



Colorado Office of the Child's Representative

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Fall 2016 Newsletter

Notes from the Executive Director

As this issue of our Newsletter goes to press, we have all just returned from our Fall Conference in Lafayette. As an agency, OCR has always prioritized training as a way to ensure excellence in legal representation. Increasingly, OCR is focusing trainings on cultivating an environment in which we learn from each other.

The Fall Conference, *Advanced Legal Advocacy for Children and Youth*, was a great example of this. Conference topics included tough issues you encounter in cases including addiction, lack of attachment, domestic violence and human trafficking. The stand-outs, though, were the sessions that connected legal topics to practical challenges. Our panel session on *Bringing Reason into Reasonable Efforts* with GALs from urban and rural districts discussing their experiences raising reasonable efforts was really well received. The interactive Think Tank session on challenging issues was perhaps the highlight of the conference. Matching a facilitator and a practitioner to gather resources on practice challenges such as contested placements, ICWA, educational stability, transitioning to adulthood, and adoption subsidies, then breaking out into small group discussions to address real scenarios proved to be a great strategy. The small group discussions yielded some great tips and suggestions from practitioners that were reported back to the broader group.

My favorite part of any conference is the chance to connect with all of our amazing lawyers. We had a turnout of over 120 attorneys from across all 22 judicial districts. It is clear that everyone was invested in sharing their years of experience and knowledge in child welfare and open to learning from each other.

Thanks to our staff for all of their hard work on the conference and to all who attended.

I especially want to thank our GAL presenters and facilitators including: Meghan Baker, Ashley Chase, Mary Davis, Amy Finklestein, Alison Hartman, Chris Henderson, Josi McCauley, Jill McConaughy, Kelli Narans, Beth Padilla, Jacque Philips, Brooke Silverthorne, Kelley Southerland, Bob Tweedell, Anna Ulrich, Peter Wasley, and Sara Wynes. Each of you took time from your busy practices to prepare and present and we could not have had such a successful conference without you.

If you didn't have the chance to join us, the training will be available on our website soon. Going forward, we hope to incorporate Think Tanks and Case Rounds in every conference as we really do learn best from each other. Please reach out to me if you have any suggestions on how we can make our training program better. I'm really excited that we are well on our way to creating a practice and learning community that is continuously improving. ♦



Linda Weinerman
Linda Weinerman,
Executive Director



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Meet an OCR Attorney

Each quarter, the OCR features an attorney in our newsletter and on our website. Learn about the individuals who make OCR's mission a reality through their passion, skill, and dedication to Colorado's kids!



Heather Cannon practices as a Guardian ad Litem in the Fourteenth Judicial District.

► Why did you choose to practice child welfare law?

I attended law school at Gonzaga and I loved the social justice aspect of child welfare law. I have found in my practice that there are very few areas where the legal system has the ability to truly change lives in a positive way; however, practicing in the area of child welfare provides an opportunity to assist children and families in making incredible changes in their lives.

► What has been the most rewarding moment for you while working with children and families in the dependency and neglect system?

The most rewarding moment I have had while working with children and families in the dependency and neglect system came about four years ago when a juvenile I represented wrote me (actually hand wrote) a letter and expressed her dreams, her goals and how much of an impact I had made on her life. I keep that letter in my desk and read it every day to remind myself of the amazing potential we have to impact someone's life on a daily basis through our work with the Office of the Child's Representative.

► Describe a challenge you face doing this work and your strategies to overcome it.

A common challenge in child welfare law is the difficulty in locating necessary resources in a rural community that are able to address very complex family dynamics or addictions. I have found that developing a strong resource list outside of the area, as well as inside the area, really is essential to being effective in this area of law to achieve the best outcomes for children and families.

► What advice do you have for an attorney who is new to child welfare law?

The best advice I have is to always focus on the positive in any situation presented in the cases you are assigned. As an attorney who has a general practice, I can honestly say that this area of law has the potential to be the most rewarding career choice an attorney can make simply because of the ability to help so many people in a short period of time. However, I can also say the situations that present themselves in these cases can be the most heartbreaking and it is easy for a new attorney to become overwhelmed or discouraged. I have found that there is usually a silver lining in nearly every situation, even if it is learning how to address a new situation or locating new resources that can be used in the future.

► What drives you to continue in this line of work and do you have any advice for seasoned attorney?

The primary driving force in continuing in this line of work is truly the passion I have for this area of law and the desire to continue to help people through the legal system. The only advice I would have to offer for a seasoned attorney is to pass on their knowledge of the law and their experience in our chosen field of practice.

► Share a litigation strategy or case example when you were successful despite opposition from other parties to the case.

Wow, there are so many to choose from over the years; this is truly a difficult question to answer. Candidly, I believe the best litigation strategy in child welfare cases is to ensure that the child (if old enough) is able to form a relationship with you where they feel they can trust decisions you are making on their behalf and they are open to helping you make those decisions. So many times, it seems that the case becomes very parent focused and the child becomes a secondary issue in the case. As a Guardian *ad Litem*, I feel my role is to ensure the case starts and remains child focused throughout the duration of the case and that the judges have the ability to form a positive relationship with the children, as well. I have found that as long as the focus of my case remains on the child and that I work to ensure that other parties in the case are focused on this as well, legal outcomes that are best for the child are nearly always accomplished. ♦



Nominate, share your own story, and view our archive on our [Meet an OCR Attorney](#) page online!

Fall Legal Review

Summaries of new cases and legislation brought to you by OCR's Staff Attorneys

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■ 1. CO Supreme Court

16SC287 *People in Interest of E.M.* Whether a juvenile court must proceed under section 19-5-105, C.R.S. (2015), or section 19-3-604, C.R.S. (2015), when terminating the parent-child legal relationship of the non-relinquishing parent after one parent decides to relinquish his or her parental rights to a child subject to pending dependency and neglect proceedings.

Oral argument is scheduled for Oct. 4, 2016 in ***People v. Ybanez, 14 SC 190***. This case addresses, among other issues, 1) Whether a child charged as an adult with first-degree murder, whose parent is a victim of the crime and a prosecution witness, is entitled to a guardian *ad litem* to assist with his defense and to advise him regarding the waiver of his constitutional trial rights; 2) Whether the court of appeals properly applied plain review to the defendant's claim that a guardian *ad litem* should have been appointed, when there was no objection at trial or the initial Crim. P. 35(c) motion.

■ 2. Court of Appeals

In Interest of J.W., 2016 COA 125 (August 25, 2016). In this decision, the Court of Appeals vacates an order terminating the parent-child legal relationship due to the lack of a predicate order adjudicating the children dependent or neglected. In district court, the mother demanded a jury trial which did not result in an adjudication due to the jury's determination that the "lacking proper parental care" basis had not been met and inability to answer the question as to whether the children's environment was injurious to their welfare. Mother subsequently chose to admit that the children's environment was injurious to their welfare, but the court did not enter a formal order adjudicating the children dependent or neglected and instead proceeded to adopt a treatment plan. A few months later, the court terminated parental rights. The court did not enter a written order adjudicating the children dependent or neglected with respect to mother until a month after mother's parental rights had been terminated.

First, the Court of Appeals rejects the department's argument that mother's appeal was untimely filed because of the timeframe between the adjudicatory stage of the proceeding and the appeal. The Court notes that an adjudication order is not final and appealable until the court reduces the adjudicatory and dispositional orders to writing and that the appeal was timely filed in relation to the order terminating mother's parental rights.

As to the termination of mother's parental rights, the Court holds that the trial court lacked subject matter jurisdiction to terminate mother's parental rights because the children had not been adjudicated dependent or neglected. Additionally, a finding that the children had been adjudicated dependent or neglected is required under 19-3-604. Notably, the Court declines to follow the precedent set forth by *N.D.V.*, 224 P.3d 410 (Colo. App. 2009), noting that 19-3-505(7)(a) provides that "the court shall sustain the petition and shall make an order of adjudication" if the court finds that the allegations of the petition are supported by a preponderance of the evidence. The Court reasons that without a formal order of adjudication, mother's admission only authorized the court's continuation of its temporary intervention and not its termination of the parent-child legal relationship.

In Interest of L.K., 2016 COA 112 (July 14, 2016). In this case, the Court of Appeals upholds an order terminating the parent-child legal relationship between the respondent father and his daughter. In doing so, the Court holds that the trial court properly admitted evidence of father's failure to take a polygraph examination as required by the treatment plan, distinguishing this consideration from any consideration of results of the exam. The Court also rejects father's arguments that the trial court had improperly shifted the burden of proof and infringed on father's privilege against self incrimination in its findings and that insufficient evidence existed to establish the criteria for termination of parental rights. The Court does reverse an award of \$400 in attorney's fees to father entered against the department as a discovery sanction pursuant to C.R.C.P. 37, holding that the doctrine of Sovereign Immunity prevents the court from awarding such sanctions absent an express waiver of such immunity.

■ 3. Legislative and Policy Update

OCR Legislative Review of Second Regular Session of the Seventieth General Assembly

The two chambers of the 70th General Assembly remained split between the political parties: the Republicans controlled the Senate 18 to 17 and the Democrats controlled the House of Representatives 34 to 31 seats. This make-up made bipartisan support of legislation essential in order to pass through the legislature. Colorado legislators introduced 685 bills; 387 bills passed, representing a 56% pass rate. The Governor signed all but four bills; he vetoed two and two became law without his signature. Most acts became effective 10 August 2016.

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Fall Legal Review

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HB 1057 Seven Day Court Interval

Sponsors Representative Ransom and Senator Merrifield | The Act amends §19-1-108 to allow judicial review of magistrate orders in D&N proceedings 7 days following the order and non-D&N proceedings 14 days following the order. Effective 7/1/16

HB 1100 Homeless Youth Verify In-State Status

Sponsors Rep. Pedersen & Esgar and Sen. Cooke | Allows unaccompanied homeless youth to determine their own domicile for purposes of establishing in-state tuition eligibility rather than rely on their parents or guardians. Effective 5/17/16

HB 1227 Exemptions from Child Support Enforcement Requirements as a Condition of Receipt of Child Care Assistance

Sponsors Representatives Kagan & DelGrosso and Senators Hill and Crowder | The Act provides that Colorado teen parents who have not graduated from high school or have completed a GED qualify for child care assistance under § 26-2-805, C.R.S. (2015), without submitting an application for child support as a condition of receiving such assistance. The county can require the teen parent to attend informational sessions on the benefits of child support and two-parent engagement in a child's life. Counties can require the parent to seek child care assistance when the parent is no longer a teen, has graduated from high school or successfully completed a high school equivalency exam. The Act further provides a process by which victims of domestic violence, a sexual offense, harassment or stalking may avoid child support cooperation requirements. Effective 5/19/16.

HB 1309 Right to Counsel in Municipal Court

Sponsors Representative Lontine and Senator Marble | Defendants in custody and facing possible incarceration due to a municipal charge are entitled to counsel at the initial appearance. Effective May 1, 2017

HB 1373 Requiring School Districts to Adopt a Policy Permitting the Use of Medical Marijuana by Students Authorized to Use Medical Marijuana ("Jack's Law")

Sponsors Representative Singer and Senators Holbert & Marble | The Act allows a student's primary caregiver to administer medical marijuana in a nonsmokeable form to a student on school grounds, on a school bus or at a school activity unless the school or school district will lose federal funding if such use is allowed. Effective: 6/6/16

HB 1377 Task Force on Collection & Security of Photographic Evidence of Child Abuse or Neglect

Sponsors Rep. Primavera and Sen. Lambert | The Act creates a 21-member task force to study the existing system of and the best practices for collecting, documenting and securing digital images of evidence of suspected child abuse or neglect by government employees. The task force shall submit an initial report on its findings and progress on or before December 1, 2017 and its final report with findings and recommendations is due December 1, 2018. Effective 6/08/16.

SB 013 Office of Child Protection Ombudsman

Sponsors Sen. Newell and Rep. Singer | The Act clarifies the responsibilities of the Child Protection Board and the Office of the Child Protection Ombudsman. Effective 4/15/16.

SB 180 DOC Specialized Program for Certain Juvenile Offenders Convicted as Adults

Sponsors Senators Woods & Jahn and Representatives Kagan & Ransom | The Act directs the Department of Corrections to develop and implement a specialized programs for certain offenders who were convicted as adults for offenses committed when they were juveniles. The new program—for those individuals who have served at least 20 or 25 years of a sentence, depending on the type of crime—will allow such individuals to further demonstrate rehabilitation and earn early release in a less secure setting. The goals of the program include fostering independent living and intensive supervision. Offenders must apply to be in the program and must be in the program for at least 3 years. Effective 8/10/16

SB 181 Sentencing Juveniles Convicted of Class 1 Felonies

Sponsors Senators Woods & Jahn and Representatives Kagan & Dore | The Act allows offenders who were sentenced to life without the possibility of parole for a class 1 felony committed as a juvenile between July 1, 1990 and July 1, 2006 to petition the court for a resentencing hearing. The Act also specifies the factors that the court can consider in such re-sentencing hearing, including mitigating circumstances, the offender's age and maturity level at the time of the crime and the capacity for rehabilitation. Effective 6/10/16

SB 212 Twelve Month Eligibility Requirement of the Colorado Child Care Assistance Program

Sponsors Sen. Crowder and Rep. Buckner | The Act aligns the Colorado Child Care Assistance Program (CCCAP) with federal law changes requiring a child receiving CCCAP supports remain eligible for such assistance for an entire 12-month period before eligibility is re-determined. Effective 6/1/16.

The [*OCR Summer Newsletter*](#) featured complete summaries of the following legislation; the effective dates are provided below.

HB 1224 Child Abuse or Neglect Involving Human Trafficking of Minors, *Sponsors Rep. Lundeen and Sen. Woods*. Effective 1/1/17

HB 1316 Change of Venue in D&N Proceedings, *Sponsors Rep. Rosenthal and Sen. Cooke*. Effective 8/10/16

HB 1328 Use of Restraint and Seclusion, *Sponsors Reps. Lee and McCann and Sens. Lambert and Lundberg*. Effective 6/10/16.

HB 1448 The Relative Guardianship Assistance Program, *Sponsors Rep. Singer and Senators Kefalas & Lundberg*. Effective 10/1/16.

SB 110 Child Victim Privacy Criminal Justice Records, *Sponsors Sen. Woods and Rep. Lundeen*. Effective 9/1/16

Ideas that made it to bill paper but did not garner legislative support include:

- Juvenile Delinquency Record Expungement
- Narrowing Circumstances in Which Exposure to Substances Constitutes Child Abuse
- Establishing Sexting as a Misdemeanor
- Narrowing Circumstances in Which Juveniles are Shackled
- Prohibiting Detentions of Truants
- Parents Bill of Rights
- Predictive Analytic Technology for Child Welfare Pilot Program ♦

Highlights from OCR's Annual Report to the General Assembly (Sept. 2016)

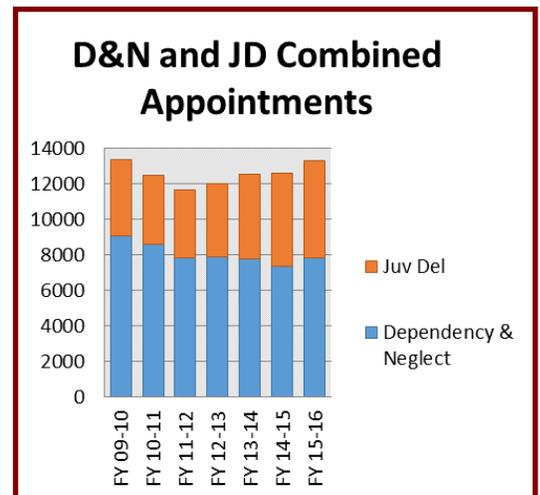
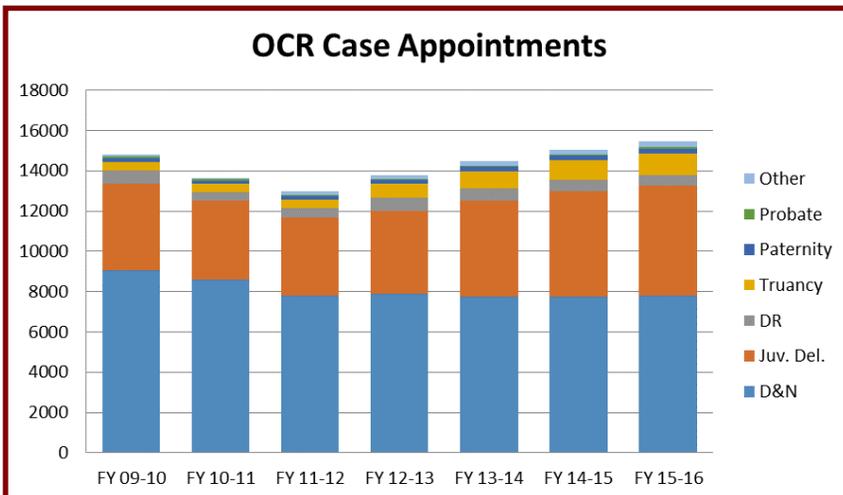
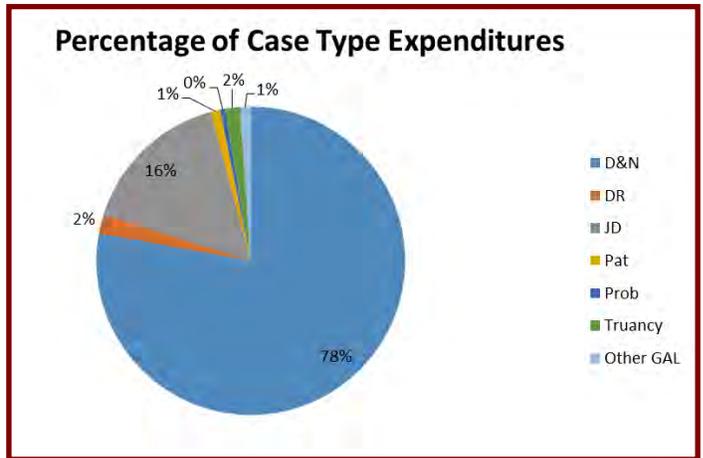
OCR's annual report to the General Assembly was submitted on September 1, 2016. The General Assembly report is one of several reports and documents OCR files with the General Assembly throughout the year. In addition to explaining the difficult work you do and the value of that work, the GA Report explains the functioning of the OCR and the manner in which OCR spends taxpayer dollars. Read the entire report at tinyurl.com/jglmmfo.

The OCR spent 95% of its budget on meeting its statutory mandates—primarily on attorney services for children—and 5% of its budget on central administration. Seventy-eight percent (78%) of OCR's attorney services budget is expended in dependency and neglect cases. OCR contracts with approximately 220 attorneys skilled in juvenile law throughout the state. The average cost of an OCR case in FY 15-16 was \$1,222.00, a \$75 cost per case decrease from the average cost in FY 14-15.

The OCR saw an overall increase in appointments paid from the previous four fiscal years. This fiscal year's appointments amount to a 19% increase over FY 11-12 and a 2.8% increase over FY 14-15 case appointments. The breakdown of appointments for each case type over the last five fiscal years is shown in the chart at the bottom of this page.

The OCR experienced a 6.4% increase in D&N case appointments and a slight decrease in hours billed in D&N cases in FY 15-16 as compared to the previous fiscal year. The average cost per dependency and neglect case was \$1,881 in FY 15-16. D&N expenditures account for 78% of attorney expenditures. Fiscal Year 15-16 continued the trend of increased GAL appointments in Juvenile Delinquency (JD) matters. JD appointments rose 4.1% and the average cost per JD matter decreased by \$24 over FY 14-15 amounts to \$588.

Domestic relations appointments of OCR attorneys decreased by 10% in FY 15-16 to 484 appointments compared to 540 appointments in FY 14-15. OCR saw a 27% decrease in expenditures as the average cost of DR appointments this fiscal year fell to \$706 average cost per case in FY 15-16 from \$875.00 average cost per case in FY 14-15. ♦



Awards & Accolades!

Congratulations to two of Colorado's most recent **judicial appointments!** OCR is pleased to announce that the Governor recently appointed two GALs as District Court Judges. **Susan Blanco**, a GAL from the 8th judicial district, has been appointed in Larimer County, and **Anna Ulrich**, a former GAL in the 12th and an appellate attorney on OCR's Litigation Support List, has been appointed in Saguache County. ♦

Budget Update

OCR remained within its original approved budget and closed fiscal year 2016 with approximately \$240,000 remaining (that reverted to the state's General Fund). Thanks to all of you for entering your end-of-year billing by the July deadline. While we are still early in the fiscal year, OCR expects to remain within its fiscal year 2017 budget without the need for a supplemental appropriation. ♦



Multiple GALs Serving Children in Different Jurisdictions

Children involved in court proceedings in multiple jurisdictions may have their best interests represented by more than one GAL because the court appointed a GAL from the local eligibility list or the first GAL appointed was unable to follow the case to the new jurisdiction. It is critical to the child's best interests that the multiple GALs communicate and coordinate representation and services. While local practice and services available in the jurisdiction may make such coordination challenging, please do communicate in order to avoid inconsistencies in representation and confusion of the child and his/her family. Each GAL may bill for their time coordinating representation as consultation - litigation support / GAL. ♦

GALs in Philly!

Over 16 GALs representing 12 districts in Colorado attended the National Association of Counsel for Children's 39th National Child Welfare, Juvenile & Family Law Conference in Philadelphia. This conference provides an opportunity for GALs to learn about new research, practice innovations, and legal updates to help them in their advocacy work for Colorado's children. The OCR would like to thank the NACC for partnering with us to offer this opportunity this year! ♦



OCR Fiscal Year 2016 Evaluation Results

Last spring, OCR received renewals, verifications or applications from 261 attorneys interested in contracting with the OCR during Fiscal Year 2015-2016. Fifty of the attorneys were new applicants who had not previously contracted with the OCR.

In 2012 the OCR adopted our current three-year contract cycle in an effort to streamline the process for attorneys and to increase the breadth and quality of information available to OCR. While time intensive, the process has proved to be valuable and informative. In FY16 OCR received 200 renewal applications/attorney verifications and 54 new applications. OCR added 14 new contractors in June and July.

OCR conducted nearly 500 courtroom observations involving 74 attorneys and 813 children/youth, and conducted 187 reference interviews. The OCR received 1294 Stakeholder Survey responses concerning 207 attorneys; 378 responses were from judicial officers.

Highlights of the electronic survey responses are shown below:

Question answered (respondents were allowed to answer "Do Not Know")	Strongly Agree or Agree
GAL Possesses relevant advocacy skills	88%
GAL possesses requisite knowledge	88%
GAL familiar with community services	86%
GAL personally attends all court hearings	95%
GAL critically assesses department case plans & permanency plans	76%
GAL is respectful of others involved in the case	79%

Our reference interviews allow us to highlight the tremendous value OCR Attorneys bring to every case:

[Caregiver] likes how everything [GAL] did was based on the child's best interests. [GAL] was always focused on the child every time! It was annoying at first, but [caregiver] recognized that [GAL] was doing everything in the best interests of the child. - *A caregiver's feedback about an OCR Attorney*

Yes, she really got to know the child and her brother on a personal level and knew her better than anyone including the social worker. She was not just a case number and she said that made her feel nice.

- *A child's feedback about her GAL*

I just want her to know that I was really grateful to have her as my GAL.

- *A youth's feedback about an OCR attorney*

He is a really nice guy and if I ever need a lawyer in the future, he will be my first call.

- *A youth's feedback about an OCR attorney*





2016 COBALT Service Project

The Colorado Bar Association Leadership Training ("COBALT") 2016 Class is excited to unveil its service project, Season to Bid: A

Fundraiser for Civil Legal Aid. The goal is simple: to raise as much as \$20,000 auctioning tickets to benefit the Legal Aid Foundation of Colorado, one of the funding sources for Colorado Legal Services (Colorado's civil legal aid program). Please visit:

www.biddingowl.com/cobalt2016 for the chance to bid on concert tickets, sporting events, theatre, and more. You may score some amazing tickets for a great price and help an incredibly important cause at the same time! ♦



Recent News & Resources



➔ Effective August 1, 2016, the Social Security Administration (SSA) implemented a one-year trial policy to allow foster youth of all ages with disabilities to apply for Supplemental Security Income (SSI) benefits six months before they leave care. The **Juvenile Law Center toolkit for advocates to assist youth with applying for SSI** can be found at tinyurl.com/zmwoxhq.

➔ The U.S. Department of Education released **guidance to states and school districts on the new provisions in the Every Student Succeeds Act (ESSA)** for supporting homeless youth. The new provisions address the needs of homeless individuals, and ensure educational rights and protections for homeless children and youth. Find more by visiting tinyurl.com/jlcdzwq.

Updates on the implementation of the Every Student Succeeds Act and education attainment for children in foster care can be found at the Colorado Department of Education ESSA blog at tinyurl.com/zcxwgch.

➔ **Youth Voices For Permanency: Courtroom Guide on How Courts and Judges Can Make a Difference**, Voice for Adoption (May 2016). Visit tinyurl.com/hpjrm7m to find the full guide.

The Courtroom Guide above highlights **"Four Steps Judges and Court Professionals Can Take to Promote Permanency for Youth in Foster Care"** and includes "Questions Youth Would Like Judges to Ask."

- ✓ Promote Positive Attitudes Toward Permanency
- ✓ Ensure That Youth Participate
- ✓ Limit Group Care, Support Family-Based Placements
- ✓ Check That Permanency Planning is Being Done Well

➔ **The Role of the Court in Implementing the Older Youth Provisions of the Strengthening Families Act**, ABA Center for Children and the Law, author Jennifer Pokempner (Feb, 2016). See tinyurl.com/ha5swjs. ♦



Training Updates

➤ Each and every day, our attorneys provide legal representation to our state's most vulnerable and at-risk children. The work involves complicated legal, psychological, and emotional issues and they spend endless hours advocating for children. **This year we are partnering with our attorneys to develop a plan for cultivating a learning and practice environment that supports excellence in legal representation.** If you are interested in being a part of this effort, please contact Melinda Taylor at melindataylor@coloradochildrep.org.



➤ OCR wants to shout out to **Alison Jensen** and **Christine Thornton** for coming up with the idea and working to put together the 9/21 training for therapists on the LAN decision. Over 65 therapists attended in person and 40 participated via webinar, contributing to a better understanding of the role of the GAL as it relates to this important protection for children involved in D&N proceedings. Thank you also to the GALs who attended this training, creating an invaluable opportunity for therapists and GALs to dialogue with one another about this issue.

➤ At our recent Fall Conference, we integrated a session on issue-specific workgroups so participants could brainstorm and develop legal strategies to target solutions to these issues. In response to that session, it is clear that ICWA and LGBTIQQA are challenging issues to many of you. If you are interested in participating in a workgroup to continue strategizing around the issues we would welcome your participation. Please contact Melinda Taylor at melindataylor@coloradochildrep.org and let her know which topic you would like to work on.

➤ During FY 15-16, OCR offered 83.2 CLE training hours! View details, register for trainings, and/or subscribe to future email notices at tinyurl.com/trainingtues. The OCR website also provides access to 235 CLE hours of archived trainings. Visit our website at <http://www.coloradochildrep.org/training/materials/> to find archived videos. ♦

MISSION STATEMENT

The mission of the Office of the Child's Representative (OCR) is to provide competent and effective legal representation to Colorado's children involved in the court system because they have been abused and neglected, impacted by high conflict parenting time disputes, or charged with delinquent acts and without a parent able to provide relevant information to the court or protect their best interests during the proceedings.

OCR Board of Directors

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