



# CHILDREN, FAMILIES, AND THE COURTS



## OHIO BULLETIN

WINTER 2005

Vol. 2, No. 2

### The Effect of MEPA-IEP Legislation in Ohio: A Guide to the Multiethnic Placement Act of 1994 as Amended by the Interethnic Adoption Provisions of 1996

Rachael Lord, Research Assistant III, NCJJ

#### *Adoption Practices, State and Federal Legislation, and the Effect of Race and Ethnicity — A History*

The use of racial matching in foster care and adoption placement practices is based on the idea that children placed in homes that are ethnically or racially different from their genetic heritage will be at risk of losing their own racial identity. The fear of psychological and social consequences resulting from transracial<sup>1</sup> placements has led to strong opposition of transracial adoption from some minority groups and some child welfare professional organizations and individuals. From another perspective, delaying permanent placements for children due to policies of “racial matching” can be considered unethical, and raises questions regarding a child’s need to bond with caregivers and the social and psychological ramifications of attachment.

The over-riding issues of transracial placement practices in foster care and adoption in the United States can be broken into several categories.

1. Providing appropriate placements for children in out-of-home care, achieving timely permanency for these children, and maintaining the standard of “best interests of the child” as required under the Adoption and Safe Families Act.<sup>2</sup>
2. All Americans, including children, are entitled to equal treatment and to be free of discriminatory practices under the Civil Rights Act.
3. There is an overrepresentation of minority children present in the foster care/adoption system in the United States.
4. There are a disproportionate number of white foster and adoptive placements available when compared to the number of minority children awaiting placement.

All of these competing issues can lead to vastly different interpretations by state and local practitioners and administrators who provide foster and adoption services for children. These issues have also contributed to investigations into the ways that states and localities conduct their adoption placements.

Racial equality in the United States is a relatively “new” concept. Prior to the 1960s, discrimination based on race, color or national origin was socially accepted. However, in 1964, the Civil Rights Act was passed making racial discrimination in public places illegal. Under the Act, federal funding for programs could be denied if any evidence of discrimination based on race, color, or national origin was present. Title VI of the Act states that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”<sup>3</sup>

Title VI, at the time of its enactment, did not have much of an effect on the practice of racial matching in foster care and adoption. Resistance to interethnic placement of children was much more prevalent than acceptance of the practice and there was not a method in place to monitor discriminatory practices in foster and adoption agencies. Today, the U.S. Department of Health and Human Services houses an Office for Civil Rights to enforce “certain statutorily-created civil rights.”<sup>4</sup> This Office ensures that all persons in the United States are receiving services in a nondiscriminatory manner from state and local social services agencies. Currently, the Office for Civil Rights is responsible for enforcing non-discrimination practices in foster and adoption programs (receiving federal funding) throughout the United States.

In 1972 the National Association of Black Social Workers issued a public statement opposing transracial adoption.<sup>5</sup> Strong statements opposing placing black children with white families (the most common scenario at the time for transracial placements) such as “we know there are numerous alternatives to the placement of black children with white families and challenge all agencies and organizations to commit themselves to the basic concept of black families for black children,” polarized child welfare organizations of the time.

Within a year of the National Association of Black Social Workers’ statement, a book entitled *Beyond the Best Interests of the Child*, reintroduced the concept of the “best interests of the child” as a factor in determining child placement.<sup>6</sup> The publication emphasized timely and permanent legal decisions related to child placement and adoption rather than racial matching and once more highlighted disparity among professionals in the adoption field. Debates among key practitioners in child welfare, courts, legislators and parents gained momentum over the implications of adhering to a standard of same-race

placements for children waiting for permanency while stressing the importance of a child’s best interests.

In 1980, the Adoption Assistance and Child Welfare Act was passed and provided funding to states that supported subsidies for special needs adoptions and resources for family preservation and child abuse/neglect prevention efforts. Individual states formed their own policies and practices related to placing children for adoption that included statements on limiting transracial placements as well as focusing on the “best interests of the child.” As states formed legislation aimed to address these dual concerns in adoption placement practices, it became clear that restricting transracial placements was leading to significantly longer time frames for permanency specifically affecting children of color.

Efforts to recruit and train foster and adoptive parents were not able to keep pace with the number of children in need of placement. Because of disproportionate percentages of minority children entering the child welfare system, and subsequently entering the adoption system, the number of minority children waiting for placements increased substantially. States were unable to recruit sufficient numbers of prospective minority parents due to inadequate recruitment practices in minority communities and other factors. Individual states that continued to observe same-race placement policies experienced even longer waiting periods for minority children.

In recognition of these extensive waiting periods not being in the “best interests of the child” during the 1980s and early 90s, the National Committee to End Racism and the National Council for Adoption came together to lobby for a change in federal law to end practices of discrimination and racism in adoption. A U.S. senator from Ohio, Howard Metzenbaum, recognized that Ohio and other states needed to address the length of time that children were waiting to be adopted. He led the effort to introduce a Bill focusing on permanency for all children with the awareness of how race and ethnicity affected the time children spent waiting for placement and a goal of increasing the number of foster and adoptive families.

Testimony given at congressional hearings described situations in which qualified adoptive homes were available but not utilized because of state or organizational policies that promoted racial matching. Also highlighted were the large numbers of African-American children waiting for adoptive placements because of lengthy

searches for same-race placements. Due to these and other lobbying efforts, Congress recognized that minority children were being over-represented in out-of-home care and that only a legislative change would address the discrepancies in federal adoption legislation.

---

### *The History of the Multiethnic Placement Act*

---

The Multiethnic Placement Act (MEPA)<sup>7</sup> was enacted in 1994 and was presented as a solution to the long-standing debates about transracial adoption, same-race placements, “best interests of the child”, and expedited permanency for children. At the time of its enactment, MEPA prohibited any adoption and/or foster placement agency or entity that accepts federal assistance (e.g. Title IV-E funding which reimburses state agencies for foster care and adoptive placements<sup>8</sup>) from delaying or denying a child’s placement in an adoptive or foster home due to the race, color or ethnicity of the parent or the child involved. However, because of some unclear language in the Act, MEPA did not end complaints of discrimination in foster and adoption placement practices. This legislation included a section entitled “Permissible Consideration” which stated that race, color, or national origin could not be used as the sole reason for denial of an adoptive placement but could be considered as one of a number of factors to determine the best interests of a child.<sup>9</sup>

Early on, the need for greater clarity in the Act became apparent. A short time after the law was passed, the U.S. Department of Health and Human Services issued a monograph entitled “A Guide to The Multiethnic Placement Act of 1994.”<sup>10</sup> This publication was intended to “describe the Act and the current state of the law” and “provide a guide for determining what the law does and does not require and offer some practical suggestions for child welfare administrators and social workers who must implement the Act in the best interest of the children whom they serve.” Unfortunately, the monograph did not resolve all of the issues surrounding MEPA.

Within two years, Congress passed the Small Business Act of 1996. This Act included provisions that amended MEPA by removing misleading language and adding more conclusive statements to better reflect the spirit of the original legislation. This new legislation included a

section containing specific amendments to MEPA (entitled “The Removal of Barriers to Interethnic Adoption Provisions”) which did not include any language permitting states to consider race and ethnicity as one of a number of factors to determine the best interests of the child.<sup>11</sup> This legislation was signed by President Clinton on August 20, 1996.

---

### *In What Ways Did the Removal of Barriers to Interethnic Adoption Provisions (IEP) Change MEPA?*

---

The IEP amendments (also referred to as Section 1808) removed and revised potentially confusing language from MEPA and stated conclusively “discrimination is not to be tolerated.” Section 1808 also adds a State Plan requirement and specifies penalties to Title IV-E of the Social Security Act, which apply both to states and to adoption agencies.<sup>12</sup> These amendments provided the means to withhold federal funds from states and their foster/ adoption organizations that were not in compliance with the Act, and gave individuals the right to file complaints in federal court against a state or other entity alleged to be in violation of the Act. IEP amendments removed the majority of MEPA’s original language, with the exception of two provisions relating to recruitment efforts and the consequences of a state’s failure to carry out its plan for compliance with the legislation.

The Removal of Barriers to Interethnic Adoption Provisions (IEP) also require states and other recipients of federal funds to be in compliance with Title IV-E State Plan requirements. When compliance is not evident, two types of violations may be assessed:

- *Individual violations:* a MEPA-IEP violation against an individual (e.g. a prospective adoptive parent was denied the opportunity to adopt based on the parent’s race, color or national origin).
- *Systemic violations:* maintaining any statute, regulation, policy, procedure, or practice that is a violation of MEPA-IEP.

When a violation of the act is suspected, the U.S. Department of Health and Human Services first provides an opportunity for an alleged violator to cooperate with

---

## *MEPA-IEP and the Indian Child Welfare Act*

---

the agency voluntarily, encouraging the formation of a corrective action plan (CAP) to remedy the situation in order to promote complete compliance with the MEPA-IEP legislation. The federal agency also has the option to pursue the matter formally through an administrative proceeding if voluntary agreements are not forthcoming. Administrative proceedings provide a forum to discuss the alleged violation in a hearing and the possible sanctions that would be implemented as a consequence of a proven violation.

Graduated financial penalties and a withdrawal of funding can be applied to states and other entities that are found to have committed a violation against an *individual*. Penalties assessed on states and entities are imposed on a graduated basis of 2%, 3%, and 5% of Title IV-E funding beginning in the fiscal quarter in which the state receives notification of its violation. Financial penalties may be imposed while a state completes a corrective action plan. There is no time frame for the development or completion of a corrective action plan to address *individual violations* but there are incentives to complete the plan in a timely manner since penalties can run until the end of that fiscal year or until a state achieves compliance, whichever occurs first.<sup>13</sup> *Systemic violations* must be addressed by the state through a corrective action plan within 30 days of notification of a violation. Once approved, the plan must be completed in six months. Failure of a state to successfully complete a corrective action plan will also result in a financial penalty.

States failing to comply with MEPA-IEP's provisions are also violating Title VI of the Civil Rights Act which prohibits discrimination in programs that receive federal monies on the basis of race, color, or national origin. The Office for Civil Rights is required to investigate any allegation or complaint indicating a violation of Title VI of the Civil Rights Act of 1964 has occurred—which also applies to states and other entities in violation of MEPA-IEP provisions. If the Office for Civil Rights determines that a violation of Title VI has occurred, it notifies the agency or entity involved and requests voluntary compliance. If compliance does not occur within the predetermined time frame, the U.S. Department of Health and Human Services is brought in to conduct an additional investigation.

American Indian children eligible under the Indian Child Welfare Act of 1978 (ICWA)<sup>14</sup> do not fall under the guidelines established for foster care and adoptive placements under MEPA-IEP. Congress recognized that there is a distinctive relationship between a tribal government (as a political entity) and an Indian child. This relationship and the ramifications of finding appropriate placements for Indian children needing out-of-home care were addressed under the original ICWA legislation. The “political status” defined under ICWA is not a racial classification which excludes Indian children from federal or state anti-discrimination legislation such as MEPA-IEP. Under provisions relating to the Indian Child Welfare Act under Section 1808 (b) and (c), it is stated that “the Removal of Barriers to the Interethnic Adoption amendments shall not be construed to affect the application of the Indian Child Welfare Act of 1978.” However, it is important to not assume that the enactment and later amendments of MEPA-IEP had no effect on the Indian Child Welfare Act.

A common reason for states to be out of compliance with ICWA legislation is not having sufficient Indian foster or adoptive placements. MEPA-IEP requires that states describe how they will “provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed.”<sup>15</sup> The federal plan requirement, part of the original MEPA legislation that remained after the IEP amendment, is cognizant of the connection between effective recruitment of foster and adoptive placements and expedited placement of children. However, recruitment strategies aimed at minority families may not be as effective with Indian families and can contribute to extensive delays for Indian children requiring out-of-home placements—particularly those children who are legally free for adoption. MEPA-IEP recruitment requirements are designed to encourage states the development of a more collaborative and effective relationship between Indian communities and state and/or local child placement entities in order provide placement solutions for Indian children needing out-of-home care.

## Overview of MEPA-IEP

According to the U.S. Department of Health and Human Services *Guide to the Multiethnic Placement Act of 1994 As Amended by the Interethnic Adoption Provisions of 1996*,\* the “specific intentions of MEPA-IEP are to:

- Decrease the length of time that children wait to be adopted,
- Facilitate the recruitment and retention of foster and adoptive parents who can meet the distinctive needs of children awaiting placement, and
- Eliminate discrimination on the basis of the race, color, or national origin of the child or the prospective parent.

To achieve these goals, MEPA-IEP has three basic mandates:

1. It prohibits states and other entities that are involved in foster care or adoption placements, and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program, from delaying or denying a child’s foster care or adoptive placement on the basis of the child’s or the prospective parent’s race, color, or national origin;
2. It prohibits these states and entities from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent’s or the child’s race, color, or national origin; and
3. It requires that, to remain eligible for federal assistance for their child welfare programs, states must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes.

Although MEPA-IEP does not explicitly incorporate a “best interests” standard for making placements, the guidelines provided by the U.S. Department of Health and Human Services (referred to as “guidances”) note that “The best interests of the child remains the operative standard in foster care and adoptive placements. Nonetheless, to be consistent with constitutional “strict scrutiny” standards for any racial or ethnic classifications, as well as with MEPA-IEP, a child’s race, color, or national origin cannot be routinely considered as a relevant factor in assessing the child’s best interests. Only in narrow and exceptional circumstances arising out of the specific needs of an individual child can these factors lawfully be taken into account.\*\* Even when the best interests of an individual child appear to compel consideration of these factors, caseworkers cannot assume that needs based on race, color, or national origin can be met only by a racially or ethnically matched parent. Much will depend on the nature of the child’s specific needs and on the capacity of individual prospective parents to respond to these needs.”

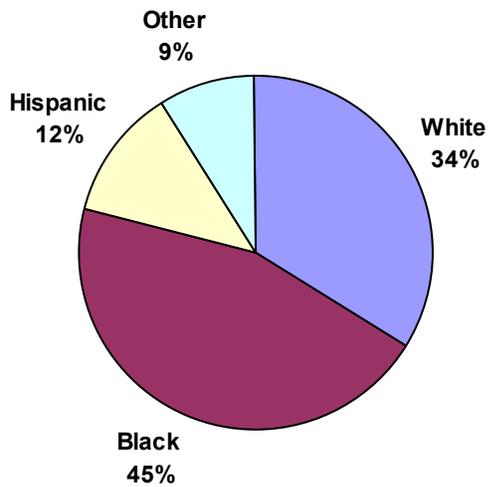
\* This section is taken directly from the U.S. Department of Health & Human Services website: A Guide to The Multiethnic Placement Act of 1994 As Amended by the Interethnic Adoption Provisions of 1996. This section was retrieved from the web on August 2, 2004. The full online Guide is available at: <http://www.acf.hhs.gov/programs/cb/publications/mepa94/mepachp1.htm>

\*\* The U.S. Department of Health & Human Services addressed when agencies may consider race, national origin and ethnicity in making placement decisions as follows: “Any consideration of these factors must be done on an individualized basis where special circumstances indicate that their consideration is warranted. A practice of assessing all children for their needs in this area would be inconsistent with an approach of individually considering these factors only when specific circumstances indicated that it is warranted”. Citation from: Answers to GAO Questions Regarding the Multiethnic Placement Act, as Amended. Retrieved from the Web July 14, 2004: [www.acf.dhhs.gov/programs/cb/laws/im/im9803a.htm](http://www.acf.dhhs.gov/programs/cb/laws/im/im9803a.htm).

## Race and the Waiting Child

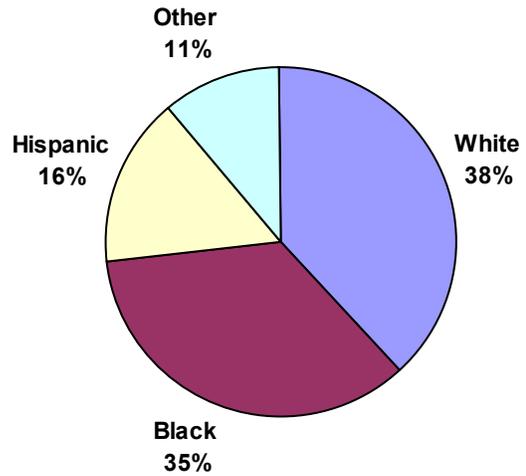
The U.S. Department of Health and Human Services defines waiting children as “children who have a goal of adoption and/or whose parental rights have been terminated.” The majority of all waiting children have been in continuous foster care (out-of-home care) for more than three years. According to federal estimates,<sup>16</sup> on September 30, 2001, 126,000 children were waiting to be adopted nationwide. Black children comprise 45% of this population.

**Race of Children Awaiting Adoption Nationwide  
One-Day Count (9/30/01)  
(Estimated N=126,000)**



A much smaller number of children in foster care were adopted in FY2001. Federal FY2001 estimates developed by the U.S. Department of Human Services place this figure at approximately 50,000. Black children comprised a considerably smaller share of the CY2002 adoption population (35%) than they did the September 30, 2001 foster care population awaiting adoption (45%).

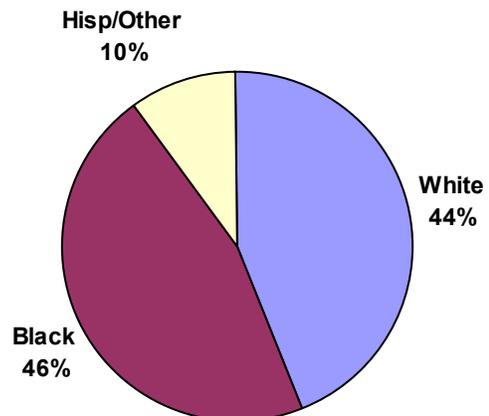
**Race of Children Adopted Nationwide, FY2001  
(Estimated N=50,000)**



## Race and Adoption in Ohio

Similar disparities are reflected in Ohio foster care adoption population. In federal fiscal year 2002, approximately 3,500 children in foster care were awaiting adoption in Ohio on any given day. Black children comprised approximately 59% of this awaiting adoption population.<sup>17</sup> During the same fiscal year, black children comprised a considerably smaller percent of all adoptions in Ohio (46%).<sup>18</sup>

**Race of Adopted Children in Ohio  
One Year Period (10/1/01 - 9/30/02)**



## *Office for Civil Rights Internal Evaluation Instrument*

The Office for Civil Rights and the U.S. Department of Health & Human Services developed an “Internal Evaluation Instrument” to be used by states and other entities to self assess their compliance with MEPA-IEP. It is intended as a self-screening tool to assist in the process of a voluntary review of programs, policies and practices to identify how well they are complying with MEPA-IEP and in what areas improvement is needed.\* In this way, states are encouraged to review their policies and procedures relating to foster care and adoption prior to a complaint being filed or an investigation initiated. Agencies are urged to consult with counsel in order to fully understand the impact of MEPA-IEP on policies and procedures in addition to completing the instrument.

The following is a summary of the information provided on the Internal Evaluation Instrument:

### **Recruitment of Foster and Adoptive Parents**

- Race and Ethnicity Data on Current Foster and Prospective Adoptive Parents
- Recruitment Efforts: including whether the agency has a comprehensive foster and adoptive home recruitment plan that indicates it is making diligent efforts to recruit foster and adoptive parents that reflect the racial and ethnic backgrounds of the population of children in foster care.

### **Screening, Orientation, Preparation, and Assessment of Prospective Foster and Adoptive Parents**

- Screening and Orientation: How does the agency ensure that persons of diverse race, color, or national origin (RCNO) are provided access to information on how to become a foster or adoptive parent?
- Assessment and Preparation of Prospective Foster and Adoptive Parents: when assessing prospective parents’ preferences, does the agency describe all the types of children available and the care needed by these children regardless of RCNO?

### **Foster/Adoptive Parent and Staff Training**

- Are MEPA/Section 1808 requirements integrated into training curricula?
- Do these curricula accurately address current law?
- Is each foster and adoptive parent provided the same information regarding policies and procedures about licensing/approval and/or other agency procedures regardless of the parent’s RCNO?
- How does the agency ensure that all training complies with MEPA/Section 1808?

### **Licensing/Approval of Foster and Adoptive Parents**

- Are uniform licensing and home study questions routinely applied throughout the state or locality?
- Is there a formal mechanism within the agency by which prospective foster and adoptive parents can comment or express concern about the licensing process?
- Is information about a prospective family’s preferences regarding the RCNO of children documented in the licensing or adoptive home study?

### **Assessment of Foster and Adoptive Children**

- How does the agency ensure that the process by which it assesses the children’s needs complies with MEPA/Section 1808?

continued on page 8.....

## *Office for Civil Rights Internal Evaluation Instrument (continued)*

continued from page 9.....

### **Selection Process and Placement of Foster and Adoptive Children**

- How is information on the pools of adoptive and available foster parents organized or maintained?
- Do prospective foster and adoptive parents have the opportunity to meet children in need of an adoptive/ foster home, regardless of RCNO (e.g., through adoption parties)?
- What are the procedures and resources used to locate and select potential, appropriate foster/adoptive families for a particular child?
- According to the agency's family selection and child placement policies and practices, under what circumstances would it be appropriate to consider the RCNO of the child or the foster or adoptive parent in making decisions on the most appropriate family for a particular child?

### **Quality Assurance and Compliance Monitoring**

- Does the agency track the results of foster/adoptive recruitment efforts?
- Does the agency perform internal monitoring to ensure its compliance with MEPA/Section 1808?
- What happens with the results of the monitoring?

The Internal Evaluation Instrument is available on the web at: [www.acf.hhs.gov/programs/cb/initiatives/mepaeval.htm](http://www.acf.hhs.gov/programs/cb/initiatives/mepaeval.htm).

\* The Internal Evaluation Instrument does not guarantee that the state/ agency/ organization is in MEPA-IEP compliance. The Office for Civil Rights can conduct complaint investigations and compliance reviews regardless of internal reviews.

On a positive note, however, the number of adoption finalizations in Ohio has risen steadily over the past few years. This has prompted the U.S. Department of Health and Human Services to provide \$1.1 million annually in federal adoption incentive funding.<sup>19</sup> Overall, Ohio remains dedicated to increasing the number of adoptions finalized each year and continues to support efforts to recruit and retain foster and adoptive placements that better reflect the ethnic diversity of children who are waiting for permanency.

### *MEPA-IEP Violations in the United States*

The Office for Civil Rights conducts periodic “compliance reviews” to determine whether states, counties, or individual agencies that receive federal Title IV-E money for foster and/or adoption placements are in compliance with Title VI of the Civil Rights Act as well as Section 1808 (MEPA-IEP). In a typical “compliance review,” written policies and procedures are reviewed, case files are examined and interviews of staff are held to determine whether the state or county in question have violated any part of Title VI and/or MEPA-IEP. At the conclusion of the review, a Letter of Finding is sent to the organization receiving and disseminating Title IV-E

funds to inform them of the results regarding the investigation and findings. If non-compliance has been documented, the agency is given the opportunity to enter into a Voluntary Compliance Agreement to address specific violations.

In some instances, a Resolution Agreement is used in place of the voluntary agreement. If the Office for Civil Rights receives a specific complaint regarding discrimination or violations of Title VI, they first decide whether it is appropriate to accept the complaint for resolution. If the Office for Civil Rights chooses to pursue the matter, a letter is sent to the agency or organization informing them of the impending investigation. Resolution Agreements provide the opportunity to immediately resolve the allegations that prompted the complaint. If each party is willing to use this approach, a written resolution to the complaint is developed by all parties. OCR does not sign, approve, or endorse this agreement but will provide technical and legal assistance to help resolve the matter.

---

### *MEPA-IEP Violations in Ohio and Hamilton County*

---

On April 30, 1999, the Office for Civil Rights initiated a Compliance Review of Hamilton County's Department of Human Services.<sup>22</sup> The Office also conducted a review of policies and training provided by the Ohio Department of Human Services.<sup>23</sup> These reviews attempted to determine if there were violations of compliance with Title VI of the Civil Rights Act of 1964 and MEPA-IEP. In response to the impending federal investigation, Ohio issued a procedure letter to address a re-issuance of agency policies around compliance with MEPA-IEP. The letter, which preceded the commencement of the Compliance Review, urged agencies to amend their foster care and adoption policies and resubmit them to regional offices, to ensure that all policies in Ohio were in compliance with MEPA-IEP by January 1, 1999. The U.S. Department of Health and Human Services provided Ohio with technical assistance to better understand MEPA-IEP and how policies should reflect the legislation.

In July of 2002, Hamilton County officials entered into a consent decree that addressed the issues identified by the federal investigation and attempted to complete the applicable tasks tied to compliance. However, in October of 2003, the Office for Civil Rights issued a Letter of Finding to the Hamilton County Department of Job and Family Services and the Ohio Department of Job and Family Services, indicating that Hamilton County had violated the civil rights of children eligible for adoption, as well as the rights of foster families, and other prospective adoptive families. The Letter of Finding also specified that Ohio had systemic violations in the form of two rules in the Ohio Administrative Code. According to a U.S. Department of Health and Human Services press release, Hamilton County made "adoption determinations on the basis of race, rather than on the basis of the individual needs of the children. These cited "individual" violations included instances where non-African-American foster families were improperly prevented from adopting African-American children in their care with whom they had formed a close bond, because of racial considerations."<sup>24</sup>

Both the State of Ohio and Hamilton County denied that "adoption and foster care policies or practices discriminated on the basis of race, color, or national origin, or constituted any other wrongdoing."<sup>25</sup> Both are currently appealing the federal findings that violations of MEPA-IEP occurred. However, in the Letter of Finding, state and county officials were required to submit a voluntary compliance agreement within thirty days of the receipt of the Notification Letter and the state was required to submit a corrective action plan which would provide solutions for the alleged violations. The corrective action plan had to address certain key areas including:

- The development and implementation of rules, policies, and other materials that comply with Title VI and Section 1808 (MEPA-IEP);
- Adequate training for staff and any relevant contract agencies;
- The provision of key data on children in Hamilton County's custody and prospective adoptive families; and
- Provisions for the adequate monitoring of any corrective actions.<sup>26</sup>

HCJFS submitted its Corrective Action Plan to the Office for Civil Rights in November of 2003. The state requested a time extension to submit both its corrective action and voluntary compliance plans and submitted its original agreement to federal authorities in January 2004. The “original” plans were subsequently revised and submitted to the Office for Civil Rights for approval in the summer of 2004. Ohio and Hamilton County’s Corrective Action and Resolution Plan was approved on July 21, 2004, and will be in effect for the next five years. Hamilton County Job and Family Services is continuing to work on developing systems and procedures that are needed to address the specific tasks outlined in the revised plan. The main areas of this plan are as follows:

- Amendment of State Administrative Rules and Policies
- Amendment of Placement and Homestudy Rules
- Providing Access by Metro Counties to All PCSA Home studies
- Adequate File Maintenance and Data Collection Procedures
- Establishment of a Formal Complaint Process for MEPA and Title VI Discrimination Complaints
- Require PCSA, PCPA, and PNA to Submit Corrective Action Policies For Employees Who Violate MEPA<sup>27</sup>
- Training
- Monitoring
- Prohibition on Retaliation
- Assurance of Hamilton County Job and Family Services Performance

As previously mentioned, findings of an individual violation of MEPA-IEP can lead to a financial penalty for the state agency responsible for administering federal Title IV-E funding.<sup>28</sup> Ohio is the first state to be financially penalized for violations of MEPA-IEP although it is not the first state to be found in violation (see Summary of OCR Reviews, pp. 12-13). The Ohio Department of Job and Family Services was required to “pay back” a portion of its Title IV-E budget as a result of the Office for Civil Rights’ findings that there were individual county violations. However, although it is alleged that multiple

violations were committed by Hamilton County, the state received the minimum penalty for violations of MEPA-IEP - 2% (\$1,161,658) of its quarterly Title IV-E budget.

---

### *Concluding Remarks*

---

Ohio and Hamilton County are currently making all necessary revisions to policies and practices related to foster care and adoption as required by the U.S. Department of Health and Human Services and the Office for Civil Rights. Although Ohio denies the allegations of MEPA-IEP and Title VI violations, considerable resources have been dedicated to resolving the claims made in the Letter of Finding, and both state and local authorities are cooperatively seeking a resolution to federal concerns about the foster and adoption system in Ohio and Hamilton County. The federal review process has, since its inception, afforded states the opportunity to make significant changes in policy. These reviews offer a range of technical assistance designed to support community and state agencies in designing programs and wording policies that are in compliance with the legislation. MEPA-IEP is inherently complex and consequently the U.S. Department of Health and Human Services and the Office for Civil Rights encourage all entities that receive federal MEPA-IEP related funding to seek legal advice when changing or creating new policies and procedures in the areas of foster care and adoption.

So why do violations of MEPA-IEP and non-compliance continue to be an issue in states and county agencies across the U.S.? The answer lies somewhere in the historical roots of civil rights legislation, modern-day beliefs in “the best interest of the child” and a systemic overrepresentation of minority children in the foster care system.

The Civil Rights Act of 1964 and the enactment of further legislation designed to prevent discrimination in placement practices, are only as effective as the individuals who are responsible for providing services. Although designed to provide a regulatory function, anti-discrimination legislation is still emotionally debated throughout our legal system. Our society, is premised on the intrinsic civil rights of all people, regardless of race, ethnicity or national origin. There is also recognition that society is comprised of individuals of different races, ethnicities and national

## Ohio Administrative Code Rules Not in Compliance with MEPA-IEP

Ohio's systemic violations of MEPA-IEP were cited in the form of two rules in the Ohio Administrative Code\*:

1. Ohio Administrative Code Rule 5105:2-48-02 (rescinded May 1, 1999) section (D) stated: "The adoptive placement for every child including a biracial and multiracial child, shall meet the child's best interests and address the special needs of the child. *Cultural heritage may be a factor for consideration provided that the adoptive family can meet the special needs of the child.* However, the sole criterion in the selection or denial of an adoptive placement shall not be race or cultural heritage."

This rule was in violation of MEPA-IEP because it states, "cultural heritage may be a factor" and may have been interpreted to allow the state to use cultural heritage\*\* as a means to deny placement. MEPA-IEP prohibits states from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective parent's race, color, or national origin.

2. Ohio Administrative Code Rule 5101:2-48-07 (also rescinded May 1, 1999 but was rewritten without the following section citing an applicant's "cultural plan" and given a new rule number: 5101:2-48-12). Section (C)6 originally stated that the adoptive home study process shall consist of: "An assessment of an adoptive applicant seeking a *transracial/transcultural adoptive placement*, to determine the applicant's capacity and disposition to value, respect, appreciate and educate a child regarding a child's *racial, ethnic and cultural heritage, background and language and the applicant's ability to integrate the child's culture into normal daily living patterns.*"

This rule was in violation of MEPA-IEP because of the requirement for the home study to include information regarding an applicant's ability to integrate the child's culture into daily living patterns—this requirement was only applicable to applicants seeking a transracial/transcultural adoptive placement. MEPA-IEP prohibits states from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent's or the child's race, color, or national origin.

Ohio worked to revise these rules within the appropriate time frame and thus eliminate the MEPA-IEP violations cited in the original Letter of Findings. Since then, Ohio has been found to be in full systemic compliance with MEPA-IEP.

\* Current Ohio Administrative Code can be found online at: <http://emanuals.odjfs.state.oh.us/>.

\*\*Although the rule included a caveat: "the sole criterion in the selection or denial of an adoptive placement shall not be race or cultural heritage," because of the "cultural heritage" language, the rule was still found to be in violation of MEPA-IEP.

*Summary of Selected OCR Reviews of States and/or Counties:  
Findings and Resolution Action*

The following table contains information regarding some of the states and/or counties that have been investigated by the Office for Civil Rights for routine compliance reviews regarding Title VI and Section 1808 (MEPA-IEP), and/or specific complaints of discriminatory practices in foster or adoption placement practices:

<b>State/County/Agency</b>	<b>Review Type</b>	<b>Finding</b>	<b>Resolution</b>
Alabama Department of Human Resources	Compliance Review	Placement practices in certain Alabama counties and written policies in one county violated	A Voluntary Compliance Agreement was entered into to address the specific findings.
Alameda County, California Social Services Agency, Children and Family Services (CFS)	Compliance Review	Review focused on whether CFS provides all individuals the opportunity to become adoptive or foster parents without denials or delays based on race or ethnicity.	A Resolution Agreement required CFS to amend procedures, revise forms, train staff, provide non-discrimination notices, and track placements.
Fresno County, California Children and Family Services (CFS), Fresno County Human Services System	Compliance Review	During the investigations, CFS agreed to voluntarily resolve the complaint.	Resolution Agreement addressed the specific complaint as well as the need to diversify recruitment practices and other actions related to MEPA-IEP.
San Diego, California Children Services Bureau, Health and Human Services Agency	Compliance Review	While the review was in progress, the Bureau made significant revisions to its placement policies and procedures.	The Children Services Bureau was found to be in compliance with Title VI and Section 1808 (MEPA-IEP).
Florida Department of Children and Families (FDCF)	Compliance Review	State regulations and policies as well as placement practices in one country were found to be in violation of Title VI and Section 1808 (MEPA-IEP).	After a Letter of Finding was issued, FDCF agreed to revise state regulations and policies, placement criteria, and training practices.

continued on page 13.....

origins and those characteristics make each person unique. In the field of foster care and adoption, children waiting for placement and permanency are the most important focus for workers, administrators and legislators. Pursuing placements that are in the “best interests of the child” continues to be the ideal that foster care and adoption workers strive to achieve. But for some in the foster care and adoption field, encouraging or providing same-race placements for children *is* in the best interest of children and it would be difficult to persuade them otherwise.

The growing numbers of children in the foster care and adoption system continue to place a burden on state and local agencies trying to recruit adequate numbers of foster and adoptive parents. Many children have been in the system for so long that they have essentially run out of placement options due to their behavioral needs and the lack of qualified placements. This is especially true of minority children who, on average, spend considerably more time waiting for placements than their Caucasian counterparts. Placement recruitment efforts in some states and local communities have led to increased numbers of minority placement options and increased the number of available foster care and adoptive

*Summary of Selected OCR Reveiws of States and/or Counties:  
Findings and Resolution Action (continued)*

The following table contains information regarding some of the states and/or counties that have been investigated by the Office for Civil Rights for routine compliance reviews regarding Title VI and Section 1808 (MEPA-IEP), and/or specific complaints of discriminatory practices in foster or adoption placement practices:

<b>State/County/Agency</b>	<b>Review Type</b>	<b>Finding</b>	<b>Resolution</b>
Florida Department of Children and Families (FDCF)	Investigation of Complaint	While the investigation against a FDCF district office was in process, FDCF & the Office for Civil Rights reached a Predetermination Settlement Agreement.	A Predetermination Settlement Agreement was entered into. FDCF also agreed to take specific steps to investigate complainants' concerns and allegations.
Hennepin County, Minnesota Children and Family Services Department	Compliance Review	This review was initiated to determine the county's current practices regarding the use of race in foster and adoptive placements. Prior complaints (3) were resolved with Resolution agreements.	The county was found to be in compliance with Title VI and Section 1808 (MEPA-IEP).
Nevada Department of Human Services, Division of Child and Family Services (DCFS)	Compliance Review	A Letter of Finding was issued stating that some DCFS policies & practices were inconsistent with Section 1808 & Title VI.	A Resolution Agreement was entered into addressing a variety of DCFS adoption and foster care practices.
Hamilton County and Ohio Department of Job and Family Services	Compliance Review	The Office for Civil Rights issued a violation Letter of Findings regarding its compliance review of the adoption and foster care program of Hamilton County and related activities of the State of Ohio.	A violation Letter of Finding was issued citing delays, denials, or other discriminatory practices involving 16 children & 22 prospective parents. In addition, the state was found in violation of Title VI & MEPA-IEP through administrative rules governing transracial adoption & foster care. (See page 9 on Ohio and Hamilton Counties).
Washington Department of Social and Health Services (DSHS)	Compliance Review	During the compliance review, DSHS agreed to present a plan to ensure Section 1808 compliance.	A Compliance Plan addressed efforts to comply with Section 1808 & expanded ongoing staff training.

homes in general. However, the number of children needing permanency continues to increase, due in part to the continuing overrepresentation of minority children entering foster care. This has made it impossible to recruit foster and adoptive homes that are racially representational of the community of children needing placement. It is not acceptable then, both legally and ethically, for agencies to continue the practice of racial

matching when considering placement options for children in need of a permanent home.

MEPA-IEP legislation does not address differences in opinion when it comes to racial matching in foster care and adoption. It also does not provide a platform to discuss race issues in society nor does it give answers about long-term effects of inter-racial placements or

extended waiting periods for children in foster care. It does, however, specifically state that discriminatory practices in placements will not be tolerated and that violations of the law will be dealt with through an investigative process. Several states and/or counties have been found in violation of some part of MEPA-IEP as of the date of this publication, and federal authorities will continue to conduct reviews and investigations of complaints to enforce non-discriminatory placement practices.

Civil rights, racial-matching, and what is in the “best interest” of children will continue to be central topics of debate for federal lawmakers, state governments, and local entities. States and counties found in violation of MEPA-IEP are subject to substantial financial penalties and it is in each state’s best interest to take an active role in addressing possible violations. The Ohio Department of Job and Family Services is committed to working with local counties to address their concerns about potential violations. If your county or local adoption entity needs assistance to review adoption policies, rules, procedures, etc., to assess compliance with MEPA-IEP legislation, please contact:

Vanessa Tower  
Program Administrator  
Office for Children and Families  
Ohio Department of Job and Family Services  
614-466-9274  
or via e-mail at  
[towerr@odjfs.state.oh.us](mailto:towerr@odjfs.state.oh.us)

---

## Endnotes

---

- <sup>1</sup> For the purpose of this paper, the terms “Transracial” and “Interethnic” will be used interchangeably to denote placements and adoption of children of color, (with African American children representing the majority of children awaiting adoption placements), primarily by Caucasian parents.
- <sup>2</sup> The Adoption and Safe Families Act (ASFA) was signed into law on November 19, 1997, to amend the federal foster care law in order to make safety and permanency for children the primary focus. Pub. L. 103-89.
- <sup>3</sup> Title VI of the 1964 Civil Rights Act. 42 U.S.C. §§ 2000d-2000d-7.
- <sup>4</sup> U.S. Department of Health and Human Services: Welcome to the Office for Civil Rights. Retrieved from the Web on August 19, 2004: <http://www.hhs.gov/ocr/index.html>.
- <sup>5</sup> Robert H. Bremner, *Children and Youth in America: A Documentary History, Vol. 3, Parts 1-4* (Harvard University Press, 1974): 777-780.
- <sup>6</sup> Joseph Goldstein, Anna Freud, and Albert J. Solnit, *Beyond the Best Interests of the Child* (New York: Free Press, 1973). Although “best interests of the child” was not a new concept, this publication increased the role of “best interests” in child welfare and made the concept more mainstream.
- <sup>7</sup> The full title of the Act is: the Multiethnic Placement Act (MEPA) of 1994. P.L. 103-382, Title V, Part E.
- <sup>8</sup> Title IV-E of the Social Security Act is an open-ended entitlement program which helps states care for children who are in the foster care system. It provides funding for some of the expenses of maintaining them in foster homes and other child care institutions as well as paying some of the associated administrative and training costs.
- <sup>9</sup> Please see Section 553 of the Metzenbaum Multiethnic Placement Act of 1994.
- <sup>10</sup> A Guide to The Multiethnic Placement Act of 1994. Retrieved from the web on July 14, 2004: [www.acf.dhhs.gov/programs/cb/laws/pi/pi9523a5.htm](http://www.acf.dhhs.gov/programs/cb/laws/pi/pi9523a5.htm).
- <sup>11</sup> The full title of the Act is: the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996. P.L. 104-188, Title I, Subtitle H, Section 1808, Removal of Barriers to Interethnic Adoption. The Act is referred to various ways in this bulletin including: IEP, Section 1808, and the Removal of Barriers to Interethnic Adoption.
- <sup>12</sup> United States Department of Health and Human Services, Office for Civil Rights Memorandum: Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996: Retrieved from the Web on July 14, 2004: <http://www.hhs.gov/ocr/iepguide.htm>.
- <sup>13</sup> There is some confusion regarding the requirement for states to complete a corrective action plan for individual violations. 45 C.F.R § 1335.38 (b)(1) makes a corrective

- action plan *optional* stating “The State *may* develop, obtain approval of, and implement a plan of corrective action any time after it receives written notification from ACF that it is in violation of section 471(a)(18) [42 U.S.C. § 671 (a)(18)] of the Act.”
- <sup>14</sup> Indian Child Welfare Act (ICWA) of 1978. P.L. 95-608. ICWA required Indian children to be placed in foster or adoptive homes that reflect Indian culture and granted preference to Indian family environments in adoptive or foster care placement. Although ICWA seems to be in direct contradiction to the MEPA-IEP legislation, one must view the Act in terms of its historical precedent. The Bill was originally initiated due to the large number of Indian children being removed from their families and tribes and placed in non-Indian placements. This was not “in the best interests” of an Indian child or the tribe because of the loss of Indian culture and heritage that resulted. In addition, because of the existence of tribal government separate and apart from the federal government, Indian children need specific legislation aimed at clarifying the political aspects of out-of-home placements away from the tribe.
- <sup>15</sup> P.L. 103-82 Multiethnic Placement Act (MEPA) of 1994; Section 554.
- <sup>16</sup> Source: U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau. *The AFCARS Report*, Preliminary FY 2001 Estimates as of March 2003 (8). Retrieved from the Web on July 19, 2004: <http://www.acf.hhs.gov/programs/cb>.
- <sup>17</sup> Ohio also finalized 2,165 adoptions in 2002. Retrieved from the Web on July 15, 2004: <http://jfs.ohio.gov/oapl/adoptohi.htm>.
- <sup>18</sup> Time period is: October 1, 2001 to September 30, 2002. Source: Source: U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families. *Race/Ethnicity of Public Agency Children Adopted: October 1 2001 to September 30, 2002*. Retrieved from the Web on July 19, 2004: [www.acf.dhhs.gov/programs/cb/dis/tables/race04.htm](http://www.acf.dhhs.gov/programs/cb/dis/tables/race04.htm).
- <sup>19</sup> Source: Ohio Department of Job and Family Services Annual Report FY 2003. Retrieved from the Web on Aug 11, 2004: [www.odjfs.state.oh.us/forms/pdf/01832.pdf](http://www.odjfs.state.oh.us/forms/pdf/01832.pdf).
- <sup>20</sup> Information contained in this table was obtained from the U.S. Department of Health and Human Services website entitled Protection from Racial Discrimination in Adoption and Foster Care: Summary of Selected OCR Compliance Activities. Retrieved from the Web on August 18, 2004: [www.hhs.gov/ocr/mepa/complianceact.html](http://www.hhs.gov/ocr/mepa/complianceact.html).
- <sup>21</sup> In January 2001, Hamilton County Department of Human Services changed its name to the Hamilton County Job and Family Services (HCJFS).
- <sup>22</sup> In July 2000, The Ohio Department of Human Services changed its name to the Ohio Department of Job and Family Services (ODJFS).
- <sup>23</sup> U.S. Department of Health and Human Services press release. 2003. Retrieved from the web July 15, 2004: [www.hhs.gov/ocr/hamilton\\_county\\_directors\\_stmt.doc](http://www.hhs.gov/ocr/hamilton_county_directors_stmt.doc).
- <sup>24</sup> Corrective Action and Resolution Plan of the Ohio Department of Job and Family Services and Resolution Agreement of Hamilton County Job and Family Services. 2004.
- <sup>25</sup> OCR-MEPA-Summary of Selected OCR Compliance Activities. 2003. Retrieved from the web August 18, 2004: [www.hhs.gov/ocr/mepa/complianceact.html](http://www.hhs.gov/ocr/mepa/complianceact.html).
- <sup>26</sup> PCSA, PCPA and PNA refer to child placing agencies either public or private who receive federal money to provide adoption services or foster care placement services through Ohio.
- <sup>27</sup> It is important to note that the Ohio Department of Job and Family Services did submit and have approved a corrective action plan by ACF for “individual violations” while maintaining that corrective action plans are optional at the state’s discretion. Ohio continues to raise questions about the authority ACF and OCR have to require corrective action plans for individual violations. See 45 C.F.R § 1335.38 (b)(1) for relevant text.

## *TPR Appeals — How Long Do These Take?*

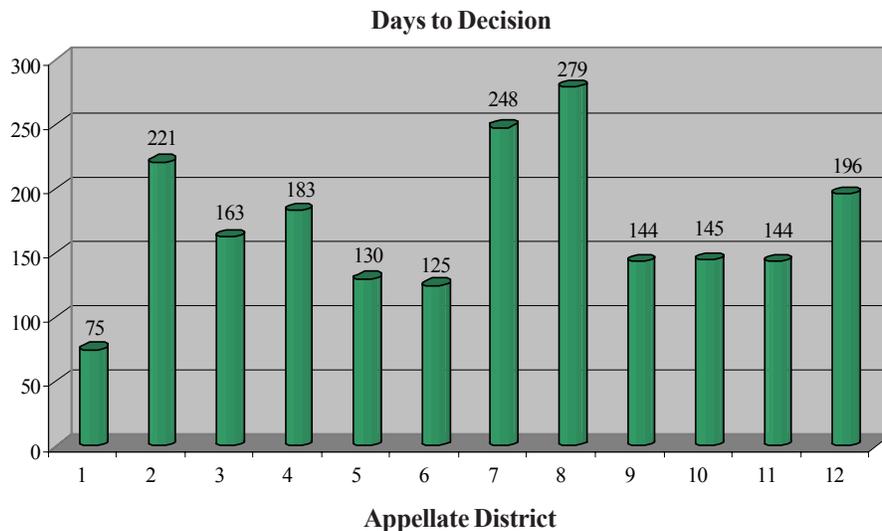
Ohio's Child and Family Services Review (CFSR) was completed by the Children's Bureau, U.S. Department of Health and Human Services in January 2003. Referenced in this report were a number of court-related practices that the authors felt contributed to a general finding of failure to achieve substantial conformity with any of the seven safety, permanency or well-being outcomes. These include issues related to the timeliness of case processing (including hearings not conducted within prescribed timeframes), excessive continuances, overcrowded dockets and appellate delays.\*

In response to these findings the Supreme Court of Ohio (SCO) in collaboration with the Department of the Ohio Department of Job and Family Services (ODJFS) undertook data collection efforts to determine if the court-related items cited in the CSFR were truly statewide issues or more local in nature and isolated to specific courts or regions of the state.

Included in these efforts was a study initiated by the SCO's Family Law Section to gather data on cases filed in Ohio's twelve appellate courts appealing termination of parental rights (TPR) determinations. Family Law Section staff contacted each of the State's appellate courts to identify TPR appeal cases that were resolved in calendar year 2002 and extracted from the court files key case processing information related to the initiation and timeliness of the appeals process.

A total of 155 cases (involving more than 225 children) were identified in which an appellate court made a decision on a TPR appeal in calendar year 2002. Approximately 44% of these cases involved two appellate court districts – District 5 (31 cases) and District 8 (37 cases).\*\* On average, it took Ohio's appellate courts 187 days from the date of the notice of the TPR appeal to decide the case.\*\*\* This is considerably more than the 120 days maximum recommended by the National Council of Juvenile and Family Court Judges.\*\*\*\* Overall, 68% of the cases analyzed took longer than the recommended maximum amount of time.

**Average Number of Days Between Notice of Appeals and Appellate Court Decision  
TRP Cases Decided in CY2002**



\* Please see the Summer 2003 edition of Children, Families and the Courts – Ohio Bulletin, page 11 for a summary of the findings and conclusion contained in Ohio's CFSR Final Report and steps being taken to address concerns highlighted in the report.

\*\* District 5 includes Stark and surrounding counties while District 8 encompasses Cuyahoga County.

\*\*\* The average number of days increases to 200 if dismissed cases (N=22) are excluded from the analysis.

\*\*\*\* Please see National Council of Juvenile and Family Court Judges, Adoption and Permanency Guidelines: Improving Practice in Child Abuse and Neglect Cases, Chapter 4 (2002). The proposed timelines are divided into maximum time lines for each step in the appeals process. The overall cumulative total for these is 150 days. This includes 30 days for the actual filing of the appeal (from the date of the TPR determination). The 120 days time line reflected in the above analysis excludes the 30 days allocated for the actual filing of the appeal notice.

## *Beyond the Numbers: Update*

### **OAJCJ District 1 Pilot Project**

- 12 of the 13 northwest Ohio counties comprising OAJCJ District 1 continue to serve as pilot sites for the *Beyond the Numbers* project. These counties are: Defiance, Hancock, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, and Wood counties.
- SCO staff created a draft instrument designed to assist courts' review of closed cases to uncover systemic problems with timely case flow. The pilot counties were introduced to the Court Case File Review Instrument, the Court Case File Review Summary Sheet, and accompanying instructions in October and were asked to attempt to use the instrument prior to the November 19<sup>th</sup> Regional Stakeholders' Meeting.
- ODJFS Bureau of Outcome Management supplied each court with the names of ten closed cases to review using the instrument developed by SCO. It was the intent of ODJFS that the ten cases be limited to those that would not conform with CFSR measurements if reviewed. The purpose of this activity was to assist courts in identifying recurrent barriers or patterns.
- On Friday, November 19<sup>th</sup> the SCO hosted a full day Regional Stakeholders' Meeting for District 1 Judges, court staff, PCSA directors, and PCSA staff. SCO and ODJFS staff led the participants through the agenda and a great deal was learned by and from the participants.
  - Some counties already had completed the Court Case File Review for ten or more cases. Some counties already had held local planning meetings.
  - Participants from each county were asked to work together to understand their CFSR numbers and brainstorm barriers that impede progress and strengths that improve compliance with CFSR measurements.
  - An afternoon session allowed counties that had already piloted the *Beyond the Numbers* tools to share their experiences with the group.
  - The participants then worked to define the next steps to be taken and desired assistance from the SCO and ODJFS.
- Participants of the Regional Stakeholders' Meeting are being asked to continue with Local (County) Planning and Implementation. Meetings will be on-going or as needed, convened by the juvenile court judge(s), and will include a variety of community stakeholders. This team will work together to evaluate current child protection practices, and design and commit to ways to improve and assess progress while strengthening oversight of these cases.

### **OAJCJ Districts 6 and 7**

- On Friday, November 12<sup>th</sup>, Judges and court staff representing 16 of the southern Ohio counties that comprise Districts 6 and 7 of the OAJCJ met to learn about the *Beyond the Numbers* project. The meeting was designed to introduce judges to the project, as well as CFSR data and Ohio's Performance Improvement Plan goals.
- Each district will be invited to host a Regional Stakeholders' Meeting in the spring of 2005.

### **Beyond the Numbers Judicial Planning Committee**

- The Judicial Planning Committee has been periodically updated on the project. Most recently, it met on December 8<sup>th</sup> in Canton to review the pilot project and discuss the requests and concerns that resulted from the November meetings of Districts 1, 6, and 7. As *Beyond the Numbers* expands outside of judicial participation, child welfare representation will be added to the committee.

### **2005 Planning**

- SCO currently is setting the calendar to accommodate:
  - District 1 Local meetings
  - District 6 Regional Stakeholders Meeting

continued on page 18.....

.....continued from page 17

- District 7 Regional Stakeholders Meeting
- District 2-5 Judicial Meetings
- National Council of Juvenile and Family Court Judges' *Family Court Forum*, to be co-sponsored by SCO and ODJFS and to be held at the Sheraton City Centre in Cleveland, October 16-19, 2005.

**Other *Beyond the Numbers* activities include:**

- Establishing a model agenda and related materials for local *Beyond the Numbers* meetings.
- Gathering materials from a number of sources within Ohio and nationally to create a juvenile bench book. The Judicial Planning Committee of the *Beyond the Numbers* project is overseeing the compilation of this document.
- Pursuing judicial ethics guidelines to address concerns of collaboration with community partners.
- Exploring increased continuing legal education with the Ohio State Bar Association.
- Generating a glossary of interdisciplinary terms related to this project.
- Revising the Case File Review Instrument to accommodate differences in terminology among Ohio's 88 counties and to clarify data.

Questions regarding *Beyond the Numbers* can be directed to SCO Project Manager Jessica Shimberg Lind, [lindj@sconet.state.oh.us](mailto:lindj@sconet.state.oh.us) or Kristin Gilbert, [gilbek@odjfs.state.oh.us](mailto:gilbek@odjfs.state.oh.us).

## *Guardian ad litem Standards: Update*

The Supreme Court of Ohio's *Advisory Committee on Children, Families and the Courts* has voted to recommend new standards of service for Ohio's guardians ad litem. The proposed standards went through a lengthy review and comment period prior to presentation to the Advisory Committee; comments were incorporated into the committee's final language whenever feasible and consistent with the intent of standards. To begin the process of enactment, the Supreme Court now will identify which standards can be implemented through rule change and which require statutory change.

The 26 standards are organized into 5 categories:

- 1) Service and duties
- 2) Training
- 3) Reports
- 4) Funding and Payment
- 5) Monitoring and Enforcement

The Advisory Committee was careful in its deliberations to balance the needs of children with the realities of practice. For example, when recommending a pre-service training requirement of six hours and three hours in-service instruction annually thereafter, the Advisory Committee instructed that this training be made available in a manner that was geographically accessible and not cost prohibitive. The Supreme Court of Ohio contracted with the Ohio CASA/GAL Association to develop a standardized curriculum for the initial six hours, and is exploring methods of delivering the instruction state-wide on an ongoing basis. It is the Supreme Court's expectation that the six hour instruction will be available to Ohio's guardians ad litem well in advance of enactment of any training requirement.

A complete copy of the Advisory Committee's approved standards for guardians ad litem can be found on [www.sconet.state.oh.us](http://www.sconet.state.oh.us). Questions should be directed to Doug Stephens at [stephend@sconet.state.oh.us](mailto:stephend@sconet.state.oh.us).

*In re C.W., 104 Ohio St.3d 163, 2004-Ohio-6411*

On December 8, 2004, the Supreme Court of Ohio found that before a public children-services agency or private child-placing agency can move for permanent custody of a child on R.C. 2151.414(B)(1)(d) grounds, the child must have been in the temporary custody of an agency for at least 12 months of a consecutive 22-month period.

On June 20, 2002, the trial court issued an emergency order awarding temporary custody of C.W. to the public children services agency. After a hearing on June 21, 2002, the trial court ordered that C.W. remain in the temporary custody of the agency. An adjudicatory hearing was held on July 17, 2002, at which the trial court adjudicated C.W. a dependent child and ordered that C.W. remain in the temporary custody of the public children services agency.

On April 23, 2003, nine months after the dependency adjudication, the public children services agency moved for permanent custody of C.W., alleging that permanent custody was in C.W.'s best interest, that C.W. had been in the temporary custody of the public children services agency for 12 of the prior 22 months, and that C.W. could not be placed with his parents within a reasonable period of time.

On October 14, 2003, the trial court granted the public children services agency's motion for permanent custody and terminated parental rights. The trial court determined that C.W. had been in the temporary custody of appellant for 12 or more months of a consecutive 22-month period pursuant to R.C. 2151.414(B)(1)(d) and that permanent custody with a goal of adoption was in C.W.'s best interest.

The court of appeals reversed the trial court's order granting permanent custody to the public children services agency and remanded the cause for further proceedings. Specifically, the court of appeals found that the trial court had erred in terminating parental rights, since the court had based its judgment on the erroneous conclusion that C.W. had been in the temporary custody of appellant for 12 or more months pursuant to R.C. 2151.414(B)(1)(d). The court of appeals noted the undisputed evidence that C.W. had not been in the temporary custody of the public children services agency for 12 months prior to the filing of the motion for permanent custody. Stating that a motion for permanent custody must allege grounds that currently exist, the court of appeals concluded that the trial court had erred in relying on the R.C. 2151.414(B)(1)(d) ground in granting permanent custody to appellant.

The Supreme Court of Ohio's inquiry centered around a determination whether a trial court may count the time between the filing of a motion for permanent custody and the time of the permanent-custody hearing to satisfy the requisite 12-month period of temporary custody set forth in R.C. 2151.414(B)(1)(d).

The Court held that before a public children-services agency or private child-placing agency can move for permanent custody of a child on R.C. 2151.414(B)(1)(d) grounds, the child must have been in the temporary custody of an agency for at least 12 months of a consecutive 22-month period. In other words, the time that passes between the filing of a motion for permanent custody and the permanent-custody hearing does not count toward the 12-month period set forth in R.C. 2151.414(B)(1)(d).

The Court specifically stated that the above finding does not preclude an agency from moving for permanent custody before a child has been in the agency's temporary custody for at least 12 months. If a ground other than R.C. 2151.414(B)(1)(d) exists to support a grant of permanent custody, the agency may move for permanent custody on that other ground.

## *CIP Highlight: Logan County's Efforts to Expedite the Dependency Hearing Process*

In a joint effort, the Children's Services Board, the Prosecutor's Office and the Juvenile Court in Logan County have succeeded in drastically reducing the length of time required to address child abuse, neglect and dependency cases. Judge Michael L. Brady, Prosecutor Gerald Heaton and Children's Services Director John Holtkamp assigned a committee to research options and implement changes so abuse, neglect and dependency cases do not fall between the cracks during processing and investigation. Excessive timelines often result in families being left in limbo while waiting for the court to make vital decisions affecting their lives.

The committee started meeting in May of 2004 and began by examining the existing case flow timelines. Abuse, neglect and dependency cases were taking an average of 73 days from an initial contact with Children's Services to disposition in Juvenile Court. Although these average timelines fell within Supreme Court guidelines, committee members felt that the process took too long and could be expedited. They set an initial goal of reducing the average time to disposition by 21 days.

In analyzing the case flow, two points of delay drew immediate attention: the amount of time it took to appoint counsel for indigent defendants and the time lag between the initial pre-trial and subsequent hearings. A lack of assigned counsel prior to the first pretrial date often necessitated a second pretrial and, when applying for subsequent hearings, cases had to re-enter the queue for docket time. The appointment of counsel could not be completed until a defendant filed an Affidavit of Indigency. Routinely, defendants did not receive blank affidavits until they appeared for their pretrial hearing and there was often a delay in returning the completed affidavits with the required notary seal.

The question became: "How do we, in a timely fashion, get the necessary forms to the people who need them and how can we speed up the return of the notarized forms?" The committee's solution was to ask the Children's Services caseworkers, who investigate the initial allegations of abuse or neglect, to keep a supply of blank affidavits with them and to have the CSB staff become Notaries Public. A letter from Judge Brady helps to explain the legal purpose of the form and the role the caseworker is taking. This offer of assistance by the CSB worker can allow the notarized Affidavit of Indigency to be completed during the intake investigation process and filed along with the charges, and ensures the defendant will have assigned counsel on the pre-trial date.

Additionally, the Juvenile Court began assigning hearing times for the arraignment and disposition at the same time they determine the pre-trial date. Lastly, the Children's Service Board has contracted with the Prosecutor's Office to ensure that abuse allegations can be processed in under 5 days by the Prosecutor's staff. With a remarkable level of cooperation and lack of defensiveness, these agencies analyzed the problems and agreed on new strategies to overcome barriers. *As a result, the average amount of time from the first call to Children's Services to disposition in Juvenile Court has been reduced by 45% (from 73 days to 40 days).*

Logan County is pleased by this improvement but not satisfied and is looking for further ways to reduce the amount of time abuse, neglected and dependent children have to wait. Judge Brady is initiating a Court Appointed Special Advocate Program in Logan County. With financial support from the Ohio CASA Association and the Ohio Children's Foundation, the first class of Logan County CASA volunteers have completed their training. CASA volunteers will be advocating for timely decisions that ensure safe and permanent homes for their clients. A Family Drug Court is also being established – 90% of the out-of-home removals by Children's Services in the county are related to parental substance abuse. These and other Logan County programs reflect the community's commitment to the best interests of children and the belief in the value of continuous quality improvement.

## *Ohio Association of Juvenile Court Judges Resolution*

The Ohio Association of Juvenile Court Judges (OAJCJ) continues to play a strong leadership role in the planning and early development of *Beyond the Numbers*. Most recently, Ohio's judicial community demonstrated its commitment to these important issues by passing a resolution establishing *Beyond the Numbers* as an association priority.

The motion was put forth by Judge Frederick E. Mong, Hocking County, OAJCJ District 7 Trustee, and seconded by Judge G. Allen Gano, Clinton County, District 6 Trustee. The approved motion reads as follows:

Be it resolved that the trustees of each district of the Ohio Association of Juvenile Court Judges be encouraged to convene a district-wide meeting regarding the statewide effort entitled *Beyond the Numbers* – Ohio's Response to the Child and Family Services Review which is being guided by The Supreme Court of Ohio and Ohio Department of Job and Family Services. The OAJCJ encourages Ohio's juvenile court judges to take the lead in improving permanency planning to address the best interests of Ohio's children and encouraging other local stakeholders to cooperate in this effort designed to improve local practice and state compliance with federal requirements so as not to forfeit federal monies.

## *Ohio Children's Advocacy Centers Get New Support*

On February 1<sup>st</sup>, Governor Bob Taft signed Senate Bill 66 into law. This new legislation sponsored by Senator J. Kirk Schuring (Canton) permits counties to establish Children's Advocacy Centers to perform and provide certain functions, activities, and services relative to reports of child sexual abuse or other types of abuse of a child. Under new statutory language, the state Children's Trust Fund Board is required to develop and provide a list of funding sources for establishing or operating a Children's Advocacy Center and to permit child abuse and child neglect prevention advisory boards to request up to \$5,000 per county out of Children's Trust Fund Board funds as one-time, start-up costs for a Children's Advocacy Center. Children's advocacy centers now will be permitted to annually request funds from the Children's Trust Fund Board to conduct primary prevention strategies. Visit [www.oncac.org](http://www.oncac.org) to learn more about Ohio's Children's Advocacy Centers and to link to Senate Bill 66.

Enactment of Senate Bill 66 was a recommendation of the *Governor's Task Force on the Investigation and Prosecution of Child Abuse and Neglect*. The next edition of Ohio Children, Families and the Court Bulletin will look at the full recommendations of the task force and report on current status.

*Janet Arlene Akers*

*1953-2004*

It is with regret that we report the December 22<sup>nd</sup> death of Janet Akers, in an automobile accident caused by icy roads. Janet was an active member of the Governor's Task Force on the Investigation and Prosecution of Child Abuse, first appointed by Governor Richard Celeste and re-appointed by Governor George Voinovich. She held a RN certificate, BSN from The Ohio State University and MSN from Wright State University, and was a certified emergency room nurse.

She worked at Children's Hospital as Director of Emergency Services in Columbus and was Director of Operations at PSA before going to Fairfield Medical Center in Lancaster as a director of the Emergency Department. After leaving the hospital in Lancaster, she worked for the Ohio Board of Health in Columbus until she retired in 2003. At the time of her death, she was enrolled in the Nurse Practitioner Program at Ohio State University. Janet's passing marks the loss of a vocal advocate for the rights of abused and neglected children and their families.

*Save the Date: October 16 – 19, 2005*  
*Forum on Family Court*

The Sheraton Cleveland City Centre will be the site for The National Council of Juvenile and Family Court Judges' biannual *Forum on Family Court*. The Supreme Court of Ohio and Ohio Department of Job and Family Services will co-sponsor this event. Mark your calendars to take full advantage of the training and networking opportunities offered through this national conference.



**Children, Families, and the Courts - Ohio Bulletin** is a copyrighted publication of the National Center for Juvenile Justice in conjunction with the Supreme Court of Ohio and the Ohio Department of Job and Family Services. This bulletin is a quarterly publication that refers to a constellation of activities jointly administered by the Supreme Court of Ohio and the Ohio Department of Job and Family Services to improve both the interaction between child welfare and judicial systems, and the effectiveness of intervention in cases involving families where judicial action is required. This collaboration is supported by a blend of federal Court Improvement and Children's Justice Act grant funds.

The National Center for Juvenile Justice (NCJJ) is a non-profit organization that conducts research (statistical, legal, and applied) on a broad range of juvenile justice topics and provides technical assistance to the field. NCJJ is the research division of the National Council of Juvenile and Family Court Judges.

Production Editors: Kristy Connors and Melanie Bozynski

For additional information contact:

Gregory Halemba  
National Center for Juvenile Justice  
412-227-6950  
halemba@ncjj.org  
[www.ncjj.org](http://www.ncjj.org)

Douglas Stephens  
The Supreme Court of Ohio  
614-752-8967  
StephenD@sconet.state.oh.us  
[www.sconet.state.oh.us/navigat.htm](http://www.sconet.state.oh.us/navigat.htm)

Kristin Gilbert\*  
Ohio Department of Job and Family Services  
614-728-3467  
GilbeK@odjfs.state.oh.us  
<http://jfs.ohio.gov/ocf/>

\*Also contact Kristin Gilbert for any mailing address changes or to be added to the mailing list.

For a downloadable edition of the Children, Families, and Courts Bulletin, go to [www.sconet.state.oh.us](http://www.sconet.state.oh.us)

**Children, Families, and the Courts**  
255 East Main Street, 3rd Floor  
Columbus, Ohio 43215