

5101:2-42-18.1 **Non-discrimination requirements for foster care placements.**

- (A) A public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA) shall not deny any person the opportunity to become a foster caregiver on the basis of race, color or national origin (RCNO) of that person, or of the child involved; nor shall the PCSA, PCPA, or PNA delay or deny the placement of a child into foster care on the basis of RCNO of the foster caregiver or of the child involved.
- (B) The Multiethnic Placement Act of 1994 as amended by Section 1808 of the Small Business Job Protection Act of 1996, 42 U.S.C. 622(b)(7), 671(a)(18), 674(d) and 1996(b) (~~1/2/06~~) (MEPA) and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (~~1/2/06~~), as they apply to the foster care process (~~Title VI~~), do not supercede the provisions of the Indian Child Welfare Act of 1978, 25 U.S.C.A. 1901 (~~1/2/06~~).
- (C) A PCSA, PCPA, or PNA shall not routinely consider RCNO as a factor in assessing the needs or best interests of children. In each case, the only consideration shall be the child's individual needs and the ability of the prospective foster caregiver to meet those needs.
- (D) Only the most compelling reasons may serve to justify the consideration of RCNO as part of a placement decision. Such reasons emerge only in the unique and individual circumstances of each child and each prospective foster caregiver. In those exceptional circumstances when RCNO need to be taken into account in a placement decision, such consideration shall be narrowly tailored to advance the child's best interests. Even when the facts of a particular case allow consideration related to RCNO, this consideration shall not be the sole determining factor in the placement decision.
- (E) The following actions by a PCSA, PCPA, and PNA are permitted as it applies to the foster care placements.
- (1) Asking about and honoring any initial or subsequent choices made by prospective foster caregivers regarding what RCNO of child the prospective foster caregivers will accept.
  - (2) Providing information and resources about fostering a child of another RCNO to prospective foster caregivers who request such information and making known to all families that such information and resources are available.
  - (3) Considering the request of a birth parent(s) to place the child with a relative or non-relative identified by name.

- (4) Considering the RCNO of the child as a possible factor in the placement decision when compelling reasons serve to justify that the RCNO need to be a factor in the placement decision pursuant to paragraph (G) of this rule. Even when the facts of a particular case allow consideration related to the RCNO, this consideration shall not be the sole determining factor in the placement decision.
  - (5) Promoting cultural awareness, including awareness of cultural and physical needs that may arise in the care of children of different races, ethnicities and national origins as part of the training which is required of all applicants who seek to become foster caregivers.
  - (6) Documenting verbal comments, verbatim, or describing in detail any other indication made by a prospective foster caregiver or prospective foster caregiver family member living in the household or any other person living in the household reflecting a negative perspective regarding the RCNO for whom the prospective foster family have expressed an interest in fostering.
    - (a) The documentation shall indicate whether those comments were made before or after completion of the cultural diversity training that is required for all foster care applicants.
    - (b) The documentation shall be included in the family's homestudy, update, or an addendum to the homestudy or update prior to consideration of placement.
- (F) The following actions by a PCSA, PCPA, and PNA are prohibited as it applies to the foster care process:
- (1) Using the RCNO of a prospective foster caregiver to differentiate between foster care placements for a child, unless the procedures in paragraphs (G) to (K) of this rule are followed.
  - (2) Honoring the request of a birth parent(s) to place a child with a foster parent(s) of a specific RCNO unless the birth parent(s) identifies a relative or non-relative by name and that person is found to meet all relevant state child protection standards and the agency determines that the placement is in the best interests of the child.
  - (3) Requiring a prospective foster family to prepare or accept a transracial foster care plan.
  - (4) Using culture or ethnicity as a proxy for RCNO.
  - (5) Delaying or denying placement of a child based upon the following:

- (a) The geographical location of the neighborhood of the prospective foster caregiver if geography is being used as a proxy for the racial or ethnic composition of the neighborhood.
  - (b) The demographics of the neighborhood.
  - (c) The presence or lack of presence of a significant number of people of a particular RCNO in the neighborhood.
- (6) Requiring extra scrutiny, additional training, or greater cultural awareness of individuals who are prospective foster caregivers of children of a different RCNO than is required of other prospective foster caregivers.
  - (7) Relying upon general or stereotypical assumptions about the needs of children of a particular RCNO.
  - (8) Relying upon general or stereotypical assumptions about the ability of prospective foster caregivers of a particular RCNO to care for or nurture the sense of identity of a child of another RCNO.
  - (9) Steering prospective foster caregivers away from parenting a child of another RCNO. "Steering" is any activity that attempts to discourage prospective foster caregivers from parenting a child of a particular RCNO.
- (G) If a medical or psychological evaluation, school record, or other material documented in the file, including statements made by the child to a caseworker, indicate that there may be compelling reasons to consider needs the child may have regarding RCNO in the placement process, the agency shall determine if the child should be referred for an assessment of whether the child has individual needs involving RCNO.
  - (H) One of the following licensed professionals shall conduct the assessment regarding RCNO:
    - (1) A licensed child psychiatrist.
    - (2) A licensed child psychologist.
    - (3) A licensed independent social worker.
    - (4) A licensed professional clinical counselor.
  - (I) The licensed professional conducting the assessment shall not be employed by the PCSA or PCPA making the referral.

(J) At the time of the referral, the PCSA or PCPA shall initiate and subsequently complete the JFS 01688 "Individualized Child Assessment" (~~rev. 5/2007~~)(rev. 6/2017) using the following procedures:

- (1) The caseworker shall complete section I of the JFS 01688 and submit the JFS 01688 and all relevant medical or psychological evaluations, school records, or other material documented in the file to the caseworker's supervisor and the PCSA or PCPA MEPA monitor.
- (2) If both the supervisor and the MEPA monitor determine that the documented material contained in the case file indicates there may be compelling reasons to consider the needs the child may have regarding RCNO in the placement process, the child shall be referred within ten days of the signature of the caseworker for an individual child assessment as indicated in paragraph (G) of this rule. At the time of the referral, the agency shall forward to the licensed professional the following documents:
  - (a) The original JFS 01688.
  - (b) All relevant medical or psychological evaluations, and school records.
  - (c) All other relevant material documented in the child's case file.
- (3) The PCSA or PCPA shall request in writing that the licensed professional complete and sign section II of the original JFS 01688 and return it within sixty days to the PCSA or PCPA with a copy of the requested assessment attached.
- (4) The licensed professional shall determine whether the child has needs involving RCNO and any other needs of a psychological or behavior nature and, if so to specify what those needs are and how those needs may impact a potential substitute care placement.
- (5) The licensed professional shall not complete an assessment pursuant to paragraph (G) of this rule until the PCSA or PCPA has provided the licensed professional with copies of this rule and each of the following:
  - (a) JFS 01607 "MEPA Educational Materials" (~~rev. 1/2009~~)(rev. 10/2016).
  - (b) The JFS 01611 "Non-discrimination Requirements for Foster Care and Adoptive Placements" (~~rev. 1/2009~~)(rev. 10/2016).
  - (c) Rule 5101:2-48-13 of the Administrative Code.
  - (d) Rule 5101:2-48-16 of the Administrative Code.

- (6) The licensed professional shall sign the JFS 01608 "Licensed Professional Statement" (~~rev. 1/2009~~)(rev. 10/2016) acknowledging receipt of the materials required in paragraph (J)(5) of this rule. A copy of the signed JFS 01608 shall be submitted to the PCSA or PCPA.
- (7) The PCSA or PCPA shall keep the JFS 01608 and attach a copy to each JFS 01688 the licensed professional completes. The PCSA or PCPA shall submit a copy of the JFS 01608 and JFS 01688, if applicable to the Ohio department of job and family services (ODJFS) ten days after receiving it.
- (8) Each completed JFS 01688 shall remain in effect for twelve months from the date of the final decision as documented on the JFS 01688.
  - (a) If it has been determined that RCNO should be a factor considered in the child's placement, an updated JFS 01688 and assessment shall be completed prior to the twelve month expiration date.
  - (b) If it has been determined that RCNO should not be a factor considered in the child's placement, an updated JFS 01688 and assessment is not required prior to the twelve month expiration date. In such instance, the PCSA or PCPA may update the JFS 01688 and assessment as deemed necessary.
- (9) The JFS 01688 shall be considered as part of the placement decision making process.
- (K) The PCSA or PCPA shall maintain in the child's case file the completed original JFS 01688 and all medical or psychological evaluations, school records, or other material in the file.
- (L) A PCSA, PCPA, or PNA shall not intimidate, threaten, coerce, or in any way discriminate or retaliate against any person who has filed an oral or written complaint, testified, assisted, or participated in any manner in the investigation of an alleged violation of MEPA and Title VI. This includes:
  - (1) Any prospective or certified foster family.
  - (2) Any employee of a PCSA, PCPA, or PNA.
  - (3) Any employee of any other agency with responsibilities regarding the care or placement of a child in the temporary custody or permanent custody of the PCSA, PCPA or PNA such as a guardian ad litem (GAL) or court appointed special advocate (CASA) volunteer.
- (M) Prohibited retaliatory conduct includes, at a minimum:

- (1) A reduction in the amount of foster care payments which a family should receive based on the child's needs.
- (2) Unwarranted poor evaluations of an employee by his or her supervisor.

Effective: 11/1/2019  
Five Year Review (FYR) Dates: 7/2/2019 and 11/01/2024

CERTIFIED ELECTRONICALLY

---

Certification

09/12/2019

---

Date

Promulgated Under: 119.03  
Statutory Authority: 5101.141, 5103.03, 5153.166  
Rule Amplifies: 2151.412, 5153.16  
Prior Effective Dates: 09/01/2000, 05/01/2002, 02/01/2005, 05/15/2009,  
03/01/2010, 05/10/2014