



**DEPARTMENT OF HEALTH & HUMAN SERVICES**

Voice - (312) 886-2359, (800) 368-1019  
TDD - (312) 353-5693, (800) 537-7697  
(FAX) - (312) 886-1807  
<http://www.hhs.gov/ocr/>

**OFFICE OF THE SECRETARY**

Office for Civil Rights, Region V  
233 N. Michigan Ave., Suite 240  
Chicago, IL 60601

October 20, 2003

Suzanne A. Burke, Director  
Hamilton County of Job and Family Services  
222 East Central Parkway  
Cincinnati, Ohio 45202

**NOTE: This document uses pseudonyms  
in order to protect personal privacy**

Tom Hayes, Director  
Ohio Department of Job and Family Services  
30 East Broad Street  
Columbus, Ohio 43266-0423

Re: Docket No. 05997026

Dear Ms. Burke and Mr. Hayes:

On April 30, 1999, the Office for Civil Rights (OCR) of the United States Department of Health and Human Services (HHS) commenced a compliance review of the Hamilton County Department of Human Services (HCDHS)<sup>1</sup>. During its review, OCR also examined related activities of the Ohio Department of Human Services (ODHS) and its successor as the single State agency under the Title IV(E) program, the Ohio Department of Job and Family Services. As is explained in further detail below, OCR conducted this compliance review to determine if HCDHS was complying with Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000d, and its implementing regulation, 45 C.F.R. Part 80. OCR's compliance review also examined whether HCDHS complied with Section 553 of the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (MEPA), and whether HCDHS complied with Section 1808(c) of the Small Business Job Protection Act of 1996, 42 U.S.C. § 1996b. OCR has now completed its review. This letter sets out OCR's Title VI, MEPA, and Section 1808(c) findings.<sup>2</sup>

---

<sup>1</sup> In January 2001, HCDHS changed its name to the Hamilton County Job and Family Services (HCJFS). In this letter, the term "HCDHS" will be used in identifying the department with respect to events which occurred prior to January 1, 2001 and the term "HCJFS" will be used with respect to events which occurred after that date.

<sup>2</sup> This letter does not address findings with respect to reviews currently pending in other Ohio counties or other matters concerning the Ohio Department of Job and Family Services (ODJFS).

OCR conducted this investigation following receipt of information from the HHS Administration for Children and Families (ACF) regarding allegations contained in newspaper reports and in a complaint filed in *John Doe v. Hamilton County Department of Human Services*, Civil Case No. C-1-99-281, in the United States District Court for the Southern District of Ohio. Under the ACF regulation implementing Section 1808(a) of the Small Business Job Protection Act of 1996, if ACF becomes aware of a possible violation of that law, it will refer the matter to OCR for investigation. 45 C.F.R. §1355.38(a)(1). Based upon the results of the OCR investigation, ACF will determine if a violation of Section 1808(a) has occurred, and will separately provide written notification of its determination. 45 C.F.R. § 1355.38(a)(2), (a)(3). Because the facts and findings set forth in this letter also provide the basis for further action by ACF under Section 1808(a), OCR is sending the underlying record of its investigation as well as this letter to ACF as a report of OCR's investigation in this matter. See 45 C.F.R. § 1355.38(a)(2). ACF will provide separate notification to the state, as appropriate, of its determination whether a violation of Section 1808(a) has occurred.

## I. INTRODUCTION AND BACKGROUND

### A. Summary of Findings

OCR concludes that HCDHS has violated Title VI and its implementing regulations, MEPA and Section 1808 in the operation of its adoption program. HCDHS repeatedly engaged in acts of discrimination against African American children by seeking to remove them from the homes of non-African American foster families with whom they had formed close parent-child bonds on the basis of race. HCDHS delayed or denied adoptive placements based on the child's race and the race of the prospective adoptive parents. HCDHS sought to place children adoptively with same race families on the basis of race. HCDHS also systematically discriminated against African American children by denying them an opportunity to be placed adoptively with certain non-African American families because of the racial composition of the neighborhood in which these families resided.

OCR also finds that HCDHS repeatedly discriminated against non-African American foster parents by refusing to allow them to adopt their African American foster children with whom they had formed a close parent-child bond because they were of a different race than the children. OCR finds that HCDHS discriminated on the basis of race against non-African American potential adoptive families by refusing to allow these families to adopt African American children on the basis of race. OCR also finds that HCDHS discriminated against non-African American families by denying them an opportunity to adopt African American children due to the racial composition of the neighborhood in which the families resided. HCDHS discriminated against non-African American families by requiring parents interested in transracial placements to undertake additional efforts, beyond those required of families interested in same-race placements, in order to be considered as potentially appropriate adoptive parents for a child of another race. HCDHS also discriminated against non-African American families when HCDHS denied these families the opportunity to adopt African American children because the family did not prepare a "transracial plan" for African American children that was satisfactory to HCDHS.

HCDHS also maintained discriminatory transracial adoption policy statements from the effective date of MEPA on October 21, 1995 through the removal of its transracial policy statement from the Internet version of its *Adoption Policy Handbook* in September 2000. These policies violated Title VI, MEPA and Section 1808 because they permitted considerations based on race in adoption placement decisions without any individualized assessment of the child's particular needs and because they imposed additional burdens and requirements, based on race, in cases of proposed transracial adoptive placements.

OCR has determined that HCDHS discriminated against children and families in violation of Title VI and, in most cases, in violation of MEPA or Section 1808. Each of these statutes prohibits race-based discrimination. Title VI prohibits discrimination on the basis of race, color or national origin by the recipients of federal funds. MEPA and Section 1808 affirmed that Title VI's prohibitions on discrimination apply in the context of foster care and adoptive programs and explicitly prohibit the delay or denial of foster care or adoptive placements on the basis of race.<sup>3</sup>

In addition, based on its analysis of individual cases and on its review of HCDHS practices generally, OCR has determined that HCDHS routinely engaged in a number of practices that violate both Title VI and Section 1808. Finally, OCR has determined that HCDHS's discriminatory practices had a detrimental effect, specifically the failure to match Caucasian families with children who were available for adoption, and the significant delay in making adoptive placements for very young African American children.

OCR also concludes that Ohio violated Title VI and its implementing regulations, MEPA and Section 1808 when it promulgated certain administrative rules governing transracial adoption and foster care. One of these rules, in effect from December 1995 until January 1999, required that prospective adoptive parents who were "not of the same cultural heritage" as a child they sought to adopt develop a "plan for assuring the child's cultural identity." A second rule, in effect from December 1996 until January 1999 and as implemented through a homestudy form in effect until September 2000, required assessments of the racial composition of neighborhoods in which individuals interested in adopting transracially resided. These rules required adoption agencies to subject prospective parents to different treatment and standards based upon their race and the race of the children in which they expressed an interest in adopting. In numerous individual cases (described in Section II.A., below), HCDHS took actions consistent with the mandates of these rules when HCDHS violated the rights of children and prospective adoptive parents, including actions that delayed or denied placements on the basis of race, or actions that denied to prospective parents the opportunity to adopt children on the basis of race. HCDHS also acted consistently with these Ohio rules when it engaged in systemic practices to impose additional requirements for transracial placements and to evaluate the racial composition of the neighborhood of individuals interested in adopting transracially (described at Section II.C., below).

---

<sup>3</sup> A more detailed discussion of the elements of Title VI, MEPA and Section 1808 violations is provided in Section I.F., below.

## **B. OCR's Investigation**

### **1. OCR's Jurisdiction**

OCR may review and investigate compliance with Title VI of any entity that receives funds from HHS. 45 C.F.R. § 80.7(a) and (c). HHS, through its Administration for Children and Families (ACF), has provided the Ohio Department of Human Services (ODHS) and since July 1, 2000, the Ohio Department of Job and Family Services (ODJFS) with Federal financial assistance for adoption activities in Ohio in accord with Title IV(E) of the Adoption Assistance and Child Welfare Act. (Title IV(E).)<sup>4</sup> OCR finds that ODHS and ODJFS provided some of those federal funds to HCDHS.

OCR also has jurisdiction in Section 1808 cases in accord with regulations that detail how Section 1808 will be enforced. 45 C.F.R. §§ 1355.38 -1355.39; 65 Fed. Reg. 4020, 4045-4049, 4082- 4084 (January 25, 2000)(final rule with comments). These regulations provide a three-step process for enforcement of Section 1808: (1) “[i]f ACF becomes aware of a possible section 471(a)(18) violation...it will refer such a case to the Department’s Office for Civil Rights (OCR) for investigation”; (2) OCR will conduct an investigation; and (3) based upon the results of the OCR investigation, ACF will determine if a violation of section 671(a)(18) has occurred.” 45 C.F.R. § 1355.38(a)(1), (a)(2). If ACF finds a violation, ACF may impose sanctions, including penalties in the form of reduced Title IV(E) funding to the State (up to a maximum of 5% of the State’s annual Title IV(E) funding) and require adoption of a corrective action plan. 42 U.S.C. § 674(d)(1); 45 C.F.R. §§ 1355.38(b), (c).

OCR exercised its jurisdiction to conduct a compliance review in this case following information OCR received from ACF in April 1999 regarding allegations contained in newspaper reports and in a complaint filed in *John Doe v. Hamilton County Department of Human Services*, Civil Case No. C-1-99-281, in the United States District Court for the Southern District of Ohio (*Doe* litigation). In the *Doe* litigation, HCDHS social worker **Orville Odgen** and other plaintiffs alleged that HCDHS was systematically violating Title VI and Section 1808.<sup>5</sup> OCR also initiated

---

<sup>4</sup> The Adoption Assistance and Child Welfare Act provides that a State may be reimbursed for a percentage of its foster care and adoption assistance expenses when the State satisfies the requirement set forth in the Act. 42 U.S.C. §§ 672-674, 675(4)(A).

<sup>5</sup> In the *Doe* litigation, **Orville Odgen** (identified in the complaint as “John Doe” in order to protect the confidentiality of the children and families involved), alleged systematic violations of Title VI and 1808 and also cited specific instances of African American foster children being denied the opportunity to be placed adoptively with their Caucasian foster parents, despite the fact that the children had developed close parent-child bonds and were thriving in their foster-parents’ homes. In June 2000, OCR received a complaint on behalf of **Mary and Charles Camarena, Donald and Janet Shea, Thomas and Amanda Thornton, and William and Mildred Osburn** alleging that they and their adopted children had been the subject of Section

this compliance review because OCR had previously investigated a complaint concerning HCDHS's handling of transracial adoptions in alleged violation of Title VI, which was resolved when HCDHS entered into a Title VI "Compliance Agreement" with OCR on June 8, 1990.

## 2. Scope and Method of OCR's Investigation

OCR's investigation included both document review and analysis and interviews. OCR concentrated on the period from 1997-1999 but reviewed some adoptive placements from as early as 1990 and as late as 2001. OCR also reviewed HCDHS's transracial adoption policy statements from as early as 1995.

OCR reviewed the minutes of HCDHS's weekly adoption Selection Committee meetings held in 1997, 1998, and 1999, as well as minutes of a number of meetings held in 1995 and 1996. The Selection Committee, which until June 1999 was composed exclusively of HCDHS adoption unit workers, supervisors, and upper management with responsibility for adoptions, was the entity that made adoption matches.<sup>6</sup> Those match decisions, made pursuant to state law, were subject to review and approval by the Juvenile Court. The minutes describe the children being considered for placement during a particular meeting, identify the families considered for each child, and set forth the factors relied upon by the Selection Committee in making its placement decisions.

OCR also examined case files for children who had been placed in the permanent custody of HCDHS and were, therefore, eligible for adoption. OCR reviewed the files of biological parents to learn more about the children. OCR reviewed files of the potential adoptive parents, which included their homestudies, "match charts" (on which the families set forth their preferences for children as to age, gender, race, degree and type of disability, and number of siblings they would accept), and related documents. In addition, OCR reviewed Juvenile Court orders terminating the biological parents' parental rights and vesting permanent custody of the child in HCDHS until an adoptive placement was made and finalized (known as Orders granting permanent custody or "PC Orders"). Among other things, these Orders documented the child's tenure in foster care and the plan for adoptive placement. OCR also reviewed ODHS's administrative

---

1808 violations by HCDHS. OCR had interviewed each of these families in the summer of 1999 as part of its initial work in its compliance review. OCR accepted these complaints and incorporated them into its ongoing compliance review. The families were also plaintiffs in the *Doe* litigation. The *Doe* litigation was resolved through a Consent Decree signed by the parties in March 2002 and approved by the Court in July 2002. OCR was not a party in this matter.

<sup>6</sup> In June 1999, through the work of an Adoption Task Force established by the Hamilton County Juvenile Court, the composition of the Selection Committee (today known as the Matching Committee) was broadened to include "outsiders," such as representatives of the Guardian ad Litem's office, third-party child advocacy volunteers, and representatives of private children's services agencies which had begun contracting with HCDHS to provide certain adoption services.

rules implementing MEPA and Section 1808, and the materials ODHS distributed at its MEPA or Section 1808 training sessions for workers and their supervisors held between 1995 through 1999. Finally, with substantial assistance from the United States Department of Justice (DOJ), OCR reviewed and conducted analysis of data provided to OCR by HCDHS.

OCR also interviewed a variety of stakeholders in the HCDHS adoption process. OCR interviewed a number of families who had sought to adopt transracially through HCDHS. OCR interviewed virtually all of the adoption unit workers employed by HCDHS during the 1997-1999 period. OCR also interviewed representatives of the private agencies in the collaborative to which HCDHS privatized much of its adoption functions. In addition, OCR interviewed representatives of the Guardian Ad Litem's (GAL) office, current and former Juvenile Court magistrates, and third parties knowledgeable about the HCDHS adoption system. OCR interviewed ODHS employees. OCR also spoke with national experts on transracial adoptions.

### C. Administration of the Title IV(E) Program in Ohio

Under Title IV(E), a state may be reimbursed by HHS for a percentage of its foster care and adoption assistance expenses that satisfies the requirements set forth in the Social Security Act. 42 U.S.C. §§ 672-674, 675(4)(A). To participate, a state must first submit a plan to the Secretary of HHS for approval, which Ohio has done. 42 U.S.C. §§ 670-671. Pursuant to Section 1808(a), any such plan must contain a prohibition on the use of race, color, or national origin in the placement process for federally-funded adoption and foster care services in the state. 42 U.S.C. § 671(a)(18).

Ohio had designated ODJFS as its single State agency to “administer, or supervise the administration” of its Title IV(E) program. 42 U.S.C. § 671(a)(2). Prior to June 1, 2000, ODHS was the single state agency. Ohio Revised Code (ORC) §§ 5101.01, 5101.141. The State may delegate the responsibility for implementing the Title IV(E) program to political subdivisions such as counties, provided that the State plan is in effect, and is binding, throughout the State. 42 U.S.C. § 671(a)(3). Ohio’s system provides that it is the eighty-eight county Public Children’s Services Agencies (PCSAs) that actually administer and provide Title IV(E) foster care and adoption services, in accordance with the State plan and administrative rules. The state statute implementing Title IV-E requires PCSAs to follow these rules. ORC § 5101.141. The counties then claim reimbursement from the State. ORC §§ 5101.11, 5101.14, 5101.141, 5101.143. ODJFS then claims federal financial participation (FFP) from ACF, and ODJFS then “downstreams” federal payments back to the counties. *Id.*

Under the Title IV-E State plan, the State is required to oversee the adoption and foster care activities of the counties. OCR’s review found little evidence of State oversight and supervision of HCDHS transracial adoption activities. OCR found that ODHS failed to take action after HCDHS informed it of **Orville Odgen**’s complaint that HCDHS was not following legal requirements with respect to transracial adoption practices. Although HCDHS asked ODHS to conduct an investigation, ODHS responded instead that it would conduct a review after HCDHS completed its internal review of **Odgen**’s allegations and provided ODHS with certain data. *See*

Letter from Director, HCDHS to Director, ODHS Cincinnati District Office, July 2, 1997; Letter from Director, ODHS Cincinnati District Office to Director, HCDHS, August 13, 1997. ODHS never took further action, even after HCDHS failed to provide ODHS with its internal report<sup>7</sup> or the requested data. Moreover, when OCR initiated its review of HCDHS, ODHS had only one individual responsible for monitoring Title VI and Section 1808 compliance by Ohio's 88 counties and 253 private child placement agencies. During the time period of this investigation, Ohio never conducted any compliance reviews in large metropolitan counties such as Hamilton County.

ODHS has established administrative rules that counties use in conducting adoption and foster care activities. Ohio, from December 1995 until January 1999, maintained a rule stating that adoption agencies could consider prospective adoptive parents who were "not of the same cultural heritage" as a child they sought to adopt, so long as the parents "develop a plan for assuring the child's cultural identity is maintained." OAC 5101:2-48-02(E) (rescinded 1999). By contrast, the Ohio administrative code did not require that families in same-race adoptions prepare a plan to maintain the child's "culture." OCR found that the phrases "cultural heritage" and "cultural identity" in this rule was generally used as a synonym for "racial heritage" and "racial identity" in HCDHS adoption practice. Thus, this rule amounted to a requirement that prospective adoptive parents interested in adopting a child of another race prepare transracial plans.

In addition, from December 1996 until January 1999, ODHS maintained administrative rules requiring that homestudies of prospective adoptive parents seeking "transracial/transcultural" adoptive placements include a determination whether the prospective adoptive parents are able to "value, respect, appreciate and educate a child regarding a child's racial, ethnic and cultural heritage, background and language and the applicant's ability to integrate the child's culture into normal daily living patterns." OAC 5101:2-48-07(C)(6) (rescinded 1999). The State-mandated homestudy form required by this rule directed until September 2000 that public children's services agencies (PCSAs) such as HCDHS assess the "racial composition" of the neighborhood in which prospective adoptive families resided and obtain from prospective adoptive parents a written plan outlining the parents' plans for meeting a child's "transracial/transcultural needs." ODHS training materials issued in 1998 contained a section entitled "neighborhood milieu" which discussed appraisal of "the applicant's immediate neighborhood and its ability to assimilate and nurture a child whose culture is different from the applicant family."

When these state administrative rules were in effect, they violated Title VI, MEPA and Section 1808. The rules required adoption agencies to subject prospective parents to different treatment and standards based upon their race and the race of the children in which they expressed an interest in adopting. The different treatment was not based upon an individualized assessment of

---

<sup>7</sup> HCDHS' report of its internal investigation, the "**Peak Report**," is discussed below at pages 8-9, and in Section II regarding the child **Samuel McGowen** and prospective adoptive parents **Sherry Monroe** and **Percy Haughton**.

a particular child's needs and the ability of the parents to meet those specific needs, but rather on generalized, race-based assumptions. The administrative rule requiring the development of a plan to maintain a child's "cultural identity" in transracial placements was based on the generalized assumption that families interested in adopting a child of another race needed to take additional measures to ensure that they could be appropriate parents. The administrative rule concerning inquiries into the racial composition of neighborhoods (as well as the homestudy form required by the rule and the guidance provided through ODHS's training materials) was based on the generalized assumption that a transracial adoptive placement could not be in the best interests of a child unless the neighborhood in which the prospective adoptive parents resided included some unspecified percentage of neighbors who were of the same race as the child being adopted. ODHS and OCR engaged in discussions about these matters during the spring of 1997 through the spring of 1999. Ohio revised these rules in 1999<sup>8</sup>.

#### **D. Prior Investigations Involving HCDHS**

As previously referenced, OCR conducted a Title VI complaint investigation regarding HCDHS' transracial adoption practices in 1989 and entered into an agreement with HCDHS in 1990. In the 1990 Agreement, HCDHS agreed to abide by Title VI in its adoption placement policies, practices, and procedures and to take other "voluntary action[s]."

In March 1997, HCDHS adoption worker **Orville Odgen** reported to HCDHS Assistant Director **Roberta Sizemore** that adoption supervisor **Mattie Kline** and the workers in her unit dominated the placement process in Selection Committee meetings and hindered transracial placements, and that a particular transracial placement in which **Mr. Odgen** was involved had been deferred for inadequate and racially discriminatory reasons.<sup>9</sup> In response, **Ms. Sizemore** assigned HCDHS' Equal Opportunity Officer, **Luke M. Peak**, and the HCDHS Human Resources Office to investigate HCDHS transracial adoption practices and to examine issues in the individual case raised by **Mr. Odgen**. **Mr. Peak** and an associate interviewed 18 employees of the adoption unit, a union representative and a foster parent. In November 1997, **Mr. Peak** tendered his 29-page memorandum ("**Peak Report**") to **Ms. Sizemore**.

The **Peak Report** states that a number of HCDHS workers said race was a major, or sometimes even sole, factor considered when a transracial adoption was proposed, or made other statements indicating the predominance of race in HCDHS' consideration of such placements. See **Peak** interviews of **Vetrice Sanford**, **Naomi Overman**, **Michelle Garth**, **Margaret Cummings**, **Glenda Keys**, **Orville Odgen**, and **Hazel King**. **Peak Report**, pp. 9, 10, 15-16, 21-22, 29-30. **Mr. Peak** recommended that upper management conduct a "dialogue" with the adoption workers

---

<sup>8</sup> As noted above, Ohio also deleted from the homestudy form inquiries into the racial composition of neighborhoods in which prospective adoptive families reside.

<sup>9</sup> This individual case, concerning a child named **Samuel McGowen** and prospective adoptive parents **Sherry Monroe** and **Percy Haughton**, is discussed in Section II, below.



to discuss how proposed transracial placements should be evaluated and to prevent workers proposing such placements from being required to specially justify transracial placements in a way not required for same-race placements. Mr. **Peak** also recommended that upper management decide if **Ms. Kline** and her unit should be permitted to continue “dominating” the adoption placement process. *Id.* at p. 6. HCDHS leadership confirmed to OCR that the County took no action in response to the statements or recommendations in Mr. **Peak**’s report. **Bledsome Tr.**, p. 47, **Sizemore Tr.**, p. 46, **Dunham Tr.**, p. 128.

#### **E. How the HCDHS Adoption Placement System Worked**

A child usually entered the HCDHS child welfare system with the initial goal of either remaining with his or her biological family or being reunified with the biological family. A child who could not currently reside with his or her biological family was generally placed in a foster home. Cases of children in foster care were handled by a social worker in HCDHS’s “on-going unit.” Children in foster care received a “plan of care,” based on an individualized assessment of their needs.

If HCDHS determined that the child could not be reunified with his or her biological family, HCDHS developed a plan for the child, usually adoptive placement. HCDHS then asked the Juvenile Court to set a date for a trial to determine whether the child would be placed in the permanent custody of HCDHS. If the Juvenile Court agreed that the biological parents’ parental rights should be terminated and found that the child was “adoptable,” the Court generally entered an Order placing permanent custody of the child in HCDHS. If no appeal was filed by the biological parents within 45 days of the entry of the permanent custody order or if such an appeal had been unsuccessful, the child’s case was transferred from the on-going unit to the adoption unit.

Families seeking to adopt through HCDHS were required to undertake a “pre-service training” course and to submit to a HCDHS “homestudy.” The homestudy involved a number of procedures, including a credit check and a criminal background check. It included a minimum of four visits to the family’s home by the social worker to interview the potential adoptive parents, as well as interviews of any children already living in the home. It also included a physical assessment of the home. The family was required to submit a minimum of five references, and to answer a series of essay questions about its motivation for wanting to adopt and its plans for taking care of an adopted child in its home. During the homestudy process, a “match chart” would be filled out, in which the family’s criteria for an adopted child would be noted. These criteria included the age range, gender, number of siblings, race, and degree and type of physical, emotional, and mental disabilities from which a child suffered. If the HCDHS adoption assessor (*i.e.*, social worker) determined that the family had the capacity to appropriately parent one or more adopted children, she or he would recommend to HCDHS that the family’s homestudy be approved. Following the completion of the homestudy and the approval of the family by a HCDHS social work supervisor, the family was considered by the HCDHS Selection Committee as a possible “match” for a child in need of adoption.

Ohio regulations provide that children eligible for adoption be placed in an adoptive home which meets their “best interest and special needs.” See OAC 5101:2-48-16(C). The function of the Selection Committee was to make adoptive matches in conformity with this standard. Selection Committee meetings took place on a weekly basis.

Under Ohio law, HCDHS could provide a preference to relatives of the child over anyone else in the matching process, unless placement with a relative was determined not to be in the child’s best interest. OAC Rule 5101:2-48-16(D)(1). If no relative was available, Ohio law allowed HCHDS to provide a preference to the child’s foster parents. OAC Rule 5101:2-48-16(D)(2). HCDHS generally made a practice of allowing both a relative preference and a foster parent preference.

If no relatives were available and the foster family was unwilling or unable to adopt the child, then the Selection Committee typically looked for a family that had had no prior contact with the child. Children available for adoption were “presented” to the Selection Committee, *i.e.*, described by the child’s adoption unit worker. The child’s characteristics were described, as was other information about the child’s social history and interests and any special needs. According to HCHDS staff, the Selection Committee was then supposed to consider all potential adoptive families who had asked for a child with the general characteristics of the child being presented. The stated normal process was that all of the match charts of families who wanted a child of a certain age were sorted to identify families who also wanted a child of the gender, race, number of siblings, and degree and type of disability of the particular child. According to HCDHS staff, the Selection Committee was then supposed to discuss the child and all of the available families to decide which families seemed appropriate and ultimately to decide if placing the child with any of the families was in the child’s “best interest.” If so, a match was made. If not, the Selection Committee would consider the child again at another meeting when, it was hoped, new families would be available to be considered.

If the Selection Committee decided to match the child with a family, the worker for the child and the worker for the family would contact the family and arrange to come to the family’s home to make a presentation about the child. The workers would tell the family as much as possible about the child. The family was then given some time to think about the proposed placement. If the family decided to go forward, HCDHS would file a case plan amendment in the Juvenile Court advising the court of the match and allowing other interested parties, such as the Guardian Ad Litem (“GAL”), an opportunity to pose objections.

If the Juvenile Court approved the proposed placement, pre-placement visits generally began no earlier than 14 days after the match was made by the Selection Committee. If the pre-placement visits went well, the child would then be placed in the putative adoptive parents’ home. The child would live with the adoptive parents for at least six months before the adoption could be finalized. If after six months the family still wanted to proceed with the adoption and HCDHS felt that the placement was working out well for the child, the adoption would be “finalized” in a hearing before the Hamilton County Probate Court.

Although HCDHS told OCR that this was how the matching process operated, **Kline Tr.**, pp.189-203, as discussed in the description of individual cases in Section II, below, OCR's investigation shows that the system did not always operate in this manner, especially when a potential transracial match was presented to the Selection Committee.

## **F. The Elements of Title VI, MEPA and Section 1808 Violations**

### **1. Title VI**

Title VI was enacted as part of the Civil Rights Act of 1964. Title VI provides that:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d.

Among other things, Title VI's implementing regulations prohibit:

1. Subjecting an individual to discrimination on the basis of race;
2. Providing services to an individual in a different manner on the basis of race;
3. Restricting an individual on the basis of race in the enjoyment of any advantage or privilege enjoyed by others;
4. Treating an individual differently on the basis of race in determining whether the individual satisfies any requirements or conditions in order to be provided any service or other benefit; and
5. Affording an individual an opportunity to participate in a program that is different from the opportunity afforded others under the program on the basis of race.

See 45 C.F.R. § 80.3(a); 45 C.F.R. § 80.3(b)(1)(ii); 45 C.F.R. § 80.3(b)(1)(iv); 45 C.F.R. § 80.3(b)(1)(v); 45 C.F.R. § 80.3(b)(vi).

Title VI forbids decision-making on the basis of race, color or national origin unless the consideration advances a compelling governmental interest. The only compelling governmental interest for race-based decision-making in the context of adoption and foster care placements is protecting the "best interests" of the child who is to be placed. Moreover, the consideration must be narrowly tailored to advancing the child's interests and must be made as an individualized determination for each child. A child welfare agency may take race into account only if it has made an individualized determination that the facts and circumstances of the specific case require

the consideration of race in order to advance the best interests of the specific child. Any placement policy that takes race or ethnicity into account is subject to strict scrutiny.<sup>10</sup>

## 2. MEPA

In October 1994, Congress enacted MEPA. MEPA was intended to “promote the best interests of children by (1) decreasing the length of time that children wait to be adopted; (2) preventing discrimination in the placement of children on the basis of race, color, or national origin; and (3) facilitating the identification and recruitment of foster and adoptive families that can meet children’s needs.” Pub. L. No. 103-382, § 552. MEPA also provided, in relevant part:

### Sec. 553 MULTIETHNIC PLACEMENTS

#### Activities.

**Prohibition.** An agency, or entity, that receives Federal assistance and is involved in adoption or foster care placements may not (A) categorically deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved; or (B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

**Permissible consideration.** An agency or entity to which paragraph (1) applies may consider the cultural, ethnic, or racial background of a child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of such background as one of a number of factors used to determine the best interests of a child.

\* \* \*

**Noncompliance Deemed a Civil Rights Violation.** Noncompliance with this subtitle is deemed a violation of title VI of the Civil Rights Act of 1964. . . .

## 3. Section 1808

---

<sup>10</sup> HHS has consistently articulated its application of the “strict scrutiny” standard in adoption and foster care matters in non-regulatory guidance and other documents made available to child welfare agencies. *See, e.g.*, HHS OCR and ACF, Policy Guidance on the Use of Race, Color or National Origin as Considerations in Adoption and Foster Care Placements (1995); HHS OCR and ACF, Joint Guidance to Staff on the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 (1997); HHS OCR and ACF, Answers to GAO Questions Regarding the Multiethnic Placement Act, as Amended (1998).

In August 1996, Congress enacted Section 1808 of the Small Business Job Protection Act, Pub. L. 104-188. Section 1808 affirmed and strengthened the prohibition against discrimination in foster care or adoptive placements. Section 1808 repealed Section 553 of MEPA. The repeal of Section 553 had the effect of removing from MEPA the language that read “Permissible Consideration -- An agency or entity may consider the cultural, ethnic or racial background of a child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of such background as one of a number of factors used to determine the best interests of a child.” See Pub. L. 104-188, § 1808(d). Section 1808 also had the effect of removing the language that a person or government involved in adoption or foster care placements may not “categorically deny” the opportunity to become a foster or adoptive parent “solely” on the basis of race, color or national origin, or “otherwise discriminate in making a placement decision, solely” on the basis of race, color or national origin. See id. Section 1808(c) reads, in pertinent part:

#### Interethnic adoption

##### (1) Prohibited conduct

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.

##### (2) Enforcement

Noncompliance with paragraph (1) is deemed a violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

In enacting Section 1808, Congress thus 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. Section 1808 made clear that any consideration of race, color or national origin in adoption or foster care must meet Title VI’s strict scrutiny standard and must be based on an individualized determination about the best needs of the child. A separate provision of the Small Business Job Protection Act, Section 1808(b), provided for financial penalties against recipients of Title IV(E) funds who violated Section 1808(a). See 42 U.S.C. § 674(d)(1). Section 1808 took effect on January 1, 1997.

In OCR’s compliance review, OCR applied the elements of these statutes to each of the individual families and children whose placement decisions it reviewed. In each case, OCR analyzed whether HCDHS violated Title VI and its implementing regulations. In addition, OCR analyzed whether MEPA was violated with respect to conduct that occurred between October 21,

1995 and December 31, 1996. OCR analyzed whether Section 1808 was violated with respect to conduct that occurred after January 1, 1997.

## II. FINDINGS

OCR's investigation finds that HCDHS has engaged in systemic practices that violated Title VI and its implementing regulations, MEPA and Section 1808. HCDHS practices discriminated on the basis of race and served to delay or deny placements for adoption by requiring parents interested in transracial placements to develop special plans and undertake additional efforts, and subjecting them to different and more rigorous scrutiny. The HCDHS practice of discriminatorily taking into account the racial makeup of neighborhoods also served to unlawfully delay or deny placements, or otherwise subject individuals to discrimination. For a period of time, HCDHS had an *Adoption Policy Handbook* and other policies and materials that explicitly violated Title VI and its implementing regulations, MEPA and Section 1808. OCR's investigation also found that HCDHS engaged in a number of other practices that systematically violated these laws.

A review of HCDHS' own data presents a troubling picture of adoption of African American children by parents of another race. From January 1995 to June 30, 2000, African American families who included African American or biracial children among those children they were willing to adopt waited an average of 89.8 days to be matched.<sup>11</sup> By comparison, Caucasian parents who included African American or biracial children among those children they were willing to adopt had to wait more than twice as long – an average of 201.5 days before being matched. And, while only 15.3% of African American families who included African American or biracial children among those children they were willing to adopt were never matched, 33.8% of Caucasian parents who included African American or biracial children among those children they were willing to adopt were never matched. These comparisons are more significant in light of the wait being experienced by children during the same period: Caucasian children under two years of age waited an average of 145 days from the date they came into HCDHS' permanent custody before they were first matched with a family, but African American children under two years old waited an average of 223.1 days – 53% longer than Caucasian children – from the date they came into HCDHS' permanent custody before first being matched with a family.<sup>12</sup> Moreover, there was a significant difference by race in the time very young children waited from the date of referral to the HCDHS adoption unit until the date on which children were matched with an adoptive family. On average, African American children under two waited almost twice as long as Caucasian children under two from referral to match. African American children under two waited an average of 144.9 days from referral to match; Caucasian children under two

---

<sup>11</sup> Some of these prospective parents indicated that they would accept a child of any race.

<sup>12</sup> In some cases, children were initially matched with a family but later "unmatched," due either to family preference or some other obstacle.

waited an average of 73.6 days from referral to match. This data indicates that both adoptive parents and children were harmed by practices that impeded adoption on the basis of race.

As the findings below demonstrate, these HCDHS discriminatory policies and practices had serious, direct and adverse consequences for the children and families involved, in violation of Title VI and its implementing regulations, MEPA and Section 1808.

## **A. Individual Cases**

### **1. Leah Michelle Hahn and William and Jean Atkinson**

**Leah Michelle Hahn**, an African American child, was two years old in March 1994 when she was placed in the permanent custody of HCDHS. She was born with Fetal Alcohol Syndrome and Russell Silver Syndrome, a form of dwarfism. Her foster mother was not interested in adopting her. **Leah's** case was originally assigned in June 1994 to an HCDHS worker who left the agency in October 1994. At that time, it was reassigned to **Orville Odgen**. In October 1994, **Mr. Odgen** received an inquiry about **Leah** from the Fairbanks Counseling and Adoption Agency in Fairbanks, Alaska on behalf of **William and Jean Atkinson**, a Caucasian family. The **Atkinsons** resided in North Pole, Alaska, a Fairbanks suburb, eleven miles from the city limits and fourteen miles from the nearest major medical facility, the University of Alaska at Fairbanks Medical Center. The **Atkinsons** had biological children with special needs, including one with spinal meningitis, a second with a physical disfigurement, and a third with lymphocytic leukemia. The **Atkinsons** were also long-term foster parents of an Alaskan Native Athabascan child who had cerebral palsy and was a hypochondroplastic dwarf. The **Atkinsons** were active in an advocacy group for people with dwarfism, "Little People of America," and they had learned about **Leah** through that organization.

The **Atkinsons'** homestudy was approved on November 5, 1994. They received very enthusiastic references, including one from the Alaska representative of the North American Council on Adoptable Children (NACAC), and another from a physician attesting to the **Atkinsons'** skill in caring for a child with cerebral palsy and dwarfism. NACAC Letter; Fairbanks Counseling and Adoption Addendum to **Atkinson** Homestudy, Nov. 17, 1994. The **Atkinsons'** materials were promptly sent to HCDHS.

**Orville Odgen's** supervisor, **Ethel Beamin**, raised a number of concerns about the **Atkinsons** as a potential placement for **Leah**. First, she asked **Mr. Odgen** to find out if **Leah** could withstand the cold Alaskan climate. **Mr. Odgen** contacted **Leah's** gastroenterologist, who advised that the climate in Alaska would not adversely affect her medical condition. Letter to **Odgen**, December 15, 1994. **Ms. Beamin** also raised racial concerns, asking **Mr. Odgen** to find out how many African Americans resided in Alaska, in general, and, specifically, in the elementary school district where **Leah** would attend school. **Ms. Beamin** directed **Mr. Odgen** to talk to HCDHS' recruitment office to find a "local family." **Odgen** Tr., p. 328.

After reviewing the **Atkinsons'** homestudy, **Ms. Beamin** told **Mr. Odgen** that she did not think that the homestudy "fully reflect[s] **Leah's** cultural needs." **Hahn** Dictation entry, November 17, 1994 and **Odgen** Wit. Sta., p. 56. **Odgen** asked the **Atkinsons'** social worker in Fairbanks to supply an addendum to the homestudy on racial issues. The Fairbanks worker supplied a number of materials including two media articles on the sizable African American community of 23,000 residents in Alaska, a state with a population of only 550,000 per the 1990 census. Essence Magazine story, Oct. 1994; Fairbanks Daily News-Miner article summarizing Essence Magazine story, Oct. 23, 1994. The worker also provided information about the **Atkinsons'** African American friends and the percentage of minority congregants at the **Atkinsons'** church.

In their written addendum to the homestudy, the **Atkinsons** had stated that they intended to raise **Leah** in "a color-blind manner." After learning of this statement by the **Atkinsons**, **Ms. Beamin** prevented **Mr. Odgen** from presenting **Leah** and the **Atkinsons** to the Selection Committee, even though HCDHS had had permanent custody of **Leah** at this point for eight months and she had never been presented to the committee. **Odgen** Wit. Sta., Pp. 56, 57. **Mr. Odgen's** dictation notes indicate that **Ms. Beamin** directed him to postpone the presentation of **Leah** and the **Atkinsons** "so additional placement possibilities may be secured for consideration." **Mr. Odgen** told OCR that **Ms. Beamin** and HCDHS were upset by information that Alaskan schools instructed children to be "color blind" to the race of other people. **Odgen** Wit. Sta., p. 39; Dictation entry November 28, 1994. **Mr. Odgen** said that **Ms. Beamin** told him that, "there was no such thing as 'color blind.'" **Odgen** Wit. Sta., p. 39.

**Leah's** annual review in the Juvenile Court occurred on January 12, 1995. According to **Orville Odgen**, who was present at the review, the Court asked why it was taking HCDHS so long to make a placement. **Odgen** Wit. Sta. p. 57. The Court Referee's report directed HCDHS to submit a plan concerning the status of the adoption search by February 13, 1995. Referee's Report, Hamilton County Court of Common Pleas, Juvenile Division, 1/12/95. The Referee's report noted the interest of "a family from Alaska" in adopting **Leah**, and stated that HCDHS "is awaiting to determine whether any additional family's [sic] will express an interest in the child before submitting the Alaskan family to the match committee." *Id.* According to **Orville Odgen's** notes of the January 12 hearing, the Court stated that HCDHS could not "continue to 'delay' a potential adoption to increase pool of applicants when the family we have may be appropriate," and stated that the Court may become involved "if adoption continues to be delayed without clear explanation as to why....." **Odgen** notes, undated.

**Leah** was placed on the agenda for the February 2, 1995 Selection Committee meeting. On the morning of the meeting, **Ethel Beamin** gave **Orville Odgen** a homestudy she had just received from adoption supervisor **Mattie Kline**, for a single African American woman, **Nicole DiCaprio**, who resided in Columbus, Ohio. **Mr. Odgen's** dictation indicates that he intended to present the **Atkinsons**, **DiCaprio**, and two other families as possible matches for **Leah** at the February 2, 1995 meeting. **Hahn** Dictation entry, January 27, 1995 and February 2, 1995. According to **Mr. Odgen**, however, when he tried to present the **Atkinsons**, "**Emily London**, a social worker who was a supervisor in Children's Services Training at that time [and was the



facilitator at the meeting], said, ‘Oh that’s that Alaskan family. We’re not even going to consider them.’ **Odgen** Wit. Sta., p. 58. The **Atkinsons** are not mentioned in the Selection Committee minutes for the meeting. Selection Committee Minutes 2/2/95.

The Selection Committee matched **Leah** with **Nicole DiCaprio**, even though **Mr. Odgen** pointed out that **Ms. DiCaprio**’s homestudy was three years old and, therefore, should have been updated.<sup>13</sup> After the match was made, **Ms. Beamin** instructed **Mr. Odgen** to obtain a homestudy update for **Ms. DiCaprio**. He did so. It showed that **Ms. DiCaprio** had contracted muscular dystrophy since her original homestudy had been done. After **Ms. DiCaprio** was initially informed of the match, she was unresponsive to HCDHS for several weeks. Finally, on March 9, 1995, about a year after **Leah** had been placed in the permanent custody of HCDHS, **Ms. DiCaprio** told **Orville Odgen** that she had no interest in adopting a child with dwarfism. **Odgen** Wit. Sta., p. 58.

OCR finds that HCDHS violated Title VI and its implementing regulations in its handling of the **Atkinsons**’ application to adopt **Leah Michelle Hahn**.<sup>14</sup> HCDHS employed race-based criteria in evaluating the **Atkinsons** as prospective adoptive parents for **Leah**. HCDHS sought out information about the number of African Americans in the **Atkinsons**’ neighborhood and in the schools that **Leah** would be attending. **Ms. Beamin** and others in HCDHS were reportedly upset by the fact that the Alaskan schools **Leah** would attend taught children to be “color blind.” **Ms. Beamin** also expressed disagreement with the **Atkinsons**’ statement that they could raise **Leah** in a “color-blind manner.” In this context, HCDHS’ concerns and statements about the **Atkinsons**’ 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 **Atkinsons** were unable to meet, simply because they were Caucasian.

HCDHS did not conform to Title VI’s “strict scrutiny” principle, forbidding the use of racial criteria except in limited, individual circumstances in which a compelling governmental interest - - in child welfare cases, the “best interests of the child” -- requires a race-based decision. There was no evidence that HCDHS undertook any individualized assessment of **Leah**’s needs, indicating that, based on specific facts and circumstances, race needed to be considered as a factor in her placement. HCDHS based its need for race-based inquiries solely on the fact that **Leah** was of a different race than the **Atkinsons**. Moreover, HCDHS made these inquiries even in light of evidence that the **Atkinsons** had already served ably as foster or adoptive parents, that

---

<sup>13</sup> The ODHS administrative rule effective at the time **Leah** was matched with **Ms. DiCaprio** required that homestudies be updated every three years. OAC 5105:2-48-09(A) (rescinded 1996).

<sup>14</sup> Although MEPA was enacted in October 1994, it did not take effect until October 21, 1995. Thus, while HCDHS’ actions regarding **Leah Michelle Hahn** all occurred after MEPA was enacted, MEPA is inapplicable to those actions because they occurred prior to its effective date.

they had experience in meeting the needs of children with disabilities, and that they were familiar with issues affecting individuals with dwarfism. HCDHS' disregard of the **Atkinsons'** abilities to meet **Leah's** needs supports the conclusion that race was the reason this families were rejected as appropriate adoptive parents for this child.

The purported nondiscriminatory reasons presented by HCDHS for not placing **Leah** with the **Atkinsons** were pretextual and do not withstand factual scrutiny. HCDHS adoption supervisor **Mattie Kline** and adoption unit worker **Betty Stone-Kingston** told OCR that the **Atkinsons'** distance from medical facilities was a principal reason for HCDHS' rejection of the **Atkinsons**. **Kline** Tr., pp. 454-456 and **Stone-Kingston**, Tr., pp. 431-434. In fact, nothing in the case documentation indicates that **Ethel Beamin** ever raised the issue of distance from medical facilities in her numerous memoranda to **Orville Odgen**. Since **Mr. Odgen** was never allowed to present the **Atkinsons** to the Selection Committee, there was obviously no discussion of the issue there. In any event, the **Atkinsons** lived only 14 miles from a major university medical facility. In actuality, the **Atkinsons** had a proven track record in dealing with the difficult medical needs of a child with dwarfism, but HCDHS ignored these qualifications when it rejected the **Atkinsons** as appropriate adoptive parents for **Leah**. Finally, although as discussed below with respect to the **Lamm** family, **Leah** was eventually matched with and adopted by **Phoebe Hearst**, a Caucasian woman who resided in Cleveland, Ohio, this placement was looked upon favorably by HCDHS because **Ms. Hearst's** neighborhood was integrated, and some of her family members were biracial. There is no evidence that HCDHS scrutinized closely, or at all, the distance that **Phoebe Hearst** lived from appropriate medical facilities.

**Betty Stone-Kingston** and **Mattie Kline** also told OCR that they had concerns about **Leah's** placement with the **Atkinsons** due to the Fairbanks, Alaska climate. **Ms. Kline** insisted to OCR that doctors were concerned about **Leah** living in a cold climate, even though the physician statement solicited by **Orville Odgen** stated that **Leah's** health would not be adversely affected and that **Leah** had no condition that would restrict her ability to live in Alaska. **Betty Stone-Kingston** told OCR that she and her colleagues became concerned about potential harm to **Leah** of living in Fairbanks with its high snowfall when they saw a video the **Atkinsons** sent to HCDHS: "[W]e actually kind of sat around and looked at this videotape of their home while it was snowing and like several feet of snow, and this child was a dwarf, and that was a concern over that, just literally - we weren't trying to be facetious - her having a problem walking around in the snow." **Stone-Kingston** Tr., pp. 431-32. In actuality, the average annual snowfall in Cuyahoga County, Ohio, where **Leah** was placed after her match with **Phoebe Hearst**, is about 73% of the average annual snowfall in Fairbanks. According to the National Weather Service, parts of Cuyahoga County have an average annual snowfall of 90 inches a year, which is about 25% greater than the Fairbanks average annual snowfall of 68 inches a year. That HCDHS' purported concerns about the Fairbanks, Alaska climate had little, if any, basis in fact supports the conclusion that these concerns were offered merely as a pretext for a decision that was based on race.

OCR finds that HCDHS violated Title VI and its implementing regulations in its handling of the **Atkinsons'** application to adopt **Leah Michelle Hahn**. HCDHS failed to seriously and fairly

consider the **Atkinsons** as potential adoptive parents for **Leah Michelle Hahn** on the basis of race. HCDHS subjected the **Atkinsons** to different treatment and standards based on their race and **Leah's** race. The different treatment was not based on an individualized assessment of **Leah Michelle Hahn's** needs and the ability of the **Atkinsons** to meet those needs, but on generalized assumptions and stereotypes based on race. HCDHS' actions subjected the **Atkinsons** and **Leah Michelle Hahn** to discrimination on the basis of race in violation of 45 C.F.R. § 80.3(a). HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **Atkinsons** in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **Atkinsons** differently on the basis of race in determining whether they satisfied conditions necessary to participate in the adoption program. HCDHS also violated 45 C.F.R. § 80.3(b)(1)(vi) by affording the **Atkinsons** and **Leah Michelle Hahn** an opportunity to participate in its program that was different than that afforded others on the basis of race.

## 2. Leah Michelle Hahn and Chad and Ruth Lamm

About two weeks after the Selection Committee had refused to consider the **Atkinsons** as a potential placement for **Leah Michelle Hahn**, **Adriana Caprillari**, a social worker with the Counseling and Family Services agency in Peoria, Illinois, wrote to HCDHS supervisor **Ethel Beamin** inquiring about the possibility that **Leah** might be adoptively placed with **Chad and Ruth Lamm** of Easton, Illinois. Letter from **Caprillari** to **Beamin**, Feb. 16, 1995. The **Lamms**, a Caucasian family, had already adopted a bi-racial male child who was diagnosed with dwarfism. **Mrs. Lamm**, herself, had achondroplastic dwarfism and was active with Little People of America. The **Lamms** were also foster parents to a three year old African American child who had Down's Syndrome. **Lamm** Homestudy; HCDHS form "Applicants Approved for Child;" and Letter from **Caprillari** to **Beamin**, Feb. 16, 1995. **Orville Odgen** told OCR that **Leah's** guardian ad litem and foster parent supported a match with the **Lamms**. **Odgen** Wit. Sta. pp. 58-59.

**Ethel Beamin** and the Selection Committee were not supportive of a match between **Leah** and the **Lamm** family. On March 15, 1995, **Ms. Beamin** wrote a note to **Mr. Odgen** saying that she had "many questions" regarding the **Lamms**. Memorandum from **Beamin** to **Odgen**, March 15, 1995. At the March 16, 1995 Selection Committee meeting, along with questions raised by **Ms. Beamin** about the **Lamms'** ability to meet **Leah's** medical and other special needs, Committee members asked **Mr. Odgen** to find out: (1) if the **Lamms** were "isolated on their property;" (2) how much contact they had with the African American community; (3) were there African Americans in the local school system as either teachers or students; and (4) what plans the **Lamms** had to address **Leah's** cultural heritage. **Odgen** notes, March 16, 1995; **Odgen** Wit. Sta. p. 59. On March 16, 1995, **Mr. Odgen's** notes read: "Selection Committee requests obtain additional info re: transcultural concerns, plans to address cultural heritage, community, etc. Represent on 3.24.95." **Odgen** notation on memorandum from **Beamin**, March 16, 1995.

In May 1995, the **Lamms**, having never been voted on in the Selection Committee, withdrew their application for **Leah**. In June 1995, fifteen months after **Leah** was placed in the permanent

custody of HCDHS, she was matched with **Phoebe Hearst**, a single Caucasian woman who resided in Cleveland, Ohio. **Mattie Kline** told OCR that a major reason for the match being made with **Ms. Hearst** was because of the excellent medical facilities in the Cleveland area. **Kline Tr.**, p. 460. According to **Orville Odgen**, **Ms. Beamin** noted that **Ms. Hearst** lived in an “integrated neighborhood and had bi-racial brothers.” **Odgen Wit. Sta.** p. 60.

OCR finds that HCDHS violated Title VI and its implementing regulations in its handling of the **Lamms’** application to adopt **Leah Michelle Hahn**. HCDHS employed race-based criteria in evaluating the **Lamms** as prospective adoptive parents for **Leah**. 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.

HCDHS did not conform to Title VI’s “strict scrutiny” principle, forbidding the use of racial criteria except in limited, individual circumstances in which a compelling governmental interest - - in child welfare cases, the “best interests of the child” -- requires a race-based decision. There was no evidence that HCDHS undertook any individualized assessment of **Leah’s** needs, indicating that, based on specific facts and circumstances, race needed to be considered as a factor in her placement. HCDHS based its need for race-based inquiries solely on the fact that **Leah** was of a different race than the **Lamms**. Moreover, HCDHS made these inquiries even in light of evidence that the **Lamms** had already served ably as foster or adoptive parents, that they had experience in meeting the needs of children with disabilities, and that they were familiar with issues affecting individuals with dwarfism. HCDHS’ disregard of the **Lamms’** abilities to meet **Leah’s** needs supports the conclusion that race was the reason these families were rejected as appropriate adoptive parents for this child.

The purported nondiscriminatory reasons presented by HCDHS for not placing **Leah** with the **Lamms** were pretextual and can not withstand factual scrutiny. HCDHS adoption supervisor **Mattie Kline** told OCR that the **Lamms’** distance from medical facilities was a principal reason the **Lamms** were rejected by HCDHS. **Kline Tr.**, pp. 455-456. But the **Lamms** already had an existing system for their adopted African American son who had dwarfism; they had a pediatrician in Pekin, Illinois, a town that was 25 miles away from their residence and a doctor in Milwaukee, Wisconsin, about 280 miles away for their son’s special medical needs arising out of his dwarfism. These facts indicate that, despite residing in a small town, the **Lamms** had taken steps to meet the medical needs of children with this unique disability, and presumably could have met **Leah’s** needs as well. In actuality, the **Lamm** families had a proven track record in dealing with the difficult medical needs of a child with dwarfism, but HCDHS ignored these qualifications when it rejected them as appropriate adoptive parents for **Leah**.

Finally, although **Leah** was eventually matched with and adopted by **Phoebe Hearst**, a Caucasian woman who resided in Cleveland, Ohio, this placement was looked upon favorably by

HCDHS because **Ms. Hearst's** neighborhood was integrated, and some of her family members were biracial. There is no evidence that HCDHS scrutinized closely, or at all, the distance that **Phoebe Hearst** lived from appropriate medical facilities

OCR finds that HCDHS violated Title VI and its implementing regulations in its handling of the **Lamm's** application to adopt **Leah Michelle Hahn**. HCDHS failed to seriously and fairly consider the **Lamms** as potential adoptive parents for **Leah Michelle Hahn** on the basis of race. HCDHS subjected the **Lamms** to different treatment and standards based on their race and the race of a child they expressed interest in adopting. The different treatment was not based on an individualized assessment of **Leah Michelle Hahn's** needs and the ability of the **Lamms** to meet those needs, but on generalized assumptions and stereotypes based on race. HCDHS' actions subjected the **Lamms** and **Leah Michelle Hahn** to discrimination on the basis of race in violation of 45 C.F.R. § 80.3(a). HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **Lamms** in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **Lamms** differently on the basis of race in determining whether they satisfied conditions necessary to participate in the adoption program. HCDHS also violated 45 C.F.R. § 80.3(b)(1)(vi) by affording the **Lamms** and **Leah Michelle Hahn** an opportunity to participate in its program that was different than that afforded others on the basis of race.

### 3. **Ramona Dubak and Donald and Janet Shea**

**Ramona Dubak**, an African American female, was only two months old when she was placed in foster care with **Donald and Janet Shea**, a Caucasian couple, in November 1994. During **Ramona's** foster placement, she bonded with the **Sheas** and with the family's two African American adopted daughters. HCDHS records document that the agency considered the **Sheas** to be excellent foster parents who were meeting **Ramona's** needs.<sup>15</sup> Early in 1995, the **Sheas** told HCDHS that they would like to adopt **Ramona** if she could not be placed with a relative. In June 1995, the Juvenile Court entered an order stating that the plan was for the **Sheas** to adopt **Ramona** if HCDHS was unsuccessful in its then ongoing efforts to find a relative who would adopt **Ramona**. In August 1995, **Ramona's** court-appointed Guardian Ad Litem (GAL) wrote to HCDHS to support **Ramona's** adoption by the **Sheas** if no relative adoptive placement could be made, stating that she "strongly believe[d] that adoption by the **Sheas** would be in **Shantay's** [sic] best interest." 8/28/95 letter from **Martha Langston** to HCDHS adoption worker **Nancy Barham**. In September 1995, HCDHS learned that **Ramona's** last available relative was not interested in adopting **Ramona**.<sup>16</sup>

---

<sup>15</sup> For example, in July 1995 **Ramona's** foster worker wrote that **Ramona** "continues to thrive in the foster home - adequately gaining weight and developing normally. She is very bonded to the foster family and is very responsive and happy." Children's Services Dictation by Marie Warren, July 11, 1995, p. 5.

<sup>16</sup> **Ramona** had a maternal aunt in Georgia who, according to HCHDS, had expressed interest in adopting **Ramona**, and HCDHS asked that an adoptive homestudy of the aunt be

Although HCDHS did not inform the **Sheas** in September 1995 that the final potential relative placement for **Ramona** had fallen through, on October 18, 1995, the **Sheas** submitted to HCDHS an application to adopt **Ramona**. On October 26, 1995, HCDHS matched **Ramona** with **Ralph** and **Gayle Blackwell**, an African American couple who were not related to **Ramona**. Selection Committee minutes describing this meeting noted that the “homefinder” who located the **Blackwells** “has stated that foster family [the **Sheas**] will fight to maintain this child. Committee feels best interest of child should be considered – what placement would be best for her future development.” Selection Committee Minutes (computer printout) , 11/7/95, p. 5.<sup>17</sup> The Selection Committee minutes made reference to **Ramona**’s positive experience with the **Sheas**. The minutes state that **Ramona** had “bonded with foster family; foster family familiar with her needs (transracial foster placement, aware of cultural needs, have adopted transracially twice before).” Selection Committee Minutes, p. 4. Despite the **Sheas**’ previously-expressed interest in adopting the child and their history and recognition by HCDHS as excellent foster parents to **Ramona** over the previous eleven months, Selection Committee minutes indicate that Committee members did not give any consideration to the **Sheas** as adoptive parents for **Ramona**.

Less than a week after the match with the **Blackwells** was made, **Ramona**’s GAL filed an emergency motion in Juvenile Court to keep **Ramona** in the **Sheas**’ home pending an evidentiary hearing. At the hearing, the GAL opposed HCDHS’ match of **Ramona** with the **Blackwells**, and argued that the Juvenile Court should place **Ramona** adoptively with the **Sheas**. The **Sheas** also retained counsel to challenge **Ramona**’s placement with the **Blackwells**. In late November 1995, the Juvenile Court issued an order prohibiting HCDHS from removing **Ramona** from the **Sheas**’ custody pending a further order of the Court. The Order noted that “[o]n 6/19/95 HCDHS had “presented a plan for the foster parents to adopt if no relatives came forward.” The Order also set a January 1996 hearing date on **Ramona**’s placement. Judicial Entry, Nov. 27, 1995. Four days after the Juvenile Court issued its order, HCDHS informed the Court that it was “unmatching” the **Blackwells** and would agree to match **Ramona** adoptively with the **Sheas**.

OCR concludes that HCDHS chose to reject the **Sheas** as **Ramona**’s adoptive parents in October 1995 on the basis of race. Contemporaneous documents and HCDHS staff interviews with OCR established that HCDHS recognized that the **Sheas** provided good care for **Ramona**, and also noted such strengths as the **Sheas**’ training in caring for highly medically fragile children,

---

conducted. In September 1995, however, the DeKalb County, Georgia Department of Family and Children’s Services informed HCDHS that the DeKalb County agency had been “unable to enlist the cooperation” of **Ramona**’s maternal aunt “in any sort of evaluation process” to adopt **Ramona**, and was thus was closing the aunt’s case. Sept. 21, 1995 letter from DeKalb County, Georgia Department of Family and Children’s Services to **Nancy Barham** of HCDHS.

<sup>17</sup>Although these Selection Committee minutes were dated November 7, 1995, they recounted the events of the October 26, 1995 meeting.

their service on a Foster/Adoptive Parent Advisory Board, and their speaking at training classes for prospective adoptive and foster parents.

OCR's investigation established that race was a primary factor in HCDHS's view and evaluation of the **Sheas**. The Selection Committee minutes describing the decision to place **Ramona** with the **Blackwells** indicate that the Committee's decision was based on the view that placement with an African American family would be in **Ramona's** "best interest" and "best for her future development." Selection Committee Minutes, 11/7/95; see also **Stone-Kingston** Tr. p. 152. In an interview with OCR, however, **Mattie Kline** admitted that HCDHS chose not to contest the November 1995 Court order directing that **Ramona** be placed with the **Sheas** because "[w]e couldn't give any reasons to the court that the **Sheas** were not meeting [Ramona's] needs. There was nothing justifiable." **Kline** Tr., October 23, 2000, p. 1015.

HCDHS workers' race-based criticisms of the **Sheas'** abilities as adoptive parents provide further support for the conclusion that race was the reason why HCDHS did not match **Ramona** with the **Sheas** in October 1995. In a homestudy update of the **Sheas** conducted in January 1996,<sup>18</sup> HCDHS social worker **Betty Stone-Kingston** expressed "numerous concerns about the **Sheas** plans for the future with **Ramona** and her adoptive sisters." After noting anticipated problems of "separation and loss" and adolescence, **Ms. Stone-Kingston** wrote, "to top all of those problems off ... they are in a transracial placement. This worker feels the **Sheas** have not totally dealt with the transracial piece in a realistic manner. Although their last adoptive homestudy stated they have, it is the opinion of this worker that they certainly could benefit from more training, particularly in the area of hair care.... Since Juvenile Court and the Guardian Ad Litem have objected to HCDHS placing this child adoptively with another family, we reluctantly approve this family for the adoptive placement since it will bring about permanency for now for this child." Homestudy Update, Jan. 26, 1996, p. 2. In an interview with OCR, **Ms. Stone-Kingston** reiterated her belief that the **Sheas** had some unrealistic expectations about racial tolerance. **Ms. Stone-Kingston** also told OCR that she believed the **Sheas'** "dealings with African Americans had been somewhat limited," based on the fact that the school system in which the **Sheas** resided was not racially diverse. In addition, **Ms. Stone-Kingston** said that she opposed the **Sheas'** adoption of **Ramona** because the **Sheas** had resided in neighborhood consisting of "Caucasian families, predominantly Caucasian families." **Ms. Stone-Kingston** said that she "was concerned about this family realistically looking at the, meeting the needs of this particular child" in light of the composition of the **Sheas'** neighborhood. **Ms. Stone-Kingston** also told OCR that the **Sheas** were "not exactly ... doing it," with respect to educating themselves about African American culture, even though a homestudy update **Ms. Stone-Kingston** prepared (in conjunction with the **Sheas'** adoption of another African American child) stated that the **Sheas** were involved in such self-education efforts. **Stone-Kingston** Tr. Oct.12, 2000 pp. 105-06.

---

<sup>18</sup> Although the **Sheas** had already been approved as adoptive parents for two other children, State rules required that their homestudy be updated when they expressed an interest in adopting another child.

Finally, despite the **Sheas'** recognized history of caring for more than 30 African American foster and adoptive children,<sup>19</sup> HCDHS staff apparently believed that **Mrs. Shea** demonstrated racial insensitivity. Sometime in 1995, **Mrs. Shea** referred to one or more of her adoptive children, though not necessarily **Ramona**, as "Brillo Pad" while talking with **Ms. Stone-Kingston** and HCDHS worker **Hazel King**. The comment apparently referred affectionately to the difficulty of combing the child's hair. **Ms. Stone-Kingston** and other adoption workers with whom she discussed the comment were very offended by it, although apparently no HCDHS worker discussed their concerns with **Mrs. Shea**. **Stone-Kingston Tr.**, pp. 66-68; **Cummings Tr.**, pp. 177-180. OCR finds that HCDHS staff members' concern and offense regarding this statement contributed to HCDHS' conclusion that the **Sheas**, as Caucasians, were not appropriate adoptive parents for **Ramona**, an African American child.

HCDHS' conduct in handling **Ramona Dubak's** placement violated Title VI and its implementing regulations and MEPA. HCDHS refused on the basis of race to place **Ramona** with the **Sheas**. HCDHS attempted instead to place **Ramona** with an African American family, and decided to place **Ramona** with the **Sheas** only after having been ordered to do so by the Juvenile Court. HCDHS subjected the **Sheas** to different treatment and standards based on their race and the race of a child they expressed interest in adopting. The different treatment was not based on an individualized assessment of **Ramona Dubak's** needs and the ability of the **Sheas** to meet those needs, but on generalized assumptions and stereotypes based on race. HCDHS' actions subjected the **Sheas** and **Ramona** to discrimination on the basis of race in violation of 45 C.F.R. § 80.3(a). HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **Sheas** in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **Sheas** differently on the basis of race in determining whether they satisfied conditions necessary to participate in the adoption program. HCDHS also violated 45 C.F.R. § 80.3(b)(1)(vi) by affording the **Sheas** and **Ramona Dubak** an opportunity to participate in its program that was different than that afforded others on the basis of race. HCDHS' conduct violated MEPA because, in its vote of October 26, 1995, HCDHS denied **Ramona's** adoptive placement with the **Sheas** solely on the basis of race. A violation of MEPA constituted a violation of Title VI. Pub. L. 103-382, § 553.

---

<sup>19</sup> Worker's Assessment of Prospective Adoptive Family - 1993, p. 8.



#### 4. Theodore Brand and Ann Darling

In 1996, **Ann Darling**, a single Caucasian woman, applied to HCDHS to adopt a child. She was willing to accept a child of any race with up to moderate disabilities. **Naomi Overman** was **Ms. Darlings's** case worker. She prepared a homestudy for **Ms. Darling** that was very favorable, and that discussed at length **Ms. Darlings's** ability to parent a child of another race. For example, in commenting on **Ms. Darling's** ability to parent a special needs child of another race, **Ms. Overman** wrote:

She [**Ann Darling**] is a special education teacher and has experience with children from preschool to high school in her profession. She knows that parenting a child of a different race and culture presents its own special challenges. She feels that it is important to have like race games, dolls, toys, and books. She feels that self esteem is going to be especially important for a child who may encounter prejudice. She wants the child to get their own positive self image from home and family so that when they may encounter someone or something negative that they do not internalize that. **Ann** feels she can help a child to be proud of who they are and has dealt with this in her profession. She feels that it will be important to work with the child so that they do not need the approval of others to validate who they are, yet be able to comfort the child when they encounter prejudice and negativity.

Worker's Assessment of Prospective Adoptive Family, p. 4. The homestudy also noted that **Ms. Darling's** sister, who lived nearby, was married to a biracial man and that he had agreed to help **Ms. Darling** raise a bi-racial or African American child and to serve as a role model. The homestudy commented on **Ms. Darling's** effective work at her school with African American students. The homestudy documented that **Ms. Darling** had a close African American friend at her school who had adopted a child and agreed to help **Ms. Darling** address the issues that a child of color was likely to face. *Id.*, p. 6.

**Ms. Overman's** interview with OCR about the **Darling** homestudy depicted HCDHS as a child welfare system that required Caucasian families to satisfy special criteria to adopt African American children, and required HCDHS workers to provide special justification for transracial adoptive placements. When OCR asked **Ms. Overman** why she concentrated on racial issues in her homestudy of **Ms. Darling**, **Ms. Overman** responded that she knew that if **Ms. Darling** was presented during the Selection Committee Meeting (SCM) that she would not be approved based solely upon her being a good person, a good prospective adoptive parent, or her experience working with disabled children. Rather, **Ms. Overman** said, it would take a lot more for the committee to approve her for a transracial adoption. **Ms. Overman** reported that she expected to be closely questioned from some of the committee members based upon past experiences. Therefore, **Ms. Overman** said, she instructed **Ms. Darling** as she did with other families willing to accept transracial adoptions that some extra efforts must be made to demonstrate their capabilities in parenting a child of a different race. **Ms. Overman** stated that she did not recall specifically what she suggested **Ms. Darling** do to enhance her possibility for matching, but that

she was sure that she would have advised **Ms. Darling** to become more familiar with the African American culture. Record of Interview with **Naomi Overman**, July 5, 2001, pp. 1-2.

**Ann Darling** was first discussed as an adoptive parent at a Selection Committee meeting on January 16, 1997. The Selection Committee minutes discuss various factors pertaining to her fitness as an adoptive parent:

Single, Caucasian female. Lots of experience with children, 23 nieces and nephews she is very involved with. Teaches Special Ed classes at Taft. Would consider visual impairment, seizure disorder, sexual acting out or other medical problems. Support system of close family, church members, friends and coworkers. Excited about being a mother. Approved for transracial placement. Time can be taken off and if younger child is placed, she will use on site day care. Currently lives near sister in Amelia - area not very integrated. Has nieces and nephews who are Biracial. Easy going, mild mannered and patient. Open minded and flexible. Recently moved to Cincinnati area (1991) from Rhode Island. Selection Committee Minutes, 1/16/97, p. 2.

During the January 16, 1997 meeting, the Selection Committee matched adoptive parents to three Caucasian children and one African American sibling group. The minutes of the January 16, 1997 Selection Committee meeting reflect that with respect to **Ms. Darling** meeting participants did not follow HCDHS' usual practice of listing all of the families who were considered for each child. The minutes note only "[s]ome children were discussed as possible matches" for **Ms. Darling**, but did not discuss **Ms. Darling** as a potential match for any specific child.

**Ms. Darling** was next considered at the January 23, 1997 Selection Committee meeting. The minutes of this meeting indicate that **Ms. Darling** was considered as a possible match for **Theodore Brand**, a two and a half year old African American male with no more than mild disabilities. Six families were considered for **Theodore**, with **Ms. Darling** being the only family that was Caucasian. She was not, however, matched with **Theodore**. In discussing **Ms. Darling**, the Selection Committee minutes state:

**Darling** - Single Caucasian female. Approved 1-6-97. Resides in predominately Caucasian neighborhood, not willing to relocate- family is near by. Support of family, church members, friends and co-workers. Teaches at Taft High School.

Selection Committee Minutes, 1/23/97, p. 4.

**Theodore Brand** was matched instead with an African American couple. In matching **Theodore** with this couple, the Selection Committee never referenced the racial composition of the neighborhood in which the family lived. Similarly, the Selection Committee did not

comment on the racial composition of any other families (including four African American families and one biracial family) who were considered as potential matches for **Theodore**.<sup>20</sup>

**Ms. Darling** was next considered by the Selection Committee on February 13, 1997. **Ann Darling** was matched with **Edna Peterson**, one of three Caucasian siblings. Selection Committee Minutes, 2/13/97, p. 6. The ultimate goal had been to place all three children in the same household, but it was felt that complications with the children's individual situations made such a placement impossible. *Id.*, p. 5. The February 13 minutes describe **Ms. Darling** as follows:

**Darling**: Single Caucasian female. Teaches at Taft High School. Has good support system. Appears capable of meeting **Edna's** needs. Applicant has been previously presented. It was noted at that time that **Edna** was going to disrupt and this applicant was considered then to be an appropriate placement for **Edna**. *Id.*, p. 6.

When **Ms. Darling** was matched with **Edna Peterson**, there was no reference to the racial composition of **Ms. Darling's** neighborhood. By contrast, the composition of **Ms. Darling's** neighborhood was noted during the January 23, 1997 meeting, when HCDHS was considering whether to match **Ms. Darling** with an African American child.

**Ann Darling** was notified of her match with **Edna Peterson** shortly after the February 13, 1997 Selection Committee meeting. The placement never actually took place, however. Selection Committee members discussed for several weeks whether to place at least two of the siblings together, and whether to separate the children from each other in their foster care placement prior to making adoptive matches for all three children. As a result, **Edna Peterson** remained in her foster home, despite the match with **Ms. Darling**. At the May 8, 1997 Selection Committee, **Ms. Darling** was unmatched from **Edna Peterson**. Selection Committee minutes stated that **Ms. Darling** was being unmatched from **Edna** because she had been "frustrated by agency indecision and time that has lapsed since she was matched with **Edna**." Selection Committee Minutes, 5/8/97, p. 1. At that point, **Ms. Darling** pursued adoption through a private agency.

OCR finds that HCDHS's treatment of **Ann Darling** with respect to **Theodore Brand** violated Title VI and its implementing regulations and Section 1808. HCDHS relied on the racial composition of **Ms. Darling's** neighborhood as a placement factor in deciding not to match her

---

<sup>20</sup> On January 23, 1997, during the same Selection Committee meeting in which **Ann Darling** was not matched with **Theodore Brand**, an announcement was made that **Samuel McGowen**, a four-year-old African American male, had been "unmatched" from an adoptive family because the family felt **Samuel** was too old. Selection Committee Minutes, 1/23/97, p.1. **Samuel** met all of the characteristics requested by **Ms. Darling** as to age, race, gender, number of siblings, and nature and degree of disabilities. Yet, even though the Committee considered and rejected **Ms. Darling** for **Theodore Brand**, it did not even discuss her as a possible placement for **Samuel McGowen**.

with **Theodore Brand**, an African American child. HCDHS denied **Ms. Darling** the opportunity to become an adoptive parent on the basis of race, and denied the placement of **Theodore Brand** on the basis of race. These actions violated Section 1808(c)(1)(A) of the Small Business Job Protection Act as to **Ms. Darling** and Section 1808(c)(1)(B) as to the placement of **Theodore Brand**. Section 1808(c)(1)(A) provides that an adoption agency which receives federal funds may not “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.” Section 1808(c)(1)(B) provides that such an agency may not “delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved .” In this case, HCDHS prevented **Theodore Brand** from being placed for adoption with **Ann Darling** because of **Theodore’s** race and **Ms. Darling’s** race.

A violation of either Section 1808(c)(1)(A) or (c)(1)(B) constitutes a violation of Title VI. 42 U.S.C. § 1996b(2). HCDHS subjected **Ms. Darling** to different treatment and standards based on her race and **Theodore’s** race. The different treatment was not based upon an individualized assessment of **Theodore Brand’s** needs and the ability of **Ms. Darling** to meet those needs, but on generalized assumptions and stereotypes based on race. HCDHS’ actions violated Title VI and its implementing regulations. HCDHS’ actions subjected **Ms. Darling** and **Theodore Brand** to discrimination on the basis of race in violation of 45 C.F.R. § 80.3(a). HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **Ms. Darling** in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating **Ms. Darling** differently from other prospective adoptive parents on the basis of race in determining whether she satisfied conditions necessary to participate in the program. HCDHS also violated 45 C.F.R. § 80.3(b)(1)(vi) by affording **Ann Darling** and **Theodore Brand** an opportunity to participate in the program that was different than that afforded to others on the basis of race.

##### 5. Samuel McGowen and Sherry Monroe and Percy Haughton

At the February 6, 1997 Selection Committee meeting, **Orville Odgen** proposed that **Samuel McGowen**, a four year old African American male, be placed adoptively with **Sherry Monroe** and **Percy Haughton**. **Sherry Monroe** is Caucasian and **Percy Haughton** is of Caucasian and East Indian descent. **Vetrice Sanford**, the adoption unit worker for the **Monroe/Haughton** family, strongly supported the proposed match.

**Mattie Kline** was the facilitator for the Selection Committee meeting that day. She expressed reservations about the proposed match, as apparently did other members of her adoption unit and **Margaret Cummings**, the adoption intake worker. According to the Selection Committee minutes, other documents and worker interviews, the concerns were: (1) whether the **Monroe/Haughton** family lived too close to **Samuel’s** biological mother; (2) whether the **Haughton/Monroe** family would allow **Samuel** to continue to have contact with his siblings; and (3) whether **Samuel** would feel comfortable being adopted transracially. In addition, during the discussion of this match, HCDHS social worker **Hazel King** made a statement indicating that she believed that Caucasian families were not appropriate adoptive parents for African American

children. **Ms. King** said: “Most families that request to adopt transracially want to adopt because [African American] children are cute but they don’t understand the issues that will arise as a child becomes a young African American adult.” **McGowen** Dictation entry, February 6, 1997. **Orville Odgen** also claimed that HCDHS worker **Margaret Cummings** made statements during the February 6 meeting suggesting that the placement might not be successful because **Samuel** and the **Monroe/Haughton** family were of different races. **Odgen** claimed that **Brewer** asked “What kind of effect do you think it will have on **Samuel** being adopted by a white family? Has he ever had any interaction with white people? Have you prepared him for transracial placement?” **McGowen** Dictation entry, 2/6/97.

Because of these concerns the Selection Committee voted to defer the proposed match to its February 13, 1997 meeting. Selection Committee Minutes, 2/6/97, p. 4. The match was approved at the February 13, 1997 Selection Committee meeting. The Selection Committee minutes indicate “Concerns noted last meeting: location of birth family and feelings of family re: transracial placement.” Selection Committee Minutes 2/13/97, p. 6.

**Orville Odgen** told OCR that the delay in matching **Samuel McGowen** with the **Haughton/Monroe** family occurred because **Samuel** was of a different race than **Ms. Monroe** and **Mr. Haughton**. **Odgen** Wit. Sta. p. 35. **Vetrice Sanford**, an HCDHS adoption unit worker, made similar statements in her interview during **Luke M. Peak**’s investigation of HCDHS’ transracial placement practices.<sup>21</sup> **Ms. Sanford** said:

The match did not occur [on February 6] due to concern over where the adoptive family lived and where the birth family lived. I don’t remember that being a reason to defer before. They could have matched, then unmatched if there was a problem. They [the **Haughton/Monroe** family] lived in a predominately African American neighborhood, had a variety of cultures in the family, in their circle of friends, and the church they attended. This was a healthy four year old, with no health problems, and not many behavior problems. They wanted to save him for an African American family.

**Peak** Report, p. 9. (Emphasis added.)

In her interview with OCR, HCDHS worker **Carla Hayes** corroborated **Vetrice Sanford**’s statement that there was no other occasion when a proposed match was deferred to determine if the biological family and the adoptive family lived in the same neighborhood. **Hayes** Tr., p. 198.

---

<sup>21</sup> On June 30, 1997, HCDHS Assistant Director **Roberta Sizemore** ordered **Luke M. Peak** and HCDHS Director of Personnel **Clinton Hayden** or his designee to conduct an internal investigation of **Orville Odgen**’s allegations that the Selection Committee’s purported reasons for the deferral were racially based and constituted a “delay” of **Samuel**’s placement on account of his race in violation of Section 1808. That investigation resulted in the **Peak** Report, described in Section I, above and referred to here.

HCDHS worker **Naomi Overman** told **Luke M. Peak** that it was “unusual” for a match to be deferred in order to explore such issues. **Peak Report**, p. 10.

**Mattie Kline** confirmed to OCR that all three reasons set forth in the Selection Committee minutes had been discussed as reasons to defer the proposed match. **Kline Tr.**, pp. 600-602. She said that she was particularly concerned about whether the biological family lived in the same neighborhood as the **Haughton/Monroe** family because she thought the biological family might harass the **Haughton/Monroe** family if they saw them in the neighborhood. *Id.*, p. 600.<sup>22</sup> **Ms. Kline** acknowledged, however, that in a situation in which a prospective adoptive family does not know the child, HCDHS normally would make the match, then discuss with the prospective adoptive parents any issues, concerns or questions about the child, and possibly return to the Selection Committee to invalidate the match if the prospective adoptive parents were unwilling to accept the child. *Id.*, pp. 603-04.

Finally, OCR asked HCDHS staff about the need to discuss transracial placement with **Samuel**, then four years of age, as a reason to delay an adoption match. HCDHS Assistant Director **Dorothy Dunham** was asked how a social worker could have a meaningful and useful conversation with a four year old about a transracial placement. She said, “I don’t know, I truly don’t know how you would.” **Dunham Tr.**, p. 73.

There is no apparent valid non-discriminatory reason for delaying **Samuel McGowen’s** match with the **Haughton/Monroe** family. Information about the location of the biological family’s residence was readily available to the Selection Committee and could have been obtained within a few minutes during the February 6 Selection Committee meeting. Moreover, as noted above, delaying a match under such circumstances was not HCDHS’ usual procedure. Similarly, OCR found that it was not HCDHS’ usual procedure to delay the match in order to address the issue of sibling contact. Finally, given the difficulty and unreliability of soliciting a four-year-old child’s input on whether he should be placed transracially, OCR finds that this purported reason for delaying **Samuel’s** placement with the **Haughton/Monroe** family is pretextual. Throughout this investigation, OCR did not find any other example of a match being deferred either to ask potential adoptive parents about sibling contact or to ask a young child about transracial placements.

In addition, the **Peak Report** documented that concerns and views about race permeated HCDHS workers’ analysis regarding the proposed placement. For example, HCDHS worker **Margaret Cummings** told **Luke M. Peak** that she was raising a Caucasian nephew and that “[y]ou can’t care for them the same.” **Peak Report**, p.15. **Michelle Garth**, an HCDHS employee who attended virtually all Selection Committee meetings as the Selection Committee’s clerical support and was knowledgeable about how the Committee operated, told **Mr. Peak** that adding

---

<sup>22</sup> As **Ms. Kline** admitted to OCR however, the Selection Committee’s belief that **Samuel’s** biological family lived near **Ms. Monroe** and **Mr. Haughton** was incorrect. *Id.* at pp. 617-618.

“transracial issues” to a situation in which a couple had never previously been parents “can be difficult.” **Ms. Garth** said that adoption unit workers saw a need to “maintain the child’s culture,” given that the adoption of **Samuel** by **Ms. Monroe** and **Mr. Haughton** would result in “three cultures” in the family. **Ms. Garth** said that workers would “look at the family’s ability, do they live in an integrated neighborhood, what about hair and skin care?” **Peak Report**, p. 9.

OCR finds that HCDHS’ conduct in placing **Samuel McGowen** with the **Monroe/Haughton** family violated Section 1808 and Title VI and its implementing regulations. HCDHS delayed **Samuel McGowen’s** placement with the **Monroe/Haughton** family on the basis of race. This conduct violated Section 1808(c)(1)(B). A violation of Section 1808(c) constitutes a violation of Title VI. 42 U.S.C. 1996b(2). HCDHS subjected the **Monroe/Haughton** family to different treatment and standards based on their race and **Samuel’s** race. The different treatment was not based on an individualized assessment of **Samuel McGowen’s** needs and the ability of **Ms. Monroe** and **Mr. Haughton** to meet those needs, but on generalized assumptions and stereotypes based on race. HCDHS’ conduct violated Title VI and its implementing regulations. HCDHS’s actions subjected **Ms. Monroe, Mr. Haughton and Samuel McGowen** to discrimination on the basis of race in violation of 45 C.F.R. § 80.3(a). HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **Monroe/Haughton** family in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **Monroe/Haughton** family differently from others on the basis of race in determining whether they satisfied conditions necessary to participate in the program. HCDHS violated 45 C.F.R. § 80.3(b)(1)(vi) by affording **Samuel McGowen, Ms. Monroe** and **Mr. Haughton** an opportunity to participate in its program that was different than that afforded to others on the basis of race.

## 6. Conrad Hall and Mary and Charles Camarena

In January 1996, when **Conrad Hall**, an African American child, was four months old, he was placed in foster care with a Caucasian couple, **Charles and Mary Camarena**. Correspondence from **Camarenas** to HCDHS, July 7, 1997, p. 1. The **Camarenas** resided in the Price Hill section of Cincinnati, a neighborhood whose racial composition historically had been predominantly Caucasian. A couple of months later, the **Camarenas** told their HCDHS on-going worker **Franklin Lewis** that they would be interested in adopting **Conrad** if it became impossible to reunify **Conrad** with his biological mother. Transcript of Proceedings, Hamilton County Court of Common Pleas, Juvenile Division, Jan. 15, 1998, p. 49. A short time later, however, **Mr. Lewis** told the **Camarenas** that HCDHS had identified **Doreatha Walker** as an adoptive placement for **Conrad**. *Id.*, pp. 51, 61-62; Correspondence from **Camarenas** to HCDHS, July 7, 1997, p. 1. **Ms. Walker** is African American. According to the **Camarenas**, they were given the “distinct impression” that **Ms. Walker** would have priority as a permanent placement for **Conrad**. Correspondence from **Camarenas** to HCDHS, July 7, 1997, p. 1.

**Doreatha Walker** had met **Conrad’s** biological mother, **Margaret Ann Curry**, when **Ms. Curry** was pregnant with **Conrad**. Transcript of Court Proceedings, Jan. 15, 1998, pp. 38-39. **Ms. Curry** designated **Doreatha Walker** as **Conrad’s** godmother and indicated that she wanted

**Ms. Walker** to adopt **Conrad. Dunham** Tr., pp. 325-326, 330. **Ms. Walker** was a social worker with a private agency in Cincinnati. She had previously worked at HCDHS where she had become acquainted with several members of the Selection Committee. Memorandum from **Orville Odgen** to **Reba Lewis-Webster**, Oct. 9, 1997, p.2. In June 1996, **Ms. Walker** asked HCDHS to conduct a homestudy in connection with her application to adopt **Conrad** in the event that an Order of permanent custody was entered. Work on the homestudy was suspended because **Ms. Walker** was hospitalized. **Kline** Tr. p. 1089. The homestudy for **Ms. Walker** was completed in May 1997.

Meanwhile, the **Camarenas**, believing that they would not be able to adopt **Conrad**, told HCDHS that they would serve as a “back-up” adoption placement in the event that HCDHS’ plans to place **Conrad** with **Ms. Walker** fell through. Transcript of Court Proceedings, Jan. 15, 1998, pp. 59-60, 62; Correspondence from **Camarenas** to HCDHS, July 7, 1997, p. 1. In November 1996, however, the **Camarenas** received a notice from ODHS informing them that a new law provided that foster parents could be entitled to a preference in the adoption placement process over everyone except biological relatives if their foster child became available for adoption.<sup>23</sup> In December 1996, the **Camarenas** obtained an adoption application from HCDHS. Their completed application was received by HCDHS on January 3, 1997. Application for Child Placement, p. 1. It was not, however, assigned to an adoption worker to begin work on a homestudy until March 14, 1997. The worker to whom preparation of the homestudy was assigned was **Orville Odgen**.

A Permanent Custody Order was entered in late May 1997 terminating **Ms. Curry’s** parental rights over **Conrad**. On July 3, 1997, **Conrad** was first presented to the Selection Committee. The only family considered as a possible match was **Doreatha Walker**, although the Selection Committee minutes also note that **Conrad’s** foster parents were interested in adopting him and that the foster parents’ homestudy would be completed shortly. Selection Committee Minutes 7/3/97, p.6. **Orville Odgen** objected to the consideration of a match for **Conrad** at that meeting, and separately to **Ms. Dunham**, on two grounds: (1) the Permanent Custody Order had not become final and non-appealable because **Ms. Curry** was pursuing a motion for reconsideration before the Juvenile Court magistrate; and (2) **Mr. Odgen** was still working on the **Camarenas’** homestudy and no match should be considered until he had finished the **Camarenas** homestudy since the **Camarenas**, as **Conrad’s** foster parents, had a preference in the placement process over non-relatives like **Doreatha Walker**. **Odgen** Tr. pp. 54, 65-71, 77; **Odgen** Wit. Sta. pp. 7-8. The Selection Committee Minutes stated that the decision over matching **Conrad** would be

---

<sup>23</sup> See OAC Rule 5101:2-48-16(D). As previously noted, among other things, this statute provides that Public Children’s Services Agencies (PCSAs) such as HCDHS “shall consider giving preference to ... the substitute caretaker of the child who has expressed an interest in adopting the child.” In practice, HCDHS generally afforded this preference to foster parents. In this case, however, the **Camarenas** were not afforded a foster parent preference. Moreover, as discussed elsewhere in this letter, HCDHS similarly denied a preference to other foster parents who sought to adopt transracially.



delayed one week “for further discussion ... to clarify situation.” Selection Committee Minutes 7/3/97, p. 6. **Conrad** was not considered again by the Selection Committee until October 2, 1997. Selection Committee Minutes 10/2/97, pp. 1-3.

A week before the October 2, 1997 Selection Committee meeting, **Dorothy Dunham** convened a special meeting to discuss **Conrad**'s placement. The **Camarenas** and **Doreatha Walker** were invited. **Dunham tr.**, p. 336. Also present were **Betty Stone-Kingston** (**Doreatha Walker**'s social worker), **Mattie Kline** (**Ms. Stone-Kingston**'s supervisor), **Orville Odgen** (the **Camarenas**' social worker), and **Reba Lewis-Webster** (**Mr. Odgen**'s supervisor). **Dunham Tr.**, p. 335. **Ms. Dunham** told OCR that the purpose of the meeting was to allow her to gather information on such points as why the **Camarenas** had waited so long to apply to adopt **Conrad** and why they had allowed **Doreatha Walker** to come to their home to spend time with **Conrad** if they intended to seek to adopt him themselves. **Dunham Tr.**, pp. 336-337. Other HCDHS workers who had been present at the meeting told OCR that they perceived the meeting as an effort to get one of the families to withdraw their application to adopt **Conrad**. **Kline Tr.**, p. 1100, **Lewis-Webster Tr.**, pp. 554-555, and **Odgen Tr.**, p. 802. In addition, both **Mr. Odgen** and the **Camarenas** told OCR that they perceived the purpose of the meeting to be to cajole the **Camarenas** to withdraw. **Odgen Tr.**, p. 805; **Camarenas Wit. Sta.** pp. 10-11. HCDHS workers told OCR that they could not recall any such meeting having ever been called before. **Odgen Tr.**, p. 804; **Lewis-Webster Tr.** p. 556; **Stone-Kingston Tr.** pp. 268-69. Nothing was resolved at this meeting.

On October 2, 1997, the Selection Committee voted 6-4, with three abstentions, to match **Conrad Hall** adoptively with **Doreatha Walker**. Selection Committee Minutes 10/2/97, p. 3. The Selection Committee minutes noted that **Doreatha Walker**'s application was filed several months before the **Camarenas**' and that **Ms. Walker** worked with special needs children. *Id.* At the time of the Selection Committee's decision, **Conrad** was doing very well with only very minor developmental delays. Transcript of Court Proceedings, Jan. 15, 1998, p. 7. The Selection Committee minutes document that Committee members discussed at length the racial composition of the **Camarenas**' neighborhood. The **Camarenas**' transracial plan was also discussed, including plans to change churches to one that was more integrated and to provide **Conrad** with an African American mentor, doctor and barber. By contrast, there was no discussion of the racial composition of **Ms. Walker**'s neighborhood or her church in making the determination to match her with **Conrad**. There were no criticisms of the care the **Camarenas** provided to **Conrad** for the 21 months that he had been in their home, and Selection Committee minutes note that the **Camarenas** had “bonded” with **Conrad**. Selection Committee Minutes 10/2/97, pp. 2-3.

HCDHS asked the Juvenile Court to hold an evidentiary hearing on the Selection Committee's decision to match **Conrad** with **Ms. Walker**. Transcript of Court Proceedings, Jan. 15, 1998, p. 2; Selection Committee Minutes, Oct. 2, 1997, p. 3. The evidentiary hearing was originally scheduled for November 11, 1997, but HCDHS asked that the hearing be postponed until January 1998.

The hearing regarding **Conrad's** placement was held on January 15, 1998. At the hearing, HCDHS's position was presented by **Hazel King**, **Conrad's** HCDHS worker. **Ms. King** testified that she had abstained from voting at the Selection Committee meeting because she thought it was a very close call. Transcript of Court Proceedings, Jan. 15, 1998, p. 27. She stated that she was presenting HCDHS's position, not necessarily her own. *Id.*, p. 28. **Ms. King** testified that HCDHS voted to place **Conrad** with **Ms. Walker** because **Ms. Walker** was the "first identified family" for **Conrad**, because **Ms. Walker** worked with special needs children and was the parent of a special needs child, and presumably could handle any special needs which **Conrad** might develop, and because the birth mother had requested that **Ms. Walker** adopt **Conrad**. *Id.*, p. 22. Ms. King was asked about the effect on **Conrad** of moving him from the **Camarenas'** home:

Q. Do you see this as a problem, moving the child out of the home after he's been there that long?

A. You know, unfortunately, we move children all the time. And there can be some regression initially, but that's expected. . . .

*Id.*, p. 24.

Q. With whom does **Conrad** have a parental-child bond?

A. With the **Camarenas**.

Q. Is it your opinion and/or the agency's opinion that it's in his best interest to break that bond?

A. Yes.

*Id.*, p. 31.

**Ms. King** also testified that HCDHS did have "some concerns regarding the racial and cultural piece, making sure **Conrad** is able to grow up in a society where he does have a high self regard for himself, not just because he's an African American, but because, you know, of society the way it is." *Id.*, p. 27. HCDHS's attorney stated in his closing argument that **Doreatha Walker** "admittedly has probably got a greater familiarity with cultural issues." *Id.*, p. 76. **Conrad's** Guardian Ad Litem argued that **Conrad** should be adopted by the **Camarenas** because of the two year parent-child bond and the damage that **Conrad** would incur if he were removed from the only family he had ever known. *Id.*

The Juvenile Court denied HCDHS' request to place **Conrad** with **Ms. Walker**. The Court noted that although concerns about the "cultural, racial ethnic issues" had been raised, "the evidence has not demonstrated that it is so compelling as would it outweigh what I perceive to be

a very strong priority in Conrad's life, and that is the attachment, the bonding, the development and the progress that he's shown." *Id.* at pp. 77-79. HCDHS did not appeal the Juvenile Court's order. On February 12, 1998, the Selection Committee voted to match **Conrad** with the **Camarenas**. Case Dictation, Nov. 11, 1998, p. 1.

There is no apparent valid nondiscriminatory reason for the Selection Committee's decision to place **Conrad** with **Doreatha Walker**. As **Hazel King** acknowledged to the Juvenile Court, a parental-child bond had developed between **Conrad** and the **Camarenas**. Although the Selection Committee stated that it placed **Conrad** with **Doreatha Walker** because **Ms. Walker's** application to become an adoptive parent was filed several months before the **Camarenas**, the Committee apparently did not consider the fact that the **Camarenas** had expressed an interest in adopting **Conrad**, but were discouraged from doing so by HCDHS social worker **Mr. Lewis**. In any event the order in which the prospective adoptive parents indicated their interest in adoption had no relevance as to which placement was in **Conrad's** best interest. Moreover, despite the statements made to the Juvenile Court by **Ms. King** and HCDHS' attorney concerning the importance of race and culture, nothing discussed at the July 2, 1997 Selection Committee meeting, the October 2, 1997 Selection Committee meeting or in the Juvenile Court hearing indicates that HCDHS conducted any individualized assessment considering or determining that **Conrad's** needs required that he have a same race placement. Selection Committee Minutes, July 3, 1997, p. 6 and Selection Committee Minutes, Oct. 2, 1997, pp. 1-3.

HCDHS has claimed to OCR that **Doreatha Walker**, as **Conrad's** godmother, actually had a higher preference than the **Camarenas** under the Ohio rule that provides a child's "relative" with a higher preference than the child's foster parents. See OAC Rule 5101:2-48-16(D). HCDHS has contended that the doctrine of "fictive kinship" applies and under that doctrine, a person who developed a relative-like relationship with a child would be deemed to be a "relative" for purposes of the relative preference rule. According to HCDHS, on October 28, 1996, the term "relative" in ODHS' "Kinship Care Family Preservation Supportive Services" program was defined as "Any adult the current custodial caretaker identifies as having a familiar and long-standing relationship/bond with the child and/or the family which will ensure the child's social and cultural ties."

As set out above, OCR concludes that HCDHS' decision to place **Conrad** with **Ms. Walker** was made on the basis of race, not on the basis of a determination that "fictive kinship" existed. Moreover, OCR rejects HCDHS' argument that a "fictive kinship" existed in this case. First, OCR has carefully reviewed all of the contemporaneous documents regarding **Conrad Hall's** placement, including the Selection Committee minutes for the July 2 and October 3, 1997 meetings, the case worker dictation for **Conrad, Doreatha Walker**, and the **Camarenas**, and the transcript of the evidentiary hearing. At no time did anyone from HCDHS ever suggest that **Doreatha Walker** should be deemed to be a relative of **Conrad Hall** and, therefore, have a preference over the **Camarenas**. This concept was first suggested by **Reba Lewis-Webster** during her interview with OCR, nearly three years after the vote to place Conrad with Ms. Walker. **Lewis-Webster Tr.**, pp. 566-568. Because HCDHS did not raise the fictive kinship argument during the course of **Conrad Hall's** placement proceedings, OCR deems it to be an

after-the-fact pretext for discriminatory conduct. In addition, OCR rejects HCDHS's argument as a matter of law. The Ohio Administrative Code defines "relative" for purposes of temporary and permanent custody of children to cover various relationships including step- and half-sibling relationships. "Godparent" is not listed in the rule's definition of "relative." See OAC Rule 5101:2-1-01.

OCR finds that HCDHS' conduct in the placement of **Conrad Hall** violated Title VI and its implementing regulations and Section 1808. HCDHS denied **Conrad's** adoptive placement with the **Camarenas** on the basis of race. This denial violated Section 1808(c)(1)(A) as to the **Camarenas** and Section 1808(c)(1)(B) as to the placement of **Conrad Hall**. A violation of Section 1808(c) constitutes a violation of Title VI. 42 U.S.C. § 1996b(2). HCDHS subjected the **Camarenas** to different treatment and standards based on their race and the race of a child they expressed interest in adopting. The different treatment was not based on an individualized assessment of **Conrad Hall's** needs and the ability of the **Camarenas** to meet those needs, but on generalized assumptions and stereotypes based on race. HCDHS refused to place **Conrad** with the **Camarenas** even though the **Camarenas** were **Conrad's** foster care placement, even though the **Camarenas** and **Conrad** had formed a parental-child bond, and even though HCDHS generally afforded a preference to foster parents who wished to adopt their foster children. HCDHS' conduct violated Title VI and its implementing regulations. HCDHS' actions subjected the **Camarenas** and **Conrad Hall** to discrimination on the basis of race in violation of 45 C.F.R. § 80.3(a). HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **Camarenas** in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(iv) by, on the basis of race, restricting the **Camarenas** in the enjoyment of the preference to foster parents that it afforded to others. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **Camarenas** differently from others on the basis of race in determining whether they satisfied conditions necessary to participate in the program. HCDHS violated 45 C.F.R. § 80.3(b)(1)(vi) by affording the **Camarenas** and **Conrad Hall** an opportunity to participate in its program that was different than that afforded to others on the basis of race.

## 7. **Kenneth and Dora Shepard and Adolph and Minnie McReynolds**

In the fall of 1996, a Permanent Custody Order was entered for African American siblings **Kenneth Shepard**<sup>24</sup>, then age 4, and **Dora Shepard**, then age 6. They were first presented to the Selection Committee on November 21, 1996. Initially, their foster parent was interested in adopting them, but she later decided to decline. On May 29, 1997, **Kenneth** and **Dora** were matched with an African American woman, but they were unmatched on August 14, 1997 because the prospective adoptive parent reported that she could not handle their behaviors. **Kenneth** and **Dora** were not considered by the Selection Committee again until ten months later on June 4, 1998. Among the families considered then were two Caucasian couples, **William** and

---

<sup>24</sup>HCDHS documents contained two spellings, "**Keneth**" and "**Kenneth**." Occasionally, there were even other variations. For purposes of consistency, OCR will use "**Kenneth**" here.

**Mildred Osburn and Adolph and Minnie McReynolds.** Selection Committee Minutes, 6/4/98, p. 2.

The **McReynolds**, who had previously lived in Cincinnati and been licensed foster parents through HCDHS, moved to Richmond, Virginia in 1984, where they adopted a biracial child. In the late 1990s, they periodically reviewed the HCDHS adoption website and made web inquiries about a number of children, including **Kenneth** and **Dora**. **McReynolds** Wit. Sta., pp. 1, 2. **Mrs. McReynolds** called HCDHS and spoke to an adoption unit worker who told her to send their homestudy, which had been conducted by a private agency in Richmond. *Id.*, p.2. During this conversation, Mrs. McReynolds asked specifically about **Kenneth** and **Dora**. On May 2, 1998, the **McReynolds** sent HCDHS their homestudy report, and referenced **Kenneth** and **Dora** in the cover letter to HCDHS. **McReynolds** Homestudy report and cover letter. This homestudy indicated that the **McReynolds** were prepared to provide a child of a different race “with an understanding of his background and heritage,”and that the **McReynolds** lived “in a culturally diverse neighborhood with friends of different races that they hope will serve as role models.” **McReynolds** Homestudy report, p. 9.

In April 1998, **William** and **Mildred Osburn** had their homestudy forwarded to HCDHS from the Huron County, Ohio Department of Human Services. In March 1998, the **Osburns** had received adoptive placement of an African American child, who was the sibling of **Kenneth** and **Dora**. **Lewis-Webster** Tr., p. 818. The **Osburns** learned about **Kenneth** and **Dora** and sought to adopt them as well. The Ohio Administrative Code normally prohibited a family from entering into a second adoption proceeding before the first proceeding was completed, but the **Osburns**’ HCDHS worker, **Orville Odgen**, spoke to his supervisor, **Reba Lewis-Webster**, and they decided to try to make an exception in this case in an effort to allow the three siblings to grow up together. **Lewis-Webster** Tr., p. 818.

On June 4, 1998, the Selection Committee discussed the **McReynolds**’ application to adopt **Kenneth** and **Dora Shepard**. It concluded that they would not be a good match because:

[N]o transracial piece addressed in the homestudy. . . .Family is approved for any race child. The [*sic*] is no substantial of readiness for transracial placement. Worker does not feel that they are appropriate candidates for **Kenneth** and **Dora Shepard**.

Selection Committee Minutes, 6/4/98, p. 2. The Selection Committee matched **Kenneth** and **Dora Shepard** with the **Osburns**. *Id.*

The Selection Committee’s only stated basis for its decision not to place the children with the **McReynolds** was the **McReynolds**’ purported inability to parent a child of another race. Selection Committee Minutes, 6/4/98, p. 2. All the evidence in the record indicates that the only information about the **McReynolds** that was considered by the Selection Committee was the **McReynolds**’ homestudy. In fact, Mr. and Mrs. **McReynolds** told OCR that no one from HCDHS had ever contacted them about **Kenneth** and **Dora**, or about any other specific child. Nothing in the record indicates that HCDHS had engaged in any specific inquiries about either

the **McReynolds** or the **Shepard** children that might support this conclusion. Moreover, although HCDHS concluded based only on the **McReynolds**' homestudy that the **McReynolds** could not parent transracially, the homestudy itself reached a different conclusion, and recommended approval of the **McReynolds** as adoptive parents for a child or sibling group of any race.

OCR finds that HCDHS's conduct in placing **Kenneth and Dora Shepard** violated Title VI and its implementing regulations and Section 1808. HCDHS violated Title VI and its implementing regulations and Section 1808(c)(1)(A) with respect to the **McReynolds** and Title VI and its implementing regulations and Section 1808(c)(1)(B) with respect to the placement of **Kenneth and Dora Shepard** by denying the **McReynolds** the opportunity to adopt on the basis of race, and by denying the placement of **Kenneth and Dora Shepard** on the basis of race. A violation of Section 1808(c) constitutes a violation of Title VI. 42 U.S.C. § 1996b(2). HCDHS subjected the **McReynolds** to different treatment and standards based on their race and the race of children they expressed interest in adopting. The different treatment and the denial of the placement of **Kenneth and Dora** was not based on an individualized assessment of the children's needs and the ability of the **McReynolds** to meet those needs, but on generalized assumptions and stereotypes based on race. HCDHS' conduct violated Title VI and its implementing regulations. HCDHS's actions subjected the **McReynolds** and **Kenneth and Dora Shepard** to discrimination on the basis of race in violation of 45 C.F.R. § 80.3(a). HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **McReynolds** in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **McReynolds** differently from others on the basis of race in determining whether they satisfied conditions necessary to participate in the program. HCDHS violated 45 C.F.R. § 80.3(b)(1)(vi) by affording the **McReynolds** and **Kenneth and Dora Shepard** an opportunity to participate in its program that was different than that afforded to others on the basis of race.

#### 8. **Kenneth and Dora Shepard and William and Mildred Osburn**

The **Osburns** alleged that HCDHS delayed the finalization of the placement of **Kenneth and Dora Shepard** on the basis of race. In particular, the **Osburns** alleged that the delay was due to their desire to change the first names of the two children.

**Kenneth and Dora Shepard** were placed by HCDHS in the **Osburns**' home on July 31, 1998. Under OAC rules, their adoption could not be finalized for at least six months. **Lewis-Webster Tr.**, p. 829. HCDHS prepared documents and arranged for a finalization hearing. **Lewis-Webster Tr.**, pp. 826-27. One of the documents was an application for a new birth certificate for the children. **Mrs. Osburn** informed HCDHS that, in addition to changing their last names, **Kenneth** wanted to change his first name to "**William**," the same first name of **Mr. Osburn**, and **Dora** wanted to change her first name to "**Mildred**," the same first name as **Mrs. Osburn**. **Lewis-Webster Tr.** pp. 820-22 and G-25, Case Dictation, 1/25/99. **Kenneth** was then 8 years old and **Dora** was 10 years old. **Lewis-Webster Tr.**, p. 820.

The HCDHS worker responsible for preparing the documents expressed concern about the name changes. She said that she thought the name change could be psychologically difficult for the children. **Lewis-Webster** Tr., pp. 823-24. She said the only thing they would carry through life from their biological parents would be their first names. *Id.* **Mrs. Osburn** was insistent, however, so the birth certificate application was prepared with the new first names. **Lewis-Webster** Tr. pp. 820-22. The **Osburns'** adoption of **William** and **Mildred** was finalized on April 13, 1999.

The finalization process took longer than the **Osburns** and the GAL wanted it to take. In addition, reports from the Huron County worker who was making monthly courtesy home visits indicated that **Dora** and **Kenneth** were getting worried that they never would be adopted. OCR did not find any evidence that the placement was delayed on account of race. The evidence shows that the HCDHS worker did support and advocate for this match when it was presented to the Selection Committee. OCR learned of at least one other situation where the new parents sought to change the first names as well as the surnames of the children. In that case, involving a same-race placement, the HCDHS worker strongly opposed the change from a child welfare perspective and tried to talk the family out of it. OCR does not find any Title VI or Section 1808 violation by HCDHS with respect to the placement of **Kenneth** and **Dora Shepard** with the **Osburns**.

#### 9. Susie Gellar and William and Isabel Hobbs

On September 1, 1997, **William** and **Isabel Hobbs**, a Caucasian couple, applied to HCDHS to adopt a child of either gender, any race, up to five years of age, with no to moderate physical or emotional problems. Application for Child Placement, Sept. 1, 1997. The **Hobbs** completed a PreAdoptive Checklist in which they indicated that they preferred either an African American or bi-racial child.

The **Hobbs'** HCDHS adoption worker first contacted them on October 9, 1997. Their homestudy was completed on June 12, 1998. The homestudy included a detailed discussion of the racial composition of Norwood, the Cincinnati neighborhood in which the **Hobbs** resided. The **Hobbs** submitted a transracial plan at about the time that they submitted their application to adopt. However, because their adoption worker was concerned that it would not pass muster with some members of the Selection Committee, she asked them to revise it to add many more details. The adoption worker prepared a personal instruction sheet to assist them in preparing their transracial plan. The instruction sheet listed "specific areas to be covered," including: "What motivated you to consider transracial/cultural placement?" "How would your current lifestyle support a child's ability to stay connected to their racial and cultural heritage?" "What is the racial and cultural composition of your neighborhood, school, church? Use percentages if possible. How will they accept a child of a different race in these areas?" and "How will you receive ongoing education regarding transracial/cultural issues and about the specific race you are interested in adopting?" **Hobbs** Transracial Plan, pp. 1-7. The **Hobbs'** revised transracial plan addressed the racial composition of the **Hobbs'** church and neighborhood and the **Hobbs'** efforts to become more aware of African American culture.

The additional steps and justifications required of the **Hobbs** were not based on an individualized assessment of the needs of a particular child and an assessment of the ability of the **Hobbs** to meet those individually assessed needs, but reflected requirements that were placed on the **Hobbs** because of their race and their general expression of interest in children of a different race. The HCDHS adoption worker told OCR that the additional preparation process applied to any Caucasian family who wanted to adopt transracially and was substantially different and more involved than what she would normally do for a family seeking a same race placement.

**Overman** Int. Sta., 1/04/02, p. 3. As a result, the adoption worker reluctantly asked the family to do things that she would not have asked them to do had they wanted a same race placement:

I had them do all kinds of extra things (i.e., read books, be able to identify African Americans they worked with, socialized with, or attended church with; considered art work, considered the area they lived in which was mostly known as a “White, Red-Neck Area”). I knew if they did not do these extra things, they would not get approved. I really had to sell them at the Selection Committee Meeting.

**Overman** Int. Sta., August 18, 1999 pp. 6-7. To persuade HCDHS that they were an appropriate family to adopt transracially, the **Hobbs** did what was asked of them, including completing a revised transracial plan. **Hobbs** Transracial Plan. They also changed churches and purchased a home in a more integrated area. **Hobbs** Int. Sta., August 17, 1999. Their homestudy reflected the HCDHS focus on the issues identified by their adoption worker. **Hobbs** Homestudy, p. 13. The **Hobbs**' homestudy was approved on June 17, 1998.

On April 8, 1998, **Mrs. Hobbs** contacted her adoption worker and told her that she was aware of a child available for adoption who was in the permanent custody of Catholic Social Services. The child, eight-month old **Susie Gellar**, an African American female, had severe physical disabilities. On May 12, 1998, **Mrs. Hobbs** called again and discussed her and her husband's interest in adopting the child. On June 17, 1998, the HCDHS adoption worker wrote to Catholic Social Services about the **Hobbs**' interest, enclosing a copy of their homestudy, and indicating that HCDHS would be willing to supervise the adoptive placement during the pre-finalization period and to take the steps necessary to finalize the adoption. Letter to **Tina Marie Barrymore**, Catholic Social Services from **Naomi Overman**, HCDHS, 6/17/98. HCDHS was informed that such an arrangement was acceptable to Catholic Social Services.

**Susie Gellar** was matched with the **Hobbs** by the HCDHS Selection Committee on June 18, 1998. According to the adoption worker, she was questioned during the Selection Committee process about how the **Hobbs** would handle the child's cultural needs. HCDHS had not identified any particularized need based on an individualized assessment. The adoption worker told the committee that the **Hobbs** lived near Evanston, a predominately black community, and would be able to use services and shop in that community. **Hobbs** Homestudy, p. 3. The Selection Committee did not ask any follow-up questions about the child's disabilities and how the **Hobbs** were going to handle her special medical needs. The child was placed adoptively in the **Hobbs**' home on June 22, 1998. Notice of Matching for **William** and **Isabel Hobbs** with **Susie Gellar**, 6/18/98.



OCR finds that the HCDHS treatment of the **Hobbs** constituted a violation of Title VI and its implementing regulations. HCDHS subjected the **Hobbs** to different treatment and standards based upon their race and the race of the children in which they expressed an interest in adopting. The different treatment was not based upon an individualized assessment of a particular child's needs and the ability of the **Hobbs** to meet those specific needs, but on generalized assumptions and stereotypes of the **Hobbs** based on their race. The **Hobbs** were told to prepare a detailed transracial plan if they hoped to successfully adopt a child of another race. They were also required to develop a plan for assuring that the child's cultural identity was maintained. No such requirement was applied to families who were of the same race as the child they were seeking to adopt. The application of different criteria to the **Hobbs** based on their race constitutes violations of 45 C.F.R. §§ 80.3(a); 80.3(b)(1)(ii); 80.3(b)(1)(v); and 80.3(b)(1)(vi). Those provisions prohibit HCDHS from subjecting a person to discrimination on the basis of race; from providing services to an individual in a different manner on the basis of race; from treating an individual differently on the basis of race in determining whether the individual satisfies any requirements or conditions in order to be provided any service or other benefit; and from affording an individual an opportunity to participate in a program that is different from that afforded others under the program on the basis of race.

#### 10. **Betty Rieg and Catherine Wallace**

In October 1996, **Catherine Wallace**, a single, Caucasian woman, applied to adopt a second child.<sup>25</sup> Application for Adoption Placement, Oct. 30, 1996. Her application was assigned to the same worker who handled her first adoption. Completed Form, Applicants Approved for Child, Dec. 22, 1997; Memorandum Regarding **Ms. Wallace**' Status, Dec. 10, 1997. **Ms. Wallace** expressed an interest in children of any race or gender, five years of age or under, who could be a slow learner to above average, with no or moderate physical and emotional impairments. Application for Adoption Placement, Oct. 30, 1996. **Ms. Wallace** said she would prefer to have one child but would consider two siblings. *Id.*

During the period in which **Ms. Wallace** was approved for consideration, HCDHS was responsible for the placement of **Betty Rieg**.<sup>26</sup> The February 26, 1998 Selection Committee minutes lists **Ms. Wallace** among the families considered for **Betty**, but the minutes also indicate

---

<sup>25</sup> **Ms. Wallace** had previously adopted a child through HCDHS in June 1996. In that case, she had applied to adopt in July 1994, and her homestudy was approved in December 1994. Also in December 1994, she had attended an HCDHS adoption Christmas party, where she met a two year old African American girl who had some severe developmental disabilities. **Ms. Wallace** asked that the child be placed with her. On December 21, 1994, the Selection Committee voted to do so. The adoption was finalized in June 1996.

<sup>26</sup> **Betty Rieg**, an African American child, was born in August 1996; she was born seven weeks early with a significant heart condition. **Betty** entered the HCDHS system in September 1996. A PC Order regarding **Betty** was entered on December 15, 1996.

that when the Committee voted, **Ms. Wallace** did not appear among the families considered. Selection Committee Minutes, 2/26/98. **Betty** was matched adoptively with **Linda Coe**, an African American woman. Selection Committee Minutes, 2/26/98, p. 4. A week later **Betty** was unmatched with **Ms. Coe**. Selection Committee Minutes, 3/5/98, p.1. The Selection Committee minutes do not reflect that **Ms. Wallace** was considered on March 5, 1998 when **Betty** was matched with the **Dunns**, an African American couple. Selection Committee Minutes, 3/5/98, p. 4. On April 9, 1998, **Betty** was unmatched from the **Dunns** without ever having been placed with them. Selection Committee Minutes, 4/9/98, p.1. Also on April 9, 1998, **Betty** was re-matched with **Ms. Coe**. Selection Committee Minutes, 4/9/98, p. 1. On April 30, 1998, **Betty** was unmatched again from **Ms. Coe**. Selection Committee Minutes, 4/30/98, p. 1. On that date, **Betty** was matched with the **Colberts**, an African American couple. Selection Committee Minutes, 4/30/98, p. 2. Yet again, the Selection Committee minutes do not reflect that **Ms. Wallace** was considered. Selection Committee Minutes, 4/30/98, p. 2.

On April 23, 1999, an emergency Selection Committee meeting was called to discuss the disruption of **Betty Rieg's** placement with the **Colberts**. The Selection Committee decided to contact the following families in order: **Gail Dennis, Catherine Wallace, Minson and Robert Stewart**, and **Allene and Lloyd Cox**. Selection Committee Minutes, 4/23/99, p. 2. **Ms. Wallace** was the only Caucasian family in the group. Although the Selection Committee voted to offer **Betty** first to **Gail Dennis**, **Betty** was actually offered first to **Minson and Robert Stewart**, an African American couple. Selection Committee Minutes, 6/10/99, p.1. Pre-placement visits, with the **Colberts'** approval, were scheduled to begin on May 20, 1999. The **Stewart** family was unable to meet the schedule so they chose not to accept **Betty**. Selection Committee Minutes, 6/10/99, p. 1. Consequently, HCDHS contacted **Ms. Wallace**, who agreed to meet **Betty** and spend a couple of hours with her from about 5:00 to 7:30 p.m. on May 20. When **Betty's** worker arrived at the **Colberts'** home, they told her that they did not want **Betty** brought back to their home. They were told they would have to keep **Betty** until she had been placed with someone else.

The worker took **Betty** to **Ms. Wallace**. Around 7:30, the worker started calling the **Colberts**. By 10:00, after the worker could not contact the **Colberts**, she asked **Ms. Wallace** to keep **Betty**. **Ms. Wallace** agreed, but only as a foster parent for the moment until she had spent more time with **Betty** and had been allowed to see her file, especially her medical records. **Wallace Wit. Sta.**, Aug. 31, 1999, p. 2. Within a couple of weeks, **Ms. Wallace** told HCDHS that she had bonded with **Betty** and wanted to go forward with adopting her. Under State rules, HDCHS was allowed to give, and generally gave, a preference to foster parents over other non-relatives in making placements.

On June 10, 1999, the Selection Committee unmatched **Betty** from the **Colbert** family but did not match her with **Ms. Wallace**. Selection Committee Minutes 6/10/99, p. 1. On August 5, 1999, the Selection Committee voted to match **Betty** with **Bruce and Pattie Easton**, an African American couple. Selection Committee Minutes, 8/5/99, p. 5. The Selection Committee went on to state that if the **Easton** family did not want to take **Betty**, the **Hugley** family would be

considered. *Id.* The Hugley family is African American. The minutes to that meeting described the good progress **Betty** had made both physically and behaviorally while in the care of **Ms. Wallace**. Selection Committee Minutes, 8/5/99, pp. 4-5. Nevertheless, no consideration was given to **Ms. Wallace** at that meeting. **Betty** was never placed with either the **Easton** or **Hugley** family. On September 30, 1999, the Selection Committee voted to match **Betty** adoptively with **Catherine Wallace**. Selection Committee Minutes, 9/30/99, p. 4. Although **Betty** had been living at **Ms. Wallace**' home since May 20, 1999, the Selection Committee minutes reflect that **Betty** was not formally placed adoptively with **Ms. Wallace** until October 11, 1999. Selection Committee Minutes, 10/15/99, p. 1.

OCR finds that HCDHS violated Title VI and its implementing regulations and Section 1808 in its handling of the placement of **Betty Rieg**. OCR finds that HCDHS violated Title VI and its implementing regulations and Section 1808(c)(1) when it decided not to match **Betty Rieg** with **Catherine Wallace** at its August 5, 1999 Selection Committee meeting. HCDHS violated Title VI and its implementing regulations and Section 1808(c)(1)(A) with respect to **Ms. Wallace** and Title VI and its implementing regulations and Section 1808(c)(1)(B) with respect to the placement of **Betty Rieg**, when it denied **Catherine Wallace** the opportunity to adopt on the basis of race, and when it denied the placement of **Betty Rieg** on the basis of race at the August 5, 1999 Selection Committee meeting. Even though **Betty Rieg** was living with **Catherine Wallace** as her foster mother, HCDHS at first did not consider placing her with **Ms. Wallace**. HCDHS attempted instead to place her with two other families, who were African Americans. There were no explanations for excluding **Ms. Wallace** from consideration. OCR's review of the 1997-1999 Selection Committee minutes showed that in similar circumstances (when foster parents wanted to adopt a child and there were no complaints about the family's care for the child), HCDHS routinely gave a preference to foster parents of the same race as the child when making placement decisions. A violation of Section 1808(c) constitutes a violation of Title VI. 42 U.S.C. 1996b(2). HCDHS' actions also violated Title VI and its implementing regulations by subjecting **Betty Rieg** and **Ms. Wallace** to discrimination on the ground of race in violation of 45 C.F.R. § 80.3(a). HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to **Ms. Wallace** in a different manner on the basis of race. HCDHS also violated 45 C.F.R. § 80.3(b)(1)(iv) by restricting **Ms. Wallace** in the enjoyment of the preference to foster parents that it afforded to others on grounds of her race. That conduct also violated 45 C.F.R. § 80.3(b)(1)(v) by treating **Ms. Wallace** differently from others on the basis of race in determining whether she satisfied conditions necessary to participate in the program. Finally, HCDHS also violated 45 C.F.R. § 80.3(b)(1)(vi) by affording **Betty Rieg** and **Ms. Wallace** an opportunity to participate in its program that was different than that afforded to others on the basis of race.

## 11. Steven Warren and Thomas and Amanda Thornton

In September 1997, **Amanda** and **Thomas Thornton**, a Caucasian couple, applied to adopt with HCDHS. **Mr. Thornton** was a physical therapist with expertise in club foot problems. **Mrs. Thornton** was a special education teacher. At the time their homestudy began in October 1997, the **Thorntons** indicated on their "match chart" that their ideal child was: female, although they would accept a male; White, but they would accept Hispanic, Asian, Biracial and would consider

accepting a Black child; and age 0-2 years, but 3-5 years was acceptable, 5-8 years would be considered and 9 years and older was unacceptable. They also said that they preferred a child with no significant health problems. **Thornton** Homestudy, Sept. 10, 1998, p.18. The **Thorntons** stated that they did not want a child with significant disabilities because they both worked with such children professionally. **Thornton** Homestudy, Sept. 10, 1998, pp. 6,9. During the HCDHS training course for potential adoptive parents, the **Thorntons** learned that most children in the HCDHS system who needed adoptive placement were African American males. Consequently, prior to approval of their homestudy, the **Thorntons** revised their original match chart to indicate that they would accept a child of any race or gender under the age of 8. The **Thorntons** reaffirmed those revisions in the updated match chart they submitted at the time of their homestudy approval in October 1998. When the **Thorntons** were initially presented during the Selection Committee meeting on October 22, 1998, the case worker indicated the family's preference was a child 0-8 years old, of either gender, and any race. The worker also indicated that the **Thorntons** would consider two siblings.

On at least four occasions from October 1998 through June 1999, the Selection Committee considered a child with characteristics which the **Thorntons** had indicated would be acceptable to them. In each instance, the Selection Committee rejected the **Thorntons** based on the racial makeup of their neighborhood and acquaintances. For example, the minutes from the October 22, 1998 Selection Committee meeting stated, in pertinent part, "The [**Thorntons**] acknowledge that their transracial plan needs some work. They live in Mt. Washington area (predominately White). Couple does have AA friends, co-workers and are fairly good friends with an interracial couple. They will seek out more relationships if transracial placement is made and will seek appropriate role models for a child." Selection Committee Minutes October 22, 1998, p.3.

In March 1999, a friend of **Mrs. Thornton**, **Emma Harris**, told **Mrs. Thornton** about her step-grandson, a 2½ year old African American named **Steven Warren**. The child was in a foster home with his sister, **Clara Gooding**, who was **Mrs. Harris**' biological granddaughter. **Steven** had had an operation to repair a club foot. In May 1999 the **Thorntons** began a series of visits to the foster home to spend time with **Steven**. Although **Steven** was initially very withdrawn, **Steven** became attached to the **Thorntons**. Selection Committee Minutes, 7/8/99.

On March 30, 1999 the Juvenile Court decided to place **Steven** and his step-sister, **Clara**, in HCDHS' permanent custody. **Emma Harris** attended the hearing and told the court about the **Thorntons**' interest in **Steven**. The PC Order, entered on April 27, 1999, committed the children to the legal custody of HCDHS. The order noted HCDHS's plan to seek adoptive homes for the children, and described the grandmother's desire to adopt Clara, and that friends of the grandmother had expressed a desire to adopt Steven. On the same day that the Juvenile Court hearing took place, **Steven Warren**'s on-going unit worker, **Louisa Ruess** and **Eleanor Williams**, the representative of the GAL's office, conducted a site visit at the **Thorntons**' home. **Ruess**, p. 49 and **Williams** Witness Statement, p. 1. They both liked the **Thorntons** and thought their home would be physically appropriate for **Steven**.

According to a tape of the July 8, 1999 Selection Committee meeting, **Nora Davis**, the **Thorntons'** adoption unit worker, described the **Thorntons'** strengths as adoptive parents, but repeatedly expressed concerns that the **Thorntons** had "lied" to HCDHS when they wrote on their original application that they wanted a Caucasian girl without disabilities and were now seeking an African American boy with some disabilities. **Louisa Ruess** echoed similar concerns and also spoke of how unfair it was that the **Thorntons** had circumvented the Selection Committee process by contacting **Steven** through **Emma Harris**. **Ms. Harris** was present for the meeting and spoke favorably of the **Thorntons** and of their relationship with **Steven**. **Eleanor Williams** spoke approvingly of the **Thorntons**, especially because of their expertise in physical disabilities and special needs children.

At the Selection Committee vote, the four people who were not HCDHS employees, but were from the GAL's office or the Court Approved Special Advocate's office, voted in favor of the match. Two members spoke strongly in favor. One HCDHS adoption unit worker, who had had no involvement with **Steven** or the **Thorntons**, also voted in favor. **Nora Davis** asked first to abstain, but then "passed" on voting until the end of the vote. **Louisa Ruess** also passed. No one voted or spoke against the match between the time **Louisa Ruess** passed and the facilitator called on **Mattie Kline**. Without providing any explanation, and without having previously spoken, **Ms. Kline** voted, "No." **Nora Davis** and **Louisa Ruess** then voted, "No", as well. The final vote was 5-3 in favor of the match.

Later that day, **Ms. Williams** filed a case plan amendment with the Juvenile Court seeking to have **Steven** placed with the **Thorntons** on July 23. Amendment Form, July 8, 1999. On July 23, 1999, the Juvenile Court set a placement date of August 2, 1999.

The **Thorntons** learned of the mixed vote at the Selection Committee meeting on the day the vote took place. They were angry that their worker and **Steven's** worker had voted against the placement. **Mrs. Thornton** called **Stephen Franklin**, the HCDHS Section Chief for adoptions, to complain that HCDHS had tried to deny the placement because they were White and **Steven** was African American. Adoption Record Dictation, p. 8.

**Steven** was placed adoptively with the **Thorntons** on August 2, 1999. The **Thorntons** were automatically entitled to a \$250 a month adoption subsidy to help defray **Steven's** expenses. A higher subsidy was available if **Steven** had certain special needs, e.g., if he needed to go to a special day care facility. According to **Reba Lewis-Webster**, in August 1999, the **Thorntons** told her that they did not think **Steven** had such needs. But by September 1999, the **Thorntons** determined that **Steven** did have certain special needs and sought the higher subsidy. **Ms. Lewis-Webster** told OCR that she was not surprised since she had suggested the higher subsidy earlier and was happy to process it. **Lewis-Webster**, Tr., p. 494.

The **Thorntons** state, however, that HCDHS, through **Stephen Franklin**, refused to provide the additional subsidy. The GAL corroborated this, indicating that **Mr. Franklin** claimed that **Steven** was not a special needs child. Although HCDHS had caused extensive medical and

psychological tests to be performed on **Steven** and should have had the test results in **Steven's** file, HCDHS required the **Thorntons** to provide documentation to show that **Steven** had special needs requiring the additional subsidy. The GAL went to numerous offices of physicians and laboratories to obtain copies of the results of the tests HCDHS had had taken. The GAL then delivered these test results to HCDHS. Interview with **Eleanor Williams**, p. 3. Although the **Thorntons** requested the extra subsidy in August 1999, HCDHS did not start providing it until January 2000. At that time, HCDHS reimbursed the **Thorntons** for the payments they had made during the August-December period.

OCR finds that the HCDHS' treatment of the **Thorntons** constituted a violation of Title VI and its implementing regulations. HCDHS subjected the **Thorntons** to different treatment and standards based upon their race and the race of the children in which they expressed an interest in adopting. The different treatment was not based upon an individualized assessment of a particular child's needs and the ability of the **Thorntons** to meet those specific needs, but on generalized assumptions and stereotypes of the **Thorntons** based on their race. The application of different criteria to the **Thorntons** based on their race constitutes violations of 45 C.F.R. §§ 80.3(a); 80.3(b)(1)(ii); 80.3(b)(1)(v); and 80.3(b)(1)(vi). That conduct violated 45 C.F.R. § 80.3(a) by subjecting the **Thorntons** to discrimination on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **Thorntons** in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **Thorntons** differently from others on the basis of race in determining whether they satisfied conditions necessary to participate in the program. HCDHS violated 45 C.F.R. § 80.3(b)(1)(vi) by affording **Steven Warren** and the **Thorntons** an opportunity to participate in its program that was different than that afforded to others on the basis of race.

The **Thorntons** alleged that HCDHS delayed presenting **Steven** to the Selection Committee to be matched with them for discriminatory reasons. OCR finds that the evidence does not support that contention. Although the Juvenile Court indicated that it was granting permanent custody of **Steven** to HCDHS at the March 30, 1999 hearing, the court did not issue its written PC Order until April 27, 1999. The order did not become final and non-appealable until June 11, 1999. The Selection Committee made the match less than a month later, a relatively expeditious presentation. Consequently, OCR finds no violation of Title VI or Section 1808 on this ground.

The **Thorntons** alleged that HCDHS violated Title VI and Section 1808 when three of its four employees voted against matching the **Thorntons** with **Steven Warren** at the July 8, 1999 Selection Committee meeting. OCR finds that no violation occurred at the Selection Committee meeting. All eight participants in the Selection Committee meeting, including the four "outsiders" not employed by HCDHS, were acting on behalf of HCDHS as Selection Committee members. Since the Committee voted 5-3 in favor of the match, HCDHS made the match and there was no discrimination by HCDHS arising out of the opposition of the three HCDHS employees at the Selection Committee meeting itself.

Finally, OCR finds that HCDHS violated Title VI and its implementing regulations by retaliating against the **Thorntons** through the withholding of the extra subsidy because the **Thorntons**

lodged complaints about the actions of the HCDHS workers at the July 8 Selection Committee meeting. Title VI and its implementing regulations protect from retaliation those who file complaints or racial discrimination against a recipient or subrecipient of federal funds, even if the underlying complaint is ultimately not sustained. 45 C.F.R. § 80.7. HCDHS was not entitled to punish the **Thorntons** financially for exercising their right to complain of alleged discrimination by the HCDHS staff.

## 12. Cynthia Wadsworth and Thomas and Amanda Thornton

As detailed above, in 1997 **Amanda** and **Thomas Thornton** applied to adopt with HCDHS. After the **Thorntons** learned that most children in the HCDHS system who needed adoptive placement were African American males, they revised their original match chart to indicate that they would accept a child of any race or gender under the age of 8. On at least four occasions from October 1998 through June 1999, the Selection Committee considered a child with characteristics that would be acceptable to the **Thorntons**, but rejected them based on the racial makeup of their neighborhood and acquaintances. For example, the minutes from the October 22, 1998 Selection Committee meeting stated, in pertinent part, “The [**Thorntons**] acknowledge that their transracial plan needs some work. They live in Mt. Washington area (predominately White). Couple does have AA friends, co-workers and are fairly good friends with an interracial couple. They will seek out more relationships if transracial placement is made and will seek appropriate role models for a child.” Selection Committee Minutes October 22, 1998, p. 3. On February 26, 1999, the Selection Committee considered the **Thorntons** for a possible match with an African American female, **Cynthia Wadsworth**. The **Thorntons** were rejected because they did not “live in a diverse neighborhood (Mt. Washington). Have vague cultural plan for transcultural placement.” **Cynthia Wadsworth** was unanimously matched with **Jeff and Connie Kempf**, an African American family. Selection Committee Minutes February 26, 1999, p. 3.

OCR finds that the HCDHS’s treatment of the **Thorntons** constituted a violation of Title VI and its implementing regulations. HCDHS subjected the **Thorntons** to different treatment and standards based upon their race and the race of the children in which they expressed an interest in adopting. The different treatment was not based upon an individualized assessment of a particular child’s needs and the ability of the **Thorntons** to meet those specific needs, but on generalized assumptions and stereotypes of the **Thorntons** based on their race. The application of different criteria to the **Thorntons** based on their race constitutes violations of 45 C.F.R. §§ 80.3(a); 80.3(b)(1)(ii); 80.3(b)(1)(v); and 80.3(b)(1)(vi). That conduct violated 45 C.F.R. § 80.3(a) by subjecting the **Thorntons** to discrimination on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **Thorntons** in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **Thorntons** differently from others on the basis of race in determining whether they satisfied conditions necessary to participate in the program. HCDHS violated 45 C.F.R. § 80.3(b)(1)(vi) by affording **Cynthia Wadsworth** and the **Thorntons** an opportunity to participate in its program that was different than that afforded to others on the basis of race.

OCR also finds that HCDHS's treatment of **Cynthia Wadsworth** and the **Thorntons** violated Section 1808(c). OCR finds that HCDHS relied on the racial composition of the **Thorntons'** neighborhood and acquaintances in rejecting the **Thorntons** as a possible placement for **Cynthia Wadsworth**. HCDHS denied the **Thorntons** the opportunity to become adoptive parents on the basis of race, and denied the placement of **Cynthia Wadsworth** on the basis of race. HCDHS's actions violated Section 1808(c)(1)(A) as to the **Thorntons**, and Section 1808(c)(1)(B) as to the placement of **Cynthia Wadsworth**. Section 1808(c)(1)(A) provides that an adoption agency which receives federal funds may not "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." Section 1808(c)(1)(B) provides that such an agency may not "delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved." In this case, HCDHS prevented **Cynthia Wadsworth** from being placed for adoption with the **Thorntons** because of **Cynthia Wadsworth's** race and the **Thorntons'** race.

### 13. Joanne Sherman and Thomas and Amanda Thornton

Also on February 26, 1999, the Selection Committee took up the placement of a six-month old African American female, **Joanne Sherman**. **Joanne** met the criteria on the **Thorntons'** chart. Though they had been discussed as a possible match for **Cynthia Wadsworth** that day, the **Thorntons** were not discussed in connection with **Joanne**. The refusal to discuss the **Thorntons** was consistent with the pattern described above, in which the Selection Committee considered a child with characteristics that would be acceptable to the **Thorntons**, but rejected them based on the racial makeup of their neighborhood and acquaintances.

OCR finds that the HCDHS's treatment of the **Thorntons** constituted a violation of Title VI and its implementing regulations. HCDHS subjected the **Thorntons** to different treatment and standards based upon their race and the race of the children in which they expressed an interest in adopting. The different treatment was not based upon an individualized assessment of a particular child's needs and the ability of the **Thorntons** to meet those specific needs, but on generalized assumptions and stereotypes of the **Thorntons** based on their race. The application of different criteria to the **Thorntons** based on their race constitutes violations of 45 C.F.R. §§ 80.3(a); 80.3(b)(1)(ii); 80.3(b)(1)(v); and 80.3(b)(1)(vi). That conduct violated 45 C.F.R. § 80.3(a) by subjecting the **Thorntons** to discrimination on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **Thorntons** in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **Thorntons** differently from others on the basis of race in determining whether they satisfied conditions necessary to participate in the program. HCDHS violated 45 C.F.R. § 80.3(b)(1)(vi) by affording **Joanne Sherman** and the **Thorntons** an opportunity to participate in its program that was different than that afforded to others on the basis of race.

OCR also finds that HCDHS's treatment of **Joanne Sherman** and the **Thorntons** violated Section 1808(c) of the Small Business Job Protection Act. OCR finds that HCDHS relied on the racial composition of the **Thorntons'** neighborhood and acquaintances in refusing to consider



the Thorntons as a possible placement for **Joanne Sherman**. HCDHS denied the **Thorntons** the opportunity to become adoptive parents on the basis of race, and denied the placement of **Joanne Sherman** on the basis of race. HCDHS's actions violated Section 1808(c)(1)(A) as to the **Thorntons**, because it denied to them the opportunity to become an adoptive parents, on the basis of their race and the race of the child. HCDHS violated Section 1808(c)(1)(B) as to the placement of **Joanne Sherman** because it denied her placement for adoption on the basis of her race and the race of the adoptive parents.

#### 14. Unnamed Child and Thomas and Amanda Thornton

Following the rejection of the **Thorntons** as possible placements, as described above, the Selection Committee again considered them as a possible placement for a child. On March 4, 1999, the Selection Committee considered the **Thorntons**, this time for a resource placement of a two year old African American female who had been returned to HCDHS by the State of Georgia because of her severe physical and developmental issues.<sup>27</sup> In rejecting the **Thorntons** as a match for this child, the Committee said of them, "Very persistent in pursuit of adoption. Do not live in a diverse neighborhood, but they have submitted a transcultural plan. They have co-workers they can talk to re: child's heritage. Appear somewhat desperate/anxious for a child. More contact is needed with family to get a better understanding of them and their wants." Selection Committee Minutes March 4, 1999, p. 4. The rejection of the **Thorntons** was consistent with the pattern described above, in which the Selection Committee considered a child with characteristics that would be acceptable to the **Thorntons**, but rejected them based on the racial makeup of their neighborhood and acquaintances.

OCR finds that the HCDHS's treatment of the **Thorntons** constituted a violation of Title VI and its implementing regulations. HCDHS subjected the **Thorntons** to different treatment and standards based upon their race and the race of the children in which they expressed an interest in adopting. The different treatment was not based upon an individualized assessment of a particular child's needs and the ability of the **Thorntons** to meet those specific needs, but on generalized assumptions and stereotypes of the **Thorntons** based on their race. The application of different criteria to the **Thorntons** based on their race constitutes violations of 45 C.F.R. §§ 80.3(a); 80.3(b)(1)(ii); 80.3(b)(1)(v); and 80.3(b)(1)(vi). That conduct violated 45 C.F.R. § 80.3(a) by subjecting the **Thorntons** to discrimination on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **Thorntons** in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **Thorntons** differently from others on the basis of race in determining whether they satisfied conditions necessary to participate in the program. HCDHS violated 45 C.F.R. § 80.3(b)(1)(vi) by affording the child in question and the **Thorntons** an opportunity to participate in its program that was different than that afforded to others on the basis of race.

---

<sup>27</sup>A resource placement is when a child is placed with a family adoptively before a PC Order has been entered.

OCR also finds that HCDHS's treatment of the unnamed child and the **Thorntons** violated Section 1808(c). OCR finds that HCDHS relied on the racial composition of the **Thorntons'** neighborhood and acquaintances in rejecting the **Thorntons** as a possible placement for the child. HCDHS denied the **Thorntons** the opportunity to become adoptive parents on the basis of race, and denied the placement of the child on the basis of race. HCDHS's actions violated Section 1808(c)(1)(A) as to the **Thorntons**, because it denied to them the opportunity to become adoptive parents, on the basis of their race and the race of the child. HCDHS violated Section 1808(c)(1)(B) as to the placement of the child because it denied her placement for adoption on the basis of her race and the race of the adoptive parents.

### 15. Joanne Sherman and Traci and Steven Snyder

On February 26, 1999, the Selection Committee took up the placement of **Joanne Sherman**. The Committee considered **Paulette Hale** and **Traci and Steven Snyder** as possible matches for **Joanne**. **Paulette Hale** is an African American woman; **Traci and Steven Snyder** are a Caucasian couple, who had asked to be matched with **Joanne** after seeing her on *Thursday's Child*, a weekly local news show segment that focused on one or two children who were in HCDHS permanent custody and required adoptive placement. In considering these potential matches, the Selection Committee noted that "mental illness [in a child] would have to be discussed with" **Ms. Hale**. As to the **Snyders**, the minutes state, "Child they are interested in birth parent [*sic*] has mental illness issues – it is not known at present what they would be open to. Open to transcultural placement. Live in Colerain Township area." Selection Committee Minutes, February 26, 1999, pp. 4-5. According to the 2000 census, Colerain Township, in Hamilton County, had a racial composition of 87.8% Caucasian, 9.4% African American, and 2.8% Other. In describing the vote to match **Joanne Sherman** with **Ms. Hale**, the minutes stated: "The **Snyders'** match chart indicates they are not open to mental illness and their Homestudy has not been updated." Selection Committee Minutes, February 26, 1999, pp. 4-5. The rejection of the **Snyders** reflects disparate treatment by the Selection Committee on the basis of race. The minutes demonstrate that the **Snyders** were subjected to different standards in that geographical considerations came into play when they were considered, but not when **Ms. Hale** was considered. In addition, even though the **Snyders** had sought out **Joanne**, their interest in a child with disabilities was questioned and served as a basis for their rejection. This treatment stands in contrast to the more favorable treatment of **Ms. Hale**, where the minutes indicate that "mental illness would have to be discussed."

OCR finds that the HCDHS's treatment of the **Snyders** constituted a violation of Title VI and its implementing regulations. HCDHS subjected the **Snyders** to different treatment and standards based upon their race and the race of the children in which they expressed an interest in adopting. The different treatment was not based upon an individualized assessment of a particular child's needs and the ability of the **Snyders** to meet those specific needs, but on generalized assumptions and stereotypes of the **Snyders** based on their race. The application of different criteria to the **Snyders** based on their race constitutes violations of 45 C.F.R. §§ 80.3(a); 80.3(b)(1)(ii); 80.3(b)(1)(v); and 80.3(b)(1)(vi). That conduct violated 45 C.F.R. § 80.3(a) by subjecting the **Snyders** to discrimination on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by

providing services to the **Snyders** in a different manner on the basis of race. HCDHS violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **Snyders** differently from others on the basis of race in determining whether they satisfied conditions necessary to participate in the program. HCDHS violated 45 C.F.R. § 80.3(b)(1)(vi) by affording **Joanne Sherman** and the **Snyders** an opportunity to participate in its program that was different than that afforded to others on the basis of race. OCR also finds that HCDHS's treatment of **Joanne Sherman** and the **Snyders** violated Section 1808(c). OCR finds that HCDHS relied on the racial composition of the **Snyder's** neighborhood in rejecting them as a possible placement for **Joanne Sherman**. HCDHS denied the **Snyders** the opportunity to become adoptive parents on the basis of race, and denied the placement of **Joanne Sherman** on the basis of race. HCDHS's actions violated Section 1808(c)(1)(A) as to the **Snyders**, because it denied to them the opportunity to become adoptive parents, on the basis of their race and the race of the child. HCDHS violated Section 1808(c)(1)(B) as to the placement of **Joanne Sherman** because it denied her placement for adoption on the basis of her race and the race of the adoptive parents.

#### 16. **Antuan Mays, Brittany Baker, Denise Baker and Julian and Casey Ryan**

**Antuan Mays, Brittany Baker** and **Denise Baker** were a sibling group for whom HCDHS was attempting to find a placement. **Antuan Mays** is an African American male, who was ten months old when he was placed in the permanent custody of HCDHS on December 18, 1998. **Brittany Baker** (aka **Brittany Mays**) is an African American female, who was about two and a half years old on November 30, 1998 when she was placed in the permanent custody of HCDHS. **Denise Baker** is an African American female, who was living in the same foster home as **Brittany**. When the Selection Committee considered possible placement of **Antuan** and **Brittany** on July 1, 1999, **Denise Baker** had not yet been placed in HCDHS's permanent custody. **Brittany's** PC Order became final and non-appealable on January 14, 1999 and **Antuan's** on February 1, 1999. The on-going unit referred **Brittany** and **Antuan** to the adoption unit on February 16, 1999. HCDHS wanted to place **Antuan** and **Brittany** together with the hope that **Denise** could join them. Selection Committee Minutes, 7/1/99, p. 4.

When the Selection Committee considered **Antuan Mays** and **Brittany Baker**, it considered only one family as a possible match, **Michael** and **Donna Lenn**. The **Lenns**, an African American couple, lived in Butler County, Ohio. Their homestudy had been approved on December 3, 1998 for up to two children of either sex from 0 to 2 years of age. Their homestudy was transmitted to HCDHS on March 23, 1999. The **Lenns** saw **Antuan** and **Brittany** on *Thursday's Child*, and then asked to be placed with the children. HCDHS matched the children with the **Lenn** family at its July 1, 1999 Selection Committee meeting. The Selection Committee minutes indicate that "no other families [were] available." Selection Committee Minutes, 7/1/99, p. 5.

That explanation for considering only the **Lenn** family is not supported by the evidence. Although the **Lenns** were the only family considered by the Selection Committee, they were not the only family that expressed an interest in the children before their presentation to the Selection Committee. **Julian** and **Casey Ryan** also expressed an interest. The **Ryans** were a Caucasian

couple who had adopted one bi-racial child through a private agency and were in the process of adopting an African American child through a power of attorney from the child's biological mother. **Mrs. Ryan** was a friend of **Antuan's** foster mother, **Mrs. Leister**. **Mrs. Leister** told her when **Antuan** was placed in the permanent custody of HCDHS. **Mrs. Ryan** also met **Antuan** at a HCDHS Christmas party in December 1998. In the spring of 1999, **Mrs. Ryan** learned that **Antuan** had sisters who might be available for placement as well and contacted **Hazel King, Stephen Franklin, Reba Lewis-Webster** and **Mattie Kline** to tell them that she and her husband were interested in adopting the sibling set. During her interview with OCR, **Mrs. Ryan** declared:

We informed **Reba Lewis-Webster** and **Hazel King** that we were interested in **Antuan** and his sisters. We also informed **Mattie Kline** and **Hazel King** that we were interested in an African American or bi-racial child and that we would consider a sibling group or two or maybe three children. I spoke with **Reba** several times about this desire. Our preference for an African American or bi-racial child was indicated on our application, too.

**Casey Ryan Int.**, 4/10/00. **Mrs. Leister** also told OCR that **Mrs. Ryan** had told her that her family was interested in adopting **Antuan** and his sisters. **Leister Int.**, p. 4.

Notwithstanding the expression of interest by the **Ryans**, HCDHS only presented the **Lenns** as a possible placement at its July 1, 1999 Selection Committee meeting. The **Ryans** were not even mentioned as a possible placement for the **Mays** and **Baker** children. Instead, the **Ryans** were matched at the same meeting as a resource placement with a seven month old Caucasian female. The **Ryans** turned down the proposed resource placement match. The July 22, 1999 Selection Committee minutes note the unmatched and say that, "family decided they wanted to pursue a transracial/transcultural placement." The decision of the **Ryans** was consistent with their previously expressed interests. The **Ryans** had been pursuing such a placement with HCDHS since their original homestudy was done in spring of 1997. Their homestudy stated that because the **Ryans** were interested in a transracial placement, "an in-depth cultural parenting assessment was done with **Mr. and Mrs. Ryan**...A great deal of time was spent on self-esteem." The homestudy also noted:

Although the **Ryans** live in a community with a low black population, there are few black families in their neighborhood. They do have friends in the community, who have adopted and fostered African American children. The **Ryans** have also sought out a cultural consultant to assist them with the questions that may arise while caring for this child.

Worker's Assessment of Prospective Adoptive Family completed by **John Nicolas**, Adoption Worker, approved 3/31/97.

OCR finds that HCDHS violated both Title VI and its implementing regulations and Section 1808(c) in failing to present **Julian** and **Casey Ryan** as potential adoptive parents for the **Mays-**

**Baker** children at its July 1, 1999 Selection Committee meeting. In particular, HCDHS violated Section 1808(c)(1)(A) as to the **Ryans** in that they were denied the opportunity to adopt the **Mays-Baker** children on account of their race and that of the children. HCDHS violated Section 1808(c)(1)(B) as to the placement of the **Mays-Baker** children in that they were denied placement with the **Ryans** because of their race and that of the **Ryans**. The **Lenn** and **Ryan** families were similarly situated in that both families had expressed a specific interest in the children. HCDHS was also aware of the **Ryans**' expressed interest in a transracial placement. Despite the expressed interest and approved homestudies, HCDHS did not consider the **Ryans** for the **Mays-Baker** children. It instead considered them for a same-race placement that did not reflect their expressed interests. The fact that HCDHS elected to present, consider and match the **Ryans** with a Caucasian child on the same day establishes that there were no barriers to their consideration for the **Mays-Baker** children. HCDHS's false explanation for considering only the **Lenns**, and its decision to attempt a same-race placement for the **Ryans** demonstrate that it was acting on the basis of race in refusing to even consider the **Ryans**. Its assessment of the racial make-up of the **Ryans**' neighborhood also helps substantiate that HCDHS's failure to consider the **Ryans** was based on race. By refusing on the basis of race to consider the **Ryans**' request to be considered as a placement for the **Mays-Baker** children, HCDHS violated Section 1808(c)(1)(A) and Section 1808(c)(1)(B) of the Small Business Job Protection Act of 1996. Those provisions prohibit a person or government that is involved in adoption or foster placements from denying to any individual the opportunity to become an adoptive parent on the basis of the race, color, or national origin of the individual, or of the child, involved and from delaying or denying the placement of a child for adoption on the basis of the race, color, or national origin of the adoptive parent, or the child, involved. A violation of that law constitutes a violation of Title VI . 42 U.S.C. 1996b(2). The refusal to consider the **Ryans** as a possible placement also violates Title VI and its implementing regulations. The refusal subjected the **Ryans** to discrimination on the basis of race in violation of 45 C.F.R. § 80.3(a). HCDHS violated 45 C.F.R. § 80.3(b)(1)(ii) by providing services to the **Ryans** in a different manner on the basis of race. HCDHS also violated 45 C.F.R. § 80.3(b)(1)(v) by treating the **Ryans** differently from others on the basis of race in determining whether they satisfied conditions necessary to participate in the program. HCDHS also violated 45 C.F.R. § 80.3(b)(1)(vi) by affording **Antuan Mays, Brittany Baker, Denise Baker** and the **Ryans** an opportunity to participate in its program that was different than that afforded to others on the basis of race.

## **B. State Rules**

OCR also concludes that Ohio violated Title VI, MEPA and Section 1808 when it promulgated certain administrative rules governing transracial adoption and foster care. One of these rules, in effect from December 1995 until January 1999, required that prospective adoptive parents who were "not of the same cultural heritage" as a child they sought to adopt develop a "plan for assuring the child's cultural identity." OAC 5101:2-48-02(E). A second rule, in effect from December 1996 until January 1999, required that prospective adoptive parents who wished to adopt transracially undergo homestudies that required assessments not applicable in same-race situations. See OAC 5101:2-48-07(C)(6). That rule, as implemented through a homestudy form

in effect until September 2000, required assessments of the racial composition of neighborhoods in which individuals interested in adopting transracially resided. These rules required adoption agencies to subject prospective parents to different treatment and standards based upon their race and the race of the children in which they expressed an interest in adopting. In numerous individual cases, HCDHS took actions consistent with the mandates of these rules when HCDHS violated the rights of children and prospective adoptive parents, including actions that delayed or denied placements on the basis of race, or actions that denied to prospective parents the opportunity to adopt children on the basis of race. HCDHS also acted consistently with these Ohio rules when it engaged in systemic practices to impose additional requirements for transracial placements and to evaluate the racial composition of the neighborhood of individuals interested in adopting transracially.

### **C. Systemic Practices**

As demonstrated by its activities described above, and as confirmed during the course of OCR's review of its practices generally, HCDHS routinely engaged in a number of practices that violated both Title VI and its implementing regulations and Section 1808(c).

#### **1. Additional requirements for transracial placements**

In the cases discussed above, and in other HCDHS materials OCR reviewed, HCDHS maintained a practice of requiring parents interested in transracial placements to develop special plans and to undertake additional efforts as a part of their homestudy. Among other things, HCDHS workers urged parents interested in transracial placements to consider moving to integrated neighborhoods, to attend integrated churches, to obtain African American artwork, and to become familiar with what workers perceived as African American culture.

OCR's investigation also found that adoption workers were required to specially justify proposed transracial placements. One worker described the different preparation and review process that transracial placements required:

I never had to do the prep work for a same race placement that I had to do for a transracial placement. For same race placements, I usually felt confident that if I felt a family was appropriate and if I had the homestudy information that I could adequately present the family to the committee. I was never "grilled" by the Selection Committee when I proposed a same race placement for a child....I knew that for a transracial placement considerable additional information would be required that would never be sought by the Selection Committee when a same race placement was being considered.

**Overman Int. Sta., 1/4/02, p. 3.**

In addition, as contained in the January 1995, April 1997 and November 1998 editions of its *Adoption Policy Handbook* and as contained on its adoption website until September 2000,

HCDHS declared that it “pursues every avenue to secure permanent homes for children which meet their racial, cultural and ethnic identification needs” and that it “believes children have a right to a family that reflects their race, culture and ethnicity.” Moreover, HCDHS policy was explicit about the additional requirements in transracial placements:

7. Consideration is given to adoptive parents of a different cultural heritage than the child, but the family must develop a plan to assure the child’s cultural identity is understood, maintained and promoted. The plan should include:
  - a. documentation of a family’s acceptance of racial, cultural, ethnic, religious, socioeconomic differences amongst people;
  - b. willingness to help the child understand and appreciate differences amongst peoples;
  - c. documentation of an integrated lifestyle (i.e., living in an integrated neighborhood, maintaining relationships with individual’s [*sic*] of the same ethnic background as the child, etc);
  - d. documentation that the family understands that they may have to withstand hostility and isolation if they parent a child of a different race;
  - e. how the family plans to cope with hostility and isolation if they parent a child of another race;
  - f. support from extended family members;
  - g. opportunities to have regular contact with siblings when applicable;
  - h. the family understands the differences in the child’s skin, hair and health care needs.
8. Substitute caregiver(s) of a different cultural heritage are considered when the child is in the caregiver’s home prior to permanent commitment and the child’s attachment outweighs his need to be with a family of the same cultural heritage and a plan is developed to maintain the child’s identity.

“Transracial Adoptive Placement Pursuant to OAC 5101:2-48-02,” Hamilton County Department of Human Services Adoption Policy Handbook, page 11.

Although these policies were changed after the initiation of OCR’s review, they were in force at the time HCDHS acted in the cases described above. As a result, they provide further support for OCR’s findings that HCDHS regularly required families interested in transracial placements to undertake additional steps, and to be subject to different treatment and criteria. By imposing

additional requirements on parents who expressed an interest in transracial placements, HCDHS subjected them to different treatment and standards based upon their race and the race of the children in which they expressed an interest in adopting. This different treatment was not based upon an individualized assessment of a particular child's needs and the ability of parents to meet those specific needs, but on generalized assumptions and stereotypes of parents based on their race. In the homestudy process, HCDHS regularly required these additional steps prior to the identification and consideration of a particular child. As a result, the different requirements could not have been based on the individually assessed needs of a given child; rather they were applied based on the race of the parents and the race of the children in whom they expressed a general interest. In addition, even after homestudies were approved, HCDHS regularly required additional process and justification for parents interested in transracial placements. The application of different criteria based on race constitutes violations of Title VI and its implementing regulations, §§ 80.3(a); 80.3(b)(1)(ii); 80.3(b)(1)(v); and 80.3(b)(1)(vi), as well as Section 1808(c). That conduct violates 45 C.F.R. § 80.3(a) by subjecting the individuals to discrimination on the basis of race. The conduct violates 45 C.F.R. § 80.3(b)(1)(ii) by providing services to individuals in a different manner on the basis of race. It also violates 45 C.F.R. § 80.3(b)(1)(v) by treating individuals differently from others on the basis of race in determining whether they satisfy conditions necessary to participate in the program. The application of different criteria also violates 45 C.F.R. § 80.3(b)(1)(vi) by affording individuals an opportunity to participate in its program that was different than that afforded to others on the basis of race.

## 2. Consideration of geography in transracial placements

HCDHS also maintained a practice of taking into account the racial makeup of the neighborhoods in which prospective parents lived when transracial placements were considered. This practice is clearly demonstrated in the consideration of the neighborhoods of the **Atkinsons**, the **Lamms**, the **Sheas**, **Ms. Darling**, **Ms. Walker** and **Mr. Haughton**, the **Camarenas**, the **McReynolds**, the **Hobbs**, the **Thorntons**, the **Snyders** and the **Ryans**.

HCDHS employees acknowledged that consideration of the racial composition of the neighborhood was used in making placement decisions. For example, one worker told OCR that the racial composition of the neighborhood in which the prospective adoptive parents live is a relevant factor in placement decisions. **King Tr.**, p. 139; *see also* **Kline Tr.**, p. 480, **Dunham Tr.**, p. 85, and **Stone-Kingston Tr.**, p. 29. In addition, HCDHS's director, **Bill Bledsome**, acknowledged that HCDHS viewed consideration of the racial composition of the family's neighborhood as being in the best interests of the children in question. **Bledsome Tr.**, pp. 61-62 and 66.

OCR's review found evidence substantiating those statements by HCDHS staff. As a part of its review, OCR examined the minutes of HCDHS's weekly adoption Selection Committee meetings held from 1997 through 1999. OCR's review substantiated that, consistent with Ohio requirements, HCDHS regularly considered the racial makeup of the neighborhood of prospective adoptive parents who expressed an interest in transracial placements. For example, in 1998, the Selection Committee considered **Micky and Dollie Brasco**, who were interested in



adopting a child of a different race, and noted: “Family has nothing formalized as far as cultural heritage of an adopted child. They have done some reading and have a basic plan for transracial placement. Only involvement family has with African American families is through church . . . . Live in White Oak (predominantly Caucasian neighborhood.)” Similarly, in 1999, the minutes show that, in discussing the **Blake** family, who expressed that they were open to adopting children of any race, HCDHS noted that both prospective parents “were raised in Price Hill and the family lives in upper Price Hill.” According to the 2000 census, that area was 96.5% Caucasian, 1.1% African American, and 2.4% Other. Selection Committee minutes also showed that the **Graham** family was rejected as a placement in 1997. The minutes reflect consideration of the fact that the family “recently moved to West Chester.” According to the 2000 census, West Chester was 91.4% Caucasian, 4.3% African American, and 4.3% Other. In 1998, the **Regan** family was also rejected as a placement. Selection Committee minutes reflect consideration of the fact that the family “live[d] in New Richmond.” New Richmond was 96.3% Caucasian, 2.3% African American, and 1.4% Other.

In contrast to its actions in transracial placements, HCDHS did not consider the racial diversity of neighborhoods when same-race placements were considered. HCDHS staff could not explain why the racial diversity of neighborhoods was only considered in connection with a transracial placement, and not when a same race placement was being contemplated in a non-diverse neighborhood. See, e.g. **Lewis-Webster Tr.**, p. 845. This HCDHS application of different standards based on whether the placement under consideration was same-race or transracial constitutes the application of different standards based on the race of the parent and of the child involved.

Moreover, the application of different standards by HCDHS was not based on any individualized assessments of children. HCDHS regularly applied different standards based on the prospective parents’ expression of interest in transracial placement before any specific child was identified as a possible placement. The application of different standards in that manner demonstrates that HCDHS acted based on the race of the parents, on assumptions and stereotypes about the ability of parents based solely on their race, and on assumptions and stereotypes about the needs of children based solely on their race. Even after HCDHS approved homestudies for parents interested in transracial placements, OCR’s investigation found that HCDHS regularly focused on the racial makeup of the neighborhoods of prospective parents only when transracial matches were being considered. When same-race placements were discussed for the same children, the racial makeup of the same-race prospective parents were not discussed. This disparity also demonstrates that these criteria were based on the race of the parents, on assumptions and stereotypes about the ability of parents based solely on their race, and on assumptions and stereotypes about the needs of children based solely on their race.

As noted above, HCDHS’s adoption policy manual explicitly required transracial adoption plans to include, among other things, “documentation of an integrated lifestyle (i.e., living in an integrated neighborhood . . .).” The existence of this requirement provides further support for OCR’s findings that HCDHS regularly required families interested in transracial placements to undertake additional steps, and to be subject to different treatment and criteria.

This HCDHS practice constitutes a violation of Title VI and its implementing regulations, and Section 1808(c). HCDHS subjects prospective parents to different treatment and standards based upon their race and the race of the children in which they expressed an interest in adopting. The different treatment was not based upon an individualized assessment of a particular child's needs and the ability of the parents to meet those specific needs, but on generalized assumptions and stereotypes based on their race. The application of different criteria based on race constitutes violations of 45 C.F.R. §§ 80.3(a); 80.3(b)(1)(ii); 80.3(b)(1)(v); and 80.3(b)(1)(vi). Those provisions prohibit HCDHS from subjecting a person to discrimination on the basis of race; from providing services to an individual in a different manner on the basis of race; from treating an individual differently on the basis of race in determining whether the individual satisfies any requirements or conditions in order to be provided any service or other benefit; and from affording an individual an opportunity to participate in a program that is different from that afforded others under the program on the basis of race.

#### **D. HCDHS's Responses**

During the course of OCR's review, HCDHS raised three defenses to its actions. OCR concludes that none of these defenses has merit.

First, HCDHS claimed that any violations of Title VI, MEPA, or Section 1808 in which it may have engaged were caused by its adherence to state administrative rules. As discussed earlier, OCR has previously advised ODHS that some of its administrative rules violated Title VI and Section 1808. The existence of those rules does not excuse the discriminatory conduct outlined in this letter. HCDHS had an independent duty under Title VI, MEPA and Section 1808 not to discriminate.

HCDHS also claims that any Section 1808 violations it may have committed came about because ODHS failed to provide it with adequate training on the changes between MEPA and Section 1808, leading it to assume that Section 1808 was just a "technical change." As previously noted, HCDHS has an independent duty to comply with applicable laws and regulations, and its discriminatory conduct cannot be excused based on claims of inadequate training provided by others. Moreover, OCR's review revealed that ODHS did provide HCDHS with several opportunities for both oral and written training on Section 1808. Some of the training materials which ODJFS provided at these sessions made clear that HCDHS could not lawfully engage in the discriminatory conduct in which it was engaged. For example, an overhead slide used at a February 1999 session stated that "An agency cannot use Geographical location as the basis for denying or delaying the placement of available children." For all of these reasons, HCDHS's claim that its actions can be excused because of a lack of training does not have merit.

Third, HCDHS claims that OCR and/or ACF provided it with inadequate or contradictory advice on the operation of MEPA and Section 1808. OCR and ACF have reviewed their files and neither agency has been able to identify a single inquiry from HCDHS regarding the operation of Title VI, or Section 1808 during the period from October 1994, when MEPA was enacted, until the commencement of OCR's compliance review. During that period, ACF, alone or in concert

with OCR, did furnish the public with written guidance concerning MEPA and Section 1808. These included the 1995 Guidance issued on April 25, 1995, "Policy Guidance on the Use of Race, Color or National Origin as Consideration in Adoption and Foster Care Placements," issued on April 20, 1995, and "ACF Program Instruction ACYF-PI-CB-95-23," issued on October 11, 1995. After Section 1808 took effect, ACF and OCR issued the 1997 Joint Guidance and in 1998 their joint response to questions from the Government Accounting Office (GAO) regarding the implementation of Section 1808. The 1997 Joint Guidance explained the changes in the law between MEPA and Section 1808 and incorporated by reference portions of the 1995 Guidance, such as the need for an individualized assessment of a child's needs and the prohibition against requiring an adoption worker to specially justify a proposed transracial placement. The joint response to GAO questions elaborated on how Section 1808 would operate in particular circumstances. Since HCDHS did not seek any advice from OCR and ACF, the discriminatory conduct described in this letter cannot be excused on grounds that it was the product of misleading or contradictory advice. Since the initiation of this review, OCR and ACF have provided significant amounts of technical assistance to HCDHS. All of that technical assistance has been consistent with the guidance mentioned above.

### **III. REMEDIES**

When an OCR investigation indicates that a recipient of HHS assistance under Title VI has failed to comply with applicable regulations, the recipient is given an opportunity to take the corrective actions necessary to remedy the violation. Toward that end, OCR is available to discuss the findings described in this letter.

Further, to facilitate voluntary compliance in this matter, OCR requests that HCJFS and ODJFS submit to OCR within 30 days a proposed plan for correcting the above violations. Any corrective action must address certain key areas, including: the development and implementation of rules, policies and other materials that are fully in compliance with Title VI and Section 1808; the development and implementation of uniform and non-discriminatory practices in HCJFS' adoption system; adequate training for staff and any relevant contract agencies; the provision to OCR of key data on children who are in HCJFS custody and families with approved homestudies seeking to adopt one or more children through HCJFS and provisions for adequate monitoring of corrective actions. Following the receipt of a proposed corrective action plan, OCR is available to discuss voluntary resolution of these issues.

If compliance cannot be secured by voluntary means, it may be effected by suspension or termination of, or refusal to grant or to continue Federal financial assistance, when a violation is found after opportunity for hearing, or by any other means authorized by law, including a recommendation that the Department of Justice bring an action to enforce Title VI.

### **IV. CONCLUSION**

Please be advised that no recipient may intimidate, threaten, coerce or discriminate against an individual because he or she has made a complaint, testified, assisted or participated in any

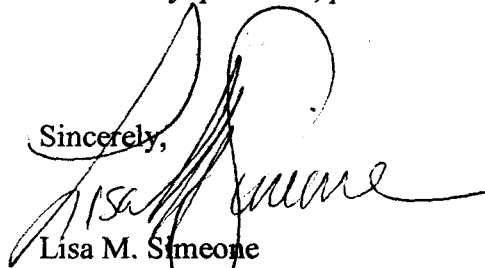
Page 60 - Suzanne A. Burke and Tom Hayes - Pseudonym Version

manner in an action to secure rights protected by the civil rights statutes enforced by OCR. (45 C.F.R. § 80.7(e))

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event OCR receives such a request, we will make every effort to protect, to the extent provided by law, information which identifies individuals or which, if released, would constitute an unwarranted invasion of privacy. (5 U.S.C. § 552)

Thank you for your cooperation. If you should have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa M. Simeone". The signature is fluid and cursive, with a large loop at the end.

Lisa M. Simeone  
Regional Manager  
Office for Civil Rights  
Region V