

**Testimony before  
United States Commission on Civil Rights**

**September 21, 2007**

**By**

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Mr. Chairman and Members of the Commission, I thank you for this opportunity to appear before you today to discuss implementation of Multiethnic Placement Act (MEPA) of 1994 and the 1996 Interethnic Adoption Provisions (IEAP) that amended MEPA.

I am Joe Kroll, executive director of the North American Council on Adoptable Children (NACAC). I also serve on the boards of the National Foster Parent Association and Voice for Adoption, a coalition of more than 50 state, local, and national adoption organizations. More importantly, I am a parent of two children, one a young woman who was adopted transracially from Korea when she was an infant.

NACAC strongly believes that race matters in child welfare and that MEPA/IEAP, as implemented, has done little, if anything to help waiting or older children of color find families more quickly and has gone too far in a misguided effort to be colorblind. NACAC follows a dual strategy to help foster and adopted children of color:

- We support same race placements by researching and identifying the barriers faced by prospective foster and adoptive parents of color, and providing assistance to minority parent groups and specialized adoption agencies.
- We support families who adopt transracially and transculturally by providing education and training to help them handle the special challenges.

We believe that both of these strategies could be much better supported through federal legislation and advocacy, and would do far more to promote the best interests of children of color in foster care. Current efforts to promote colorblind child welfare practice are naïve at best, and do not serve the best interests of either African American or Latino children OR the families who adopt them. We are all reminded daily that race matters in this country—whether through stories of racial profiling by the police or by statistics on racial disparities in educational achievement. In a country where nooses are hung on trees to discourage black students from speaking out, we cannot doubt that racism is alive and well.

## **Background**

Before I answer some specific questions on MEPA/IEAP, I need to provide some background on the legislation's history.

The initial interest in addressing racial matching policies can be traced to the death of Reece Williams in 1989. Reece, an African American child, was originally placed with a white foster family in Hamilton County, Ohio. When the three-year-old Reece's parental rights were terminated, he was placed with an African American family in New York who subsequently killed him. Senator Howard Metzenbaum (OH) blamed racial matching policies for the death, and began looking for ways that federal legislation could address the issue.

The debate raged on for four years until October 1992 when *60 Minutes* aired a very one-sided report that highlighted Reece's murder and practice where children were moved for race-matching purposes. At the same time, the National Committee for Adoption and its allies channeled the anger among white parents who believed they were being denied the opportunity to adopt black infants. Senator Metzenbaum reacted to the stories by committing to pass MEPA before he retired.

Unsurprisingly, policy makers and the media paid no attention to the nearly universal practice of placing white children only with white adoptive families or to the impact of "same race" adoptive placements on the welfare of white children. The media and decision makers also totally ignored research documenting that half of black infants (under 2) and two-thirds of Latino infants in the care of private agencies were already being adopted transracially.<sup>1</sup>

Although for many people the primary racial concerns in adoption were about white parents' access to black infants and toddlers, MEPA was alleged to be the solution for the longer waits older African American foster children experienced and their over representation in care. Researchers and adoption practitioners sought to make clear to policy makers that the longer waits of children of color were caused by a number of factors and that difficulties finding families interested in adopting older children and youth of color posed a particular challenge.<sup>2</sup> White families were not being deprived of the right to adopt these children; most were simply not interested.

## **Legislative Intent**

The long, heated discussions about MEPA showed that many policymakers believed that race does matter in child welfare. During negotiations on MEPA between the House and Senate, representatives of the Congressional Black Caucus insisted on the inclusion of language promoting the recruitment of families that reflect the racial and ethnic background of foster

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<sup>1</sup> North American Council on Adoptable Children, *Barriers to Same Race Placement*, 1991

<sup>2</sup> NACAC, 1991

children. This provision was intended to address the fact that too few families of color are sought to be foster or adoptive parents.

Although he did not want to see placements delayed or denied because of race, Senator Metzenbaum agreed that race should be a factor in placement decisions:

But that does not mean that when a black child comes up for adoption that somebody should stand in the way of that child being adopted by a white family if the white family is fully capable, and in a position to provide loving care and wholesome guidance for that young person, and there is not a black person of equally capable characteristics also wanting to adopt that black child.

Let me make my position clear: If there is a white family and a black family that want to adopt the black child and they are equal in all respects, then the black family ought to have preference.<sup>3</sup>

Other Senate sponsors also supported the idea of reaching out to communities of color while supporting transracial placement when a family of color is not available:

In approaching the issue of multicultural placements we have been guided by the principle that a transracial placement is a valid method of providing a child with a loving home when an appropriate same race placement is not available. The amendments made to the Multiethnic Placement Act do not in any way detract from this principle. In fact, the amendments in several respects enhance it.

First, the amendments further limit the use of race in a placement decision to only permit consideration of the racial, ethnic or cultural background of a child and the capacity of the prospective parent to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child. Second, the amendments emphasize the recruitment of prospective foster and adoptive families from various racial, ethnic and cultural backgrounds. Increasing the pool of appropriate and available prospective parents will be a significant step toward decreasing the amount of time that children wait for out of home placements. ...

DAN COATS,  
NANCY KASSEBAUM,  
DAVID DURENBERGER,  
HOWARD METZENBAUM,  
CAROL MOSELEY-BRAUN,  
PAUL SIMON.<sup>4</sup>

### **The 1996 Amendments**

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<sup>3</sup> *Congressional Record Senate S14169*, October 5, 1994

<sup>4</sup> *Congressional Record Senate S14201*, October 5, 1994

Even before the U.S. Department of Health and Human Services (HHS) had time to issue regulations to implement MEPA, Representative Jim Bunning (KY) claimed that MEPA was “not working.”<sup>5</sup> Without hearings or statements for the record, the Interethnic Placement Act was drafted, stating that race was not to be considered as a factor in decisions regarding foster care or adoption placements. It was inserted into the omnibus bill Small Business Protection Act and became law in August 1996.

## Specific Questions

### 1. Has enactment of MEPA removed barriers to permanency facing children involved in the child protective system?

In a soon-to-be published, in-depth analysis of transracial adoption, author Susan Livingston Smith concludes: “The assumptions underlying the development of MEPA-IEP were not accurate, and the anticipated outcomes of the law—to expedite adoptions of children of color in foster care by promoting transracial adoption—have not come to pass.”<sup>6</sup>

There is no compelling evidence that MEPA removed barriers to permanence for foster children. Reductions of length in time in care and increases in adoption did not occur until after implementation of the Adoption and Safe Family Act (ASFA) of 1997. Adoptions began increasing from 27,000 in 1997 to more than 50,000 in 2000 and have remained constant thereafter. During the same period there has been a decrease in the length of time that children spend in care, but that is more likely a factor of ASFA timelines because ASFA directly addressed children’s need for permanence and dramatically reduced timelines for permanency planning efforts.

While we may never know if MEPA has helped children find permanent families, we do know that since the passage of MEPA children of color have been increasingly placed transracially while white children are still placed almost exclusively with same race families. In 1995, 2.4 percent of white children were placed with parents of another race, compared to 2.8 percent in 2001. African American children were placed transracially 14.2 percent of the time in 1995, compared to 16.9 percent in 2001. Transracial placements of Latino children increased more dramatically—from 20.7 percent in 1995 to 37.8 percent in 2001.<sup>7</sup> If MEPA truly led to colorblind child welfare practice, we would expect increases in transracial placements for children of all races, not just children of color.

In Hennepin County (Minneapolis), Minnesota—featured in the *60 Minutes* story mentioned above for moving African American children to same race families—transracial placements are

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<sup>5</sup> *Congressional Record*, March 25, 1995

<sup>6</sup> Susan Livingston Smith, “Adoptive Families for African American Children in Foster Care: The Role of Transracial Adoption,” to be published

<sup>7</sup> Mary Eschelbach Hansen and Rita J. Simon, “Transracial Placement in Adoption with Public Agency Involvement: What Can We Learn from the AFCARS Data?” *Adoption Quarterly*, Volume 8, Number 2, 2004

rampant. In 2004, over 75 percent of the county's African American children were placed with parents of another race.<sup>8</sup>

Other data suggests that MEPA has helped white families adopt children who were already more likely to find permanent families. AFCARS data document that two-thirds of transracial adoptions of African American children are of children five and younger, not the older children and youth who often struggle to find a permanent family.<sup>9</sup>

## **2. Do transracial adoptions serve the children's best interest or does it have negative consequences for minority children, families, and communities?**

As a successful transracial adoptive parent, I can say unequivocally that transracial adoption can be an extremely positive experience for both children and parents. It works when prospective adoptive parents are "as fully prepared as possible for the adoption of a particular child," and those who train parents focus on "the child's...cultural, racial, religious, ethnic, and linguistic background." I have just described the current regulations of the U.S. State Department regarding international adoptions under the Hague Convention.

Unfortunately and in complete contrast, in implementation of MEPA/IEAP, agencies have been led to ignore race so completely that they cannot adequately prepare families for transracial placement. As HHS stated in an Information Memorandum:

*State child welfare agencies...must ensure that they do not take action that deters families from pursuing foster care or adoption across lines of race, color, or national origin. Whether subtle or direct, [such] efforts...cannot be tolerated.<sup>10</sup>*

While this may not read as an explicit prohibition against preparing families to address issues of race and culture, it has in effect seriously stifled such preparation. In Ohio, adoption preparation training has been dramatically watered down so that it could not possibly discourage a prospective transracial adopter. In other cases, agencies simply avoid all discussion of race and culture because they fear such discussions might "deter families from pursuing foster care or adoption across lines of race, color, or national origin." During a recent training, for example, a caseworker reported that white foster parents interesting in adopted an African American foster child stated that they did not allow their birth children to have African American friends. The worker's supervisors instructed her not to discuss the issue with the family for fear of violating MEPA.<sup>11</sup>

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<sup>8</sup> personal communication, Cathy Bruer-Thompson, Hennepin County Adoption Program Training Manager, September 2007

<sup>9</sup> Penelope L. Maza, Children's Bureau, "Adoption Data Update," presented at the CWLA National Conference, February 2004

<sup>10</sup> U.S. Department of Health and Human Services, Information Memorandum ACYF-CB-IM-03-01, March 25, 2003

<sup>11</sup> Smith, to be published

The Hague regulations, by contrast, focus on children’s best interests and assert that parents’ need to be prepared for adoption “outweighs any concern that the [required parent training] will discourage families from adopting.”

Decades of research on transracial adoption firmly supports three conclusions:

- Transracial adoption in itself does not produce psychological or social problems in children.
- There are challenges faced by transracial adopted children and their families, and the way families address these challenges affect a child’s development.
- It is particularly important that children adopted from foster care be placed with families who can address their specific needs, including their racial/ethnic needs, to maximize their opportunity to achieve their fullest potential.<sup>12</sup>

Research by Robert Carter showed that transracial adoptees in their 20s and 30s do not have the skills that other African Americans have to successfully confront the racism and discrimination they experience.<sup>13</sup> In a study of transracial families, McRoy, Zurcher, et al. found that there was a strong correlation “between the transracially adopted black children’s perception of their racial identity and their parents’ perceptions. Generally, if the parents ... tended to de-emphasize racial identity to the child, the child acquired similar perceptions.”<sup>14</sup> Many studies have linked racial identity to child’s self-esteem.

Children’s best interests are served when agencies work to honestly inform would-be parents about the special needs of children who are available for adoption—including the effects of abuse and neglect or in-utero exposure to alcohol or drugs, and issues of race, ethnicity, and national origin. Children’s best interests, in short, are not served by uninformed, unprepared families who ignore their children’s racial identity. If engaging parents in discussions of race makes prospective parent uncomfortable—or even challenges their thoughts about transracial parenting—that should be acceptable. Ultimately, the government’s goal must be to ensure that parents are thoroughly prepared and ready to meet their children’s many needs—physical, emotional, *and* cultural.

### **3. How effectively is the Department of Health and Human Service (HHS) enforcing MEPA?**

HHS is enforcing only one provision of MEPA/IEAP. Enforcement has focused solely on the “delay or deny” provisions of the act and ignored the diligent recruitment section entirely. In fact, the entire section in the Code of Federal Regulations focuses on the “delay or deny” provision and subsequent penalty. There is no mention of the need to enforce the provision

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<sup>12</sup> Smith, to be published

<sup>13</sup> Carla M. Curtis, “The Adoption of African American Children by Whites: A Renewed Conflict,” *Families in Society: The Journal of Contemporary Human Services*, March 1996.

<sup>14</sup> Ruth G. McRoy, Louis A. Zurcher, Michael L. Lauderdale, & Rosalie E. Anderson, “Self-esteem and Racial Identity in Transracial and Inracial Adoptees,” *Social Work*, November 1982.

mandating recruitment of families of color, and there have been no fines or investigations of failures of this portion of MEPA.

HHS has conducted more than 130 investigations of alleged violations of MEPA's delay or deny provisions and has fined agencies in only two cases: Hamilton County and the state of Ohio in 2003, and the state of South Carolina in 2006. After most other investigations, agencies have agreed to make changes requested by HHS.

Child and Family Service Reviews (CFSR), enacted after ASFA, require states to identify compliance with the recruitment provision of MEPA. Only 22 states even reported having plans for diligent recruitment for families who reflect the racial and cultural backgrounds of children in care.<sup>15</sup> No states have been investigated by HHS or fined as a result of being graded "Area Needing Improvement" during the CFSR.

This lack of enforcement has resulted in little progress on recruiting families of color. The Local Agency Survey, designed to assess the impact of MEPA/IEAP and ASFA, found that only 8 percent of responding agencies had created new recruitment resources following MEPA/IEAP.<sup>16</sup>

Again, this suggests that the focus of MEPA/IEAP is on white families' access to children of color, rather than recruiting and preparing families to be the best possible parents for foster children who need families.

#### **4. What has been the impact of HHS's enforcement of MEPA on the efforts of prospective foster care or adoptive parents to adopt or provide foster care for minority children?**

MEPA/IEAP—and its uneven enforcement—have had a chilling impact on the child welfare field. In an odd twist, workers are sometimes afraid to place children with the very African American families they were required to recruit for fear of showing bias against non-African American families.

Some agencies choose to place children with the family at the top of the waiting list, without regard for that family's ability to best meet the child's need. Others fear that when an agency has two home studied families who are equally able to parent a child—one who shares the child's race or ethnicity, and one who doesn't—the agency cannot consider race in choosing one over the other. Such placement decisions are clearly not in a child's best interests, which require a thorough evaluation of each family's ability to meet a particular child's specific needs.

With the perceived threat of a lawsuit or fine looming overhead if they place children of color with families of color, some agencies have regrettably little incentive to recruit as widely and intensively as they should for families of color.

#### **5. Has the enactment of MEPA has reduced the amount of time minority children spend in foster care or wait to be adopted?**

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<sup>15</sup> Smith, to be published

<sup>16</sup> Smith, to be published

AFCARS reports suggest that length of time care for minority children have gone down over the last decade—just as stays in care have gotten shorter for white children. There is no proof that shorter stays for children of color are due to MEPA/IEAP. According to AFCARS data from 2002, two-thirds of transracial adoptions of black children occurred when they were five and under. Older children—those who are harder to place and more likely to languish in care—are much more frequently adopted by kin. Two-thirds of relative adoptions of black children occur when they are six and older.<sup>17</sup> One could argue that the black children’s stays in care have been reduced because so many relatives have stepped up to provide them with a permanent family.

### **NACAC Recommendations**

While it is likely that MEPA/IEAP led to some increases in transracial placements, there is no evidence that the law has helped the older foster children it was designed to serve. Because NACAC believes MEPA/IEAP is hampering agencies’ efforts to promote each child’s best interests and to attract more foster and adoptive families of color, we are advocating for federal legislation to replace provisions of MEPA/IEAP with statutory language that codifies the principles listed below:

- A child’s best interests should always be paramount in placement decisions.
- In any foster care or pre-adoptive placement, preference shall be given to placement with a child’s relative or fictive kin when those families can safely meet the child’s needs.
- States, counties, and other agencies with responsibility for children in foster care must recruit and retain prospective foster and adoptive families from communities that reflect the racial, ethnic, cultural, and linguistic background of children in their foster care system.
- Placing agencies must *fairly and equally consider* these recruited families for foster and adoption placements. We all know that recruitment is only the first step. Agencies must also be able to welcome newly recruitment families and fairly assess their ability to meet children’s needs.
- Placing agencies must assess a prospective foster or adoptive family’s ability to meet a child’s needs—including racial, ethnic, cultural, and linguistic needs—when making a foster or adoptive placement and, in placement decisions, must consider the child’s cultural, racial, ethnic, and linguistic needs as well as prospective parents’ capacity to address other needs the child may have.
- When making transracial or transcultural foster or adoption placements, state, county, and other agencies with responsibility for children in foster care must provide training and other supportive services to ensure that foster and adoptive parents are adequately

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<sup>17</sup> Maza, February 2004

prepared and supported to meet their children's racial, ethnic, cultural, and linguistic needs.

- A foster or adoptive placement should not be delayed or denied due solely to the race, color, national origin/ethnic background, or primary language of either the child or prospective parent.
- Financial incentives or penalties will encourage state, county, and other agencies with responsibility for children in foster care to comply with provisions listed above:
  - agencies that do not comply shall lose a portion of their Title IV-E foster care or adoption assistance funding; or
  - the federal government will develop an incentive program to reward agencies for recruiting families that reflect the racial, ethnic, cultural, and linguistic background of children in their foster care system, and for placing children with families who can meet the children's racial, ethnic, cultural, and linguistic needs.

In today's diversified but still racist society, NACAC cannot comprehend how agencies can guard children's well-being without recognizing how much race influences every person who lives in this country. We must replace MEPA/IEAP with legislation that focuses on the best interests of children in our nation's foster care system, and truly ensures that they find permanent, loving, and culturally sensitive families as quickly as possible.