

**Nebraska State Foster Care Review Board**  
**Reviewing the Permanency Plan**  
**“Findings”**

Each of the findings local boards make is based on federal requirements, state mandates, and/or children’s best interests. Neb. Rev. Stat. 43-1308(b) requires that we provide rationale for each finding in the report to the court and legal parties. A clarification of each finding in reference to the plan follows.

It is essential that we, as an agency, review the plan in a consistent and uniform manner across the state and communicate the issues we identify and our recommendations in the most efficient manner possible. Recommendations must be submitted within the timeframe established by individual courts. Court requirements differ from 3-7 days prior to the hearing. As the Court has said, your work is valuable:

“Importantly, §43-285(6) provides that the only prerequisite for the admission in evidence of the Board’s written findings and recommendations is that they have been provided to all other parties of record. The Foster Care Review Act and the Board would be empty vessels indeed if the Board’s recommendations were not considered by the court. Thus, we do not take the Board’s emphatic stand against the DSS plan to be a meaningless gesture.” *In Re Interests of John T., Court of Appeals, (1995).*

<b>Finding “A” - Reasonable Efforts to Prevent Child's Removal from the Home.</b>
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There are two findings regarding reasonable efforts, which are federally mandated: 1) Reasonable efforts to prevent the child’s removal and 2) Reasonable efforts to achieve permanency (Finding “J”). Finding “A” deals only with the first reasonable efforts requirement to “prevent the child’s removal”.

This finding is based on the **most recent time** the child/children entered foster care. If a child has been in care before for the same issue, and services were offered previously, yet the child re-entered care, those previous services could, in some circumstances, be considered as reasonable efforts to prevent removal. Brief rationale is required for the Board's finding.

**A1 The Board finds that reasonable efforts were made to prevent the child's removal from the home.**

If there is documentation of services offered to the family prior to the child's current removal, the Board needs to decide if the services were enough to constitute reasonable efforts. In some cases we have seen years and years of services to the family prior to the removal (more than reasonable) and in other cases we have seen nothing offered for a dirty house and the children are removed (no reasonable efforts).

**A2 The Board finds that reasonable efforts could not have been made to prevent the child’s removal due to \_\_\_\_\_.**

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In cases where no services could have been provided to ensure the child's safety in the home, this finding should be used. This can include an assessment of situation following the removal of the children and a determination that the removal was necessary for the children's safety. However, if there had been multiple referrals to CPS regarding the family over the course of time before action was taken to protect the child, the Board should consider if reasonable efforts were really made to prevent removal, and should not automatically put every "emergency" situation under this finding. I.e., Law enforcement removal of child. It is still important to look at the reasons for law enforcement removal and look at reasonable efforts to prevent removal. This finding would also be used in voluntary and non-court cases.

**A3 The Board finds that reasonable efforts were not made to prevent the child's removal from the home.**

This is used if there is documentation or verbal update from the caseworker that services were not offered to the family prior to removal, but could have been. There are financial implications for DHHS if this finding is made, so there must be supporting evidence and the rationale needs to be very clear.

**A4 The Board finds that reasonable efforts to prevent removal were not necessary due to a judicial determination of aggravated circumstances.**

Aggravated circumstances include, but are not limited to: abandonment; torture; chronic abuse; sexual abuse; murder or manslaughter of another child; aiding or abetting in the murder or voluntary manslaughter of another child; or, committing a felony assault that resulted in serious bodily injury to another child of the parent. This will be documented through the Court order. If you are requesting that the court file a termination under aggravating circumstances, you would use the "A2" finding until the Court had ruled on the aggravating circumstances.

**A5 The Board finds that it is unclear what efforts were made to prevent the child's removal from the home.**

There is no documentation or verbal information that any services were offered to prevent removal that WAS NOT an emergency situation. The Board should ask for specific documentation.

<b>Finding "B" - Appropriateness and Safety of Current Placement.</b>
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Safety and appropriateness should be assessed separately, however, are put together in this finding to mirror the language in Neb. Rev. Stat. 43-1308(b).

**Safety.** Do not assume a placement is safe in the absence of an updated home study and appropriate written documentation regarding the child's progress in the placement. The Board needs to ask questions such as: *Is there a current home study? Are the foster parents licensed? How many biological, adopted, and foster children are in the home?*

All foster placements, including relative placements, are required to have a home study completed on them. If documentation of the home study is not available for review, it needs to

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be requested. Home studies need to be current within two years or have an update completed within two years of review.

Be mindful that regardless if a home is a relative and/or child specific placement, a homestudy always needs to be completed. A child can be placed in a relative or child specific placement as long as CPS/background checks have been completed and a walk-through of the home has occurred. However, a formal home study then needs to be completed within 30 days of placement of the child in the home.

For children living in a group home, there may not be a lot of written documentation regarding safety practices. Therefore, it will be important when speaking with the case manager to inquire as to whether there are intakes regarding the child, intakes regarding the home, sanitary, or supervision issues that could impact safety. Placement questions can include: How many staff are on duty? Do they have awake overnight staff? Do they use restraints? What type training regarding the use of restraints has their staff received?

Regardless of the type of placement, when determining whether a placement is safe, the Board should ask questions about the mix of children in the placement, the individual needs of the children, and whether or not a safety plan is needed for that particular child. For example, a youth with perpetration issues should have a safety plan that includes additional monitoring of that youth to ensure the placement can be considered safe for other children.

**Appropriateness.** A placement can be safe, but not appropriate to meet an individual child's needs for a variety of reasons. For example, placement of a child in a residential treatment center may be safe but not appropriate if that child should be placed in a less restrictive environment. If there is an absence of information regarding the placement, it is essential that the Board **does not assume** it is appropriate.

If the Board makes the B2, B3 or B4 findings, rationale should be provided for making that specific finding.

The following language has been helpful to some Boards.

"The Board is unable to make a finding on the appropriateness of the current placement due to the lack of information/ documentation regarding the foster home in the case record. This is not meant to reflect negatively on the care the children are receiving, but rather an indication of a lack of information. The Board recommends that a home study of the foster placement and clarification if the foster home is licensed or approved be provided in the case record. Additionally, it is recommended that documentation about the child's progress in the placement be placed in the case record."

In the discussion of appropriateness, the question "Is this placement the least restrictive placement for this child?" needs to be considered. The Board should consider this question and if appropriate, indicate in the recommendation that this placement may not be the least restrictive

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placement for this child. For example, if a child were placed in a group home on the sole basis that there was not an appropriate foster home available, the finding on inappropriate placement would be utilized. Furthermore, it would be appropriate to state that the Board does not believe this placement is the least restrictive placement for the child.

Another issue that needs the Board's attention is if this particular home is appropriate for THIS particular child? An example of this would be a case where the foster home is licensed, it is well known, the homestudy states the home is best suited for children under five, however you are reviewing a 17 year old placed there. Or consider the case of a 16-year-old sexual perpetrator placed in a licensed foster home with younger children, is this an appropriate placement? As is all too often the case, the placement may not be the appropriate one for that particular child, but utilized because it is the only home where a bed is available in that area.

**B1 The Board finds that the child's current placement appears appropriate and safe.**

If there is an absence of information regarding the placement, it is essential that the Board **does not assume** it is appropriate.

**B2 The Board finds that the child's current placement appears unsafe and therefore inappropriate.**

If the B2 finding is made, the Board is recommending the **immediate** removal of the child from the home. Specific rationale must be provided when making this finding.

If the finding is made that the placement is unsafe, the Review Specialist should contact their supervisor and/or Program Coordinator immediately.

**B3 The Board is unable to make a finding on the appropriateness and/or safety of the child's current placement due to a lack of documentation/homestudy or due to**

\_\_\_\_\_.  
If the Board makes the B3 finding, rationale should be provided for making that specific finding.

Please note that homes that accept youth with developmental disabilities are not always licensed and may not have homestudies. If a homestudy is not located, this needs to be requested.

The following language has been helpful to some Boards.

"The Board is unable to make a finding on the appropriateness of the current placement because there was a lack of information/ documentation regarding the foster home in the case record. This is not a negative reflection on the care provided by the foster parents at this time, rather an indication of a lack of information.

The Board recommends that a home study of the foster placement and clarification if the foster home is licensed or approved be provided in the case record. Additionally, it is recommended that documentation about the child's progress in the placement be placed in the case record."

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**B4 The Board finds the child’s current placement appears safe, but is inappropriate due to: \_\_\_\_\_.**

If the Board makes the B4 finding, rationale should be provided for making that specific finding. For example, placement of a child in a residential treatment center may be safe but inappropriate if the child should be in a less restrictive environment.

If a child were placed in a group home on the sole basis that there is a lack of foster homes available, B4 inappropriate placement would be utilized. Furthermore, it would be appropriate to state that the Board does not believe this placement is the least restrictive placement for the child.

Long-term shelter or DCYC placements are also not appropriate for a child, especially if they are not be receiving appropriate services while in that placement. Clarify if the reason for the lack of alternative placement is due to the lack of availability or the lack of Magellan approval for level of care.

**B5 The Board is unable to make a finding on the appropriateness and/or safety of the child’s current placement because the child is AWOL/runaway.**

If the board makes the B5 finding, the efforts or lack of efforts being made to locate the child should be summarized. This should also be in the top concerns.

<b>Findings C<sub>1</sub>, D<sub>1</sub>, &amp; E<sub>1</sub> and C<sub>2</sub>, D<sub>2</sub>, &amp; E<sub>2</sub> Services in the Plan</b>
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The C finding always refers to mother, D always refers to father and the E finding always refers to the Child/ren.
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Each family/child must have a plan. The plan must include a permanency objective, timeframes, specific goals and information as to how those goals will be accomplished. If the plan has some of these, but not all of these, there is a plan but it is incomplete. This plan could be in the form of a Case Plan, Court Report or written narrative. The Board must make two findings in the C, D and E categories based on the completeness of the plan as well as the mother, father or child's willingness/ability to utilize those services.

In General, the purpose of C, D & E findings are to indicate if needed and ordered services are included in the plan (C<sub>1</sub>, D<sub>1</sub>, & E<sub>1</sub> Findings) and then are those services that are being offered by DCFS, accessible, and utilized by the children and their parents?(C<sub>2</sub>, D<sub>2</sub>, & E<sub>2</sub> Finding).

The following are some quotes that may be helpful in providing your rationale.

Unless the provisions of the Case Plan “tend to correct, eliminate, or ameliorate the situation or condition on which the adjudication has been obtained” a Court-ordered plan “is nothing more than a plan for the sake of a plan, devoid of corrective and remedial

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measures.” *In Re Interest of J.S. A.C., and C.S.*, 227 Neb. 251, 268, 417 N.W. 2d 147, 158 (1987).

Neb. Rev. Stat. §43-285 requires the Nebraska Department of Health and Human Services to prepare and file with the court a proposed plan for the care, placement, services and permanency which are to be provided to the juvenile and his or her family.

The findings on the services in the plan are divided out by the mother (“C<sub>1</sub> & C<sub>2</sub>” findings), the father (“D<sub>1</sub> & D<sub>2</sub>” findings), and the child (“E<sub>1</sub> & E<sub>2</sub>” findings).

**The C<sub>1</sub>, D<sub>1</sub>, and E<sub>1</sub> findings are used to hold the Department accountable for having a complete plan as specified by statute.** This is a separate finding from whether or not the Mother, Father, and Child/ren are actually receiving the specified services, which will be dealt with in the C<sub>2</sub>, D<sub>2</sub> and E<sub>2</sub> finding.

*Since the same notes below apply to each of the C<sub>1</sub>, D<sub>1</sub>, and E<sub>1</sub> findings, they are combined below.*

**C<sub>1</sub>, D<sub>1</sub>, and E<sub>1</sub> 1**      **The Board finds that all services regarding the \_\_\_ (*mother, father or child*) are included in the plan as required by Neb. Rev. Stat. 43-285.**

If the plan includes all services Court ordered or needed in order to achieve permanency, the Board would choose this finding.

**C<sub>1</sub>, D<sub>1</sub>, and E<sub>1</sub> 2**      **The Board finds that some services regarding the \_\_\_ (*mother, father or child*) are included in the plan as required by Neb. Rev. Stat. 43-285.**

The Board would make this finding if all services are not included in the plan. This would include the services ordered by the Court, as well as services deemed necessary by the Board in order to achieve permanency. The Board should specifically note what is lacking and recommendations should be made for the case manager to update the case plan.

**C<sub>1</sub>, D<sub>1</sub>, and E<sub>1</sub> 3**      **The Board finds that services regarding the \_\_\_ (*mother, father or child*) do not need to be described in the plan as required by Neb. Rev. Stat. 43-285 due to \_\_\_\_\_.**

Reasons that a parent may not be included in a plan include the child’s adjudication status, parental rights not intact, parent not identified, a parent is deceased, and/or the permanency objective no longer requires parental participation. This could include the court finding that reasonable efforts are no longer required.

**C<sub>1</sub>, D<sub>1</sub>, and E<sub>1</sub> 4**      **The Board finds that services regarding the \_\_\_ (*mother, father or child*) are not in the plan as required by Neb. Rev. Stat. 43-285 because there is no plan.**

This finding would be utilized when there is no plan or the date of the plan (not timeframes) is more than 6 months old. If this finding is used, you must also make the following findings **F3, G3, H3** and **I3** due to the lack of a written plan.

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**C<sub>1</sub>, D<sub>1</sub>, and E<sub>1</sub> 5**      **The Board finds that services regarding the \_\_\_ (mother are not included in the plan as required by Neb. Rev. Stat. 43-285.**

This finding would be used when the services should be included in the plan for the *mother, father or child* but are not addressed.

**In addition to choosing C<sub>1</sub>, D<sub>1</sub>, and E<sub>1</sub> findings, also choose a C<sub>2</sub>, D<sub>2</sub> and E<sub>2</sub> finding.** The C<sub>2</sub>, D<sub>2</sub> and E<sub>2</sub> findings reflect whether needed services are being provided to the mother, father and the child/ren, regardless of whether the services have been documented in the plan. Also, state whether those services are being effectively utilized.

*Since the same notes below apply to each of the C<sub>2</sub>, D<sub>2</sub>, and E<sub>2</sub> findings, they are combined below.*

**C<sub>2</sub>, D<sub>2</sub>, and E<sub>2</sub> 1**      **The Board finds that all needed services are in place for the \_\_\_ (mother, father or child).**

This would include court ordered services as well as services deemed necessary by the Board. Independent verification should be found in the case file, i.e., therapy notes, supervised visitation reports, NA or AA attendance, tutoring notes, etc. Without documentation (the Court Report is not documentation) the Board cannot ensure that services are occurring.

**C<sub>2</sub>, D<sub>2</sub>, and E<sub>2</sub> 2**      **The Board finds that some needed services are in place for the \_\_\_ (mother, father or child).**

Be sure to indicate which services are not provided and/or utilized. These should also be included in the "Barriers to achieving Permanency" section of the top recommendations.

**C<sub>2</sub>, D<sub>2</sub>, and E<sub>2</sub> 3**      **The Board finds services are being offered but not utilized by the \_\_\_ (mother, father or child).**

Make certain that the lack of parental compliance is due to unwillingness on the part of the parent/child, and not to the lack of availability of services. Is the service accessible, affordable, and available in the area? Have appropriate referrals been made? The parent cannot be held responsible if NDHHS has not done their job.

If you do not have documentation, you cannot make a finding that services are not being utilized by the parent/child. You would need to make a **C<sub>2</sub>, D<sub>2</sub>, or E<sub>2</sub> 4** Finding. The focus would then become the need for documentation to be requested and provided to the Court.

**C<sub>2</sub>, D<sub>2</sub>, and E<sub>2</sub> 4**      **The Board finds it is unclear what services are in place for the \_\_\_ (mother, father or child).**

Use this finding when documentation is not available. For example, if the mother, father or child are supposed to attend therapy sessions but no therapy reports were found in the case file, then the board should specify in the main concerns which reports should be obtained, placed in the file for review, and provided to the Court at the next hearing.

**C<sub>2</sub>, D<sub>2</sub>, and E<sub>2</sub> 5**      **The Board finds that services for the \_\_\_ (mother, father or child) are not applicable due to \_\_\_\_\_.**

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Reasons that a parent may not be included in a plan include the child's adjudication status, parental rights not intact, parent not identified, a parent is deceased, and the permanency objective no longer requires parental participation. This could include the court finding that reasonable efforts are no longer required.

### **Finding "F" - Case Plan.**

Neb. Rev. Stat. §43-285 requires the Nebraska Department of Health and Human Services to prepare and file with the court a proposed plan for the care, placement, services and permanency which are to be provided to the juvenile and his or her family.

Findings will be based on the most recent plan available/provided at the time of review. The findings must correlate with the plan listed on the front page of the recommendations.

If the case plan is not complete, the following citation may be helpful.

Unless the provisions of the Case Plan "tend to correct, eliminate, or ameliorate the situation or condition on which the adjudication has been obtained" a Court-ordered plan "is nothing more than a plan for the sake of a plan, devoid of corrective and remedial measures." *In Re Interest of J.S., A.C., and C.S.*, 227 Neb. 251, 268, 417 N.W. 2d 147, 158 (1987).

**Concurrent planning.** Each plan must contain a primary permanency objective and a secondary (concurrent) plan. The Board should base its findings and recommendations on the primary plan.

However - per Federal Guidelines - a complete case plan **MUST include** goals, objectives, and timeframes for both the primary and the concurrent plan. The plan should include steps taking place to achieve the primary plan in conjunction with the secondary plan. For example, if the permanency objective is Reunification and Adoption pending Termination of Parental Rights, the Board should make its findings on the primary plan of Reunification. In this case, efforts should be taking place to reunify the family. However, the child could also be placed in a foster/adoptive home in the event that reunification fails and parental rights are terminated. The Board can comment on the secondary plan, such as, the "Board supports the secondary plan of Adoption."

**Plans for older children.** For youth who are 16 and older, their plans **must** contain specific goals and objective for gaining independent living skills training. A statement in the plan that says, "independent living skills included" is insufficient to meet this requirement.

**F1 The Board finds that there is a written permanency plan with services, timeframes, and tasks specified.**



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If a case plan is available, written within 6 months of the Board meeting, and has a permanency objective, updated target dates, timeframes, tasks and services listed in it, it is a complete plan. Remember to commend the case manager where appropriate.

**F2 The Board finds that there is a written plan, but it is incomplete.**

If a case plan is available, but is missing one or more of the required elements (permanency objective, target date, timeframes, tasks or services), it is an incomplete plan. Document what is missing from the plan.

**F3 The Board finds that there is no plan.**

The Foster Care Review Act requires every child in out-of-home care to have a plan. If a case plan is not available or is not found, the board should find that there is no plan.

**F4 The Board finds that there is a written plan but it is more than 6 months old.**

DHHS policy requires the permanency plan to be updated every six months, or more frequently as circumstances dictate. If the case plan is more than 6 months old, this finding would be made. The recommendations should then include the need for the plan to be updated.

<b>Finding “G” - Progress Towards the Permanency Objective.</b>
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This finding gives the board the opportunity to comment on the recent progress of the case during the previous six months, based on documentation.

Progress is more than just attending services and "jumping through the hoops". Examples of wording that you may wish to consider:

“While there is documentation that the parents are attending (therapy, parenting classes, etc.) reports indicate that the parents continue to deny abuse, minimize abuse, are not engaging in the program or services, etc. Therefore, the Board finds no progress is being made towards reunification.”

“Although the mother has attended visitation within the last 2 weeks, she has not attended any visitation in the 5 months prior.

Progress can also be reflective of other system barriers such as not transferring the case to the adoption worker, not filing for termination, no court reviews, not getting subsidy paperwork done etc. The aim here is to identify barriers to permanency and get them addressed.

**G1 The Board finds that progress is being made towards the permanency objective.**

If the board finds that the family is making any progress towards the permanency objective, this finding would be used.

**G2 The Board finds that no progress is being made towards the permanency objective.**

There must be documentation of parental non-compliance and/or lack of progress towards the permanency objective. This would be an appropriate place to reiterate what

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needs to occur, such as “the mother has been ordered to attend AA, yet has not provided documentation that this is occurring. Further, the mother has missed several appointments for UA testing.” Or, a referral for an adoptive home study has not been made and the adoption paperwork has not been completed. If there is no progress, this needs to be reflected in top concerns, and you and your supervisor need to discuss how to effectively advocate for this child.

### **G3 The Board finds that it is unclear what progress is being made toward the permanency objective due to \_\_\_\_\_.**

When using this finding, you must state what is making it unclear for your Board to make a more definitive finding and write your top recommendations to include what must take place in order to *make it clear*. If it is due to the lack of documentation, be specific as to what documentation is required in order to make a finding.

If progress is unclear, this needs to be reflected in top recommendations (concerns) and you and your supervisor need to discuss how to effectively advocate for this child.

## **Finding H -- The Board Agrees or Disagrees with the Permanency Objective.**

Keep in mind that in serious cases of abuse or neglect, the Supreme Court has made it clear that DHHS does not have to first pursue a plan of reunification before termination can be pursued. We can acknowledge that DHHS policy is to first pursue reunification and then comment on the appropriateness of that policy in relation to the particular case you are reviewing.

You may choose to cite the Nebr. Supreme Court in Re Interest JDM 230 NE 273, (1988) This is a case where the mother and father were both found guilty and sentenced to the Penitentiary for abuse of a 5 week old baby. Subsequent to this, the mother became pregnant again. The Court terminated rights on both children, even though there was no abuse to the second child. The Court found that “Even though the father has had no unsupervised contact with the child, it is not necessary that the Court await the time the child shows permanent scars of the father’s anger and impulsivity before acting to terminate the relationship.”

### **H1 The Board agrees with the permanency objective.**

This finding does not always mean that the Board thinks that the child should return home immediately. The following language could be used in that situation,

“The Board agrees with the permanency objective of reunification, but we find that to return the child home at this time would not be in the child's best interests due to....” or “While the Board believes the parents should be given an opportunity to rehabilitate, returning the child home at this point would place the child at risk.”

### **H2 The Board does not agree with the child's permanency objective.**

If the Board does not agree with the permanency objective, specific reasons based on written documentation must be given. Then an alternate permanency objective for the

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family/child should be recommended. The following comment can be made. “The Board commends the case manager for developing a thorough service plan. However, due to a documented lack of compliance by the parents, we do not agree with a plan of reunification.” The alternative permanency objective you recommend here, must also be made in the “O” finding.

**H3 The Board cannot agree or disagree with the permanency objective due to the lack of a current written plan.**

**H4 The Board cannot agree or disagree with the permanency objective due to \_\_\_\_.**  
When using this finding, state what conditions exist that makes it difficult for your Board to agree or disagree with the current Permanency Objective. This could include the lack of documentation, parental history of involvement with services and/or DHHS, inability to determine if the parent accepts responsibility for the abuse, etc.

**Finding “I” - The Board Finds that the Department has Evaluated the Safety of the Child and has Taken the Necessary Measures in the Plan to Protect the Child.**

This finding is made based on the **PLAN** and **NOT on the Placement!** Your assessment on the safety of the placement was made in the “B” finding. In assessing the safety “in the plan,” evaluate the services outlined in the plan to determine if they are all in place, and, if in place, would the child be safe.

The Board should assess the current, as well as the future, safety of the child by asking the following questions.

- Is there domestic violence in the home?
- What is the support system in the home, is the family isolated from support, is there someone the child can go to in an emergency?
- What is the age and ability of the child to remove himself/herself from the situation?
- Is there an escape plan?
- Is there cyclical mental illness present?
- Are drug and alcohol issues present?
- Does the parent have the ability to demonstrate empathy toward the child; can they put themselves in the child’s place?
- Are the children supervised before/after school?
- Who else is in the home?
- What is the past behavior of the parents?

The Board should base this finding on the documented efforts that have been made to ensure the safety of the child. *We cannot assume that the safety of the child has been evaluated without documentation to support the evaluation.*

**I1 The Board finds that the Department has evaluated the safety of the child and has taken the necessary measures in the plan to protect the child.**

**I2 The Board finds that the Department has *not* taken the necessary measures in the plan to protect the child. [explanation]**

**I3 The Board cannot make a finding on whether the Department has evaluated the safety of the child and has taken the necessary measures in the plan to protect the child due to \_\_\_\_\_.**

When using this finding, state what conditions exist that makes it difficult for your Board to make this finding. If we cannot ascertain that the safety of the child has been evaluated, this needs to be in the top concerns. Also use this finding if there is no written plan.

### **Finding “J” - Reasonable Efforts to Return the Child Home**

This finding addresses services provided by **DHHS** in order to facilitate the permanency objective. In other words, state whether or not DHHS are doing their job to ensure that services are provided and barriers to receiving these services are removed. Parent/child compliance would be listed under the C, D, and E findings.

Things to consider: If the child entered out of home care due to failure to thrive, yet no services are being offered to the parent to address the failure to thrive, such as nutrition classes, are reasonable efforts being made to correct the situation? Sometimes we see the same "canned response" case plan for every case, regardless of the reason the child entered out-of-home care.

The Board needs to determine that services are being offered in a timely manner to correct the reason that the child being reviewed entered out of home care.

**J1 The Board finds that reasonable efforts by the Department are being made to towards the plan of reunification.**

This would be used if appropriate services are being offered to the parents and the child, and those services are accessible and affordable.

**J2 The Board finds that reasonable efforts by the Department are currently NOT being made towards reunification.**

If there is information that services are not being provided to return the child home, yet the plan is reunification, this finding would be used. Give your rationale. For example, you may have a case in which you need to cite that a professional has recommended that mother/father complete treatment X in order to address issue Y, which was one of the reasons that the child entered care; however, there is no documentation that the service has been sought. Or services ordered by the court are not being provided to the parent/child.

**J3 The Board finds that reasonable efforts by the Department to return the child home are no longer required due to (plan is no longer reunification or due to a judicial determination).**

Utilized if plan is adoption, guardianship, independent living, or other planned, permanent living arrangement.

**Findings K & L - Parental Visitation/Parenting Time**

HHS agencies have a standard form for a written visitation plan. Some HHS offices utilize this form and some do not. It is important to document the frequency and length of visitation in the findings section to ascertain if it is adequate contact. Keep in mind the child's age, length of time in care, supervision status, and what the permanency plan is. The K Finding is for the mother, and the L Finding is for the father. You should make a separate finding for each parent involved in the case.

Never assume without documentation that the children are having supervised visits.

**K & L 1      The Board finds that parental visitation is occurring as ordered.** Look to see if the Court has adopted the HHS visitation plan, or ordered one of its own. HHS does not have the authority to determine or place restrictions on parental visitation. Parental visitation rights are a matter for judicial determination per C.A. 235 Neb 893,457 NW 2d 822 (1990).

This finding would be used if a visitation plan has been ordered and visitation is occurring as ordered by the Court. Some Courts order "reasonable supervised visitation" and leave it up to NDHHS to determine the frequency and duration of contact. If the Board does not believe that the current visitation plan is in the child's best interest (too much or not enough contact), this should be described here and specific rationale given.

**K & L 2      The Board finds that parental visitation is not occurring as ordered.** If visitation is not occurring as was ordered by the Court, this finding should be used. Be sure to clarify if the lack of visitation is due to parental non-compliance, referrals not completed by NDHHS, or cancellation by the visitation worker. The board should note what is not occurring and who is the responsible party.

**K & L 3      The Board finds that there is a no contact order.** In some cases of extreme abuse/neglect or sexual abuse, the Court may order no contact between the child and parent. At that point this finding would be used. The Board should indicate if they support the no contact order and give its rationale.

**K & L 4      This code is no longer used.**

**K & L 5      The Board finds that parental visitation is unclear.** If there is no documentation/information to indicate the frequency, duration, or outcomes of visitation between the parent and the child, use this finding. The Board should request that a formal visitation plan be developed and court ordered. The Board may suggest an appropriate visitation plan. A written visitation plan should specify the frequency, length, and supervision of the visits.

**K & L 6      The Board finds that parental visitation is not applicable due to \_\_\_\_\_.** Give the reason(s) that this is not applicable, such as parent is deceased, parental rights

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are no longer intact, paternity has not been established, child's adjudication status is such that parents are not subject to a court order, etc.

### **K & L 7      The Board finds that the court has not addressed parental visitation.**

Use this code if the case meets all of the following criteria:

- The child is adjudicated 3a.
- The court has not ordered visitation.
- The court has not issued a no-contact order.
- Parent rights are intact.
- Maternity/paternity has been established.

If the case meets the above criteria, give a recommendation of what, if any, visitation would be appropriate. Also, note if it does not appear to be in the child's best interest to have any type of visitation with the parent. For example of the parent incarcerated for life and the child has never had a relationship with the parent.

### **Finding "M" - Sibling Visitation.**

This finding can be used for siblings in separate foster placements, or for siblings remaining in the home. If the plan is reunification, and siblings remain at home, it is important to keep the bond intact and document how the children interact.

Do not assume that sibling visitation is occurring during parental visitation. It may be necessary in some cases to recommend sibling visitation separate from parental visitation. Also, keep in mind that there may be half-siblings and stepsiblings with whom the children may have a relationship, and you may want to comment on these here as well.

Please remember that the Court cannot order sibling contact if a sibling has achieved permanency through adoption/guardianship, if the child is a status offender, or if the sibling is over the age of majority.

**M1      The Board finds that sibling visitation is occurring.**

**M2      The Board finds that sibling visitation is not occurring.**

**M3      The Board finds that sibling visitation is not applicable due to \_\_\_\_\_.**

Some examples would include that the child has no siblings, siblings are placed together, or there was no pre-existing relationship.

**M4      The Board finds that information regarding sibling visitation was not available.**

Recommend that such documentation be made available.

**M5      Sibling visitation is not occurring per court order.**

Indicate if the Board agrees or disagrees with this decision.

### **Finding “N” - Need for Out-of-Home Placement**

- N1 The Board finds that there is a continued need for out of home placement.**
- N2 The Board finds that there is no longer a need for out of home placement and the child should be returned to parent(s).**  
This finding should be used if the board feels that the child no longer needs to be in foster care and could be safely returned home immediately. This needs to be a top concern.
- N3 The Board finds that there is no longer a need for out of home placement and the child’s adoption, guardianship, or other permanency should be finalized.**  
This finding should be used if the board feels that the child no longer needs to be in foster care. Major barriers to the adoption, guardianship, etc. should be in the top concerns section.

### **Finding “O” - Recommending an Alternate Permanency Plan**

The Nebraska Foster Care Review Act (§43-1308) requires the Board to recommend a specific alternate permanency plan, if the Board finds that it is unlikely that the child will return home.

- O1 The Board finds that the return of the children to the parents is likely or possible.**  
This finding should be made when documentation indicates that reunification is likely and appropriate. Some boards have found it helpful to use the following wording to expand this finding “should the parents continue to make significant progress toward their court ordered goals.”
- O2 The Board finds that return of the children to the parents is not likely and recommends referral for termination of parental rights and/or adoption.**  
If the Board feels that progress is not being made toward reunification and the child’s best interest would be met through alternative permanency. If parental rights have already been severed (voluntarily or involuntarily) you may change the wording at the end of the finding to “... and recommends the adoption be completed.”
- O3 The Board finds that return of the children to the parents is not likely and recommends referral for guardianship.**  
When considering guardianship it will be important to consider the age of the child, and the possibility of loss of eligibility for items such as the former ward program, social security dependent payments, and/or Medicaid eligibility. It is not necessary to terminate parental rights in order to achieve a guardianship.
- O4 The Board finds that return of the children to the parents is not likely and recommends placement with a relative.**

This option is in the statute. This finding is used if recommending a long-term placement with a relative that does not involve an adoption or guardianship.

**O5 The Board finds that return of the children to the parents is not likely and recommends a planned, permanent living arrangement other than adoption, guardianship, or placement with a relative.** (I.e. independent living/self-sufficiency)

This includes not only independent living, but can include self-sufficiency with supports for those youth who are lower functioning and may not be appropriate for either guardianship or adoption.

### **Finding “P” - Grounds for Termination of Parental Rights**

**The Nebraska Foster Care Review Act (§43-1308) requires that board make a finding regarding whether grounds for termination of parental rights under section 43-292 appear to exist.** Boards should be specific to both biological parents when choosing findings relating to Termination of Parental Rights. *Reminder: There must be a legal basis for the P finding.*

Parental rights should not be involuntarily severed without good cause and due process. If the Board recommends that TPR be pursued, it needs to clearly articulate on what basis this serious action should occur. Sometimes even though the case is not making progress toward reunification there is insufficient evidence for the County Attorney to successfully argue the case through the anticipated appeal of the court’s decision. This can be frustrating for local board members and staff.

**Keep in mind that not only must one of the elements listed in 43-292 exist, but also termination of parental rights must be in the child’s best interest and parental unfitness must be able to be proven.** In other words, length of time in foster care alone is not sufficient to terminate parental rights. There must also be some action/inaction of the parents that would put the child at risk, such as mental illness, severe bodily injury, etc.

The following are the grounds for termination as listed in statute, along with an explanation of how this applies to our findings:

**(a) 43-292[1] abandonment prior to filing petition**

The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition. To determine this, there must either be no contact for six months, or no **SUBSTANTIAL** contact. One visit, or even a few visits/phone calls are not enough to be considered substantial contact.

**(b) 43-292[2] substantially and ...repeatedly neglected and refused to give the juvenile or a sibling...parental care and protection**

The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection.

**(c) 43-292[3] parents are financially able but willfully neglected to provide...**

The parents, being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or other care necessary for his or her health, morals,



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or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the juvenile is lodged with others and such payment was ordered by the court.

**(d) 43-292[4] parents unfit...debauchery...liquor..drugs..lewd and lascivious behavior...**

The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well being of the juvenile

**(e) 43-292[5] parents unable...mental illness or mental deficiency...**

The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period.

This needs to have been in the original, amended, or supplemental petition. Do not use this unless it is an adjudicated reason for the children entering care.

**(f) 43-292[6] (3)(a) of §43-247...reasonable efforts...under section 43-283.01, ... have failed to correct...**

Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination.

The County Attorney must be able to prove that DHHS has provided reasonable efforts to reunify in the case in order to utilize this provision.

**(g) 43-292[7] ... in an out-of-home placement for fifteen or more months of the most recent twenty-two months**

The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months. Remember that this cannot be the sole reason for a termination.

Also, if a child returns home for at least six months, the “clock” starts over and the fifteen months starts to be counted over again.

**(h) 43-292[8] parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury**

The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury. The key here is “serious.” If your Board is considering this reason, there needs to be a discussion of why the abuse is “serious.”

**(i) 43-292[9] ... aggravated circumstances, ..., abandonment, torture, chronic abuse, or sexual abuse**

The parent of the juvenile has subjected the juvenile to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

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In cases where the parent has subjected a juvenile to “aggravated circumstances” prosecutors can request the court to make a finding that will excuse the State from its duty to make reasonable efforts to preserve and reunify the family.

The phrase “aggravated circumstances” has been judicially interpreted to mean that the nature of the abuse or neglect is so severe or repetitive that reunification with the child’s parents jeopardizes and compromises the child’s safety and well-being.

Local boards can identify the existence of factual grounds upon which the court can make a determination that reasonable efforts to preserve and reunify the family are not required. Where such grounds exist, local boards can also recommend that the appropriate parties take the necessary steps to obtain such a finding from the court. For example, such a determination can be requested from the court in the initial petition filed by the State, or in a motion subsequently filed by either the State or the juvenile’s guardian ad litem.

The element of “aggravated circumstances” also constitutes a separate statutory ground upon which termination of parental rights can be sought immediately. Neb. Rev. Stat. §43-292(9) authorizes the court to terminate parental rights when the parent of the juvenile has subjected the juvenile to “aggravated circumstances,” including, but not limited to, abandonment, torture, sexual abuse, or chronic abuse.

Note that the “aggravated circumstances” under Neb. Rev. Stat. §43-283.01 and the “aggravated circumstances” under Neb. Rev. Stat. §43-292(9) are in substance the same, but do differ in this respect: subjection of either the juvenile **or another child of the parent** to aggravated circumstances will suffice to relieve the State from its duty to make reasonable efforts under Neb. Rev. Stat. §43-283.01, while parental rights can be terminated under Neb. Rev. Stat. §43-292(9) in the situation where the parent has subjected **only the juvenile himself or herself** to aggravated circumstances. In other words, the fact that the parent has subjected another one of his or her children to aggravated circumstances (but **not** the juvenile who is the subject of the court proceeding) will not provide a sufficient basis upon which to terminate parental rights under Neb. Rev. Stat. §43-292(9).

The following are some language examples that relate to the issue of aggravated circumstances:

The Board finds that aggravated circumstances exist in this case and that termination of parental rights should be pursued in regard to both parents, or, at a minimum, that grounds exist upon which the court can determine that reasonable efforts are not required under Neb. Rev. Stat. §43-283.01.

- Mr. “Jones” has been convicted of felony child abuse due to the abuse he inflicted on “Sally”. “Sally” suffered bruising all over her body and broken bones at the hands of Mr. “Jones.”
- Ms. “Smith” delayed in seeking proper medical treatment for “Sally.” The Supreme Court found (*in re Interest of Jac’quez N. 266 Neb. 782; 669 N.W.2d 429; 2003*) that

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“Although the evidence does not tend to establish that [mom] inflicted the initial injuries on [child], it clearly and convincingly establishes that she delayed seeking medical treatment for 48 hours after he had received obvious and serious injuries, thus severely neglecting his medical needs.”

The Board recommends that a Petition to Terminate Parental Rights be filed and that a permanency objective of Adoption be implemented for these children.

- (j) **43-29210] parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent.**

- P1 The Board finds that grounds for termination of parental rights *appears* to exist under the following subsections of §43-292 and termination of parental rights is in the child’s best interest. (List applicable subsections of §43-292)**

The Board must identify all subsections of §43-292 that apply and give rationale. The 15 of 22 months provision is not sufficient grounds by itself. If you choose this subsection (7) then you must also use (6) ...failed to correct. For a termination to be successful, there must also be a form of parental unfitness and best interest.

For each of the other grounds, it must also be proven that this would be in the child’s best interests.

- P2 The Board finds that grounds for termination of parental rights under §43-292 do not *appear* to exist.**

This finding is used when there are not yet grounds to terminate parental rights, or if the filing (adjudication) is a 3b, 1, or 2.

- P3 The Board finds that grounds for termination of parental rights *appears* to exist; however, termination of parental rights is not in the best interests of the child due to\_\_\_\_\_.**

Be sure to list the reason for finding a termination not in the child’s best interests. Some examples of those reasons could be the age of the child, the bond that exists between the children and the parents, or the progress being made by the parents. The 15 of 22 months provision is not sufficient grounds by itself. In some case circumstances, such as when the child is working out issues through therapy, it may be appropriate to add “at this time” to the finding. If the O1 finding is used then the P2 finding should be used.

- P4 The Board’s finding on whether the grounds for termination of parental rights *appears* to exist is not applicable due to\_\_\_\_\_. (Examples, parents are deceased; parental rights have already been relinquished or terminated)**

The following are some court citations that may be helpful when documenting this issue.

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"It is not necessary that the court await until the child shows permanent physical scars before the court can act to terminate parental rights." *In re Interest of J.B. and A.P.* 235 Neb 74, 453 N.W.2d477 (1990)

"It is true that, fortunately, neither the father nor the mother has had an opportunity to have this child in his or her care. Therefore, there is no evidence of any harm having as yet befallen the minor. However, a court need not await certain disaster to come into fruition before taking protective steps in the interest of a minor child". *See In re Interest of S.L.P.*, 230 Neb 635,639 (1988)

"Even though the father has had no unsupervised contact with the child, it is not necessary that the Court await the time the child shows permanent scars of the father's anger and impulsivity before acting to terminate the relationship." *In re interest JDM* 230 NE 272, (1988)

"Parental obligation is a positive duty, which encompasses more than a financial obligation. It requires continuing interest in the child and a genuine effort to maintain communication and association with that child. Abandonment is not an ambulatory thing, the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child." *In Re Interests of J.M.D.*, 233 Neb 540 (1989).

"Although termination of parental rights may sometimes appear cruel or harsh, experience has shown that failure to terminate parental rights in appropriate cases simply punishes the child for the uncorrectable deficiency of the parents, thereby extending the same problems and conditions into successive generations." *In Re Interest of C.A.A. and V.S.A.*, 229 Neb 135, 138-39 (1988).

"Where a parent is unable or unwilling to rehabilitate him or herself within a reasonable time, the best interests of the children require termination of the parental rights." *In Re Interest Ty M. & Devon M.* 265 Neb. 150, 665 N.W.2d 672 (2003).

"A child should not be left suspended in foster care and should not be required to exist in a wholly inadequate home. Further, a child cannot be made to await uncertain parental maturity." *In Re Interest of JS, SC, and LS*, 224 Neb 234 (1986).

### Barriers

Barriers should focus on what currently exists that prevents permanency from occurring. The barriers should focus on the major issues, please do not choose more barriers than necessary. The maximum number of barriers the data base system will allow to be entered is 10.

The "other" barrier (i.e., 199 or 299) should only be used when the barrier does not fit within another barrier category. The Board's main findings and recommendations (top concerns) should support the barriers chosen.