



DEPARTMENT OF HEALTH & HUMAN SERVICES

Voice - (415) 437-8310, (800) 368-1019

TDD - (415) 437-8311, (800) 537-7697

(FAX) - (415) 437-8329

<http://www.hhs.gov/ocr/>

OFFICE OF THE SECRETARY

Office for Civil Rights, Region IX

50 United Nations Plaza, Room 322

San Francisco, CA 94102

July 3, 2003

(415) 437-8310

TDD 437-8311

FAX 437-8329

William Bell, Acting Director
Arizona Department of Economic Security
1789 W. Jefferson
P. O. Box 6123
Phoenix, Arizona 85005

Reference: 09-02-7005

Transaction: 02-01384

Dear Mr. Bell:

The Office for Civil Rights (OCR) has completed a review of the Arizona Department of Economic Security (DES), Administration of Children, Youth and Families' (ACYF). OCR's review focused on whether ACYF has policies, procedures, and practices that delay or deny an individual the opportunity to become a foster care or adoptive parent based on the race, color, or national origin of the child or the prospective parent involved.

OCR conducted its review under its authority to enforce Title VI of the Civil Rights Act of 1964 and implementing regulation, 45 CFR Part 80 (Title VI), and the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 (MEPA-IEP). Title VI and MEPA-IEP prohibit discrimination in foster care and adoptive placement decisions based on race, color, or national origin.

ACYF worked cooperatively with OCR throughout the review. However, OCR's initial review raised some Title VI and MEPA-IEP compliance concerns for OCR. ACYF and OCR discussed these concerns as they arose and ACYF took prompt action to address them. ACYF has revised placement policies and procedures to ensure that they accurately reflect current MEPA-IEP policy. It has communicated the revised policies and procedures to its staff and to its contract providers through training sessions and written notices.

Based on ACYF's voluntary actions, OCR has found ACYF in compliance with the issue under review. Highlights of the reviews findings are as follows.

Background

ACYF provides foster care and adoption services in six districts throughout Arizona. Approximately 60% of ACYF's child care cases are in District 1 and 30% are in District 2. District 1 serves Maricopa County (Phoenix) and District 2 serves Pima County (Tucson).

ACYF contracts with private children's service agencies for home study and foster care family supervision services. ACYF case managers conduct home studies and supervise foster care homes only under limited circumstances, generally where no local private agency exists.

This review included visits to ACYF's offices in Phoenix and Tucson. We interviewed staff, reviewed documents and case files, and spoke with advocates for children who are familiar with ACYF's placement practices.

Family assessment guide

ACYF provides case managers with a Family Assessment Guide to help them get to know foster care and adoption applicants. ACYF developed the Guide in 1997, and distributed it internally and to contract providers statewide. The Guide defines medical, psychological, and social factors about the applicant that a case manager should consider for the home study report. ACYF does not require its contract providers to use the Guide, but many use it or something similar. Case managers use the resulting home study report to identify appropriate families for children.

Prior to OCR's review, a section of the Guide queried the applicant about "ethnic differences." Specifically, the Guide asked the applicant to describe why the applicant was willing to parent a child of a different race or ethnicity, to describe experiences with discrimination, and to explain how a child of a different racial or ethnic heritage would be received in the family, by friends, the neighborhood, and the community. Instructions for case managers advised them to target for response those applicants interested in cross-race foster care or adoption.

MEPA-IEP policy prohibits children's service agencies from routinely asking applicants about their racial, ethnic, or cultural awareness or competency in the home study process. OCR believes an agency could use the results of such an assessment to prematurely eliminate families from consideration for a particular child and to limit the child's placement options based on race or ethnicity. ACYF asserted that case managers use the "ethnic differences" section of the Guide to educate parents so they can help their children cope with race discrimination. MEPA-IEP policy guidance provides that a children's service agency's efforts to educate parents to race discrimination issues should take place during training offered to all parents and not in the home study process.

After discussion with OCR, ACYF promptly revised the Guide to eliminate the items in question. It notified its staff and contract providers statewide to discontinue any assessment tool that referenced race or ethnicity in the applicant screening process.

OCR found no evidence that ACYF imposes any additional written standards or requirements to its evaluations of prospective parents who will embrace a cross-race placement. ACYF case managers who conduct home studies told OCR they do not comment on an applicant's competency with issues of race or ethnicity in their home study reports.

Foster care home licensing

DES's Office of Licensing, Certification, and Review (OLCR) reviews and approves licenses for foster care homes. OLCR is a separate office from ACYF within DES. OCR reviewed OLCR's practices because OLCR determines who can be a foster parents. OCR found that OLCR's licensing policies and procedures have uniform standards and are neutral with regard to race and ethnicity. We found no deficiency in the licensing process that would delay or deny a license to a foster home based on race or ethnicity. OLCR gives parents willing to take children with special needs first priority for license review and approval. Under Section 8 of Arizona's Revised Statute, "special needs" children include those children with high risk of developmental disability, sibling relationships, and racial or ethnic minorities. The order of priority is designed to facilitate timely placements for children who have the greatest difficulty finding homes. The order of priority is reasonable and legitimate because it is based on the availability of homes for children and not based on race or ethnicity.

OCR reviewed foster care home licenses during site visits to Phoenix and Tucson. We found no evidence of licensing restrictions based on the foster care family's race or ethnicity.

Licensing specialists routinely review home studies conducted by ACYF case managers and by contract providers. The licensing specialists interviewed indicated to OCR that the home studies are free from negative comments about an applicant's competency to care for a child of a different race or ethnicity. Further, they indicated that the home studies do not place limits on children's placement options based on race or ethnicity.

Foster care placement

ACYF's placement guidelines advise case managers to consider the race or ethnicity of the child or prospective parent only when the child's needs assessment requires such consideration. The guidelines are free of any references to race or ethnicity as a criterion to match a child with a foster care family. Case managers interviewed by OCR defined selection factors for foster care home placements as proximity to siblings, parents, school, and medical and therapy services, behavior, and number and age of other children in the home. They also consider the language needs of the child and parents. These factors are legitimate and nondiscriminatory considerations under MEPA-IEP.

MEPA-IEP policy guidance provides that a children's service agency may not honor a birth parent's request that the child be placed in a racially or ethnically matched home. ACYF's guidelines explicitly instruct case managers not to consider the birth parent's race or ethnic preference for a foster care parent. ACYF's guidance reflects MEPA-IEP policy.

ACYF uses placement teams and supervisory reviews to ensure individual case managers appropriately place foster care children. Placement teams may consist of peer case managers, supervisors, and community child advocates. Team review and supervisory review protect

against an individual case manager selecting only those families that race match with the child.

Title VI and MEPA-IEP policy prohibit children's service agencies from prioritizing placements based on race or ethnicity. ACYF prioritizes placements for non-Native American children that it takes into protective custody. The order is defined in Arizona's administrative code as kinship foster care, significant person, and licensing family foster care home. This order is neutral with regard to race and ethnicity.

Adoptive placement

Prior to this review, ACYF's adoptive placement guidelines advised case managers not to remove a child placed in a cross-race home solely because the foster care parents have applied to adopt the child. MEPA-IEP prohibits consideration of race as even one factor in placement decisions except in exceptional circumstances. OCR believes that "for the sole reason" language provides case managers with ambiguous guidance about whether they can routinely consider race in placement decisions. ACYF followed OCR's advise and removed "for the sole reason" language from the guidelines.

Also prior to this review, ACYF's adoptive placement guidelines encouraged case managers to assess the applicant's ability to deal with discrimination, especially if the child was a different nationality from the applicant. MEPA-IEP prohibits racial competency assessments. ACYF's assessment of competency with discrimination issues could easily function in practice as a routine racial competency assessment. Additionally, Title VI prohibits children's service agencies from holding some applicants to a different or higher standard than other applicants based on race. ACYF's placement guidance indicated that case managers need only assess those applicants interested in cross-race adoption. Put into practice the guidance could result in case managers with ACYF and with its contract providers applying separate standards to different applicants based on race.

At OCR's suggestion, ACYF removed the routine assessment language from the placement guidelines. The revised guideline communicates clearly that a case manager can consider a specific applicant's flexibility to address discrimination issues when a child's individual assessment reveals a need for race or ethnicity to be taken into account.

Approximately 83% of ACYF's adopted children are "matched" adoptions; a relative or foster care parent with whom the child is living adopts the child. ACYF gives preferential consideration to relatives and foster care parents who are interested in adopting children already in their care. ACYF proceeds with the adoption if the case manager and the supervisor agree. When conflict arises in a matched placement decision, ACYF holds a case review conference to resolve the conflict. Case conference participants would generally include case managers, foster care parents, and other individuals familiar with the specific needs of the child. Routine supervisory review and case conferencing when disagreements arise promote impartiality decision making based on race.

Approximately 17% of ACYF's adopted children are "unmatched" adoptions; ACYF finds a permanent home for the child from a pool of prospective adoptive parents with completed applications and home studies who are not currently providing care to a child they wish to adopt. ACYF and the Court give preferential consideration to prospective parents who have applied to adopt special needs children. Special needs children may include children who may have difficulty finding a permanent home because of their race or ethnicity. ACYF's priority placement practice gives Arizona's most difficult to place children an enhanced opportunity to find an appropriate permanent family of any race or ethnicity in a timely manner.

ACYF's "unmatched" adoptive placement selection procedures provide three levels for selecting a permanent family for a child. A placement coordinator makes the initial match between the child and the applicant based on general criteria. The case manager then narrows the selection to two or three most qualified applicants, and a placement team makes the final selection. The team monitors the placement practices of individual social workers, identifies problems that may impede a child's placement, and recommends actions that will expedite an appropriate placement. This process establishes impartiality in applicant selection and provides a counterbalance to the possible racial prejudices of any individual case manager.

File reviews

OCR reviewed 40 home studies to ensure they were free from analysis of racial or ethnic competency. ACYF case managers and contract providers had conducted the home studies. They consistently discussed family composition, background, and behavior. They showed a clear pattern of uniform information and were free of references to an applicant's general ability to parent cross-race.

OCR also reviewed open and closed foster care and adoption case files, including those for children and applicants who are Caucasian, African-American and Hispanic. We looked at files for children that ACYF placed in same race homes and children it placed in cross-race homes. Race did not appear to be a routine factor for consideration in the placement process and the file review showed that ACYF regularly placed children in cross-race homes.

Parent orientation and training

Arizona administrative code and DES regulations require orientation and training for both prospective foster care and adoptive parents and define the mandatory topics for training. The topics include addressing the cultural and ethnic needs of a child.

Under Title VI and MEPA-IEP requirements, the information presented in mandatory orientation and training should be consistent for all applicants. The evidence indicates that when ACYF provides training, case managers provide the same information to all applicants without regard to their race or ethnicity.

ACYF's contract providers generally provide orientation and training to applicants. ACYF's revised assessment guide and placement procedures should by their common use reinforce to contract providers that training must be consistent for all prospective parents.

ACYF and many contract providers offer additional cross-race and ethnicity parent education. ACYF's policy is to proceed with a placement even when the applicant has not participated in such additional education. This policy complies with MEPA-IEP requirements because the additional training is identified as voluntary. OCR found no evidence that ACYF imposes any additional consequences for non-participation in practice. We found no indication that ACYF case managers use the training as a ruse to evaluate an applicant's racial and ethnic competence or that an applicant's nonparticipation in the voluntary training influences any placement decisions.

ACYF permits its contract providers to define the specific content for both mandatory parent training and additional education. ACYF monitors contractor compliance with MEPA-IEP standards for parent training on an exception basis. In a January 2003 letter, ACYF reminded its contract providers that additional training they provide must be strictly voluntary. This action, in unity with the other procedural changes that ACYF has made, should help ensure contractors understand and follow MEPA-IEP requirements.

Staff Training

OCR's interviews with ACYF administrators, supervisors, and case managers indicate MEPA-IEP principles are integrated into the thinking of both new and seasoned staff. MEPA-IEP training is an ongoing training element for new case managers. ACYF also communicates MEPA-IEP principles to staff through State law, supervisors, and coworkers.

In January 2003, ACYF's adoption manager provided MEPA-IEP training to District 1 case managers and contract providers. OCR believes ongoing MEPA-IEP training is critical to effective implementation statewide. We encourages ACYF to continue this training with its staff and with contract providers.

CONCLUSION

OCR finds ACYF in compliance with Title VI of the Civil Rights Act of 1964 and implementing regulation, 45 CFR Part 80 (Title VI), and the Interethnic the Small Business Job Protection Act of 1996 (MEPA-IEP) with respect to the issue in this review. We have closed this review effective the date of this letter.

This closure does not apply to other issues or investigations pending before OCR, other agencies within HHS, or another federal agency. Nothing in this closure letter relieves ACYF of its obligation to comply with all provisions of Title VI of the Civil Rights Act of 1964.

Page -7-

ACYF shall not intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, testified, assisted, or participated in any manner in this review.

OCR may release this document and related materials consistent with the requirements of the Freedom of Information Act, 5 U.S.C. 552, and its implementing regulation, 45 CFR Part 5.

Thank you for the courtesy and cooperation your staff extended to my staff throughout the review. We particularly appreciate the exceptional work done by Mark Schwartz and Angela Cause to bring this review to a successful conclusion. If you have any questions, please telephone Marlo Sagatelian at (415) 437-8326 or me at 437-8310.

Sincerely,

A handwritten signature in black ink that reads "Ira Pollack". The signature is written in a cursive, flowing style.

Ira C. Pollack
Regional Manager

cc: Mary Lou Q. Hanley, Acting Assistant Director
Division of Children, Youth and Families

Mark Schwartz, Administrative Services Officer
Administration for Children, Youth and Families

Angela Cause, Adoptions Director
Administration for Children, Youth and Families

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