

**NUMBER**

#18-68-17

**DATE**

September 18, 2018

**OF INTEREST TO**

County Directors  
Social Services Supervisors and  
Staff  
Tribal Social Services Staff  
Private Social Services Staff  
County Attorneys  
District Court Judges

**ACTION/DUE DATE**

Please read information and  
implement.

**EXPIRATION DATE**

September 18, 2020

## Consideration of Culture in Placement Decisions

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### TOPIC

The Multiethnic Placement Act (MEPA) and Interethnic Adoption Provisions (IEP), and placement decisions.

### PURPOSE

Clarification regarding consideration of culture when making placement decisions to comply with federal and state laws.

### CONTACT

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### SIGNED

NIKKI FARAGO, Assistant Commissioner  
Children and Family Services Administration

### TERMINOLOGY NOTICE

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

## I. Background

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Federal and Minnesota laws prohibit general consideration of race, color, and national origin (RCNO) in making foster and adoptive placement decisions. There is no prohibition in considering culture.

This bulletin summarizes legal requirements regarding RCNO and culture. It also provides guidance to child-placing agencies for consideration of RCNO and culture in recruiting foster and adoptive parents and making placement decisions.

[Minnesota Statutes, section 260C.215; 42 U.S.C. § 671 (a)(18); 42 U.S.C. § 622 (b)(7)]

## II. Federal Law

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The Howard M. Metzenbaum Multiethnic Placement Act (MEPA) of 1994 [Public Law 103-382] and section 1808 of the Small Business Job Protection Act of 1996, entitled “Removal of Barriers to Interethnic Adoption” (referred to as IEP, IEAP, Interethnic Adoption Provisions or Section 1808) [Public Law 104-188], were implemented to:

- Reduce the length of time children wait to be adopted
- Facilitate diligent recruitment and retention of foster and adoptive families
- Eliminate discrimination on the basis of RCNO of either a prospective parent or child.

These laws require child-placing agencies to diligently recruit foster and adoptive families that reflect the racial and ethnic diversity of children in need of out-of-home placement. Additionally, child-placing agencies cannot deny or delay adoption or foster care placement based on a prospective parent’s or child’s race, color, or national origin.

MEPA-IEP does not apply to American Indian children for whom the Indian Child Welfare Act (ICWA) applies. A child’s eligibility under the ICWA is not based on a child’s race, color, or national origin; rather, it is based on a child’s political status. An Indian child’s tribe(s) has exclusive jurisdiction in determining membership or eligibility for membership.

[42 U.S.C. § 671 (a)(18); 42 U.S.C. § 622 (b)(7); 42 U.S.C. § 1996b (3); 25 U.S.C. §§ 1902 and 1903 (4); 25 C.F.R. § 23.108]

## III. Minnesota Law

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Minnesota law includes MEPA-IEP requirements regarding RCNO, as well as when and how culture can be considered separately from RCNO. Specific duties are assigned to the commissioner of Human Services that are meant to assist local social services agencies and private child-placing agencies in carrying out MEPA-IEP requirements while considering culture as a best interest factor in placement decisions.

To comply with MEPA-IEP and Minnesota law regarding consideration of culture, local social services and private child-placing agencies are required to:

- Develop and implement a written plan for diligent recruitment of foster and adoptive parents who reflect the ethnic and racial diversity of children for whom foster and adoptive homes are needed
- Make diligent efforts to recruit a diverse pool of foster and adoptive parents who reflect the ethnic and racial diversity of Minnesota children for whom foster and adoptive homes are needed
- Develop and follow procedures for implementing requirements regarding consideration of best interest factors, the ICWA, and the Minnesota Indian Family Preservation Act in making placement decisions
- Focus on a child's specific, individual needs, including cultural needs, and the capacities of a particular foster or adoptive parent to meet those needs
- Not delay or deny placement of a child in a foster or adoptive home based on race, ethnicity, color or national origin of prospective foster or adoptive parent or child.

[Minnesota Statutes, sections 259.57, subdivision 2(c); 259.77; 260.755, subdivision 8; 260C.193, subdivision 3 (f); 260C.212, subdivision 2(b)(6) and (c); 260C.215; and 260C.613, subdivision 4; Minnesota Rules, parts 9560.0670 and 9560.0140, subpart 2 (c)]

## IV. Making Placement Decisions Based on a Child's Best Interests

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Federal law is very clear that RCNO cannot be a routine consideration when making foster and adoption placement decisions. Federal law refers instead to the need for individualized assessments for both prospective foster and adoptive parents and children to inform placement decisions. Minnesota law provides further guidance on acceptable considerations.

### A. Relative and Sibling Placement Preference

Agency staff must consider placing children with relatives and important friends in the following order:

- An individual who is related to a child by blood, marriage or adoption, including the legal parent, guardian, or custodian of a child's sibling
- An individual who is an important friend with whom a child has resided or had significant contact.

The designation of important friend is based on a child's relationship to a person, not the relationship between a person and a child's birth parent or relative.

In addition to considering placement with relatives, siblings are to be placed together for foster care and adoption, at the earliest possible time, unless it is documented that placement together is not in the best interests of one or more of the siblings.

[Minnesota Statutes, sections 260C.007, subdivision 27; 260C.212, subdivision 2 (a) and (d); 260C.613, subdivision 3; and 260C.617]

## B. Individualized Determination and Child's Best Interests

Foster and adoptive placement decisions must be based on a child's best interests. To ensure each child's best interests are met, Minnesota law requires an individualized determination of a child's needs, and a description of how the selected placement will meet those needs.

Minnesota Statutes, section 260C.212, subdivision 2 (b), requires agency staff to consider the following 10 factors in determining a child's individual needs when making placement decisions:

- Child's current functioning and behaviors
- Child's medical needs
- Child's educational needs
- Child's developmental needs
- Child's history and past experience
- Child's religious and cultural needs
- Child's connection with a community, school and faith community
- Child's interests and talents
- Child's relationship to current caretakers, parents, siblings, and relatives
- The reasonable preference of a child, if the court, or child-placing agency in the case of a voluntary placement, deems a child to be of sufficient age to express preferences.

For an American Indian child, an agency must also consider the best interests of an Indian child, as defined in Minnesota Statutes, section 260.755, subdivision 2a.

Minnesota law also requires documentation of how foster and adoptive placement decisions are made. A child's out-of-home placement plan must include a review of how placement in a specific home or facility is consistent with their best interests and special needs. For children with transfer of permanent legal and physical custody to a relative as a permanency goal, the out-of-home placement plan must also include documentation to support the determinations in the kinship placement agreement, which include a determination that a child has a strong attachment to a relative caregiver, and they are committed to caring for the child on a permanent basis.

A child's adoption record must also include the reasons for an adoptive placement decision, including both an individualized determination of a child's needs and an assessment of how an adoptive placement meets those needs.

[Minnesota Statutes, sections 260C.212, subdivisions 1 (c)(1) and (7) and 2 (b); and 260C.613, subdivisions 1 (b) and 5]

## C. Considering a Child's Cultural Needs

The U.S. Department of Health and Human Services does not define culture. MEPA-IEP only addresses RCNO, and does not directly address consideration of culture in placement decisions. Therefore, a public agency is not prohibited from considering culture in making placement decisions.

As noted in section B, Minnesota law recognizes the importance of a child's cultural needs by including them as one of 10 factors for agency staff to consider when making individualized placement decisions. However, culture is not the same as RCNO. [Merriam-Webster defines culture](#) as "the customary beliefs, social forms, and material traits of a racial, religious, or social group; the characteristic features of everyday existence...shared by people in a place or time; the integrated pattern of human knowledge, belief, and behavior that depends upon the capacity for learning and transmitting knowledge to succeeding generations." Using this definition, culture is fluid; it can be learned, developed and changed. A public agency's consideration of culture must comply with MEPA-IEP in that it may not use culture as a replacement for the prohibited consideration of RCNO.

### 1. Example of Considering Culture

Consider an agency that is recruiting an adoptive family for an 11-year-old African-American boy. It would be a MEPA-IEP violation to recruit prospective adoptive families only on the basis of RCNO, either by limiting prospective families to a specific race or eliminating from consideration all families of a specific race, such as stating "I am looking for an African-American family for this child." This description is family-focused, too general and would eliminate a large number of prospective adoptive families.

MEPA-IEP requires child-focused recruitment. A caseworker can say, "I am recruiting an adoptive family for an 11-year-old boy who is connected to his African-American culture. He celebrates Kwanza every year and enjoys attending African-American cultural celebrations such as Juneteenth and Rondo Days. I am looking for a family who is willing and able to meet his cultural needs." This description is child-focused and has identified specific cultural needs, rather than eliminating a broad base of prospective adoptive families. This description would include families of the same culture as the child, as well as families able and willing to learn about and celebrate occasions and events that are culturally important to the child. The focus is on finding a family who can meet the needs of that child.

## V. Allowable Exceptions Under MEPA-IEP

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While MEPA-IEP prohibits routine consideration of RCNO when making placement decisions, there may be individual circumstances in which RCNO may be considered. If RCNO is to be a factor in making a placement decision for a specific child, it must be based on an individualized determination of that child's needs. For example, an older child, whose consent is required to be adopted, might express unwillingness to be placed with a family of a particular race. An agency is not required to dismiss a child's preference when making placement decisions; older children should be involved in making placement decisions. At the same time, workers should not dismiss all families of a particular race as possible resources because those families may be able to meet the unique needs of a child.

Federal guidance on MEPA-IEP acknowledges it is impossible to list all circumstances in which RCNO can be taken into account in placement decisions. MEPA-IEP requires a strict scrutiny standard in considering RCNO in placement decisions. This means only the most compelling reasons may serve to justify consideration of RCNO as part of a placement decision for an individual child. Such reasons are likely to emerge only in unique and individual circumstances. Occasions where RCNO may lawfully be considered in placement decisions will be rare.

MEPA-IEP has clear sanctions for individuals and agencies that violate the law. Noncompliance is considered a violation of Title VI of the Civil Rights Act of 1964.

[42 U.S.C. § 1996b (2)]

## VI. Additional Internet Resources Regarding MEPA-IEP

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- [Resources on Minnesota Issues](#), Minnesota Minority Child Heritage Protection Act, Minnesota Legislative Reference Library
- [Child Welfare Policy Manual: MEPA/IEAP](#), Administration for Children and Families, Children's Bureau
- [Protection from Discrimination in Child Welfare Activities](#), U.S. Department of Health and Human Services, Office for Civil Rights
- [Multiethnic Placement Act \(MEPA\) Program Resources](#), Administration for Children and Families, Children's Bureau.

### Americans with Disabilities Act (ADA) Advisory

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