

5101:2-33-03

Procedure for Complaints of Alleged Discriminatory Acts, Policies or Practices in the Foster Care or Adoption Process that Involve Race, Color or National Origin.

Effective Date: February 1, 2005

- (A) Each public children services agency (PCSA), private child placing agency (PCPA), and private noncustodial agency (PNA) shall provide a written notice of the procedure for any complaints of discrimination in the foster care or adoption process that involve race, color or national origin (RCNO) to all individuals inquiring about or applying to be a foster caregiver or adoptive parent. Such notice shall be provided within seven days of the individual's first contact with the agency.
- (B) Any individual may file a complaint alleging a discriminatory act, policy or practice involving RCNO in the foster care or adoption process of a PCSA, PCPA, PNA or the Ohio department of job and family services (ODJFS).

Any person, including but not limited to, an employee or former employee of a PCSA, PCPA, or PNA or a member of a family which has sought to become a foster caregiver or adoptive parent, may also file a complaint alleging that he or she was intimidated, threatened, coerced, discriminated against or otherwise retaliated against in some way by a PCSA, PCPA, PNA or by ODJFS because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing in connection with an allegation that a PCSA, PCPA, PNA or ODJFS engaged in discriminatory acts, policies, or practices as it applies in the foster care or adoption process.

- (C) The individual filing a complaint shall use the JFS 02333 "Discrimination Complaint Form". The complaint shall be filed within two years from the date of the occurrence of the alleged discriminatory act; or two years from the date upon which the complainant learned or should have known of a discriminatory act, policy or practice. The complaint may be filed with:
- (1) Any PCSA, PCPA or PNA; or,
 - (2) The ODJFS.
- (D) When any complaint alleging discrimination involving RCNO in the foster care or adoption process is received by:
- (1) A PCSA, PCPA or PNA, the agency shall forward the complaint to ODJFS within three working days of date of receipt of the complaint.
 - (2) ODJFS, the department shall notify the PCSA, PCPA, PNA that is the subject of the complaint within three working days of the receipt of the complaint.
- (E) ODJFS shall conduct an investigation of the complaint. The PCSA, PCPA or PNA that is the subject of the complaint shall not initiate, conduct, or run concurrent investigations surrounding the complaint or take any further action regarding the complainant or the subject of the complaint until the issuance of the final investigation report by ODJFS, unless approved by ODJFS.

(F) The PCSA, PCPA or PNA that is the subject of the complaint shall cooperate fully with ODJFS during the course of the investigation and shall submit any information requested by ODJFS not later than fourteen days from the date of the request, unless otherwise agreed upon.

(G) ODJFS shall conduct an investigation that shall include, but is not limited to:

(1) Face-to-face interviews with the complainant, the respondent and all relevant witnesses.

(2) Issuance of a final investigation report to the complainant and the PCSA, PCPA or PNA that is the subject of the complaint. The report shall include the allegations, background information, analysis, determination and recommendations and shall be issued within ninety days of the receipt of the initial complaint.

If unanticipated circumstances require additional time to complete the investigation or to issue the final report, ODJFS will notify the complainant and the PCSA, PCPA, or PNA that is the subject of the complaint of the need for additional time.

(H) Upon completion of the final investigation report, ODJFS shall determine if any action against a PCSA, PCPA or PNA is warranted. For noncompliance by a PCSA, ODJFS may take any action permitted under section 5101.24 of the Revised Code. For noncompliance by a PCPA or PNA, ODJFS may take action concerning the agency's certificate pursuant to Chapter 5101:2-5 of the Administrative Code.

(I) No person who has filed a complaint alleging a discriminatory act, policy or practice involving RCNO in the foster care or adoption process of a PCSA, PCPA or PNA or who has testified, assisted or participated in any manner in the investigation of a complaint shall be intimidated, threatened, coerced, or retaliated against by any employee or contractor of the PCSA, PCPA, PNA or ODJFS.

(J) Nothing in this rule or in an agency's policy shall prohibit an individual from filing a complaint with the United States department of health and human services (HHS), office for civil rights (OCR) alleging discrimination that involves RCNO in the foster care or adoption process of a PCSA, PCPA, PNA or ODJFS.

(K) The requirements of rules 5101:2-33-04 and 5101:2-48-24 of the Administrative Code do not apply to complaints of discrimination in the foster care or adoption process that involve RCNO.

(L) Each PCSA, PCPA or PNA shall provide a written notice of the procedures for any complaints of discrimination in the foster care or adoption process that involve RCNO within thirty days of the effective date to all foster caregivers certified or in the process of certification and to all individuals who have approved adoptive homestudies or who are participating in the adoptive homestudy process on the effective date of this rule.

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FCASMTL 162

5101:2-48-13

Non-Discrimination Requirements for Adoptive Placements

Effective Date: December 11, 2006

- (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 an adoptive parent 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 for adoption on the basis of race, color or national origin 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) (hereinafter "MEPA") and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq, 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 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 adoptive parent to meet those needs.
- (D) Only the most compelling reasons may serve to justify 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 adoptive parent. 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) A JFS 01689 "Documentation of the Placement Decision-Making Process"(rev. 02/2005), 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) 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:
 - (1) Asking about and honoring any initial or subsequent choices made by prospective adoptive parents regarding what race, color, or national origin of child the prospective adoptive parents will accept.

- (2) Honoring the decision of a child over twelve years of age 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 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 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 to be a factor in the placement decision pursuant to paragraphs (I) and (J) 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.
- (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 required to document verbal comments, verbatim, or describing in detail any other indication made by a 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 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 may shall consider the information in determining if the placement is in the child's best interests. 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 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, 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.

- (5) Delaying or denying placement of a child based upon the 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.
 - (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 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.
 - (8) Relying upon general or stereotypical assumptions about the ability of prospective adoptive parents 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 adoptive parents away from parenting a child of another race, color, or national origin. "Steering" is any activity that attempts to discourage prospective adoptive parents from parenting a child of a particular race, color or national origin.
- (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 or 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.
- (J) 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 documented in the file.
- (K) No PCSA, PCPA, or PNA shall 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.

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5101:2-42-18.1

Non-Discrimination Requirements for Foster Care Placements

Effective Date: February 1, 2005

- (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 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 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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