

5101:2-42-18.1

Non-discrimination requirements for foster care placements.

- (A) No public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA) shall deny any person the opportunity to become a foster caregiver on the basis of race, color or national origin 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 race, color or national origin 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)(9), 671(a)(18), 674(d) and 1996(b) (hereinafter "MEPA") and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. as they apply to the foster care process (hereinafter "Title VI"), do not supercede the provisions of the Indian Child Welfare Act of 1978, 25 U.S.C.A. 1901 et seq.
- (C) No PCSA, PCPA, or PNA may routinely consider race, color or national origin 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 race, color or national origin 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 race, color or national origin need to be taken into account in a placement decision, such consideration must be narrowly tailored to advance the child's best interests. Even when the facts of a particular case allow consideration related to race, color or national origin, 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 process.
- (1) Asking about and honoring any initial or subsequent choices made by prospective foster caregivers regarding what race, color or national origin of child the prospective foster caregivers will accept.
 - (2) Providing information and resources about fostering a child of another race, color or national origin 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 race, color or national origin as a possible factor in the placement decision when compelling reasons serve to justify that the race, color or national origin 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 race, color or national origin, 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 parents who seek to become foster caregivers.

(6) Documenting verbal comments, verbatim, or describing in detail any other indication made by a prospective foster caregiver family member living in the household or any other person living in the household reflecting a negative perspective regarding the race, color or national origin of a child for whom the prospective foster family have expressed an interest in fostering or adopting. The documentation shall indicate whether those comments were made before or after completion of the cultural diversity training which is required for all foster care applicants. Documentation shall be included in the family's homestudy, update, or an addendum to the homestudy or update prior to consideration of placement or a matching conference. For the purposes of this rule, a matching conference is the process of determining the most appropriate foster care family for the child based on the child's special needs. The matching committee may consider the information in determining if the placement is in the child's best interests.

(F) The following actions by a PCSA, PCPA, and PNA are prohibited as it applies to the foster care process:

(1) Using the race, color or national origin of a prospective foster caregiver to differentiate between foster care placements for a child, unless the procedures in paragraph (G) of this rule are followed.

(2) Honoring the request of a birth parent(s) to place a child with a parent(s) of a specific race, color or national origin, 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 family to prepare or accept a transracial foster care plan.

(4) Using "culture" or "ethnicity" as a proxy for race, color, or national origin.

(5) Delaying or denying placement of a child based upon the geographical location of the neighborhood of the prospective foster caregiver whenever geography is being used as a proxy for the racial composition of the neighborhood, the demographics of the neighborhood, the presence or lack of presence of a significant number of persons of a particular race, color or national origin in

the neighborhood or any similar purpose.

(6) Requiring extra scrutiny, additional training, or greater cultural awareness of individuals who are prospective foster caregivers of children of a different race, color or national origin required of other prospective foster caregivers.

(7) Relying upon general or stereotypical assumptions about the needs of children of a particular race, color or national origin.

(8) Relying upon general or stereotypical assumptions about the ability of prospective foster caregivers of a particular race, color or national origin to care for or nurture the sense of identity of a child of another race, color or national origin.

(9) "Steering" prospective foster caregivers away from parenting a child of another race, color, or national origin. "Steering" is any activity that attempts to discourage prospective foster caregivers from parenting a child of a particular race, color or national origin.

(G) When medical or psychological evaluations, school records, 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 race, color, or national origin in the placement process, the child shall be referred to a licensed child psychiatrist, licensed child psychologist, licensed independent social worker or licensed professional clinical counselor for an assessment of whether the child has individual needs involving race, color or national origin. At the time of the referral, the custodial agency shall initiate and subsequently complete the JFS 01688 "Individualized Child Assessment " using the following procedures:

(1) Within ten days of the decision that a child should be assessed pursuant to paragraph (G) of this rule, 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 agency's MEPA monitor.

(2) If both the supervisor and the MEPA monitor determine that the documented material contained in the case file indicates that there may be compelling reasons to consider needs the child may have regarding race, color or national origin in the placement process, the child shall be referred within an additional ten days for an individual child assessment as indicated in paragraph (G) of this rule. At the time of the referral, the agency shall send the licensed professional the original JFS 01688 and all relevant medical or psychological evaluations, school records, or other material documented in the file. The licensed professional shall be requested in writing by the supervisor to complete and sign "Section II" of the original JFS 01688 and

return it within sixty days to the agency with a copy of the requested assessment attached. The licensed professional shall be requested to determine whether the child has needs involving race, color or national origin or any other needs of a psychological or behavioral nature and, if so, to specify what those needs are and how these needs may impact a potential foster placement.

- (3) No licensed professional may complete an assessment pursuant to paragraph (G) of this rule until the PCSA, PCPA, or PNA has provided the licensed professional with the JFS 01607 "MEPA Educational Materials." The licensed professional conducting the assessment shall not be employed by the custodial agency.
- (4) The PCSA, PCPA or PNA shall obtain the professional's signature on the JFS 01608 "Licensed Professional's Statement" acknowledging receipt of the educational material and the opportunity to obtain technical assistance regarding the material. A copy of the signed JFS 01608 shall be provided to ODJFS within ten days of receipt by the PCSA, PCPA, PNA.
- (5) The JFS 01688 and the supporting materials shall be considered as part of the placement decision process. Each completed JFS 01688 shall remain effective for twelve months from the date of the final decision as documented on the JFS 01688.
- (6) A copy of each completed JFS 01688 and the assessment of the licensed professional shall be sent to ODJFS within ten days of the date the agency received it.
- (H) The custodial agency 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.
- (I) For each child who has had a referral for an assessment regarding needs the child may have regarding race, color or national origin, the custodial agency shall complete the JFS 01688 documenting the placement decision-making process and final placement decision and submit it to ODJFS within ten days of the date the agency completed the JFS 01688.
- (J) No PCSA, PCPA, or PNA shall 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 any potential or actual adoptive or foster family, any PCSA, PCPA, or PNA or any employee of any other agency with responsibilities regarding the care or placement of a child in the temporary or permanent custody of the PCSA, PCPA and PNA, such as a guardian ad litem (GAL) or court appointed special advocate (CASA) volunteer. Prohibited

retaliatory conduct includes, but is not limited to, reduction in the amount of foster care payments which a family should receive based on the child's needs and unwarranted poor evaluations of an employee by his or her supervisor.

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