

OFFICE OF RESPONDENT PARENTS' COUNSEL

ANNUAL PERFORMANCE REPORT



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I. Agency Overview

The Office of Respondent Parents' Counsel (ORPC) is an independent government agency within the State of Colorado Judicial Branch and is vested with the oversight and administration of Respondent Parents' Counsel (RPC) representation in Colorado. The agency opened on January 1, 2016, and assumed oversight for RPC attorneys on July 1, 2016.

The United States Supreme Court recognized that the “Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 66 (2000). As former United States Supreme Court Justice John Paul Stevens highlighted more than thirty years ago, there is little that is “more grievous” than depriving a parent of the right to raise one’s child, including even a prison sentence. *Lassiter v. Department of Social Services*, 452 U.S. 18, 59 (1981) (Stevens, J., dissenting). This deprivation of a parent’s rights is what all RPC tirelessly defend against and is the very heart of RPC practice.

In Colorado, an indigent respondent parent has a statutory right to appointed counsel to protect this fundamental right to parent. *See* § 19-3-202, C.R.S. (2020). Prior to the creation of the ORPC, no agency existed in Colorado exclusively dedicated to parent representation. As the Colorado General Assembly has declared, respondent parents’ counsel “plays a critical role in helping achieve the best outcomes for children involved in dependency and neglect proceedings by providing effective legal representation for parents in dependency and neglect proceedings, protecting due process and statutory rights, presenting balanced information to judges, and promoting the preservation of family relationships when appropriate.” § 13-92-101, C.R.S. (2020).

A study conducted on respondent parent representation in Colorado prior to the creation of this office found that RPC representation is “typically adequate but rarely proficient.”¹ The ORPC was established to address this performance gap, as the cause of “sub proficient practice is not the unwillingness of counsel to provide proficient services but rather the existence of practice, administration, and court systems which discourage optimal practice.”²

A. Statutory Mandate

To protect and oversee the appointment of these critical counsel, the Office of Respondent Parents' Counsel (ORPC) was established on January 1, 2016, by Senate Bill 14-203³ as an independent office in the Judicial Branch. House Bill 15-1149 established the Respondent Parents' Counsel Governing Commission and provided that all existing and new state-paid RPC appointments be transferred to the ORPC on July 1, 2016. The ORPC’s enabling legislation charges and entrusts the ORPC, at a minimum, with enhancing the provision of respondent parents’ counsel by:

1. Ensuring the provision and availability of high quality legal representation for parents in dependency and neglect proceedings;

¹ The National Center for State Courts, National Council for Juvenile and Family Court Judges, and National Association of Counsel for Children, *State of Colorado Judicial Department Colorado Needs Assessment*, (March 2007) (hereinafter “*Assessment Report*”), available at <https://cdm16501.contentdm.oclc.org/digital/collection/famct/id/177>.

² *Id.* at p. 75.

³ §§ 13-92-101 - 104, C.R.S. (2022).

2. Making recommendations for minimum practice standards;
3. Establishing fair and realistic state rates by which to compensate RPC; and,
4. Working cooperatively with the judicial districts to establish pilot programs.

Additionally, the ORPC Contract, Billing Policies and Procedures, and Chief Justice Directive 16-02 (CJD 16-02), titled “Court Appointments through the Office of Respondent Parents’ Counsel,” govern the appointment, payment, and training of respondent parents’ counsel.

B. Mission Statement and Strategic Plan

The ORPC’s mission is to protect the fundamental right to parent by providing effective legal advocates for indigent parents in child welfare proceedings. This right is protected when a parent has a dedicated advocate knowledgeable about child welfare laws and willing to hold the state to its burden. The office’s duties are to provide accountability, training, and resources, develop practice standards, and advocate for systemic and legislative changes in Colorado.

The ORPC believes that every child deserves to have their parent represented by the best lawyer in town. To achieve this ideal, the ORPC has identified five essential pillars that support and inform its work.

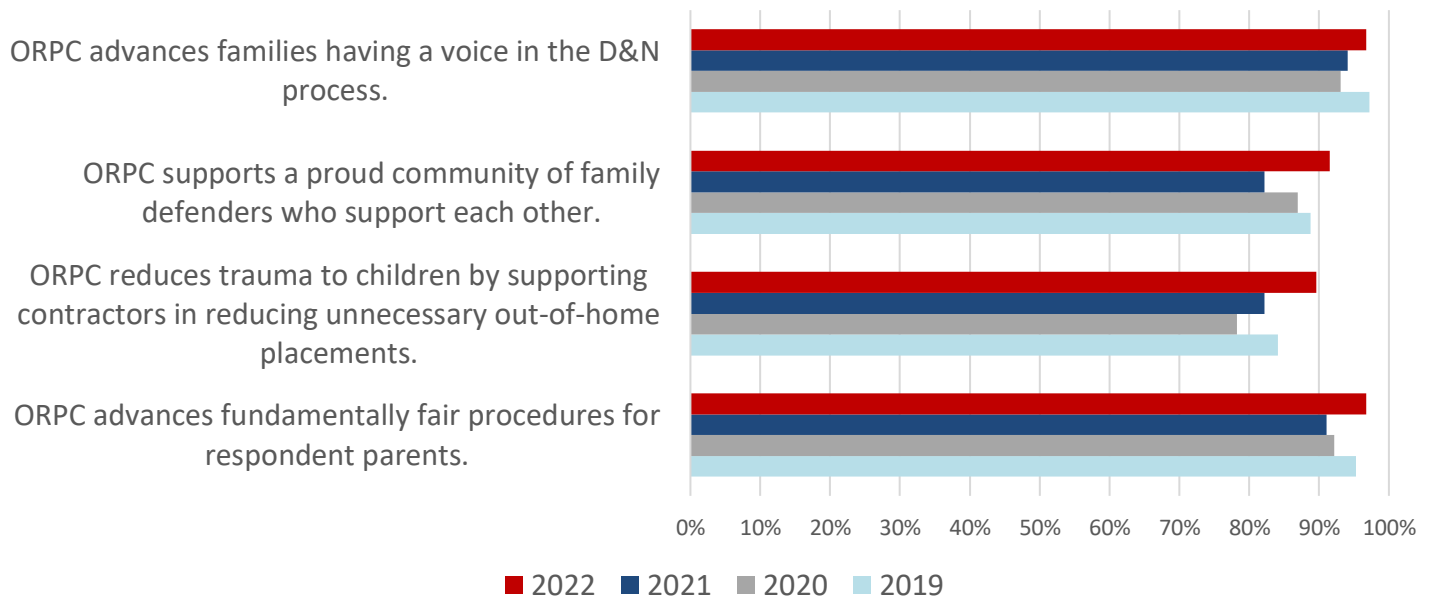
1. **Systems are Fair and Followed** – Procedural fairness occurs when parents receive access to excellent interdisciplinary teams through engagement, recruitment, and retention of contractors who have access to the resources necessary to give dignity and fairness to families and to ensure procedures are followed.
2. **Family Voice Leads** – Family voice is strong when parents are engaged and present at every stage of their case and supported by their family defense team, so they may be heard by the system and play an active role in their case planning.
3. **Decrease Trauma to Children** – Trauma to children is reduced when parents are provided with preventative or in-home supports to keep children with their family of origin, when unnecessary removals are rare, and when children can safely stay with their family.
4. **Family Defenders Have a Strong Community** – Parents have better representation when there is a strong community of family defenders who have access to training, access to litigation and practice support, and who are celebrated for every kind of success in their parent advocacy.
5. **ORPC is Recognized, Respected, Productive and its Staff is Strong** – The ORPC achieves its statutory mandate when its reputation, performance, staff strength, and adherence to its values, which include the Five Pillars of the ORPC, have a positive impact on the child welfare system

The ORPC issues an annual survey to contractors to solicit essential feedback regarding the agency’s performance, availability and value of resources offered, training needs, and challenges to effective advocacy for family defense teams. In the 2022 Annual Contractor Survey, contractors weighed in on the extent to which they agreed or disagreed with the below statements about the ORPC’s essential pillars. The chart below shows the percentage of ORPC contractors that strongly agree or agree with these statements over the last four years. In 2022, for example, 97% of contractors surveyed strongly agreed or agreed that ORPC advances family voice in the dependency and neglect process and advances fundamentally fair procedures for respondent parents. According to ORPC contractors from 2019 to 2022, the ORPC has improved, or for one measure maintained, its performance in each of these areas. In 2022, at least 90% of ORPC contractors agreed or strongly agreed with the below statements about the ORPC's essential pillars.

2022 ORPC Annual Contractor Survey

Please indicate the extent to which you agree or disagree with the following statements about the ORPC’s pillars.

% Strongly Agree and Agree



II. Major Functions

The ORPC is charged with enhancing the provision of respondent parent representation across the State of Colorado and with providing oversight to contractors appointed to represent indigent parents and serve on interdisciplinary teams in child welfare cases. The items below detail the major functions of the agency and the efforts by the ORPC to meet its four primary legislative mandates, while upholding the five essential pillars of the agency.

A. Systems are Fair and Followed

Attorney Evaluations: The ORPC’s statutory mandate to provide parents with high quality legal representation is the primary means for the agency to ensure that the Colorado child welfare system is both substantively and procedurally fair. To further this mandate, the agency has created an objective attorney contracting process that consists of a written application, writing sample assessment, references, assessment of attorney qualifications and commitment to the work, and an interview. Applications are scored by two staff attorneys using a matrix to maximize objectivity and consistency in the review of applicants. Once an attorney is selected for a contract, their work is monitored periodically through the agency’s courtroom observation process.

After the ORPC was created, the federal Administration on Children, Youth and Families Children’s Bureau (hereinafter the Children’s Bureau) issued an information memorandum about the importance of high quality legal representation for all parties in child welfare proceedings.⁴ The Children’s Bureau emphasized the “[n]umerous studies and reports” indicating the importance of competent legal representation for parents, children, and youth in ensuring that legal rights are protected.⁵

The Children’s Bureau noted evidence supports that providing legal representation for parties in child welfare proceedings contributes to:

- Increases in party perceptions of fairness;
- Increases in party engagement in case planning, services, and court hearings;
- More personally tailored and specific case plans and services;
- Increases in visitation and parenting time;
- Expedited permanency; and
- Cost savings to state government due to reductions of time children and youth spend in care.⁶

Further, the memo points to the demonstrated link between the provision of competent legal representation and increases in procedural justice, fairness, and engagement of families in the child welfare system.⁷ The ORPC’s intensive contractor review and selection process promotes the appointment of family defense attorneys who have adequate experience and are qualified to handle child welfare cases on behalf of respondent parents. The courtroom evaluation process helps to ensure that an attorney doing work on behalf of parents is meeting the criteria for excellent representation suggested by the Children’s Bureau. It also fosters RPC who are client-centered, ethical, and prepared for proceedings.

During the past year, the ORPC has successfully increased the number of high quality RPC in rural jurisdictions, though recruitment and retention of attorneys in these locations continues to present a significant challenge. Moving forward, the ORPC will continue working to increase diversity among RPC applicants, increase the total number of RPC applicants across the state, enhance the electronic

⁴ U.S. DEP’T OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES – CHILDREN’S BUREAU, HIGH QUALITY LEGAL REPRESENTATION FOR ALL PARTIES IN CHILD WELFARE PROCEEDINGS, ACYF-CB-IM-17-02 (2017), available at <https://www.acf.hhs.gov/cb/policy-guidance/im-17-02>.

⁵ *Id.* at p. 2.

⁶ *Id.*

⁷ *Id.* at p. 5.

application process, and continue to develop a more robust electronic means of tracking contractor information, demographics, and case outcomes.

Performance Measure A: Evaluate and Recruit Attorney Contractors		FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Number of Applications Reviewed	Actual	295	300	282	11*	TBD
Number of New Applicants	Actual	63	75	47	11*	TBD

**Data provided for the FY 2022-23 year includes data from July 1, 2022- November 1, 2022. Most contractors apply by 3/31 each year, but ORPC does review mid-cycle applications where there is a need for new attorneys in a particular jurisdiction.*

In addition to reviewing RPC during the annual renewal process, the ORPC has also designed a system for observing attorneys in court. The purpose of the in-court observations is to assist the agency in evaluation of RPC quality for contracting decisions, RPC supports, and tailored training to address local needs for individual attorneys or whole jurisdictions. Additionally, information gained during the observations is used to evaluate the need to add or subtract lawyers within jurisdictions. Aiming to observe all trial-level RPC multiple times during their contract allows the ORPC to better address concerns as they arise and to celebrate successes with legal teams that encourage excellence for clients.

The ORPC believes that continuing to improve the availability of high quality legal representation for parents will improve the fundamental fairness for families in the child welfare system.

Conduct Court Observations: The ORPC prioritizes conducting observations of RPC to ensure the provision of high quality legal representation. The use of frequent, targeted, and objective evaluations based on ORPC practice standards ensures that indigent parents have access to effective assistance of counsel.

Observations also mitigate overall legal error in courtrooms. If ORPC staff observe systemic problems in any jurisdiction, staff may follow up with judges and other appropriate agencies, such as the Colorado Judicial Department’s Court Improvement Program, to discuss needs for training or additional resources. ORPC staff also support attorneys in each jurisdiction by providing relevant caselaw, research, and practice tips following observations to ensure parents have access to appropriate treatment plans, services, and resources both as early as possible and throughout the case. Court observations are essential to the ORPC’s ability to safeguard fair systems for families.

Since 2017, the ORPC has conducted court observations year-round. In non-pandemic times, scheduling court observations requires intensive coordination between agency staff, local court personnel, and RPC. Logistical challenges can present significant hurdles to scheduling and completion of court observations in rural and non-metro areas of the state. Prior to the onset of the pandemic, agency staff traveled throughout the state, witnessing court appearances in many types of hearings, both contested and uncontested.

The increased volume of remote hearings across the state created additional opportunities for court observations due to the elimination of travel time for ORPC staff. This change has also permitted the

ORPC to observe more contested substantive hearings, since these hearing types are often continued with little notice.

However, remote hearings provide fewer opportunities for engaging directly with RPC and inhibit the ORPC’s ability to truly analyze what is occurring in a jurisdiction. Additionally, virtual hearings are often difficult to follow due to technical difficulties, poor audio quality, and background noise from multiple participants. ORPC staff have observed that internet outages and poor connection quality for court staff, individual attorneys, and parents has frequently led to delays and confusion among parties to cases. Sometimes, a parent or party who is not related at all to the case being heard accidentally makes a record or appears. Because of these issues, ensuring quality observations and oversight remains a challenge. To combat these challenges, the ORPC continues to conduct in-person court observations when possible and has conducted in-person observations in this fiscal year in jurisdictions as geographically diverse as El Paso, Denver, Mesa, and Washington counties.

In 2019, the agency adopted an objective court observation measurement tool tied to the ORPC’s practice standards, the Colorado Rules of Professional Conduct, and legislative mandates. The agency aims to observe all renewing contractors at least once in the fiscal year leading up to their contract renewal. The agency also plans to observe contractors at least three times during their contracting period, which is typically four years. The ORPC makes exceptions to these fundamental goals for those contractors who carry fewer than five contracted cases or who serve only in a supervisory role.

The data collected during court observations creates follow up opportunities to advise RPC when their performance has fallen below practice standards and to offer them resources to improve their performance. It also allows the ORPC to recognize contractors who are excelling in their advocacy and support of clients. The collected data also creates information for the training division to incorporate in planning curricula.

Performance Measure B: Conduct Court Observations		FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Observations of renewing contractors	Target	100%	100%	100%	100%	100%
	Actual	93%	100%*	N/A**	47%***	TBD

**In FY 2020-21, only one contractor was up for renewal.*

***The ORPC extended all contracts by one year for FY 2022-23 in recognition of the continued challenges faced by RPC and the ORPC during the pandemic and the desire to have a more normalized year of court observations before evaluating renewal applications, among other reasons.*

****Data provided for the FY 2022-23 year includes data from July 1, 2022-November 1, 2022.*

In FY 2019-20, the ORPC observed 93% of the RPC eligible for renewal. This is notable, given that ORPC was unable to observe any attorneys for approximately 3.5 months at the beginning of the pandemic when court operations were severely disrupted. Had the pandemic not been a factor, the ORPC is confident that the agency would have observed 100% of renewing contractors in FY 2019-20. The ORPC is on track to observe 100% of renewing contractors in FY 22-23.

Colorado-Specific Practice Standards: Based on input from RPC and the need for Colorado-specific practice standards, the ORPC has drafted practice standards reflecting the nature of the

agency's practice in Colorado, drawing on guidance from the American Bar Association's national standards of practice for attorneys representing parents in dependency cases and other states' practice guidelines for respondent parent attorneys.

In 2019, the ORPC finalized the practice standards and worked with the Colorado Supreme Court and the Office of the State Court Administrator to incorporate the updated practice standards into Chief Justice Directive 16-02. In 2020, the ORPC worked with the Office of Attorney Regulation Counsel to review the proposed practice standards and incorporate all feedback. The updated Chief Justice Directive with Colorado-specific practice standards for RPC was amended and went into effect in March 2021.

Appellate Program: The ORPC's appellate program is an essential element of its statutory mandate to provide high quality legal representation for parents. After assuming oversight for RPC, the agency created an appellate contractor list, selecting appellate attorneys based on objective criteria to ensure that parents receive quality representation on appeal. The agency also implemented a policy preventing trial attorneys from handling their own appeals to ensure that parents are getting the opportunity for a truly unbiased review of trial proceedings.

The ORPC developed an appellate-specific training program for appellate RPC that includes a biannual Appellate Certification training to acquaint new RPC with performance and practice standards of appellate attorneys. The ORPC requires all appellate attorneys to complete the Appellate Certification training within two years of appointment.

The appellate certification program allows trial RPC who are interested in doing appellate work to learn more about what the work entails and allows the ORPC to train and provide professional development opportunities that are rare in an independent contractor model. The ORPC provides additional training to appellate attorneys, including a Rule 21 webinar, appellate roundtables, training on framing appellate issues, and scholarships to national conferences such as the National Legal Aid and Defender Association's Appellate Conference.

Appeals are especially important to ensuring that court processes in child welfare cases are fundamentally fair. When the Colorado Supreme Court decides a case or the Court of Appeals publishes an opinion pursuant to Colorado Appellate Rule 35(f), the decision becomes binding statewide precedent that guides all trial judges' application of the Children's Code. The ORPC tracks reversal and remand rates in both published and unpublished opinions as listed in the table below.

Performance Measure C: Appellate List Efficiencies		FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Overall percentage of remands	Actual	7%	9%	9%	5%	TBD
Percentage rate of published remands	Actual	60%	57%	80%	100%	TBD
Percentage of appellate attorneys trained through ORPC's Appellate Certification	Target	50%	50%*	100%	100%	100%
	Actual	85%	85%*	95%	94%**	TBD

**Appellate Certification was not offered in FY 2020-21.*

***Data provided for the FY 2022-23 year includes data from July 1, 2022-November 1, 2022.*

In 2021, the ORPC began collecting data from all opinions issued by the Court of Appeals and combining that data with information the ORPC already collected when assigning appellate RPC. This data allows the ORPC to see trends and issues, including when trial RPC are being alleged to be ineffective or when counties are experiencing a relatively high rate of remand. It also allows the agency to understand which issues are being raised on appeal and to have more oversight of appellate RPC work. Additionally, it assists ORPC staff attorneys in providing better support to appellate and trial RPC. For example, if an appellate RPC wants to raise a novel issue or has a concerning set of facts in a case, the data collected by the ORPC allows staff to locate unpublished cases that may contain helpful reasoning or to connect the appellate RPC with another RPC who has made a similar argument.

This data collected by the agency indicate that the ORPC's appellate program has increased parents' access to justice over the last six years. Correcting errors at the trial court level protects parents' due process rights and ensures that trial courts will treat cases involving the most important decision in a child and parent's life with due care and deliberation. Based on contractors' reports on case closure of appeals, approximately ten percent of cases submitted to the Court of Appeals are found to have a legal error so substantial that the Court of Appeals reverses the trial court decision. This figure does not include limited remands, which occur when the Court of Appeals sends a case back to the trial court for further proceedings but still maintains jurisdiction over the appeal. If limited remands were included, this figure would be even higher.

Due to the nature of appeals, however, it is likely that, as the appellate program matures, the percentage of new appeals and remands will level off or potentially decrease. The sharp spike in published remands and reversals is indicative of some of the larger procedural issues occurring at the trial court level that impinge upon the constitutional and statutory rights of parents and families. As RPC improve their ability to spot and correct these errors at earlier points in the case, and as trial courts make corrections based on current remands from the Court of Appeals, this increase in the number

of remands should level off. This creates an environment where most published opinions are issued in cases with difficult legal issues to resolve or correct.

Over the past year, the ORPC has invested considerable resources in ensuring that the Indian Child Welfare Act (ICWA) continues to be robustly enforced in Colorado. First, the ORPC participated as amicus curiae in both briefing and oral arguments in two cases at the Colorado Supreme Court involving the ICWA. The first case involved defining how county departments must make active efforts to assist parents in meeting the goals of their treatment plans.⁸ The second case involved whether tribes must be notified when a parent proclaims Native American heritage but cannot demonstrate membership in a tribe.⁹ Yet a third case is currently being briefed in which the Supreme Court will consider what due diligence is necessary in investigating whether a child is an Indian child.¹⁰

Unfortunately, the Colorado Supreme Court has weakened the protections of the ICWA by reversing decisions of the Court of Appeals that provided greater protection for Indian families and by overturning a 16-year-old precedent that required notice to tribes.¹¹ This change seems poised to result in yet another tidal wave of uncertainty and disruption for Indian families while severely reducing the involvement of tribes in child welfare cases in Colorado. The ORPC anticipates increased appellate and trial costs as RPC navigate these legal changes while attempting to ensure that tribes are aware of and involved in cases.

On top of this uncertainty, the U.S. Supreme Court recently heard oral arguments in the *Brackeen v. Haaland* case. An opinion in that case will be issued in the summer of 2023. The ORPC anticipates that the opinion by the U.S. Supreme Court is likely to further disrupt the practices Colorado adopted to ensure that Indian children can remain safely at home, with families, or with members of their tribes or communities that understand the importance of the child's culture to both the child and to the child's tribe and community. The ORPC expects additional costs associated with increased remands and additional uncertainty for families as these rapid changes occur.

Disability Law Overview: Discrimination against people with disabilities is woven throughout this nation's history. Indeed, almost a century ago, the Supreme Court of the United States ratified such discrimination with its decision in *Buck v. Bell*.¹² The facts of that case are tragic and illuminate the disgraceful views of our nation at the time.

Carrie Buck was born to a mother with Intellectual/Developmental Disabilities (I/DD), who was living in the "Virginia State Colony for Epileptics and Feeble-minded." Carrie was ultimately released from the institution to live with another family. She was then sexually assaulted, became pregnant, and was returned to the institution. The institution's superintendent pursued the forced sterilization of Carrie as a test case for the forced sterilization of any other person with a disability in state custody. In upholding Carrie's forced sterilization, Justice Holmes wrote that,

⁸ *People v. V.K.L.*, 2022 CO 35.

⁹ *People in Interest of E.A.M. v. D.R.M.*, 2022 CO 42.

¹⁰ *People in the Interest of Jay.J.L. v. J.M.G.*, 2022 SC 348.

¹¹ *E.A.M.*, 2022 CO 42, ¶ 6.

¹² 274 U.S. 200 (1927)

[i]t is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.¹³

And, lest we think that as a nation we have passed this point, it should be noted that *Buck* has never been overruled. In fact, the closest the Supreme Court has come to overruling *Buck* was in the 1942 case of *Skinner v. Oklahoma*, in which the Court held that forced sterilization as a *punitive* measure was unconstitutional.¹⁴

In an important step forward, the Colorado General Assembly made the following findings four years ago:

- Persons with disabilities continue to face unfair, preconceived, and unnecessary societal biases, as well as antiquated attitudes, regarding their ability to successfully parent their children;
- Because of these societal biases and antiquated attitudes, children of persons with disabilities historically have been vulnerable to unnecessary removal from one or both of their parents' care or are restricted from enjoying meaningful time with one or both parents; and
- Children have been denied the opportunity to enjoy the experience of living in loving homes with a parent or parents with a disability or other caretakers with a disability.¹⁵

Fighting against negative stereotypes of parents, including those with disabilities, is a primary challenge that RPC face daily. This struggle was addressed head on by a previous and deeply missed ORPC Staff Attorney, Ms. Carrie Ann Lucas.

Ms. Lucas was a devoted disability advocate who herself lived with disabilities and parented children with disabilities. She was eloquent and outspoken about the discrimination she faced in her road to parenthood and steadfastly fought for other parents with disabilities so they would not face the same discrimination.

Sadly, Ms. Lucas passed away three years ago at the age of only 47. Her death left an unfillable void at the ORPC where she worked tirelessly to ensure that RPC had the skills to recognize when their clients had disabilities and the tools necessary to advocate for them. While no one could ever replace such a formidable advocate, the ORPC knew Ms. Lucas's singular goal that parents with disabilities be treated equally remained critical to Colorado's families. With support from the Colorado General Assembly, the ORPC added the position of the Carrie Ann Lucas Disability Advocacy Director in 2020. This position is dedicated to advancing the rights of parents and families with disabilities. Additionally, in April 2021, Governor Polis signed SB21-107 into law, formally honoring the efforts of Ms. Lucas to end discrimination against parents with disabilities by renaming a portion of Colorado statute the Carrie Ann Lucas Parental Rights for People with Disabilities Act.

The initial Carrie Ann Lucas Disability Advocacy Director began work with the agency in September 2020 during the height of the COVID-19 pandemic. Despite this, the ORPC continued its training of RPC and others on the rights of people with disabilities in the child welfare system. This included

¹³ *Id.* at 207.

¹⁴ 316 U.S. 535, 543 (1942).

¹⁵ H.B. 18-1104, 71st Gen. Assemb., 2nd Reg. Sess. (Co. 2018) (enacted).

trainings at the American Bar Association’s Parent Representation Conference, child welfare attorneys in Texas and Idaho, and numerous child welfare Best Practices Court Teams throughout Colorado. Additionally, realizing that caseworkers must also have training in recognizing disabilities and identifying reasonable accommodations for persons with disabilities, the ORPC has developed and executed a training for social workers through The Kempe Center’s Child Welfare Training System and the ORPC is looking for ongoing opportunities to continue training child welfare stakeholders on the ADA.

Shortly after the departure of the initial Carrie Ann Lucas Disability Advocacy Director, the agency brought on a new Director with significant disability law experience in the dependency and neglect context. Having someone well-versed in dependency law is critical to the agency’s continued efforts because, of the population of Colorado parents served by the ORPC, a staggering 48.3% – virtually half of all parents – have one or more disabilities.¹⁶

While parents with disabilities account for nearly half of the parents the ORPC serves, they account for nearly 70% of the total number of parental rights terminations.¹⁷ Said differently, parents with disabilities are more than two times more likely to have their rights terminated than non-disabled parents.¹⁸ Similarly, while parents without disabilities enjoy a 71% reunification rate, the reunification rate for parents with disabilities plummets to 50%.¹⁹

While the ORPC trains its contractors to support and advocate for indigent parents with disabilities and educates other stakeholders about the rights of people with disabilities, there is much work to be done. A person’s disability rarely needs to dictate whether they can successfully parent. To believe otherwise plays into the antiquated stereotypes and assumptions that Ms. Lucas and decades of advocates before her have disproven time and again.

B. Family Voice Leads

Attorneys representing indigent parents in dependency and neglect proceedings are client-directed, meaning they must consult with their client and represent his or her expressed position. A courtroom is an intimidating place for a parent, particularly after experiencing the trauma of having a child removed from the family. When an attorney has frequent communication with a parent and can access appropriate resources such as expert evaluations, consultations, or the assistance of an investigator, these resources can assist a parent in telling his or her story and meaningfully engaging in treatment services. Treating parents with dignity and respect and providing adequate resources up front in a case can help ensure that parents’ voices are heard by the court and by the other professionals working on the case.

However, the normal challenges faced in amplifying a parent’s voice were exacerbated by the COVID-19 pandemic. While it may appear that the pandemic is behind us, Colorado courts continue to differ in their approaches for remote, in-person, or hybrid hearings for indigent parents. As a result, it is

¹⁶ ORPC Internal Data, Respondent Parent Payment System, analyzed November 2022 for the period FY 2018-19 through Q1 of FY 2022-23; *see also* Nat’l Council on Disability, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children* (2012), chapter 5, <https://www.ncd.gov/publications/2012/Sep272012>.

¹⁷ ORPC Internal Data, Respondent Parent Payment System, analyzed November 2022 for the period FY 2018-19 through Q1 of FY 2022-23.

¹⁸ *Id.*

¹⁹ *Id.*

more important than ever to have a cohesive interdisciplinary team to support parents. These obstacles are further compounded at the intersection of expensive technology and accessibility. For the families the ORPC serves who struggle daily with poverty, sobriety, and mental health issues, support beyond that of the appointed attorney is crucial in connecting and engaging the parent in an increasingly complex legal system.

Attorneys who work within a supportive and collaborative family defense team have a higher level of satisfaction with their work and are more likely to continue to represent indigent parents. In a recent 2022 survey of ORPC contractors, a contractor wrote “I am always treated with respect from ORPC staff. They are great to work with.” Another contractor noted that “ORPC is open to us making new and creative arguments and I think that is the only way we are going to make movement in the law in this area.”

Excellent advocacy, adequate resources, and an increased number of allies for parents will strengthen family voice in dependency proceedings and ensure that families are heard regarding what is most important to them – the needs and concerns of their children. In this ongoing time of crisis, parents feel more isolated and marginalized than ever before; surrounding them with a team of advocates creates hope that their voice is being heard.

Attorney Consultations and Coaching: In 2017, after assessing the need for increased support, the agency hired a full-time staff attorney to serve as the Case Strategy Director, charged with handling the increased call volume and need for case support and consultation for trial attorneys. Since 2021, and a restructuring of attorney duties, case consultations have been handled primarily by the Case Strategy Director and the Director of Family Defense with assistance from the Carrie Ann Lucas Director of Disability Advocacy, other staff attorneys, the Director of Programming – Social Worker, and occasionally contractors with specialized knowledge in specific areas of law. On average, ORPC team members handle an average of five case consultations with RPC regarding case strategy per day, amounting to approximately 500 consultations per year. The primary consulting ORPC staff have implemented a scheduling system that allows contractors to schedule a consultation easily and reduces staff time spent scheduling phone calls and meetings. Attorneys seek guidance on a range of issues, from appointment of expert witnesses to appropriate services for parents to questions on caselaw and statutory provisions, such as the Americans with Disabilities Act. Through these optional consultations, attorneys are provided with the resources and support to ensure that their clients’ voices are heard.

Optional case consultations and attorney coaching are part of a broader initiative by the ORPC to provide supports to attorney contractors. As a result of increased staff capacity, case consultations can also be more targeted and broadly offered. For cases involving clients with disabilities or children with disabilities, RPC are connected with the Disability Advocacy Director for consultation. In cases where lawyers are preparing for trial, they are connected to the Director of Engagement, Case Strategy Director, or Director of Family Defense to discuss case theory, themes, and trial strategy.

Attorney coaching consists of individual case consultations related to specific cases. This sometimes involves concentrating on litigation skills, client-centered advocacy efforts, ethical concerns, disability advocacy for individual clients, and other law practice management advice. Based upon the ORPC’s jurisdictional court observations, coaching can also consist of targeting groups of attorneys facing similar challenges to craft litigation strategies or resolve systemic issues unique to child welfare practice

in their county. The format of coaching includes one-on-one feedback, roundtable discussions, strategy brainstorming, skill building, and case reviews. ORPC supports can reduce costs and mitigate attorney burnout by helping attorneys avoid spending hours drafting motions or researching issues where ORPC staff resources can quickly point them in the right direction.

The Director of Training provides quarterly roundtable opportunities by jurisdiction for those attorneys and other professionals facing similar struggles based on their unique situation. Roundtables are also provided for BIPOC professionals and new RPCs during their first two years of practice as a new ORPC contractor. ORPC staff attend these roundtables and may refer RPC to additional resources, specific training opportunities, or mentorship options as part of the contractor coaching program. These supports have the added benefit of promoting RPC community building by supporting attorneys before they reach possible burnout. Since implementing these roundtables in 2021, ORPC has created opportunities for our community to share struggles and successes, helping to redefine success in the work.

Beginning FY 2019-20, the ORPC tracked the percentage of attorneys using the case consultation resource provided by the agency. With additional staff attorneys providing consultations and the ability to refer attorneys to other staff with specialized knowledge, such as disability advocacy or trial and investigation strategy, the ORPC has increased its capacity to offer meaningful feedback to attorneys more frequently and more broadly.

Performance Measure D: Attorney Coaching		FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Percentage of attorneys using case consultations	Target	80%	80%	80%	80%
	Actual	80%	86%	69%*	TBD

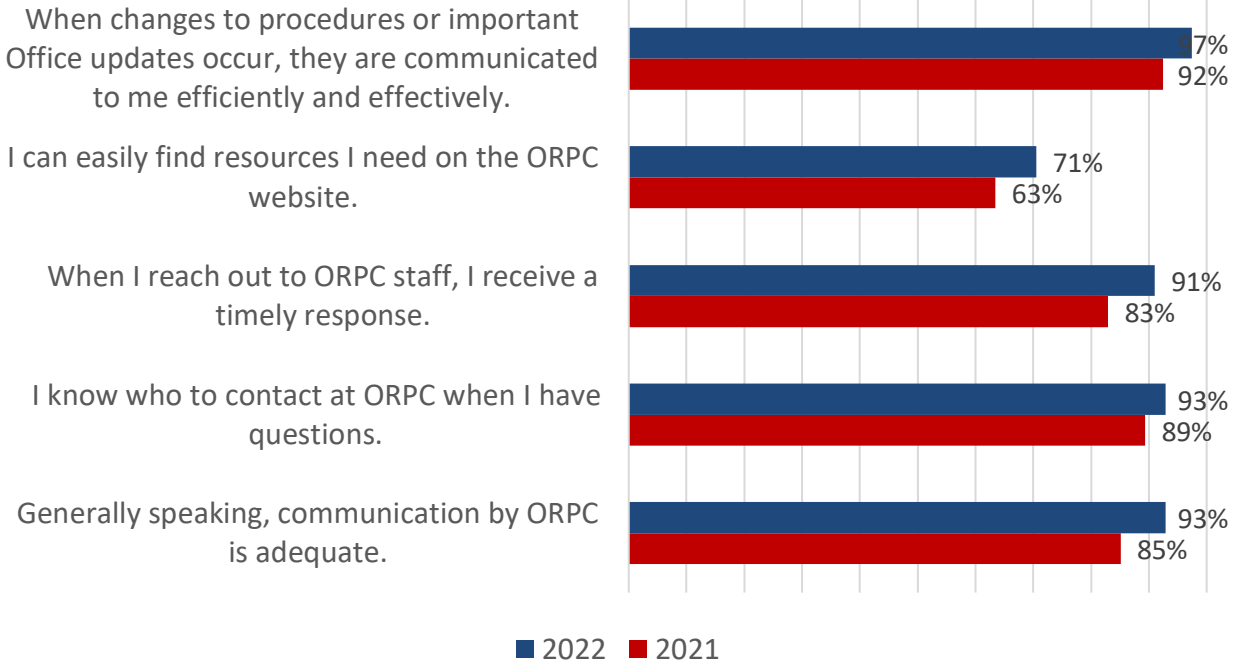
**Data provided for the FY 2022-23 year includes data from July 1, 2022-November 1, 2022.*

In addition to tracking the percentage of attorneys who utilize the case consultation resource, the ORPC also asked contractors in its past two annual surveys for feedback regarding responsiveness by the ORPC staff, as well as the overall effectiveness of communication with the agency. The ORPC prioritizes constructive and timely communications to ORPC contractors, and the below chart shows the extent to which the ORPC staff is achieving this according to contractors. The agency is pleased to report that contractor satisfaction with ORPC responsiveness is increasing.

2022 ORPC Annual Contractor Survey

Please indicate your level of agreement with the following statements about the ORPC's communication with you.

% Strongly Agree and Agree



Access to Experts and Investigators: The ORPC consults with RPC about available experts and possible treatment resources for parents, including providing access to published social science journal articles. The ORPC continues to work on developing a web-based application to house expert information that will increase efficiencies for the agency staff who routinely consult with RPC about the availability of experts across the state.

Experts may provide an evaluation that recommends a service for a client that has not been considered but that could address a safety concern to permit an earlier reunification of the family. A psychologist can recommend specific accommodations for a parent with a cognitive or intellectual disability that would allow the individual to independently parent. A toxicologist may review a report and determine that accusations that a parent tested positive for a drug are not accurate. An expert may be called upon to debunk antiquated theories regarding attachment or provide information to the court and other parties regarding separation trauma. An expert may provide perspective on the importance of race and culture in determining permanency for a child. The ORPC offers a wide range of experts that assist attorneys in both evaluating their cases and presenting evidence that supports the parent's position. Expert assistance in dependency cases improves both the services that may be offered to a parent and the accuracy of the court's decision, and thus ensures fairness for indigent parents during the court process.

The ORPC tracks the numbers of experts appointed in the representation of parents each fiscal year. The data below do not include social workers, family advocates, or parent advocates that are appointed as members of the legal defense team. The data refer to the use of experts approved for parent evaluations or those used through the course of litigation. The data are useful internally in determining the number of RPC accessing expert services, training regarding appropriate use of experts, and the costs associated with such use. While the numbers related to expert appointments are useful to the agency, many variables can cause fluctuation in the number of requests. For that reason, the ORPC does not use the number of parent appointments with experts as a measure of performance; rather, this number is useful strictly as an informational data point for improving representation of parents and helping to understand the overall costs of legal representation. The performance measure below instead lists the number of experts available for appointment through the ORPC.

Additionally, the ORPC continues to expand the availability of investigators, which creates efficiencies in the amount of time spent by RPC on cases and therefore the overall cost of cases. Specifically, investigative professionals can assist in locating clients, interviewing possible witnesses, obtaining necessary records and files, and gathering information about possible family supports and kinship placements at a lower hourly cost than RPC. These lower costs also result from improved outcomes in cases. In one case, an investigator located an out-of-state parent who was unaware of the dependency and neglect case and was able to have his child returned to him from foster care.

In another case, an investigator located a client who decided to relinquish her parental rights and was supported during that process, resulting in an outcome supportive to the parent and the child and avoiding ongoing litigation in the case. Resolving a case and supporting a family through a relinquishment of parental rights can reduce the overall length of a case, case costs, court time, and trauma to the family resulting from extended litigation, allowing the parent to proceed through the process with dignity. These are a few examples of how using a lower-cost resource can ensure attorneys have the information they need to make parents' voices heard and to move towards permanency for children more quickly, while using agency resources more efficiently.

During the past year, attorneys have started to find investigators in their communities who are interested in assisting parents. This has helped increase the number of investigators in some of our more rural communities, thus impacting costs in a positive way by reducing travel time and mileage costs in completing investigations. When a new investigator is added on an individual case, the Director of Engagement reaches out to determine if that investigator is interested and qualified to help other parents in that region. Nearly always, investigators are excited to help support parents in their efforts to reunify their families.

In the upcoming years, as illustrated in the chart below, the ORPC plans to increase available litigation support for attorney contractors to create law practice efficiencies. The number of investigators the agency works with may begin to stabilize as agency recruiting efforts result in engaging a large percentage of the high quality investigators suited for this work.

Performance Measure E: Recruit and Maintain Experts and Investigators		FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Number of experts available for appointment through ORPC	Target	200	265	300	300**	300
	Actual	288	350	278	236*	TBD
Number of investigators available for appointment through ORPC	Target	30	40	50	50	50
	Actual	41	44	53	54*	TBD
Number of expert appointments	Target	No target established	No target established	No target established	No target established	No target established
	Actual	304	348	305	143*	TBD
Number of investigator appointments	Target	No target established	200	250	250	250
	Actual	284	512	442	148*	TBD

**Data provided for the FY 2022-23 year includes data from July 1, 2022-November 1, 2022.*

***In upcoming fiscal years, the ORPC's goal is to maintain the existing number of vetted and available experts and to assess the list for breadth of expertise and quality.*

Legislative Initiatives: Part of the ORPC's mission is advocating for systemic and legislative change. With limited resources, the agency devotes significant staff time to advocating for legislative and regulatory changes in Colorado. Most of the agency's advocacy focuses on efforts to ensure that children can remain safely at home wherever possible and, when they cannot, that their connections with their parents, extended family, and their community are supported through visitation and placement.

In 2022, the General Assembly provided new opportunities for the agency to participate in systemic change, with the Director of Programs – Social Worker sitting on the Mandatory Reporting Task Force created by HB 22-1240 and the Director of Engagement representing the agency on the Pre-Adolescent Services Task Force created by HB 22-1131. Additionally, an ORPC parent advocate serves as Chair of the Pre-Adolescent Services Task Force along with Representative Gonzales-Gutierrez as Co-Chair. The ORPC also continues its work on the High Quality Parenting Time Task Force, which was created through HB 21-1101 and is chaired by the ORPC Case Strategy Director.

The agency also secured important protections for ORPC and the Office of the Child's Representative (OCR) contractors through HB 22-1041. Legislation in previous years protected caseworkers and county attorneys who were threatened in the course of their work, but ORPC and OCR contractors were not included in these protections. HB 22-1041 provides important safeguards to keep the home addresses of ORPC and OCR staff and contractors confidential when they experience threats as a result of their advocacy. These protections support people doing very challenging work and may aid in retention of contractors.

In the coming session, the ORPC will focus its legislative advocacy on strengthening families. First, changes are necessary to ensure that where there is a safe and appropriate family member available to care for a child, the court acts quickly to place the child with the relative. Social science research shows that children placed with relatives experience fewer placement changes, reduced separation trauma, better mental health, preservation of their cultural identities, and higher rates of reunification with their parents.²⁰ To fully realize these benefits, the law needs to provide more support for kinship placement, and the ORPC will propose legislation in the 2023 session to accomplish this.

The ORPC is also working to strengthen families by addressing the needs of incarcerated parents and their children. With nearly 25% of parents in ORPC cases who experience incarceration at some point during the proceedings, Colorado needs a stronger framework for providing treatment, services, and visitation for these families. Currently, most incarcerated parents are not able to participate in court hearings or meetings where important decisions about their children are made. The ORPC plans to ensure that incarcerated parents have a seat at the table when decisions are being made that will impact the rest of their lives and the lives of their children.

Over the last year and going into the next year, the ORPC has increased its efforts to engage parent advocates, RPC, and social workers in legislative initiatives. The ORPC consults regularly with both internal and external stakeholders when determining whether the agency will support legislation and which of the agency's legislative agenda items should be prioritized. Most importantly, the ORPC is providing training and support to parent advocates to tell their stories and explain why these initiatives are crucial to safely reunify more families and keep more families together.

C. Decrease Trauma to Children

The ORPC surveys the agency's contractors each year. In 2022, almost 90% of survey respondents agreed that the ORPC reduces trauma to children by supporting contractors in reducing unnecessary out-of-home placements. Research demonstrates that children have better long-term outcomes when they are raised in their families of origin.²¹ The removal of children from their families is a traumatic experience for both children and parents. For children in particular, separation trauma can endure and have long-term implications for a child's educational attainment, mental and physical health, and future employability.;

In addition to the research demonstrating that children have better long-term outcomes when they are raised in their families of origin, research has also shown that when compared with youth in the general population, youth aging out of foster care experience the following:

- lower high school graduation and college enrollment rates;

²⁰ T.D. Moore et al., *Assessing Risk of Placement Instability to Aid Foster Care Placement Decision Making*, 2 J. PUB. CHILD WELFARE 117 (2016); Marc Winokur et al., *Kinship Care for the Safety, Permanency, and Well-being of Children Removed from the Home for Maltreatment: A Systematic Review*, 10 CAMPBELL SYSTEMATIC REV. 2 (2014); CASEY FAMILY PROGRAMS, WHY SHOULD CHILD PROTECTION AGENCIES ADOPT A KIN-FIRST APPROACH? (2019), available at https://caseyfamilypro.wpengine.netdna-ssl.com/media/SF_Kin-First-Approach.pdf; CHILDREN'S BUREAU, PARTNERING WITH RELATIVES TO PROMOTE REUNIFICATION (2020), available at https://www.childwelfare.gov/pubPDFs/factsheets_families_partner_relatives.pdf.

²¹ Mimi Laver, *Improving Representation for Parents in the Child-Welfare System*, October 7, 2013, <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2013/improving-representation-parents-child-welfare-system/>.

- lower employment rates;
- lower incomes;
- higher rates of homelessness;
- higher occurrence of mental health problems that affect daily functioning;
- higher rates of addiction; and
- increased involvement in the criminal justice system.²²

These negative, long-term traumatic effects for children experiencing out-of-home care demand system-wide efforts to prevent unnecessary family separation when possible and, if not possible, to focus on safe and timely family reunification efforts.

The ORPC is committed to providing the resources that parents’ attorneys need to successfully prevent unnecessary removals or separations, whenever possible. The agency does this by providing training, consultations, experts, investigators, social workers, and parent advocates to ensure Colorado’s parents have the best model of representation and support possible.

Lessons of the COVID-19 Pandemic

The COVID-19 pandemic disproportionately impacted the poor,²³ people of color,²⁴ and people with disabilities.²⁵ The pandemic also coincided with a nationwide reckoning on systemic racism, particularly in the criminal justice system.

At the outset of the pandemic in 2020, child welfare, medical, and educational professionals raised alarm that with more children at home while schools were shut down, fewer allegations of abuse and neglect would be reported, creating a pandemic of undetected child abuse with long term impacts.²⁶ However, these dire warnings were firmly rooted in “racist underpinnings,”²⁷ which demonstrated the system’s “distrust and lack of faith in the poor families and families of color that disproportion[ately] populate the child welfare system.”²⁸

²² Pecora *et al.*, *Educational and Employment Outcomes of Adults Formerly Placed in Foster Care: Results from the Northwest Foster Care Alumni Study*, 28(1) Child and Youth Services Review 1459 (2006); *see also* Laura Gypen *et al.*, *Outcomes of Children Who Grew Up in Foster Care: Systematic-Review*, 76 Children and Youth Services Review 74 (2017) , May 2017.

²³ ELIZABETH RAMEY, COLORADO LEGISLATIVE COUNCIL STAFF, *INCOME INEQUALITY IN COLORADO AND COVID-19 IMPACTS*, p. 6 (2021), available at https://leg.colorado.gov/sites/default/files/r20-1320_income_inequality_and_the_economy.pdf.

²⁴ Latoya Hill & Samantha Artiga, *COVID-19 Cases and Deaths by Race/Ethnicity: Current Data and Changes Over Time*, KAISER FAM. FOUND. (Aug. 22, 2022), <https://www.kff.org/658f598/>.

²⁵ Nat’l Governors’ Ass’n., *Governors’ Role in Promoting Disability Employment in COVID-19 Recovery Strategies* (Mar. 23, 2021), <https://www.nga.org/center/publications/governors-role-in-promoting-disability-employment-in-covid-19-recovery-strategies/>.

²⁶ *See, e.g.*, Angela Ufheil, *Calls to Colorado’s Child Abuse Hotline Have Dropped—And That’s Not a Good Thing*, 5280 (May 18, 2020), <https://www.5280.com/2020/05/calls-to-colorados-child-abuse-hotline-have-dropped-and-thats-not-a-good-thing/>.

²⁷ David Crary, *HHS Leaders: No Evidence of Child Abuse Surge Amid Pandemic*, AP NEWS, Jan. 14, 2021, <https://apnews.com/article/us-news-health-coronavirus-pandemic-child-welfare-child-abuse-2e88d66ab57e1b621cf86d3657536ce7>.

²⁸ David Kelly, *Child Welfare Alarmism Paints Unfair Picture of Families*, THE IMPRINT (June 12, 2020), <https://imprintnews.org/child-welfare-2/child-welfare-alarmism-paints-unfair-picture-of-families/44315>; *see also* Eli Hager, *Is Child Abuse Really Rising During the Pandemic?*, THE MARSHALL PROJECT (June 15, 2020), <https://www.themarshallproject.org/2020/06/15/is-child-abuse-really-rising-during-the-pandemic>.

Tellingly, the feared pandemic of child abuse and neglect did not materialize.²⁹ In an interview two years after the start of the pandemic, pediatric researcher Dr. Robert Sege of Tufts Medical Center opined on why three different statistical indicators of child abuse sharply dropped during the pandemic, drawing a straight line between increased economic supports available for families during the pandemic and decreased rates of child abuse and neglect. He observed:

most parents really love their children. When child abuse occurs, it's not because parents don't love their kids; it's because they've reached the end of their rope... We have known for a long time that supports for families—food benefits, utility assistance, all those things—decrease child abuse.³⁰

Early data out of Colorado shows alignment with national trends. While educators make the most referrals for child abuse or neglect, these referrals declined with school closures. Because calls from educators are far less likely than calls from other types of mandatory reporters to be screened in and substantiated for abuse or neglect, this reduction in referrals does not suggest a pandemic of unreported child abuse or neglect occurred in Colorado.³¹ Instead, child welfare leaders in Colorado have attributed their success at reducing removals during the pandemic to provision of in-home services in 70% of cases.³²

However, those parents who had the misfortune of being involved in dependency and neglect cases during the pandemic faced huge challenges. Left with an unprepared, patchwork system, many parents separated from their children were provided only virtual visits and, to this day, continue to have limited in-person visitation, sometimes just one visit per week even with newborns. Access to the courts to address these issues remains an obstacle, with some courts conducting hearings to determine whether children should be removed from their homes over the phone and without attorneys appointed for parents in advance. Courts continue to issue automated emergency orders permitting restricted visitation and restricted court access.

Despite these serious challenges, the pandemic also required innovation that ultimately increased parental engagement in many cases. For example, parents with transportation challenges are more able to access family meetings and court hearings when they are held virtually. Services that were not available in rural areas before the pandemic became increasingly available through telehealth opportunities. Additionally, ORPC Contractors were more able to maximize their time helping clients and spend less time driving, particularly those practicing in rural locations. Many jurisdictions have embraced these positive changes with plans to continue using virtual options to further increase

²⁹ Barbara Chaiyachati et al., *Emergency Department Child Abuse Evaluations During COVID-19: A Multicenter Study*, 150(1) PEDIATRICS (July 2022), <https://publications.aap.org/pediatrics/article/150/1/e2022056284/188279/Emergency-Department-Child-Abuse-Evaluations>.

³⁰ Brenda Patoine, *Child Abuse Actually Decreased During COVID. Here's Why*, TUFTS NOW (Feb. 14, 2022), <https://now.tufts.edu/2022/02/14/child-abuse-actually-decreased-during-covid-heres-why>; See also Robert Sege & A. Stephens, *Child Physical Abuse Did Not Increase During the Pandemic*, 176(4) J. AM. MED. ASS'N PEDIATRICS (2022).

³¹ Samantha M. Brown et al., *The Impact of the COVID-19 Pandemic on Child Protection System Referrals and Responses in Colorado, USA*, 27(1) CHILD MALTREATMENT 3-11 (Feb. 2022), <https://journals.sagepub.com/doi/epub/10.1177/10775595211012476>.

³² *Calls to Colorado Child Abuse and Neglect Hotline Increase as More Mandatory Reporters are Seeing Kids in Person*, CO4KIDS BLOG (March 9, 2022), <https://co4kids.org/blog/calls-colorado-child-abuse-and-neglect-hotline-increase-more-mandatory-reporters-are-seeing> (“Even with the increased risk factors, in approximately 70% of child welfare cases, counties have been able to provide services directly to families so children can remain safely at home with their parents.”).

participation in the future.

The ORPC urges the General Assembly to heed the lessons of COVID-19: it is not the removal of children from their parents that saves children. Instead, it is the deployment of concrete supports and preventative services to our marginalized communities that will protect children from the generational cycle of trauma and family separation.³³ For, “[i]f we are truly a field and a society that looks to data and facts to help us understand the world, it is time to put to rest the preconceived notion and prejudiced narrative that parents are a danger to their children, because in the overwhelming majority of families involved with child welfare that is simply not the case.”³⁴

ORPC Interdisciplinary Programming: The right type of representation in child welfare cases can easily mean the difference between preserving a family and seeing it permanently destroyed. Over the last decade, research from around the country has established that a family’s chance of success improves dramatically when parents are provided with an interdisciplinary approach to legal representation that includes a zealous attorney, an appropriate clinical assessment for services, delivery of timely and effective services, and strong advocacy within the child welfare system by a social worker or peer advocate on the parent defense team. Interdisciplinary legal teams are a nationally established best practice standard for parent and children’s defense agencies.³⁵

Since its inception, the ORPC has both studied and piloted interventions to improve the quality of representation for parents in Colorado. In FY 2017-18, the ORPC launched a Social Worker Pilot Program (SWPP) with the goal of offering holistic, high quality legal representation to parents. This inclusion of social workers on legal defense teams immediately produced positive results, measured through an independent evaluation conducted by Metropolitan State University in 2019.³⁶ Put simply, the evaluation concluded that the interdisciplinary team model of parent representation practiced in Colorado reduces the time that children spend in out-of-home care and increases the likelihood of a parent and child being reunified safely at case closure.

One example highlighted in this evaluation involved reunification in El Paso County. There, parents who had a social worker assigned to their family defense team achieved reunification with their children at over twice the rate of the state and county averages. This also included data showing that when placed out-of-home, the time a child spent in placement was reduced.³⁷

Additionally, the SWPP outcomes reflected the national research. In a 2019 published study examining outcomes for 9,582 child welfare cases over seven years, researchers compared the efficacy of interdisciplinary legal teams to solo law practitioners for parents in child welfare cases. The results were staggering. Specifically, researchers concluded that the interdisciplinary teams achieved the safe return of children to their families 43% more often than solo practitioners in the first year of a case,

³³ Anna Arons, *An Unintended Abolition: Family Regulation During the COVID-19 Crisis*, 11 COLUM. J. RACE & LAW 1 (2022), <https://ssrn.com/abstract=3815217>.

³⁴ Kelly, *supra* note 28.

³⁵ American Bar Association, *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases* (2006), p. 30, available at: https://www.americanbar.org/content/dam/aba/administrative/child_law/aba-parent-rep-stds.pdf.

³⁶ Lori Darnel and Dawn Matera Basset, *A Program Evaluation of Colorado Office of Respondent Parents’ Counsel Social Work Program*, Metro State University Department of Social Work (November 2019), <https://coloradoorpc.org/wp-content/uploads/2019/11/ORPC-SWPP-Evaluation.pdf>.

³⁷ *Id.*, pp 11-13, 16.

and 25% more often in the second year.³⁸ Further, even when reunification was not possible, the interdisciplinary model allowed children to be permanently released to relatives over 106% more often in the first year of a case and 67% more often in the second year.³⁹

ORPC interdisciplinary teams may also include a parent advocate. Parent advocates have lived experience successfully navigating the child welfare system and were ultimately reunited with their children. They are trained and supervised to work alongside RPC to guide and support parents with current dependency and neglect cases. Peer coaching and support has been an integral part of mental health and substance use intervention for decades, and the inclusion of peer advocates on legal representation teams is expanding across the country.

Based on the successful outcomes of interdisciplinary models that include parent advocates on legal teams,⁴⁰ the ORPC began to recruit, train, and mentor parent advocates in FY 2020-21. The agency contracted with the first class of parent advocates in November 2020, the second class in December 2021 and is recruiting for the third class in early 2023. Parent advocates have since been assigned to support over 500 parents statewide.

Use of Evidence-Based Practices: The ORPC diligently engages in evidence-based analysis as the primary foundation for its budget requests. The ORPC defines evidence-based budgeting as analyzing data to project costs and justify requests based on the best empirical evidence available, including research published in peer-reviewed journals.

Performance Measure F tracks the ORPC’s implementation of evidence-based practices in dependency and neglect cases, showing that the agency has steadily increased availability of and access to social workers and parent advocates. Finally, the ORPC works to ensure that its training program is focused on evidence-based practices and the use of interdisciplinary teams to increase the number of cases that conclude with reunification or kinship placement.

Performance Measure F: Support the Use of Evidence- Based Practices		FY2019-20	FY2020-21	FY2021-22	FY2022-23*	FY2023-24
Number of ORPC cases with interdisciplinary representation (social worker, family advocate, or parent advocate)	Target	400	425	500	500	600
	Actual	843	976	1,308	251*	TBD
Number of social worker/family advocate/parent advocate contractors available for work on ORPC cases	Target	15	30	35	40	50
	Actual	30	33	42	52*	TBD

*Data provided for the FY 2022-23 year includes data from July 1, 2022 – November 1, 2022.

³⁸ Lucas Gerber *et al.*, *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, (July 2019), p. 52, available at <https://www.sciencedirect.com/science/article/pii/S019074091930088X>.

³⁹ *Id.*

⁴⁰ Gerber *et al. supra* note 38.

D. Family Defenders Have a Strong Community

Training: For the ORPC, training creates opportunities for contractors to gather, network, and share successes as well as to stay abreast of changes in the law and develop stronger skills related to advocating for parents at all stages of dependency or neglect case proceedings. These opportunities to share information and ideas are valuable in energizing and strengthening RPC practice for all professionals. The ORPC's nationally recognized training model aims to build a strong community of parent representation professionals across Colorado. Among our established, annually held trainings are New Attorney Boot Camp, Fall Conference, the Carrie Ann Lucas Disability Advocacy Training, and our brand-new JEDI (Justice, Equity, Diversity, and Inclusion) Training. The ORPC also holds a bi-annual Appellate Certification training which all appellate RPC are required to attend. In addition to these annual training and community building events, the ORPC holds periodic webinars, trainings, and workshops on rotating topics. Nearly all ORPC trainings are offered free of charge and are open to the general public.

Our values-based training program provides opportunities for contractors and other stakeholders to participate in legal skills-building, interdisciplinary learning, antiracist education, and more. In FY 2021-22, the ORPC executed 46 trainings. Below is a sample of recent RPC feedback about the agency's trainings:

"This was so great! I really appreciated all of the practice tips and motions and other concrete information and ideas. This really taught me how to think about best representing parents who are incarcerated!"

"I learned a lot that I can apply to my daily practice and life. I was engaged and interested in every session. It was a great conference."

"This training was well presented and fantastic. Dr. Gootnick was particularly helpful."

"I found the training very useful in my job. I have shared the materials with co-workers and many other stakeholders in the dependency field in Northern Nevada. Thank you for the information!"

"Informative, eye-opening, challenging, provocative."

"I attend this training yearly and still got new information from it this time. Thank you!"

"Amazing!!"

In FY 2021-22, the ORPC's training program remained primarily virtual. However, toward the end of the fiscal year, the agency was finally able to offer a handful of in-person training opportunities. The ORPC's current training director, who started on January 1, 2019, is the longest standing training director that the agency has employed. This has allowed for a consistent and cohesive training program throughout FY 2021-22, and to the present day. The COVID-19 pandemic required significant adjustment to and has fundamentally altered the way the ORPC approaches training. The ORPC was thrilled to begin offering in-person training again and continues to use the lessons learned during the pandemic to offer virtual training. This training model—mixing virtual and in-person training opportunities—provides the best of both worlds. Virtual platforms reach many more trainees and

allow for the agency to invite many more national trainers to speak. Yet the community building and collaboration that occurs at in-person events simply cannot be replicated virtually. Thanks to lessons learned during the pandemic, and the return of in-person learning, the ORPC's training program is stronger now than it has ever been.

The agency met and exceeded its goal of increasing attendance and improving the quality of its training program in FY 2021-22. The ORPC surpassed its highest historical training attendance by a significant margin in FY 2021-22. Additionally, the ORPC's training evaluation results for FY 2021-22 showed high marks for quality of trainings. On average, training attendees rated ORPC trainings as "Excellent" 62.7% of the time and "Good" 27.9% of the time.⁴¹ This means that the ORPC's feedback about its training program in FY 2021-22 was overwhelmingly positive. The ORPC expects this trend to continue and has already received positive feedback about its trainings in the first half of FY 2022-23.

ORPC trainings are now much more accessible for contractors who live far from the Denver metro area. The ORPC has training videos from 37 prior trainings available for contractors to view at their convenience. At this time three years ago, that number was only five. The increased availability in training videos means that ORPC contractors who are not able to attend in-person trainings—either due to conflicts or because the training took place before they began working with the ORPC—can access valuable training information that they otherwise would have missed out on.

The ORPC continues to produce and publish its podcast, the Family Defender Download ("FDD"). In FY 2020-21, the ORPC released five episodes in Season 1 of the FDD, covering topics such as systemic racism, caselaw and legislative updates, the ADA in child welfare, and more. Season 2 of the FDD, which was released beginning December 2021, consists of seven episodes focused on the Colorado Rules of Evidence and common evidentiary issues that come up in dependency & neglect cases.

Finally, the ORPC has continued to hold contractor roundtables as a consistent and recurring part of its training program in FY 2021-22. Contractor roundtables allow smaller groups of ORPC contractors to come together with ORPC staff and discuss different issues they are facing in their parent representation practice. In FY 2021-22, the ORPC held recurring contractor roundtables for the following groups: new RPC across the state (monthly roundtables); appellate RPC (quarterly roundtables); RPC by Judicial District (quarterly roundtables); RPC wishing to brainstorm motions issues (bi-monthly roundtables); and RPC who identify as Black, Indigenous, and people of color.

In the next three years, the ORPC will continue to implement trainings based on ORPC practice standards and principles of interdisciplinary practice as well as continue to offer its annual core trainings. Importantly, the ORPC will hold its first annual JEDI training on January 9, 2023. The agency has and continues to incorporate antiracism into each and every training, and is excited to add this new, annual training to its antiracism agenda. The ORPC will also implement a new training and community building program for BIPOC contractors following the JEDI training. The agency has succeeded in its goal of expanding online training resources and will continue to prioritize remote access to training. The ORPC will also continue to use roundtables as a part of its training program, and looks forward to being able to offer some of these roundtables in-person regionally. The ORPC

⁴¹ These percentages are based on training attendees who chose to complete training evaluations. The percentages were calculated by taking the number of training evaluations which rated a training "excellent" or "good" and dividing that number by the total number of training evaluations received during the entire FY21-22 period.

will offer a hybrid training calendar, which will incorporate virtual webinar trainings, in-person trainings, and trainings offered both in-person and virtually.

Performance Measure G: Provide High-Quality Trainings		FY2019-20	FY2020-21	FY 2021-22	FY2022-23*	FY2023-24
Training for attorneys, associates, social workers, parent advocates, and court personnel	Target	10	10	10	20	20
	Actual	43	43	46	17*	TBD
Total Number of Training Hours		162.9	139.8	184	34.25*	TBD
Total Number of Attendees**		833	1177	1459	439*	TBD

**Data provided for the FY 2022-23 year includes data from July 1, 2022-Novemebr 1, 2022.*

***The total number of training attendees is calculated by adding together the total number of attendees at each training. As such, a training attendee who attends multiple trainings in a year will be counted each time they attend an individual training.*

Motions Bank, Caselaw Updates, and Resources for Contractors: The ORPC provides several resources to build and maintain a strong community of family defenders. Attorneys are encouraged to share motions, and the ORPC assists with updating and drafting some motions. The ORPC has also contracted with attorneys to provide motions drafting assistance, and these attorneys are asked to share the motions they draft with the ORPC to increase resources available to contractors. To more quickly update the available resources for contractors, the ORPC transitioned its Motions Bank to a DropBox account that can only be accessed by ORPC staff and contractors.

In addition to Motions, the ORPC has provided access to case management orders, records policies, and other commonly used documents and forms from other jurisdictions. This allows RPC to look at examples of best practices in other jurisdictions in order to work on adopting such practices in their own jurisdictions. The Motions Bank currently contains over 263 files, with more added each week.

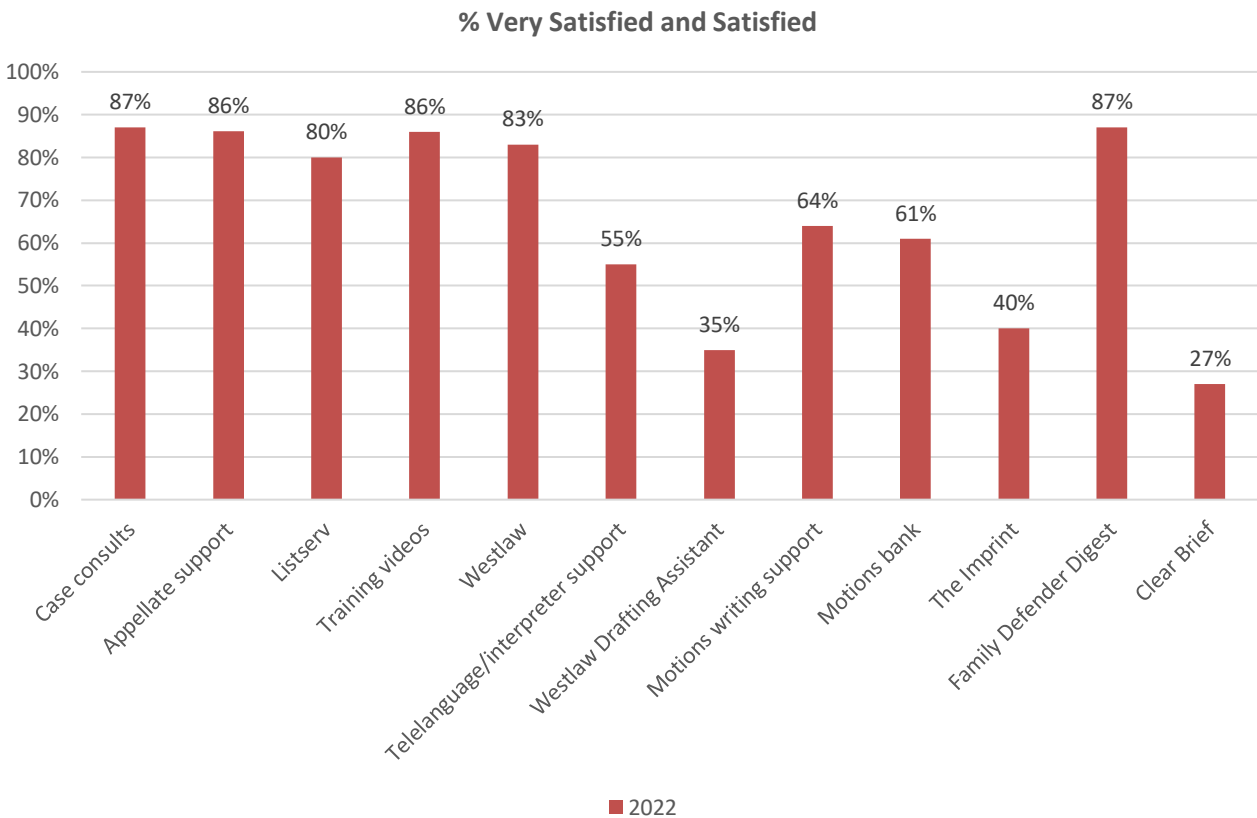
The ORPC also provides weekly written case law summaries as a service to its contractors. The agency monitors legal opinions at both the state and federal levels involving dependency and neglect cases, including published and unpublished cases, and sends out a written summary of critical opinions impacting dependency cases. The ORPC supplements these written case law summaries with podcast caselaw summaries and caselaw updates at the agency’s annual conference.

Additionally, in 2021 the ORPC launched a new weekly email update, the *Family Defender Digest*, which provides an update on caselaw trends, resources (including draft motions), disability advocacy practice pointers, and recognition of RPC who had a significant success or otherwise deserve kudos for their efforts. The weekly caselaw update provided is also uploaded to the DropBox so it is easy for contractors to revisit or search in the future.

The 2022 ORPC Annual Contractor Survey asked contractors to rate their level of satisfaction with the various resources made available by the ORPC.

2022 ORPC Annual Contractor Survey

Please indicate your level of satisfaction with the following resources offered by the ORPC.



Recruitment and Retention: An ongoing and overarching goal for the ORPC is the promotion of excellent representation for indigent parents. For the ORPC community to flourish, it is vital to retain those contractors who already provide strong advocacy for their clients. Such contractors model the correct application of practice standards for newer members of the RPC community. In creating a strong community of family defenders, it is equally important to recruit talented, dedicated attorneys to the practice to inject energy and creativity into pursuing the ORPC’s mission.

Over the past four years, the ORPC surveyed contractors regarding their satisfaction with family defense work and dependency practice. Over those four years, the rates of frequency with which contractors experience burnout in their RPC work has risen steadily each year. In fact, in 2022, 78% of contractors reported experiencing burnout. Despite these concerning rates of burnout, contractors have consistently cited the culture and leadership of ORPC as reasons they feel valued and choose to continue their work. ORPC continues to observe the impact of the pandemic on all its contractors.

Retention of RPC, particularly in rural communities, continues to be challenging. The impact of the pandemic has been felt across all professionals in court systems. The result seems to be people in all aspects of the dependency and neglect system working beyond their capacity and communication challenges amongst stakeholders. The work of family defense is uniquely challenging. The agency works very hard to meet the lawyers where they are, listen to concerns, and support the challenging work of family defenders in courtrooms where their work is rarely celebrated.

The ORPC continues to develop multiple pipelines from which to recruit attorneys who are likely to excel in parent representation. The staff attorneys at the ORPC are cultivating networks of potential family defenders through law schools, specialty bars, and other professional organizations. One method of creating competent parent lawyers is to pair new lawyers with established RPC in mentoring partnerships. When any lawyer new to representing parents contracts with the ORPC, the Director of Engagement connects them with a well-established RPC who exemplifies the practice and culture ORPC values. The ORPC has developed a system of tracking new applicants who are not yet qualified to work independently on a contract but would be great candidates for associate positions with established RPC firms. When an established RPC is looking to expand her or his law firm, the ORPC aims to provide potential candidates for positions with those firms. Further, because of courtroom observations and networking within the defender community, ORPC staff attorneys are able to find opportunities to introduce high quality lawyers to the notion of becoming family defenders. It is these supports ORPC relies on to develop practitioners with a desire for longevity in the practice.

ORPC staff also proudly represent the ORPC by participating on committees and boards and appearing at speaking engagements throughout the state and the country. ORPC staff also routinely participate in public interest career fairs at local law schools and attended classes, clinics, and other recruitment opportunities to share information about a family defense career path with students. With a return to in-person opportunities, staff has been invited to speak at law schools, including University of Denver Sturm College of Law (DU), University of Colorado Law School, and University of Wyoming College of Law. ORPC staff attorneys also provide ongoing mentorship of law students from the local law schools. Additionally, the ORPC externship through DU's Sturm College of Law has produced externs for the agency for the past several semesters. As a result of the student practice act, several students have appeared in court advocating for parents, learning the practice of being an RPC in the same way promising public defenders and district attorneys have for years. Through this practice of placing externs with firms, ORPC hopes to bring new energy and interest to the family defense practice.

Agency staff routinely engage with attorneys who may be practicing in child welfare, family, or criminal law in other roles and are interested in transitioning to or adding RPC work to their practices. The Director of Engagement follows up with attorneys who are leaving public practice to let them know options available to them in family defense. The agency is committed to supporting alternative business models and structures that allow competent and passionate attorneys to enter this field and to continue to represent indigent parents throughout their legal careers. Participating in these opportunities to share the agency's mission and vision with the broader community helps the ORPC recruit professionals who might otherwise be unaware of the important work of family defenders.

Establish Fair and Realistic Contractor Hourly Rates to Attract and Retain High Quality Professionals: The ORPC is responsible for paying contractors tasked with representing indigent parents in dependency and neglect cases. The ORPC's enabling legislation charges and entrusts the

ORPC with enhancing the provision of respondent parents' counsel by establishing fair and realistic state rates by which to compensate RPC.⁴² Attracting and retaining experienced and effective contractors for the difficult work of representing indigent parents is critical to the ORPC's mission and is directly impacted by the hourly rates paid.

In FY 2020-21, the ORPC requested and received approval for a rate increase for contractors. However, due to the pandemic, the increase was withdrawn because of the economic downturn. In addition, salaries for state employees increased by 3% in FY 2019-20, by an additional 3% in FY 2021-22, and yet another 3% in FY 2022-23. ORPC contractors did not receive annual increases comparable to state employees and during this same time, private sector attorney salaries continued to increase. This change has only further exacerbated the pay disparity between public and private sector attorneys.

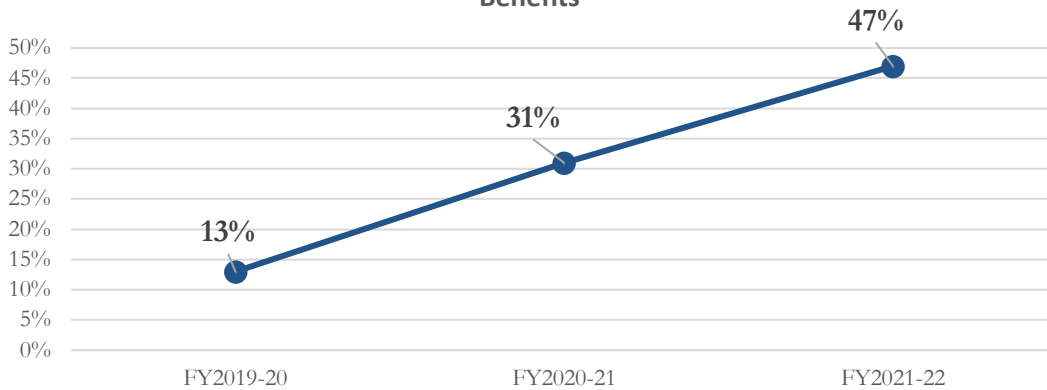
After a few years of stagnant rates of pay for public interest attorneys and contractors, in FY 2022-23 the ORPC successfully requested and received a \$5/hour increase in the hourly rate for attorneys and a commensurate 6% increase in the hourly rates of other contractors such as social workers and parent advocates. While this increase in rate of pay is greatly appreciated, it has not gone far enough to support contractors in sustaining the traditionally lower paying, public interest work of the ORPC.

The ORPC has also recognized that requesting increases to contractor hourly rates in the same percentage as increases to State employee pay does a disservice to contractors because it does not take into account two critical factors, total compensation and salary range adjustments. The State uses total compensation calculations, which include ever-increasing health insurance and other benefit premiums absorbed by the State, when determining the percentage of across-the-board increases to provide to employees. When contractors are given the same absolute percentage increase as State employees, the effective increase in pay is less than that of State employees because contractors must absorb the higher benefits costs themselves. In addition, the State compares job classes and salary ranges to those in the private sector and provides additional adjustments for employees in job class ranges in which the pay falls a certain percentage below the market range. This critical adjustment helps the State retain employees in job class ranges which are increasing faster than the overall market. Attorneys are one such class in which pay has increased faster than that in the overall market, but the hourly rates of ORPC contract attorneys have not kept pace.

For these reasons, it is no surprise that attorneys who leave ORPC contract work report the number one reason for leaving is to take a salaried job with benefits. In fact, since FY 2019-20, the percentage of attorneys who cite that accepting a full-time job with benefits is their number one reason for leaving RPC work has increased dramatically.

⁴² §§ 13-92-101 - 104, C.R.S. (2022).

Percentage of Exiting RPC Leaving the Work for a Full-Time Job with Benefits



In addition to stagnant rates of pay, the pandemic has impacted the agency’s ability to recruit and retain existing attorneys. Since early 2020, the agency has noted increased turnover of RPC contractors and reduced capacity of existing RPC to manage a full-time practice while balancing the increased demands of personal health and family obligations.

Compensation alone cannot completely address retention issues, but it is one means of attracting and maintaining high quality legal representation for indigent parents. Consequently, the ORPC’s current focus is on increasing the hourly rates of ORPC contractors to prevent the loss of the public-spirited attorneys who provide a vital service to their clients and to the State of Colorado. As a result, in the current FY 2023-24 budget request, the ORPC seeks an investment of additional funding to increase the hourly rates of ORPC contract attorneys to \$100/hour so family defenders can afford to dedicate their time and expertise to the preservation of Colorado families.

This increase will not close the gap between rates of pay, but it will more closely align hourly rates for ORPC contract attorneys with the rates paid attorneys in other public sectors. It will also partially address the loss of real earnings due to inflation and decrease the attrition rate of contract attorneys who leave ORPC practice for more lucrative and stable areas of practice. Improved retention of existing RPC will increase the experience level of the contractors who do the difficult and essential work of representing indigent parents. Finally, increasing the current hourly rates for contractors will also help the ORPC attract strong professionals to the practice of parent representation and family defense.

Performance Measure H:		FY 2019-20	FY 2020-21	FY 2021-22	FY2022-23	FY2023-24
Realistic Rate of Pay						
ORPC average hourly attorney rate	Target	\$80	\$84	\$80	\$85	\$100
	Actual	\$80	\$80	\$80	\$85	TBD

Redefining Success: To strengthen advocacy and leadership for ORPC contractors, the agency is working to develop measures of success that encapsulate all the challenges facing parent attorneys. While family reunification is universally recognized in dependency and neglect proceedings as one measure of successful representation, success also includes providing parents with dignity, advocacy, and a voice in the proceedings. In building a strong community of family defenders, it is essential that

the ORPC communicates the value inherent in contractors' work beyond traditional measures. For that reason, the ORPC has begun recognizing contractors for meeting many other goals of representation, including:

- successfully complying with the performance standards established in CJD 16-02;
- providing client-centered representation to parents;
- educating stakeholders regarding the impact of separation trauma when appropriate;
- successfully communicating client stories and history to opposing parties and courts;
- exploring alternatives to reunification including allocation of parental rights;
- providing data and expert research to better inform courts and stakeholders of potential harm often overlooked by well-meaning professionals;
- recognizing and celebrating the culture of families in arguments for reunification;
- creating dignity for parents who have often experienced extensive trauma themselves; and
- employing parent advocates with lived experiences to work on cases and to educate the community regarding the challenges parents face within the system.

Another indicator of successful representation emphasized by the ORPC is leadership in the courtroom. A successful RPC is the most professional, well-informed, and legally knowledgeable lawyer in the courtroom. The elevation of RPC practice in courtrooms across the state is a success independent of the resolution of the case.

The change in RPC practice and culture is becoming evident. ORPC contractors are now looking at success from many angles. Recently, ORPC was contacted by a well-established expert who has worked on dozens of dependency and neglect cases. He reached out specifically to let us know that one of our RPC is one of the "sharpest and most gifted attorneys [he has] worked with since [he] began this work in 1995." This feedback came during the proceedings, before the outcome of the case was known. As RPC continue to deliver high quality representation for parents across the state, confidence in the system as a whole improves and outcomes will inevitably shift. ORPC focuses on recognizing this advocacy through our weekly Family Defender Digest and at trainings such as the Annual Fall Conference. These successes are felt deeply by the community and often shared by other professionals on our listservs so that every contractor can celebrate these successes.

Even when the result of the proceeding is not what the parent or the RPC hopes it will be, contractors are able to focus on ways that clients' lives have improved. One appellate attorney pointed out, "I am so happy when I talk to clients who have become substance-free, even after the court terminated their parental rights." Many times, ORPC contractors struggle to obtain justice for their clients. They can provide dignity, however, for clients who have been traumatized, belittled, or ignored their whole lives. RPC carrying the stories of their clients proudly into family engagement meetings or review hearings is often a success for parents who express that they have never truly been listened to or felt heard.

The ORPC is committed to supporting contractors when their clients identify other objectives as the primary goal in a case, such as allocating parental rights to other family members or relinquishing their rights, in addition to supporting contractors whose clients are pursuing reunification. Representing parents who have experienced trauma can be emotionally draining and lead to burnout, and it is crucial

that the ORPC redefine success for attorneys in these cases so that they are recognized and celebrated for all critical aspects of the important work they are doing.

Colorado family defenders are also recognized as leaders in the public defender community across the country. Because ORPC contractors are working creatively and strategically toward better outcomes and broader models of success, they are often invited to speak at national public defender conferences where family defense tracks are becoming an integral part of national defender training. In the past year, Colorado lawyers, social workers, and parent advocates have presented at conferences hosted by the American Bar Association Center for Children and the Law, National Association for Public Defense, and the National Legal Aid and Defender Association. The recognition of these professionals as experts in family defense instills a sense of pride in the work they are doing at home, celebrates their excellence, enhances their reputation as leaders in their field, and is not dependent upon individual case outcomes.

ORPC Collaboration with the Colorado Evaluation and Action Lab: Fulfilling the ORPC’s mission to protect the fundamental right to parent by providing effective legal advocates for indigent parents in child welfare proceedings necessitates an evidence-based, data-driven approach to investments. One such investment is the ORPC’s partnership with the Colorado Evaluation and Action Lab (Colorado Lab). The Colorado Lab is an innovative government-research partnership that promotes evidence-based policymaking. Since FY 2020-21, the ORPC has contracted with this pioneering organization to evaluate the ORPC’s overall effectiveness.

In the first year of this planned four-year collaboration, evaluation activities centered on the ORPC’s interdisciplinary representation model. The initial phase of assessing this model called for defining interdisciplinary team roles and indicators of client-centered representation within the unique context of Colorado’s child welfare system. Subsequent phases of the evaluation are exploring the value of the interdisciplinary model of representation vs. attorney-only representation and identifying activities and practices associated with positive case outcomes, long-term return on investment, and systemic changes.

Additionally, the Colorado Lab recently began an evaluation of the pre-filing representation pilot program that the ORPC launched in Jefferson County in early 2022. Assessment of the program’s referral and parental engagement processes, as well as its outcomes, will inform its implementation in other counties. As the Colorado Lab conducts these evaluations of ORPC programming, staff at both agencies are working together to build the ORPC’s capacity to evaluate its own efforts in the future.

A key component of the ORPC’s partnership with the Colorado Lab is acquiring access to high quality data collected by other departments and agencies. In FY 2021-22, with the Colorado Lab’s guidance, the ORPC onboarded to the Linked Information Network of Colorado (LINC),⁴³ a state collaborative based out of the Governor’s Office of Information Technology that facilitates the integration of data across state and local agencies including human services, health, labor and employment, higher education, housing, K-12 education, and criminal justice. The Colorado Lab is also assisting the ORPC in entering into a formal data-sharing agreement with the Colorado Department of Human Services that would provide biannual data pulls, as well as advising the ORPC in refining its own internal data collection via its proprietary contractor billing system to facilitate program evaluation.

⁴³ Linked Information Network of Colorado, <https://lincolorado.org/>.