

5101:2-48-13

Non-discrimination requirements for adoptive placements.

- (A) ~~No~~ 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 an adoptive parent 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 for adoption on the basis of ~~race, color or national origin~~ RCNO of the adoptive parent, 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) (1/2/06) ~~(hereinafter "MEPA")~~ and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, ~~et seq.~~ (1/2/06), as they apply to the adoption 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~~ A PCSA, PCPA, or PNA ~~may~~ shall not routinely consider ~~race, color or national origin~~ 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 adoptive parent to meet those needs.
- (D) Only the most compelling reasons may serve to justify consideration of ~~race, color or national origin~~ RCNO as part of a placement decision. Such reasons emerge only in the unique and individual circumstances of each child and each prospective adoptive parent. In those exceptional circumstances when ~~race, color or national origin~~ RCNO needs to be taken into account in a placement decision, such consideration ~~must~~ shall 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~~ RCNO, this consideration shall not be the sole determining factor in the placement decision.
- (E) A JFS 01689 "Documentation of the Placement Decision-Making Process" ~~(rev. 02/2005), (rev. 12/2006)~~ (rev. 12/2006) ~~which documents factors taken into consideration when selecting an adoptive placement for any child,~~ shall be completed at each matching conference where families are considered as potential matches and prior to the placement selection by the custodial agency, pursuant to rule 5101:2-48-16 of the Administrative Code.
- (F) Each PCSA, PCPA and PNA involved in the placement of children for adoptive purposes or in the recruitment and completion of adoptive homestudies, shall complete the JFS 01668 "MEPA Biennial Comprehensive Self-Assessment Report" ~~(rev. 01/2006)~~ (rev. 12/2006) ~~pursuant to rule 5101:2-33-11 of the Administrative Code.~~

(G) The following actions by a PCSA, PCPA, or PNA are permitted as it applies to the ~~adoption process:~~ adoptive placement:

- (1) Asking about and honoring any initial or subsequent choices made by prospective adoptive parents regarding what ~~race, color, or national origin~~ RCNO ~~of child~~ the prospective adoptive parents will accept.
- (2) Honoring the decision of a child over twelve years of age not to ~~not~~ consent to an adoption, unless the court finds that the adoption is in the best interest of the child and the child's consent is not required.
- (3) Providing information and resources about adopting a child of another ~~race, color or national origin~~ RCNO to prospective adoptive parents who request such information and making known to all families that such information and resources are available.
- (4) Considering the request of a birth parent(s) to place the child with a relative or non-relative identified by name.
- (5) Considering the ~~race, color or national origin~~ RCNO of the child as a possible factor in the placement decision when compelling reasons serve to justify that the ~~race, color or national origin need~~ RCNO needs to be a factor in the placement decision pursuant to ~~paragraphs~~ paragraph (I) ~~and (J)~~ of this rule. Even when the facts of a particular case allow consideration related to the ~~race, color, or national origin,~~ RCNO, this consideration shall not be the sole determining factor in the placement decision.
- (6) 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 adoptive parents.
- (7) ~~Agencies are~~ The agency is required to document verbal comments, verbatim, or describing in detail any other indication made by a prospective adoptive parent or prospective adoptive 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~~ RCNO of a child for whom the prospective adoptive family have expressed an interest in adopting. ~~The documentation shall indicate whether those comments were made before or after completion of the cultural diversity training which is required for all adoptive 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 adoptive family for the child based on the child's special needs. The matching committee shall consider the information to determine if it will impact the placement.~~

(a) The documentation shall indicate whether those comments were made before or after completion of the cultural diversity training that is required for all adoptive applicants.

(b) The documentation shall be included in the prospective adoptive family's homestudy, update, or in an addendum to the homestudy or update prior to consideration of placement or a matching conference. The matching conference committee shall consider the information to determine if it will impact the placement.

(H) The following acts are prohibited as it applies to the adoption process:

- (1) Using the ~~race, color or national origin~~ RCNO of a prospective adoptive parent to differentiate between adoptive placements.
- (2) Honoring the request of a birth parent(s) to place a child with a prospective adoptive parent(s) of a specific ~~race, color or national origin~~, 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, provided that the agency determines that the placement is in the best interests of the child.
- (3) Requiring a prospective adoptive family to prepare or accept a transracial adoption plan.
- (4) Using "culture" or "ethnicity" as a proxy for ~~race, color or national origin~~ RCNO.
- (5) Delaying or denying placement of a child based upon any of the following: ~~geographical location of the neighborhood of the prospective adoptive family whenever geography is being used as a proxy for the racial or ethnic 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.~~
 - (a) The geographical location of the neighborhood of the prospective adoptive family 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 adoptive parents of children of a different ~~race, color or national origin~~ RCNO than required of other prospective adoptive parents.
- (7) Relying upon general or stereotypical assumptions about the needs of children of a particular ~~race, color or national origin~~ RCNO.
- (8) Relying upon general or stereotypical assumptions about the ability of prospective adoptive parents of a particular ~~race, color or national origin~~ RCNO to care for or nurture the sense of identity of a child of another ~~race, color, or national origin~~ RCNO.
- (9) "Steering" prospective adoptive parents away from parenting a child of another ~~race, color, or national origin~~ RCNO. "Steering" is any activity that attempts to discourage prospective adoptive parents from parenting a child of a particular ~~race, color or national origin~~ RCNO.
- ~~(I) 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" (rev. 02/2005) 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 agency's 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 needs the child may have regarding race, color or national origin 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 (I) of this rule. At the time of the referral, the agency shall send to 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 agency 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 and 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 adoptive placement.~~

- ~~(3) No licensed professional may complete an assessment pursuant to paragraph (I) of this rule until the PCSA, PCPA, or PNA has provided the licensed professional with the JFS 01607 "MEPA Educational Materials" (02/2005). 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" (02/2005) acknowledging receipt of the JFS 01607. The JFS 01608 shall be maintained by the agency and must be attached to each JFS 01688 completed by the licensed professional. A copy of the signed acknowledgement must be submitted to ODJFS ten days after receipt by the PCSA, PCPA or PNA.~~
- ~~(5) Each completed JFS 01688 shall remain effective for twelve months from the date of the final decision as documented on the JFS 01688.~~
- ~~(6) The JFS 01688 and the supporting materials shall be presented as part of the placement decision process at each matching conference in which the child is considered for a match with a family. Documentation of how race, color or national origin impacted the placement decision shall be documented on the JFS 01689 pursuant to rule 5101:2-48-16 of the Administrative Code. Each JFS 01689 completed where a JFS 01688 was in effect shall be submitted to ODJFS no later than ten days after the matching conference.~~
- ~~(7) A copy of each completed JFS 01688 and the assessment of the licensed professional shall be sent to the ODJFS bureau of family services within ten days of the date the agency received it.~~

(I) 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.

(J) 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.

(K) The licensed professional conducting the assessment shall not be employed by the PCSA or PCPA making the referral.

(L) At the time of the referral, the PCSA or PCPA shall initiate and subsequently complete the JFS 01688 "Individualized Child Assessment" (rev. 5/2007) 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 for 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 assessment as indicated in paragraph (I) 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 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 adoptive placement.

- (5) A licensed professional shall not complete an assessment pursuant to paragraph (I) of this rule until the PCSA or PCPA has provided the licensed professional with copies of the following:
- (a) The JFS 01607 "MEPA Educational Materials" (rev. 1/2009).
 - (b) The JFS 01611 "Non-discrimination Requirements for Foster Care and Adoptive Placements" (rev. 1/2009).
 - (c) This rule.
 - (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) acknowledging receipt of the materials required by paragraph (L)(5) of this rule. A copy of the signed JFS 01608 shall be submitted to the Ohio department of job and family services (ODJFS) within ten days after receipt by 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 to 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 PCSA or PCPA shall forward a copy of each completed JFS 01688 and the assessment of the licensed professional to ODJFS within ten days of receiving it.
- (10) The following documents shall be presented as part of the placement decision making process at each matching conference in which the child is considered for a match with a prospective adoptive family:
- (a) The JFS 01688, if applicable.

(b) The JFS 01690 "Documentation of the Pre-Adoptive Staffing and Updates" (rev. 12/2006.)

(c) All other relevant supporting materials.

(11) Documentation of how RCNO impacted the placement decision shall be documented on the JFS 01689 "Documentation of the Placement-Making Decision" (rev. 12/2006) pursuant to rule 5101:2-48-16 of the Administrative Code.

(12) The PCSA or PCPA shall submit the JFS 01689 to ODJFS within ten days of placing the child in an adoptive home, if the PCSA or PCPA determined that RCNO should be a factor considered in the child's placement.

~~(J)~~(M) ~~The custodial agency~~ 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 documented in the file.

~~(K)~~(N) ~~No~~ A PCSA, PCPA, or PNA shall not intimidate, threaten, coerce, or in any way discriminate or retaliate against any person who has filed any complaint orally or in writing, testified, assisted, or participated in any manner in the investigation of any alleged violation of MEPA and/or Title VI, including: ~~any potential or actual adoptive family or foster caregiver, any employee of a 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 or PCPA, 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 size of an adoption subsidy which a family should receive based on the child's needs, and unwarranted poor evaluations of an employee by his or her supervisor.~~

(1) Any potential or actual adoptive family or foster caregiver.

(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 and PNA, such as a guardian ad litem (GAL) or court appointed special advocate (CASA) volunteer.

(O) Prohibited retaliatory conduct includes, at a minimum:

(1) A reduction in the size of an adoption subsidy which a family should receive based on the child's individual needs.

(2) Unwarranted poor evaluations of an employee by his or her supervisor.

Effective: 05/15/2009

R.C. 119.032 review dates: 08/01/2009

CERTIFIED ELECTRONICALLY

Certification

04/08/2009

Date

Promulgated Under: 119.03
Statutory Authority: 3107.032, 5103.03, 5153.16, 5153.166
Rule Amplifies: 2151.41, 3107.031, 5153.16
Prior Effective Dates: 9/1/00, 5/1/02, 9/1/03, 2/1/05, 12/11/06.