific decisions and will I think make a real difference for the following key reasons:

(1) They spell out in unmistakable language the meaning of MEPA, eliminating any possible doubt. This is important not because MEPA's language or the MEPA regulations were ambiguous – they were not. But MEPA has many enemies, and those enemies have done their best to create confusion as to MEPA's mandate. The HHS decisions make clear that MEPA prohibits *any* systematic reliance on race as a factor in placement, and that it prohibits all forms of special screening of prospective transracial adoptive parents. Experience has shown that these aspects of MEPA are crucial to its actually making a real-world difference in practice.

(2) These decisions also impose the very significant financial penalties mandated by MEPA – a $1.8 million penalty in the Ohio case. This kind of financial penalty is the kind of message that financially strapped child welfare agencies *cannot* ignore.

However.... I am still concerned that not enough is being done. HHS has done little to publicize these decisions. Indeed I have found it necessary to post the decisions on my own website in order to help get the word out. Also, neither HHS nor any other government agency has produced any serious accounting of what difference in fact MEPA has made and the degree to which MEPA may continue to be systematically violated.

Conclusion:

In conclusion, I applaud you for holding this hearing. Hope that it will help both in encouraging HHS to do its enforcement job, and in getting the word out to the child welfare world that MEPA is the law of the day.

I also want to alert you to a MEPA-related problem that the federal government has created in connection with its implementation of the new Hague Convention on Intercountry Adoption. We now have federal regulations that require, in connection with U.S. agencies sending kids from this country to other countries for adoption, that the children be held for two months after birth prior to placement abroad in an effort to match the children with in-country parents, in direct violation of MEPA's prohibition against matching based on "race, color, *or national origin*." I urge you to look into this and to encourage reconsideration of these recently issued federal regulations.

More generally, this Commission should know that U.S. and other countries' policies in the world of international adoption replicate what were our own domestic racial matching policies in the pre-MEPA world. In the international adoption context there are now very powerful preferences for keeping children within their racial, ethnic and national group of origin, even when this means that the children will live out their childhoods, or die, in orphanages characterized by horrendous conditions. Our State Department has shown great sympathy with these kinds of preferences. The underlying

principles that inspired MEPA are being entirely ignored in the world of international adoption.

So in conclusion, while I applaud you for holding this hearing, I want to emphasize that there is much work still to do both to enforce MEPA, and to implement the principles inherent in MEPA, principles that are very important to child welfare and to our society as a whole.

Commentary: Cultural Stereotypes Can and Do Die: It's Time to Move on With Transracial Adoption

Elizabeth Bartholet, JD

This commentary argues that the Multiethnic Placement Act, designed to combat common cultural stereotypes, provides clear guidance to state child welfare agencies and the mental health professionals that serve them, eliminating any regular consideration of race in the foster and adoptive placement of children. Given recent enforcement action by the U.S. Department of Health and Human Services, those who ignore this guidance act at peril of subjecting state agencies to the significant financial penalties mandated for any violation of the law.

J Am Acad Psychiatry Law 34:315–20, 2006

Ezra Griffith and Rachel Bergeron[1] write in their article, "Cultural Stereotypes Die Hard: the Case of Transracial Adoption," that the controversy that has long surrounded transracial adoption is ongoing and that the law is significantly ambiguous. Accordingly, they say that psychiatrists and other mental health professionals are faced with a challenge in deciding on the role that race should play in adoption evaluations for purposes of foster and adoptive placement decisions.

I agree that the controversy is ongoing, but think that the law is much clearer than Griffith and Bergeron indicate and that it provides adequate guidance as to the very limited role that race is allowed to play. However, because of the ongoing controversy, many players in the child welfare system are committed to law resistance and law evasion. The challenge for mental health professionals is to decide how to respond to conflicting pressures and whether to use their professional skills to assist in good faith implementation of the law or in efforts to undermine the law. The challenge is a real one, because those committed to undermining the law do so in the name of the ever popular best-interests-of-the-child principle, arguing that best practices require consideration of race in placement decisions. However, in my view the choice should be clear, not simply because the law exists, but because the law takes the right position—right both for children and for the larger society.

Griffith and Bergeron acknowledge that, after a period in which race-matching was common and court-made law allowed at least some regular use of race in the placement process, the U.S. Congress passed laws governing these matters: the 1994 Multiethnic Placement Act and the 1996 amendments to that Act (here referred to collectively as MEPA and, when it is important to distinguish between the original 1994 Act and the amended Act, referred to as MEPA I and MEPA II, respectively).[2] However they say that these laws "may still leave the door open to continued race-matching. . ." (Ref. 1, p 303). They go on to say:

> [E]ven though the statutory attempts were meant to eliminate race as a controlling factor in the adoption process, their implementation has left room for ambiguity regarding the role that race should play in adoption proceedings. Consequently, even though the statutes were intended to eliminate adoption delays and denials because of race-matching, they may have allowed the continued existence of a cultural stereotype—that black children belong with black families—and may have facilitated its continued existence [Ref. 1, p 304].

Griffith and Bergeron accurately describe how MEPA I allowed the use of race as one factor in placement, so long as it was not used categorically to determine placement or to delay or deny placement:

> An agency. . .may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or

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adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child [Ref. 1, p 307].

And they describe how MEPA II removed that section of the law, and made related amendments designed to limit the use of race.[1] They note that the U.S. Department of Health and Human Services (DHHS), the MEPA enforcement agency, interprets the law to require strict scrutiny as the standard by which to judge use of race in placements and quote one of the guidance memoranda issued by DHHS as follows:

> The primary message of the strict scrutiny standard in this context 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 lawfully may be considered in a placement decision will be correspondingly rare [Ref. 1, p 309].

But they conclude that the DHHS guidance "seemed to frame the possibility for adoption agencies to continue the practice of race-matching," and "allows for discussions with prospective adoptive or foster care parents about their feelings, preferences, and capacities regarding caring for a child of a particular race or ethnicity" (Ref. 1, p 309). They go on to cite the positions of the National Association of Black Social Workers, the Child Welfare League of America, the National Association of Social Workers, and some others, all arguing for a systematic preference for race-matching.

While Griffith and Bergeron raise some questions about the wisdom of assumptions made by race-matching proponents that all blacks will be culturally competent to raise black children in a way that no whites will be, they conclude with a message that seems to emphasize the difficulty of the challenge faced by mental health professionals in deciding just how much weight to give race in their placement evaluations. They state that MEPA has not been considered "spectacularly successful" (Ref. 1, p 312), and that DHHS guidance permits some consideration of race in specific cases, and then they give their mental health colleagues the following ambiguous charge:

> The pointed objective, therefore, in future evaluations will be to show that a particular black child has such unique and special needs that he or she deserves particular consideration for placement in a black family. It will be interesting to see whether our forensic colleagues, in striving for objectivity, will consider the factor of race in their evaluations only when something unique about that particular adoption context cries out for race to be considered so that the best-interest-of-the-child standard can be met. It seems clear that forensic professionals must be careful not to state that they routinely consider race in their adoption evaluations unless they intend to argue clinically that race is always relevant. And even then, they should be cautious about not articulating a general preference for inracial over transracial adoptions [Ref. 1, p 312].

In their final two paragraphs Griffith and Bergeron cite the Adoption and Race Work Group, assembled by the Stuart Foundation, as evidence of the ongoing debate within the mental health community, noting its conclusion that "race should not be ignored when making placement decisions and that children's best interests are served—all else being equal—when they are placed with families of the same racial, ethnic, and cultural background as their own" (Ref. 1, p 313).

There are several problems with the message that this article by Griffith and Bergeron sends to their colleagues. First, the law is much clearer than they indicate. MEPA II did, as they point out, eliminate the provision in MEPA I that had allowed race as a permissible consideration. MEPA II also eliminated related language indicating that some use of race might be permissible—language in MEPA I forbidding agencies to "categorically deny" placement, or delay or deny placement "solely" on the basis of race—and substituted language that tracked the language of other civil rights statutes, simply prohibiting discrimination. As I discuss elsewhere:

> The intent to remove race as a factor in placement decisions could hardly have been made more clear. The legislative history showed that the race-as-permissible-factor provision was removed precisely because it had been identified as deeply problematic. The simple antidiscrimination language substituted had been consistently interpreted in the context of other civil rights laws as forbidding *any* consideration of race as a factor in decision-making, with the increasingly limited exception accorded formal affirmative action plans [Ref. 3, p 131].

While it is true that DHHS issued a 1997 Guidance Memorandum allowing consideration of race in some circumstances, that Guidance makes clear that race cannot be used in the normal course but only in exceedingly rare situations. The only example the Guidance gives of such circumstances is as follows:

> For example, it is conceivable that an older child or adolescent might express an unwillingness to be placed with a family of a particular race. In some states, older children and adolescents must consent to their adoption by a particular family. In such an individual situation, an agency is not required to dismiss the child's express unwillingness to consent in evaluating placements. While the adoption worker might wish to counsel the

> child, the child's ideas of what would make her or him most comfortable should not be dismissed, and the worker should consider the child's willingness to accept the family as an element that is critical to the success of the adoptive placement. At the same time, the worker should not dismiss as possible placements families of a particular race who are able to meet the needs of the child [quoted in Ref. 3, p 132].

Moreover, when the Guidance states that use of race in placement is governed by the strict scrutiny standard, it invokes a standard known in the legal world as condemning as unconstitutional under the Federal Constitution almost all race-conscious policies.

MEPA's prohibition of racial matching is controversial within the child welfare world, with some arguing for its repeal and others for "interpretations" that would allow for race-matching in blatant disregard for the clear meaning of the law. The positions taken by the Child Welfare League of America, the National Association of Social Workers, and the National Association of Black Social Workers, cited by Griffith and Bergeron, illustrate these organizations' disagreement with the law. The Report issued by the Stuart Foundation's Adoption and Race Work Group, relied on by Griffith and Bergeron in their concluding paragraphs, illustrates the commitment by many who disagree with the law to evade its restrictions. As I wrote when asked for my comments on this Group's preliminary draft report, which became the final report with no significant changes in tone or substance:

> From start to finish [the Report] reads like a justification for the present race-matching system, and an argument for continuing to implement essential features of that system in a way designed to satisfy the letter but not the spirit of [MEPA]. . . .
>
> The general thrust of the Report in terms of policy direction, together with its specific Recommendations, read to me like the advice prepared by clever lawyers whose goal it is to help the client avoid the clear spirit of the law. The general idea seems to be to tell those in a position to make and implement policy, that this is a bad law, based on a misunderstanding of the needs of black children, but that since it is less than crystal clear, it will be possible to retool and reshape current policies and practices so that they look quite different but accomplish much the same thing [quoted in Ref. 3, pp 135–6].

The fact that there is ongoing controversy about and resistance to this law matters. Law is not self-enforcing. It relies on people, nonprofit organizations, and government entities to demand enforcement.

However, just as controversy affects law, so law also affects controversy. The fact that federal law now states that race-matching is equivalent to race discrimination matters in a nation that has committed itself in significant ways to the proposition that race discrimination is wrong. Moreover this particular law mandates powerful penalties, specifying an automatic reduction of a set percentage of the federal funds provided to each state for foster and adoption purposes, for any finding of violation.[4] This changes the risk assessment enterprise for typically risk-averse bureaucrats. Acting illegally can get you into trouble, especially if millions of dollars of financial penalties are at stake. While in the years after MEPA's passage I was one of the most vocal critics of the absence of MEPA enforcement activity, as the years went by I began to get the sense in my travels around the country speaking on these issues that social work practice was adjusting, albeit slowly, to MEPA's demands (Ref. 5, p 223).

The dramatic new development is on the enforcement front. The U.S. Department of Health and Human Services (DHHS), designated as the enforcement agency for MEPA, has finally moved beyond the tough-sounding words that it issued providing interpretive guidance, to take action—action in the form of decisions finding states in violation of the law and imposing the financial penalties mandated by MEPA for such violations. Griffith and Bergeron make no mention of this development, but it seems likely to have a major impact on child welfare agencies nationwide and accordingly seems likely to change the context in which mental health professionals will work in making placement evaluations and the pressures on them with respect to the race factor. The first such enforcement decision involved Hamilton County, Ohio. In 2003, after a four-and-one-half-year investigation, DHHS's Office for Civil Rights (OCR) issued a Letter of Findings, concluding that Hamilton County and Ohio had violated MEPA as well as Title VI of the 1964 Civil Rights Act (42 U.S.C. Sec. 2000(d)), and DHHS's Administration for Children and Families (ACF) issued a Penalty Letter imposing a $1.8 million penalty.[6] In its extensive Letter of Findings, DHHS confirmed that under MEPA as well as Title VI, strict scrutiny is the standard, and child welfare workers have extremely little discretion to consider race in the placement process. DHHS found that MEPA prohibits any regular consideration of race in the normal course, any regular consideration of race in the context of a transracial placement, and any differential

consideration of transracial as compared with same-race placements. Moreover, the Letter stated that MEPA prohibits the variety of policies and practices used to assess transracial placements with a view toward the prospective parents' apparent ability to appropriately nurture the racial heritage of other-race children. More specifically, DHHS found illegal administrative rules requiring that: (1) home-studies of prospective adoptive parents seeking "transracial/transcultural" placements include a determination of whether a prospective parent is able to "value, respect, appreciate and educate a child regarding a child's racial, ethnic and cultural heritage, background and language and. . .to integrate the child's culture into normal daily living patterns;" (2) assessments be made of the racial composition of the neighborhood in which prospective families live; and (3) prospective parents prepare a plan for meeting a child's "transracial/transcultural needs." DHHS stated that, in enacting MEPA II, Congress "removed the bases for arguments that MEPA permitted the routine consideration of race, color, or national origin in foster or adoptive placement, and that MEPA prohibited only delays or denials that were categorical in nature." In the consideration of particular Hamilton County cases, DHHS regularly faulted child welfare workers for demanding that home-studies reflect a child's cultural needs, asking for additional information on racial issues, and inquiring into and relying on prospective parents' statements about their racial attitudes (e.g., intention to raise the child in a "color-blind" manner), the degree of contact they had with the African-American community, the level of racial integration in their neighborhood or school system, their plans to address a child's cultural heritage, their level of realism about dealing with a transracial placement, the adequacy of their training in areas like hair care, their unrealistic expectations about racial tolerance, their apparent ability to parent a child of another race, their willingness to relocate to a more integrated community, their apparent ability to provide a child with an understanding of his heritage, and their readiness for transracial placement.

In rejecting one of Ohio's defenses, based on allegedly inadequate advice on the operation of MEPA, DHHS found that the guidance issued in the form of various memoranda from 1995 through 1998 was fully adequate in clarifying the prohibition against any special requirements related to transracial placements.

The subsequent DHHS decision imposing the $1.8 million penalty took issue additionally with Ohio's apparent attempt to circumvent the law by a new administrative rule providing that an agency determination that race should be considered would trigger a referral for an opinion from an outside licensed professional (psychiatrist, clinical psychologist, social worker, or professional clinical counselor). The professional was to be required to provide an "individual assessment of this child that describes the child's special or distinctive needs based on his/her race, color, or national origin and whether it is in the child's best interest to take these needs into account in placing this child for foster care or adoption." DHHS faulted the process for signaling to the professional that the agency thinks race should be a factor, for the professional's lack of training regarding the legal limitations on considering race and for asking the professional whether race should be considered, while failing to require any finding by the professional: "that there is a compelling need to consider race; that such consideration is strictly required to serve the best interests of the child; and that no race-neutral alternatives exist." DHHS also noted that Ohio had indicated its desire for state approval to obtain opinions from professionals known to be opposed to transracial adoptions. DHHS concluded that the rule was "readily susceptible to being used to foster illegal discrimination."

In 2005, DHHS made a second enforcement decision, involving South Carolina, with OCR issuing a Letter of Findings concluding that the state's Department of Social Services had violated both MEPA and Title VI, and ACF issuing a Penalty Letter imposing a penalty of $107,481.[7] In its Letter of Findings in this case, DHHS again emphasized that strict scrutiny is the standard and that the law forbids any regular consideration of race, allowing its consideration only on rare occasions and even then only to the degree it can be demonstrated to be absolutely necessary. DHHS found illegal South Carolina's practice of treating prospective parent racial preferences with greater deference than other preferences: "By treating race differently from all other parental preferences. . .[the agency] establishes its own system based on racial preference. . . ." DHHS also found illegal the agency's practice of deferring to birth parents' racial preferences, stating that the law requires

agencies to make placement decisions "independent of the biological parent's race, color or national origin preference." Furthermore, DHHS found illegal the agency's practice of treating transracial adoptions with greater scrutiny, faulting, for example, the inquiries into prospective parents' ability to adopt transracially, and ability to nurture a child of a different race, as well as inquiries into the racial makeup of such parents' friends, neighborhoods, and available schools. And finally, DHHS found to be illegal various other ways in which the agency took race into consideration, including use of race as a "tie-breaking" factor, matching for skin tone, and use of young children's racial preferences—"the routine deference to and wide range of reasons given for. . .following the same-race preferences of young children undermines any claim that these placement decisions are truly individualized." In addition, DHHS made findings of violations in several individual cases, including that of a black couple interested in adopting a Hispanic child, in which the agency was faulted for inquiry into the couple's ability to meet the child's cultural needs. DHHS specified that any acceptable corrective action plan by the state would have to include, *inter alia*, support and encouragement for parents interested in adopting transracially, the creation of progressive disciplinary action, including termination, for staff continuing to use race improperly, the development of whistle-blower protection for staff who reported the use of race by others, and monitoring and reporting requirements designed to ensure future compliance with the law. The ACF Penalty Letter noted that, having reviewed and concurred in the OCR's Letter of Findings, it was imposing the penalty mandated by MEPA.

While these are the only cases in which Letters of Findings and Penalty Letters have been issued, DHHS's OCR has engaged in compliance efforts in several other cases, resulting in agreements by various state agencies to modify their practices in accord with OCR's demands.[8] In addition DHHS's ACF has through various policy statements reenforced its commitment to rigorous enforcement of MEPA.[9]

DHHS's recent enforcement action constitutes a shot across the bow for all state agencies involved in foster and adoptive placement throughout the nation. The opinions in the two cases in which financial penalties were imposed are as clear as they can be that, at the highest ranks, DHHS believes that MEPA and the various MEPA-related guidance memoranda that DHHS has issued mean that race cannot lawfully be taken into account in any routine way in placement decisions, that it is only in the exceptional cases that race can be considered, and even then that authorities will have to be very careful to demonstrate that compelling necessity demands such consideration, consistent with the strict scrutiny standard.

While DHHS guidance had in my view made all this clear previously, the fact that OCR has now taken enforcement action finding MEPA violations, with ACF imposing financial penalties, raises the stakes in a way that agency directors and agency workers will not be able to ignore. Penalties for MEPA violations are mandated under the law, and they are very severe, reducing by set percentages the federal funds on which states are absolutely dependent to run their child welfare systems.[4] A 1997 DHHS Guidance Memorandum noted that in some states MEPA's penalties could range up to more than $3.6 million in a given quarter and could increase to the $7 to $10 million range for continued noncompliance (Ref. 3, p 132). State agencies act at their peril in ignoring this law. So, too, do agency workers, since their supervisors are not likely to be pleased with action that puts the state's child welfare budget at risk.

Some will no doubt continue to resist and evade the law, but I predict that such conduct will diminish over time as the law becomes more established in people's minds as simply part of the nation's basic civil rights commitment. While some have called for MEPA's repeal there has been no significant move in this direction.

My hope is that mental health professionals will join ranks with those interested in following the law in good faith, rather than with those interested in evading its mandate. I say this not simply because MEPA is the law, but because I believe it is a good law, one that serves the interests both of children and of the larger society. Griffith and Bergeron note that black children "can" do well in white families,[1] but I believe the social science evidence provides much stronger support for MEPA than that. By now, there is a significant body of studies on transracial adoptees, many of which are good, controlled studies, comparing them to same-race adoptees. My review of these studies and that of others besides me, reveals no evidence that any harm comes to children by virtue of their placement across color lines. By contrast, there is much evidence that harm comes to children in foster or institutional care when they are delayed

in adoptive placement or denied adoption altogether, and there is much evidence that race-matching policies result in such delay and denial.[10] In addition, there is evidence that even when child welfare systems purport to use race as only one factor in decision-making, rather than as a categorical factor justifying delay and/or denial of adoptive placement, race ends up being used in ways that result in just such delay and denial.[3,10,11] This latter was, of course, the main reason Congress amended MEPA I to eliminate race as a permissible consideration—Senator Metzenbaum, the law's sponsor, became convinced that MEPA I was not succeeding in eliminating the categorical use of race because its permission to use race as one factor was being abused, something that many of us who supported MEPA II had thought was inevitable, based on experience.[3]

So, it seems to me clear that MEPA serves the interests of children, by helping black children in particular to find placements in loving homes of whatever color as promptly as possible. MEPA also seems to me to serve the interests of the larger society, by combating in a small but significant way the notion that race should divide people. Race-matching is the direct descendant of white supremacy and of black separatism.[3,10–12] For the state to promote the formation of same-race families and discourage the formation of interracial families, as it does when it endorses race-matching, is wrong in my view for the same reasons that barriers to interracial marriage were wrong. The U.S. Supreme Court struck down those marriage barriers in 1967 in *Loving v. Virginia.*[13] Congress took an important step in passing MEPA II to bring our nation's child welfare policies in line with the rest of our civil rights regimen. This law makes the statement that while race, of course, does matter in myriad ways in our society, it does not and should not define people's capacity to love each other.

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Ms. Brown has more than 20 years of experience at GAO. She is currently Acting Director in GAO's Education, Workforce, and Income Security team, where she is responsible for leading GAO's work related to child welfare, child support, domestic nutrition assistance, and other income security programs. Previously, in her role as Assistant Director, Ms. Brown managed projects that focused on improving government performance in the areas of program integrity, customer service, human capital, process reengineering, data sharing, and privacy issues.

In addition, Ms. Brown has led teams evaluating foreign food assistance, refugee aid, and disaster assistance. She has received numerous awards during her career at GAO, including two honor awards for meritorious service and several others for outstanding achievement, leadership, and teamwork.

Prior to her work at GAO, Ms. Brown worked for a county child welfare program, where she first provided casework services and then managed a countywide child development program. Ms. Brown has an M.P.A. from the University of Pittsburgh's Graduate School of Public and International Affairs.

U.S. Commission on Civil Rights Briefing

September 21, 2007

Written Statement on African American Children in Foster Care

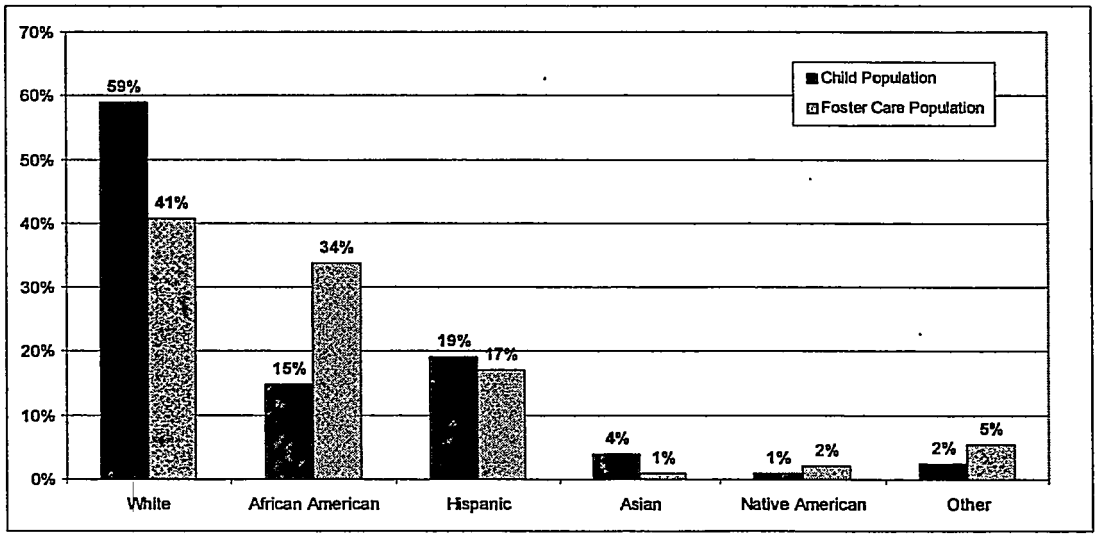
Kay E. Brown, Acting Director

Education, Workforce, and Income Security

U.S. Government Accountability Office

I am pleased to be here today to discuss our recent report on African American children in foster care.[1] As you may know, children of all races are equally as likely to suffer from abuse and neglect, according to the HHS data. However, these data show that African American children across the nation were more than twice as likely to enter foster care compared with White children in 2004. State data also show patterns of disproportionate representation in foster care for Native American children, and in certain localities, for Hispanic and Asian subgroups. The figure below depicts the extent to which these children were represented in foster care and in the general population at the end of fiscal year 2004.

Proportion of Children in Foster Care Settings, End of Fiscal Year 2004



Source: GAO Analysis of 2004 Census and 2004 AFCARS data

Concerned about why African American children are overrepresented in foster care, the Chairman of the House Committee on Ways and Means asked GAO to study three things:

[1] *African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care*, GAO-07-816 (Washington, D.C.: July, 11, 2007)

(1) The major factors that influence the proportion of African American children entering and remaining in foster care compared to children of other races and ethnicities;

(2) The extent that states and localities have implemented strategies that appear promising in addressing this issue; and

(3) The ways in which key federal child welfare policies may have influenced this issue.

Our report is based on the results of a nationwide Web-based survey of state child welfare administrators in 50 states and the District of Columbia[2], site visits to five states[3], analysis of state-reported data, and interviews with cognizant federal agency officials, researchers, and issue area experts.

In terms of the factors that cause African American children to enter foster care in higher proportion than other children, state child welfare directors and researchers reported a complex set of interrelated factors beginning with a higher rate of poverty among African American families. While families of all races live in poverty to some degree, nationally, African Americans are nearly four times more likely than others to live in poverty. Studies have shown that, under these circumstances, families have difficulty gaining access to social services and appropriate housing that can help families stay together. However, research suggests that these factors do not fully account for differing rates of entry into foster care. State child welfare directors we surveyed also responded that bias or cultural misunderstanding and distrust between child welfare decision makers and the families they serve also contribute to the disproportionate removal of children from their homes.

Once African American children are removed from their homes, HHS data show that they remain in foster care about 9 months longer than White children. State officials attributed these longer lengths of stay to similar factors, such as challenges parents have gaining access to subsidized housing, substance abuse treatment, and other services that may be needed before children can be reunified with their families. For children who cannot be reunited with their families, state officials reported difficulties in finding appropriate permanent homes, in part because of the challenges in recruiting adoptive parents, especially for youth who are older or have special needs. In addition, African American families are more likely than White families to rely on relatives to provide foster care. Although this type of foster care placement, known as kinship care, can be less traumatic for children, it is also associated with longer lengths of stay.

In terms of our second objective on state actions, most states in our survey reported implementing some strategies that experts have identified as promising for reducing African American representation in foster care. While researchers and officials stressed that no single strategy would fully address the issue, strategies that specifically address the causes I mentioned above were considered promising. These included strategies designed to increase access to support services, reduce bias, and increase the availability of permanent homes. For example, strategies used by more than 33 states to improve access to services included collaboration with

[2] Of these, 48 responded.

[3] California, Illinois, Minnesota, New York and North Carolina

neighborhood-based organizations to increase awareness and use of local services, and interagency agreements among various state agencies that may serve the same clients. Most states sought to reduce bias by including the family in making key decisions and by recruiting and training staff with the skills to work with people of all ethnicities. To move children more quickly from foster care to permanent homes, more than half of states reported performing a diligent search for fathers or paternal kin of children in foster care who might be willing to provide a permanent home. They also reported recruiting African American adoptive families and offering subsidies to guardians who were not willing or able to adopt, similar to what is currently allowed for adoptive families.

Although research on the effectiveness of strategies has been limited, public and private officials in the forefront of research and implementation said that the ability to analyze data, work across social service agencies, and sustain leadership was fundamental to any attempt to address racial disproportionality. HHS has taken steps to help states in their efforts through outreach and technical assistance. However, state child welfare directors generally reported in our survey that they needed additional support to analyze data and disseminate corrective strategies.

For our third objective—on federal policies, states reported that they considered some federal policies helpful in decreasing disproportionality in their child welfare systems, while they viewed other federal policies as having the opposite effect. Linking back to the factors contributing to the disproportionality, about half of the child welfare directors we surveyed reported that using federal social services block grants, such as Temporary Assistance for Needy Families, was helpful. These grants, when used for preventive services and family supports, can be particularly relevant for African American and other families living in poverty.

States also considered federal policies that promote adoption as helpful. One federal adoption policy generally considered beneficial is the requirement under MEPA/IEP to diligently recruit minority adoptive families. In our survey, 22 states reported that this requirement contributes to a decrease in the proportion of African American children in care. However, state officials said it was a challenge to recruit a racially and ethnically diverse pool of potential foster and adoptive parents, and HHS reported that more than half of states are not meeting the federal performance goals for recruitment. State officials noted the shortage of willing, appropriate, and qualified parents to adopt African American children, particularly older children. Researchers also cited a lack of resources among state and local agencies and a lack of federal guidance to implement new recruiting and training initiatives. Perhaps because of these challenges, 9 states in our survey reported that the policy requiring diligent recruitment had no effect on the proportion of African American children in care, and 15 states reported that they were unable to tell.

Another federal adoption policy states considered helpful in reducing disproportionality was the provision under Title IV-E that provides subsidies to a parent who adopts a child with special needs. Special needs is a state-defined term for children having characteristics that states believe make adoption more difficult, such as being of older age, having a disability, or being a member of a minority group. In 2003 through 2005, HHS data showed that states designated more than 80

percent of adoptions as special needs adoptions, enabling families to receive federal financial subsidies. However, over the last 5 years, African American children have consistently experienced lower rates of adoption than children of other races and ethnicities, according to HHS adoption data.

States report being constrained by the lack of federal subsidies for legal guardianship similar to those provided for adoption. Legal guardianship is formally recognized under federal law as a permanent placement option and provides a means for families who want to permanently care for children without necessarily adopting them. It is considered a particularly important way to help African American children exit foster care. In fact, subsidizing guardianships has demonstrated its value in providing permanent families for children and in reducing the number of African American children in foster care. It may also be cost-effective, given the experiences of the states that implemented this strategy using federal waivers. Because of these factors, it may be appropriate to reconsider the current distinctions that provide subsidies for adoption but not for guardianship.

Not all federal adoption policies were considered helpful by states in reducing disproportionality. For example, the MEPA/IEP provision encouraging race-neutral adoptions was reported by states to have less effect than other policies in reducing African American representation in foster care. Although 15 states reported that this provision would help reduce disproportionality, 18 states reported that this provision had no effect, and an additional 12 states reported that they were unable to tell. An HHS study reported in 2003 that implementation was hindered by confusion about what the law allowed or prohibited, and state officials in states we visited said that ongoing confusion and disagreement continued to hinder implementation.

In conclusion, I would like to emphasize that issues surrounding the disproportionate representation of African American children in foster care are pervasive, continuing, and complex. They affect nearly all states in this nation to varying degrees. In efforts to reduce African American representation in foster care, state and local child welfare officials face numerous challenges. Despite the steps that HHS has taken to disseminate information about these strategies, states report that they need further information and technical assistance to strengthen their current efforts.

Biographical Sketch of
Joe Kroll, executive director, North American Council on Adoptable Children

Joe Kroll, an adoptive and birth father, became involved with NACAC in 1975 and has served as NACAC's executive director since 1985. As executive director, Joe has taken NACAC from a small grassroots organization to a acclaimed nonprofit that serves thousands of adoptive parents each year and strives to improve the child welfare system for foster children and the families who care for them.

A passionate advocate for children, Joe is committed to achieving NACAC's mission that every child deserves a permanent, loving, and culturally sensitive family. Joe's work includes talking with individual families about how to obtain post-adoption support, to training parent group leaders and other foster and adoptive parents, to testifying before Congress and speaking at the White House to achieve needed system reforms to better serve vulnerable children and families. He remains committed to achieving system reform by building a network of adoptive families at the grassroots level. By bringing together parents, professionals, and policy makers for more than two decades at NACAC, Joe has significantly improved the lives of adoptive families throughout the U.S. and Canada.

Testimony before
United States Commission on Civil Rights

September 21, 2007

By

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Mr. Chairman and Members of the Commission, I thank you for this opportunity to appear before you today to discuss implementation of Multiethnic Placement Act (MEPA) of 1994 and the 1996 Interethnic Adoption Provisions (IEAP) that amended MEPA.

I am Joe Kroll, executive director of the North American Council on Adoptable Children (NACAC). I also serve on the boards of the National Foster Parent Association and Voice for Adoption, a coalition of more than 50 state, local, and national adoption organizations. More importantly, I am a parent of two children, one a young woman who was adopted transracially from Korea when she was an infant.

NACAC strongly believes that race matters in child welfare and that MEPA/IEAP, as implemented, has done little, if anything to help waiting or older children of color find families more quickly and has gone too far in a misguided effort to be colorblind. NACAC follows a dual strategy to help foster and adopted children of color:

- We support same race placements by researching and identifying the barriers faced by prospective foster and adoptive parents of color, and providing assistance to minority parent groups and specialized adoption agencies.

- We support families who adopt transracially and transculturally by providing education and training to help them handle the special challenges.

We believe that both of these strategies could be much better supported through federal legislation and advocacy, and would do far more to promote the best interests of children of color in foster care. Current efforts to promote colorblind child welfare practice are naïve at best, and do not serve the best interests of either African American or Latino children OR the families who adopt them. We are all reminded daily that race matters in this country—whether through stories of racial profiling by the police or by statistics on racial disparities in educational achievement. In a country where nooses are hung on trees to discourage black students from speaking out, we cannot doubt that racism is alive and well.

Background

Before I answer some specific questions on MEPA/IEAP, I need to provide some background on the legislation's history.

The initial interest in addressing racial matching policies can be traced to the death of Reece Williams in 1989. Reece, an African American child, was originally placed with a white foster family in Hamilton County, Ohio. When the three-year-old Reece's parental rights were terminated, he was placed with an African American family in New York who subsequently killed him. Senator Howard Metzenbaum (OH) blamed racial matching policies for the death, and began looking for ways that federal legislation could address the issue.

The debate raged on for four years until October 1992 when *60 Minutes* aired a very one-sided report that highlighted Reece's murder and practice where children were moved for race-matching purposes. At the same time, the National Committee for Adoption and its allies channeled the anger among white parents who believed they were being denied the opportunity to adopt black infants. Senator Metzenbaum reacted to the stories by committing to pass MEPA before he retired.

Unsurprisingly, policy makers and the media paid no attention to the nearly universal practice of placing white children only with white adoptive families or to the impact of "same race" adoptive placements on the welfare of white children. The media and decision makers also totally ignored research documenting that half of black infants (under 2) and two-thirds of Latino infants in the care of private agencies were already being adopted transracially.[1]

Although for many people the primary racial concerns in adoption were about white parents' access to black infants and toddlers, MEPA was alleged to be the solution for the longer waits older African American foster children experienced and their over representation in care. Researchers and adoption practitioners sought to make clear to policy makers that the longer waits of children of color were caused by a number of factors and that difficulties finding families interested in adopting older children and youth of color posed a particular challenge.[2] White families were not being deprived of the right to adopt these children; most were simply not interested.

Legislative Intent

The long, heated discussions about MEPA showed that many policymakers believed that race does matter in child welfare. During negotiations on MEPA between the House and Senate, representatives of the Congressional Black Caucus insisted on the inclusion of language promoting the recruitment of families that reflect the racial and ethnic background of foster

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[1] North American Council on Adoptable Children, *Barriers to Same Race Placement*, 1991

[2] NACAC, 1991

children. This provision was intended to address the fact that too few families of color are sought to be foster or adoptive parents.

Although he did not want to see placements delayed or denied because of race, Senator Metzenbaum agreed that race should be a factor in placement decisions:

> But that does not mean that when a black child comes up for adoption that somebody should stand in the way of that child being adopted by a white family if the white family is fully capable, and in a position to provide loving care and wholesome guidance for that young person, and there is not a black person of equally capable characteristics also wanting to adopt that black child.
>
> Let me make my position clear: If there is a white family and a black family that want to adopt the black child and they are equal in all respects, then the black family ought to have preference.[3]

Other Senate sponsors also supported the idea of reaching out to communities of color while supporting transracial placement when a family of color is not available:

> In approaching the issue of multicultural placements we have been guided by the principle that a transracial placement is a valid method of providing a child with a loving home when an appropriate same race placement is not available. The amendments made to the Multiethnic Placement Act do not in any way detract from this principle. In fact, the amendments in several respects enhance it.
>
> First, the amendments further limit the use of race in a placement decision to only permit consideration of the racial, ethnic or cultural background of a child and the capacity of the prospective parent to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child. Second, the amendments emphasize the recruitment of prospective foster and adoptive families from various racial, ethnic and cultural backgrounds. Increasing the pool of appropriate and available prospective parents will be a significant step toward decreasing the amount of time that children wait for out of home placements. ...
>
> DAN COATS,
> NANCY KASSEBAUM,
> DAVID DURENBERGER,
> HOWARD METZENBAUM,
> CAROL MOSELEY-BRAUN,
> PAUL SIMON.[4]

The 1996 Amendments

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[3] *Congressional Record Senate S14169*, October 5, 1994

[4] *Congressional Record Senate S14201*, October 5, 1994

Even before the U.S. Department of Health and Human Services (HHS) had time to issue regulations to implement MEPA, Representative Jim Bunning (KY) claimed that MEPA was "not working."[5] Without hearings or statements for the record, the Interethnic Placement Act was drafted, stating that race was not to be considered as a factor in decisions regarding foster care or adoption placements. It was inserted into the omnibus bill Small Business Protection Act and became law in August 1996.

Specific Questions

1. Has enactment of MEPA removed barriers to permanency facing children involved in the child protective system?

In a soon-to-be published, in-depth analysis of transracial adoption, author Susan Livingston Smith concludes: "The assumptions underlying the development of MEPA-IEP were not accurate, and the anticipated outcomes of the law—to expedite adoptions of children of color in foster care by promoting transracial adoption—have not come to pass."[6]

There is no compelling evidence that MEPA removed barriers to permanence for foster children. Reductions of length in time in care and increases in adoption did not occur until after implementation of the Adoption and Safe Family Act (ASFA) of 1997. Adoptions began increasing from 27,000 in 1997 to more than 50,000 in 2000 and have remained constant thereafter. During the same period there has been a decrease in the length of time that children spend in care, but that is more likely a factor of ASFA timelines because ASFA directly addressed children's need for permanence and dramatically reduced timelines for permanency planning efforts.

While we may never know if MEPA has helped children find permanent families, we do know that since the passage of MEPA children of color have been increasingly placed transracially while white children are still placed almost exclusively with same race families. In 1995, 2.4 percent of white children were placed with parents of another race, compared to 2.8 percent in 2001. African American children were placed transracially 14.2 percent of the time in 1995, compared to 16.9 percent in 2001. Transracial placements of Latino children increased more dramatically—from 20.7 percent in 1995 to 37.8 percent in 2001.[7] If MEPA truly led to colorblind child welfare practice, we would expect increases in transracial placements for children of all races, not just children of color.

In Hennepin County (Minneapolis), Minnesota—featured in the *60 Minutes* story mentioned above for moving African American children to same race families—transracial placements are

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[5] *Congressional Record*, March 25, 1995

[6] Susan Livingston Smith, "Adoptive Families for African American Children in Foster Care: The Role of Transracial Adoption," to be published

[7] Mary Eschelbach Hansen and Rita J. Simon, "Transracial Placement in Adoption with Public Agency Involvement: What Can We Learn from the AFCARS Data?" *Adoption Quarterly*, Volume 8, Number 2, 2004

rampant. In 2004, over 75 percent of the county's African American children were placed with parents of another race.[8]

Other data suggests that MEPA has helped white families adopt children who were already more likely to find permanent families. AFCARS data document that two-thirds of transracial adoptions of African American children are of children five and younger, not the older children and youth who often struggle to find a permanent family.[9]

2. Do transracial adoptions serve the children's best interest or does it have negative consequences for minority children, families, and communities?

As a successful transracial adoptive parent, I can say unequivocally that transracial adoption can be an extremely positive experience for both children and parents. It works when prospective adoptive parents are "as fully prepared as possible for the adoption of a particular child," and those who train parents focus on "the child's...cultural, racial, religious, ethnic, and linguistic background." I have just described the current regulations of the U.S. State Department regarding international adoptions under the Hague Convention.

Unfortunately and in complete contrast, in implementation of MEPA/IEAP, agencies have been led to ignore race so completely that they cannot adequately prepare families for transracial placement. As HHS stated in an Information Memorandum:

> *State child welfare agencies...must ensure that they do not take action that deters families from pursuing foster care or adoption across lines of race, color, or national origin. Whether subtle or direct, [such] efforts...cannot be tolerated.*[10]

While this may not read as an explicit prohibition against preparing families to address issues of race and culture, it has in effect seriously stifled such preparation. In Ohio, adoption preparation training has been dramatically watered down so that it could not possibly discourage a prospective transracial adopter. In other cases, agencies simply avoid all discussion of race and culture because they fear such discussions might "deter families from pursuing foster care or adoption across lines of race, color, or national origin." During a recent training, for example, a caseworker reported that white foster parents interesting in adopted an African American foster child stated that they did not allow their birth children to have African American friends. The worker's supervisors instructed her not to discuss the issue with the family for fear of violating MEPA.[11]

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[8] personal communication, Cathy Bruer-Thompson, Hennepin County Adoption Program Training Manager, September 2007

[9] Penelope L. Maza, Chlidren's Bureau, "Adoption Data Update," presented at the CWLA National Conference, February 2004

[10] U.S. Department of Health and Human Services, Information Memorandum ACYF-CB-IM-03-01, March 25, 2003

[11] Smith, to be published

The Hague regulations, by contrast, focus on children's best interests and assert that parents' need to be prepared for adoption "outweighs any concern that the [required parent training] will discourage families from adopting."

Decades of research on transracial adoption firmly supports three conclusions:

- Transracial adoption in itself does not produce psychological or social problems in children.
- There are challenges faced by transracial adopted children and their families, and the way families address these challenges affect a child's development.
- It is particularly important that children adopted from foster care be placed with families who can address their specific needs, including their racial/ethnic needs, to maximize their opportunity to achieve their fullest potential. [12]

Research by Robert Carter showed that transracial adoptees in their 20s and 30s do not have the skills that other African Americans have to successfully confront the racism and discrimination they experience.[13] In a study of transracial families, McRoy, Zurcher, et al. found that there was a strong correlation "between the transracially adopted black children's perception of their racial identity and their parents' perceptions. Generally, if the parents ... tended to de-emphasize racial identity to the child, the child acquired similar perceptions."[14] Many studies have linked racial identity to child's self-esteem.

Children's best interests are served when agencies work to honestly inform would-be parents about the special needs of children who are available for adoption—including the effects of abuse and neglect or in-utero exposure to alcohol or drugs, and issues of race, ethnicity, and national origin. Children's best interests, in short, are not served by uninformed, unprepared families who ignore their children's racial identity. If engaging parents in discussions of race makes prospective parent uncomfortable—or even challenges their thoughts about transracial parenting—that should be acceptable. Ultimately, the government's goal must be to ensure that parents are thoroughly prepared and ready to meet their children's many needs—physical, emotional, *and* cultural.

3. How effectively is the Department of Health and Human Service (HHS) enforcing MEPA?

HHS is enforcing only one provision of MEPA/IEAP. Enforcement has focused solely on the "delay or deny" provisions of the act and ignored the diligent recruitment section entirely. In fact, the entire section in the Code of Federal Regulations focuses on the "delay or deny"

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12 Smith, to be published

13 Carla M. Curtis, "The Adoption of African American Children by Whites: A Renewed Conflict," *Families in Society: The Journal of Contemporary Human Services*, March 1996.

14 Ruth G. McRoy, Louis A. Zurcher, Michael L. Lauderdale, & Rosalie E. Anderson, "Self-esteem and Racial Identity in Transracial and Inracial Adoptees," *Social Work*, November 1982.

provision and subsequent penalty. There is no mention of the need to enforce the provision mandating recruitment of families of color, and there have been no fines or investigations of failures of this portion of MEPA.

HHS has conducted more than 130 investigations of alleged violations of MEPA's delay or deny provisions and has fined agencies in only two cases: Hamilton County and the state of Ohio in 2003, and the state of South Carolina in 2006. After most other investigations, agencies have agreed to make changes requested by HHS.

Child and Family Service Reviews (CFSR), enacted after ASFA, require states to identify compliance with the recruitment provision of MEPA. Only 22 states even reported having plans for diligent recruitment for families who reflect the racial and cultural backgrounds of children in care.[15] No states have been investigated by HHS or fined as a result of being graded "Area Needing Improvement" during the CFSR.

This lack of enforcement has resulted in little progress on recruiting families of color. The Local Agency Survey, designed to assess the impact of MEPA/IEAP and ASFA, found that only 8 percent of responding agencies had created new recruitment resources following MEPA/IEAP.[16]

Again, this suggests that the focus of MEPA/IEAP is on white families' access to children of color, rather than recruiting and preparing families to be the best possible parents for foster children who need families.

4. What has been the impact of HHS's enforcement of MEPA on the efforts of prospective foster care or adoptive parents to adopt or provide foster care for minority children?

MEPA/IEAP—and its uneven enforcement—have had a chilling impact on the child welfare field. In an odd twist, workers are sometimes afraid to place children with the very African American families they were required to recruit for fear of showing bias against non-African American families.

Some agencies choose to place children with the family at the top of the waiting list, without regard for that family's ability to best meet the child's need. Others fear that when an agency has two home studied families who are equally able to parent a child—one who shares the child's race or ethnicity, and one who doesn't—the agency cannot consider race in choosing one over the other. Such placement decisions are clearly not in a child's best interests, which require a thorough evaluation of each family's ability to meet a particular child's specific needs.

With the perceived threat of a lawsuit or fine looming overhead if they place children of color with families of color, some agencies have regrettably little incentive to recruit as widely and intensively as they should for families of color.

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15 Smith, to be published

16 Smith, to be published

5. Has the enactment of MEPA has reduced the amount of time minority children spend in foster care or wait to be adopted?

AFCARS reports suggest that length of time care for minority children have gone done over the last decade—just as stays in care have gotten shorter for white children. There is no proof that shorter stays for children of color are due to MEPA/IEAP. According to AFCARS data from 2002, two-thirds of transracial adoptions of black children occurred when they were five and under. Older children—those who are harder to place and more likely to languish in care—are much more frequently adopted by kin. Two-thirds of relative adoptions of black children occur when they are six and older.[17] One could argue that the black children's stays in care have been reduced because so many relatives have stepped up to provide them with a permanent family.

NACAC Recommendations

While it is likely that MEPA/IEAP led to some increases in transracial placements, there is no evidence that the law has helped the older foster children it was designed to serve. Because NACAC believes MEPA/IEAP is hampering agencies' efforts to promote each child's best interests and to attract more foster and adoptive families of color, we are advocating for federal legislation to replace provisions of MEPA/ IEAP with statutory language that codifies the principles listed below:

- A child's best interests should always be paramount in placement decisions.
- In any foster care or pre-adoptive placement, preference shall be given to placement with a child's relative or fictive kin when those families can safely meet the child's needs.
- States, counties, and other agencies with responsibility for children in foster care must recruit and retain prospective foster and adoptive families from communities that reflect the racial, ethnic, cultural, and linguistic background of children in their foster care system.
- Placing agencies must *fairly and equally consider* these recruited families for foster and adoption placements. We all know that recruitment is only the first step. Agencies must also be able to welcome newly recruitment families and fairly assess their ability to meet children's needs.
- Placing agencies must assess a prospective foster or adoptive family's ability to meet a child's needs—including racial, ethnic, cultural, and linguistic needs—when making a foster or adoptive placement and, in placement decisions, must consider the child's cultural, racial, ethnic, and linguistic needs as well as prospective parents' capacity to address other needs the child may have.

[17] Maza, February 2004

- When making transracial or transcultural foster or adoption placements, state, county, and other agencies with responsibility for children in foster care must provide training and other supportive services to ensure that foster and adoptive parents are adequately prepared and supported to meet their children's racial, ethnic, cultural, and linguistic needs.

- A foster or adoptive placement should not be delayed or denied due solely to the race, color, national origin/ethnic background, or primary language of either the child or prospective parent.

- Financial incentives or penalties will encourage state, county, and other agencies with responsibility for children in foster care to comply with provisions listed above:

    - agencies that do not comply shall lose a portion of their Title IV-E foster care or adoption assistance funding; or

    - the federal government will develop an incentive program to reward agencies for recruiting families that reflect the racial, ethnic, cultural, and linguistic background of children in their foster care system, and for placing children with families who can meet the children's racial, ethnic, cultural, and linguistic needs.

In today's diversified but still racist society, NACAC cannot comprehend how agencies can guard children's well-being without recognizing how much race influences every person who lives in this country. We must replace MEPA/IEAP with legislation that focuses on the best interests of children in our nation's foster care system, and truly ensures that they find permanent, loving, and culturally sensitive families as quickly as possible.

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Finding Permanency for African American Children in the Child Welfare System: Implications of MEPA/IEPA*

Testimony presented to the U.S. Commission on Civil Rights

by

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*This testimony is based upon the forthcoming Evan B. Donaldson Adoption Institute's policy brief, *Adoptive Families for African American Children in Foster Care: The Role of Transracial and Inracial Adoptions.*

Finding Permanency for African American Children in the Child Welfare System: Implications of MEPA/IEPA*

Transracial adoption is defined as the adoption of a child from a different race/ethnicity than the race/ethnicity of the adoptive parent(s). It is a practice that continues to be a subject of debate in our society as well as across the globe. Numerous books and articles have addressed this practice over the past 50 years, often driven by polarizing agendas. This body of work has been used and misused to fuel a false dichotomy on transracial adoption – portraying transracial adoption as either "good" or "bad" for children. As with so many issues, the answers are not absolute: the best interest of a particular child is determined by many considerations, one of which may be race.

Over the past three decades, there have been substantial changes in the practice of transracial and intercountry adoption in the US and the policies that govern these practices. Efforts have been made to address the removal of Native American children from their families and tribes; the number of international adoptions by U.S. citizens has grown dramatically, with greater attention to practice and policy; and child welfare legislation has been enacted in the United States that both promotes foster care and adoptive placements with families of children's racial and cultural heritage *and* forbids the denial or delay of the foster or adoptive placement of a child in state custody due to racial considerations.

With the implementation of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption scheduled for early 2008, the U.S. will soon have three federal policies concerning transracial adoption. The Hague Convention was adopted in 1993 and, to date, has been ratified by approximately 71 countries. It was established to regulate abuses in international adoption and to protect the rights of children, birthparents, and adoptive parents. Article 16 of the Hague Convention states that a child's country of origin must "give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background" and "determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child." The Hague Convention on Intercountry Adoption, and the implementing Intercountry Adoption Act of 2000 (Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993) require that adoption agencies carefully attend to how parents will meet the needs of children adopted from another race, ethnicity, or culture.

The U.S. signed the Hague Convention and plans to ratify it early in 2008 when all implementing regulations are in place. These regulations, issued by the U.S. Department of State in February, 2006, include a focus on children's racial and ethnic

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needs in two ways. First, they require that prospective adoptive parents receive 10 hours of pre-adoption training which, among other topics, must address the "long-term implications for families who become multi-cultural through intercountry adoption" (Section 96.48). Second, adoption service providers are to counsel parents about the child's history, including a focus on the child's "cultural, racial, religious, ethnic, and linguistic background" (Riggs & Kroll, 2006).

The Indian Child Welfare Act (ICWA) of 1978 established federal standards for the removal of Indian children from American Indian families including provisions to ensure the placement of Indian children in foster or adoptive homes that would reflect the unique values of the tribes. If placement in a child's extended family cannot be done, then the next order of placement is a family from another Indian tribe and then other Indian families approved by the tribe.

Unlike ICWA and the Hague, the Multiethnic Placement Act of 1994 (MEPA) and its subsequent amendments, the Interethnic Adoption Provisions (IEP) enacted in 1996, prohibit child welfare agencies that receive federal funding from considering race, color or national origin in the foster and adoptive placement of children in foster care except in extraordinary circumstances. These policies represent very different policy approaches to the role of race in adoption. Of the three US policies regarding the role of race in adoption decision making, it is only MEPA-IEP that prohibits the consideration of race in the placements of children with foster and adoptive families.

This paper focuses primarily on the evolution and implementation of MEPA/IEP as a policy and practice approach to meeting the needs of African American children in foster care who cannot be safely reunited with their parents or placed with kin. It will specifically address the following five questions identified for consideration by the U.S. Commission on Civil Rights:

1) Has the enactment of MEPA removed barriers to permanency facing children involved in the child protective system?

2) Has the enactment of MEPA reduced the amount of time minority children spend in foster care or wait to be adopted?

3) How effectively is the Department of Health and Human Services (HHS) enforcing MEPA?

4) What impact has HHS' enforcement of MEPA had on the efforts of prospective foster care or adoptive parents to adopt or provide foster care for minority children?

5) Does transracial adoption serve children's best interest or does it have negative consequences for minority children, families, and communities?

Trends in the Adoption of African American Children from Foster Care

In examining the controversial issue of the impact of MEPA on the transracial adoption of African American children in foster care, it is important to consider the historical context as well as the competing interests, policies and practices which have impacted its implementation. Throughout most of the 19th century and beyond, transracial adoption in the United States rarely occurred and was illegal in many states. During this era, adoption was largely arranged informally and to the extent that efforts were made to "match" children and adoptive families, religion was the most important criteria. By the mid 20th century, adoption had become professionalized, and adoption professionals assumed the responsibility for matching children and parents. They utilized a wide range of criteria which were considered vital to a proper "match" in a social environment which required that children and adoptive parents resemble one another as closely as possible: physical appearance, race, cultural background, and potential talents. Given the highly segregated social environment of the US during the 1950s and 1960s and anti-miscegenation laws, transracial adoption was extremely rare (Freundlich, 2000).

Although there were a few instances of transracial placements as early as the 40's, transracial adoption of African American children in the U.S. really began in the 1960s as a result of two significant developments: (1) changes in the demographic profile of children placed for adoption as the number of healthy White infants relinquished for adoption began to decline and increasingly, adoption agencies began to place children of color with adoptive families; and (2) the civil rights movement which significantly altered societal views of racial relationships.

Historically, racial matching in adoption was standard practice. For example, in 1958, the Child Welfare League of America's Adoption Standards suggested that children with the same racial characteristics as their adoptive parents could be more easily integrated into the average family (McRoy, 1989). At that time White families were typically adopting the many White infants which were placed for adoption. However, in the 60's due to liberalized abortion laws, growing use of contraceptives, and increased social acceptance of unwed parenthood, there was a smaller supply of healthy White infants available for adoption (McRoy, 1989). Some agencies responded by establishing waiting lists and often establishing very stringent criteria for families seeking to adopt a healthy White infant, which was considered the "ideal adoptable child." During this time also, some private agencies which had previously discouraged the relinquishment of black infants, began to accept them for adoption placement planning (Day, 1979).

In many cases, if White families could not qualify for a "White healthy infant" due to parental age or number of children already in the home, some agencies were open to considering the family for a "child with special needs," typically a child who was black, mixed race, older, or with special emotional or behavioral needs. Concurrently, the growing number of children in the public foster care system led many White families to become foster parents with the hope that they eventually might be able to adopt.

By 1968, the Child Welfare League of America changed its Adoption Standards on matching and suggested that "In most communities there are families who have the capacity to adopt a child whose racial background is different from their own. Such couples should be encouraged to consider such a child (Child Welfare League of America, 1968, p. 34). By 1971, the number of transracially adopted African American children reportedly reached 2,574 (Simon & Altstein, 1987).

Concern about the growing number of African American children being placed with White families, led the National Association of Black Social Workers to issue a position statement in 1972 which stipulated that Black children "belong physically and psychologically and culturally in black families where they receive the total sense of themselves and develop a sound projection of their future.(National Association of Black Social Workers, 1971, pp. 2-3). Concurrently, concerns were also raised about the limited success agencies were having in finding African American adoptive families. Although African American families had historically informally adopted and provided kinship care, many agencies had failed to recruit from the African American community and many White workers "knew little about stable African American families or their potential as resources for the children" (Duncan, 2005, p. 2).

Based upon the large numbers of approved waiting Caucasian families and limited numbers of approved waiting African American prospective adoptive families, many agencies believed that African American families were either not available or uninterested in adopting (Sullivan, 1994). However, many studies (Hill, 1993; Mason & Williams, 1985, Rodriguez and Meyer, 1991) suggested that African American families are not only interested but have applied to adopt, but disproportionately high numbers are screened out of the process. Rodriguez and Myer found that agency policies and lack of sufficient minority and trained staff members were among the barriers to successful recruitment of families for older minority children. In 1991, the North American Council on Adoptable Children (1991) similarly reported the following barriers to African American families adopting: agency fees, inflexible standards, institutional/systemic racism and lack of minority staff. Some agencies responded by seeking more African American families through establishing satellite offices in African American communities and eliminating rigid eligibility criteria which served to screen out African American families. Also new minority specializing agencies were established such as Homes for Black Children in Detroit in the late 60's and Black Adoption Program and Services in Kansas City, Kansas in the early 70's (Duncan, 2005)

Over the years, there continued to be significant increases in the number of children in foster care and disproportionately high numbers of children awaiting adoption were African American (McRoy, 2003). By 1994, there were nearly 500,000 children in foster care. Children were waiting a median of two years and eight months to be adopted and African American children were waiting the longest (Brooks, Barth, Bussiere, & Patterson, 1999). However, instead of focusing on factors leading to the growing numbers of children being removed from African American birth families and placement in foster care, the disparate outcomes for African American children in the foster care system, the need to overcome barriers to African American families adopting, or the

need to increase funding for more family preservation services for African American birth families, Congress turned its attention in 1994 to reducing the barriers to transracial adoption of African American children.

These developments provided the basis in the 1990s for a broad policy effort to prohibit "racial matching" policies and practices in foster and adoptive placements. Among others, Harvard law professors Elizabeth Bartholet (1991, 1993) and Randall Kennedy (1995) contended that matching children with adoptive families on the basis of race was unconstitutional, and they championed the removal of all barriers to transracial adoption as the means to move African American children from foster care to adoption more quickly. They argued that "race matching" policies represented race-based state action, were discriminatory, and, consequently, violated the Fourteenth Amendment equal protection guarantee and antidiscrimination legislation such as Title VI of the Civil Rights Act of 1964. Bartholet and Banks (1998) asserted that the state could not permissibly make decisions about adoptive placements based on race; they disagreed, however, on whether prospective adoptive parents could express race-based preferences. Bartholet, on the one hand, contended that prospective adoptive parents were entitled to express racial preferences regarding the child they would adopt and create a multiracial family only if they so chose; Banks, on the other hand, argued that allowing prospective adoptive parents to state racial preferences for a child and accommodating their preferences was "facilitative accommodation" and promoted racism (Bartholet, 1991, 1993; Banks; 1998).

In 1994, Congress passed the Multiethnic Placement Act (MEPA, PL 103-382). Introduced by Senators Howard Metzenbaum and Carol Moseley-Braun, MEPA was designed to address concerns related to African American children's long stays in foster care by (1) prohibiting the delay or denial of a child's foster care or adoptive placement solely on the basis of race, color, or national origin; and (2) requiring that state agencies make diligent efforts to expand the pool of foster and adoptive parents who represented the racial and ethnic backgrounds of children in foster care. Congress believed that through the implementation of these two approaches, the number of minority adopters would increase and barriers would be removed to children's placement with any available qualified adoptive families. MEPA's mandates apply to any agency that receives federal funds from any source and is involved in some aspect of foster or adoptive placements.

The enactment of MEPA was strongly influenced by two factors. First, a much publicized *60 Minutes* program aired shortly before the bill was introduced decrying "race matching" policies and linking these polices to the overrepresentation of African American children in foster care. Second, during hearings on MEPA, White families seeking to adopt children in their care passionately argued that race matching policies discriminated against them by limiting their ability to adopt African American infants. Interestingly, no attention was given at the hearings to the fact that White children were typically placed with White adoptive families, generating no claims of discrimination, and under the Indian Child Welfare Act, preference was given for Indian children to be placed with Indian families (McRoy, et al., 2007).

Almost immediately upon enactment of MEPA, there were calls that the Act did not go far enough in removing barriers to transracial adoption. Regulations to implement MEPA were still pending with the US Department of Health and Human Services when, in the course of debates on Title IV-E that were taking place on the floor of the House of Representatives, it was asserted that MEPA had failed and was not being appropriately implemented (Congressional Record, March 25, 1995). The following month, two very different opinions about MEPA were published in the *American Bar Association Journal* (p. 44):

- Senator Carol Moseley-Braun, co-sponsor of MEPA, wrote that "race, culture and heritage of the child and the family are considerations in an adoption" but should never be the determining factor. She stated that changing the law to incorporate language that would eliminate any consideration of race in determining the best interests of a child "will only further frustrate efforts to increase adoption by ethnic or minority families" and "would have the effect of reinforcing the status quo."

- Randall Kennedy wrote that racial matching "undoubtedly prevents a substantial number of children from ever reaching adoptive homes." He stated that there was no justification for racial matching and that, at best, those who advocate for the consideration of race in adoption decision in any way "resort to vague, unsubstantiated intuitions such as the dubious notion that, all things equal, adults of the same race as a child will be better able to raise that child than adults of a different race," a claim which he labeled as no more valid than "a hunch."

The Interethnic Placement Act Amendments (IEP). In 1996, consistent with the Kennedy opinion piece, MEPA was amended by the Removal of Barriers to Interethnic Adoption Provisions (IEP) (as attached to PL 104-88). IEP removed the word "solely" from MEPA's prohibition against delaying or denying an adoptive placement "solely on the basis of race..." IEP prohibited agencies receiving federal child welfare funding from considering race in decisions regarding foster care or adoption placements. It substituted, instead, language of other civil rights statutes through its prohibition on any consideration of race as a factor in decision-making (Bartholet, 1999).

Subsequent federal guidance made clear that agencies were not to consider race or ethnicity, except when a "compelling government interest" was at stake, language drawn directly from Title VI of the Civil Rights Act. The guidance states the "best interest of the child" allowed consideration of race in narrow and exceptional circumstances, such as when an older child who had the right to consent to adoption refused to be placed with a family of a particular race (Hollinger, 1998).

IEP added provisions addressing the rights of prospective adoptive parents. It prohibits states from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the parent or child's race. IEP provides that neither a state nor any other entity in the state that receives funds from the federal government and is involved in adoption or foster care placements may:

- 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; or

- 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.

Assumptions underlying MEPA-IEP. The rationale upon which MEPA/IEP is based includes four primary assumptions: 1) there are large numbers of White families seeking to adopt minority children in foster care; 2) there is an insufficient number of African American families able to or interested in adopting; 3) a large number of minority children will not achieve permanency unless race-matching policies are prohibited and transracial adoptions are promoted broadly; and 4) children fare just as well or better when adopted transracially.

Proponents of MEPA predicted that when race matching policies were banned and transracial adoption was broadly promoted, thousands of African American children waiting in foster care would leave care to adoptive families (Simon, Alstein, & Melli, 1994). Bartholet (1993, p. 99) stated that "very large numbers of black children in need of homes are spending significant amounts of their childhoods in foster and institutional care rather than permanent adoptive homes because of policies against transracial placement." These assumptions were not based on evidence that showed either that minority children's longer stays in foster care were caused by policies that promoted same race adoptive placements or on evidence that showed that transracial adoption would shorten their stays in foster care.

1) Has the enactment of MEPA removed barriers to permanency facing children involved in the child protective system?

Transracial adoption has not proven to be the "answer" to the long waits of African American children in foster care. According to the federal Adoption and Foster Care Analysis and Reporting System (AFCARS) for FY2005 (US Department of Health and Human Services, 2007) there were 513,000 children in foster care who were an average of ten years old. Thirty-two percent of these children or 166,482 were African American. Also in 2005, 114,000 children were awaiting adoption and 36% or 40,840 children are African American. The children awaiting adoption were an average of five years when they were removed from their parents and an average of 27 months have passed since parental rights were terminated. These children are now an average of 8.6 years old. According to HHS adoption data, "over the last five years, African American children as well as Native American children have consistently experienced lower rates of adoption than children of other races and ethnicities" (GAO,2007, p. 56).

A look at the number of transracial adoptions reveals that although there have been small increases in transracial placements of African American children, there are thousands remaining who need permanency. Pollack and Hansen (2007) recently

reported their economic analysis of transracial adoptions. They found that between 1996 and 2003, transracial adoptions of African American children with state agency involvement rose from 17.2% in 1996 to 20.1% in 2003. This rate fluctuated annually from a low of 11.2% in 1999 to a high of 20.1% in 2003, and averaged 16% across these years.

Although it appears that there has been a small increase nationally in the number of transracial adoptions of African American children, the pattern varies considerably from one state to another. One pattern, seen in a number of states, is a significant increase in the number of adoptions of African American children from foster care with only a very small percentage of these adoptions being transracial. A number of states with substantial African American populations (such as IL, CA, GA, KY, NC, PA, DC, CO) have had the largest increases in the number of adoptions of African American children from foster care during years when the number of transracial adoptions has been low. In FY2000, for example, California had the highest number of adoptions of African American children from foster care and only 9 percent of those adoptions were transracial; in other years, when California's total number of adoptions of African American children from foster care was lower, the percentage for African Americans adopted transracially was higher (ranging from 13 to 15 percent). In 1999, Illinois finalized adoptions for 5,408 African American children in foster care, of which only 4 percent were transracial (Hansen & Simon, 2004). The converse pattern was found in 6 states where increases in the adoptions of African American children in foster care was accompanied by increases in the numbers of transracial adoptions (IA, MN, NJ, OH, OK, and TN). Interestingly, Ohio was one of these states, and yet, it was assessed the most severe financial penalty for violation of MEPA-IEP (Hansen & Simon, 2004).

The Local Agency Survey (LAS), an extension of the National Study of Child and Adolescent Well-being, sought to assess the impact of both MEPA-IEP and the Adoption and Safe Families Act (ASFA) on child welfare practice and outcomes. In the survey of agency administrators, most agencies (77 percent) reported that there had been no increase in the proportion of transracial foster or adoptive placements following the enactment of MEPA-IEP (Mitchell, Barth, Green, Wall, Biemer, Berrick, Webb, and NSCAW workgroup, 2005).

Moreover, the recent GAO (2007) report on African American disproportionality in the child welfare system found that "only 15 states reported that encouraging race-neutral adoptions would help reduce disproportionality and 18 states responded that the policy had no effect while 12 indicated that they were unable to tell" (p. 58). In fact in some cases, workers were reported to misunderstand MEPA and believe that it prohibits or discourages same race adoptions. As a result, workers may be less likely to place African American children with relatives or in same race adoptions.

2) Has the enactment of MEPA reduced the amount of time minority children spend in foster care or wait to be adopted?

The small reductions in time to adoption for African American children have little to do with the enactment of MEPA. Since the passage of ASFA, the time to adoption has declined, on average, for all racial and ethnic groups of children in foster care. One study (Hansen & Pollack, 2007) found that African American children who were adopted transracially spent one fewer months in foster care between termination of parental rights (TPR) and adoption finalization compared to children adopted by same race families (14.3 months compared to 15.6 months). The researchers hypothesized that this difference was most likely related to the higher percentage of African American children, when compared to other racial groups, who are adopted by relatives; ASFA's exemption of children in stable placements with kin from time requirements for moving to TPR; and caseworkers' lower sense of urgency regarding the legal status of children in kinship care. Other studies indicate that children adopted by relatives generally wait longer for adoption finalization, although they are placed with permanent families more quickly than children adopted by unrelated families and they experience fewer moves while in foster care (GAO, 2007; Howard, 2006; Magruder, 1994).

Other benefits of relative adoptions have been documented. An Illinois study of over 1300 adoptive families found that 60 percent of the African American children adopted from foster care were adopted by relatives, compared to 16 percent of Caucasian children Although time in foster care was longer when kin adopted, these adoptive families reported the most positive child outcomes when compared to the outcomes for children adopted by unrelated foster families and children adopted by unrelated families who were recruited and matched with them. Children adopted by relatives had fewer school problems, fewer behavior problems, greater closeness in the parent-child relationship, and a higher rate of satisfaction with their adoption experience (Howard, 2006; Rosenthal & Groze, 1992).

African American children who are adopted transracially are generally very young children. Federal data show that in FY2002, the majority of African American children adopted transracially were age 4 and younger (Maza, 2004). Similarly Hansen and Pollack (2007) noted that children adopted transracially are an average of a year younger than children placed in same race placements and that the proportion of infants and toddlers transracially placed doubled between 1996 and 2003. They also found that transracial adoptions are only half as likely to occur with teenagers.

In FY 2002, the median age of all 124,000 children waiting for adoptive families was 8.5 years. These data make clear that it is younger African American children who are adopted transracially from foster care and not the older African American children who states almost uniformly consider to have "special needs," that is, characteristics or conditions that make their adoptive placements more challenging. These data also make clear that predictions that transracial adoption would significantly increase adoption opportunities for older African American children in foster care have not proven to be correct. In fact, according to Maza (2000), in fiscal year 2000 older African American children "were more than three times as likely to be adopted by a single female than were older White children "(p. 6). She found that half of the adoptive mothers of African American children adopted form foster care are 50 years or older.

3) How effectively is HHS enforcing MEPA/IEPA?

The U.S. Department of Health and Human Services (DHHS) Office for Civil Rights is charged with enforcing MEPA. The enforcement has focused only on one of the two requirements, removal of barriers to transracial adoptions, with no enforcement efforts directed to the law's requirement of diligent recruitment of families who represent the racial and ethnic backgrounds of children in foster care.

DHHS has conducted over 130 investigations across the country, and in the majority, either no violation was found or the agency was asked to, and agreed to make changes as recommended by DHHS. In 2003, DHHS for the first time documented a violation of MEPA-IEP and assessed a fine against a child welfare agency. Hamilton County, Ohio and the state of Ohio, were fined $1.8 million. Subsequently, in 2006, DHHS found the South Carolina Department of Social Services to be in violation of MEPA-IEP and assessed a fine of $107,000. DHHS findings of MEPA-IEP violations have been based, among other issues, on the following state/county activities:

- Requiring parents who adopt transracially to prepare a plan for addressing the child's cultural identity. DHHS held that this practice discriminated against parents by requiring them to undertake efforts not required of other adoptive families. (Cited legal basis: Title VI of the Civil Rights Act which prohibits providing services to an individual in a different manner on the basis of race.)
- Requiring families who seek to adopt transracially to evaluate the racial composition of the neighborhood in which they resided. (Cited legal basis: Title VI of the Civil Rights Act which prohibits treating an individual differently on the basis of race in satisfying any requirements to be provided a service.)
- Making "generalized assumptions," as evidenced by the above activities, that families interested in adopting transracially must take additional steps to ensure that they can appropriately parent a child of color.
- Making placement matches which appear to consider race. In one case, the agency had chosen a single White parent over a White couple because she lived in an "integrated neighborhood and had bi-racial brothers." DHHS stated:

  "HCDHS sought out information about how much contact the Lamms had with the African American community and whether there were African American teachers or students in the local school system. In this context, HCDHS' concerns and statements about the Lamms' ability to meet Leah's 'cultural' needs were, in actuality, concerns and statements based on HCDHS' view that Leah, as an African American child, had needs, based on her race, that the Lamms could not meet, simply because they were Caucasian" (p. 20).

- Considering the racial preferences of children in foster care who are below the legal age to give consent to the adoption.
- Using a computerized matching system based on preferences of prospective adoptive parents and the characteristics of the child. South Carolina's use of such a system was found to over-emphasize race because the agency would, at

times, change certain characteristics of the child, such as age, to identify a broader pool of prospective adoptive parents, but did not change the child's race to do so. This practice was deemed to "overemphasize" the race preference of the parents.

The interpretations of MEPA-IEP that have served as the basis for its enforcement run directly counter to proven best practice in adoption. Of greatest concern are interpretations of MEPA-IEP that prohibit agencies from assessing families regarding their readiness to adopt a child of another race/ethnicity; preparing families for transracial adoption in any way that is not provided to families who adopt in-race; considering families' existing or planned connections with the child's racial/ethic heritage/culture; and considering children's expressed preferences related to race unless the child has the right to consent to his/her adoption. Understandable fears of enforcement actions and fiscal penalties have led states to step away from best practices that serve children's and families' interests and are consistent with social work ethics.

As mentioned earlier, in the U.S. three different policies direct practice regarding the role of race, ethnicity, and culture in adoption, and they conflict in substantial ways. ICWA and MEPA-IEP represent almost polar opposites in their treatment of race as a factor in foster care and adoption placement decision-making. MEPA-IEP prohibits an agency receiving federal funding from considering race and ethnicity in the foster or adoptive placement of a child except, as has been interpreted by DHHS, when a compelling government interest is at stake. ICWA places strong value on racial/ethnic heritage by giving statutory preference to the placement of Native American children with members of their own tribes or other Indian tribes. Similarly, the Hague Convention and the Intercountry Adoption Act of 2000 require that attention be paid to children's cultural, racial, religious, ethnic, and linguistic background needs and the preparation of parents to meet those needs. MEPA-IEP has created a different status for African American children who are adopted from the foster care system with regard to racial/ethnic/cultural identity – a status that converges significantly from that recognized in law for American Indian/Alaskan Native children, children adopted internationally, and children who are adopted through private adoption agencies that do not receive federal funds.

The radically different approaches in federal laws and policies about race and adoption reflect the deep societal divide in the U.S. regarding the role of race in adoptive family formation. The result is a disturbing inconsistency in policy that, as research has demonstrated and transracial adoptees and their families have consistently reported, harms children, families, and the very agencies charged with serving them. For some children (internationally adopted children and Native American children), the law holds that race and culture matter, and the law protects their racial and cultural interests; for African American children, however, the law holds that race does not matter, and the law not only does not protect their racial and cultural interests, it punishes those who work to respect and protect those interests.

The divergent legal mandates create impossible demands on adoption agencies that are committed to serving children of color and their adoptive families in accordance with recognized standards of best practice. A private agency, for example, may have both an international adoption program and a program that provides adoption services for children in foster care through a contract with the state public child welfare agency (and partially funded with federal dollars). That agency could be found to have violated MEPA-IEP and could be fined because in its international adoption program, it uses a home study format that addresses race/cultural issues in a way that complies with the Hague Convention but yet appears to violate MEPA-IEP for adoptions of children in foster care. An agency may provide educational opportunities to provide prospective adoptive parents with opportunities to learn about the racial/ethnic/cultural identity needs of a child whom they may adopt and their plans for meeting that child's needs, a practice entirely consistent with the Hague Convention. This program, however, may be found to violate MEPA-IEP if prospective adoptive parents of children in foster care also are required to attend this program.

4) What is the impact HHS' enforcement of MEPA has had on the efforts of prospective foster care or adoptive parents to adopt or provide foster care for minority children?

An important question regarding the impact of MEPA-IEP is the extent to which it has strengthened agencies' efforts to diligently recruit families who represent the racial and ethnic backgrounds of children in foster care. Data indicate that it has not. In the Local Agency Survey (Mitchell, et al, 2005), only 8 percent of agencies of the 97 responding agencies (generally, agencies in large urban areas) reported that they created new recruitment resources following the enactment of MEPA-IEP. Among other possible reasons, agencies' lingering confusion about allowable actions under MEPA-IEP, including the permissible scope of adoptive family recruitment efforts, appears to have stifled diligent recruitment efforts (Mitchell, et. al., 2005). Similar findings emerged from the Child and Family Service Reviews which found that although 22 states reported having plans for diligent recruitment of families who reflect the racial and cultural backgrounds of children in foster care, the majority of states had not met this MEPA requirement.

Although the proportion of children in foster care who are African American has declined somewhat, these children continue to be disproportionately represented among children in foster care and underrepresented among children who are adopted from foster care. The goals of reducing the length of time that African American children remain in foster care, waiting for adoptive families, and increasing their opportunities for adoption must be met in other ways—such as contracting with minority-based adoption agencies. It is critical that policy makers assess and address the unintended, negative consequences of MEPA-IEP that are working against achieving the very goals that the law sought to achieve—the lack of resources devoted to specialized recruitment of families who represent the racial/ethnic backgrounds of children in foster care; the paralyzing effects of interpreting MEPA-IEP as prohibiting the use of established best practices in

recruiting, preparing, and support prospective adoptive parents; and the use of punitive approaches in the form of significant fiscal penalties that have caused agencies to retreat from what they know children and families need.

5) Does transracial adoption serve the children's best interest or does it have negative consequences for minority children, families, and communities?

Just like children born into birth families, children enter adoptive families with their own unique combination of risk and potential. Likewise, parents bring to the formation of families their own constellation of strengths and limitations. Adoption itself brings challenges to children and families in addressing issues such as loss, identity, and others. Transracial adoption adds another layer of issues that children and families must address. Research suggests that African Americans adopted transracially have more adjustment problems than other subgroups of transracially adopted children. Feigelman (2000) found that black transracially adopted young adults exhibited three or more adjustment problems at twice the rate of other transracially adopted persons. Brooks and Barth (1999) reported that African-American transracially adopted males were more likely than other groups to adjustment problems. The contributions of empirical research to our understanding of the particular challenges posed by transracial adoption are discussed below.

Researchers in the fields of sociology, psychology, and social work began to focus on transracial adoption in the 1970s and 1980s, studying children placed in infancy or at very young ages. They looked at overall ratings of adjustment, including self-esteem, achievement, and level of adjustment problems. Most used very small sample sizes, and some did not have comparison groups of children placed in same-race families. Overall, these studies found that children adopted transracially in the U.S. or from other countries had overall adjustment outcomes similar to children placed in same-race families, particularly when they are adopted early in life (Grow & Shapiro, 1974; Kim, 1977; McRoy, Zurcher, Lauderdale, & Anderson, 1982, 1984; McRoy & Zurcher, 1983; Simon & Altstein, 1987; Feigelman & Silverman, 1983; Shireman & Johnson, 1986).

Recent studies of transracial adoption have used more rigorous research methods such as multivariate analyses to determine the contribution of various factors in child outcomes. They have refined the specific constructs that are measured (racial/ethnic identity, reference group orientation, aspects of cultural socialization, and others) and have tested hypotheses about the relationship between different variables. To date, however, most studies of outcomes of transracial adoption have examined children adopted in infancy or at young ages. Few have focused on children adopted from foster care. In general, studies show that the younger children are at adoption and the less serious and less extensive the maltreatment they have experienced, the lower the level of adjustment difficulties. It is clear that more attention needs to be given in future research to the impact of transracial adoption on children adopted at older ages and with more extensive histories of abuse or neglect. There is, however, much to be learned from the current body of empirical research.

A group of studies have examined racial/ethnic identity in transracially adopted persons, but again, most do not address the relationship between the racial and ethnic experiences of adoptees and their adjustment. Lee (2003) reviewed more recent cultural socialization outcome studies that serve as a bridge between outcome studies and racial/ethnic identity studies. His review focused on studies that have examined how adoptees and families address the challenges of transracial adoption and how these differences are associated with different adjustment outcomes.

Based on the current body of research, three conclusions are firmly supported:

1. Transracial adoption in itself does not produce psychological or social maladjustment problems in children.

2. There is a range of challenges that transracially adopted children and their families face, and the manner in which parents handle them facilitates or hinders a child's development.

3. Children adopted from foster care come to adoption with many risk factors that pose challenges for healthy development. For these children, it is particularly important that they be placed with adoptive families who can address their particular needs, including racial/ethnic identity needs, so as to maximize their opportunity to develop to their fullest potential.

Studies Addressing Challenges in Transracial Adoption

Several studies have found that transracially adopted children struggle more with acceptance and comfort with their physical appearance compared with children placed in-race (Andujo, 1988; Kim, 1995). Although some children may leave this feeling behind, the sense of difference continues into adulthood for many transracial adoptees. Brooks and Barth (1999) studied 25 year-old adoptees and reported that about half of Black and Asian transracial adoptees had expressed discomfort about their ethnoracial appearance. The exception was black females: only 21 percent expressed such discomfort.

An African American man growing up with White parents in a small Minnesota town described his pervasive feelings of difference while growing up: "I always felt like I had this 'A' on my forehead, this adoptee, that people could see from a far distance that I was different" (Clemetson & Nixon, 2006, p.A18). Research and reports from transracially adopted adults indicate that this struggle is more intense for children of color growing up in homogeneous White communities. Feigelman (2000), for example, found that transracial adoptees from White-only communities were more likely than adoptees living in racially mixed communities to have discomfort with their racial appearance (51% vs. 25%). In summarizing his findings, Feigelman wrote:

> *One of the study's most striking findings showed that transracial adoptive parents' decisions on where to live had a substantial impact upon their children's*

adjustments. Transracial adoptive parents residing in predominately White communities tended to have adoptees who experienced more discomfort about their appearance than those who lived in integrated settings. Adoptees feeling more discomfort, in turn, were more likely to have adjustment difficulties (p. 180).

"Fitting In": The Family, Neighborhood, School, and Community. In addition to the internal struggle with a sense of difference, transracially adopted persons often find challenges in overcoming the sense of difference in all areas of their lives. One of the childhood struggles described by many transracially adopted young adults was the difficulty fitting in with peers, the community in general, and sometimes, with their own families. The following responses from transracially adopted persons illustrate these challenges:

> *I don't think that there should ever be just one transracially adopted child in the family. Children need to know that there is support at home and to be able to look at another brown kid. It's not enough for the parents to love the child. They need to be able to look at others of the same race in the family. It's unfair to the child if there isn't* (Haymes & Simon, 2003, p. 264).

> *If we lived in a different neighborhood, I'd feel more comfortable. People wouldn't ask so many questions or call me names. I feel a little more comfortable around people who are my color because I know they won't call me names* (Haymes & Simon, 2003, p. 261).

The social world of very young children is centered largely in their family, but as children develop, their social world becomes increasingly influenced by experiences outside their families. A child may have a strong sense of belonging within his or her family but struggle significantly to fit in outside the family. When family members are not able to understand a child's experience outside the family or to adequately support the child in addressing racial issues, feelings of competing allegiances, isolation, and alienation can result.

Fitting in with those of the child's own race/ethnicity. A transracially adopted African American man interviewed for a *New York Times* story reported that he always felt awkward around other blacks because he did not understand their culture: trends in fashion or music, or little things like playing the dozens or the black oral tradition of dueling insults (Clemetson & Nixon, 2006). Having grown up in a small town in Minnesota, there were few other African Americans who could help develop an understanding of the culture. Others who grew up in similar situations report that it was not until they went to college that they began to cultivate relationships with persons of their own race. This process involved acculturation and a struggle with conflicting feelings. John Raible (1990), a transracial adoptee, describes this experience:

> *I got to know other middle class black students as real people who were not that different from me. I began to appreciate the variety of ways of being black...Yet all was not smooth sailing, by any means. I felt nervous and anxious around my*

new black friends and peers. I was self-conscious about sounding or acting 'too White.' I felt scrutinized for having White girlfriends, and continued to fret over being rejected and not being taken seriously as an equal...when my parents would come to visit, I was self-conscious about being seen with them. I worried about being seen too often, or in the 'wrong' places, with my White friends. I was very aware of feeling caught between two cultures, of having to tread the line between two worlds.

The "marginal man" phenomenon experienced by those who are, to a large extent, "caught between two cultures" and do not fit in with either group is a theme of Raible's experience. There has been very limited research focus on transracial adoptees' feelings of marginality in society and lack of belongingness in the family. A study of 88 African American transracial adoptees found that those who were low in identification with both African American and White reference group orientations were more maladjusted (DeBerry, et al., 1996), that is, they did not feel that they belonged with either group.

Developing a Positive Racial/Ethnic Identity. Racial/ethnic identity, a component of personal identity, develops over the course of childhood, adolescence, and early adulthood. Generally, by age 4, children are aware of physical racial differences and by age 9, they can see themselves through the eyes of others and understand the consequences of a particular racial group membership, including prejudice (Lee & Quintana, 2005). This process has particularly important implications for African American children for whom racial/ethnic identity is salient and closely tied to self-esteem (Phinney, 1991). There are various constructs related to ethnic/racial identity, including self-identification, attitudes toward one's own group, sense of belonging to a given group, reference group orientation, and racial preferences. The research on transracial adoption has focused in different ways on these constructs.

McRoy and colleagues conducted one of the only early studies that included measures of both self-esteem and racial identity for same-race and transracially adopted children (McRoy, Zurcher, Lauderdale, & Anderson, 1982). Although they found no significant differences between transracially and in-racially adopted children on self-esteem, they found that transracially adopted children scored lower on racial identity measures than in-race adoptees. They also found that the manner in which White parents addressed race was linked with the extent to which their children acknowledged racial differences. African American children whose parents acknowledged their children's racial identity, moved to integrated neighborhoods, and provided their children with African American role models had a greater sense of racial pride; African American children with White parents who minimized the importance of racial identity were reluctant to identity themselves racially. Eighty percent of the transracially adopted African American children had been told that "they were not like other blacks" (McRoy et al., 1984, p. 38). Andujo (1988) found similar results in her study of 60 Mexican American children placed with same-race and with White families.

Over the past 15 years, researchers have begun to examine racial/ethnic identity issues in more sophisticated ways and to explore the relationship between different adaptations to racial/ethnic identity and aspects of overall adjustment. Research indicates that transracial adoptees demonstrate considerable differences in how they incorporate race/ethnicity into their identity over the course of their childhood and beyond.

Early studies on domestic transracial adoption found that parents were most likely to minimize racial differences and emphasize a color-blind approach (Lee; 2003; Andujo, 1988; DeBerry et al., 1996; McRoy & Zurcher, 1983). These families acculturated their children into the majority culture, but often, they did not help their children integrate their African American or Latino racial status into their identity. These children were reluctant to identify with those of their own racial group or avoided African American peers (McRoy et al., 1982, 1984). According to one scholar on racial adaptations, assimilated individuals can fare well when the environment is supportive. When navigating conflicts between two racial memberships, the most poorly adjusted individuals are marginal in that they never develop a strong identity with either group (Phinney, 1991 &1992).

Scholars studying racial adaptations of minority children view those children with a bicultural or multicultural identification as the most highly adjusted (Phinney, 1991 & 1992, DeBerry, et al, 1996). Likewise, standards of professional adoption practice have increasingly focused on preparing parents to assist children adopted transracially to integrate their heritage in a positive manner into their sense of self. They encourage parents to acknowledge racial differences, communicate openly with their children about race and culture, and offer their children opportunities to gain knowledge and experience related to their birth group (Vonk & Angaran, 2003).

More recent research has focused on parents' approaches to cultural and racial socialization and how these relate to different aspects of ethno-racial identity as well as to adjustment. Most studies assessing the extent to which transracial adoptive parents provide cultural socialization opportunities to their children indicate that there is a low level of focus on these opportunities (primarily through books or cultural events) in childhood but that even this low level of activity drops away as the child grows into adolescence (Mohanty, et al., 2006; DeBerry, et al., 1996).

Kimberly DeBerry and colleagues (1996) have conducted the most sophisticated and extensive research on patterns of family racial socialization and racial identity in African American children adopted transracially. Assessing 88 transracially adopted African American adoptees at ages 7 and 17 and their families, they found that that family racial socialization predicted the adoptees' racial orientation, which, in turn, predicted adjustment. Most transracially adopted adolescents experienced difficulty becoming ecologically competent in both Africentric and Eurocentric orientations. The study also found that youth who experienced more transracial adoptive stressors (such as perceived racial stress and perceived transracial adoptive stresss) were more maladjusted. DeBerry and colleagues suggested five potential explanations for their findings that relatively few adoptees had both high Eurocentric and Africentric reference

group orientations and were well adjusted: multiple forms of loss and grief, converse acculturation stress, unresolved belongingness issues, uncertainty and difficulty emotionally regulating and cognitively negotiating shifts between Africentric and Eurocentric reference group orientations, and/or differential trust patterns (such as a generalized distrust of European-Americans and relative mistrust of African-Americans).

When a child's race is different from both adoptive parents, it is especially important for the child to receive support and understanding in learning to cope with discrimination. If parents minimize the difficulty of discriminatory experiences or are unable to support and understand their child, barriers can develop in the parent-child relationship. Raible (1990), for example, described how he gave up trying to talk to his family because he was told that he was being too sensitive. He resigned himself to expecting less support and understanding from his parents. He stated that his parents worried that he was rejecting them in seeking knowledge of his black heritage, which created feelings of guilt and disloyalty as he explored issues of race.

The only recent study examining transracial adoption of children adopted from foster care is an Illinois study assessing the adjustment of 1340 children, ages 6–18 and receiving adoption subsidies (Howard & Smith, 2003). The study used, as a measure of overall adjustment, the Behavior Problem Index (BPI), a standardized behavior problem measure utilized in the National Longitudinal Survey of Youth. The BPI lists 28 behavior problems. The National Longitudinal Survey of Youth found for the more than 11,500 children studied, that the mean number of behavior problems was 6.4. In the Howard and Smith study (2003), the mean number of behavior problems for children adopted from foster care was 11.9. African American children had the lowest rates of behavior problems (mean of 10.4 problem behaviors) of all racial/ethnic groups. Important differences were noted, however, between African American children who were adopted transracially and those who were adopted by same-race families. The 73 African American children adopted transracially had a mean of 14.4 behavior problems compared to a mean of 9.9 behavior problems for the 407 African American children adopted by same-race families. On most other outcomes such as the parent's closeness to the child or their satisfaction with the adoption, transracially placed children were not significantly different. However, parents were more likely to rate their transracially placed children as more difficult to raise than the parents of children placed in same-race families.

Although these findings do not provide a basis for reaching conclusions about the level of problems among African American children placed transracially compared to African American children adopted by black families, they indicate the need for further research in this area. Most children adopted from foster care have experienced a constellation of experiences that present challenges to their development. The Howard and Smith study (2003) found that these children had experienced a range of adverse experiences: serious neglect (63%), prenatal alcohol or drug exposure (60%), physical abuse (33%), sexual abuse (17%), and two or more foster placements (37%). Most children had experienced more than one of these risk factors. Children in foster care who have experienced assaults on their developmental status and well-being require

environments that mitigate rather than heighten their vulnerability. They need opportunities to develop nurturing attachments to parents and siblings, succeed in school, establish friendships with other children, and find acceptance and support in all areas of their lives.

Conclusion

The assumptions underlying the development of MEPA-IEP were not accurate, and the anticipated outcomes of the law — to expedite adoptions of children of color in foster care by promoting transracial adoption– have not come to pass. As adoption professionals with expertise in the adoption of children in foster care explained when MEPA and then IEP were enacted, relatively small numbers of White families express an interest in adopting older children and youth of color in foster care. As these professionals urged Congress to understand, MEPA-IEP's promotion of transracial adoption could not—and has not—resulted in large numbers of African American children and youth leaving foster care for adoption by White families. The removal of barriers to transracial adoption, IEP's relegation of race to a non-issue, and the levying of significant penalties for MEPA-IEP violations have not substantially increased the number of transracial adoptions of African American children in care, particularly not for the older children and youth for whom adoption is a more challenging goal.

Recommendations

Provide funding for family support and preservation of birth families.
Although the incidence of child abuse and neglect does not vary significantly by race or ethnic group, African American children are represented in the foster care system at a rate that is 2.26 times greater than the proportion they comprise of the total U.S. population (GAO, 2007). African American children are more likely to be removed from their families, and they are less likely to be adopted once their parents' rights have been terminated (GAO, 2007. Barth (1997) found that White children have a five times greater chance to be adopted than any child from a minority group and that the adoption process proceeds more slowly for African American children than for White children.

A number of interrelated factors have been identified which may influence these disproportionate outcomes for African American children. According to the recent GAO report (2007), such factors include "African American families' higher rates of poverty, difficulties in accessing support services to provide a safe environment and prevent removal, and racial bias and cultural misunderstandings among child welfare decision makers (p. 16). The report also attributed longer lengths of stay for African American children to the "lack of appropriate adoptive homes for children, greater likelihood of using kinship care, and parents' lack of access to supportive services needed for reunification with their children" (p. 16). If states could offer these services to birthfamilies, many child removals could be prevented and more birthfamilies could be preserved. This study as well as previous studies (the Pew Commission (2004) and earlier GAO studies (GAO-06-787T; GAO 07-75) have concluded that since the majority of federal funding through Title IV-E funding is for foster care maintenance payments,

states do not have the flexibility to use these funds for support and prevention services for birth families.

Promote positive adoption outcomes for African American children who cannot be safely reunified with parents or extended family members.
When African American children in foster care cannot be safely reunited with their parents or extended family members, they need the security, stability and love of adoptive families. To ensure that African American children in foster care are timely placed with adoptive families who can meet their needs, including their racial/ethnic needs, we make the following recommendations:

Repeal IEP and reinstate the MEPA standard. Good, ethical adoption practice requires consideration of race and ethnicity.
Policy and law should be consistent with established best adoption practice and explicitly state that the racial/ethnic identity needs of children should be addressed throughout the adoption process and after adoption. Federal and state law should state that race is one factor that can be taken into consideration in matching prospective adoptive families and children in foster care. Law should accord with practice that directs that the matching process address whether specific families are able to meet all needs of the child, including racial/ethnic identity issues. It should be consistent with practice that directs that all foster and adoptive families receive some level of training in parenting children of culturally diverse backgrounds and with practice that requires that when families adopt transracially or transculturally, they receive additional training and other supportive services to ensure that they are prepared to meet their children's racial, ethnic, cultural, and linguistic needs.

A child's best interests should always be paramount in decisions regarding children's foster care and adoption placements. The choice of a foster or adoptive family should be based on an assessment of which family can best meet the child's individual needs, including the child's racial/ethnic identity, cultural, and linguistic needs. This choice must be driven by the child's needs and not by prospective adoptive parents' needs or presumed "rights". By focusing on Title VI and protections for prospective adoptive parents, DHHS has placed too little emphasis on the "best interest of the child." There is broad practice and legal support for assessments of prospective adoptive families to ensure the safety and well-being of children. Just as these assessments take into account families' abilities to meet children's physical, emotional, social, and developmental needs, they must take into account families' ability to meet children's racial/ethnic identity needs.

Prepare families for transracial adoptions.
According to CWLA adoption standards (2000), all children deserve to be raised in a family that respects their cultural heritage. The standard states, "in any adoption plan, the best interests of the child should be paramount. All decisions should be based on the needs of the individual child. Assessing and preparing a child for a transracial/transcultural adoption should recognize the importance of culture and race to the child and his or her experiences and identification. The adoptive family selected

should demonstrate an awareness of and sensitivity to the cultural resources that may be needed after placement."

When families who adopt transracially do not receive preparation and training that promote racial awareness and assist them with multicultural planning and the development of survival skills, they and their children are not well served. Families lose critical opportunities to assess their own preparedness to adopt transracially and to develop the awareness and skills that are essential to meeting their children's racial/ethnic identity and socialization needs. Failing to provide families with this preparation and training is contrary to sound and ethical social work practice with its emphasis on recognition of and support of each individual's racial/ethnic identity and socialization needs. The current interpretation of MEPA-IEP allows such preparation and training, but only if it is offered to all prospective adoptive families, irrespective of whether they are adopting transracially. This requirement creates unrealistic expectations for prospective adoptive families by mandating that all families participate in training regarding transracial adoption irrespective of their adoption plans or that no families receive this preparation. It also creates unrealistic demands on adoption agencies as they work to appropriately serve prospective adoptive families based on their adoption interests and plans. To "legally" provide preparation and training regarding transracial parenting, agencies must design programs that generally appeal to all families, inevitably resulting in "watered down" training and preparation. Just as an agency would provide a family who plans to adopt a child who is HIV-affected with special training and preparation to address the child's needs, families who adopt transracially need training and support to meet their child's needs.

Address barriers to inracial adoptions.
Barriers to adoption for African American families have been documented by a number of authors and research studies. Hill (2004) reported that African-American-run organizations have been highly successful in placing African American children in foster care with adoptive families, but many state agencies do not contract with them or only call them for help in placing the oldest children and those who are the most difficult to place for adoption. Casey Family Programs (2005, p. 17), reporting on a project involving 22 public child welfare agencies, found that a "history of negative interactions between communities of color and child welfare agencies" contributed to a lack of success in finding adoptive families of color. As the participating public child welfare agencies developed and implemented new strategies, including developing partnerships with faith-based organizations in the black community, they achieved significant increases in the number of families of color applying to adopt.

Enforce the MEPA requirement to recruit and retain families which reflect the children needing placement.
The majority of children in foster care are minority children. As MEPA-IEP recognizes, meeting those children's needs for adoptive families requires diligent recruitment of more families that reflect the ethnic, racial, and linguistic diversity of the children served. A broader pool of minority foster families would provide a critical needed solution to ensuring that these children have the benefit of adoptive families as soon as adoption

becomes the plan. This requirement of MEPA should be supported with financial resources and fully enforced. Agencies should work closely with minority specializing agencies that have proven success in recruiting and retaining minority foster and adoptive families.

Full implementation of MEPA's requirement for specialized recruitment of families that reflect the ethnic and racial diversity of children in the state would go a long way in expanding the pool of adoptive families for waiting children in foster care. These families, because they are members of the same communities as waiting children, are most likely to adopt African American children in foster care. It is through developing this pool of families that there is the greatest opportunity to reduce the time that African American children remain in foster care waiting to be adopted, the very goal of MEPA-IEP.

Many child welfare professionals view the recruitment and retention of minority families as an essential step in increasing the number of minority children who leave foster care to adoption. Yet, according to the recent GAO report (2007) more than half of states are not meeting HHS performance goals for recruitment. Interviewees for this study called for more parents who want to adopt older African American children and for resources to implement recruitment and training initiatives.

As Hill (2004) noted that African American-controlled organizations have a very good track record of successful recruitment of African American families, many state agencies either do not contract with them or contract only for older children and not the younger African American children. In 2005, NACAC published a list of 24 such agencies located throughout the United States which can help states become compliant with the MEPA recruitment requirement (McRoy, Mica, Freundlich, & Kroll, 2007).

Recruitment of inracial foster families.
As another strategy to increase the likelihood of adoption for African American children from foster care, emphasis should be placed on recruiting more African American foster families as 60% of all adoptions from care are by foster families. By placing initially in same race families who are willing to adopt if termination occurs, it is possible to avoid the tension that develops between the importance of supporting children's attachments to White foster families and the importance of providing children with opportunities to be with same race families.

Provide funding for subsidized guardianship.
As relatives are another significant resource for the placement of older African American youth, Congress should consider amending federal law to allow federal reimbursement for legal guardianship similar to the subsidies provided for adoption. States that have implemented subsidized guardianship programs have found that this is both cost effective and serves to reduce the number of African American children in the system and provides permanency for children (GAO, 2007, p. 65).

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JOAN E. OHL

Biography

Joan E. Ohl was sworn in as commissioner of the Administration on Children, Youth and Families in the Administration for Children and Families, U.S. Department of Health and Human Services, in January 2002. This is the most recent position of leadership that she has held in the public, private and nonprofit sectors over the past three decades.

Prior to joining the Bush administration, Mrs. Ohl was West Virginia's secretary of health and human services from 1997 to 2001. In administering the 5,300-employee agency, she emphasized effective and efficient programs, fiscal accountability and personnel development.

Her previous work in the health-care field included serving as a board member of the West Virginia Health Care Cost Review Authority. She also worked as a consultant on medical, nutrition and children's issues in the state between 1984 and 1993.

In addition, Mrs. Ohl held a number of positions in higher education. Among these were vice president of the Independent College Fund of New Jersey and the Association of Independent Colleges and Universities in New Jersey. She also has worked at Colorado College, University of Arkansas, Pennsylvania State University, and Fairleigh Dickinson University.

A hallmark of her career has been establishing new organizational structures, programs and services. Equally important, she has been actively engaged in building partnerships between the public and private sectors.

Mrs. Ohl, was born in Harrisburg, Pennsylvania, and grew up in Lewes, Delaware. She received an undergraduate degree from the University of Delaware, a Master of Education degree from the University of Buffalo, New York and did advanced graduate work at Pennsylvania State University.

She is married to Dr. Ronald E. Ohl, recently retired president of Salem International University. They reside in Martinsburg, West Virginia.

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U.S. Commission on Civil Rights Briefing

September 21, 2007

"The Multiethnic Placement Act: Minority Children in State Foster Care & Adoption"

Written Statement
Joan E. Ohl, Commissioner
Administration for Children, Youth and Families
Administration for Children and Families
U.S. Department of Health and Human Services

I have been invited here this morning to provide the Administration's perspective on the Multiethnic Placement Act (MEPA) and, more generally, on the extent to which race should be a factor in foster care and adoption placement decisions.

Specifically, the U.S. Commission on Civil Rights has expressed interest in the Administration's views on whether the enactment of MEPA has removed barriers to permanency facing children involved in the child protective system; whether transracial adoption serves the children's best interest, or has negative consequences for minority children, families, and communities; how effectively the U.S. Department of Health and Human Services (HHS) is enforcing MEPA; the impact HHS' enforcement of MEPA has had on the efforts of prospective foster care or adoptive parents to adopt or provide foster care for minority children; and whether the enactment of MEPA has reduced the amount of time minority children spend in foster care or wait to be adopted.

It is my hope that this briefing will lead to a better understanding of the appropriateness of transracial adoption and whether the purpose for which MEPA was enacted is being achieved.

The Multiethnic Placement Act (MEPA) was signed into law by President Clinton in 1994 as part of the Improving America's Schools Act. MEPA was enacted after much debate about transracial adoption and same-race placement polices. At the heart of this debate is the need to promote the best interests of children by ensuring that they have permanent, safe, stable, and loving homes suited to their individual needs. However, placement delays and denials based on illegal discrimination increase the risk that the growing number of children, especially minority children, in the child protective system will never find a permanent home. It was the sense of Congress that some of the key factors contributing to the long waits experienced by these children are the race, color, and national origin matching policies and practices of public agencies. These policies, along with agency policies that generally discouraged minorities from becoming foster or adoptive families, resulted in too many children languishing in foster care. MEPA was broadly intended to remove and eliminate discrimination in child welfare, both for the benefit of children who needed permanent homes, and for the benefit of prospective parents who wished to provide permanent homes for children.

In 1996, MEPA was amended by the provisions for Removal of Barriers to Interethnic Adoption (IEP) included in the Small Business Job Protection Act of 1996. The IEP amendments were supposed to remove what some members of Congress felt was potentially misleading language in the original provisions of MEPA and to further clarify that discrimination against children in need of suitable homes or prospective adoptive parents is illegal. In addition, IEP strengthens compliance and enforcement procedures, including the withholding of Federal funds and the right of individuals to bring an action in Federal court against the State or other entity alleged to have violated MEPA.

Congress took a significant step in passing MEPA and its amendments to bring our Nation's child welfare policies in line with the body of established civil rights law. This law makes clear that race, color and national origin should not and may not preclude or delay a child from being placed into a loving and permanent home.

The debate about transracial adoption and same-race placement polices spurred MEPA. However, to date, there is no official Federal definition of "transracial adoption." Within the Administration for Children, Youth and Families, the Children's Bureau's Data & Technology Division defines transracial adoption as adoptions where the adoptive parents differ in at least one racial or ethnic characteristic from the adopted child.

Keeping in mind the Children's Bureau's Data Division's definition of transracial adoption, the research—much of which has been conducted by my fellow colleagues and panelists here today—shows that transracial adoptees of color were no more likely to engage in negative social behaviors than white inracial adoptees (e.g., they are no more likely to abscond or engage in drug use). And studies also show that transracial adoptees have exhibited academic competence, a clear sign of positive well-being.

But even more importantly, transracial adoptees experience speedier adoptions than inracial adoptees of color on the whole, reducing the time these children are allowed to "languish"—a term now synonymous with foster care—in care, without the benefits of a permanent family.[1] Using AFCARS data for example, between 1996 and 2003 the average waiting time for African American children was 17.7 months, while the average waiting time for children of all other races was 15.0 months.[2]

On the issue of adoptive parent recruitment, the Collaboration to AdoptUsKids, a product of the Children's Bureau, has made great strides in formulation and implementation of a national adoptive family recruitment and retention strategy. The AdoptUSKids initiative is designed to find and support foster and adoptive families for waiting children by providing new and enhanced recruitment tools and training and technical assistance (T/TA) to States and Tribes. The Collaboration to AdoptUsKids also operates the AdoptUsKids.org website, encourages and enhances adoptive family support

[1] Hansen, Mary Eschelbach, and Daniel Pollack. 2007. Transracial Adoption of Black Children: An Economic Analysis. *The Berkeley Electronic Press: ExpressO Preprint Series*, 2007: http://law.bepress.com/expresso/eps/1942

[2] AFCARS data, U.S. Children's Bureau, Administration for Children, Youth and Families

organizations, and conducts a variety of adoption research projects. AdoptUsKids.org is a tool for connecting foster and adoptive families with waiting children throughout the United States. Registration and participation on the site is free for homestudied families and foster adoption professionals.

In June of 2006, the U.S. Department of Health and Human Services announced the launch of a new adoption advertising campaign encouraging the adoption of older children in foster care; the initiation of a new series of English and Spanish language public service advertisements (PSAs) designed to encourage the adoption of older children and teens from foster care were developed in collaboration with the Ad Council and AdoptUsKids.

The campaign is an extension of the previous award-winning PSA campaign, launched in 2004, which focused on the adoption of children eight and older. Not only have these advertisements won major kudos from the advertising industry, but since the launch of the website, over 8,200 children (as of August, 2007) featured on AdoptUSKids.org have been placed with permanent adoptive families.

With respect to the Multiethnic Placement Act, this Administration can and should be credited with decisive action on the enforcement front. As a representative of ACF, one of the two MEPA enforcement agencies, I'm proud to say that we have finally moved beyond simply providing interpretive guidance, to take action—action in the form of decisions finding states in violation of the law and imposing the financial penalties mandated by MEPA for such violations.

The first enforcement decision involved Hamilton County, Ohio in 2003. After a 4½ year investigation, the Office for Civil Rights (OCR) issued a Letter of Findings, concluding that Hamilton County and Ohio had violated MEPA as well as Title VI of the 1964 Civil Rights Act (42 U.S.C. Sec. 2000(d)), and ACF issued a Penalty Letter imposing a $1.8 million penalty.

The Letter of Findings confirmed that under MEPA child welfare workers cannot routinely consider race, color or national origin in the foster care or adoption placement process. OCR explained that, among other things, MEPA prohibits:

- routine consideration of race, color or national origin in foster care and adoption placement decisions;
- routine consideration of race in the context of a transracial placement and
- applying different or more rigorous scrutiny to consideration of transracial placements as compared with same-race placements.

Specifically in Hamilton County, we found illegal administrative rules requiring that:

- home-studies of prospective adoptive parents seeking transracial/transcultural placements include a determination of whether a prospective parent is able to "value, respect, appreciate and educate a child regarding a child's racial, ethnic and cultural heritage, background and language and. . .to integrate the child's culture into normal daily living patterns;"

- the agency assess the racial composition of the neighborhood where prospective families live and
- prospective parents prepare a plan for meeting a child's transracial/transcultural needs.

A notable historical footnote in the Hamilton County case is that U.S. Senator Howard Metzenbaum, the author of MEPA, represented the State of Ohio, which is where ACF levied the first MEPA penalties. Metzenbaum served for almost 20 years (1974, 1976-1995), introducing MEPA in order to encourage transracial adoption when appropriate and believed that it is better for children to be adopted by parents of another race than not to be adopted at all. Metzenbaum stressed that policies that virtually prohibit multiethnic foster care and adoption are unconstitutional, harmful and must be stopped.

Hamilton County's Corrective Action and Resolution Plan (which we call Hamilton County's CARP) with ACF and OCR was executed on July 15, 2004. As a result of the agreement with OCR and ACF, Ohio has taken take numerous actions designed to avoid discriminatory practices, including promulgating revised state administrative rules and policies, enhancing state monitoring and oversight of Ohio counties and private agencies who contract with counties to provide certain child welfare services, and providing state-wide training for child welfare staff regarding compliance with Section 1808, Title VI and other relevant Federal and state laws, administrative rules, policies and practices.

As a result of the CARP agreement, Hamilton County is subject to continued monitoring to ensure its compliance with Title VI, its MEPA State plan requirements and the CARP agreement. In addition to complying with state-wide regulations and policies required by the CARP agreement, Hamilton County has revised certain aspects of its child welfare policies and practices and began conducting annual audits of adoption subsidies provided to adoptive families to help ensure these subsidies are not provided in a racially discriminatory manner. Ohio continues to implement the provisions of the CARP as a MEPA Monitor—who is helping to ensure that State practice complies with the law—is in place and has begun monitoring visits to county agencies.

The second enforcement decision involved South Carolina in 2005. Here, OCR issued a Letter of Findings explaining that the South Carolina's Department of Social Services had violated both MEPA and Title VI, and ACF issued a Penalty Letter imposing a penalty of $107,481.70.

The Letter of Findings emphasized that strict scrutiny is the appropriate Constitutional standard of review, and that the law forbids any routine consideration of race, color or national origin, allowing its consideration only on rare occasions and even then only to the degree it can be demonstrated to be absolutely necessary.

Specifically, we found illegal South Carolina's practices of:

- honoring birth parents' racial preferences (the law requires agencies to make placement decisions "independent of the biological parent's race, color or national origin preference");

- subjecting prospective transracial parents to greater scrutiny (for example, making inquiries into 1) the prospective parents' ability to adopt transracially; 2) the prospective parents' ability to nurture a child of a different race and 3) the racial makeup of the prospective parents' friends, neighborhoods, and available schools);
- treating prospective parent racial preferences with greater deference than other preferences and
- the manner in which the agency took race into consideration, including use of race as a "tie-breaking" factor, matching for skin tone, and use of young children's racial preferences.

South Carolina's Corrective Action Plan (CAP) with ACF and OCR was executed on July 2, 2007. The CAP requires South Carolina to take various remedial measures to correct the MEPA and Title VI violations that OCR delineated in its Letter of Findings against South Carolina and for which ACF took financial penalties. Among other things, the provisions require South Carolina to review and revise (as necessary) all of its forms, policies and procedures that are inconsistent with MEPA, Title VI, or both, and to submit the revised policies to ACF and OCR for review and approval. Similarly, South Carolina must develop and implement wide spread MEPA training for all of its foster care and adoption workers, as well as all of its contractors. South Carolina is required to designate a MEPA Monitor, who will help to ensure that State practice complies with the law. The CAP also requires South Carolina to notify the individuals named in the Letter of Findings, as well as other individuals who applied to or are waiting to adopt from South Carolina's child welfare system that it is working to create a child welfare system that is free from discrimination. Also under the CAP, South Carolina is required to collect and submit to ACF and OCR various reports that include data on various aspects of its child welfare system.

South Carolina remains in the early stages of implementing its CAP. To date (August 2007), South Carolina has revised some of its policies, and has sent those revisions to ACF and OCR for review. South Carolina also is in the process of working on implementing its training requirements, as they are required to make significant progress on many issues within six months of signing the CAP. Other terms of the CAP extend for a year, or even up to five years after signature. We believe that the terms of the CAP, and South Carolina's work in implementing the terms, will help to ensure that South Carolina's child welfare system is accessible to all families, and provides children with an opportunity to be fostered or adopted without the barrier of discrimination.

Since the enactment of the MEPA, OCR and ACF have taken additional steps to ensure that delays or denial in the placement of a child for adoption or foster care due to race, color, or national origin are eliminated. In addition to these cases where Letters of Findings, ACF Penalty Letters, and corresponding Corrective Action Plans have been issued, there are ongoing activities in place to ensure effective MEPA compliance. OCR has conducted over 130 investigations of race, color or national origin discrimination in child welfare practice and engaged in compliance efforts in numerous cases, resulting in agreements by several state agencies to modify their practices. And ACF has, through policy statements and technical assistance, (e.g., IM-97-04, IM-98-03, 2003 Internal

Evaluation Instrument) reinforced its commitment to rigorous enforcement of MEPA. All told in terms of technical assistance through our National Resource Centers, the Administration on Children, Youth and Families has engaged States in MEPA-related compliance efforts and trainings on nearly 50 separate occasions since 1999. (NRC for Adoption – 31, and NRC on Legal and Judicial Issues – 15, since 1999).

The ability to foster or adopt a child without race, color or national origin discrimination warrants and receives our uninterrupted 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 making foster care and adoption placement decisions. We similarly respond to State and other inquiries about MEPA on a regular basis.

The enforcement action and penalties taken by the MEPA enforcement agencies of the U.S. Department of Health and Human Services ups the ante in a way that agency directors and agency workers are not likely to disregard. The mandated penalties for MEPA violations are steep, and cut into the Federal funds upon which States depend to operate their child welfare systems.

Our recent MEPA enforcement actions against Hamilton County, Ohio and South Carolina, in combination with other broad, Nationwide technical assistance efforts have certainly increased States' knowledge and awareness of what is and is not acceptable legal practice.

The Commission has inquired about whether MEPA has been effective in terms of reducing the amount of time children spend in foster care. I will address that issue now. The Multiethnic Placement Act legislation was enacted, in part, to prevent children from languishing in out-of-home care while foster or adoptive parents of the same race were found. So when we start to look at whether the enactment of MEPA has reduced the amount of time minority children spend in foster care or wait to be adopted, it is important to keep in mind the laws broad intended focus, which was to remove and eliminate discrimination in child welfare.

The Adoption and Foster Care Reporting System (AFCARS) collects case level information on all children in foster care for whom State child welfare agencies have responsibility for placement, care or supervision, and on children who are adopted from the State's public child welfare agency. AFCARS can provide some data (e.g., the length of time in out-of-home care and the length of time to be adopted) to help clarify whether MEPA has been effective.

In order to conclude that MEPA is the primary reason there may or may not have been a decline in time to discharge and/or adoption for minority children, we first have to determine what an impact of MEPA might look like. To do that, we have to develop a definition of transracial adoption since, as you'll recall, there is no Federal definition. As I stated earlier, the Children's Bureau's (Data & Technology Division) considers a

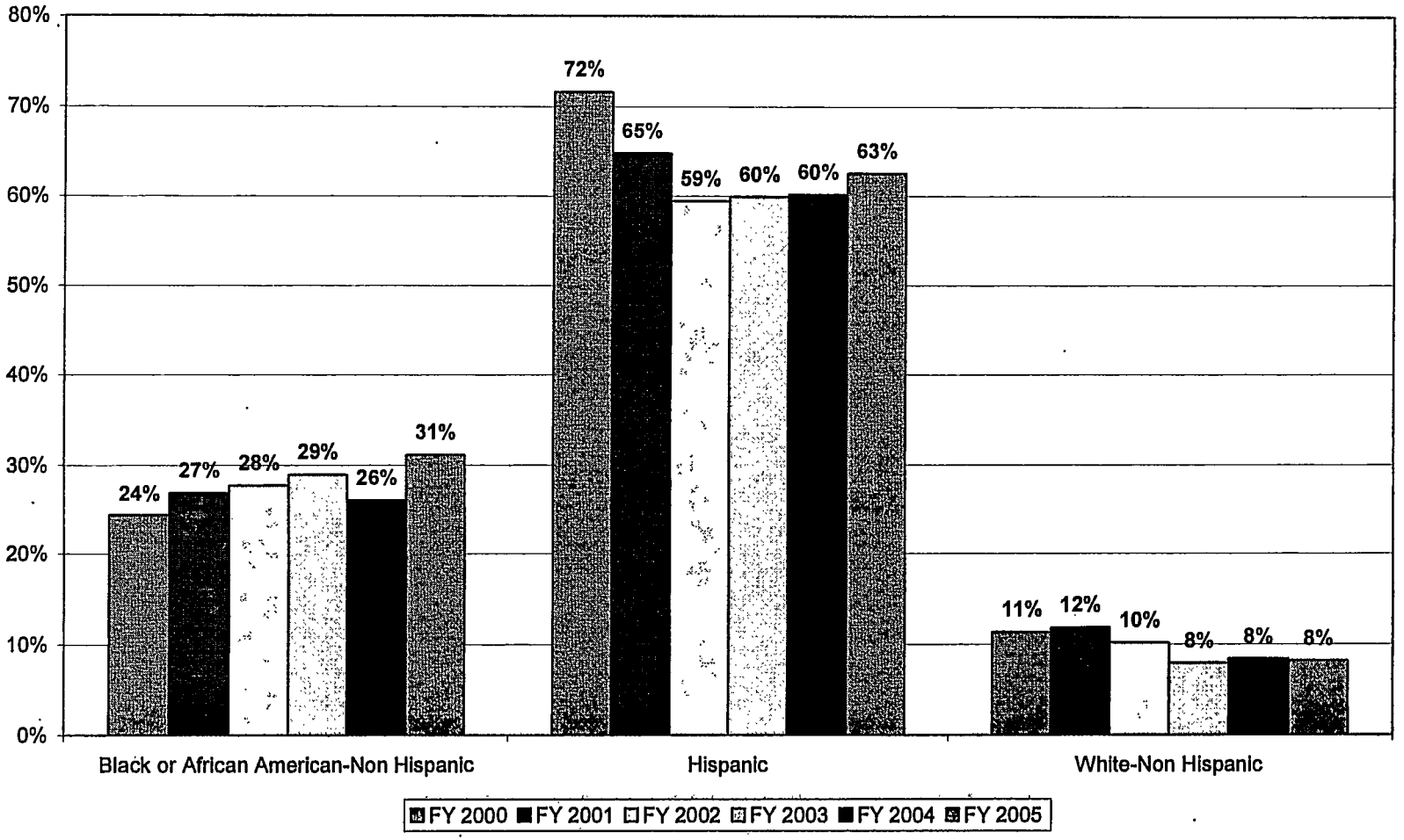
transracial adoption instances where the adoptive parents differ in at least one racial/ethnic characteristic from the adopted child.

Using that definition, the graph[3] (FIGURE 1) on the next page contains trend data for the largest racial/ethnic groups. It shows that the percentage of Black or African-American-Non-Hispanic children who were adopted by at least one parent who differed from them in at least one racial or ethnic characteristic increased between FY 2000 and FY 2005 from 24% to 31%. It decreased from 72% to 63% for Hispanic children, and decreased for White non-Hispanic children from 11% to 8%.

[3] Based on data submitted by states as of January 2007 Source: AFCARS data, U.S. Children's Bureau, Administration for Children, Youth and Families

FIGURE 1

Trend in the Percentage of Children Adopted by at Least One Parent Who Differed from Them In at Least One Racial/Ethnic Characteristic



The next two graphs[4] (FIGURE 2: "Trend in Average Number of Months to Discharge" and FIGURE 3: "Trend in Average Number of Months to Adoption for Largest Racial/Ethnic Groups") show the trend in length of stay to discharge and, specifically, to adoption for the largest racial/ethnic groups. For clarity's sake, when a child welfare agency no longer has care and placement responsibility for the child, the child is considered "discharged" from foster care.

Discharge can occur as a result of a variety of reasons, including:

- reunification with parents or primary caretaker(s) – the child was returned to his or her principal caretaker(s) home;
- living with other relatives – the child went to live with a relative other than the one from whose home he or she was removed;
- adoption – the child was legally adopted;
- emancipation – the child reached majority according to State law by virtue of age, marriage, etc.
- guardianship – permanent custody of the child was awarded to an individual;
- transfer to another agency – responsibility for the care of the child was awarded to another agency (either in or out of the State);
- runaway – the child ran away from foster care placement;
- death of child – the child died while in foster care.

The average time to discharge for Black or African-American non-Hispanic children has declined by four months from FY 2000 to FY 2005, by two months for Hispanic children, and has not declined at all for White non-Hispanic children. The average time to adoption has declined by eight months for Black or African-American children, seven for Hispanic children, and six for White non-Hispanic children.

[4] Based on data submitted by states as of January 2007 Source: AFCARS data, U.S. Children's Bureau, Administration for Children, Youth and Families

FIGURE 2

Trend in Average Number of Months to Discharge

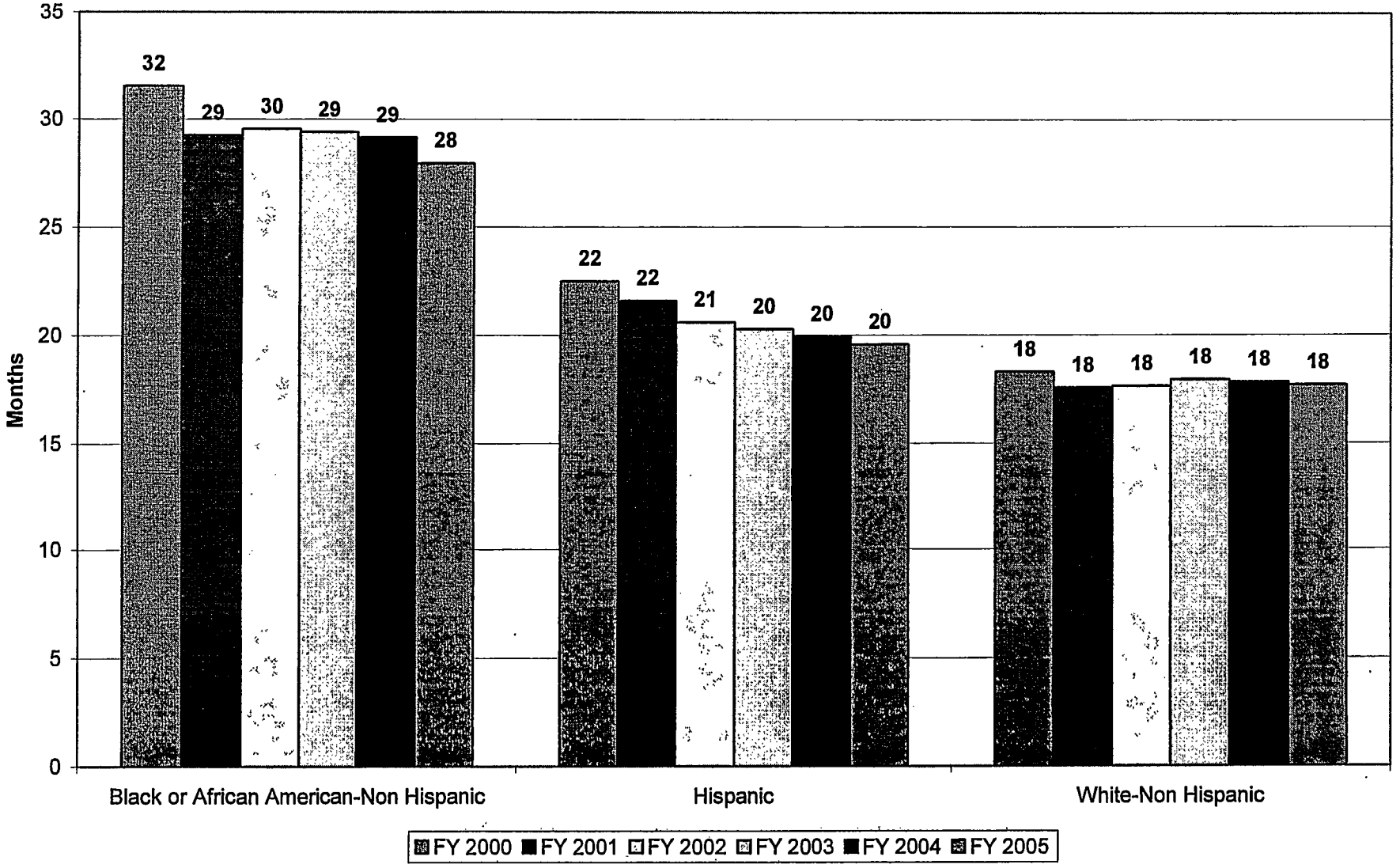
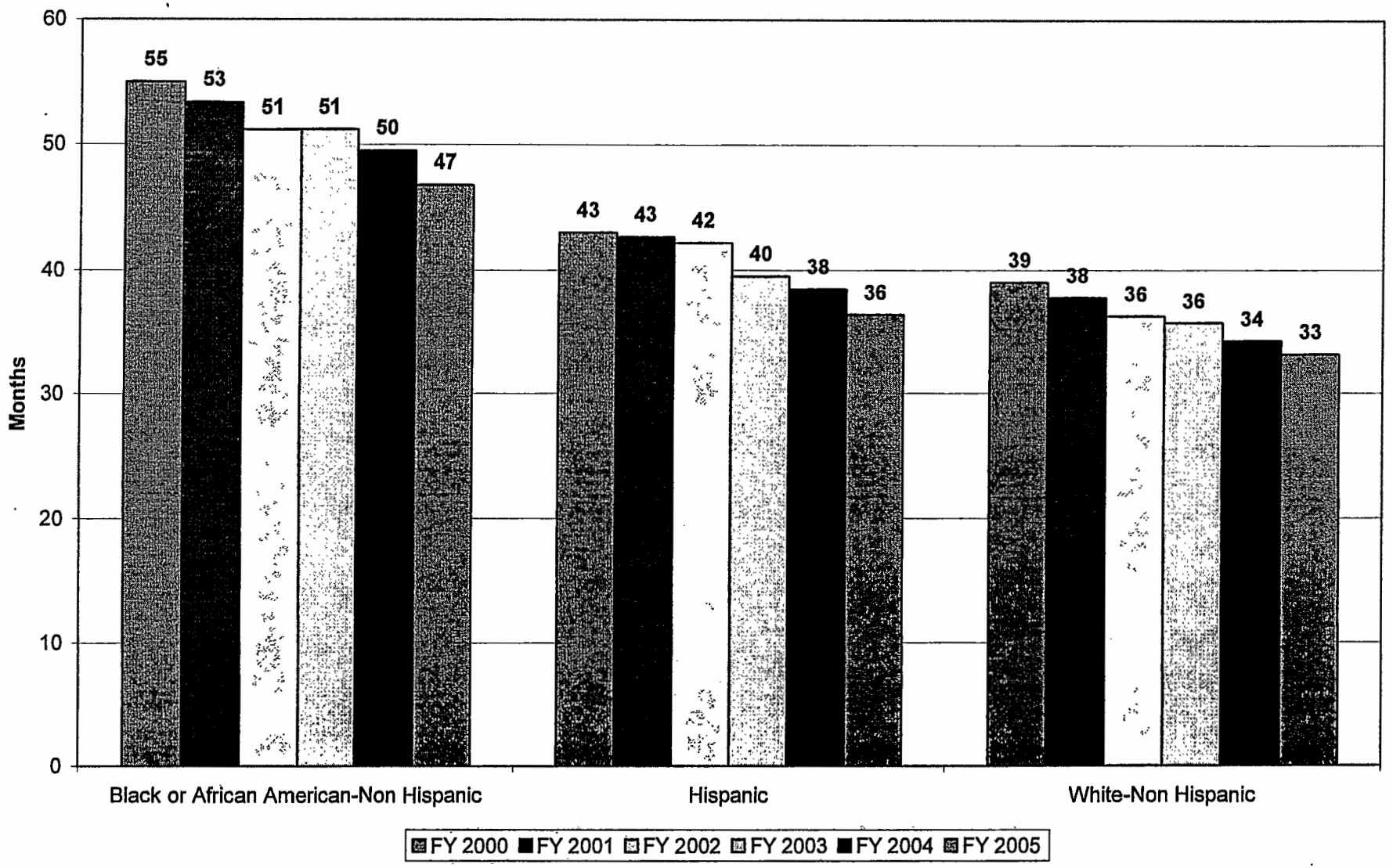


FIGURE 3

Trend in Average Number of Months to Adoption for Largest Racial/Ethnic Groups



General Comments/Conclusion

We are unable to conclude that the declines for the Black or African-American non-Hispanic and Hispanic children are solely a result of MEPA, given that the direction of the percentage change in transracial adoptions were different for Black or African-American non-Hispanic children and Hispanic children (i.e., increase for Black or African-American non-Hispanic Children and decrease for Hispanic children). But it is likely that MEPA is at least one of the causal factors in this encouraging outcome.

In addition, one would need to account for the independent effects of the Adoption and Safe Families Act (ASFA) on these declines in length of stay, as it is likely that the extent of these declines, especially when compared to the trend for White non-Hispanic children, is a result of how much longer their lengths of stay were compared to that of White non-Hispanic children to begin with. I think the only thing that can be concluded from the data is that we cannot isolate MEPA's impact on either the rate of transracial/ethnic adoption or length of stay to discharge or, specifically, adoption on White non-Hispanic children.

I want to emphasize that it quite clearly, MEPA has had an extraordinarily positive and important impact on the foster care-and adoption- experiences of *individual* children and families, but the number of children is not large enough to be produce a trend in a large national database such as AFCARS.

In addition to MEPA, ASFA, and our AdoptUsKids adoption campaign, our Child and Family Services Reviews also serve as another tool used to monitor and improve outcomes for children awaiting foster and adoptive placement decisions. The Child and Family Services Reviews (CFSR) are designed to enable the Children's Bureau to ensure that State child welfare agency practice is in conformity with Federal child welfare requirements, to determine what is actually happening to children and families as they are engaged in State child welfare services, and to assist States to enhance their capacity to help children and families achieve positive outcomes.

Each CFSR is a two-stage process consisting of a Statewide Assessment and an onsite review of child and family service outcomes and program systems. For the Statewide Assessment, the Children's Bureau prepares and transmits to the State the data profiles that contain aggregate data on the State's foster care and in-home service populations. The data profiles allow each State to compare certain safety and permanency data indicators with national standards determined by the Children's Bureau.

After the Statewide Assessment, an onsite review of the State child welfare program is conducted by a joint Federal-State team. The onsite portion of the review includes: (1) case record reviews; (2) interviews with children and families engaged in services; and (3) interviews with community stakeholders, such as the courts and community agencies, foster families, and caseworkers and service providers.

At the end of the onsite review, States determined not to have achieved substantial conformity in all the areas assessed are required to develop and implement Program Improvement Plans (PIPs) addressing the areas of nonconformity. The Children's Bureau supports the States with technical assistance and monitors implementation of their plans.

States that do not achieve their required improvements sustain penalties as prescribed in the Federal regulations. All 50 States, the District of Columbia, and Puerto Rico completed their first review by 2004. No State was found to be in substantial conformity in all of the seven outcome areas or seven systemic factors. Since that time, States have been implementing their PIPs to correct those outcome areas not found in substantial conformity. The second round of reviews began in the spring of 2007, and at the date of this briefing we have completed second round reviews with 13 states, with one more scheduled for this fiscal year, 19 in FY2008, 16 in FY2009, and 3 in FY2010.

With regard to foster and adoptive placement permanency, the CFSRs measure whether children have continuity and stability in their living situation, and whether the continuity of family relationships and connections is preserved for these children. These reviews examine in minute detail, such items as whether concerted efforts were made, or are being made to achieve a finalized adoption in a timely manner; whether children who entered foster care during the period under review were re-entering within 12 months of a prior foster care episode; and whether concerted efforts were made to maintain the child's connections to his or her neighborhood, community, faith, extended family, Tribe, school and friends.

Since MEPA legislation was passed, limited research has been published on the outcomes of transracial adoption. Overall, the studies have failed to yield significant differences in the short-term outcomes for transracial versus inracial adoptees. We strongly believe that moving a child from foster care into a permanent, loving home is an important short and long term outcome in and of itself, both for the child and for the family that adopts the child

It is intuitive to most of us that law in general and MEPA specifically does not hold within itself the means or a guarantee of its enforcement. Relying on a single person (or position), organization, or agency to enforce such a law is not only unrealistic, but counterproductive. Congress passed MEPA to make clear that a policy of race, color or national origin matching in foster care and adoption is as antithetical to our civil rights laws as other more commonly discussed forms of discrimination. The Department will continue to work towards creating and enforcing a discrimination-free child welfare system that focuses on securing loving, permanent homes for children, irrespective of race, color or national origin. But in the final analysis, it is up to all Americans, and particularly those who work with the children and families who are a part of the child welfare system, to strive to make foster care and adoption free from race, color and national origin discrimination.

Thank you for your time today, and your concern about this important issue.

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HHS/ACF Guidance Memoranda

1997: IM-97-04: Issued June 5, 1997. GUIDANCE FOR FEDERAL LEGISLATION - The Small Business Job Protection Act of 1996 (Public Law (P.L.) 104-188), Section 1808, "Removal of Barriers to Interethnic Adoption".

DHHS issued this 1997 Guidance Memorandum allowing consideration of race in some circumstances, and makes clear that race cannot be used in the normal course but only in exceedingly rare situations.

"The penalties imposed by the statute are graduated, and vary according to the State population and the frequency and duration of noncompliance. The Department has estimated that State penalties could range from less than $1,000 to more than $3.6 million per quarter, and penalties for continued noncompliance could rise as high as $7 million to $10 million in some States."

1998: IM-98-03: Issued May 8, 1998. INFORMATION ON IMPLEMENTATION OF FEDERAL LEGISLATION - Questions and answers that clarify the practice and implementation of section 471(a)(18) of title IV-E of the Social Security Act.

The General Accounting Office (GAO) conducted a study on States' implementation of the Interethnic provision of the Small Business Job Protection Act of 1996 and raised several questions. The purpose of this memorandum is to inform States, Tribes and private child placement agencies of the responses to these questions.

Internal Evaluation Instrument: In 2003, an internal self-evaluation instrument was developed by ACYF and OCR to help states assess their compliance with the Multiethnic Placement Act of 1994 and the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996.

The voluntary form is only for the use of the state and should not be submitted to the Federal government. Items guide administrators through a review of foster and adoptive parent recruitment activities, screening and preparation of prospective foster and adoptive parents, training curricula for foster/adoptive parents and staff, licensing procedures, child assessments, and the selection and placement process. Quality assurance and compliance monitoring systems also are addressed. The questions are intended to identify potential areas for discrimination or placement delays prohibited by Federal law.

J.TONI OLIVER
EXECUTIVE DIRECTOR
ROOTS, INC.....*planting seeds to secure our future*

J. Toni Oliver is President & CEO of ROOTS, INC., the first adoption agency in Georgia to focus solely on improving adoption opportunities for African American children. In addition, Ms. Oliver is President of J.T. Oliver & Associates, a child welfare training and consultation firm based in Atlanta, Georgia.

Ms. Oliver incorporated ROOTS on April 21, 1992, to address what she felt was a largely unmet, un-addressed social problem - the growing number of African American children drifting aimlessly in foster care. Currently, ROOTS serves more than 100 families PER MONTH who are actively engaged in the adoption process and has placed nearly 400 children with permanent adoptive families.

In 1999, Ms. Oliver took a two-year sabbatical from ROOTS to take a position as Program Manager for Adoptions with the Child and Family Services Agency in the District of Columbia. Under her supervision, finalized adoption services were improved and 600 adoptions were finalized, representing a 250% increase in finalized placements for the District of Columbia.

As an independent consultant and trainer with J.T. Oliver & Associates, Ms. Oliver develops training programs for public and private child welfare agencies that focus on adoptive parent recruitment, family assessment and child placement services, as they relate to children in the custody of public agencies, particularly children of color. In this capacity, she has provided training, consultation and keynote speeches for public and private agencies, parent and community groups and professional organizations in over twenty states.

For 3 ½ years, Ms. Oliver served as Director of Consultation and Training Services for the Child Welfare Institute (CWI) in Atlanta. Prior to CWI, she was the Associate Director of Training & Consultation for the National Adoption Center in Philadelphia, Pennsylvania. She has been a board member and advisory council member for numerous national and local organizations, including One Church, One Child, North American Council on Adoptable Children, University of Georgia's Federal Child Welfare Training Grant and for ten years has served as Co-Chair of the NABSW National Foster Care & Adoption Task Force and she has received numerous recognitions and awards for her work in the field of child welfare. In 2004 she received the Black Administrator of the Year Award from the Black Administrators in Child Welfare. In September of 2004, Ms. Oliver taught a three week course on non-profit management at the Georgian Institute of Public Affairs in Tbilisi, Republic of Georgia for the University of Georgia's Institute of Governmental Affairs. In 2005, Ms. Oliver was selected as the 2006 Alumni Fellow for Temple University's School of Social Administration.

She is a member of New Life Presbyterian Church, Alpha Kappa Alpha Sorority, Inc and the proud parent of two daughters. Ms. Oliver holds a Bachelor of Arts in Sociology from Bennett College and a Masters of Social Work from Temple University.

MULTIETHNIC PLACEMENT ACT (MEPA) BRIEFING
U.S Commission on Civil Rights
Friday, September 21, 2007
Views presented by J. Toni Oliver, Founder, President & CEO, ROOTS, Inc.

The stated intention of MEPA was to remove barriers to permanency facing children involved in the child protective system, and intensive recruitment for underserved populations. However, although nationally adoptions doubled from 1995 to 2005, disproportionality for African American children in foster care in particular, remained unchanged. An August 2005 Congressional Research Report on Disproportionality; AFCARS (Adoption and Foster Care Analysis and Reporting System) data; Child Welfare League of America reports on Disprorportionality; Annie E. Casey Reports on Disproportionality; and most recently, a July 2007 GAO report on African American Children in Foster Care all share the same perspective and findings:

- African American children are four times more likely to be in protective custody, more likely to stay in foster care for longer periods of time and less likely to either be returned home or adopted (CWLA)
- The average African American child is not at any greater risk for abuse and neglect than the average Caucasian child. In fact, no significant or marginal race difference in the incidence of maltreatment has ever been found by the National Incidence Study (of Child Abuse and Neglect), however, African American, Hispanic and Asian/Pacific Islander children have a disproportionately higher rate of maltreatment investigations than Caucasian children.
- The average mean age of children waiting to be adopted is 7 years old (adopting.org), and 67% of the children in foster care are age 6 and over. However, the majority of children placed transracially are below age 5.
- Washington State tracked disprorportionality from 2001 and in a 2005 FY report found that the number of African American children in care longer than 2 year remained virtually unchanged and the number of Native American children in care increased.

Most agencies are so intimidated by MEPA that they avoid any discussion of race with families who are considering adopting across racial lines, leaving parents with no opportunity to discuss the impact of race and racism a child of color may experience; how to enable the child to develop safe and healthy coping mechanisms; and how to enable a child to develop a healthy racial/cultural identity. Given the opportunity for discussion, transracial adoptive parents could be better prepared to meet a child's wholistic needs. Instead, many families are caught off guard with unexpected reactions from family and friends and unwelcome and inappropriate comments and reactions from the community in general and have no idea where to go for support. After the adoption, few agencies are equipped or even welcome requests for support from families. Unfortunately there are only a few agencies/organizations in the country that recognize

the complexity of transracial adoption and proactively provide programs to assist families and adoptees resolve the issues that are inherent with such placements. The Institute for Black Parenting and NABSW's Adoption Counseling and Referral Service offer programs and support groups for parents who have adopted transracially and youth and young adults who have been transracially adopted. The North American Council on Adoptable Children and PACT, an adoption alliance in California have a parent preparation training programs for families considering adopting transracially.

MEPA appears to be couched in a belief system that transracial adoption is a viable answer to the lengthy period of time children of color wait to be adopted. However, it ignores the fact that children of color enter the child welfare system disproportionately and inappropriately and ignores the experience that all families, especially families of color experience navigating the public agency system in their quest to adopt such as the length of the adoption process and the length of the wait for a placement and being turned away if are seeking to adopt children under 4 years old (Urban Institute, National Adoption Center). Interesting, the age range of the majority of transracial adoptive placements is the age range that families of color experience the most difficulty adopting?

Poverty is rated #1 as the major factor influencing a child's entry into foster care. In spite of the wide spread acceptance and recognition of the influence of poverty, federal legislation seeks to punish poor families by taking their children; expecting them to ameliorate the conditions that caused their children to be removed from them without adequate access to and/or availability of resources and little to no support in accessing services. Since its flagship statement in 1972, the National Association of Black Social Workers has advocated for family preservation services for African American children who come to the attention of the child welfare system rather than disproportionate removal. Only recently, are we hearing this being recommendation echoed by organizations, task groups and think tanks across the country. Hopefully, the US Commission on Civil Rights will recognize that a focus on racial equity in child welfare begins with addressing disproportionality and racial disparities in every aspect of the child welfare system – beginning with entry. Focusing exclusively on the adoption ignores the racial disparities and gross systemic inadequacies that create and exacerbate the problems encountered with adoption.

Families who become involved with public child welfare services are exclusively poor families with limited to no access to supportive services. The question must be asked why are we so eager to take away children from families who need services and give the services they need to the families with whom the children are placed. In fact, the farther removed a child is from their family and a family-like setting, the more state and federal dollars go in to support those placements. A service that is much less traumatic for families; has much better permanency outcomes and a much more cost effective for federal and state budgets is family preservation (Casey Family Programs, Dorothy Roberts, Black Administrators in Child Welfare, Chapin Hall, GAO). In spite of its appropriateness and effectiveness, the trends for decades has been to allocate fewer and fewer federal and state dollars for family preservation services. The current legislative

focus and family preservations funding disincentive fuels the problems experienced with adoption services. Changing funding incentives in child welfare changes outcome and has far reaching proportions. One significant connection is that of child welfare and juvenile justice. A Child Welfare League report suggests that disproportionality in the Juvenile Justice system may have roots in child welfare in that "cultural and racial bias in child welfare decision-making may compound the problem (entry into the Juvenile Justice system) long before children reach the just system." The report goes on to say "smaller studies have confirmed that minority children in the child welfare system experience disadvantages in areas such as the range and quality of services offered, how quickly their cases are handled, the kind of support offered to their families and the eventual outcomes."

Many agencies who complain of not having a sufficient pool of prospective adoptive families of color do nothing to recruit them and at the same time, when families respond to recruitment efforts, they complain of no or sluggish follow up (Urban Institute, National Adoption Center). While MEPA has an expectation of adoptive family recruitment of prospective parents reflective of the racial and ethnic diversity of children in care, to be effective this expectation should require documentation of recruitment efforts, documentation of the number of families recruited; documentation of the number of recruited families who begin the adoption process and documentation of the number of recruited families who receive adoptive placements.

MEPA assumes the answer to the length of time children wait to be adopted is to promote transracial adoption; however, there is overwhelming evidence that the problem begins with disproportional entry and continues with racial disparities at every level of child welfare decision making. As such, the answer to the length of time children wait to be adoptied lies at the front door of the child welfare system (entry), not at the back (adoption). By focusing on the back door, MEPA's reality is that 13 years after its passage, children of color remain disproportionately represented in the public child welfare system, experience the longest stays in foster care and the poorest adoption placement rates.

Rita J. Simon

Rita J. Simon is a Sociologist who earned her doctorate at the University of Chicago in 1957. Before coming to American University in 1983 to serve as Dean of the School of Justice, she was a member of the faculty at the University of Illinois, at the Hebrew University on Jerusalem, and the University of Chicago. She is currently a "University Professor" in the School of Public Affairs and the Washington College of Law at American University.

Professor Simon has authored 38 books and edited 19 including: *Immigration the World Over* with James P. Lynch, Rowman and Littlefield, 2003; *In Their Own Voices* (with Rhonda Roorda), Columbia University Press, 2000; *Adoption Across Borders* with Howard Altstein, Rowman and Littlefield, 2000; *In the Golden Land: A Century of Russian and Soviet Jewish Immigration*, Praeger, 1997; *The Ambivalent Welcome: Media Coverage of American Immigration* (with Susan Alexander), Praeger, 1993; *New Lives: The Adjustments of Soviet Jewish Immigrant in the United States and Israel*, Lexington Books, 1985; *Women's Movement in America: Their Achievements, Disappointments, and Aspirations (*with Gloria Danzinger*)*, Rowman and Allanheld, 1986; *Rabbis, Lawyers, Immigrants, Thieves; Women's Roles in America,* Praeger, *1993; Continuity and Change*; *A Study of Two Ethnic Communities in Israel*, Cambridge University Press, 1978; *The Crimes Women Commit, The Punishments They Receive* (with Jean Landis), Lexington, 1997; *Adoption, Race and Identity* (with Howard Alstein), Praeger, 1992; *The Case for Transracial Adoption* (with Howard Alstein and Marygold Melli), American University Press, 1994.

She is currently editor of *Gender Issues*. From 1978 to 1981 she served as editor of *American Sociological Review* and from 1983 to 1986 as editor of *Justice Quarterly*. In 1966, she received a Guggenheim Fellowship. Since 1933, Professor Simon has served as President of the Women's Freedom Network.

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Background: Ms. Spears brings 27 years of child welfare practice and senior management experience to her role as Vice President leading CWLA's work in public relations, publications, and fund development. She previously served as CWLA's Associate Vice President for Programs, Director of Child Protection, and Senior Consultant assisting public and private agencies with program and practice improvement, agency management and accountability. **Prior to joining CWLA in 1992, Linda served as the Director of Field Support with the Massachusetts Department of Social Services overseeing agency-wide services including placement, family preservation, child protection, domestic violence, housing, permanency planning and adoption, child care, cultural competence, health care, and Indian child welfare.** **She is treasurer for The Family Violence Prevention Fund, a national organization concerned with violence in the lives of women and children. Linda has published several works on domestic violence and child welfare and was awarded the Pioneer Award for her innovative working integrating services to women and children who are victims of violence.** **Because of her depth of knowledge and breadth of experience, Linda has emerged as a key national spokesperson on today's child welfare issues. She has testified before Congress and been interviewed multiple times on national television, including CNN, Fox News, WRC-TV, and KSTP-TV.**

BRIEFING

THE MULTIETHNIC PLACEMENT ACT:

MINORITY CHILDREN IN STATE

FOSTER CARE AND ADOPTION

UNITED STATES

COMMISSION

ON

CIVIL RIGHTS

September 21, 2007

2345 Crystal Drive, Suite 250, Arlington, VA 22202
Phone 703-412-2400; Fax 703-412-2401; www.cwla.org

The Child Welfare League of America (CWLA), representing public and private nonprofit, child-serving member agencies across the country, is pleased to participate in the briefing before the U.S. Commission on Civil Rights.

CWLA is an association with approximately 700 public and private nonprofit agencies drawn from all fifty states. These agencies assist more than 3.5 million abused, neglected, and vulnerable children and their families each year with a range of services. Our highest mission is to ensure the safety and well-being of children and families. We advocate for the advancement of public policy, we set and promote the standards for best practice, and we deliver superior membership services.

The CWLA vision is that every child will grow up in a safe, loving, and stable family. CWLA will lead the nation in building public will to realize this vision. We are committed to excellence in all we undertake, with an emphasis on providing services that are highly valued and that enhance the capacity and promote the success of those we serve.

As part of our mission we have developed a series of standards for the range of services and programs that make us our nation's child welfare system. It is our goal that these standards along with our other work and services will help to improve the practice in the child welfare field and ultimately will improve the lives of the millions of children and families that our touched by the child welfare system.

CHALLENGE FOR THE MULTIETHNIC PLACEMENT ACT

The Multiethnic Placement Act (MEPA) was enacted in 1994 with a goal to promote the best interests of children by ensuring that they have permanent, safe, stable, family and home. This has been a great challenge in a system that includes more than 509,662[1] children in foster care on a given day and when approximately 117,436[2] are awaiting adoption.

Of particular concern are the African American and other minority children who are dramatically over-represented at all stages of this system. The debate and concern in 1994 was that children were being denied placements due to an over reliance on policies that emphasized placements that take into account the racial and ethnic makeup of the prospective adoptive family. MEPA prohibited the use of a child's or a prospective parent's race, color, or national origin to delay or deny the child's placement and required diligent efforts to expand the number of racially and ethnically diverse foster and adoptive parents. MEPA was signed into law in 1994 and later amended to clarify its intent.

As summarized by the American Bar Association3 MEPA requires three basic actions by states:

1. It prohibits states and other entities that are involved in foster care or adoption placements, and that receive federal financial assistance under title IV-E, title IV-B, or any other federal program, from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective parent's race, color, or national origin;

2. It prohibits these states and entities from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent's or the child's race, color, or national origin; and

3. It requires that, to remain eligible for federal assistance for their child welfare programs, states must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes.

Since the 1970s, the number of Caucasian infants available for adoption has sharply declined in the U.S. Although U.S. agencies continue to provide adoption services for infants, this group now constitutes but a small part of the population of children in need of adoption planning and services. By contrast, the number of children in the nation's out-of-home care who need adoption has grown tremendously. As a result of a range of social conditions and policy changes, an increasing proportion of children in care have the goal of adoption. At the same time, these children typically have a range of challenging needs, including prenatal exposure to alcohol and other drugs, medical fragility, a history of physical or sexual abuse, or membership in a sibling group. Thousands of older children, for whom agencies traditionally have had difficulty finding placements, also await adoptive families. Children of color continue to be disproportionately represented in out-of-home care as well as among the children waiting for adoptive families.

You have asked us here today to address a number of important issues in regard to the multiethnic Placement Act (MEPA). Specifically you have asked:

(1) Whether the enactment of MEPA has removed barriers to permanency facing children involved in the child protective system;
(2) Whether transracial adoption serves the children's best interest or does it have negative consequences for minority children, families, and communities;

(3) How effectively the Department of Health and Human Services (HHS) is enforcing MEPA;
(4) The impact HHS' enforcement of MEPA has had on the efforts of prospective foster care or adoptive parents to adopt or provide foster care for minority children; and
(5) Whether the enactment of MEPA has reduced the amount of time minority children spend in foster care or wait to be adopted.

FRAMEWORK FOR ADDRESSING PLACEMENT ISSUES

A recent analysis by the Government Accountability Office (GAO) found that while African American children made up less than 15 percent of the overall child population based on 2000 census data, they represented 27 percent of the children who entered foster care in 2004. The GAO also found that in that same year African American children represented 34 percent of the children remaining in care at year's end. [4]

Perhaps more startling is the GAO finding that African American children not only were more likely to be placed in out of home care but that each decision point in the child welfare process this disproportionality or over representation grew. In some areas of the country this overrepresentation could also be found among Native American children and Hispanic populations depending on the county or state.[5]

In this light it is important to review not just that part of the child welfare system that deals with placements but to examine the entire child welfare system and services from the initial assessment provided through the protective services process, the provision of prevention services, intervention services, the placement process as well as the follow up and provision of post placement services.

Has the MEPA removed barriers to permanency? Has MEPA reduced the time minority children spend in foster care or wait to be adopted?

In recent years we have made progress in reducing the number of children in out of home care. Nationally the number of children in care has been reduced from 562,712 in 1999 to 509,662 in 2004.[6] Despite this decline, barriers to permanency remain and can be quite extensive. This is true for African American children and in particular parts of the country or parts of a state this barrier to permanency extends to some Hispanic and tribal populations.

An examination of the data shows that on September 30, 2004 there were 509,662 children in out-of-home care. Of these children

approximately 34 percent were African American and 40 percent were white.[7]. Overall, children were in care for an average of 30 months with a median of 17 months.[8] African American children were in foster care significantly longer than all children of other races. Specifically, African American children spent on average, about three years in foster care, while white children spent, on average about two years in foster care (Table 1)

Table 1. Length of Time in Out-of-Home Care, 2004[4]

Race/Ethnicity of Children in Care	Mean (months)	Median (months)
African American	39.4	22.8
American Indian/Alaska Native	26.1	15.0
Asian	26.0	15.2
Hispanic	28.7	16.4
Native Hawaiian/Pacific Islander	21.9	14.0
White	23.5	13.6
Two or More Races	23.4	14.6

Due transracial adoptions serve the children's best interest, or does it have negative consequences?

The Child Welfare League of America firmly believes that the best interest of the child must be paramount in any decisions that surround placement and the provision of services. The CWLA Standards of Excellence for Adoption Services in section 5.2 Role of Ethnicity and Culture in Selecting an Adoptive Family for a Child states,[9]

> *"When consistent with the child's best interest, the agency providing adoption services should honor the birth parents' request that a family of the same race or ethnic background adopt the child. The child's adoption, however, should not be denied or delayed if the agency is unable to recruit adoptive parents of the child's race or culture and adoptive parents of other cultural or racial groups are available.*
>
> *All children deserve to be raised in a family that respects their*

cultural heritage. [1.15]

In any adoption plan, the best interests of the child should be paramount. All decisions should be based on the needs of the individual child. [1.11]

If aggressive, ongoing recruitment efforts are unsuccessful in finding families of the same race or culture as the child, other families should be considered to ensure that the child's adoptive placement is not delayed.

Assessment and preparation of a child for a transracial/ transcultural adoption should recognize the importance of culture and race to the child and his or her experiences and identifications. The adoptive family selected should demonstrate an awareness of and sensitivity to the cultural resources that may be needed after placement."

We cannot make a general judgment that applies to all families and to all children. Determining what is in the best interest of an individual child and matching those needs with the capacities of prospective families involves a complex array of factors which are best guided by what we know through research and outcome evaluation. Since MEPA legislation was adopted limited research has been published on the outcomes of transracial adoptions. Within this limited body, the findings have been mixed and sometimes contradictory. In addition, the research focuses on children and young adults; thus little can be concluded about the long term effects of transracial adoption. Overall, the studies have failed to yield significant differences in the short-term outcomes for transracial versus in racial adoptees.

A review of the research does find positive outcomes for transracial adoptees. Transracial adoptees of color were no more likely to engage in negative social behaviors than white in racial adoptees. For example, they are no more likely to run away or use drugs. Studies also show that transracial adoptees have exhibited academic competence, another sign of positive well-being. Attributes other than race of the adoptive parents need to be examined as well. For example, when African American transracial adoptees live in integrated neighborhoods, attend integrated schools, and have parents who accept and address the race of their child, they have stronger racial identity than adoptees that live in predominately white neighborhoods and attend primarily white schools. Finally adoptive families who encourage and support the culture and heritage of the child as well as that of the adoptive family, and the child feels part of both cultures and heritages, show no significant differences compared to their white, in racial adopted peers.[10,11,12,13,14]

Having cited these studies there is also some evidence of negative outcomes. Studies have shown that transracial adoptees developed their racial identity differently from in racial adoptees. When transracial; adoptees fail to identify with the culture if their adoptive parents, they experience greater psychological distress. Transracial adoptees, particularly African American adoptees, developed adjustment problems when they experienced discrimination and discomfort with their appearance. Finally if the adoptive parents fail to address the issues regarding the differences in race and culture of the adoptee and the adoptive family, the adoptee experienced appearance anxiety lasting through adulthood. [15,16,17,18]

How effective is HHS in enforcing MEPA?

We understand that HHS is responding to reports of MEPA violations, and that it is working with the National Child Welfare Resource Center on Adoption to prepare additional training for States regarding MEPA. It also our understanding that violations in MEPA policy and practice are noted during their reviews of State programs through the Child and Family Service Reviews (CFSR's) and Title IV-E reviews.

What is the impact HHS' enforcement on the efforts of foster and adoptive parents to adopt or provide care for minority children?

It is difficult to ascertain the impact of the HHS role in the enforcement of MEPA and in turn that laws impact on children and families in the child welfare system. In large part that is because the challenges are much greater than the policies around adoption and placement.

In seeking to address this issue several elements are involved. A recent analysis by the Congressional Research Services (CRS) found that overrepresentation of children of color was found at several points of the child welfare system from entry to exit.[19] As CRS noted:

> *"Research and other data suggest that investigations of alleged child maltreatment are more likely to involve Black children as potential maltreatment victims and that, compared to their presence in the general population, black children are disproportionately represented among the children who are found to be victims of child maltreatment. The rate of White victims of child abuse or neglect was 11.0 per 1,000 White children in the general population while the comparable rate for Black children (as well as American Indian/Alaska Native children) were significantly more likely to be among the foster care cases reviewed than to be among the in-home cases reviewed. In sum, the disproportionate*

representation of Black children at several entry decision points is consistent with their disproportionate representation among the population entering foster care.

At the same time, at least one large five-state study has shown that the race/ethnicity of victims is largely in proportion to the population of children investigated. This suggests that the community of reporters, (e.g., family, friends, and neighbors, and social service, medical and school personnel) tends to over-report Black children but that once the decision to investigate is made, race/ethnicity is not an important factor in the determination of maltreatment. Nonetheless, because Black children are over-represented in the population of children investigated, a proportionate victim determination means Black children will make up a larger share of child maltreatment victims than their share of the general child population."

The Congressional study also found that decisions to provide services or to provide services in home as opposed to out of home care was also disproportionate. The CRS also found: 20

"Separate analysis of NCANDS data that looked at race/ethnicity, area poverty rate, and age in relation to removals, found that the risk of removal was highest for all income groups and race/ethnicities for children under age one. At the same time, Black infants living in counties with high poverty rates had a removal rate of 50 per 1000 black children in the population. This appears to leave them extraordinarily vulnerable compared to their Hispanic and White counterparts who had removal rates of 13 and 10 per 1000 children of their respective race/ethnic groups. Finally, race/ethnicity was found to vary significantly as a function of the type of case (in-home versus foster care) included in the aggregate sample of cases drawn for the initial round of Child and Family Services Reviews (CFSRs). Black children (as well as American Indian/Alaska Native children) were significantly more likely to be among the foster care cases reviewed than to be among the in-home cases reviewed. In sum, the disproportionate representation of Black children at several entry decision points is consistent with their disproportionate representation among the population entering foster care."

The CRS has also determined that some of the same barriers and problems exist at the exit point as well as the entry point as outlined here. In short the challenge of improving permanency rates cannot be address with a change in law but requires a comprehensive effort at

reform of the system. That reform must examine access to services at every step of the way.

CWLA has cited on many occasions a statistic drawn from the National Child Abuse and Neglect Data Systems (NCANS) that has been consistent for several years. Of the children substantiated as abused or neglected nearly 40 percent to not receive post-investigative services. 12. There are several factors that have an impact on this figure but it is clear, far too many children and the families they are a part of are not receiving the help that might prevent a future removal.

CONCLUSION

The challenges that the Multiethnic Placement Act seeks to address cannot be met without a comprehensive approach to the challenges we face in the child welfare system. The issues laid bare by the MEPA laws are really reflect broader concern about disproportionality across the child welfare system, and the issue of disproportionality is really the issue of a lack of national priority for the children in the child welfare system. The problems we face in our nation's child welfare system will not be solved merely with the change of a single law or a new edict. The Child Welfare League of America may be accused again of repeating what we have said in settings similar to this. So be it.

We once again argue for a more comprehensive approach to reforming and addressing the problems found in our nation's child welfare system. That must involve a greater partnership between the federal, state and local governments. That involves more federal dollars not simply the same dollars spent differently. It means an investment from the front end of prevention services when a family comes into contact with protective or other services; it means an investment in treatment services including greater access to Medicaid, substance abuse services and mental health services; it means greater investment in out of home care from more foster, adoptive and kinship families; and it means greater in financial and technical support for these families before and after permanency is obtained. It also mean investing in the development of a stronger knowledge base that guides practice and policy, and that is applied through a skilled and well-supported workforce. It means making children a national priority.

Footnotes:

1 Child Welfare League of America (CWLA). (2006). Special tabulation of the Adoption and Foster Care Analysis Reporting System (AFCARS). Washington, DC: Author. back.

2 Ibid. back

3 A Guide to The Muliethnic Placement Act of 1994 as amended by the Interethnic Placement Act of 1996

4 Government Accountability Office (GAO). (2007) *African American Children in Foster Care.* Washinton, DC, 20007 Author.

5 Ibid

6 Child Welfare League of America (CWLA). (2006). Special tabulation of the Adoption and Foster Care Analysis Reporting System (AFCARS). Washington, DC: Author. back.

7 Child Welfare League of America (CWLA). (2006). Special tabulation of the Adoption and Foster Care Analysis Reporting System (AFCARS). Washington, DC: Author. back.

8 Ibid.

9 Child Welfare League of America (CWLA). (2000). CWLA Standards of Excellence for Adoption Services

Washington, DC: Author. back.

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19 Congressional Research Service (CRS). (2005). *Congressional Research Service Memo to Representative Charles Rangel (D-NY),* Washington, DC (2006) .

20 Ibid.

8. Ibid.