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FOSTER CARE

**Challenges Faced in
Implementing the
Multiethnic Placement Act**

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Foster Care: Challenges Faced in Implementing the Multiethnic Placement Act

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss implementation of the Multiethnic Placement Act of 1994, as amended by the interethnic adoption provisions in 1996. As you know, this legislation sought to decrease the length of time that children wait to be adopted by eliminating race-related barriers to placement in permanent homes. At least one-third of the estimated 500,000 children currently in foster care will never return to their birth parents, leaving those children in need of permanent homes. Minority children—who made up over 60 percent of those in foster care nationwide in 1994—waited twice as long for permanent homes as did other foster children. Historically, the delays in placing minority children may have been due in part to the common practice of matching the race of a child with that of a foster or adoptive parent—a practice that was customary and required in many areas for the last 20 years.

Whereas the 1994 act explicitly permitted race to be considered as one of a number of factors when making a placement, the 1996 amendment removed that provision. The amendment clarified that race, color, or national origin may be considered only in rare circumstances when making placement decisions. Under the amended law, agencies can no longer routinely assume that placing children with parents of the same race is in the best interests of a child. The amended legislation also put child welfare agencies on notice that they are subject to civil rights principles banning racial discrimination when making placement decisions.

Today, I would like to discuss (1) the actions taken by three levels of government—the U.S. Department of Health and Human Services (HHS), the California Department of Social Services, and two of that state's larger counties, Alameda and San Diego—to implement the 1994 act; (2) the actions taken by these agencies to implement the 1996 amendment to the act; and (3) the challenges all levels of government face to change placement practices. My testimony is based on our new report, Foster Care: Implementation of the Multiethnic Placement Act Poses Difficult Challenges (GAO/HEHS-98-204, Sept. 14, 1998). In that work, we focused our review on foster care and adoption placement policy and guidance; and technical assistance, including training. We selected California for review because it has the largest foster care population in the nation and minority children made up 64 percent of its foster care caseload as of September 30, 1996.

In summary, HHS and the state of California initiated a variety of efforts to inform agencies and caseworkers about the Multiethnic Placement Act of 1994. HHS issued policy guidance to the states and began a range of technical assistance efforts, including training for state officials and efforts to ensure that state laws were consistent with the act. These actions were a joint effort of HHS' Children's Bureau and the Office for Civil Rights. The state revised its state law and adoption regulations and collaborated with county child welfare officials to develop a strategy to implement the act. The two California counties we reviewed trained their caseworkers on the provisions of the act. In contrast, when implementing the 1996 amendment, HHS and the state of California were slower to take action and provided less help. As a consequence, HHS has done little to address casework practice issues—a step necessary for successful implementation—and the state has yet to make formal changes, such as revision of state law and regulations.

All levels of government face three significant challenges in changing placement practices. First, agencies need to continue changing long-standing social work practices, such as some officials' and caseworkers' beliefs that the interests of children are best served when race is considered. Second, agencies need to translate legal principles into practical advice for caseworkers. While officials and caseworkers we spoke with understand that the law prohibits them from delaying or denying placements on the basis of race, they also voiced confusion about allowable actions under the law. Third, agencies need to develop information systems to monitor compliance with the amended act's restrictions on race in placement decisions.

Background

The guiding principle in foster care and adoption placement decisions is “the best interests of the child.” When considering what is in the child's best interests, factors of both physical and emotional well-being are taken into consideration. Historically, these factors have included maintaining a child's cultural heritage. While a caseworker may have few or many homes to consider when making a placement decision, historically the pool of available foster and adoptive parents has contained fewer minority parents than there were minority children needing homes. Thus, while attempts to match the race of a child with that of a foster or adoptive parent may have delayed the placement of minority children, it was a common practice.

As originally enacted, the Howard M. Metzenbaum Multiethnic Placement Act of 1994 provided that the placement of children could not be denied or

delayed solely because of the race, color, or national origin of the child or of the prospective foster or adoptive parents.¹ However, the act expressly permitted consideration of the racial, ethnic, or cultural background of the child and the capacity of prospective parents to meet the child's needs—if such a consideration was one of a number of factors used to determine a child's best interests. As a result of the act, HHS and some states needed to change their foster care and adoption policies. Some states also needed to change state law and the casework practices of their workers to comply with the federal law.

The 1996 amendment clarified that race, color, or national origin may be considered only in rare circumstances.² It did so, in part, by removing language that allowed consideration of these factors as part of a group of factors in assessing both the best interests of the child and the capacity of prospective foster or adoptive parents to meet the needs of a child. Thus, under the law, “the best interests of a child” is now defined on a narrow, case-specific basis, whereas child welfare agencies have historically assumed that same-race placements are in the best interests of all children. After passage of the 1996 amendment, HHS and some states again needed to change their foster care and adoption policies. Some states also needed to again change state law and the casework practices of their workers to comply with the federal law.

HHS and California Began Implementation Efforts Promptly After Passage of the 1994 Act

In implementing the 1994 act, HHS recognized that the restriction on the use of race in placement decisions would require significant changes of child welfare agencies in order to end discriminatory placement practices. In response, HHS launched a major effort to provide policy guidance and technical assistance on the 1994 act. (The app. shows a timeline of major federal and state implementation actions.) Between enactment and the effective date of the act, HHS

- issued a memorandum to states that summarized the act and provided its text;
- issued policy guidance based on existing civil rights principles;
- issued a monograph on the new law that provided additional guidance for states; and
- provided technical assistance to states that included discussing the law with state child welfare directors; providing training to state officials; reviewing each state's statutes, regulations, and policies to ensure that the

¹P.L. 103-382, secs. 551-553, 108 stat. 3518, 4056-57.

²P.L. 104-188, sec. 1808, 110 stat. 1755, 1903-04.

District of Columbia and the 28 states that were not in conformance with the act completed corrective actions; investigating complaints of discrimination that were filed with the agency; and making available other information and resources from its contracted Resource Centers, including assistance to individual states.

HHS' actions were unique in that the agency brought together two units within HHS that share responsibility for enforcement of the law—the Children's Bureau and the Office for Civil Rights—to work as a team. As a result, these units provided joint guidance and technical assistance to states. Some states believed that HHS' guidance regarding the use of race in placement decisions was more restrictive than provided for in the act. However, in part because of the internal collaboration and team approach HHS had taken, the agency was confident that its guidance accurately reflected the statutory and constitutional civil rights principles involved.

California also began implementation efforts promptly. Our work at the state level indicated that California took four actions before the date that the state was required to conform with the act. It

- issued an informational memorandum to counties notifying them of the change in the federal law;
- began a collaborative effort with an association of county child welfare officials to devise an implementation strategy;
- passed legislation that amended its state law to comply with the federal statute;³ and
- revised state adoption regulations.

State officials told us that it was not necessary to revise California's existing foster care regulations because those regulations did not include the discriminatory requirement that same-race placements be sought for 90 days before transracial placements could be made.

In the two California counties we reviewed, one county revised its foster care and adoption policies in February 1996, while the other made no change but issued a memorandum to its staff in January 1996 to alert them to the new law. Both counties included the 1994 act in their training curriculums for new caseworkers.

³Because California's state law would not be in conformance with the act until January 1, 1996, HHS extended the date by which California was to comply with the act, postponing compliance from October 21, 1995, to January 1, 1996.

HHS and California Were Slow to Respond to the 1996 Amendment

When we looked at federal actions to implement the 1996 amendment, we found that HHS was slower to revise its policy guidance and provided less technical assistance to states than was the case after the passage of the 1994 act. For example, after the passage of the 1994 act, HHS notified states of the new law within 6 weeks of its passage. After the 1996 amendment was passed, however, HHS took 3 months to notify states of the change in federal law, even though the change was effective immediately. In the 9 months after passage of the amendment, HHS

- notified states of the change in the law;
- revised policy guidance; and
- provided technical assistance, including reviews of agency placement practices in selected locations.

Although HHS continued to make Resource Center assistance available to states and to investigate complaints of violations after enactment of the amendment, it did not repeat other assistance activities provided after the 1994 legislation. For example, it did not repeat the outreach and training to state officials, nor has it updated the monograph on the act to include information on the amendment. Furthermore, HHS officials told us that it was not necessary to conduct another comprehensive review of state statutes because they said they would work with states on a case-by-case basis.

Missing from HHS' implementation efforts for both the 1994 act and the 1996 amendment was one step necessary for successful implementation—guidance on casework practice issues. Such guidance is distinct from policy guidance in that the former addresses questions about changes in social work practice needed to make casework consistent with the act and its amendment, whereas the latter provides a more general framework for understanding the law. It was not until May 1998, when we voiced concerns to HHS that we had picked up from county officials and caseworkers, that HHS issued guidance answering practical questions. This guidance clarified, for example, that public agencies cannot use race to differentiate between otherwise acceptable foster care placements, even if such a consideration does not delay or deny a child's placement.

Our work on California's efforts to implement the 1996 amendment indicated that the state has also been slow to undertake important activities. Although California began its efforts by notifying its counties of the 1996 amendment, it has not

- passed legislation to make state law consistent with federal legislation;
- revised foster care and adoption regulations; or
- targeted its limited training to staff who are most directly responsible for complying with the amended act's provisions: the caseworkers who place children in foster and adoptive homes.

Although California counties can change their own policies without state actions, only one of the two counties we visited has begun incorporating the 1996 amendment into its policies. In that county, the adoption unit has begun to update its policies, but the foster care unit has not done so. Regarding training activities in the two counties, one county is in the process of developing written training material to reflect the 1996 amendment and has provided formal training on it to some workers. The other county charged supervisors with training their staff one-on-one.

HHS and the State Face Continuing Implementation Challenges

Officials at all levels of government face three challenges as they continue to implement the amended act. The first challenge is for agencies to continue to change long-standing social work practices and the beliefs of some caseworkers. The belief that race or cultural heritage is central to a child's best interests when making a placement is so inherent in social work theory and practice that a policy statement of the National Association of Social Workers still reflects this tenet, despite changes in the federal law. The personal acceptance of the value of the act and the 1996 amendment varies among the officials and caseworkers, in our review. Some told us that they welcomed the removal of routine race-matching from the child welfare definition of best interests of a child and from placement decisions. Those who held this belief said the act and the 1996 amendment made placement decisions easier. Others spoke of the need for children—particularly minority children—always to be placed in homes that will support a child's racial identity. For those individuals, that meant a home with same-race parents. Furthermore, some who value the inclusion of race in placement decisions told us that they do not believe that the past use of race in the decision-making process delayed or denied placements for children.

The second challenge is for agencies to translate legal principles into practical advice for caseworkers. State program officials in California are struggling to understand the amended act in the context of casework practice issues. They are waiting for the HHS Children's Bureau or the federal National Resource Centers to assist them in making the necessary changes in day-to-day casework practices. In particular, the use of

different definitions by caseworkers and attorneys of what constitutes actions in a child's best interests makes application of the act and the amendment to casework practice difficult. Furthermore, while the county caseworkers we interviewed were aware that the act and the amendment do not allow denial or delay of placements related to race, color, or national origin, some caseworkers were unsure how and when, if at all, they are allowed to consider such factors in making placement decisions. Thus, the paucity of practical guidance contributes to continued uncertainty about allowable actions under the amended act.

The third challenge we identified is the need for agencies to develop information systems to monitor compliance with the amended act's restrictions on the use of race in placement decisions. Developing such systems will be particularly difficult because neither federal administrative data in the Adoption and Foster Care Analysis and Reporting System (AFCARS) nor case files are likely to contain needed information related to placement decisions. AFCARS data are not sufficient to determine placement patterns related to race that may have existed before the 1994 act's effective date. Furthermore, our examination of the data indicated that future use for monitoring changes in placement patterns directly related to the amended act is unlikely. For example, the database lacks sufficient information on the racial identity of foster and adoptive children, and their foster parents, to conduct the type of detailed analysis of foster care and adoption patterns that would likely be needed to identify discriminatory racial patterns. While case files are another source of information about placement decisions, our review of a very limited number of case files in one California county, and our experience reading case files for other foster care studies, confirmed that it is unlikely the content of placement decisions can be reconstructed from the case files.

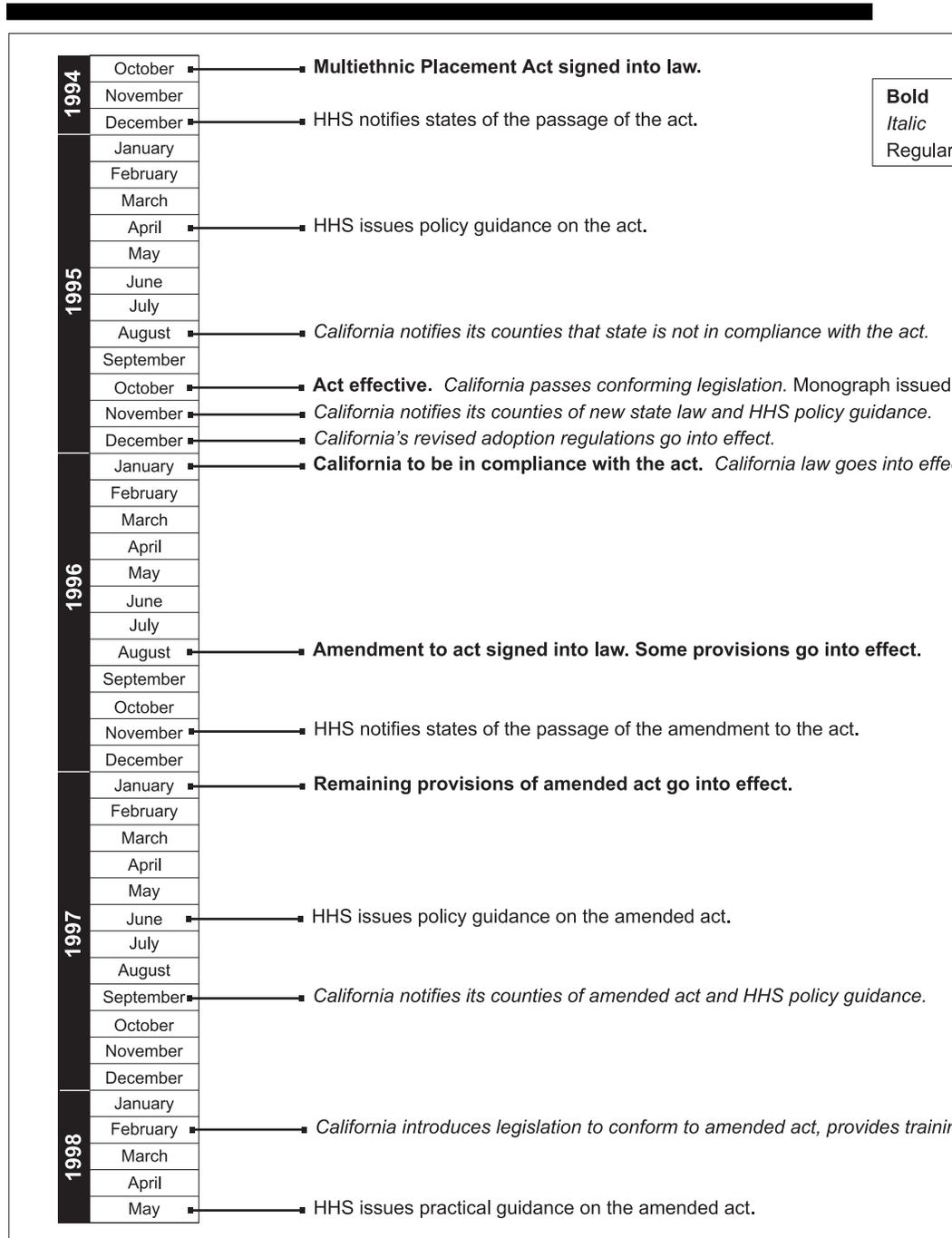
Even if sufficient data on placement decision-making are obtained, analysis of them will be hampered by inherent difficulties in interpreting the results. Data showing a change in the percentage of same-race placements would not, alone, indicate whether the amended act was effective in restricting race-based placement practices. For example, an increase in the percentage of same-race placements for black foster children could indicate that the amended act is not being followed. Conversely, the same increase could mean that the amended act is being followed, but more black foster and adoptive parents are available to care for children because of successful recruitment efforts. If relevant information on changes in the pool of foster and adoptive parents is not available for analysis—as is the case with AFCARS data—then it would not

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be possible to rule out the success of recruitment efforts as a contributor to an increase in same-race placements.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or other members of the Subcommittee may have.

Timeline of Key Federal and State Implementation Actions



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