




State of Florida
Department of Children and Families



Rick Scott
Governor

Mike Carroll
Secretary

DATE: December 23, 2016

TO: Regional Managing Directors
Community-Based Care Lead Agency CEOs
Dependency Court Improvement Program, Office of State Courts Administration
Florida Guardian ad Litem

THROUGH: David L. Fairbanks, Deputy Secretary 

FROM: JoShonda Guerrier, Assistant Secretary for Child Welfare 
Vicki Abrams, Assistant Secretary for Operations 

SUBJECT: Federal Guidance Letters – Title VI of the Civil Rights Act of 1964

PURPOSE: The U.S. Department of Justice and the U.S. Department of Health and Human Services on October 19, 2016 issued a joint guidance letter to state and local child welfare systems on the requirements of Title VI of the Civil Rights Act of 1964 and its implementing regulations. Title VI prohibits discrimination on the basis of race, color and national origin in programs and activities receiving federal financial assistance. The guidance aims to ensure that child welfare systems know about their responsibilities to protect the civil rights of children and families.

The Department of Children and Families is sharing the guidance to emphasize the need and expectation of each person and entity who helps to administer the services and benefits of Florida's child welfare program and systems to comply with the requirements of Title VI of the Civil Rights Act of 1964 and its implementing federal regulations throughout the continuum of service delivery, including clients and participants who are Limited English Proficient.

BACKGROUND: In 2015, the Department of Justice and Department of Health and Human Services issued guidance on the intersection of child welfare requirements and Title II of the Americans with Disabilities Act, as well as Section 504 of the Rehabilitation Act. The guidance issued in October 2016 is part of an ongoing partnership between the federal departments to help child welfare agencies protect the well-being of children and ensure compliance with federal nondiscrimination laws.

Specifically, the joint guidance "highlights the clear need for frank and productive discussion about how child welfare laws, policies, practices and implicit bias affect communities of color," the Department of Justice announcement said. "Data shows that particular racial and ethnic groups are overrepresented in the child welfare system compared to their numbers in the general population. The guidance letter addresses race and language access complaints that the departments have received alleging unnecessary removal of children from their biological families; biological parents being denied equal access to culturally competent reunification services; denial of relative or kinship placements; unnecessarily long stays in foster care; and family members being denied full and informed participation in family courts and social services

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Mission: Work in Partnership with Local Communities to Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and Advance Personal and Family Recovery and Resiliency

simply because they have limited proficiency in speaking, reading, writing or understanding the English language.”

Additional information on the new guidance is available in English and Spanish at the following links:

English: <https://www.justice.gov/opa/pr/departments-justice-and-health-and-human-services-issue-joint-guidance-child-welfare-systems>

Spanish: <https://www.justice.gov/espanol/pr/el-departamento-de-justicia-y-el-departamento-de-salud-y-servicios-humanos-emiten-una-gu>

ACTION REQUESTED: To help ensure compliance with the requirements of Title VI of the Civil Rights Act of 1964, please review and disseminate this memo and the attached guidance to all staff, subcontracted providers and entities who help to administer the services and benefits of the child welfare program in Florida.

CONTACT INFORMATION: If you have any questions about the information in this memo, please contact Herschel C. Minnis, DCF Human Resources Administrator – Civil Rights, at Herschel.Minnis@myflfamilies.com or (850)717-4564.

ATTACHMENTS

Title VI Child Welfare Guidance

cc: Rebecca Kapusta, General Counsel
Grainne O’Sullivan, Children’s Legal Services Statewide Director
Office of Child Welfare Directors
Regional Family and Community Services Directors
Community-Based Care Contract Managers



**U.S. Department of Health
And Human Services**
*Office for Civil Rights
Administration for Children
And Families*

U.S. Department of Justice

*Civil Rights Division
Federal Coordination and
Compliance Section*



Dear Colleagues:

The purpose of this letter is to continue the national conversation to ensure that child welfare agencies and state court systems are aware of their responsibilities to protect the civil rights of children and families in the child welfare system. Last year, we wrote to you and offered guidance on the intersection of child welfare requirements and the Americans with Disabilities Act, as well as Section 504 of the Rehabilitation Act.¹ In this letter, we provide an overview of how Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations,² which prohibit discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance, apply to child welfare policy and practice.³

Role of the Department of Justice and the Department of Health and Human Services

The U.S. Department of Justice (DOJ) and the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF) and Office for Civil Rights (OCR), are committed to working with states and other stakeholders to ensure that all children and families receive equal access to the programs and services of the child welfare system. The Children's Bureau, an office of ACF, administers funding for child welfare agencies and state court systems and provides guidance and technical assistance to child welfare agencies regarding child welfare law and policy; in addition, both HHS and DOJ provide federal funds to state court systems. HHS promulgates federal regulations and policy that govern Title IV-B and IV-E agencies⁴ and provides guidance and technical assistance to HHS-funded state court systems and child welfare agencies regarding how federal laws, regulations and policies affect a state's implementation of its child welfare laws. HHS and DOJ ensure that their respectively-funded state court systems and child welfare agencies comply with Title VI and its implementing regulations. DOJ is also responsible for ensuring consistent and effective enforcement of Title VI across federal funding agencies.

¹ See U.S. Dep't of Health and Human Servs., Office for Civil Rights and Admin. for Children and Families, and U.S. Dep't of Justice, Civil Rights Div., Disability Rights Section, *Protecting the Rights of Parents and Prospective Parents with Disabilities: Tech. Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act* (2015), go.usa.gov/xDzXF.

² 42 U.S.C. §§ 2000d – 2000d-7. The DOJ Title VI implementing regulation may be found at 28 C.F.R. pt. 42, Subpt. C; and the HHS

³ We also answer Frequently Asked Questions at Appendix A; and provide Additional Resources at Appendix B.

⁴ See Title IV-B of the Social Security Act, 42 U.S.C. §§ 621 – 629m (Child and Family Services); Title IV-E of the Social Security Act, 42 U.S.C. §§ 670 – 679c (Federal Payments for Foster Care and Adoption Assistance).

DOJ and HHS will work together to engage the field and offer technical assistance to help child welfare agencies and state court systems better understand, assess, and enhance efforts to protect the civil rights of children and families.

Need for Continuing Our National Conversation

DOJ and HHS have investigated a number of complaints alleging race, color, and national origin discrimination in the child welfare system. These complaints include allegations that such discrimination has resulted in: children being needlessly removed from their biological families; biological parents being denied equal access to culturally competent reunification services; denial of relative or kinship placements; unnecessarily long stays in foster care; and family members being denied full and informed participation in family courts and social services simply because they have limited proficiency in speaking, reading, writing, or understanding the English language.

There is a clear need for frank and productive discussion about how child welfare laws, policies, practices, and unconscious bias⁵ affect communities of color, both directly and indirectly. Data shows that particular racial and ethnic groups are overrepresented in the child welfare system compared to their numbers in the general population. Nationally, African American and Native American children are involved in the child welfare system at a rate that is almost twice their representation in the general population.⁶ Evidence of disproportionality can be a red flag signaling that additional attention is necessary to see if and how system structures, access to services, and delivery methods may contribute to racial and ethnic disparities.

Overview of Title VI of the Civil Rights Act of 1964

All recipients of federal financial assistance, including child welfare agencies and state court systems, must comply with Title VI and its implementing regulations. Title VI states: “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 [f]ederal financial assistance.”⁷ Discrimination under Title VI includes both intentional discrimination and disparate impact discrimination.

Intentional discrimination occurs when the recipient acts, at least in part, because of the actual or perceived race, color, or national origin of the alleged victims of discriminatory treatment. To prove intentional discrimination, one must show that the challenged action was “**motivated** by an

⁵ Title VI disparate impact regulations provide a powerful enforcement tool when unconscious bias invades the decision-making processes within a federally funded program and facially neutral practices fall more harshly on one racial or national origin group. See *infra* pgs. 3-4 (discussion of disparate impact discrimination).

⁶ See U.S. Dep’t of Health and Human Servs., Office of the Admin. for Children and Families, Children’s Bureau, *Addressing Racial Disproportionality in Child Welfare, Issue Brief* (2011), go.usa.gov/czWYd; see also Nat’l Council of Juvenile and Family Court Judges, *Tech. Assistance Bulletin: Disproportionality Rates for Children of Color in Foster Care (Fiscal Year 2013)* (2015), perma.cc/4F4P-U8BP.

⁷ 42 U.S.C. § 2000d.

intent to discriminate.”⁸ Evidence of discriminatory intent can be direct or circumstantial, and ill-will is not required.⁹ Such evidence can be found in, among other things: statements by decision-makers; the sequence of events leading to the decision at issue; legislative or administrative history; a departure from normal policy and procedure; a past history of discrimination or segregation; statistics demonstrating a “clear pattern unexplainable on grounds other than” discriminatory ones¹⁰; or comparative evidence of more favorable treatment toward similarly situated individuals not sharing the protected characteristic.¹¹

Under Title VI, a recipient of federal financial assistance may not take action that is motivated by race, color or national origin discrimination, including selecting a program site or location that excludes individuals or denies them benefits, or subjecting individuals to segregation or separate treatment.¹² For example, one case resolved by OCR involved allegations that a county child welfare agency served each Caucasian child in the neighborhood office located closest to the child’s home, but departed from its normal “neighborhood office” policy and required each African American child to be served in a separate county-wide office, thereby subjecting African American children and their parents to separate and unequal treatment, impermissible under Title VI.¹³

Disparate impact discrimination focuses on the consequences of a recipient’s practices rather than the motivation, and occurs when a recipient has an otherwise neutral policy or practice that has a disproportionate and adverse effect on individuals of a certain race, color, or national origin, as compared to individuals of a different race, color or national origin. A recipient of federal financial assistance is prohibited from utilizing criteria or methods of administration that have the effect, even if unintentional, of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the program’s objectives.¹⁴ To prove a disparate impact claim under Title VI, a complainant must initially show that a facially neutral practice has a racially disproportionate effect. The burden then shifts to the recipient to prove a substantial legitimate justification for the practice. The complainant may prevail by proffering an equally effective alternative practice that results in a lesser racially disproportionate effect, or evidence that the purportedly legitimate practice is a pretext for discrimination.¹⁵

⁸ See *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir.), *reh'g denied*, 7 F.3d 242 (11th Cir. 1993).

⁹ Even benign motivations for racial classifications are presumptively invalid and trigger strict scrutiny in Equal Protection Clause and Title VI cases. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 223-24 (1995); *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003).

¹⁰ See *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977) (discussion of intentional discrimination claim under the 14th Amendment).

¹¹ See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 804 (1973) (discussion of intentional discrimination claim under Title VII).

¹² See 28 C.F.R. § 42.104(b) (DOJ), 45 C.F.R. § 80.3(b) (HHS).

¹³ See U.S. Dep’t of Health and Human Servs., Office for Civil Rights, Voluntary Resolution Agreement between HHS Office for Civil Rights, HHS Administration for Children and Families, and Washington State Department of Social and Health Services at § I (July 7, 2010), go.usa.gov/cuCy9.

¹⁴ See 28 C.F.R. § 42.104(b)(2) (DOJ); 45 C.F.R. § 80.3(b)(2) (HHS).

¹⁵ See *Ga. State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985); *Meek v. Martinez*, 724 F.Supp. 888, 906 (S.D. Fla. 1987).

Courts have found Title VI disparate impact violations in cases where recipients have policies or practices that result in the provision of fewer services or benefits, or inferior services or benefits, to members of a protected group. Examples of this include utilization of a funding formula for distributing federal aid that resulted in a substantially adverse disparate impact on minorities and the elderly,¹⁶ or the use of a non-validated IQ test that resulted in a disproportionate number of African-American school children being placed in special education classes as a result of the test.¹⁷

Title VI's prohibition against national origin discrimination includes discrimination based on a person's birthplace, ethnicity, ancestry, culture related to national origin, or ability to speak English. This means that people cannot be subjected to discrimination because English is not their primary language; or because they have a name, accent, or participate in customs associated with a national origin group; or because they are married to or associate with people of a national origin group. Prohibited treatment under Title VI, for example, could include the removal of a newborn from a limited English proficient (LEP) mother and placement of the newborn in agency custody, based on stereotypical beliefs about the mother's national origin group and that group's ability to parent, or by neglecting to conduct an individualized assessment of the mother's ability to parent.

To comply with Title VI, federally funded child welfare agencies are also required to take reasonable steps to provide meaningful access to each LEP individual eligible to be served or likely to be encountered in their programs or activities. DOJ and HHS have provided general guidance for how federally funded programs should evaluate and implement their obligations to provide services to LEP individuals, and factors that may be considered in a wide variety of contexts.¹⁸ DOJ and HHS recognize the crucial interests at stake in child welfare activities, which highlight the need to communicate meaningfully with LEP individuals. Agencies might violate this standard, for example, if they fail to conduct a child placement interview with an LEP mother using a qualified interpreter competent in the mother's primary language.¹⁹

¹⁶ See e.g., *Meek v. Martinez*, 724 F.Supp. at 906.

¹⁷ See *Larry P. v. Riles*, 793 F.2d 969, 982-83 (9th Cir. 1984).

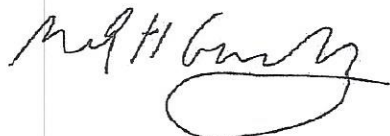
¹⁸ See U.S. Dep't of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition on National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41457, 41461 (Jun. 18, 2002) [hereinafter *DOJ LEP Guidance*], go.usa.gov/ctC8Q; see also, U.S. Dep't of Health and Human Servs., Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311, 47316 (Aug. 8, 2003) [hereinafter *HHS LEP Guidance*], go.usa.gov/ctC95.

¹⁹ See *Cruz v. Miss. Dep't of Human Servs.*, 9 F.Supp. 3d 668 (S.D. Miss. 2014) (rejecting defendants' motions to dismiss plaintiff's Section 1983 action, where plaintiff, whose primary language is Chatino -- an indigenous Mexican language -- presented a prima facie case that her rights were violated, in that hospital and child welfare agency staff made derogatory comments about her "illegal alien status," made the stereotypical assumption that she had been trading sex for housing; failed to interview her using an interpreter competent to translate from Chatino to English; and then placed her newborn in the custody of the agency without proof of abuse or neglect). In addition to the cited private plaintiff's litigation, this case has led to the issuance of a program violation letter by the HHS Administration for Children and Families and a resolution agreement between the HHS Office for Civil Rights and the Mississippi Department of Human Services. See U.S. Dep't of Health & Human Servs., Office for Civil Rights, Resolution Agreement between HHS Office for Civil Rights and Miss. Dep't of Human Servs. (Mar. 23, 2014), go.usa.gov/xWpY9. See also *U.S. Dep't of Health & Human Servs. v. Target Area Programs for Child Dev., Inc.*, No. 1615 (HHS Dep't App. Bd.) (1997), go.usa.gov/xWpYA (where nonprofit failed to provide counseling and mental health services to Head Start children and parents who spoke Spanish and Mixteco, the HHS Departmental Appeals Board upheld the termination of the nonprofit's Head Start grant).

Child welfare agencies and state court systems have important responsibilities to protect the best interests of children and to provide appropriate, non-discriminatory services to the children and families that they serve. Under Title VI, the duty to avoid discrimination on the basis of race, color, or national origin serves these child-protective responsibilities.

Thank you for your continued commitment to improving the well-being of children and their families. Please feel free to contact the Children's Bureau in the Administration for Children and Families, OCR, and DOJ for assistance or if you have further questions.

Sincerely,



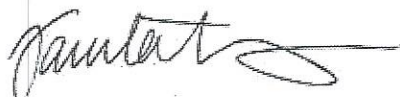
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Appendix A: Frequently Asked Questions and Answers

1. What types of child welfare programs and activities are covered by Title VI?

Answer: Unlike program-specific statutes, such as Title IV-E of the Social Security Act, Title VI applies to *all* recipients of federal financial assistance, and covers *all* of the programs, services, and activities they provide.²⁰ Therefore, all programs and activities of federally funded child welfare agencies and state court systems are covered. These include, but are not limited to, investigations, witness interviews, assessments, removal of children from their homes, placement of children outside of their homes, case planning and service planning, visitation, guardianship, foster care, adoption, family reunification services, and family court proceedings. Title VI also makes recipients responsible for the actions of private and non-profit agencies with which federally funded child welfare agencies and state court systems contract to provide services to children and families on their behalf.²¹ In such circumstances, recipients must ensure that the contractors comply with the Title VI prohibition against discrimination.

It is important to note that Title VI is an overarching anti-discrimination statute that applies to the programs and activities of all entities receiving federal financial assistance. As such Title VI's non-discrimination mandate applies to other agencies that may impact child welfare outcomes and receive federal dollars, such as those administering housing, education, transportation, and public safety programs. Additionally, if a recipient of federal funds makes sub-awards to other agencies, the recipient is responsible for assuring that sub-recipients also comply with Title VI.

2. Whom does Title VI protect in child welfare programs and activities?

Answer: Title VI protects *all* children, parents, grandparents, caregivers, foster and adoptive parents, kinship guardians, and individuals seeking to become foster or adoptive parents who interact with federally funded recipients. This protection is provided regardless of whether an individual is a U.S. citizen, as long as citizenship is not an eligibility requirement of the program.²² Title VI also protects individuals from retaliation, intimidation, and coercion they may suffer for asserting their Title VI rights or participating in a Title VI complaint, investigation, or other proceeding.²³ Individuals are protected against retaliation whether or not they are the targets of the underlying

²⁰ See 42 U.S.C. §§ 2000d, 2000d-4a.

²¹ See 28 C.F.R. § 42.104(b)(1), (2) (DOJ); 45 C.F.R. § 80.3(b)(1), (2) (HHS).

²² While the courts have not addressed the scope of "person" as that term is used in Title VI, the Supreme Court has addressed this term in the context of challenges brought under the Fifth and Fourteenth Amendments. See, e.g., *Plyler v. Doe*, 457 U.S. 202 (1982); *Mathews v. Diaz*, 426 U.S. 67 (1976). The Supreme Court has held that undocumented individuals are considered "persons" under the equal protection and due process clauses of the Fifth and Fourteenth Amendments. *Plyler*, 457 U.S. at 210-13; *Mathews*, 426 U.S. at 77. Since rights protected by Title VI, at a minimum, are analogous to such protections under the Fifth and Fourteenth Amendments, these cases provide persuasive authority as to the scope of "persons" protected by Title VI. See *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 589-90 (1983); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978).

²³ See 28 C.F.R. § 42.107(e) (DOJ); 45 C.F.R. § 80.7(e) (HHS).

discrimination. For example, if a Caucasian caseworker complains to HHS that African-American families are not receiving equal treatment at his workplace and he is later demoted because he filed a complaint, the caseworker is protected under Title VI against such retaliatory action.²⁴

3. ***What factors will a federal agency consider to determine whether a recipient has engaged in discrimination prohibited under Title VI?***

Answer: Under Title VI, discrimination can be categorized as intentional discrimination or disparate impact discrimination. To determine if a recipient has engaged in intentional discrimination, a federal agency will consider whether the recipient was motivated by the race, color, or national origin of the person who experienced the discrimination.²⁵ Though an action must be intentional, direct evidence of “**bad faith, ill will or any evil motive**” is not necessary to find an intentional discrimination violation.²⁶

Conversely, disparate impact discrimination focuses on the consequences of a recipient’s practices, rather than the motivation. This type of discrimination occurs when a recipient has a policy or practice that does not manifestly include distinctions based on race, color, or national origin, but affects members of a certain race, color, or national origin in an unequal and negative way.²⁷ Recipients are prohibited from implementing such policies or practices except in limited circumstances.²⁸ The trend in complaints based on a theory of disparate impact discrimination is to include comparative statistical evidence, such as disproportionality rates, that can be an indicator of a disparate impact.²⁹ Although disparate impact cases usually focus on statistics, statistics are neither the exclusive nor a necessary means of proof.³⁰

4. ***Does Title VI protect individuals who do not speak, read, write, or understand English?***

Answer: Yes. Recipients of federal financial assistance may not discriminate on the basis of national origin, which includes discriminating against LEP individuals, who have a limited ability to speak, read, write, or understand English. Recipients must also take reasonable steps to ensure meaningful access to their programs and activities by LEP individuals by providing language

²⁴ Cf. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 177-78 (2005) (where coach of high school girls’ basketball team complained that his students were denied equal funding and access to athletic facilities, the Court held that Title IX of the Education Amendments of 1972 protects coaches and teachers from retaliation for advocating for the rights of their students).

²⁵ *Arlington Heights*, 429 U.S. at 265-68; *Cabrera v. Alvarez*, 977 F. Supp. 2d 969, 977-78 (N.D. Cal. 2013); *Almendares v. Palmer*, 284 F. Supp. 2d 799, 805-07 (N.D. Ohio 2003); *Faith Action for Cmty. Equity v. Hawaii*, 2014 WL 1691622 at *14 (D. Haw. Apr. 28, 2014).

²⁶ *Elston*, 997 F.2d at 1406 (quoting *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11th Cir. 1984)).

²⁷ *Lau v. Nichols*, 414 U.S. 563, 568 (1974).

²⁸ 28 C.F.R. § 42.104(b)(2) (DOJ); 45 C.F.R. § 80.3(b)(2) (HHS). Such an action is only permissible when the recipient can demonstrate a significant legitimate justification and there is no available alternative practice that is comparably effective that results in less harm. See *Elston*, 997 F.2d at 1407.

²⁹ See, e.g., *Darensburg v. Metro. Transp. Comm’n*, 636 F.3d 511, 519 (9th Cir. 2011).

³⁰ See, e.g., *Thomas v. Washington Cty. Sch. Bd.*, 915 F.2d 922, 926 (4th Cir. 1990).

assistance services that allow LEP individuals to effectively participate in or benefit from a child welfare agency's or state court system's programs and activities.³¹ Meaningful access can be achieved through oral and written language assistance services, provided free of charge and in an accurate and timely manner. Such services can include providing translated documents (e.g., notices of rights, court hearings, decisions, and availability of free language assistance services; case plan requirements; program applications) and providing qualified interpreters (e.g., contracted interpreters; qualified bilingual staff interpreters; telephonic or video interpreters; or the reading of English forms and documents aloud into the non-English language). Meaningful access in the context of reunification efforts may also include taking into consideration, as part of determining the best interest of a child, preservation of his or her cultural identity and familial bonds (including the primary language of the child and/or parent) when making out-of-home placements.³² Given the importance of contact with child welfare agencies and courts, and the critical nature of timely communication, language services should be provided to parents and prospective parents, and anyone else who has a significant interest in the matter, such as grandparents or siblings.

To assist recipients in complying with language access requirements, federal agencies have issued specific guidance on this topic, including the DOJ LEP Guidance and the HHS LEP Guidance. For guidance specific to state court proceedings, please see Language Access Guidance Letter to State Courts from the Assistant Attorney General for Civil Rights - August 16, 2010.³³

5. *Is an agency permitted to require a parent or prospective parent to learn English as a condition of reunification?*

Answer: No. It is improper for an agency or court to consider a parent's limited English proficiency when determining whether to reunite a child with a parent. While a communication barrier may require the use of language services, and therefore be perceived as a challenge to reunification, it is not evidence of whether individuals are able or willing to fulfill their parental duties.³⁴ While a child welfare agency may choose to provide English language lessons for the benefit of the parent,

³¹ See *DOJ LEP Guidance* at 41461; *HHS LEP Guidance* at 47316.

³² *DOJ LEP Guidance*, at 41461-63; *HHS LEP Guidance*, at 47316-19. See *Matter of Guardianship of D.*, 404 A.2d 663, 669-70 (N.J. Juv. & Dom. Rel. Ct., Camden Co. 1979) ("[State agency] placed the children with non-Hispanic families, resulting in their inability to speak or communicate in Spanish. Since the natural parents have limited ability to communicate in English, this fact is important in determining the best interests of the children. The need for children to communicate and express themselves freely with their parents is the very core of any family relationship... [] A case like this is tragic, where the state agency has, in effect, from the beginning programmed that these children could never be returned to their natural parents by depriving them of their Spanish heritage."). For a discussion of child welfare agencies' responsibilities under the Multiethnic Placement Act of 1994, as amended by the Removal of Barriers to Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996, 42 U.S.C. § 1996b, see FAQ No. 6.

³³ go.usa.gov/ctCKC.

³⁴ See *Cruz v. Miss. Dep't of Human Servs.*, 9 F.Supp. 3d 668 (S.D. Miss. 2014) (U.S. District Court held that plaintiffs established a prima facie case that their rights were violated and that defendants acted unreasonably when defendants removed the child from the mother's custody in part because the mother was LEP); *State ex rel. Children, Youth, & Family Dep't v. Alfonso*, 366 P.3d 282, 303 (N.M. Ct. App. 2015) ("We are unconvinced that, as a general rule, native language disparities between a natural parent and his or her infant child are insurmountable obstacles to reunification."); *A.S.T. v. Etowah Cty. Dep't of Human Servs.*, 36 So. 3d 572, 577 (Ala. Civ. App. 2009) ("The mere lack of the ability to communicate because of a language barrier is not insurmountable, and, in this case, it is insufficient to serve as a basis for the termination of the father's parental rights.").

requiring a particular level of English language attainment prior to visitation or reunification is inappropriate. Conditioning reunification on English language attainment would raise serious concerns under Title VI.

6. What are the other laws regarding nondiscrimination on the basis of race, color, or national origin in child welfare?

Answer: In addition to Title VI, Title IV-E agencies must comply with the Multiethnic Placement Act of 1994, as amended by the Removal of Barriers to Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 (MEPA).³⁵ MEPA prohibits Title IV-B and IV-E agencies (and the entities with which they contract) from: (1) delaying or denying the placement of a child into foster care or for adoption on the basis of the race, color or national origin of the foster or adoptive parent, or the child, involved; and (2) denying to any individual the opportunity to become a foster or adoptive parent, on the basis of the race, color or national origin of the individual, or of the child, involved. Such conduct is both a violation of Title IV-E and Title VI.³⁶ Thus, for federally funded child welfare agencies and their contractors, compliance with the two laws is closely linked.

ACF and OCR have explained that Title IV-E agencies, and the entities with which they contract, must make an individualized placement decision for each child without relying on generalized stereotypes about race, color or national origin groups.³⁷

MEPA, as amended, also requires Title IV-B/IV-E agencies to “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.”³⁸ This important provision is designed to increase the pool of prospective foster and adoptive parents that reflect the backgrounds of children in the system, a critical aspect of encouraging permanency for children in care.

MEPA is jointly administered by ACF and OCR. ACF administers Title IV-B/IV-E plans; provides ongoing specific and general training and technical assistance to agencies; determines whether an agency or its contractors have committed a Title IV-E plan violation as to an individual or maintain noncompliant policies and practices; and administers the financial penalty process when an agency is found to have violated ACF’s MEPA regulations. OCR is responsible for civil rights enforcement under MEPA, while ACF is responsible for the financial penalty process where MEPA violations are determined.³⁹

³⁵ 42 U.S.C. § 1996b.

³⁶ *Id.*

³⁷ See perma.cc/PP9N-E94V.

³⁸ 42 U.S.C. § 622(b)(7). See Resolution Agreement between the HHS Office for Civil Rights and the County of Fresno Human Services System, Children and Family Services (Jul. 16, 2002) (to resolve a Title VI/MEPA complaint, agency agreed to implement “a comprehensive recruitment plan to recruit foster and adoptive parents that reflect the population of children in foster care”), go.usa.gov/xWprd.

³⁹ See 45 C.F.R. § 1355.38. See also *Ohio Department of Jobs and Family Services*, No. 2023 (HHS Dep’t App. Bd. (2006), go.usa.gov/xWprF (where OCR found Hamilton County in violation of Title VI, MEPA, and Title IV-E of the Social Security Act,

Appendix B: Additional Resources


Information about filing a Title VI complaint with DOJ can be found at www.justice.gov/crt/how-file-complaint. Individuals who believe they have been aggrieved under Title VI should file complaints at the earliest opportunity.


You can also file a Title VI complaint with OCR at www.hhs.gov/ocr/civilrights/complaints/index.html.

General information about civil rights and child welfare issues can be found at: www.hhs.gov/ocr/civilrights/resources/specialtopics/adoption/index.html.

For information about ACF's Children Bureau, please visit: www.acf.hhs.gov/programs/cb.

For ACF and OCR regional offices, please visit:

 www.acf.hhs.gov/programs/oro

 www.hhs.gov/ocr/office/about/rgn-hqaddresses.html

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and ACF imposed penalties and required a corrective action plan (CAP), the HHS Departmental Appeals Board upheld ACF's final determination).