

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

January 5, 2000

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Stephen A. Shaw, Administrator
Division of Child and Family Services
Department of Human Resources
711 East 5th Street
Carson City, Nevada 89710

Reference: 09-99-7001

Dear Mr. Shaw:

The Office for Civil Rights (OCR), Department of Health and Human Services (HHS), has completed its review of the civil rights compliance status of the Department of Human Resources, Division of Children and Family Services (DCFS). OCR conducted this review under its authority to enforce Title VI of the Civil Rights Act of 1964 and implementing regulation, 45 CFR Part 80, and the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 (MEPA/Section 1808). Title VI and MEPA/IAP prohibit discrimination in foster care and adoption placements based on race, color, or national origin.

The review focused on whether DCFS provides individuals the opportunity to become adoptive or foster parents without denials or delays based on the race/ethnicity of the prospective parent or the child involved. OCR reviewed written policies, case records and forms, and interviewed staff. Our review indicates DCFS's current practices do not meet the requirements of MEPA/Section 1808. Our conclusions are set out below.

Policies and Procedures

DCFS's Adoption Manual provides guidelines to Children's Social Workers (CSW) on all aspects of adoption services. The language of the manual reflects the requirements of MEPA/Section 1808. The manual explicitly informs CSWs race/ethnicity is excluded from the routine factors for consideration in assessments and placement decisions. Section 701 H 2. identifies ethnic background as a factor not to be disclosed to other parties in an adoptive placement. The exclusion of "ethnicity" is an appropriate protection against ethnic matching. OCR noticed, however, "race" is not a factor not to be disclosed. DCFS should add "race" as a nonidentifying factor as this is clearly its intent. Also, Section 705 D 3. states adoptive families of different race/ethnic background from the child must be given equal consideration in placement decisions. This language promotes nondiscriminatory practices. However, a sub-

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section entitled, "Cultural/Racial Needs," invites confusion since it refers to race/ethnicity without any reference to or definition of "culture."

Several sections of DCFS's Substitute Care Manual directly contradict MEPA/Section 1808 or invite confusion about policies and practices that comply with the law. For example, Section 505 B indicates CSWs should consider culture and ethnicity factors in every assessment. Section 521 H 2., discusses placement decisions and instructs CSWs to consider first the adoptive family that has waited the longest. This requirement applies unless "race/culture is significant enough to indicate another family is more suitable." The criteria do not define "significant enough" or advise CSWs that assumptions and stereotype about race/culture are insufficient to justify a same race/ethnicity placement decision. The language does not communicate DCFS only may consider race/ethnicity in placement decisions when there is a compelling interest for the child that DCFS can articulate and defend. Also, because race is not distinguished from culture, culture could be used as a proxy for race. Chapter R200, Minority Families, seems to confuse cultural issues with race and ethnicity. DCFS has informed OCR it is aware the Substitute Care Manual requires revision but changes in staff assignments had delayed the process. OCR appreciates that DCFS already intends to revise the manual.

OCR found no evidence that DCFS has race/ethnicity neutral policies that have the effect of discrimination based on race/ethnicity. Criteria for assessment and family treatment plans appear to apply the same requirements to all regardless of race/ethnicity.

Interviews

Interviews revealed some foster care CSWs routinely seek out same race/ethnicity placements. They place children transracially only when a same race/ethnicity home cannot be found. Comments indicate they may be taking actions and making decisions which violate MEPA/Section 1808 because they are unaware of or resistant to its requirements. Foster care CSW's in southern Nevada seemed least willing to placing children transracially. Interviewees did indicate that despite their personal opinions on transracial placements, they do not move children from stable foster care placements based on race/ethnicity. Additionally, it appears that licensing staff were not knowledgeable about MEPA/Section 1808 requirements.

DCFS provided its adoption CSWs with training on MEPA/Section 1808 in 1999. OCR found that the adoption CSWs interviewed had a basic understanding of the requirements. They knew the law permits race/ethnic considerations in placement decisions only when a specific placement is under consideration for a particular child who has a compelling need for a same race/ethnicity home. Some adoption CSWs interviewed told OCR they prefer same race placements if possible. This preference could result in attempts to discourage applicants from

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adopting transracially during the home study or elsewhere in the assessment process. However, OCR found no evidence of delay or denial of an adoption request based on race/ethnicity.

DCFS currently does not have a standardized system to record special circumstances where race/ethnicity was a factor in a placement decision. MEPA/Section 1808 emphasizes individualized decision making based on the needs of the child. CSWs should document the basis of their decisions including all the factors they considered in reaching that decision. Documentation will help CSWs clarify for themselves the factors taken into consideration and the reasons for the decision. It will provide a record a supervisor or another worker can refer to in understanding the case, and it will provide evidence of appropriate action in the event DCFS is alleged to have discriminated based on race/ethnicity.

Placement Assessment Forms

The Application for Adoption 3021 - SG (8/84) form requests the applicant identify her/his race, national descent, place of birth, and hair and eye color. These factors are generally irrelevant and counterproductive to compliance with MEPA/Section 1808. CSWs could easily use this information to match children and applicants by race/ethnicity. While eye and hair color are not definitive identifiers of race, they indicate the individual's general coloration and have the potential to be used for race matching. Unless DCFS can justify these questions, it should revise the application to eliminate these factors from the requested information. DCFS may request an applicant identify the ethnicity of the children he or she is willing to consider since this information is essential to an appropriate match. Similarly, OCR noted that the list of available foster homes at the Las Vegas office identify the race/ethnicity of available families. CSWs interviewed did not know the reason for requesting this information. DCFS's request for this information without a valid nondiscriminatory reason is of particular concern to OCR given the resistance by some foster care CSWs to MEPA/Section 1808 compliance. OCR recognizes DCFS may need to obtain race/ethnic data for reporting purposes. The method used, however, must ensure the information is not used for race/ethnic matching.

File Review:

A review of specific finalized placements showed DCFS has made transracial placements. OCR found no evidence DCFS removed children from transracial foster homes to prevent bonding that could result in transracial adoptive placement requests. OCR's review was limited, but files that were reviewed did not show any adoptive placement delays that could be attributed to race/ethnic matching attempts.

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Training:

The Pre-service Training for Foster, Adoptive, Kinship Parents/Caregivers handbook includes a cultural issues section. The section appears to provide a thorough discussion of differences between race/ethnicity and culture, as well as suggestions as to how to raise children of another culture. This handbook can be an effective tool to promote self-awareness by all prospective parents of cultural issues that may influence good parenting. In contrast with the handbook, DCFS's module on transracial adoption, African-American Children, makes no distinction between race and culture. The module appears to make broad generalizations about race and culture that are counterproductive to a nondiscriminatory practice. OCR advises DCFS to eliminate or modify the module to clarify the distinction between race and culture. OCR found no evidence DCFS requires prospective parents who wish to adopt transracially to participate in any transracial or cultural sensitivity classes or training. Any required training for prospective parents must be used with all prospective parents, regardless of their race/ethnicity or the race/ethnicity of the children they have expressed an interest in adopting.

DCFS has taken initial steps to raise CSWs awareness of MEPA/Section 1808 requirements; however, the interviews revealed CSWs need more training to understand the requirements. Additionally, DCFS should ensure CSWs can distinguish between race/ethnicity and culture. Legitimate factors in assessments, such as the prospective parents ability to honor the child's cultural background, should not be confused with generalizations and stereotypes about race/ethnic attitudes, behaviors, and beliefs.

Utilization Analysis

DCFS provided OCR with statistics on children placed in adoptive homes by the race/ethnicity of the child and parents. DCFS made 160 adoptive placements between July 1997 and June 30, 1999, 41 (26%) were transracial placements. DCFS made 27 (17%) placements where both parent were of a different race from the child. The time from date of application to date of approval or from date of approval date to date of finalization did not differ significantly between transracial adoptions and same race/ethnicity adoptions. DCFS was unable to provide OCR with statistics on children in foster care placements by race/ethnicity of the child and the foster parents. These statistics would help provide DCFS with an overview of its foster care placement practices and could assist it to monitor its own compliance with MEPA/Section 1808.

Recruitment

OCR reviewed DCFS's profiles of children seeking adoptive placement. Nevada's books of waiting children and other publications include many African American children. Each child's profile includes a picture of the child and a description of the child's interests, social relationships,

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progress in school, and disabilities. DCFS does not place restrictions on the race/ethnicity of prospective parents who can apply to adopt a particular child profiled. The profiles help DCFS to identify appropriate placements and do not screen children out from consideration because their race/ethnicity, disability, or other characteristics.

DCFS's recruitment plan dated March 15, 1999, states DCFS has implemented a minority recruitment campaign focusing on local African American Churches, Organizations, Corporations, Fraternities and Sororities. Information provided by DCFS documents it has made recruitment efforts targeted to the African American community.

Services to non-and-limited English-speaking Clients

The recruitment plan at Item VI, Strategies for dealing with Linguistic barriers, states, "Non-English applicants are welcome to utilize their own interpreters during pre-service training." OCR is concerned applicants and other clients may feel DCFS requires them to bring their own interpreters to participate in training and to benefit from its other services. Under the requirements of Title VI of the Civil Rights Act of 1964, DCFS has primary responsibility to ensure non-and-limited English-speaking clients have equal access to its services. DCFS must be able to effectively communicate with clients so they can access services. DCFS must provide clients with interpreter services at no cost to the client. DCFS may permit the client to use his or her own interpreter only after DCFS has offered the client a free interpreter, the client has declined the offer, and DCFS is assured the client's interpreter can effectively communicate the subject matter involved. DCFS should revise the recruitment plan to clarify its interpreter service policy that complies with Title VI requirements.

Conclusion:

OCR finds some of DCFS's policies and practices conflict with MEPA/Section 1808. DCFS must demonstrate to OCR efforts to comply with MEPA/Section 1808 by updating its policies and procedures, revising forms, modifying its practices, training staff, and tracking its placement decisions. OCR is available to assist DCFS in this effort.

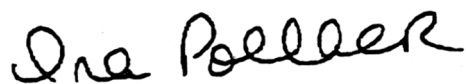
Enclosed is a proposed Resolution Agreement between DCFS and OCR. OCR has developed this agreement in an attempt to informally resolve the concerns raised by the review. We have enclosed two originals of the agreement. If you wish to sign it and agree to the voluntary corrective actions listed in "Section III. Specific Provisions," OCR will close this review and monitor DCFS's implementation of the actions by the time frames set forth. To signify your agreement, please sign and date both originals and return them to us. I will then sign the agreement and return one original to you for your records.

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Thank you for your continuing cooperation. If you have any questions, please telephone me at (415) 437-8328.

Sincerely,



Ira C. Pollack
Regional Manager

Enclosures: Resolution Agreement (2 originals)

cc: Liz Breshears, Family Programs Officer

Wanda Scott, Chief, Adoptions

Sharon M. Fujii, Regional Administrator
Administration on Children and Families