



**Implementing “Normalcy” Provisions in the
Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183)
and the Nebraska Strengthening Families Act (LB 746):
A Guide for Court Stakeholders**

In September 2014, Congress passed *The Preventing Sex Trafficking and Strengthening Families Act* (commonly referred to as “The Strengthening Families Act” or “SFA”). Many of the bill’s provisions were developed to address concerns expressed in Congressional hearings by former and current foster youth, which highlighted the unnecessary barriers in the child welfare system that prevent youth from having “normal” childhood and adolescent experiences.

This document provides an overview of the provisions in the Strengthening Families Act designed to promote “normalcy” among children and youth in foster care – that is, promoting opportunities for youth to engage in age- and developmentally-appropriate activities that their peers may take for granted, and encouraging youth to take a more active role in their case planning.

In April 2016, the Nebraska Legislature passed and Governor Ricketts signed LB 746, the *Nebraska Strengthening Families Act* (“NSFA”), which reconciles Nebraska state statutes with the federal SFA and implements a set of youth and stakeholder recommendations that reinforce and, in some cases, exceed federal requirements.

Although this legislation represents significant progress for the field, its provisions will mean little to children and youth in Nebraska unless they are effectively implemented at the local level – across services areas of the state, in everyday practice, and in the courts.

Juvenile court stakeholders have a critical role to play in the implementation of these provisions.

Supporting Normalcy for Children in Foster Care

Federal Overview: Section 111 of the federal SFA requires states to implement a “reasonable and prudent parent standard” (“RPPS”) for decisions made by “caregivers” - either a foster parent or a designated official for a child care institution (i.e., group home). This standard allows caregivers to make parental decisions that maintain the health, safety, and best interest of the youth, as well as decisions about the child’s participation in extracurricular, cultural and social activities. The provision also ensures liability protections for caregivers who appropriately use the reasonable and prudent parenting standard in decisions about the child. States must revise their licensing rules to incorporate the standard and provide training to foster parents on the new standard.

Rationale: While attempting to keep children safe from harm, some foster care policies and practices unnecessarily create barriers for youth to live out typical childhood and adolescent experiences similar to their peers. For example, many current and former foster youth cite rules that make it hard for them to participate in sports, stay over at a friend’s house, get a driver’s license, or hold down a part-time job. While these policies are usually intended to ensure the youth’s safety, they can also isolate foster youth and impede healthy development. Research findings shed light on the generally poor outcomes of youth aging out of foster care, as well as the value of participation in extracurricular and social activities in changing the course for many of these youth and preparing them for a successful transition to adulthood and independence.

Nebraska: In Nebraska, LB 746 includes specific factors for the caregiver to consider when using the RPPS, such as the child’s goals, the parent’s input, the child’s age and maturity, and the potential risks.¹ LB 746 also includes provisions requiring a parent to be consulted about their view’s on their child’s participation in activities - to the extent possible, and stating that the NSFA shall not affect a parent’s otherwise existing parental rights.² Finally, LB 746 requires the Nebraska Department of Health and Human Services (“DHHS”) to document in their court report: consultation with a parent on RPPS, the steps DHHS has taken to ensure that the caregiver is following the RPPS and that the child has access to activities, that DHHS has consulted the child about opportunities to participate in activities, and that any barriers to participation have been identified and addressed.³

Considerations for Court Stakeholders:

- To ensure the effective implementation of this provision, it is essential that judges ask about the child’s extracurricular, enrichment, social and cultural activities activities in order to ensure that youth in foster care are given the opportunity to engage in age- and developmentally-appropriate activities.
- The law’s new focus on normalcy applies to foster family homes, kinship foster homes, and child care institutions (group homes and other congregate care settings).
- This provision applies to all foster parents and placements, including those who are *currently* caring for children in foster care (i.e., no caregiver will be “grandfathered” in).
- The “reasonable and prudent parent standard” is defined in the Act as: “*the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities.*”

Questions to Ask from the Bench:

- What extracurricular activities is the youth involved in?
- What opportunities has the youth had to socialize with his or her peers?
- Has the child traveled at all?
- Does the young person have a job?

¹ Neb. Rev. Stat. § 43-4705.

² Neb. Rev. Stat. § 43-4709.

³ Neb. Rev. Stat. § 43-4710.

- What activities does the child wish to participate in?
- What barriers has the caregiver experienced in connecting the youth to extracurricular and social activities?
- Is the youth participating in all of the activities he/she would like to participate in? If not, why not?

Court Findings:

At every dispositional, review or permanency planning hearing, the juvenile court shall make a determination regarding:

- The steps DHHS is taking to ensure the child’s foster family home or child care institution is following the RPPS;
- Whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities; and
- Whether DHHS has consulted with the child in an age or developmentally appropriate manner about the opportunities of the child to participate in such activities.⁴

LB 746 also states:

“In making this determination, the juvenile court shall ask the child, in an age or developmentally appropriate manner, about his or her access to regular and ongoing opportunities to engage in age or developmentally appropriate activities. If the child, guardian ad litem, caregiver, or a party to the proceeding believes that the child has not had [such opportunities], the juvenile court may make appropriate findings or orders to ensure the child has [such opportunities]. In making such findings or orders, the court shall give deference to the caregiver in making decisions within the [RPPS].”⁵

Improving Another Planned Permanent Living Arrangement (APPLA)

Federal Overview: In Section 112, the federal SFA prohibits the use of “Another Planned Permanent Living Arrangement” (“APPLA”) as a permanency goal for children under age 16 in foster care. In Nebraska, we refer to APPLA as independent living. To ensure the appropriate use of APPLA for youth age 16 and older, at each permanency hearing the state agency must: document the intensive, ongoing and unsuccessful efforts for family placement, including efforts to locate biological family members using search technologies; ask the child about her desired permanency outcome; and make a judicial determination explaining why APPLA is still the best permanency plan.

Rationale: The permanency goal of APPLA was created by Congress to replace “long term foster care” and encourage agencies to better meet the individual needs of a particular child for whom other permanency goals – like returning home, adoption or guardianship – are not appropriate. However, too often, APPLA provides an easy way out for states: rather than continuing to look for planned permanent living arrangements for children and youth who they think will not or cannot be returned home, adopted, or placed with guardians, agencies give up and often look to residential placements rather than attempting to reengage family members or other important people in the youths’ lives who could be permanent connections. Due to

⁴ Neb. Rev. Stat. § 43-4711.

⁵ *Id.*

concerns over the number of youth in foster care with a permanency goal of APPLA, as well as the significant number of youth who age out of care each year, this provision attempts to limit the use of APPLA to only those youth for whom other permanency goals are truly not appropriate.

Nebraska: Under LB 746, to further support these goals, the permanency plan for children 16 and older with a permanency plan of APPLA must include “the identification of significant, supportive connections with identified adults willing to be consistently involved in the child’s life as the child transitions to adulthood.”⁶

Considerations for Court Stakeholders:

- As of September 29, 2015, judges may no longer assign APPLA as the permanency goal for youth under age 16.
- For youth age 16 and older, the state must demonstrate that a permanency goal of APPLA is in their best interest.
- At each permanency review, the court must ask the child about their desired permanency plan.
- Other permanency goals that should be used as an alternative to APPLA include: reunification, adoption, placement with a legal guardian, or placement with a fit and willing relative.

Questions to Ask from the Bench:

- What is the youth’s desired permanency outcome?
- What efforts has the child welfare agency made for family placement? Has the caseworker contacted family members? Which ones?
- [If APPLA is listed as the permanency goal:] Is the permanency goal of APPLA in the best interest of the child? If so, why? Why is it not in the child’s best interest to be returned home, adopted, placed with a legal guardian or with a fit and willing relative?
- What steps is the child welfare agency taking to ensure that the reasonable and prudent parenting standard is being followed?

Court Findings

In the case of any child age sixteen years of age or older for whom another planned permanent living arrangement is the court-approved permanency plan, the court shall:

- Make a determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and the compelling reasons why it continued to not be in the best interests of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative; and
- Make a determination that the department has met the requirements [to identify supportive adults and to document unsuccessful efforts at permanency] *before* approving a permanency plan of another planned permanent living arrangement for a child sixteen years of age or older.⁷

⁶ Neb. Rev. Stat. § 43-1312(4)(a).

⁷ Neb. Rev. Stat. § 43-1312(4)(c).

Empowering Foster Children Age 14 and Older in the Development of Their Own Case Plan and Transition Planning for a Successful Adulthood

Federal Overview: Section 113 of the federal SFA requires that youth age 14 and older be consulted in the development of their case plan and directs states to allow youth to invite two other members of their choosing (other than a foster parent or his/her caseworker) to be a part of the case planning team. State agencies are permitted to reject an individual selected by the youth if the state has “good cause” to believe that they would not act in the best interest of the child. The bill also requires states to provide a written “list of rights” document to youth 14 or older outlining their rights in care related to education, health care, visitations, court hearings/participation, and safety, and requires a documented, signed acknowledgement from the youth that they received their list of rights and they were explained “in an age-appropriate way.” Agencies must also provide youth 14 and older with a free annual credit report and help resolve any inaccuracies on the report.

Rationale: Previously, federal law required youth ages 16 and older to be consulted in the development of their case plan; the age was lowered to 14 and older due to a recognition that young people should be included in this important process and that youth as young as 14 can have an informed perspective that can lead to better permanency outcomes and compliance with the case plan. Involving the youth in their case planning and providing them critical information on their rights also strengthens their self-sufficiency and helps prepare them for a successful transition out of foster care and into adulthood.

Nebraska: Consistent with the federal SFA, LB 746 requires the court to “ask” the youth (age 14 and older) “in an age-appropriate way” if he/she participated in the development of his/her plan and, in addition, to make a finding regarding the child’s participation.⁸ For children of all ages, DHHS must document the “efforts to involve and engage the child in the development of their case plan,” – however, no court finding is required for children under age 14.⁹

With regard to the “list of rights” document, LB 746 requires the document to include additional rights including the right to: understand the system/s in which the child is involved, have his/her voice heard in his/her case, maintain family connection, access personal information, honest and clear communication, have his/her basic needs met, learn life skills needed to successfully transition to adulthood, and live in the most family-like setting that is safe, healthy, comfortable, and meets the child’s needs.¹⁰ Under LB 746, the document shall be provided in hard copy within 72 hours of placement and at every dispositional, review and permanency planning hearing.¹¹

Considerations for Court Stakeholders:

- All court stakeholders should inquire about the youth’s involvement in developing their case plan to ensure they have been fully engaged and had the opportunity to include two individuals of their choosing in the process.

⁸ Neb. Rev. Stat. § 43-1311.03(4).

⁹ Neb. Rev. Stat. § 43-1312(1)(g).

¹⁰ Neb. Rev. Stat. § 43-4713(1)(a).

¹¹ Neb. Rev. Stat. § 43-4713(2).

- The law does not define “good cause,” but states are encouraged to document the reasons for rejecting an individual chosen by the child.

Questions to Ask from the Bench:

- Is the youth involved in the development of his/her case plan?
- Which individuals did the youth choose to be part of his/her case planning team? If the state rejected an individual selected by the youth, what were the reasons for rejecting that individual?
- Has the youth received a copy of his/her rights? Does the youth have any questions about these rights?
- Has the agency conducted a credit report for the youth? Were there any inaccuracies in the report? If so, were they resolved? How?

Court Findings

- For a child fourteen years of age or older, the court shall “ask” the child, in an age or developmentally appropriate manner if he/she participated in the development of his/her plan and make a finding regarding the child’s participation in his/her plan.¹²
- The court’s finding regarding the independent living transition proposal under Neb. Rev. Stat. § 43-285(2)(c) now requires the court to make a finding regarding “the appropriateness of the programs and services described in the proposal designed to help the child prepare for the transition from foster care to a successful adulthood.”¹³

Ensuring Foster Children Have a Birth Certificate, Social Security Card, Health Insurance Information, Medical Records, and a Driver’s License or Equivalent State-Issued Identification Card

Federal Overview: Section 114 of the federal SFA requires that youth exiting foster care at age 18 or older and have spent at least six months in care must receive the following documents: a birth certificate, Social Security card, health insurance information, medical records, and a driver’s license or state identification card.

Rationale: Often youth in foster care are often not provided with these important documents, which are essential to ensuring that youth aging out of care have the documentation they need to secure housing, apply to school or for work, get appropriate health and mental health care, or access other forms of assistance.

Nebraska: Under LB 746, the following documents must also be provided: all documentation required for enrollment in the former foster care child category of Medicaid, educational records, credit report check, contact information, with permission, for family members with whom the child can maintain a safe and appropriate relationship, and other supportive adults, a list of community resources, written information on disability resources and benefits that may assist the child, an application for public assistance and information on how to access the system to determine eligibility, a letter from DHHS verifying the dates the child was in foster care, written

¹² Neb. Rev. Stat. § 43-285(2)(c).

¹³ *Id.*

information about the child's Indian heritage or tribal connection, and written information about how to access personal documents in the future.¹⁴

Considerations for Court Stakeholders:

- The courts play an essential role in ensuring that agencies comply with this requirement, and judges must ask the child and caseworkers about whether the child has been provided with these key documents.
- The law does not define what should be included in the medical records nor what time frame it should span.
- Depending on the unique needs or circumstances of the child, other documents may also be appropriate for the child welfare agency to provide.

Questions to Ask from the Bench:

- Has the youth been provided with the required documents?
- If the youth has not been provided with one or more of these key documents, what steps is the agency taking to secure the documents and provide them to the youth?

Court Findings

LB 746 requires DHHS to document in the transition plan whether the child was provided the documents and requires the court to make a finding as to whether the child has received the documents at the independence hearing pursuant to Neb. Rev. Stat. § 43-285(d).¹⁵

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¹⁴ Neb. Rev. Stat. § 43-1311.03(9).

¹⁵ *Id.*