

Nebraska Strengthening Families Act (NSFA) Requirements

Background

In September 2014, Congress passed the *Preventing Sex Trafficking and Strengthening Families Act* (commonly referred to as the “Strengthening Families Act” or “SFA”). The SFA was designed to promote “normalcy” among children and youth in foster care – that is, promoting opportunities for youth to engage in age or developmentally-appropriate activities, and encouraging youth to take a more active role in their case. The federal SFA also includes provisions related to limiting the use of Another Planned Permanent Arrangement (or “APPLA”) as a permanency goal and ensuring youth receive vital documents before aging out. 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.

Normalcy

Federal SFA:

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 at a child care institution (i.e., group home). This standard allows caregivers to make decisions about the child’s participation in extracurricular, enrichment, cultural and social activities. The provision also includes requirements for liability protections for caregivers who appropriately use the RPPS.

The “reasonable and prudent parent standard” is defined in the federal SFA 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.”*

Nebraska SFA:

- In Nebraska, LB 746 includes factors for the caregiver to consider when using the RPPS: the child’s goals and input, to the extent possible the parent’s input, the child’s age, maturity, and developmental level, the potential risk factors and appropriateness of the activity, the best interests of the child, the importance of encouraging the child’s emotional and developmental growth, the importance of providing the child with the most family-like living experience possible, the behavioral history of the child and the child’s ability to safely participate in the activity, the child’s personal and cultural history, and the individualized needs of the child. (Neb. Rev. Stat. § 43-4705)
- LB 746 also includes provisions requiring a parent to be consulted about their view’s on their child’s participation in activities in the planning process - to the extent possible, and stating that the NSFA shall not affect the parental rights of a parent whose rights have not been terminated. (Neb. Rev. Stat. § 43-4709)
- In addition, 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 opportunities to engage in activities, that DHHS has consulted the child about opportunities to participate in activities, and that any barriers to participation have been identified and addressed. (Neb. Rev. Stat. § 43-4710)

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. (Neb. Rev. Stat. § 43-4711)

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].” (Neb. Rev. Stat. § 43-4711)

Another Planned Permanent Living Arrangement (APPLA)

Federal SFA: 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, as of the date of the hearing, unsuccessful efforts for family placement (i.e., reunification, relative placement, guardianship or adoption), including efforts to locate biological family members using search technologies (including social media). The state agency must implement procedures to ensure that, at each permanency hearing for youth age 16 or older with a plan of APPLA, the juvenile court does the following: ask the child about her desired permanency outcome; and make a judicial determination explaining why APPLA is still the best permanency plan, and provide compelling reasons why other permanency plans are not in the child’s best interests.

Nebraska SFA: To further support these goals, under LB 746, 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.” (Neb. Rev. Stat. § 43-1312(4))

Court Findings

In the case of any child age 16 years of age or older for whom APPLA is the court-approved permanency plan, the court shall:

- Ask the child about their desired permanency outcome;
- Make a determination explaining why, as of the date of the hearing, APPLA 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 APPLA for a child 16 years of age or older. (Neb. Rev. Stat. § 43-1312(4)(c))

Youth Involvement in Case Planning & Transition Planning for a Successful Adulthood

Federal SFA: 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 and 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. One individual selected by the child may be designated as the child’s advisor and advocate on the application of the RPPS. The federal SFA also requires states to provide a written “list of rights” document to youth 14 or older describing their rights related to education, health, visitation, court participation, and to stay safe and avoid exploitation. The federal SFA also requires the case plan to include a signed acknowledgement from the youth that they received their list of rights and that 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 in the report.

Nebraska SFA: Consistent with the federal SFA, LB 746 requires the court to “ask” the youth (age 14 and older) “in an age or developmentally appropriate manner” if he/she participated in the development of his/her plan and, in addition, to make a finding regarding the child’s participation. (Neb. Rev. Stat. § 43-1311.03(4)). For children of all ages, DHHS must document in the case plan the “efforts made to involve and engage the child in the development of such plan,” – however, no court finding is required for children under age 14. (Neb. Rev. Stat. § 43-1312(1)(g))

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. (Neb. Rev. Stat. § 43-4713(1)(a)). 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. (Neb. Rev. Stat. § 43-4713(2))

Court Findings

- For a child 14 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. (Neb. Rev. Stat. § 43-285(2)(c))
- 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.” (Neb. Rev. Stat. § 43-285(2)(c))

Pre-Discharge Documents

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

Nebraska SFA: Under LB 746, the following documents must also be provided: health insurance information and 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, including siblings, 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 information about the child’s Indian heritage or tribal connection, and written information about how to access personal documents in the future. (Neb. Rev. Stat. § 43-1311.03(9)) Under LB 746, all documents must be provided on or before the child reaches eighteen, nineteen or twenty-one years of age if the child participates in the bridge to independence program, if the child is leaving foster care - there is no requirement that the child has spent at least six months in care. (Neb. Rev. Stat. § 43-1311.03(9))

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). (Neb. Rev. Stat. § 43-1311.03(9))