



MULTI-ETHNIC PLACEMENT ACT AND AMENDMENTS: POTENTIAL IMPACTS ON INDIAN CHILDREN

Legislative History

The *Multi-Ethnic Placement Act* (P.L. 103-82) was passed into law on October 20, 1994 in response to a belief that policies that gave consideration to race, color or national origin in making foster care and adoptive placement decisions often created a barrier to achieving permanency for children of color. In 1996 the Multi-Ethnic Placement Act (MEPA) was amended by the Small Business Job Protection Act (P.L. 104-188, Section 1808). The amendments entitled *Removal of Barriers to Interethnic Adoption* were passed because Congress believed that the original intent of MEPA was not being followed and that changes were necessary to remove any ambiguity about whether race, color or national origin could be considered in making placement decisions for children. These amendments replaced most of the MEPA's original language with the exception of two provisions relating to recruitment efforts for foster care and adoptive homes and the effects of a states failure to carry out their plan for a federal program under the Social Security Act (Section 554 and 555). The Removal of Barriers to Interethnic Adoption amendments are now a part the Social Security Act under the Title IV-E Foster Care and Adoption Assistance; a program that funds foster care and adoption assistance services for states and tribes that have agreements with states (approximately 48 tribes).

While the Removal of Barriers to Interethnic Adoption amendments provide new guidelines for foster care and adoptive placements, these new guidelines do not apply to placements made for eligible Indian children under the Indian Child Welfare Act (ICWA). Congress recognized the unique political relationship that Indian children have with their tribal governments and how this forms the basis for an Indian child being given protections under the ICWA. This political status is distinct and separate from a racial classification which forms the basis for other federal or state policies such as the Removal of Barriers to Interethnic Adoption.

Congress expected the MEPA and the Removal of Barriers to Interethnic Adoption amendments to decrease the length of time that many children of color wait to be adopted and prevent discrimination in the placement of children based on race, color, or national origin. Testimony presented at the hearings on MEPA often pointed to the plight of large numbers of African-American children who were languishing in foster care because of lengthy searches for same-race adoptive homes. Supporters of the MEPA promoted the idea that often qualified adoptive homes were available for these children, but that state or individual organizations policies often discriminated against these families because they were not of the same race as the child. The testimony and discussion in Congress focused primarily on African-American children without examining the specific circumstances of Indian children in foster care.

Attached are copies of the remaining provisions of the MEPA and the Removal of Barriers to Interethnic Adoption amendments.

Removal of Barriers to Interethnic Adoption Amendments

1. The law prohibits states and any other entity within the state that receives federal funds and is involved in adoption or foster care placements from doing the following under section 1808 (a)(3):

Categorically deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the adoptive or foster parent, or of the child involved

Delay or deny the placement of a child for adoption or into foster care, on the basis of race, color, or national origin of the adoptive or foster parent, or the child involved

It is important to note that Removal of Barriers to Interethnic Adoption amendments were not intended to prohibit same-race placements. A child may still be placed in a same-race foster or adoptive home. For example, making a same-race placement is acceptable as long as the agency did not delay making the placement while they searched for a same-race home while another qualified home was available that was not of the same race as the child. The agency also can not deny making a placement with an available, qualified home because they are not of the same race as that child needing the placement.

The Removal of Barriers to Interethnic Adoption amendments were also not intended to replace good case planning when making decisions about out-of-home placements for children. The placement agency may still consider issues related to the child's health, development and relationship with their extended family when making decisions about the appropriateness of a potential foster care or adoptive placement. For example, the agency may feel that placing a child in a particular foster home is important because the home is a member the child's extended family and that relationship is critical to the child's healthy development. Whether the home is of the same race as the child is not the primary issue here, rather it is based upon the importance of the child's connection to his/her family member and their ability to appropriately care for that child.

2. The law is enforced in the following manner under Section 1808 (b):

If during any quarter of a fiscal year, a state's program (Title IV-E), is found to have violated the above mentioned guidelines and not implemented a corrective action plan within 6 months, the Secretary of the Department of Health and Human Services shall reduce the Title IV-E payments to that state for each quarter of that fiscal year by 2% for the 1st violation; 3% for the 2nd violation; and 5% for 3rd violation. In addition, any other entity in the state that receives Title IV-E funds which violates the above guidelines must return all of the funds the state provided the entity under Title IV-E. These funds will be returned to the Secretary of the Department of Health and Human Services.

Any individual who is aggrieved by a violation of the above guidelines (e.g. foster care, adoptive or birth parents) by a state or other entity may bring an action seeking relief (lawsuit) from the state or other entity in any United States (federal) district court.

Any person or government that is involved in adoption or foster care and violates the above guidelines will be considered having violated Title VI of the Civil Rights Act of 1964.

3. Provisions relating to the Indian Child Welfare Act under Section 1808 (b) and (c):

No effect on the Indian Child Welfare Act of 1978 – the Removal of Barriers to Interethnic Adoption amendments shall not be construed to affect the application of the Indian Child Welfare Act of 1978.

The Multi-Ethnic Placement Act

1. The MEPA requires that states provide a description of how they will recruit foster and adoptive homes in their Title IV-B Child Welfare Services plan under Section 554:

"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."

This provision is important to the Indian Child Welfare Act because one of the most common reasons for non-compliance with the ICWA comes from not having enough Indian foster or adoptive homes. Many times state and private child placing agencies use recruitment strategies which are not effective with Indian families. This results in inadequate numbers of Indian foster and adoptive homes being licensed and, ultimately, delays for Indian children needing out-of-home care. This new federal plan requirement recognizes the relationship between available foster and adoptive homes and subsequent delays when trying to find appropriate placements for children. This new requirement will hopefully provide a catalyst to improved collaboration between Indian communities and child-placing agencies.

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