



## Office of Respondent Parents' Counsel FY2024-25 Comeback

### Summary of JBC Action:

The Joint Budget Committee's Figure setting action eliminated approved and appropriated programming by eliminating the IV-E Legal Representation line item without moving those appropriations to existing or new lines, most importantly, parent advocates, training of parent advocates and cross-disciplinary training, and preventative legal service programming. In addition, the 4.9 million transfer of spending authority to the Court Appointed Counsel line is more than the ORPC draws yearly in IV-E funding. These two issues were discussed with Mr. Kemm and he indicated that he is willing to work with the ORPC to make budget adjustments.

**ORPC Comeback:** The JBC should consider the ORPC's refinance and IV-E maximization proposal, which if approved would result in both long term general fund availability and one-time general fund availability of five million dollars.\* The ORPC discussed these five proposals with Mr. Kemm.

The ORPC proposes:

- 1) To maintain programmatic funding approved by the Joint Budget Committee and appropriated through the Long Bill to the Title IV-E Legal Representation Line by allocating those funds to appropriate existing budgetary lines and proposed new lines accurately reflecting current approved programming by:
  - a) Eliminating the Title IV-E Legal Representation Line.
  - b) Creating two new programmatic budget lines that reflect the budget for programming previously approved and appropriated.
- 2) To reallocate \$3.2 million\* of IV-E spending authority from the eliminated IV-E line to appropriate budgetary lines and return \$2 million of general fund to the Treasury on an ongoing basis. This amount reflects a shared goal to align the yearly IV-E reimbursement to spending authority.
- 3) On a one-time basis, reduce the general fund allocation for FY 24-25 by using a greater portion of the IV-E cash balance. The ORPC estimates that this action makes available five million dollars in general fund for one-time use. This one-time reduction cannot be made permanent because the ORPC would not be able to pay for its core legal representation if the general fund allocation had an ongoing reduction. This also contemplates the IV-E earnings would be reduced for one year (which would require maintaining cash fund balance to cover the temporary reduction in earnings). There are issues that need to be discussed to include risk, transfer authority, spending authority, and process.
- 4) Set aside funds for HB 24-1120, with the ORPC's allocation being funded entirely through IV-E. This bill is currently awaiting Appropriations and would expand the ORPC's preventative legal services across the state.
- 5) Keep an appropriate cash fund reserve in line with the JBC Analyst Recommendation made in 2020 to account for the potential for audits, changes in the child count, changes in the penetration rate, changes in child welfare manual policy, reduced draws due and unforeseen circumstances due to the ever-changing landscape of this funding stream. The ORPC estimates this amount should be 7 million,\* but has more work to do to be certain.

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\*The numbers in this proposal are the best estimates the ORPC could compile in a short amount of time. The ORPC requests to consult with Mr. Kemm to confirm that the proposed budget aligns with his intent, ORPC's anticipated expenditures, and IV-E reimbursements.



### Comeback Justification

**Point 1. Approved and Appropriated Programming that would be Reduced or Eliminated by the JBC's Figure Setting Action**

- **Parent advocates.** In 2021, the ORPC started a parent advocate program. The ORPC has over twenty parent advocates, all parents who successfully reunified with their own children and now help support other parents throughout their dependency and neglect cases. The parent advocates receive training and support from contracted social workers and ORPC staff. This model is evidence-based and specifically called out as an allowable use of IV-E funding. Not only do parent advocates increase parents' engagement in their cases, they also ultimately save money by communicating with parents more effectively than attorneys at a lower hourly rate. The agency used IV-E funding to pay for training and supervision of parent advocates. This year, the agency intended to hire a new class of parent advocates to keep up with the demand for their services and attrition of parent advocates since the program's inception. The agency has put these plans on hold because of the figure-setting recommendation. The agency needs \$1,700,000 in funding to continue this programming.
- **Preventative legal services.** In accordance with the ORPC's enabling statute and the approved IV-E plan, the agency has provided limited representation in ancillary civil legal cases and created a pilot program for representing parents prior to the filing of a dependency and neglect case. The agency needs \$50,000 in funding to continue current programming.

Additionally, the agency has pursued legislation, both last year and this year, to expand availability of these services through a bill that would allow the agency to represent people in administrative appeals of abuse and neglect findings. Both years, the bill has advanced out of committee only to struggle to find needed funding. The agency therefore requests a set aside for [HB 24-1120](#) and requests that the funds allocated to the ORPC be paid through IV-E. This would allow the agency to build out our programming for preventative legal services and to provide a more accurate budget to continue and expand this programming in future years. The current [fiscal note](#) estimates ORPC's costs as follows:

<b>Office of the Respondent Parents' Counsel</b>		
Personal Services	\$130,112	\$162,640
Operating Expenses	\$1,024	\$1,280
Capital Outlay Costs	\$6,670	-
Contract Attorney	\$989,415	\$1,036,530
Centrally Appropriated Costs <sup>1</sup>	\$21,415	\$26,768
FTE – Personal Services	0.8 FTE	1.0 FTE
<b>ORPC Subtotal</b>	<b>\$1,148,636</b>	<b>\$1,227,218</b>

The ORPC estimated its costs for this bill substantially lower than OLLS estimated, requesting a total of \$490,373 for FY 24-25 and \$759,949 for the full fiscal year 25-26. With the [amendments](#) made in the House Health and Human Services Committee, the ORPC estimates its cost at closer to its original submission.



Preventative legal services ultimately reduce overall child welfare system costs, compared to foster care, which generally creates a [negative social return on investment](#) of \$3.64 to \$9.55 per dollar spent. The [Children's Bureau](#) indicates that “providing early help with lawyers trained to address issues such as housing, immigration, domestic violence, healthcare, and public benefits may help “prevent children from entering foster care or help children return home sooner.” The JBC is contemplating several bills that increase funding by needed amounts for children in adoptive placements and high-level placements for children with acute needs. In comparison, preventative legal services cost far less per person served and have been shown to be successful at keeping children home or with family, resulting in far less costs downstream.

- **Cross-disciplinary and community training and events.** The ORPC hosts two major cross-disciplinary trainings each year that are open to the child community as well as a Reunification Celebration Day. These trainings and events are currently the only trainings and events open to all child welfare professionals and the community.
  - o Since the death of Carrie Ann Lucas in 2019, the agency has provided a full-day training in her honor to train caseworkers, parents’ attorneys, GALs and CFYs, county attorneys, and community members on the requirements of the Americans with Disabilities Act and advocacy for people with disabilities. In the words of participants from Adams County Human Services: “It was extremely great information, as was last year. Our entire Family Engagement Team from Adams attended and learned so much.” The ORPC requires an appropriation of \$14,000 to continue this training.
  - o Starting in 2023, the ORPC hosted a full-day conference again open to all child welfare professionals and community members on diversity, inclusion, equity, and belonging. Again, there are no other trainings like this that are cross-disciplinary and open to all child welfare stakeholders. The ORPC requires an appropriation of \$12,000 to continue this training.
  - o This year, the ORPC began providing an annual caselaw and legislative update open to the public. The event was held in Weld County this year. Going forward, the ORPC would like to hold this event in communities where the agency needs to connect with rural contractors in person and combine this event with annual court observations and meetings. As a result, the ORPC estimates this event would cost an estimated \$6,000.
  - o Starting in 2020, the agency partnered with CDHS to celebrate National Reunification Month in June. Last year, OCR, the Court Improvement Program, and CASA joined CDHS and ORPC to host an annual Reunification Celebration. The primary purpose of dependency and neglect cases is to reunify families, but there was no celebration of families that reunify, even though other agencies host celebrations for adoptive families and foster parents (CDHS) as well as for children in foster care (OCR). Hosting a Reunification Celebration jointly as a community celebrates families who are successful and reminds us that most children reunify with their families. Last year’s event was very impactful to the families and professionals who were celebrated for their work in reunifying families. The ORPC requires a \$30,000 appropriation to its Operating line item to continue this event.



The ORPC needs a total of \$32,000 for its training line item and \$30,000 for its operating line item to continue these trainings and events.

- **Additional Training Needs:** The ORPC currently receives \$30,000 in general fund for its training line item with a \$48,000 cash fund that has never earned up to that amount from contractors paying to attend trainings. The agency has always held an annual conference, consistent with the practices of OCR and other state agencies. This is an important opportunity to provide training to all contractors and build community, and it is a well-attended and highly rated event. Conference costs have increased over 25% annually since 2019, which is the last time the ORPC received an increase in its training allocation. The ORPC is requesting \$21,000 in additional IV-E funds to reflect this need.

Additionally, the office has partnered with the Office of Alternate Defense Counsel in their highly rated and sought after Trial Advocacy Training. It would cost the agency far more to produce its own Trial Advocacy Program. Our current costs are to contribute \$21,000 towards the cost of this training. Without additional funding, the agency will not be able to continue to send its contractors to this training. Courtroom observations, judicial feedback, and contractor feedback consistently rate this program as one of the highest needs for training, and \$21,000 for a full week training with trainers from across the nation is the best deal the ORPC could expect to get on such an incredible training opportunity. Without this, the ORPC would have to deploy more expensive methods to improve trial advocacy skills, including mentorship and co-counsel, and these methods would likely not be as effective.

Accordingly, the ORPC seeks an additional \$42,000 in IV-E funds in its training line item. This amount would still be less than the training allocation for OCR, and ORPC is not seeking a training assistant or additional funding for staffing in this area despite producing and having available over 150 hours of training each year.

- **Data Lab:** The ORPC has partnered with the Colorado Evaluation and Action Lab to evaluate its IV-E funded programming for the last four years. The ORPC requires an ongoing appropriation of \$100,000 to continue this work. The Lab is midway through a multi-year evaluation of the agency's interdisciplinary model, which has been recognized by the Children's Bureau. Preliminary data shows that parents represented by interdisciplinary teams are more likely to reunify and for children to be placed with family members. The final phase will identify activities and practices associated with positive case outcomes, explore the interdisciplinary model's long-term return on investment, and recommend systemic changes to further support the use of the model.
- **Payment System Costs:** As described in more depth in the agency's budget request, the ORPC is using IV-E funds, consistent with its appropriated IV-E plan, to replace its payment system, which was no longer going to be supported due to its sole engineer retiring. The ORPC has only had one payment system during its existence. While the ORPC anticipates completing its buildout of the system within the current fiscal year, if CORE modernization causes a delay, the ORPC will need to expend funds in the next fiscal year instead. As a result, the ORPC is requesting an appropriation of \$400,000 in IV-E funding to ensure that it can complete its new payment system before the engineer for its current system retires.



## **Point 2. General Fund Replacement Amount Needs to be Adjusted**

The JBC Analyst's recommendation to replace \$4.9 million of general fund with IV-E to fund a portion of the CAC line 1) overestimates the amount the ORPC earns in IV-E funding each year by at least \$1.5 million and 2) would ultimately deplete the ORPC's ability to earn federal funds, resulting in a loss of available funding to the state and a return to exclusively relying on general fund.

First, the JBC has voted to replace \$4.9 million of the agency's general fund with IV-E funding and to eliminate the IV-E Legal Representation Line Item. However, the agency has never earned more than \$3,473,305 in federal IV-E funds in one year. Adopting this proposal is likely to result in a budget shortfall of at least \$1.5 million in funding our statutory and Constitutional mandate: providing attorneys for parents. The amount of general fund for our budget that the JBC is replacing with IV-E funds should not exceed the highest amount we have earned and should instead be based on our average annual IV-E earnings of \$3,213,383.

Second, placing all the IV-E funding in our CAC line will ultimately decrease our ability to draw down IV-E and reduce available federal funds for our state, as outlined more fully below.

## **Point 3: Adopting the Proposed Refinancing Structure Presents Risks**

### **Risk: Supplanting**

The ORPC is concerned that the actions approved by the JBC or proposed in this comeback may be considered supplanting by the federal government. There is reason to proceed with caution when federal guidance is pending. Federal grant awards are generally intended to supplement, but not supplant, existing state or locally funded activities. Supplanting occurs when a state or local government reduces state or local fund activity, specifically because federal funds are available (or expected to be available) to fund that activity. Supplementing occurs when federal funds are used to enhance existing state or local funds for program activities. *See, e.g., [Supplanting Guide Sheet](#)*, U.S. Department of Justice, Office of Justice Programs.

Examples of non-supplant requirements abound in the federal code across Titles 5, 6, 7, 8, 10, 15, 19, 20, 21, 25, 28, 34, 42, and 45. A quick search revealed at least 173 references, the majority being in Title 42, to supplanting across these titles. In every one of these 173 instances, supplanting already existing funding sources with federal grant monies is strictly prohibited.

### **Risk: Divergence from Federal Intent**

Spending IV-E reimbursements in line with federal program intent that is nationally recognized is the conservative approach to spending these funds, which translates into less risk for the state having to pay back federal funds. In contrast, if IV-E reimbursement funds are diverted elsewhere to fund unrelated activities not related to legal representation, the federal government could demand repayment of these funds. The intent of this funding stream has continued to be to support and encourage high-quality legal representation for parents and children, including pre-petition and interdisciplinary representation, in efforts to prevent the removal of children from their families, safely reunify children and parents, finalize permanency, and ensure that family voices are heard, and their rights are protected. The question on supplanting has yet to be answered.





### **Risk: IV-E Audit**

On October 1, 2024, a [federal audit](#) of Colorado's Title IV-E program is scheduled to begin. The ORPC Interagency Agreement with CDHS has audit provisions, but it is unclear whether ORPC will be included in any audit or review in October. CDHS shall have the responsibility of responding to all third party audit reports regarding the IV-E interagency agreement. ORPC agrees that it shall fully and unconditionally cooperate with CDHS in responding to audit reports regarding this Agreement. ORPC shall be responsible for repayment of any Title IV-E funds received that are the result of Title IV-E funds disallowed as a direct result of a federal or state audit of ORPC's financial records.

### **Risk: Pending Federal Guidance**

The Children's Bureau [proposed a new rule](#) that includes and expands upon the previous guidance and interpretation to permit IV-E reimbursement for interdisciplinary legal representation of parents, children, and relative caregivers, including for representation of children and families at risk of entering foster care and for civil legal services. This rule would result in the IV-E legal representation program being codified in Title 42 of the Federal Code. Many of the comments from national organizations (National Association of Counsel for Children (NACC), ABA, Casey Family Programs, & American Academy of Pediatrics) on the proposed rule ask the Children's Bureau to clarify that supplanting of federal funds is not permitted and to clarify the specific uses of IV-E funds. The rule is expected to be issued before November 2024.

### **Risk: A Less Conservative IV-E Approach**

While the cash fund needs to be rebalanced, the reserve in the IV-E cash fund serves as a safety net as federal government program guidance continues to evolve. Steve Allen, the ORPC's JBC analyst wrote this in his 2020 supplement document: "Staff supports the ORPC's decision to seek as many federal dollars as it reasonably can. However, staff is concerned that the Children's Bureau may decide at a future date that Colorado was not entitled to some of the federal dollars it received . . . Colorado would then have to refund the federal dollars, which might already have been spent. Staff spoke with the Department about this concern and suggested that the ORPC not spend federal reimbursement dollars that are received for legal work that might be questioned. The "suspect" funds would be held by the CDHS until the ORPC is confident that the federal government won't ask for them to be returned. At that time the ORPC would request an additional appropriation. The ORPC agreed with this analysis and the result is the staff recommendation for this request." The ORPC believes maintaining a reasonable reserve remains a wise strategy, especially pending the results of the federal audit.

### **Risk. Viewing IV-E Funds Deposited into the Cash Fund as General Fund**

Using IV-E dollars as a state match is generally prohibited because it is a duplication of benefit, meaning the agency used prior expenses and counts as the basis to be reimbursed by the federal government, and then used these same reimbursement funds to put back into the line as part of a nonfederal match in a subsequent period.



## Background Information

### History of IV-E funding:

Title IV-E of the Social Security Act is the source of federal funding for foster care that began providing child welfare grants in 1935. In 1980, child welfare funding through the creation of Title IV-E of the Social Security Act began. The federal government matches state funds for foster care, as well as administrative costs, at 50%. In January 2019, the Children's Bureau revised its policy to acknowledge the crucial importance of funding independent legal representation for the parents of children who are at serious risk of entering foster care to ensure that reasonable efforts are made to prevent removal. As a result of this change to the Child Welfare Policy Manual, the ORPC may seek federal reimbursement for the allowable legal representation costs incurred by the ORPC, and those funds will pass through to the ORPC pursuant to C.R.S. § 26-2-102.5.

As described in C.R.S. § 26-2-102.5, the ORPC has an interagency agreement with CDHS governing the process to claim title IV-E funds for legal representation. Requests for reimbursement of costs incurred by the ORPC for legal representation are reimbursed at 50% of Colorado's penetration rate, which is a state's proportion of foster care children eligible for Title IV-E, which is a constantly changing number.

CDHS also updated the Public Assistance Cost Allocation Plan (PACAP) and instructed the ORPC on the child count, which is a complicated process. The child count counts children whose parents the ORPC has represented and then matches ORPC data to Judicial data to determine if a child is in placement or a candidate for foster care.

The ORPC submitted its first IV-E budget request in a FY 19-20 budget supplemental and budget amendment in January 2020, as soon as possible after the passage of SB 19-258 and finalization of an interagency agreement with CDHS, which established the mechanisms for the ORPC and OCR to claim IV-E funds. The supplemental request set forth a plan for using the IV-E funds that has not substantially changed in subsequent budget requests. This plan is also a part of the MOU that the agency has with CDHS and is consistent with Children's Bureau guidance and the procedures in C.R.S. § 26-2-102.5. The JBC approved this plan, and the agency was directed in figure-setting guidance from that year to request those funds as a IV-E Legal Representation Line Item, which the agency has consistently done. The Child Welfare Manual Policy change was the only guidance on what expense could be reimbursed and how the funds could be used that existed at this time.

In March of 2020 at the beginning of the COVID-19 pandemic, the ORPC requested and received its very first IV-E deposit in the cash fund. It was one of the first agencies in the country to do so, in part, because CDHS reached out to start working on the process on January 10, 2019, three days after the change in the policy manual.

In April 2020, the Children's Bureau issued subsequent guidance to clarify that administrative costs for paralegals, investigators, parent advocates, and social workers may also be claimed as Title IV-E foster care administrative costs when they are necessary to support an attorney providing independent legal representation. Three months later, in July 2020, the Children's Bureau issued a Technical Bulletin that further clarified that states may claim allowable administrative costs of "pre-removal" independent legal representation by an attorney for a child that is at risk of entry into the child welfare system for Title IV-E foster care and/or his or her parent. Colorado's interdisciplinary programming was recognized by the Children's Bureau in its 2021 Information Memorandum.

In June 2020, a presidential executive order, Executive Order 13930 – Strengthening the Child Welfare System for America's Children, was issued. Of note, the order directed that within six months, the "Secretary shall provide



guidance to States regarding flexibility in the use of Federal funds to support and encourage high-quality legal representation for parents and children, including pre-petition representation, in their efforts to prevent the removal of children from their families, safely reunify children and parents, finalize permanency, and ensure that their voices are heard and their rights are protected. The Secretary shall also ensure collection of data regarding State use of Federal funds for this purpose.”

Finally, in September 2023, the Children’s Bureau proposed a new rule that includes and expands upon the previous guidance and interpretation to permit IV-E reimbursement for interdisciplinary legal representation of parents, children, and relative caregivers, including for representation of children and families at risk of entering foster care and for civil legal services. Many of the comments from national organizations (National Association of Counsel for Children (NACC), ABA, Casey Family Programs, & American Academy of Pediatrics) on the proposed rule ask the Children’s Bureau to clarify that supplanting of federal funds is not permitted and to clarify the specific uses of IV-E funds. The rule is expected to be issued before November 2024.

Barriers to fully using IV- E funds:

The ORPC is a relatively new state agency created in 2016. After federal IV-E funding became available, the ORPC acted swiftly to begin drawing down federal funds. Unfortunately, these federal funds became available just as the COVID-19 pandemic swept our country, resulting in limited ability to develop new programming just approved and appropriated, budget shortfalls, and increased uncertainty about this funding source and the ORPC’s budget. For example, program development was slow because addressing the emergency occurring in child welfare came first. These are just a few of the ways court practice immediately changed: dealing with virtual court, uncertainty on what hearings could be remote, virtual visitation challenges and barriers, contractor reluctance to go to court, and adapting to how our office could still work in an entirely remote environment. Court practice and process has never changed so much so quickly. Nonetheless, the ORPC managed to launch approved and appropriated programming amid the pandemic. Present programmatic spending in FY 23/24 is projected to be more in line with approved spending authority.