

Title of Proposed Rule: SB22-1038 (Right to Counsel) 2509-4

CDHS Tracking #: 22-07-14-01

Office, Division, & Program:
OCYF/ DCW/ Permanency

Rule Author: Korey Elger

Phone: 303-249-5662

E-Mail:

Korey.Elger@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

- a. x | Board Executive Director
- b. x | Regular Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

AG Initial Review

Initial Board Reading

AG 2nd Review

Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number

 Amended Rules

 12 New Rules

 3 Repealed Rules

 Reviewed Rules

What month is being requested for this rule to first go before the State Board?	April 2023
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What date is being requested for this rule to be effective?	June 30, 2023
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Is this date legislatively required?	No
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I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director’s Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates:	1st Board <u>12/9/22</u>	2nd Board <u>1/6/23</u>	Effective Date <u>3/2/23</u>
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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

House Bill 22-1038 "Concerning client-directed legal representation for youth in court proceedings for youth" was signed into law in April 2022. Current law requires the appointment of a guardian ad litem for children or youth in dependency and neglect cases. The bill requires that client-directed counsel for youth be appointed for children or youth 12 years of age or older to provide specialized client-directed legal representation.

The new law prohibits the waiver of a child's or youth's right to counsel in dependency and neglect proceedings. The bill also allows a child or youth to be a party in a dependency and neglect proceeding. For a child or youth 12 years of age or older with diminished capacity, a guardian ad litem shall remain in the role and separate counsel for the child or youth must be appointed. Due to changes from this new law the rules that govern child welfare practice will need to be updated. This packet will include updates to 12 CCR-2509-04 to include counsel for youth and guardian ad litem and includes rule updates to incorporate language regarding the new law.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

to comply with state/federal law and/or

to preserve public health, safety and welfare

Justification for emergency:

State Board Authority for Rule:

Code	Description
26-1-107(5), (6), C.R.S. (2022)	State Board to promulgate rules.
26-1-109(3-5), C.R.S. (2022)	State department rules to coordinate with federal programs.
26-1-111(2), C.R.S. (2022)	State department to promulgate rules for public assistance and welfare activities.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-1-111(2), C.R.S. (2022)	State department to promulgate rules for public assistance and welfare activities.

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Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Child welfare sub pac, Permanency Task Group, Stakeholder meetings, Office of the Child Representative, Office of Respondent parent counsel.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

This rule will impact the stakeholders listed above because it will allow for youth over the age of twelve to have counsel and a voice for themselves in Dependency and Neglect and Juvenile Justice cases. The short and long term consequences will result in compliance with Colorado law Senate Bill 22-1038.

3. Fiscal Impact

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because...."***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

No State impact as this is providing guidance and there are no costs associated with these changes needed to modify state systems and rule changes is a planned for and absorbable impact for the state department.

County Fiscal Impact

No County impact as this is providing guidance and there are no costs associated with this change for counties.

Federal Fiscal Impact

No Federal Impact as this is providing guidance and there are no costs associated with this change.

Other Fiscal Impact (such as providers, local governments, etc.)

There will be a fiscal impact on the Office of Child Representative from cost incurred to address training for Guardians Ad Litem due to and the change to practice for attorneys.

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

This is not applicable as this is new law so no time has passed for data to be collected.

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5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”

There is not an alternative to rulemaking as the rules will need to have a definition through the statute about how and what a Guardian Ad Litem and a Counsel for youth will be doing in child welfare cases.

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	<i>Incorrect Statutory Reference</i>	<i>Section 26.5.103 C.R.S.</i>	<i>Section 26.5-101(3) C.R.S.</i>		
7.301.24 Family Service Plan Out-of-Home Placement Documentation S,4		<p>S 4. Upon the decision to pursue reinstatement of parental rights; only the county department, guardian ad litem, or a child sixteen (16) years of age or older may file the petition for reinstatement.</p> <p>a. The petition for reinstatement of parental rights should be filed in the county who has custody of the child(ren) through the dependency and neglect court case.</p> <p>b. The petition shall be filed in the dependency and neglect court case where the termination of parental rights occurred for the former parent(s) or in the event that the current open dependency and neglect case is a termination of the adoptive parent's rights, then the petition shall be filed in that court case, as it grants custody of the child(ren) to the county.</p> <p>c. If the county is contacted by a former parent inquiring about reinstatement, the county must notify the guardian ad litem (gal) within thirty (30) calendar days after the contact and provide them with the name and address of the former parent(s).</p>	<p>S 4. Upon the decision to pursue reinstatement of parental rights; only the county department, guardian ad litem, or a child sixteen (16) TWELVE (12) years of age or older may file the petition for reinstatement.</p> <p>a. The petition for reinstatement of parental rights should be filed in the county who has custody of the child(ren) through the dependency and neglect court case.</p> <p>b. The petition shall be filed in the dependency and neglect court case where the termination of parental rights occurred for the former parent(s) or in the event that the current open dependency and neglect case is a termination of the adoptive parent's rights, then the petition shall be filed in that court case, as it grants custody of the child(ren) to the county.</p> <p>c. If the county is contacted by a former parent inquiring about reinstatement, the county must notify the guardian ad litem (gal) AND CHILD TWELVE (12) YEARS OF AGE OR OLDER within thirty (30) calendar days after the contact and provide them with the name and address of the former parent(s).</p> <p>d. Once the court sets an initial hearing, the county shall develop and report to the court the following:</p> <ol style="list-style-type: none"> 1) Whether the former parent(s) has remedied the conditions that led to the termination; 2) Based on the assessment of the former parent, including the outcome of the Colorado family risk assessment tool, the transition plan shall include supports or treatment needed for the child(ren) and former parent(s) to help make the reinstatement a success; 	To include Counsel for youth	

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		<p>d. Once the court sets an initial hearing, the county shall develop and report to the court the following:</p> <ol style="list-style-type: none">1) Whether the former parent(s) has remedied the conditions that led to the termination;2) Based on the assessment of the former parent, including the outcome of the Colorado family risk assessment tool, the transition plan shall include supports or treatment needed for the child(ren) and former parent(s) to help make the reinstatement a success;3) Whether the former parent(s) can provide a safe and stable home for the child(ren);4) A visitation or temporary placement plan with the former parent(s) for up to a six month trial period where custody remains with the department; this plan will be approved or modified at this initial hearing.<ol style="list-style-type: none">a) Updates about the visits, transition plan, and supports shall be provided at each review hearing and no later than thirty (30) calendar days prior to the expiration of the trial home period.b) At any point the placement is deemed no longer safe or in the best interest of the child(ren), removal shall be in accordance with procedures outlined in Sections 19-3-401 and 19-3-403, C.R.S.5) Whether the child(ren) will lose or gain any benefits or services (Medicaid, Chafee, etc.) as a result of the reinstatement being granted.	<ol style="list-style-type: none">3) Whether the former parent(s) can provide a safe and stable home for the child(ren);4) A visitation or temporary placement plan with the former parent(s) for up to a six month trial period where custody remains with the department; This plan will be approved or modified at this initial hearing.<ol style="list-style-type: none">a) Updates about the visits, transition plan, and supports shall be provided at each review hearing and no later than thirty (30) calendar days prior to the expiration of the trial home period.b) At any point the placement is deemed no longer safe or in the best interest of the child(ren), removal shall be in accordance with procedures outlined in Sections 19-3-401 and 19-3-403, C.R.S.5) Whether the child(ren) will lose or gain any benefits or services (Medicaid, Chafee, etc.) as a result of the reinstatement being granted.		
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<p>7.301.241 Education Requirements for Children/Youth in Out-of-Home Placement</p>		<p>D. It is presumed to be in a child/youth's best interest to remain in the "school of origin." If transportation is necessary to maintain the child/youth in the "school of origin," this shall be provided in accordance with section 7.301.241, E. The county shall make a best interest determination prior to any school move resulting from a change in placements unless remaining in the "school of origin" poses a specific, documented threat to the child/youth's safety. The best interest determination process is as follows:</p> <ol style="list-style-type: none">1. The best interest discussion and determination shall occur as an in-person meeting when warranted and possible. When an in-person meeting is not warranted or not possible, or for participants unable to attend the meeting, the county department shall consult participants by other means, such as phone or email.2. The county department shall invite the following people to participate in the best interest determination. If a participant is unavailable or cannot be located, the county shall document the various ways in which attempts were made to engage that participant.<ol style="list-style-type: none">a. Child/youth, as described below, The county department of human services shall determine the child/youth's wishes in a developmentally appropriate way and include the child/youth in the meeting to the extent appropriate and possible for the child/youth's individual needs. If it is inappropriate or not possible for the child/youth to participate	<p>D. It is presumed to be in a child/youth's best interest to remain in the "school of origin." If transportation is necessary to maintain the child/youth in the "school of origin," this shall be provided in accordance with section 7.301.241, E.</p> <p>The county shall make a best interest determination prior to any school move resulting from a change in placements unless remaining in the "school of origin" poses a specific, documented threat to the child/youth's safety. The best interest determination process is as follows:</p> <ol style="list-style-type: none">1. The best interest discussion and determination shall occur as an in-person meeting when warranted and possible. When an in-person meeting is not warranted or not possible, or for participants unable to attend the meeting, the county department shall consult participants by other means, such as phone or email.2. The county department shall invite the following people to participate in the best interest determination. If a participant is unavailable or cannot be located, the county shall document the various ways in which attempts were made to engage that participant.<ol style="list-style-type: none">a. Child/youth, as described below, The county department of human services shall determine the child/youth's wishes in a developmentally appropriate way and include the child/youth in the meeting to the extent appropriate and possible for the child/youth's individual needs. If it is inappropriate or not possible for the child/youth to participate in the meeting, the county department shall document the reason and ascertain the child/youth's wishes through other means.b. Parents, For purposes of this subsection 7.301.241, the term "parents" includes a natural parent having sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or a parent allocated parental responsibilities with respect to a child, or an adoptive parent. Parent does not include a person whose parental rights have been terminated pursuant to the provisions of Title 19 of the Colorado Revised Statutes or the parent of an emancipated minor.c. Caseworker or appropriate designee,	<p>To include Counsel for youth</p>	
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		<p>in the meeting, the county department shall document the reason and ascertain the child/youth's wishes through other means.</p> <p>b. Parents, For purposes of this subsection 7.301.241, the term "parents" includes a natural parent having sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or a parent allocated parental responsibilities with respect to a child, or an adoptive parent. Parent does not include a person whose parental rights have been terminated pursuant to the provisions of Title 19 of the Colorado Revised Statutes or the parent of an emancipated minor.</p> <p>c. Caseworker or appropriate designee,</p> <p>d. Guardian ad litem, if one is appointed,</p> <p>e. Representative from the "school of origin" who knows the child/youth, as determined by the "education provider,"</p> <p>f. Educational surrogate parent, if any, and</p> <p>g. Others as relevant and appropriate as determined by the county, which may include but are not limited to future caregiver, court appointed special advocate (CASA), current caregiver, representatives from potential new school, support person for the child/youth.</p>	<p>d. Guardian ad litem AND/OR COUNSEL FOR YOUTH, if one is appointed,</p> <p>e. Representative from the "school of origin" who knows the child/youth, as determined by the "education provider,"</p> <p>f. Educational surrogate parent, if any, and</p> <p>g. Others as relevant and appropriate as determined by the county, which may include but are not limited to future caregiver, court appointed special advocate (CASA), current caregiver, representatives from potential new school, support person for the child/youth.</p>		
<p>7.301.241 Education Requirements for Children/Youth in</p>		<p>7. The county department shall inform the parent(s), guardian ad litem, and educational surrogate parent, if any, of the best</p>	<p>7. The county department shall inform the parent(s), guardian ad litem AND/OR COUNSEL FOR YOUTH, and educational surrogate parent, if any, of the best interest determination within one business day of making the determination. The notification shall serve as the first day in the dispute resolution time frames</p>	<p>To include Counsel for youth</p>	

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<p>Out-of-Home Placement D 7&8</p>		<p>interest determination within one business day of making the determination. The notification shall serve as the first day in the dispute resolution time frames described in section 7.301.24, D, 8. 8. Disputes regarding best interest determinations shall be handled in a manner that promotes the child/youth's safety and stability, as follows: If the parent(s), guardian ad litem, and/or educational surrogate parent, if any, is a party to an accompanying court case and disagrees with the county department's best interest determination, he or she must file a motion with the juvenile court to seek judicial resolution. Such a motion must be filed within three business days of the notice of the county's determination. If the county receives such a motion, the child/youth shall remain in the "school of origin" pending dispute resolution, unless remaining in the school poses a specific, documented threat to the child/youth's safety. If such parties indicate their agreement to a school move, the county need not delay the move pending the three-day appeal period.</p>	<p>described in section 7.301.24, D, 8. 8. Disputes regarding best interest determinations shall be handled in a manner that promotes the child/youth's safety and stability, as follows: If the parent(s), guardian ad litem, CHILD TWELVE (12) YEARS OF AGE OR OLDER, and/or educational surrogate parent, if any, is a party to an accompanying court case and disagrees with the county department's best interest determination, he or she must file a motion with the juvenile court to seek judicial resolution. Such a motion must be filed within three business days of the notice of the county's determination. If the county receives such a motion, the child/youth shall remain in the "school of origin" pending dispute resolution, unless remaining in the school poses a specific, documented threat to the child/youth's safety. If such parties indicate their agreement to a school move, the county need not delay the move pending the three-day appeal period.</p>		
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<p>7.304.53 Court-Related Procedures [Rev. eff. 12/1/18] M</p>		<p>M. When court-ordered, the county department of human or social services shall share a foster care home, kinship foster care home, and/or non-certified kinship care home provider's reports of fingerprint-based criminal history record information check generated from the Colorado Bureau of Investigation (CBI) and Federal Bureau of Investigation (FBI) with the guardian ad litem, related to the placement of a child and/or youth in out-of-home care.</p>	<p>M. When court-ordered, the county department of human or social services shall share a foster care home, kinship foster care home, and/or non-certified kinship care home provider's reports of fingerprint-based criminal history record information check generated from the Colorado Bureau of Investigation (CBI) and Federal Bureau of Investigation (FBI) with the guardian ad litem AND/OR COUNSEL FOR YOUTH, related to the placement of a child and/or youth in out-of-home care.</p>		
<p>7.304.55 Court Procedures Related to Termination of the Parent-Child Legal Relationship [Rev. eff. 2/1/10] G</p>		<p>G. In planning for termination of the parent-child legal relationship, the county department shall: 1. Work with the county's attorney in preparation of the court case. 2. Provide a treatment plan for the court's approval. 3. Cooperate with any guardian ad litem for the case. 4. Provide prepared staff to testify at the termination hearing, identify other witnesses, and assist in preparation of witnesses. 5. Keep parents, children, and appropriate interested parties informed regarding hearings and the status of the case. 6. File a motion for termination no less than 30 calendar days before the hearing.</p>	<p>G. In planning for termination of the parent-child legal relationship, the county department shall: 1. Work with the county's attorney in preparation of the court case. 2. Provide a treatment plan for the court's approval. 3. Cooperate with any guardian ad litem AND/OR COUNSEL FOR YOUTH for the case. 4. Provide prepared staff to testify at the termination hearing, identify other witnesses, and assist in preparation of witnesses. 5. Keep parents, children, and appropriate interested parties informed regarding hearings and the status of the case. 6. File a motion for termination no less than 30 calendar days before the hearing.</p>		
<p>7.304.62 Placement Activities L</p>		<p>L. Notify the guardian ad litem and/or the youth's counsel, parent(s) or legal guardian within one (1) business day upon a child/youth's placement into a foster care home. The Guardian Ad Litem's contact</p>	<p>L. Notify the guardian ad litem and/or COUNSEL FOR YOUTH the youth's counsel, parent(s) or legal guardian within one (1) business day upon a child/youth's placement into a foster care home. The Guardian Ad Litem's AND/OR COUNSEL FOR YOUTH'S contact information shall be provided to the foster parents.</p>		

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		information shall be provided to the foster parents.			
7.304.65 Administrative Review Definitions E		E. The county department shall invite parents, the child (if age appropriate as determined by the caseworker), out-of-home care providers, pre-adoptive parents, relatives/kin who are providing out-of-home care for the child, and the guardian ad litem to the Administrative Review in order that these individuals will have a right to be heard. All invitees shall be encouraged to attend.	E. The county department shall invite parents, the childREN (if age appropriate as determined by the caseworker), out-of-home care providers, pre-adoptive parents, relatives/kin who are providing out-of-home care for the child, and the guardian ad litem AND/OR COUNSEL FOR YOUTH to the Administrative Review in order that these individuals will have a right to be heard. All invitees shall be encouraged to attend.		
7.304.651 Qualified Residential Treatment Program Placement Reviews Definitions B 6		6. In instances of a voluntary placement, the ARD shall review the child or youth's placement no later than 60 days after placement in a QRTP or within 30 days after placement when the qualified individual does not support the QRTP level of care or the child, juvenile, or youth, guardian ad litem or any party objects to the placement.	6. In instances of a voluntary placement, the ARD shall review the child or youth's placement no later than 60 days after placement in a QRTP or within 30 days after placement when the qualified individual does not support the QRTP level of care or the child, juvenile, or youth, guardian ad litem AND/OR COUNSEL FOR YOUTH, or any party objects to the placement.		
7.304.651 Qualified Residential Treatment Program Placement Reviews Definitions D Invitations		D. Invitations 1. The county department shall invite parents, legal guardian or custodian, the child (if age appropriate as determined by the caseworker), members selected by the child (for children 14 years of age and above), kin, out-of-home care providers, and attorneys of record to the QRTP Placement Review. The county department shall encourage all invitees to attend.	D. Invitations 1. The county department shall invite parents, legal guardian or custodian, the child (if age appropriate as determined by the caseworker) , members selected by the child (for children 14 years of age and above), kin, out-of-home care providers, and attorneys of record to the QRTP Placement Review. The county department shall encourage all invitees to attend.		
7.305.2 SPECIFIC PROCEDURE S E		E. Free Annual Credit Record Report for Youth Fourteen (14) Years of Age and Older in Foster Care The following steps shall be taken: 1. The county department shall obtain free annual credit report information from the three	E. Free Annual Credit Record Report for Youth Fourteen (14) Years of Age and Older in Foster Care The following steps shall be taken: 1. The county department shall obtain free annual credit report information from the three credit reporting agencies designated by the Department for youth who are in foster care and are at least fourteen (14) years of age, and provide the information to the youth and		

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		credit reporting agencies designated by the Department for youth who are in foster care and are at least fourteen (14) years of age, and provide the information to the youth and Guardian ad Litem (GAL);	Guardian ad Litem (GAL) AND/OR COUNSEL FOR YOUTH;		
7.306.2 Adoption Placement Services A 1		The county department shall complete the following most recent, approved, state prescribed documents and reports: A. As soon as the county department has identified a prospective adoptive family, the county department shall conduct a face-to-face presentation interview with the prospective adoptive parent(s) within 90 days of termination of parental rights. If the adoptive resource is a two-parent family, both parents shall be present for the interview. If attending a face-to-face presentation will create an undue hardship for the prospective adoptive family, the presentation meeting may be conducted via phone or video conference chat to accommodate the prospective family during the presentation. 1. The guardian ad litem shall be invited to attend the presentation interview.	The county department shall complete the following most recent, approved, state prescribed documents and reports: A. As soon as the county department has identified a prospective adoptive family, the county department shall conduct a face-to-face presentation interview with the prospective adoptive parent(s) within 90 days of termination of parental rights. If the adoptive resource is a two-parent family, both parents shall be present for the interview. If attending a face-to-face presentation will create an undue hardship for the prospective adoptive family, the presentation meeting may be conducted via phone or video conference chat to accommodate the prospective family during the presentation. 1. The guardian ad litem AND/OR COUNSEL FOR YOUTH shall be invited to attend the presentation interview.		

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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

Cara Nord, Office of the Child’s Representative.

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes No

If yes, who was contacted and what was their input?

.

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes No

Name of Sub-PAC	Child Welfare		
Date presented	September 2022		
What issues were raised?	No		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	All voted yes		
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

Yes No

Date presented	October 2022		
What issues were raised?	No		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	All voted yes		
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

Yes No

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Office, Division, & Program:
OCYF/ DCW/ Permanency

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If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

The Office Of Respondent Council sent an email as follows :

Thank you! Would it be possible for our agency to provide written feedback? We don't have staff available to attend either of those dates.

Previous to voting the Office of Respondent parent council and the staff from the Division of child welfare meet and went through additional comments that had been brought by this office:

Hello everyone,

Thank you for agreeing to meet with the ORPC about our concerns with some of the proposed rules related to HB 22-1038. I am attaching the two PDFs where we had questions or concerns. Our comments are saved on the PDFs, and I have also summarized them below. Please ignore the highlighting – I was trying to highlight to make it easier, and the PDF was being really wonky so I stopped. Sheri, this is giving me flashbacks to editing the GRID with you, but I promise it is not that extensive!

Need Clarity:

- 7.301.24 – I think there is an error in the new language – I think it is supposed to be deleting 16 and changing it to 12 in S4, but that is not how it reads.
- 7.301.241 – the language seems to exclude parents whose children have been removed but whose rights are still intact. This is not a change, but just noticed it in reading the original rule. Would like to discuss whether this needs to be changed (but not as part of this rule packet).
- 7.304.651 – this QRTP rule lists youth, GAL, and/or CFY specifically as being able to object to QRTP placement, but all parties can (as the rule correctly identifies). Why list out just these parties separately?

Places where RPC should be added

- 7.301.241 – counsel for youth are being added to the BID meeting, but RPC are not included even though parents are included on the list. CFY represent youth and RPC represent parents, both in client-directed roles, so it does not make logical sense to add one and not the other.
- 7.304.65 – same logic as above.
- 7.704.11 - same logic as above.

Places where parents and RPC should be added

- 7.304.53 – the requirement to share background checks when ordered by the court should include RPC and parents.
- 7.708.2 – foster parents should have the ability to communicate with parents.
- 7.708.31.1 – parents and RPC should be notified in the same way that GAL/CFY are notified when alternative care is provided.
- 7.714.31 – parents and RPC should be able to obtain a report from facilities who deny children's rights.

Title of Proposed Rule: SB22-1038 (Right to Counsel) 2509-4

CDHS Tracking #: _____

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We did not have any concerns with packets 2 or 3. I don't think we will need the full time we have allocated for the meeting to discuss these concerns, so I am hoping that we can address these concerns first and then, if there is enough time, have a separate conversation with CDHS about how our office can better engage in the rule-making process with CDHS. Thank you.

All of these concerns were talked through with this stakeholder about the proposal prior to voting

7.301.24 Family Service Plan Out-of-Home Placement Documentation
S. Reinstatement of Parental Rights

4. Upon the decision to pursue reinstatement of parental rights; only the county department, guardian ad litem, or a child ~~sixteen (16)~~ TWELVE (12) years of age or older may file the petition for reinstatement.

a. The petition for reinstatement of parental rights should be filed in the county who has custody of the child(ren) through the dependency and neglect court case.

b. The petition shall be filed in the dependency and neglect court case where the termination of parental rights occurred for the former parent(s) or in the event that the current open dependency and neglect case is a termination of the adoptive parent's rights, then the petition shall be filed in that court case, as it grants custody of the child(ren) to the county.

c. If the county is contacted by a former parent inquiring about reinstatement, the county must notify the guardian ad litem (gal) AND CHILD TWELVE (12) YEARS OF AGE OR OLDER within thirty (30) calendar days after the contact and provide them with the name and address of the former parent(s).

7.301.241 Education Requirements for Children/Youth in Out-of-Home Placement

D. It is presumed to be in a child/youth's best interest to remain in the "school of origin." If transportation is necessary to maintain the child/youth in the "school of origin," this shall be provided in accordance with section 7.301.241, E.

The county shall make a best interest determination prior to any school move resulting from a change in placements unless remaining in the "school of origin" poses a specific, documented threat to the child/youth's safety. The best interest determination process is as follows:

1. The best interest discussion and determination shall occur as an in-person meeting when warranted and possible. When an in-person meeting is not warranted or not possible, or for participants unable to attend the meeting, the county department shall consult participants by other means, such as phone or email.

2. The county department shall invite the following people to participate in the best interest determination. If a participant is unavailable or cannot be located, the county shall document the various ways in which attempts were made to engage that participant.

a. Child/youth, ~~as described below.~~

~~The county department of human services shall determine the child/youth's wishes in a developmentally appropriate way and include the child/youth in the meeting to the extent appropriate and possible for the child/youth's individual needs. If it is inappropriate or not possible for the child/youth to participate in the meeting, the county department shall document the reason and ascertain the child/youth's wishes through other means.~~

b. Parents,

For purposes of this subsection 7.301.241, the term "parents" includes a natural parent having sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or a parent allocated parental responsibilities with respect to a child, or an adoptive parent. Parent does not include a person whose parental rights have been terminated pursuant to the provisions of Title 19 of the Colorado Revised Statutes or the parent of an emancipated minor.

c. Caseworker or appropriate designee,

d. Guardian ad litem AND/OR COUNSEL FOR YOUTH, if one is appointed,

d Representative from the "school of origin" who knows the child/youth, as determined by the "education provider,"

e. Educational surrogate parent, if any, and

f. Others as relevant and appropriate as determined by the county, which may include but are not limited to future caregiver, court appointed special advocate (CASA), current caregiver, representatives from potential new school, support person for the child/youth.

7.301.241 Education Requirements for Children/Youth in Out-of-Home Placement

D

7. The county department shall inform the parent(s), guardian ad litem AND/OR COUNSEL FOR YOUTH, and educational surrogate parent, if any, of the best interest determination within one business day of making the determination. The notification shall serve as the first day in the dispute resolution time frames described in section 7.301.24, D, 8.

8. Disputes regarding best interest determinations shall be handled in a manner that promotes the child/youth's safety and stability, as follows:

If the parent(s), guardian ad litem, CHILD TWELVE (12) YEARS OF AGE OR OLDER, and/or educational surrogate parent, if any, is a party to an accompanying court case and disagrees with the county department's best interest determination, he or she must file a motion with the juvenile court to seek judicial resolution. Such a motion must be filed within three business days of the notice of the county's determination. If the county receives such a motion, the child/youth shall remain in the "school of origin" pending dispute resolution, unless remaining in the school poses a specific, documented threat to the child/youth's safety. If such parties indicate their agreement to a school move, the county need not delay the move pending the three-day appeal period.

7.304.53 Court-Related Procedures

M. When court-ordered, the county department of human or social services shall share a foster care home, kinship foster care home, and/or non-certified kinship care home provider's reports of fingerprint-based criminal history record information check generated from the Colorado Bureau of Investigation (CBI) and Federal Bureau of Investigation (FBI) with the guardian ad litem AND/OR COUNSEL FOR YOUTH, related to the placement of a child and/or youth in out-of-home care.

7.304.55 Court Procedures Related to Termination of the Parent-Child Legal Relationship

G. In planning for termination of the parent-child legal relationship, the county department shall:

1. Work with the county's attorney in preparation of the court case.
2. Provide a treatment plan for the court's approval.
3. Cooperate with any guardian ad litem AND/OR COUNSEL FOR YOUTH for the case.
4. Provide prepared staff to testify at the termination hearing, identify other witnesses, and assist in preparation of witnesses.
5. Keep parents, children, and appropriate interested parties informed regarding hearings and the status of the case.
6. File a motion for termination no less than 30 calendar days before the hearing.

7.304.62 Placement Activities

L. Notify the guardian ad litem and/or COUNSEL FOR YOUTH ~~the youth's counsel~~, parent(s) or legal guardian within one (1) business day upon a child/youth's placement into a foster care home. The Guardian Ad Litem's AND/OR COUNSEL FOR YOUTH'S contact information shall be provided to the foster parents.

7.304.65 Administrative Review

E. The county department shall invite parents, the childREN ~~(if age appropriate as determined by the caseworker)~~, out-of-home care providers, pre-adoptive parents, relatives/kin who are providing out-of-home care for the child, and the guardian ad litem AND/OR COUNSEL FOR YOUTH to the Administrative Review in order that these individuals will have a right to be heard. All invitees shall be encouraged to attend.

7.304.651 Qualified Residential Treatment Program Placement Reviews

B.

6. In instances of a voluntary placement, the ARD shall review the child or youth's placement no later than 60 days after placement in a QRTP or within 30 days after placement when the qualified individual does not support the QRTP level of care or the child, juvenile, or youth, guardian ad litem AND/OR COUNSEL FOR YOUTH, or any party objects to the placement.

D. Invitations

1. The county department shall invite parents, legal guardian or custodian, the child ~~(if age appropriate as determined by the caseworker)~~, members selected by the child (for children 14 years of age and above), kin, out-of-home care providers, and attorneys of record to the QRTP Placement Review. The county department shall encourage all invitees to attend.

7.305.2 SPECIFIC PROCEDURES

E. Free Annual Credit Record Report for Youth Fourteen (14) Years of Age and Older in Foster Care
The following steps shall be taken:

1. The county department shall obtain free annual credit report information from the three credit reporting agencies designated by the Department for youth who are in foster care and are at least fourteen (14) years of age, and provide the information to the youth and Guardian ad Litem (GAL) AND/OR COUNSEL FOR YOUTH;

7.306.2 Adoption Placement Services

A. As soon as the county department has identified a prospective adoptive family, the county department shall conduct a face-to-face presentation interview with the prospective adoptive parent(s) within 90 days of termination of parental rights. If the adoptive resource is a two-parent family, both parents shall be present for the interview.

If attending a face-to-face presentation will create an undue hardship for the prospective adoptive family, the presentation meeting may be conducted via phone or video conference chat to accommodate the prospective family during the presentation.

1. The guardian ad litem AND/OR COUNSEL FOR YOUTH shall be invited to attend the presentation interview.

[Note: Changes to rule text are identified as follows: deletions are shown as “~~strikethrough~~”, additions are in “All Caps”, and changes made between initial review and final adoption are in [brackets] or **highlighted yellow**]