

DSS

Serving Children and Families

KATHLEEN M. HAYES, PH.D.
STATE DIRECTOR

MARK SANFORD
GOVERNOR

June 28, 2007

Susan Orr, Ph.D., Associate Commissioner
Children's Bureau
Administration for Children and Families
Administration on Children, Youth and Families
1250 Maryland Avenue, S.W.
Washington, DC 20024

Dear Dr. Orr:

I have enclosed South Carolina's Corrective Action Plan for MEPA, developed in coordination with the HHS Office for Civil Rights (OCR) and the HHS Administration for Children and Families (ACF). We appreciate the cooperation and guidance of your staff and the staff of the Office for Civil Rights throughout the process of arriving at this agreement. We look forward to continued collaboration and will accept gladly your offer on behalf of ACF and OCR to provide support as we move forward.

Staff at DSS are dedicated to assuring that children and families in our adoption and foster care programs receive the highest quality services. That includes a commitment to continuous reassessment and improvement to practice and policy. Consistent with that philosophy, we put our full energy behind successful implementation of this agreement. We are committed to assuring ongoing compliance with the requirements of MEPA.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/

Kathleen M. Hayes, Ph.D.
State Director

KMH/vw



Serving Children and Families

KATHLEEN M. HAYES, PH.D.
STATE DIRECTOR

MARK SANFORD
GOVERNOR

CORRECTIVE ACTION AND RESOLUTION PLAN

of

THE SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES

[OCR Docket Number: 01-00438]

I. BACKGROUND

- A. This Corrective Action and Resolution Plan of the South Carolina Department of Social Services (SCDSS) is designed to address and resolve the violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* and its implementing regulations, 45 CFR Part 80 (collectively Title VI) and the violations of Section 1808(c) of the Small Business Job Protection Act of 1996, 42 U.S.C. § 1996b (Section 1808(c)) which the United States Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) found had been committed by SCDSS in OCR's October 31, 2005 Letter of Findings (LOF), referenced as OCR docket number 01-00438. This Plan is also designed to address and resolve the violations of Section 1808(a) of the Small Business Job Protection Act of 1996, 42 U.S.C. § 671(a)(18) (Section 1808(a)) and its implementation regulations 45 CFR 1355.38 – 39 which HHS's Administration for Children and Families (ACF) found had been committed by SCDSS in its written Penalty Letter of February 24, 2006 (Penalty Letter).
- B. OCR has the authority to conduct periodic compliance reviews to determine whether recipients of Federal financial assistance operate their programs in compliance with Title VI. (45 CFR § 80.7(a)). Pursuant to this authority, OCR initiated reviews to determine if the adoption policies and practices of SCDSS' state office and of the seven regional offices were compliant with Title VI and Section 1808(c). OCR's investigation established that SCDSS, on the basis of race, color, or national origin, was denying prospective parents the opportunity to adopt and was delaying or denying the placement of children. SCDSS also was treating children and families differently on the basis of race, color or national origin in making adoption placement decisions. Thus, OCR found that SCDSS' placement policies and practices violated Section 1808(c) and Title VI and its implementing regulations at 45 C.F.R. §§ 80.3(a), 80.3(b)(1)(i), 80.3(b)(1)(ii), 80.3(b)(1)(iv), 80.3(b)(1)(v), and 80.3(b)(1)(vi). Based upon OCR's findings, ACF issued its Penalty Letter, which adopted and incorporated the findings of OCR. The Penalty Letter delineated the manner in which SCDSS violated its state plan requirements at Title IV-E of the Social Security Act. 42 U.S.C. § 670, *et seq.*
- C. SCDSS acknowledges that, as a recipient of Federal financial assistance from ACF for its adoption and foster care program, pursuant to Title IV-E of the Social Security Act, 42 U.S.C. § 670, *et seq.* (Title IV-E), SCDSS is subject to Title VI and that it is also subject both

SCDSS Corrective Action and Resolution Plan

to the Multiethnic Placement Act of 1994 and to Section 1808 of the Small Business Job Protection Act of 1996 (Removal of Barriers to Inter-ethnic Adoption), 42 U.S.C. §§ 622(b)(9), 671(a)(18), 674(d) and 1996b (collectively MEPA). These authorities prohibit States from discriminating on the basis of race, color and/or national origin when making foster care or adoption placement decisions. These authorities also prohibit States from maintaining adoption and/or foster care policies and practices that discriminate against prospective parents or children on the basis of race, color and/or national origin (RCNO) in the placement of children. SCDSS further acknowledges that, pursuant to 42 U.S.C. §§ 671(a)(1) – (a)(7), it is the single state agency responsible for supervising the administration of the Title IV-E state plan by all of its agents, subcontractors and subrecipients that receive Title IV-E funds from ACF, through SCDSS, for the purpose of implementing SCDSS' foster care and adoption program in South Carolina.

- D. In the interest of ensuring equal access to adoption and foster care services in the State of South Carolina, SCDSS has submitted this Plan to ACF and OCR for their acceptance and approval. This Plan applies to all adoption and foster care activities of SCDSS and its successors.

II. GENERAL PROVISIONS

- A. SCDSS' Corrective Action and Resolution Plan (Plan) shall become effective on the date that the Plan has been signed by all necessary parties (the Effective Date). The Plan shall remain in effect until SCDSS no longer receives Title IV-E funds from HHS or until SCDSS receives notice from ACF and OCR that SCDSS has fulfilled all Plan requirements as discussed in Section II.I. below, except that those portions of the Plan which contain specific time limits shall expire when those time limits have expired, provided that OCR and ACF find that the tasks to be performed by SCDSS within such time limits have, in fact, been performed. SCDSS' failure to perform any of the obligations required under the Plan to be performed by it prior to the Implementation Date shall be deemed a failure of implementation of the Plan, pursuant to 45 CFR § 1355.38(c)(1), and will be cause for imposition of an additional financial penalty by ACF upon SCDSS.
- B. SCDSS expressly denies that its adoptions and foster care policies, procedures, and practices discriminate on the basis of RCNO or constitute any other wrongdoing. In the interest of assuring public confidence in the integrity of its programs, assuring continued compliance with the law, and assuring high quality services to children and families, SCDSS agrees to the terms of this plan and affirms to OCR and ACF that it will act in full and complete compliance with Title VI and MEPA. SCDSS' willingness to enter into this Plan shall not be construed as an admission of fact or evidence that the agency's policies, procedures, or practices are not in compliance with Title VI and MEPA.
- C. SCDSS' full and complete implementation of and compliance with the Plan shall resolve the compliance issues described in the LOF and Penalty Letter. The Plan does not apply to any

SCDSS Corrective Action and Resolution Plan

other Federal agency regarding compliance with applicable statutes or regulations enforced by those agencies. Nor does the Plan apply to any program that SCDSS administers over which OCR and/or ACF have jurisdiction other than SCDSS' Title IV-E adoption and foster care program. The Plan also does not preclude future OCR complaint investigations or compliance reviews of SCDSS regarding other matters arising prior to or after the Effective Date, including additional allegations of violations of Title VI and MEPA. The Plan does not preclude ACF from making future findings or penalties regarding other matters prior to or after the effective date.

- D. SCDSS shall not intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, testified, assisted, or participated in any manner in the investigation of the matters addressed in the LOF, Penalty Letter and/or the Plan.
- E. ACF and OCR may review SCDSS' compliance with the Plan at any time, either informally or through a formal compliance review. As part of such review, ACF and OCR shall be permitted to inspect premises, interview witnesses, examine and copy documents and take any other action that ACF or OCR determines is necessary to determine SCDSS' compliance with the Plan. SCDSS agrees to retain the records required by ACF or OCR to assess their compliance with the Plan for at least five years. OCR and ACF may, in their discretion, comment to SCDSS on any documents or other information submitted as specified in Section III at any time after the Effective Date.
- F. If at any time ACF or OCR determines that SCDSS has failed to fulfill any obligation or otherwise comply with any provision of the Plan, OCR and/or ACF will notify SCDSS in writing. The notice shall include a statement of the basis of the decision, and will allow SCDSS thirty (30) days to explain in writing the reasons for its actions. The time frame allowed for the response may be less than thirty (30) days whenever OCR or ACF determines that a delay would result in irreparable harm to any person. If OCR or ACF is not persuaded by the explanation, OCR or ACF shall inform SCDSS that it is in violation of the Plan and shall provide it thirty (30) days in which to cure the violation(s), or a lesser cure period if OCR or ACF state in writing that the failure to cure in a lesser time would result in irreparable harm to any person. Violations of the Plan may subject SCDSS to sanctions set forth in Title VI or MEPA or their implementing regulations authorizing enforcement or other appropriate action.
- G. If OCR or ACF determines that SCDSS has failed to cure any violation of the Plan as provided for in Section II.F. above within the thirty (30) day cure period or such lesser time as OCR or ACF may declare in its written statement informing SCDSS of the breach of the Plan, HHS may, without further notice to SCDSS, file an action in Federal Court against SCDSS for breach of contract and any other appropriate causes of action, and may seek specific performance of the subject provision of the Plan, as well as any other appropriate form of relief. In connection with such an action, SCDSS stipulates to subject matter and *in personam* jurisdiction and to venue. SCDSS hereby waives the right to file, and agrees not to

SCDSS Corrective Action and Resolution Plan

file or otherwise assert, any motion to dismiss (except for failure to state a claim upon which relief can be granted), to stay or otherwise defer such an action. SCDSS also agrees to a trial of such an action within 120 days after service of summons and the complaint or the court's earliest availability, whichever is later.

- H. OCR or ACF's failure to enforce the entire Plan or any provision thereof with respect to any deadline or any other provision therein shall not be construed as a waiver of OCR or ACF's right to enforce other deadlines and provisions of the Plan.
- I. When ACF verifies that SCDSS has completed all actions required of it by the Plan, ACF will consider all allegations of deficiencies and violations arising out of the investigation by OCR resolved and so notify SCDSS in writing. Similarly, when OCR verifies that SCDSS has completed all of the actions required of it by the plan, OCR shall consider all allegations of deficiencies and violations by SCDSS arising out of OCR's investigation as set forth in the LOF to be resolved and so inform SCDSS in writing.
- J. ACF shall determine whether SCDSS has completed all obligations required by the Plan that are to be performed prior to the Implementation Date for purposes of complying with 45 C.F.R. § 1355.38(c)(1). ACF shall notify SCDSS of ACF's determination. The determination shall not alter SCDSS' continuing obligations to comply with MEPA and Title VI as well as to comply with the terms of the Plan. Nor shall it affect OCR's and ACF's respective authority to enforce those obligations if it determines that SCDSS has engaged in post-Implementation Date actions or omissions which are not in compliance with MEPA, Title VI or the Plan.
- K. SCDSS acknowledges that, pursuant to Title IV-E, it is required to have a single state Title IV-E plan and that such plan must be in effect in all of South Carolina. SCDSS also acknowledges that, pursuant to Title IV-E, it is required to monitor and conduct periodic evaluations of activities carried out pursuant to its Title IV-E plan. Consequently, SCDSS acknowledges that, pursuant to Title IV-E, it is responsible for ensuring that all employees and subrecipients of any and all SCDSS adoption and foster care offices fully comply with all aspects of Title IV-E and its implementing regulations, as well as with any state administrative rule or policy adopted by SCDSS prior to and still in effect and pursuant to the Plan, when such rule or policy pertains to the adoption or foster care placement activities. SCDSS acknowledges that, pursuant to Title VI, it is responsible for preventing discriminatory conduct in its Federally assisted program whether the program is conducted directly by SCDSS or by subrecipients.
- L. This Plan is a public agreement and there are no restrictions on the release or publication of the Plan or terms of the Plan. A copy of this Plan and all reporting data SCDSS generates to comply with this Plan shall be made available to any person in accordance with law. SCDSS shall provide a copy of this Plan to any person upon request.

SCDSS Corrective Action and Resolution Plan

M. The following terms shall bear the definitions set forth below throughout the Plan:

- “Effective Date” shall be the date of the last signature in Section IV of this Plan.
- “Implementation Date” shall be the date six months after the Effective Date.
- “Offices” shall refer to all SCDSS’ offices that place children in either adoption or foster homes.
- “Subrecipients” shall refer to any private child placing agency which receives Federal financial assistance from SCDSS to provide adoption or foster care placement services, including, but not limited to, creating home studies.
- “Standard Review Process” shall refer to any review process required by this Plan which requires approval by both OCR and ACF prior to the Implementation Date. After SCDSS submits any such materials for review, OCR and ACF shall have the opportunity to review the materials. If either ACF or OCR does not approve the proposed materials, SCDSS must revise them and resubmit them for approval. This process shall repeat itself until both ACF and OCR approve the materials. Once any materials subject to the Standard Review Process have been approved by both ACF and OCR, the materials will be attached to the Plan and the terms of the materials will be incorporated by reference herein.

N. SCDSS acknowledges that both OCR and ACF have jurisdiction over SCDSS for purposes of enforcing the Plan. OCR’s jurisdiction arises from Title VI and from Section 1808(c). ACF’s jurisdiction arises from Section 1808(a) and (b).

O. All provisions in this Plan are severable. Should any provisions of the Plan be held invalid by a court of competent jurisdiction, all other provisions shall be deemed to remain in force.

P. This Plan may be amended upon written consent of ACF, OCR and SCDSS.

III. SPECIFIC PROVISIONS

A. SCDSS Policies and Procedures, Forms and Materials

1. Prior to the Implementation Date, SCDSS shall implement and publish policies and procedures which explicitly provide that RCNO may not be used in the adoption or foster care placement process except when such use is determined through individual assessment to meet the best interests of the child. SCDSS shall require any such individualized assessment of a child's particular needs to be conducted by a licensed professional, who is not an employee of SCDSS, a subrecipient or an employee of a subrecipient. A "licensed professional" may be a child psychologist, child psychiatrist, clinical social worker or similar professional. A "licensed professional" must also sign an acknowledgment of having received a written explanation of, and of having had the opportunity to obtain technical assistance from the Plan Monitor, regarding MEPA and Title VI as it applies to foster care and adoptive placements. A draft of the policies and procedures, the written explanation of MEPA and Title VI to be provided to the "licensed professionals" and the form that shall be signed by the "licensed professional" and subsequently submitted to SCDSS shall be submitted to OCR and ACF for their approval through the Standard Review Process prior to the Implementation Date, and, once approved, the aforementioned materials will be attached as Exhibit 'A' hereto and the terms will be incorporated by reference herein. When finding that RCNO must be considered, the licensed professional must submit written materials to SCDSS that describe the individualized reasons that the agency should consider RCNO, how doing so is in the best interests of the child and why doing so is the only way to achieve the best interests of the child. SCDSS shall submit the written materials to OCR and ACF within seven business days for review and comment.
2. Prior to the Implementation Date or as specified in these sub-parts, SCDSS shall have reviewed all of its adoption and foster care policies and procedures, forms and other materials to determine whether these materials either impermissibly use RCNO or create a danger that RCNO could be used impermissibly. Prior to the Implementation Date or as specified in these sub-parts, SCDSS shall create and implement new policies and procedures or forms and materials as follows:
 - a. SCDSS will rewrite and clarify policies and procedures prohibiting the impermissible consideration or use of RCNO in making adoption and foster care decisions. SCDSS will rewrite and clarify policies and procedures prohibiting the use of culture as a proxy for race, color or national origin in making placement decisions.
 - b. SCDSS will cease collecting and acting on birth parents' preferences concerning the race, color or national origin of adoptive parents. SCDSS will rewrite all forms, policies and procedures and clarify policies and procedures to reflect this change. SCDSS will continue to follow its policy of not collecting or considering birth parent preferences concerning RCNO of foster parents.

SCDSS Corrective Action and Resolution Plan

- c. SCDSS will modify DSS Form 30103, 10/01; DSS Form 3008; and DSS Form 1575. Modification of forms should include a notice on the form which solicits parental preferences that SCDSS cannot and will not consider birth parents' race, color or national origin preferences in placing their child.
- d. SCDSS will cease subjecting families willing to adopt or foster a child of a different RCNO to differential treatment, including extra scrutiny. SCDSS will rewrite all policies, forms and procedures as necessary to reflect this change.
- e. SCDSS will place a notice which has been approved by OCR/ACF on the front of all active adoptive and foster family files instructing that information in the family assessment regarding RCNO shall be disregarded. No later than one year after the effective date, SCDSS shall ensure that all active family assessments have been rewritten without regard to RCNO or redact all information from family assessments with regard to RCNO. After the Implementation Date, if a closed file is reopened, SCDSS shall affix the aforementioned notice to the front of the file, and SCDSS shall rewrite or redact the family assessment, as appropriate, within 15 days of the date the file is reopened. SCDSS will modify policies and procedures as necessary to prevent impermissible use of RCNO in future family assessments. SCDSS will notify subrecipients of these requirements and will monitor to assure their compliance. The Plan Monitor will spot check to determine if these policies and procedures are being followed.
- f. SCDSS will rewrite and clarify policies about using racial preferences of children.
- g. For every family taken to any placement committee where two or more sets of prospective adoptive parents are being considered, Adoption Specialists will be required to clearly articulate and document in the case record the reasons another family was considered more appropriate to adopt a child. Explanations shall include the needs of the child and why another family could better meet those needs than the denied family. Whenever a family of the same RCNO as the child is chosen over a family of a different RCNO from the child, the placement committee will notify the Plan Monitor and provide the Monitor with relevant documentation from the placement committee. Policies and procedures will be modified as necessary. Under existing SCDSS policy and practice, SCDSS does not take foster care placements to a placement committee, so this sub-part ("g") does not apply to foster care placements. If this policy and practice should change, the requirements of this sub-part ("g") shall apply to foster care placements.

The amended draft of these materials along with a copy of the original materials shall be submitted to OCR and ACF for approval through the Standard Review Process no later than 30 days prior to the Implementation Date. Once the materials have been approved by ACF and OCR, the materials will be attached as Exhibit 'B' hereto and the terms will be incorporated by reference herein.

3. Prior to the Implementation Date, SCDSS shall have reviewed all of its adoption and foster care administrative rules, regulations, policies and procedures, forms and guidelines to determine whether they conform with MEPA and Title VI and this Plan.

SCDSS Corrective Action and Resolution Plan

SCDSS shall submit to OCR and ACF a statement indicating SCDSS' conclusion as to the compliance of each such rule, regulation, policy, form and guideline. If SCDSS has determined that any of its rules, regulations, policies, forms or guidelines are not fully in compliance with MEPA and/or Title VI or this Plan, or that clarification regarding the impermissible use of RCNO is necessary, SCDSS shall submit to OCR and ACF a copy of the original item and a copy of the proposed amendatory language designed to clarify the item or to bring it into compliance. OCR and ACF shall review the proposed amendatory language in accordance with the Standard Review Process. Once approved, the amended materials will go into effect prior to the Implementation Date. Once the materials have been approved by ACF and OCR, the materials will be attached as Exhibit 'C' hereto and the terms will be incorporated by reference herein.

4. For five years following the Implementation Date, any amendment by SCDSS to any policies or procedures which pertains to the adoption or foster care placement process shall be submitted to OCR and ACF for review and comment prior to the implementation of the policy. To the extent, if any, that either OCR or ACF wish to comment about the amendment within a thirty (30) day clearance period, they may do so. Nothing in this Plan shall be construed to bar OCR and/or ACF from commenting about any proposed or actual policy at any time prior to or after its adoption as to the policy's compliance with Title VI and/or MEPA.
5. Prior to the Implementation Date, SCDSS shall notify all subrecipients in writing about the fact, substance, and findings of the LOF and Penalty Letter. SCDSS shall make the subrecipients aware of plans and requirements for training. SCDSS shall advise subrecipients of activity undertaken by SCDSS to achieve compliance with MEPA and Title VI. SCDSS will develop a comprehensive handout that instructs subrecipients about MEPA and Title VI compliant practice and provide this to subrecipients prior to the Implementation Date. SCDSS will develop a form for subrecipients to sign, verifying they have received the handout. SCDSS will keep the original signed form. SCDSS must ensure that subrecipients are complying with MEPA and Title VI. SCDSS will amend the subrecipient contracts to include that subrecipients must train new subrecipient staff on MEPA and Title VI as they are hired.
6. OCR and ACF shall also have the right at any time to review the administrative rules, regulations, policies, forms and guidelines which SCDSS determines are in compliance with MEPA and Title VI. If OCR and/or ACF determine that any such item is not in compliance with MEPA or Title VI, OCR and ACF shall provide written notice of that conclusion to SCDSS and provide SCDSS with thirty (30) days in which to propose amendatory language that is in compliance with MEPA and Title VI, pursuant to the cure provision of Section II.F. and II.G. of this Plan, before commencing any other enforcement activity pursuant to 45 CFR Parts 80 or 1355 or Section II.G. of this Plan.

B. Establishment of a Formal Complaint Process for MEPA and Title VI Discrimination Complaints

1. Prior to the Implementation Date, SCDSS shall establish and implement administrative policies and procedures which set forth the terms of a complaint process for discrimination complaints arising out of the adoption or foster care placement process against SCDSS or its subrecipients.
2. The complaint process shall be described in an informational brochure (attached as Exhibit 'I' hereto), providing a general overview of MEPA, that shall be made available for five years after the Effective Date to all individuals who apply to be a foster care or adoptive parent. In particular, all potential adoptive or foster parents shall receive written information regarding the existence of and the operation of the complaint process with the application materials which they receive from the SCDSS office or subrecipient. These materials shall include an explicit statement that SCDSS is not permitted to discriminate against a child or family on the basis of RCNO in either the adoptive or foster placement process. They shall indicate that discrimination is prohibited in all phases of the placement process, including, but not limited to, the home study, the consideration of the family for a match with a child, and after the match has been made; and that retaliation by the agency at any point in the placement process against a family or individual that files a complaint with SCDSS, OCR or ACF regarding alleged race, color or national origin discrimination is similarly prohibited.
3. The informational brochure will include concrete examples of discriminatory practices to help adoption and foster parents understand what can constitute discrimination. Nothing in this Agreement shall require SCDSS to admit a MEPA or Title VI violation in the afore-described brochure.
4. SCDSS' complaint policies and procedures shall require SCDSS to open an investigation whenever SCDSS knows any information which suggests a possible violation of MEPA or Title VI in the foster or adoption placement process, by SCDSS or its subrecipients. Such information could include, but is not limited to, a newspaper article suggesting a violation or problem, an anonymous phone tip, or comment by staff. SCDSS shall notify OCR and ACF within 5 business days of opening an investigation required by this subpart.
5. The complaint policies and procedures shall include minimum measures to be taken in the investigation process. Minimum measures shall include interviews with all potential witnesses, interview with the complainant, and review of relevant files. The minimum measures shall also specify the content of an investigation's report of findings.

SCDSS Corrective Action and Resolution Plan

6. SCDSS' complaint process will allow any individual to file a complaint with SCDSS or with any SCDSS office. The complaint process will allow any person to file a complaint who believes that he or she, or any child, or any specific class of persons, has been subjected to discrimination based on his, her, or their RCNO. SCDSS will provide a copy of the complaint to OCR and ACF within 30 days of receipt. The status of each complaint shall be logged by SCDSS. All complaints shall be investigated by SCDSS, and a final report will be served on the complainant, the office or subrecipient, and OCR and ACF within 180 days after the complaint is received by SCDSS. SCDSS shall send a copy of the investigation findings to OCR and ACF and complainant immediately upon resolution of the complaint. No person who has filed a complaint, testified, assisted, or participated in any manner in the investigation of a complaint, shall be intimidated, threatened, coerced or retaliated against.
7. The administrative policies and procedures effecting this formal complaint process, as well as all SCDSS forms and notices required by this section, shall be submitted to OCR and ACF for the Standard Review Process. Once the complaint policies and procedures, notices and forms have been approved by ACF and OCR, they will be attached as Exhibit 'D' hereto and the terms will be incorporated by reference herein.

C. Disciplinary Policies and Procedures

1. Prior to the Implementation Date, SCDSS shall establish disciplinary policies and procedures which set forth the terms of progressive disciplinary action for any impermissible use of RCNO. The policies and procedures shall establish the procedures to be followed when an employee of the agency has been found to violate MEPA or Title VI and actions the agency will take to prevent the employee from violating MEPA or Title VI in the future. The disciplinary policies shall establish guidelines when various forms of punitive action, including termination, are recommended or required. The policies will require SCDSS to create a corrective action plan whenever a violation has occurred. For the next five years, SCDSS shall forward corrective action plans to OCR and ACF.
2. SCDSS' disciplinary policies and procedures shall also include whistleblower provisions for staff of SCDSS who report the use of RCNO by other staff in foster care or adoption placement decisions. The policies shall require SCDSS to establish procedures to protect staff who reports the use of RCNO.
3. SCDSS' policies and procedures shall be approved by both ACF and OCR in the Standard Review Process. Once the policies and procedures have been approved by ACF and OCR, they will be attached as Exhibit 'E' hereto and the terms will be incorporated by reference herein.

D. Training

1. SCDSS shall provide detailed training to all SCDSS supervisors and staff involved in foster and adoption placements. SCDSS shall also offer training to all other persons involved in the adoption and foster care placement process, including judges, lawyers, other appropriate court staff, representatives from the Foster Care Review Board and Citizen Review Panels and currently approved foster or adoptive parents. The training materials shall utilize different formats to speak to the needs of the different audiences. All trainings shall emphasize the law and relevant policy on racial discrimination, how SCDSS must apply the law and policy to its practice, the harm of racial discrimination and the harm to children who have their placements delayed or denied. Trainings should include a discussion of the available post-placement support services that SCDSS offers to parents who raise questions or concerns about parenting their child(ren), including concerns about parenting children of a different RCNO. ACF and OCR must approve all training materials. SCDSS shall submit to OCR and ACF for approval through the Standard Review process the names and curriculum vitae of all proposed trainers, as well as all training materials and training dates, no less than 45 business days before training has been scheduled. Once the aforementioned materials have been approved by ACF and OCR, the materials will be attached as Exhibit "K" hereto and the terms will be incorporated by reference herein. SCDSS may not use training materials that OCR and ACF have not approved. Along with the names and curriculum vitae of all proposed trainers, SCDSS also shall submit to OCR and ACF all publications, written opinions, presentations and other materials that each trainer has written or referenced that relate to his/her proposed training curriculum on foster care, adoption and RCNO. Prior to the Implementation Date, SCDSS shall provide training to all adoptions staff, who are employed as of the effective date of the Plan, and one-fourth of the foster care staff who are employed as of the effective date of the Plan. Prior to the Implementation Date, SCDSS will train all trainers for subrecipients that contract with SCDSS to conduct adoptive home assessments, or otherwise are involved in evaluating placements for, making placement decisions about, and/or placing children. Within one year of the Implementation Date, SCDSS shall ensure that all of its subrecipients' employees have been trained and that subrecipients document employees' training. Prior to the Implementation Date, SCDSS shall amend its contracts with all of its subrecipients accordingly. SCDSS shall train all remaining foster care staff no later than six months after the Implementation Date.
2. The trainings shall cover Title VI and MEPA and all relevant Federal regulations and policy and South Carolina laws, administrative rules, policies and practices relating to and implementing MEPA and Title VI. The trainings shall include examples of impermissible uses of RCNO applicable to the audience of the training.
3. The trainings shall include a discussion of the SCDSS disciplinary policies and procedures, including the whistleblower provisions. The training shall discuss the prohibition on retaliation against anyone who files a complaint alleging discrimination

SCDSS Corrective Action and Resolution Plan

based on RCNO, including retaliation against agency employees and against potential adoptive and foster families. The discussion of the retaliation prohibition shall include specific examples such as the prohibition on an agency short-changing a family in the amount of the adoption subsidy which the family receives for a child the family adopts because of a discrimination complaint the family has filed. The training for SCDSS staff shall also include a discussion of the prohibition against creating a hostile, aggressive and/or offensive work environment for an adoption specialist or foster care employee who complains of discrimination based on RCNO in the agency's placement process, or for an employee, such as the Plan Monitor, who is investigating potential discrimination claims.

4. Two and a half years to three years after the Implementation Date, SCDSS shall conduct a repeat training of all staff working on foster and adoption placement. SCDSS shall also again offer training for all other groups involved in foster and adoption placement mentioned in paragraph 1 of this section.
5. SCDSS shall ensure that all new staff involved in the adoption and foster care process receive the standardized training on MEPA and Title VI. SCDSS' obligation to train all new staff involved in the adoption and foster care process on MEPA and Title VI will be a continuing obligation, so long as this Plan is in effect, and will be accomplished by incorporating the approved training curriculum into the basic training program for all newly hired child welfare staff. SCDSS will incorporate the MEPA and Title VI training curriculum into the basic training program prior to the Implementation Date.
6. For five years after the Implementation date, SCDSS shall forward any proposed changes to the standardized training on MEPA and Title VI to ACF and OCR.

E. Monitoring

1. Prior to the Implementation Date, SCDSS shall begin monitoring compliance with MEPA, Title VI as it pertains to adoption and foster care placements, and with the Plan. The monitoring policies and procedures shall designate which office or official within SCDSS shall be primarily responsible for monitoring responsibilities, subject to approval by OCR and ACF. This office or official shall be considered the Monitor for purposes of this Plan. The Monitor will devote on average, for the first five years after the Implementation Date, at least fifty percent (50%) of a full-time employee's time to this assignment. The monitoring policies and procedures shall be subject to the Standard Review Process. Once the policies and procedures have been approved by ACF and OCR, they will be attached as Exhibit 'F' hereto and the terms will be incorporated by reference herein.
2. The Monitor shall have complete independence from SCDSS in conducting his or her monitoring duties and no report from the Monitor shall be allowed to be reviewed by non-Monitor SCDSS staff prior to its release. Furthermore, the Monitor shall be available

SCDSS Corrective Action and Resolution Plan

and able to speak directly with OCR or ACF about any issue pertaining to SCDSS' compliance with the Plan without consulting first with non-Monitor SCDSS staff. Retaliation by SCDSS, its agents or subrecipients against the Monitor for properly performing his or her monitoring duties shall be considered a violation of this Plan. All properly performed monitoring duties shall be protected through the whistleblower provisions of this Plan.

3. The monitoring policies and procedures shall require that the Monitor provide oversight and evaluation of SCDSS' compliance with this Plan. The Monitor shall also be required to review any proposed amendments to SCDSS' administrative rules, policy directives, training materials, etc. that pertain to adoptions and foster care, in order to comment on any compliance concerns related to MEPA, Title VI or this Plan. The Monitor shall also be required to provide technical assistance to any SCDSS office, employee or subrecipient which seeks assistance in complying with MEPA, Title VI or this Plan. The Monitor shall submit any written materials used to provide technical assistance to OCR and ACF no less than 14 business days prior to using such materials.
4. The monitoring policies and procedures shall require the Monitor to conduct a minimum number of on-site visits to SCDSS offices per year. The policies shall designate a minimum set of compliance activities which must be conducted during each on-site visit. The monitoring activities during an on-site visit shall include the following activities:
 - a. attend a sample of placement meetings;
 - b. conduct interviews of or focus groups with potential or current adoptive and foster parents;
 - c. conduct interviews of or focus groups with staff;
 - d. review a sampling of at least 10 child and 10 parent case files,
 - e. review outreach and recruitment material,
 - f. review training curriculum and documentation,
 - g. review child and family placement data,
 - h. review placement decision-making procedures and matching documents including agendas for matching conferences, minutes of matching conferences, family and children's match charts, home studies and related documents,
 - i. review documentation of grievances and complaints,
 - j. review adoption or foster care subsidy plans given to families who adopt children of a different RCNO compared to subsidies given to families who adopt children of the same RCNO, and
 - k. review all child and family case files where RCNO was considered.
5. The monitoring policies and procedures shall require the Monitor to create a Site Visit Compliance Report based on each on-site review and shall set a limited period of time in which the Monitor must complete the Report following the on-site visit. The Site Visit Compliance Report will detail all areas of compliance and noncompliance, and specify any area where corrective action and technical assistance may be needed. In summary,

SCDSS Corrective Action and Resolution Plan

the Site Visit Compliance Report will identify the following:

- a. whether the agency has employed recruitment strategies to reach all parts of each community to ensure that members of all communities are provided the opportunity to foster or adopt,
 - b. whether the agency has ensured that all placement options for children are considered and properly utilized regardless of the child or prospective parent's RCNO,
 - c. whether the agency has ensured that persons of all RCNO are given the opportunity to foster and/or adopt a child without regard to RCNO, and
 - d. whether the agency has ensured that all staff have been trained on the provisions of MEPA, Title VI and the Plan, and whether the staff can identify hypothetical situations which could constitute a violation of MEPA, Title VI or the Plan.
6. At a minimum, the Site Visit Compliance Report will include the following:
- a. the agency name and date(s) of the site visit,
 - b. the name of any person interviewed for purposes of the visit and a copy of the notes from the interview or a signed statement,
 - c. a summary of all materials reviewed,
 - d. a discussion of the recruitment of foster and/or adoptive parents,
 - e. a discussion of screening, orientation, preparation, and assessment of prospective foster and adoptive parents,
 - f. a discussion of foster/adoptive parent, contract provider(s) and staff training,
 - g. a discussion of licensing/approval of foster and/or adoptive parents,
 - h. an assessment of foster and/or adoptive children case records,
 - i. a discussion of the selection process and placement of foster and/or adoptive children, and
 - j. a discussion of quality assurance and agency self-assessment.
7. All Site Visit Compliance Reports shall be forwarded to SCDSS and a copy shall remain on file with the Monitor for five years. In the event that any Site Visit Compliance Report finds a violation, the Monitor shall forward a copy of the Report to OCR and ACF within 90 days and work with SCDSS to create a corrective action plan. For the next five years, a copy of any such plan will be forwarded to OCR and ACF for approval.
8. SCDSS shall generate annual Placement Reports, beginning one year from the Implementation Date. The reports will track adoption and foster placements according to the following racial and ethnic categories: Black (Non-Hispanic), White (Non-Hispanic), Hispanic, Asian (Non-Hispanic), Multi-racial (Non-Hispanic), American Indian/Alaska Native (Non-Hispanic), Native Hawaiian/Pacific Islander (Non-Hispanic), Unknown (Non-Hispanic). SCDSS shall generate the following reports:
- a. for adoption placements only, reports showing the average wait time for children by race and Hispanic ethnicity for the state as a whole, for each adoption office and for

SCDSS Corrective Action and Resolution Plan

- each Adoption Specialist,
- b. for adoption and foster placements, reports showing total child placements by race and Hispanic ethnicity for the state, for each office, and for each Adoption and Foster Specialist,
 - c. for adoption and foster placements, reports showing total same race and Hispanic ethnicity placements for each race and ethnic category and total placements of children to families of a different race or Hispanic ethnicity for all race and Hispanic ethnicity combinations for the state, for each office and for each Adoption and Foster Specialist,
 - d. for each Adoption and Foster Specialist, reports listing the SCDSS case number for each child placed transracially or to a different Hispanic ethnicity, the child's race and Hispanic ethnicity and the race and Hispanic ethnicity of the parents the child was placed with,
 - e. reports by state and county/regional offices of the unduplicated number of foster care and adoptive children by race and Hispanic ethnicity by year,
 - f. reports by state and county/regional offices of the foster/adoptive parents by race and Hispanic ethnicity each year,
 - g. Upon request of the Monitor, State Director, County Director, Adoption Administrator, or other administrative staff designated by the State Director, the above reports may include the names of Adoption Specialists or Foster Care Workers. These names will not appear in reports that are sent to ACF and/or OCR. The adoption or foster specialist is the caseworker of record on the date of the adoptive or foster care placement.

These reports shall be annually forwarded to the Monitor and should be used by the Monitor in performing his or her compliance activities.

For purposes of the reports described in Section III.E.8 herein, the following rules of interpretation apply. An adoptive placement occurs on the date a child is placed in a pre-adoptive or adoptive home. The average wait time for adoption placements is calculated based on the date the child's placement plan became adoption until the date of finalized adoption. The adoption or foster care specialist is the caseworker of record on the date of the adoptive or foster care placement. A foster care placement is each separate placement of a foster child into a family home, rather than an institutional placement. For purposes of Section III.E.8 of this Agreement, South Carolina may use an anonymous coding system in lieu of specifying each Adoption Specialist's name on the aforementioned reports.

9. SCDSS will provide a copy of the Placement Report to the Monitor and to OCR and ACF annually for five years. These reports will be used internally for quality assurance and agency self-assessment purposes in order to ensure that SCDSS staff are not impermissibly using race or national origin. These reports shall also be used by the Monitor in performing his or her compliance activities.

SCDSS Corrective Action and Resolution Plan

10. The monitoring policies and procedures shall require the Monitor to annually submit to OCR and ACF a detailed written report of the Monitor's work and findings as to SCDSS' compliance with MEPA, Title VI as it applies to the foster care and adoption process, and the Plan. This responsibility shall begin one year after the Implementation Date and continue for five years after the Implementation Date. The Monitor's annual report shall include a copy of and summarize all reports generated for compliance and monitoring purposes. The annual report shall also state the approximate number of hours worked on each project and provide a total number of hours spent on monitoring compliance with Title VI, MEPA and this plan. Failure to provide this report in a timely fashion shall constitute a violation of the Plan.

F. Notice

Prior to the Implementation Date, SCDSS shall:

1. Send an informational brochure that provides a general overview of MEPA, as described in Section III.B.2 (attached as Exhibit 'I' hereto), and a letter (attached as Exhibit 'J' hereto) to all persons that SCDSS can practicably contact who have applied or who have been waiting to adopt from SCDSS between September 2001 and the Effective Date.
2. Send an informational brochure that provides a general overview of MEPA, as described in Section III.B.2 (attached as Exhibit 'I' hereto), and a letter (attached as Exhibit 'J' hereto) to a sampling of all persons that SCDSS can practicably contact who have applied or who have been waiting to adopt from SCDSS between 1999 and September 2001. SCDSS will submit the proposed sampling methodology to ACF and OCR within thirty (30) days of the Effective Date for approval prior to mailing the notices.
3. Send a letter to all persons named in the LOF (see the "Individual Violations" section of the LOF). The letters (attached to this Agreement as Exhibit 'G' hereto) shall inform individuals that they may raise with SCDSS or OCR concerns about any SCDSS action that they believe was discriminatory on the basis of race, color or national origin. The letters further shall inform individuals that they may have a private right of action under Section 1808(c) and Title VI of the Civil Rights Act of 1964. The letters shall provide information about the SCDSS process for raising concerns or filing complaints about SCDSS actions potentially motivated by RCNO. The letters will provide OCR's contact information, and notify individuals that in lieu of contacting SCDSS about possible complaints, they may contact OCR. In addition, SCDSS will provide each of the individual prospective adoptive parents whose rights OCR found were violated (see the "Individual Violations" section of the LOF) with a copy of OCR's LOF (with the "Individual Violations" sections that do not pertain to their case redacted) and with information about any action undertaken by SCDSS as part of the resolution of OCR's investigation.

G. Prohibition on Retaliation

1. Prior to the Implementation Date, SCDSS shall implement policies and procedures prohibiting SCDSS and its employees from retaliating against any potential or actual adoptive or foster family, any employee, or any employee of any other agency with responsibilities regarding the care or placement of a child in the temporary or permanent custody of the agent or subrecipient, including, but not limited to, a guardian ad litem or CASA volunteer, who complains orally or in writing to SCDSS, an agent, a subrecipient, OCR, ACF, or any other governmental agency, including a state anti-discrimination agency, regarding alleged discrimination on account of the alleged discriminatory use of RCNO in the child's placement process. The policies shall contain illustrations of retaliatory conduct.
2. The retaliation policies and procedures shall be subject to the Standard Review Process. Once the policies and procedures have been approved by ACF and OCR, they will be attached as Exhibit 'H' hereto and the terms will be incorporated by reference herein.

