



Colorado Office of the Child's Representative

1300 Broadway Ste 320, Denver 80203 | P (303) 860-1517 | F (303) 860-1735 | www.coloradochildrep.org

Summer 2018 Newsletter

Notes from the Executive Director

As I write these notes, my retirement date of August 1 is rapidly approaching, and I can't help but look back at how far we've come as an organization.

I remember the first time I met OCR's first Executive Director, Theresa Spahn, when she invited me to be part of a panel interviewing guardians *ad litem* in OCR's initial contracting process. One of the questions on our list was, "Do you think it is important to see kids where they live?" Unbelievable as it seems, some attorneys said that wasn't important. At that time, GALs were paid a flat fee, and some had so many cases they couldn't possibly meet all of the children whose interests they represented.

A few years later, I volunteered at OCR. I vividly remember going to the OCR office on Pennsylvania Street for the first time. I was sure I was in the wrong place, as the office was in a tiny house with the dining room serving as a conference room and balconies in each bedroom/office. At that time, Sheree Coates was processing all payments as paper bills and we ran out of storage space in the scary basement where we stacked hundreds of boxes of bills. Our application process was also paper-based. Each year attorneys had to submit a separate paper application that would be filed in District binders that could be multiple volumes. In those early years, we traveled around the state and met with judges who were still not always pleased that a new organization was now charged with contracting with GALs. We also met multiple stakeholders, many of whom really weren't sure exactly what a GAL did or why they should be paid.

In the 14 years I've worked at OCR, I've seen tremendous changes in the organization. We've grown our budget from \$9 million to

\$26 million. Our attorney rate has increased from a flat fee to a well-deserved \$80 per hour as of this July. Our staff has increased from four to nine employees, but we still manage to spend 95% of our budget directly on attorney services. We have clear practice standards for best interest representation in both child welfare and delinquency cases and can use data from our billing system to measure whether we are meeting those expectations. We've transitioned to three-year contracts and include court observations and feedback from children and families in our evaluation process. OCR is recognized as a resource by legislators, judicial officers, and others. OCR has a seat at every table addressing issues impacting children involved in court proceedings.



The one thing that hasn't changed in 14 years though, is your commitment to work hard for the most vulnerable of all, kids involved in complex legal proceedings. Of all the things I have worked on, I am proudest to simply have known all of you. You are amazingly strong, smart lawyers standing up for kids! You work on important issues that matter to individual children, entire families, and whole communities. Having been some small part of that work has been the privilege of my life. I will miss each and every one of you outstanding advocates.

If I can ever be of any help to you, please reach out to me. After August 1, you can contact me at linda.weinerman@gmail.com.

God bless.♦


Linda Weinerman, Executive Director



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Summer Legal Review

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

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■ 1. Colorado Supreme Court

People in Interest of R.S., 2018 CO 31. In this decision, the Colorado Supreme Court considers whether a non-adjudication order is a final order for the purposes of appeal. Father's adjudicatory jury trial occurred simultaneously with mother's adjudicatory court trial. Primary allegations were that father sexually molested his stepdaughter S.M.-L. (who resided with R.S. and mother), mother did not believe S.M.-L.'s outcry, and mother stated that S.M.-L. lied about the abuse. The jury found that there was an insufficient factual basis to support a finding that R.S. was dependent and neglected. DHS moved for judgment notwithstanding the verdict (JNOV). The juvenile court denied the motion, indicating that it lacked jurisdiction to address the motion because its jurisdiction over father terminated when the jury found an insufficient factual basis to support a finding of dependency and neglect. The juvenile court dismissed father from the petition and adjudicated R.S. dependent and neglected "in regard to" mother and adopted a treatment plan. The case continued with mother maintaining custody of R.S. under DHS's protective supervision.

DHS appealed jury verdict regarding father. The Court of Appeals dismissed the appeal for lack of jurisdiction, reasoning that neither section 19-1-109(2)(b) nor section 19-1-109(2)(c) permits an appeal from a "no adjudication" order, which is not specifically referenced in those subsections. The Court of Appeals did not consider whether section 19-1-109(1), which permits an appeal of any final order as defined in section 13-14-102(1), authorizes an appeal of a no adjudication order.

In its decision, the Supreme Court disagrees with the Court of Appeals' reliance on section 19-1-109(2)(b) and (c). Relying on the plain text of the statute and its legislative history, the Court concludes that "subsection (1) codifies a general rule of finality, and subsection (2)(b) and (2)(c) provide certain exceptions to that general rule by authorizing the appeal of certain orders from dependency or neglect proceedings that would not otherwise be considered 'final.'" Applying the final order analysis to the dismissal order at issue, the Court holds that because the jurisdiction of the court continued due to the adjudication pertaining to mother, the dismissal of the father did not constitute a final judgement. The Court therefore affirms the Court of Appeals' dismissal of the appeal. As the trial court did not certify the order dismissing the father as a final order under Rule 54(b), the Court does not address the applicability of this exception to the finality rule.

People in Interest of L.M., 2018 CO 34. In this case, the Supreme Court holds that when a dependency and neglect proceeding is pending, the State can only terminate the parent-child legal relationship through the procedures set forth in Article 3 of the Children's Code and may not use the procedures set forth in Article 5.

In the dependency and neglect proceeding, the GAL filed a motion to terminate parental rights. The mother chose not to contest the motion and relinquished her rights. Once the mother relinquished her rights, the department filed a motion to terminate the father's parental rights pursuant to Article 5 of the Children's Code. The juvenile court terminated the father's parental rights pursuant to Article 5, and the father appealed. A division of the Court of Appeals reversed the termination and remanded for further proceedings consistent with Article 3.

Referencing the distinct purposes of Articles 3 and 5 and the distinct procedures enacted to effectuate those purposes, the Supreme Court holds that in cases like the one before it, "we perceive the respective procedures to conflict." The Court notes the following distinctions between Articles 3 and 5: while Article 5 "establishes a streamlined and expedited process" for terminating the legal relationship between a parent and a child, Article 3 procedures serve to protect children "while seeking to repair and maintain family ties"; Article 5 cases generally commence upon the petition of a parent, while the State initiates Article 3 cases; an adjudication of dependency or neglect overcomes the presumption that the parent is acting in the child's best interests; and Article 5 "seems to presume the absence of a pending termination proceeding." While the Court indicates that it can appreciate the reasons for the voluntary relinquishment effectuated by mother, it holds that "[o]nce the State commences a proceeding under Article 3, the parents are entitled to all of the substantive and procedural protections provided therein, and their parental rights can only be terminated in accordance with those procedures."

■ 2. Colorado Court of Appeals

People in Interest of B.C., 2018 COA 45. In this appeal of an order terminating the parent-child legal relationship, the Court of Appeals reverses based on the juvenile court's failure to hold a dispositional hearing and approve an appropriate treatment plan. Rather than holding a dispositional hearing after adjudicating the child dependent or neglected, the juvenile court ordered the de-

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partment to submit a treatment plan; the order stated that if no objections were made, the treatment plan would be adopted and made an order of the court. The order did not include a finding that the treatment plan was appropriate. Citing the provisions in section 19-3-507(1) requiring the court to hold a dispositional hearing and approve an appropriate treatment plan, the Court holds that "these formal steps may not be ignored." The Court reverses the judgment and remands for further proceedings.

People in Interest of I.B.-R, 2018 COA 75. In this decision, the Court of Appeals remands for lack of ICWA compliance

The relevant procedural history follows. Shortly after filing the case, the father told the department that he had Cherokee heritage. Approximately a month later, he told the court that his father's lineage descended from a tribe in Arkansas, but he did not know the tribe. The department did not notify any tribe or the BIA at that time. After filing a motion to terminate parental rights, the department sent notice of the termination proceedings to the three federally recognized Cherokee tribes. Each tribe responded by reporting non-membership. The department also notified the BIA. This notice included the father's indication of his Cherokee heritage, but did not mention the reported affiliation with the Arkansas tribe. The BIA replied, indicating that the Cherokee tribes had been notified. Approximately eight months after the filing of the motion to terminate, the court terminated parental rights. The court did not make any further inquiry regarding the children's possible Indian status.

The Court of Appeals holds that the department sent insufficient notice to the BIA because the notice did not inform the BIA that the father reported a tribal connection to Arkansas. The Court rejects the father's argument that the department should have conducted research to determine whether any federally recognized tribes were located in Arkansas. However, the insufficient information in the department's notice to the BIA "frustrated the BIA's ability to fully discharge its responsibility under ICWA to identify potentially relevant tribes." The Court sets specific instructions the juvenile court must follow upon remand.

People in Interest of C.Y., 2018 COA 50. In this case, the Court of Appeals holds that the juvenile judge erred in not recusing herself from the termination proceeding. The judge previously served as GAL on a different case involving the mother's oldest child. This information was discovered during the second day of the termination hearing, when the mother testified about her involvement in prior dependency and neglect cases. Reference to a Douglas County case led to the judge's review of the records and realization that she served as GAL for a child in one of those cases. The judge informed the parties, and the mother asked the judge to recuse herself. The judge denied the request, reasoning that she had no specific memory of the case, had stopped serving as GAL on the case prior to the termination phase of that case (due to a transfer of that case to Jefferson, then Arapahoe, Counties), and the prior GAL representation resulted in no conflict in the present case. Mother renewed this request on the third day of the termination hearing, when the minute orders from the prior case indicated the judge did serve as GAL during the termination hearing in Arapahoe County. The judge again denied the request and refused to take judicial notice of the Arapahoe County court record because the minute orders errone-

ously identified her as GAL. Ultimately, the judge terminated mother's parental rights.

The Court of Appeals holds that under these circumstances, the judge abused her discretion by not recusing herself. Referencing the Code of Judicial Conduct's standard that a judge must recuse himself or herself whenever the judge's involvement with a case might create an appearance of impropriety, the Court notes that the judge advocated a position adverse to the mother in the prior case. While this adversity alone may not automatically require reversal, the prior case "was highly relevant" during the termination hearing, which involved consideration of whether mother's conduct or condition was unlikely to change within a reasonable time, a determination requiring consideration of whether the mother had previously had her parental rights terminated. The Court reverses the judgement and remands the case for a new termination hearing.

■ 3. Legislative Update

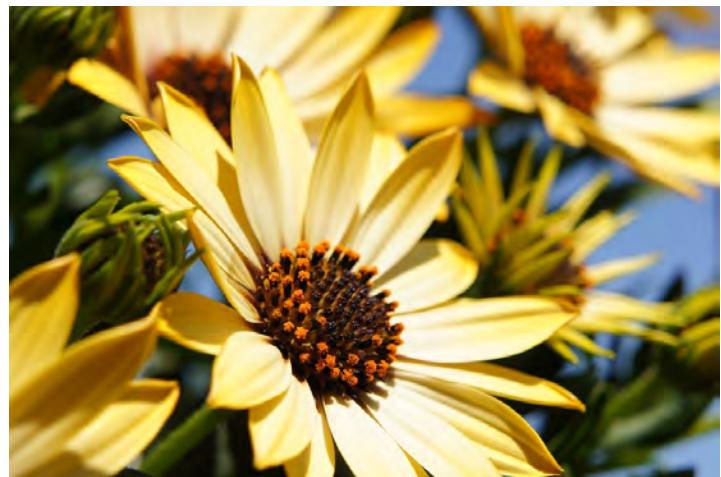
Important Bills Passed this Year with General Application

The Families First Prevention Services Act (FFPSA) was signed into law as part of the Bipartisan Budget in February 2018. FFPSA is the biggest reform to child welfare funding in over a decade. Among other things, the FFPSA focuses on prevention services and incentives to reduce congregate care. The Department of Health and Human Services will be issuing further guidance regarding the FFPSA in October 2018. OCR is a member of the strategic planning committee Colorado has convened, and will provide updates as we get them.

HB18-1257 Correction to Venue Statute corrects a drafting error which permitted change of venue only *before* adjudication enters. The statute now permits change of venue only *after* adjudication enters, consistent with statutory intent.

HB18-1348 Child Welfare Information and Services expands foster parents' access to information necessary to meet the mental, emotional, behavioral, or trauma needs of a current or potential foster child. Although the bill includes access to such children's educational records and online tools, it does not impact the privilege attached to their mental health records. The bill also provides some Child Care Assistance Program (CCAP) assistance to foster and kinship families.

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HB18-1094 Children and Youth Mental Health Treatment Act extends the Child Mental Health Treatment Act indefinitely, and changes the act in a variety of ways, such as including a provision for residential care for children who are not eligible for Medicaid, providing a continuum of services, broadening definitions, and adding an appeal process. The bill aims to help families access services and supports, thereby avoiding the child welfare system.

HB18-1233 Consumer Reporting Agency Security Freeze Minors authorizes a parent or legal guardian of a minor under 16 to request a security freeze with a consumer reporting agency.

SB18-254 Child Welfare Reforms addresses many reforms to the funding structure of child welfare services and is the first bill to include FFPSA requirements. Some reforms include: developing a program to service children and youth with intellectual and developmental disabilities placed in licensed out-of-home care; increasing the reimbursement rate to counties to 90% for adoption and guardianship subsidies; changing the child welfare allocation formula by preventing counties from negotiating provider rates below the base rate set by the state and allowing some incentive payments; requiring each county to analyze available in-home, family-like, and out-of-home placement settings, including an evaluation and plan to expand if necessary; and creating a taskforce to analyze, evaluate, and establish processes to comply with FFPSA. OCR is a member of the taskforce and will keep GALs informed regarding Colorado's plan.

Important Bills Passed this Year Related Primarily to Dependency and Neglect Cases

HB18-1104 Family Preservation for Parents with Disability establishes protections for parents with disabilities in a variety of cases (including dependency and neglect cases) in a manner consistent with the Americans with Disabilities Act (ADA). The changes include a requirement that reasonable accommodations and modifications be made to avoid nonemergency removal and be included in the disabled parent's treatment plan.

HB18-1306 Improving Educational Stability for Foster Youth (<https://tinyurl.com/yayeckvr.pdf>) aligns state law with the Federal Every Student Succeeds Act (ESSA). *OCR encourages every GAL to read this bill thoroughly, as it contains a great deal of important information related to the education of homeless youth and children placed in foster care.* The bill requires a full-time foster care education coordinator within the Department of Education (DOE) to begin in fiscal year 2019-20, mandates quicker transfer of student information between schools, permits immediate enrollment of students placed in foster care, provides additional flexibility with credit and graduation requirements for children placed in foster care who have moved schools, requires a data sharing agreement between the DOE and Colorado Department of Human Services (CDHS), establishes an educational stability grant program, and requires counties to provide transportation and case planning to allow children to remain in their school of origin (if doing so is in the best interests of children) and coordinate with school districts to establish systems-level plans for transportation.

HB18-1319 Services Successful Adulthood Former Foster Youth allows counties to use their current core services funds to provide services to youth aged 18-21 who are no longer in the child welfare system, including children who are not Chafee-eligible. The bill also establishes a Former Foster Care Youth Steering Committee to make recommendations on how to best serve former foster youth. OCR will participate in this committee and work to ensure youth involvement.

HB18-1328 Redesign Residential Child Health Care Waiver initiates a stakeholder process to prepare and submit a redesigned Children's Habilitation Residential Program (CHRP) waiver that allows for home- and community-based services.

HB18-1346 Abuse of Youth Under 21 in Care of Institution includes youth aged 18-21 in the definition of institutional abuse.

Important Bills Passed this Year Related Primarily to Juvenile Delinquency and/or Truancy Cases

HB18-1050 Competency to Proceed Juvenile Justice System establishes specific definitions of "competent to proceed" and "incompetent to proceed" for juveniles in the juvenile justice system.

HB18-1156 Limit Penalties for Juvenile Truancy removes truancy from the definition of a delinquent act, establishes a goal of ensuring youth have the opportunity to obtain quality education, and requires a best interests determination prior to sentencing a youth to detention.

HB18-1344 Relief from Collateral Criminal Consequences provides juvenile courts authority to enter an order for collateral relief, using the same process as criminal courts.

SB18-213 Transfer Academic Credits for Division of Youth Services Youth requires receiving schools and school districts to follow the same transfer policies for Division of Youth Services (DYS) placements as they do for other out-of-home placements.

SB18-154 Juvenile Planning Committee Crossover Youth Plans requires local juvenile services planning committees to devise a plan to manage crossover youth.

Bills that Were Killed and Likely to Come Back Next Year

- ▶ SB18-084 Protection Minor Victims of Human Trafficking,
- ▶ SB18-224 Subsidization Adoption Special Needs, and
- ▶ HB18-1390 Safe Families.

If you have questions or comments, please contact OCR's Legislative Liaison/Staff Attorney Ashley Chase at ashley.chase@coloradochildrep.org. ♦



Tips for Interacting with Youth with Disabilities Before, During, and After Delinquency Hearings

Hearings can be the scariest and most mystifying components of delinquency proceedings, especially for youth with disabilities. Fortunately, GALs representing the best interests of youth with disabilities in delinquency proceedings have exciting

opportunities before, during, and after hearings to provide powerful protective measures to provide safe and supportive courtroom environments that promote the due process rights of such youth. Some of those opportunities are outlined below.

Before the Hearing

- ✓ Review records, including the youth's IEP, 504, and/or psychological reports.
- ✓ Consult with parents, guardians, therapists, mentors, and other trusted adults.
- ✓ Determine whether the youth is taking medications as prescribed.
- ✓ Ask the youth about what makes him/her uncomfortable about court.
- ✓ Review courtroom players and procedures with the youth.
- ✓ Encourage him/her.
- ✓ Prepare strategies for the youth's unpredictable mood swings (*e.g.*, fidget tools, drawing paper, and/or breaks).
- ✓ Remind him/her to ask questions if s/he does not understand something.
- ✓ Ask the youth what time would be best for hearings to be scheduled.
- ✓ Ask the youth restate information to ensure comprehension.

During the Hearing

- ✓ Request a closed hearing, if necessary.
- ✓ Sit or stand close to the youth to monitor him/her.
- ✓ Make a record of the youth's needs and request accommodations (*e.g.*, adjusting the seating arrangement or lighting, permitting breaks or opportunities for the youth to stand or move, using language accessible to the youth, providing additional time for the youth to ask or respond to questions). 42 U.S.C. §12101 *et seq.*; *Tennessee v. Lane*, 541 U.S. 509, 532 (2004).

After the Hearing

- ✓ Ask the youth to summarize the hearing. Communicate important information s/he does not summarize.
- ✓ Ask the youth how comfortable s/he felt during the hearing. Explore what could occur in the future to make him/her feel more comfortable.
- ✓ Encourage him/her.
- ✓ Update mental health professionals so any courtroom issues can be addressed in therapy.
- ✓ Consult with defense counsel concerning the youth's requests and your future rec-



Contributed by Bradley M. Bittan, who provides Education Litigation Support for OCR and handles delinquency appointments in the 2nd judicial district.

Recent News & Resources



2018 Kids Count in Colorado! <https://tinyurl.com/ydc528bx> a report issued by the Colorado Children's Campaign, provides county-specific data regarding children's demographics, economic security, health, and education. "From plummeting infant mortality rates to a concerning rise in teen suicides, the anniversary edition of the KIDS COUNT report offers a rare long-term look at how Colorado kids are faring—and what policymakers need to be aware of as they work to improve Colorado for the next 25 years."

Aged Out <https://tinyurl.com/y8yvqpcc> is a four-part series of articles written by Jennifer Brown documenting the lives of youth who left the foster care system.

Child Placement Best Practices to Support Permanency and Preservation Across the Continuum <https://tinyurl.com/y8efnw6h>, an article written by Debbie Wynne and published by the National Council for Adoption, discusses six principles for ensuring effective child placement and permanency (e.g., all children have the right to grow up in a family, children's best interests must be paramount in placement planning, and efforts to preserve families must be made.)

Human Trafficking Search is a non-profit organization that "seeks to raise awareness and prevent and eliminate human trafficking worldwide." Its home page <https://tinyurl.com/ybzgdr4q> defines, answers FAQs about, explains the effects of, describes the signs of, and defines the types of, human trafficking. A subsequent page <https://tinyurl.com/yakzs4pa> provides resources including a glossary, articles, and research guides specific to geographic regions.

ICPC Sending State Check Lists <https://tinyurl.com/yahteaq9> and *ICPC Receiving State Check Lists* <https://tinyurl.com/ybbhae7d>, issued by AdoptUSKids, provides step-by-step procedures for sending and receiving placements through the Interstate Compact on the Placement of Children (ICPC).

"Promoting Permanency for Teens: A 50 State Review of Law and Policy explores the diversity of state policies and practices for teens in foster care in two potentially competing areas: teens' need for a permanent connection to a family (either their birth family, or an adoptive or guardian family), and teens' developmental and practical needs in transitioning to legal adulthood, independence, and self-sufficiency. In the context of these concurrent goals, policies, practices, and programs can serve as incentives or disincentives to pursuing permanency for teens." <https://tinyurl.com/ya3nn2e8>.

Reinstatement of Parental Rights <https://tinyurl.com/y93uxd7l>, a memorandum issued by the Colorado Department of Human Services (CDHS), outlines reinstatement regulations. Contents include youth eligibility requirements, parental assessments, Colorado Child Welfare Information System (also known as Trails) documentation, and court processes.

Tip sheets with steps for parents and caregivers to take to strengthen families <https://tinyurl.com/ya9y6vyp>, published by the United States Department of Health and Human Services, are in an easy-to-read format in English and Spanish. Topics include finding housing, protecting youth from human trafficking, preventing child sexual abuse, and raising children with developmental delays and disabilities. ♦





Financial Report

Colorado's Fiscal Year 2018-19 budget (also known as the Long Bill) has been signed by the governor. The OCR was funded for all of its budget requests, which included:

- ▶ an increase of \$5.00 per hour for contract attorneys (to \$80.00),
- ▶ a 6.6% increase in the hourly paralegal rate (to \$32.00),
- ▶ an increase of \$14.00 per hour for social service professionals (SSPs) (to \$44.00),
- ▶ funding for a full-time SSP Coordinator to increase GALs' access to SSPs throughout the state,
- ▶ staff reclassifications to align duties and compensation, and
- ▶ converting a part-time OCR staff administrative support position to full-time.

The OCR has successfully transitioned to its redesigned CARES case management/billing system. The OCR anticipates closing out the current fiscal year within its approved appropriations.



Welcome New OCR Staff

Brandy Lombardi is the new OCR Administration and Accounting Specialist, responsible for processing attorney payments, answering attorney questions related to billing, overseeing Human Resources and Administrative matters, and assisting OCR staff on miscellaneous projects. Brandy is a Colorado native whose love for the ocean has her traveling from coast to coast. Brandy earned her Bachelor of Arts in Communication Management with a Minor in Education from the University of Colorado at Denver. ♦



CARES Handbook

Please find the new *CARES Handbook* at <http://www.coloradochildrep.org/attorney-center/billing/>.

When you first logged into new CARES, OCR provided several documents/instructions tailored to the transition from old CARES to new CARES. This new handbook can replace those documents/instructions and serve as a quick reference guide to the main functions of new CARES and basic troubleshooting. The handbook also contains many CARES tips.

Please contact Rebecca Garrison at rebeccagarrison@coloradochildrep.org with questions or suggestions for future CARES revisions. ♦

Office of the Child's Representative

MISSION

The mission of the Office of the Child's Representative (OCR) is to provide effective legal representation to Colorado's children involved in the court system because they have been abused and neglected, impacted provide relevant information to the court or protect their best interests during the proceedings. As a state agency, the OCR is accountable to the State of Colorado to achieve this mission in the most cost-efficient manner without compromising the integrity of services or the safety and well-being of children. The OCR is committed to ensuring that its attorneys provide these children, Colorado's most vulnerable and margin-alized population in the courts, the best legal services available to protect and promote their safety and well-being and to have their voice heard throughout all aspects of a case.

VALUES

1. Accountability: Colorado's children, attorneys, and taxpayers can count on OCR to ensure that each decision we make and action we take advances our mission in a fair and transparent manner.

2. Efficiency: OCR strives to accomplish its mission and conserve resources by streamlining efforts, adhering to deadlines, resolving conflict constructively, and honoring well-defined projects, processes, and roles. We balance our drive to achieve with thoughtful planning and implementation.

3. Empowerment: OCR cultivates an environment of respect and honesty. We value the experience and expertise of the children we serve, our contract attorneys, and our staff. We invest time to connect, focus on strengths, value feedback, and recognize success. We support each other in our mission to empower children.

OCR Board of Directors

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