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| LOCAL COMMISSIONERS MEMORANDUM |  
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Transmittal No: 90 LCM-11

Date: January 26, 1990

Division: Family and Children  
Services

TO: Local District Commissioners

SUBJECT: Transracial Adoptions

ATTACHMENTS: There are no attachments to this LCM.

This letter is intended to reaffirm the State's position on the subject of transracial adoptions and to emphasize certain actions which should be taken by authorized agencies.

Department regulations, 18 NYCRR Section 421.18(c) requires authorized agencies to:

Make an effort to place each child in a home as similar to and compatible with his or her ethnic, racial, religious, and cultural background as possible with particular recognition that section 373(3) of the Social Services Law requires a court, when practicable, to give custody through adoption only to persons of the same religious faith as that of the child.

With the large number of minority children available for adoption, recruitment of qualified minority adoptive parents and qualified minority foster parents who can serve as a major resource for adoptive placements is vital to any adoption program. The Department encourages vigorous recruitment efforts in minority communities to build a cadre of prospective adoptive parents. In addition, we encourage authorized agencies to reach out to and utilize minority adoptive parents located and certified by other authorized agencies. All potential resources should be utilized.

If efforts to place a child in a home similar to and compatible with the child's background are unsuccessful, appropriate actions should be taken to pursue other alternatives. If after good faith efforts, including an inquiry of the Prospective Adoptive Parent Register, an adoptive placement of a child freed for adoption has not been made, consideration must be given to other available adoptive homes.

Department regulation, 18 NYCRR Section 421.16(j), states that "(r)ace, ethnic group, and religion shall not be a basis for rejecting an adoption applicant." This means that an agency may not deny an application to become an adoptive parent because of race, ethnic origin or religion. Case law suggests that race can be a factor in making an adoptive placement. However, the use of race as the sole criteria in making adoptive placements is not permissible. [In re Adoption of a Minor, 228 F. 2d 446 (1955); Rockefeller v. Nickerson, 36 Misc. 2d 869 (1962); Drummond v. Fulton County Department of Family and Children's Services, 408 F. Supp. 382, rev'd. on re-hearing en banc, 563 F. 2d 1200, cert. denied 432 U.S. 905 (1977).]

Thus, an authorized agency may not decide to place or refuse to place a child in a home solely because of the race of the prospective adoptive parents. However, the authorized agency may take race into consideration in the decision making process and use it as one of the factors in consenting to or refusing placement. General policies precluding placement solely on the basis of race are not permissible. Case by case determinations must be made concerning the suitability of individual applicants to adopt specific children.

You should evaluate your adoption application and placement practices to ensure that they comply with the above-referenced standards. Policies and practices which conflict with the standards must be corrected.

One major exception to this legal standard involves the Indian Child Welfare Act (P.L. 95-608). The placement of the Indian children is controlled by this federal act (see also 18 NYCRR Section 431.18).

We all share the goal of locating suitable homes as quickly as possible for children freed for adoption. This letter is intended to remind authorized agencies of the applicable standards, consistent with this goal, which should be followed in efforts to reach that goal.

If you have any questions on this matter, please contact Deputy Counsel John Stupp at (518) 474-8490 or 1-800-342-3715, extension 4-8490 or Assistant Commissioner Anona Joseph at extension 4-9442 or (518) 474-9442.

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Deputy Commissioner