

# Reviewing the Permanency Plan and Making Findings In Cases Involving an Abuse/Neglect (3a) or 3c Petition or a Voluntary Foster Care Placement

## A Guide for Local Board Members

### Overview

The Foster Care Review Office (FCRO) conducts case file reviews on individual children in out-of-home care in order to assure that the child's safety, health, and well-being needs are met while in out-of-home care and that the child reaches a timely, appropriate permanency.

**Our role is to determine: 1) the child's current safety and well-being, 2) progress towards permanency, and 3) recommendations for next steps in the child's case.** We use various forms of documentation plus information from telephone and in-person contacts to do that. **The findings you are asked to make all relate to one of the three items previously described.** Findings must be relevant and accurate, so expect your review specialist to ask questions if the rationale for a finding is not clear or appears contradictory, and you should point out inconsistencies also.

As part of this process we bring attention to situations where, after reasonable research, we are unable to determine something that is important to children's cases. That is a very different perspective than looking for when things are not in a file in a manner we would prefer. Our role is not to be "*documentation police*" but rather to promote children's health, safety, well-being, permanency, and best interests.

Recommendations, which contain your findings, must be submitted to all legal parties within the timeframe established by individual courts. Court requirements differ, most allowing submissions no later than a minimum of 3-5 days prior to the hearing.

The FCRO uses the collective information gained from your reviews and the research done by review specialists as it provides system oversight. Oversight includes the monitoring of child welfare functions (policy and practice) and outcomes. It includes the entire child welfare system, such as DHHS, the legal system, and service providers. Aggregate statistics gathered from reviews, such as from the findings described in this document, are routinely provided to the Nebraska Legislature and stakeholders as part of the FCRO's oversight mission. Annual and quarterly FCRO reports are available on our website, [www.fcro.nebraska.gov](http://www.fcro.nebraska.gov).

**The work you, as a local board member, do to review cases is critical for Nebraska's abused and neglected children. Thank you for your service!**

**Due to changes in federal requirements, starting July 2017 we were able to change the findings each board makes to be more forward-focused for the children involved, advocating for their immediate and long-term needs, rather than local board members gathering so much information on the past. The changes enable us to be even *more* useful to the legal parties.**

**Findings no longer being made by local boards have not been lost – they have been converted into more in-depth data points gathered by review specialists during their research so we can continue to strongly advocate for important system reforms.**

## **Inter-rater reliability and consistency is vital**

It is essential that Case Plans are reviewed across the agency in a consistent and uniform manner with issues and recommendations communicated in the most efficient manner possible. Regardless of which local board reviews a particular case the findings made for that case should be the same. Inter-rater reliability is vital, and that is one of the primary reasons for this guide.

### **Format note**

Findings are made for each individual child being reviewed.

## **TOP CONCERNS SECTION OF THE RECOMMENDATIONS**

**Many legal parties have stated that upon receipt of our post-review recommendations for a child's case they first go to the top concerns section. This is an area where you can effectively advocate for the system to meet the child's needs.**

The findings you make (which are described in detail later in this guide) should help guide your board toward identifying the current issues and determining the best course of action for each child reviewed. That's why we have tried to simplify them and make them forward-focused as much as possible within state and federal law and expectations.

The top concerns section of the Board's recommendations and findings that are sent to the court and legal parties are divided as follows:

1. Strengths to consider.
2. Current barriers to permanency.
3. Recommendations to alleviate current barriers to permanency. [Using your expertise!]
4. Recommendations regarding child's well-being. [Using your expertise!]

**Strengths.** There needs to be a balanced approach to determining the current case status. Consider strengths as well as the current barriers to permanency and well-being. If something is going right for a case consider how to encourage continued progress in that area.

Given how little recognition is generally given to persons working in the child welfare system, if a particular party has gone above and beyond for a child, the strengths section would be an excellent place to note the efforts and the positive impact attached to those efforts. [Your board may also consider sending a note to anyone who does truly outstanding work.]

**Barriers** focus on what currently exists that prevents permanency from occurring and what currently exists that negatively impacts children's safety, health, and well-being. This is not a place to discuss history, it is a place to concentrate on what yet needs to be resolved.

**Recommendations.** One of the advantages of citizen review is that local boards are made up of persons of different professional, cultural, and life-experience backgrounds. That expertise can lead to recommendations that may not have been considered by the child welfare professionals working the case and thus can be invaluable for the children and families involved.

## **Descriptions of individual findings, pertinent facts to consider, and the basis for finding determinations**

### **Finding “A” – IS THE CHILD’S CURRENT PLACEMENT SAFE?**

#### **Possible answers:**

- A1 The child/children’s current placement appears safe.
- A2 The child/children’s current placement appears unsafe due to \_\_\_\_\_.
- A3 The child/children’s safety in the current placement could not be determined due to \_\_\_\_\_

#### **Basis for the determination:**

##### **If the placement is a family-like setting:**

##### **Consider the child’s unique set of needs.**

- Is there a need for safety plan for the particular child being reviewed?
  - For example, a child with serious aggression issues should have a safety plan that includes additional monitoring of that child to ensure the placement can be considered safe for other children.
- Are there diminished physical, developmental, or cognitive factors that need to be considered?

**Consider home studies** because home studies give valuable information about the makeup and skill-set of the caregivers which can impact safety.

Here’s some valuable information on home studies followed by questions to consider.

1. A child can be placed in a relative or “kinship” placement (with someone known by the child prior to placement, such as a coach, teacher, or day-care provider) as long as CPS/background checks have been completed and a walk-through of the home has occurred. A formal home study then needs to be completed within 30 days of placement of the child in the home.
2. Homes that accept youth with developmental disabilities (Enhanced Family Homes/Host Families) rarely are licensed and there may not be home studies. If a home study is not located, this needs to be requested.
3. Home studies for licensed foster homes need to be current within two years. If there is a temporary extension the recommendation should state that the extension was granted without an update.

Home study considerations:

- Is there a *current* home study that provides *current* information? If so, does that home study indicate safety concerns, such as with the physical layout of the dwelling? Have those issues been successfully addressed or not?
- Does the home study indicate that the caregiver is likely able to keep all children and vulnerable adults in the home safe?
- If the home study is pending, then the board will need to determine if it has enough other reliable information on which to make the finding.

**Consider the caregiver's training, and willingness/ability to care for the child.**

- Are the foster parents licensed? In order to be licensed, the foster parents will have had to complete certain training.
- Does the caregiver have the willingness and ability to provide a safe, stable, and nurturing environment for the child?

**Consider other relevant factors.**

- Does the child appear to feel safe in the home?
- How many biological, adopted, and foster children are in the home? What are their ages and needs? How will that impact this child's safety and care?
- Is anyone visiting the placement, and if so what are their observations?
- Licensed and/or agency homes are required to provide written reports to DHHS on a monthly basis. Judgment should be used if one or two such reports are missing. What do the written placement reports say about the child and his/her care?
- Is there contradictory or omitted information? Information used in making this finding can include a home study, reports of care and well-being in the home, etc. Judgment should be used when weighing the types of information available.

**If the child is living in a group home:**

- Is there a need for safety plan for the particular child being reviewed?
- Is this the least restrictive, most home-like placement possible for this child given his or her specific needs at this time?
- What is the mix of children in the placement, including their individual needs?
- How many staff are on duty? Do they have awake overnight staff?
- Do they use restraints? If so, what type training regarding the use of restraints has their staff received?

**If the child is living with a non-custodial parent:**

- Are safety plans adequate?
- Is the parent receiving needed supports and services?
- Are services for the child, if any are needed, continuing?

**If the child is in a trial home visit:**

- Are safety plans adequate?
- Is the parent receiving needed supports and services?
- Are services for the child, if any are needed, continuing?

**If the child is missing from care (formerly termed “runaways”):**

- Since children missing from care can be subject to sex trafficking and other safety issues, and their safety cannot be assured ***always assume those situations to be unsafe.***
- Have we made efforts to locate a top concern?
  - It is DHHS policy that caseworkers/FPS are to immediately contact law enforcement when notified that a child is missing, and that they follow up with law enforcement on a monthly basis. These contacts are to be documented in the case narrative.
  - In the past the board has reviewed the cases of children missing from care who were hurt and one who was killed, so it is important that the system be actively looking for these children and addressing the reasons that children have been on run. Missing from care status should be a top concern.

**Other essential considerations:**

- Use A2 (unsafe) if there are immediate safety issues to the extent we are recommending IMMEDIATE removal of the child from the out-of-home placement and we can clearly define our rationale.
- If safety cannot be determined, you need to identify what information is needed. This is serious, we should always be able to tell that safety is being reasonably addressed.

**Finding “B” – IS THE CHILD’S CURRENT PLACEMENT APPROPRIATE?**

**Possible answers:**

- B1 The child/children’s current placement appears appropriate.
- B2 The child/children’s current placement appears inappropriate due to \_\_\_\_\_.
- B3 The appropriateness of the child/children’s current placement could not be determined due to \_\_\_\_\_.

**Basis for the determination:**

A placement can be safe, yet inappropriate, for a variety of reasons. Conversely an unsafe placement can never be considered appropriate.

**If the placement is a family-like setting:**

- Is the home study current? Is it favorable to this placement?
- Are the foster parents licensed? In order to be licensed, the foster parents will have had to complete certain training.

- How many biological, adopted, and foster children are in the home? What are their ages and needs? How will that impact this child’s care?
- If with a relative or kin, does that person have the willingness and ability to provide a safe, stable, and nurturing environment for the child?
- Have the foster parents indicated a desire to parent children who are this age, gender, have this child’s special needs (if any), etc.?
- What do the written placement reports say about the child and his/her care?
  - Licensed and/or agency homes are required to provide written reports to DHHS on a monthly basis. Judgment should be used if one or two such reports are missing.
- Is there contradictory or omitted information?
  - Information used in making this finding can include a home study, reports of care and well-being in the home, etc. Judgment should be used when weighing the types of information available.

**If the child is living in a group home:**

- What is the mix of children in the placement, including their individual needs?
- How many staff are on duty?
- Do they have awake overnight staff?
- Do they use restraints? If so, what type training regarding the use of restraints has their staff received?
- Is this the least restrictive, most home-like placement possible for this child given his or her specific needs at this time?

**If the child is living with a non-custodial parent:**

- Is the parent receiving needed supports and services?
- Are services for the child, if any are needed, continuing?

**If the child is in a trial home visit:**

- Is the parent receiving needed supports and services? Is the parent demonstrating the ability to adequately care for the child?
- Are services for the child, if any are needed, continuing?

**If the child is missing from care (formerly termed “runaways”):**

- Child that are missing from care are always considered to have inappropriate placements.
- Have we made efforts to locate a top concern?
  - It is DHHS policy that caseworkers/FPS are to immediately contact law enforcement when notified that a child is missing, and that they follow up with law enforcement on a monthly basis. These contacts are to be documented in the case narrative.
  - In the past the board has reviewed the cases of children who were hurt and a youth who was killed while missing from care, so it is important that the system be actively

looking for these children and addressing the reasons that children have been on run.  
**Missing from care status should be a top concern.**

**Finding “C” STATUS OF DHHS CASE PLAN**

[Parents only need to be included in the plan if they are on the petition/adjudication]

**Possible answers**

- C1 The DHHS case plan was available and reviewed.
- C2 There was no DHHS case plan.

**First follow-up finding if C1 was chosen.**

- C10 The DHHS case plan was updated within the last six months.
- C11 The DHHS case plan was not updated in the last six months.

**Second follow-up finding if C1 was chosen.**

- C20 The DHHS case plan was complete.
- C21 The DHHS case plan was incomplete due to \_\_\_\_\_.

**Basis for the determination:**

For **timing**, DHHS must submit a plan to the court in court-involved cases at the disposition, dispositional reviews, and permanency hearings. If the case is pre-disposition or voluntary, DHHS is required to develop a plan within 60 days of removal.

DHHS is to subsequently update the plan submitted to the court at every court review hearings.  
**Generally this will be about every 6 months – with a 1-month grace period.**

Remember, we are not “documentation police” so don’t get too obsessed with the exact dates. Just like your board might meet on the 1<sup>st</sup> one month and then the 7<sup>th</sup> the next (but still always be meeting on the first Tuesday), so there can be reasonable variation in the general six month guideline.

For **completeness**, there are requirements for minimal elements to be present. Minimal elements include a permanency objective, and a description of timeframes, services, and who is responsible for which task. Parents only need to be included in the plan if they are on the petition/adjudication.

For youth who are 14 and older, plans must contain specific goals and objectives for gaining independent living skills training. A statement in the plan that says, “...independent living skills included” is insufficient to meet this requirement.

This finding measures the completeness of what DHHS has prepared; it does not measure whether the court adopted that plan or whether we agree with the plan. Those elements are measured elsewhere. Even though we are often looking at plans from 5 months ago, we are still helping DHHS measure their performance on creating plans, so this is a valuable finding.

Regarding **format**, although DHHS normally uses a particular format for their plan, there is no requirement that they do so.

**Finding “D” – CURRENT DHHS SAFETY PLANNING (OTHER THAN PLACEMENT)**

**Possible answers**

- D1 DHHS evaluated the child/children’s safety and adequate safety measures and services are currently in place.
- D2 DHHS does not have adequate safety measures and services in place; it has not addressed \_\_\_\_\_.
- D3 Whether DHHS currently has adequate safety measures and services in place for non-placement situations cannot be assessed due to \_\_\_\_\_.

**Basis for the determination:**

Safety includes safety in services, safety in visitation with parents, safety in contacts with siblings, etc.

DHHS is at all times to have adequate safety measures in place. Sometimes these are adequately described as part of the case plan, in other circumstances an additional or different safety plan needs to be in place. Our goal here is to determine if DHHS is fully addressing safety.

The following are some things to consider in regard to safety planning:

- What services outlined in the case plan or safety plan are in place? Would these likely result in the child being safe?
- 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? Are there diminished physical, developmental, or cognitive factors that need to be considered?
- 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?
- Does the safety plan align with information on the SDM assessments?
- Are there adequate safeguards during visitation (both with parents and with other siblings)?

If the safety planning is unclear then the board must be able to articulate what conditions exist that make it difficult for the board to make this finding. If you cannot determine a child’s safety, it

needs to be a top concern. The review specialist should be working with his or her supervisor to ensure immediate safety is addressed for the child.

### **Finding “E” - THE PRIMARY PERMANENCY PLAN**

#### **Possible answers**

- E1 There is a court-ordered primary permanency plan objective.
- E2 There is not a court-ordered primary permanency plan objective.

#### **Follow-up finding if there is a primary permanency plan:**

- E10 At the time of the FCRO review, that objective is still appropriate.
- E11 At the time of FCRO review the current objective is not appropriate due to \_\_\_\_\_.
- E12 At the time of FCRO review the continued appropriateness of the primary objective cannot be determined due to \_\_\_\_\_.

#### **Basis for the determination:**

We make two findings here: 1) at the last court adjudication, disposition, review, or permanency hearing [which could have been some months ago] did the court order a permanency objective, and 2) if so, do the board members find that the goal remains appropriate or do they think should it be changed at the next court hearing. Be forward focused.

Has the court issued a primary permanency objective? The court order does not have to explicitly state “the primary permanency objective is xxx” for that to be the objective. Use your common sense. Do not get hung-up on looking for explicit and/or restrictive language. If the court is ordering visitation and other services for the parents, then any reasonable person would find that the plan is reunification. If the court orders or adopts the DHHS plan that states a permanency objective or services that make clear what that permanency objective is, then use the implicit objective.

Sometimes “permanency objective”, “plan”, and “goal” are used interchangeably. Do not let that confuse you. We define “permanency objective” as the goal of the child’s plan, such as reunification with the family of origin, unification with the non-custodial parent, adoption, guardianship, achieving legal age of majority (adulthood) while in foster care, independent living while preparing for adulthood, or other planned, permanent arrangement.

DHHS must submit a case plan to the court in court-involved cases. The court can accept, reject, or modify the plan. This finding is about the plan ordered by the Court. Plans ordered by the court supersede plans introduced by DHHS but not ordered by the court.

If there is a permanency objective, is it still appropriate? Remember that while a goal may be appropriate, that does not always mean that the goal needs to be achieved immediately. For example, if the plan is reunification that does not mean the child should return home today. You can make comments such as “The board agrees with the permanency objective of reunification, but finds that to return the child home at this time would not be in the child's best interests due

to...” or “While the board finds the parents should be given an opportunity to rehabilitate, returning the child home at this point would place the child at risk.” You are simply indicating that the case goal is appropriate.

At the same time, if you think that child could immediately go home, be adopted, etc., be sure to comment on why you think so.

**Finding “F” - IS DHHS MAKING REASONABLE EFFORTS TO ACHIEVE THE COURT ORDERED PRIMARY PERMANENCY PLAN’S OBJECTIVE/GOAL?**

**Possible answers**

- F1 DHHS is making reasonable efforts towards the court-ordered primary permanency objective.
- F2 DHHS is not making reasonable efforts towards the court-ordered primary permanency objective; \_\_\_\_\_ needs to occur.
- F3 DHHS efforts towards the court-ordered primary permanency objective cannot be determined due to \_\_\_\_\_.
- F4 There is not a court-ordered primary permanency objective so the level of DHHS efforts toward it cannot be assessed.

**Basis for the determination:**

This finding addresses services ordered by the court and provided by DHHS in order to facilitate the primary permanency objective - whether it is reunification, guardianship, adoption or independent living. Such efforts need to be “reasonable”, or for ICWA cases, “active”. Parent/child compliance is not what is being measured here.

Reasonable needs to be germane to the issues of the case. For example, 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, then that would likely not be reasonable. Or, if the permanency objective is adoption and steps are not being taken to locate an adoptive placement, then that may not be reasonable. Services need to be accessible and affordable. Consider if DHHS is reasonably removing barriers to receiving services.

ICWA (Indian Child Welfare Act) qualified cases are different – they require “active” efforts. If a child is of sufficient Indian heritage (based on the individual tribe’s rules) to qualify for ICWA, then DHHS needs to make “active” efforts. ICWA states that Indian children can only be removed for immediate safety issues absent the state making efforts to work with the family. Active efforts requires the correct identification of the issues and that the department makes energetic efforts to assist the family. Workers must consider the cultural norms of the tribe.

The following chart adapted from NICWA.org may be helpful:

Reasonable efforts	Active Efforts
<ul style="list-style-type: none"> <li>• Referral for services</li> </ul>	<ul style="list-style-type: none"> <li>• Arranging services</li> <li>• Aiding transportation</li> <li>• Helping the family to engage</li> </ul>
<ul style="list-style-type: none"> <li>• Managing the case</li> </ul>	<ul style="list-style-type: none"> <li>• Proactively engaging in diligent casework</li> <li>• Follow up</li> <li>• Visits</li> <li>• Service Provision</li> </ul>
<ul style="list-style-type: none"> <li>• Meeting minimum policy standards</li> </ul>	<ul style="list-style-type: none"> <li>• Creatively meeting the needs of the family, going above and beyond minimums</li> </ul>
<ul style="list-style-type: none"> <li>• Mainstream service provision</li> </ul>	<ul style="list-style-type: none"> <li>• Culturally appropriate service provision</li> </ul>
<ul style="list-style-type: none"> <li>• Updating the tribe</li> </ul>	<ul style="list-style-type: none"> <li>• Seeking service and case management suggestions</li> <li>• Co-case managing if the tribe has available personnel</li> </ul>

**Considerations:**

- Are the services being offered in a timely manner in order to facilitate the permanency objective and correct the reason that the child being reviewed entered out of home care or remains on trial home visit?
- Are there professionally recommended services not being offered? Court-ordered services not being provided?
- Is there sufficient information available on what efforts are underway? If not, what does the board need to make this finding?

**Finding “G” - IS PROGRESS TOWARDS THE COURT-ORDERED PRIMARY PERMANENCY OBJECTIVE/GOAL BEING MADE?**

**Possible answers**

- G1 Progress is being made towards the court-ordered primary permanency objective.
- G2 Minimal progress towards the court-ordered primary permanency objective is being made; \_\_\_\_\_ still needs to occur.
- G3 No progress is being made towards the court-ordered primary permanency objective.
- G4 It cannot be determined if progress is being made towards the court-ordered primary permanency objective due to \_\_\_\_\_.
- G5 There is not a court-ordered primary permanency objective so progress toward it cannot be assessed.

**Basis for the determination:**

This finding gives the board the opportunity to comment on the *recent* progress of the case during the previous six months, based on documentation. Examples of wording that may be considered:

- “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 or lack thereof 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 for the top concerns section so that they get addressed.

***Considerations:***

- In the big picture, is there progress on a majority of the issues? Is there forward momentum, not just completion of everything needed for permanency to occur right now?
- Are the parents “jumping through the hoops” or integrating needed changes and demonstrating increased competencies?
- How much more time will parents need to complete services?
- Has there been no or extremely limited progress on one or more issues, while other issues have progress? Can we identify what needs to occur to make more progress?
- Do the parents vary in their level of progress? Is the plan for the child to return to the parent making the most progress, to both parents, or to the parent making the least progress? How does this impact overall achievement of permanency?

- If the plan is reunification, is there documentation of parental compliance in the majority of services and/or progress towards the permanency objective?
- If the plan is adoption or guardianship, what is being done to facilitate finalization? Is the child in a home willing to commit to the child? Have appropriate home studies been completed? Are there delays with paperwork?
- Is there insufficient information regarding what is currently happening? Can we articulate this for the top concerns? What do we recommend to move forward?

### **Finding “H” – COMPLETENESS OF CURRENT COURT ORDER**

#### **Possible answers**

- H1        There is no recent adjudication, disposition, review or permanency hearing order so it is not possible to determine the completeness of that plan.
- H2        The most recent court order contained a complete plan
- H3        The most recent court order contained an incomplete plan; it lacked \_\_\_\_\_.
- H4        The most recent court order did not contain a plan.

#### **Basis for the determination:**

DHHS is to assist the courts by creating a proposed plan for the child. However, this does not relieve the court of its duty to assure that the plan it court orders is complete. Here we will looking at a court order that is within 6 months of the date of review.

A plan needs to list the services, timeframes, and tasks so that all parties are clear as to expectations and to provide measures by which progress can be determined.

Per Neb. Rev. Stat. 43-1312, the plan for the child shall contain at least the following:

- The purpose for which the child has been placed in foster care.
- The estimated length of time necessary to achieve permanency.
- A description of the services which are to be provided.
- The person(s) directly responsible for the implementation of the plan.
- A complete record of previous placements of the foster child.
- The name of the school the child will attend.

Per federal requirements, the case plan needs to address the services to be provided to the parents, child, and foster parents that will improve conditions in the parental home, facilitate the return of the child (if in the child’s best interests) and address the needs of the child while in foster care.

If the youth is age 14 or older, there must be a description of the services and programs to help him or her prepare for or transition to independent living.

**Finding “J” - DID THE CONCURRENT PERMANENCY PLAN AS ORDERED BY THE COURT HAVE AN APPROPRIATE OBJECTIVE/GOAL?**

**Possible answers**

- J1 There is a court-ordered concurrent permanency plan objective.  
J2 There is not a court-ordered concurrent permanency objective.

**Follow-up finding if the court did order a concurrent plan:**

- J10 The board finds that the concurrent plan objective is still appropriate.  
J11 The board finds the concurrent plan objective to not still be appropriate due to \_\_\_\_\_.  
J12 The board cannot determine the appropriateness of continuing the concurrent plan objective due to \_\_\_\_\_.

**Follow-up finding if there is no concurrent plan:**

- J20 The board finds that a concurrent plan is not necessary.  
J21 The board finds that a concurrent plan of \_\_\_\_\_ should be ordered.

**Basis for the determination:**

This finding is about the concurrent plan **ordered by the Court**. DHHS must submit a plan to the court. This plan may, or may not, include a concurrent permanency objective. Concurrent plans are not required. The court can accept, reject, or modify the plan.

Findings will be based on the most recent court ordered concurrent plan available/provided at the time of review. The findings must correlate with the concurrent plan listed on the front page of the recommendations. We want to be forward looking, describing for the court if we think a concurrent plan should be ordered at the next hearing, and if so, what the goal of that plan should be.

The board 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 being reviewed.

In some areas judges never order concurrent plans. That does not mean that the board cannot make a finding that a concurrent plan would be appropriate in a particular case). In that instance, state what concurrent plan you would recommend and why.

***Other considerations:***

- The finding that the concurrent goal remains appropriate does *not* mean that the board thinks that it should occur immediately. It does mean that efforts should be underway to implement it should the primary plan no longer be viable.
- If the case circumstances exist, a local board can recommend a concurrent plan of reunification. For example: if the primary plan is guardianship a board may want to recommend a concurrent plan of reunification. The comment: “The board recommends a concurrent plan of reunification if guardianship with the Aunt is unable to occur in a timely manner. This is based on the boy’s bonds to his mother and nearing adulthood.”

**Finding “K” - IS DHHS MAKING REASONABLE EFFORTS TO ACHIEVE THE COURT ORDERED CONCURRENT PERMANENCY PLAN’S OBJECTIVE/GOAL?**

**Possible answers**

- K1 DHHS is making reasonable efforts towards the court-ordered concurrent permanency objective.
- K2 DHHS is not making reasonable efforts towards the court-ordered concurrent permanency objective; \_\_\_\_\_ needs to occur.
- K3 DHHS efforts towards the court-ordered concurrent permanency objective cannot be determined due to \_\_\_\_\_.
- K4 There is not a court-ordered concurrent permanency objective so efforts toward it cannot be assessed.

**Basis for the determination:**

This finding addresses services provided by **DHHS** in order to facilitate the court ordered concurrent permanency objective. In other words, state whether or not DHHS is doing its job to ensure that services are provided and barriers to receiving these services are removed. This is true whether or not DHHS contracts with a lead agency for services. The board needs to determine that services are being offered in a timely manner. Parent/child compliance is not what is being measured here.

Reasonable needs to be germane to the issues of the case. For example, if the concurrent plan is adoption, it is reasonable that efforts be underway to find an adoptive home, or to maintain the child in the current home if they are willing to adopt. (See the “F” section on active efforts for ICWA eligible children).

Concurrent planning is not sequential. In other words, it’s not if the other plan fails then we will start with this goal; rather, it is making adequate preparations based on case specifics.

***Other considerations***

- Has something caused DHHS to make the correct decision to no longer work toward the concurrent plan?
- Is there a concurrent plan that DHHS is not making efforts towards? For example, a concurrent plan of adoption but no adoptive home being sought, etc.?

**Finding “L” - IS PROGRESS BEING MADE TOWARDS THE COURT-ORDERED CONCURRENT PERMANENCY OBJECTIVE/GOAL?**

**Possible answers**

- L1 Progress is being made towards the court-ordered concurrent permanency objective.
- L2 Minimal progress towards the court-ordered concurrent permanency objective is being made; \_\_\_\_\_ still needs to occur.
- L3 No progress is being made towards the court-ordered concurrent permanency objective.
- L4 Progress towards the court-ordered concurrent permanency objective cannot be determined due to \_\_\_\_\_.
- L5 There is not a court-ordered concurrent permanency objective so progress toward it cannot be measured.

**Basis for the determination:**

This finding gives the board the opportunity to comment on the recent progress towards the court ordered concurrent plan during the previous six months, based on documentation. 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, discuss them in top concerns, and get them addressed.

***Considerations:***

- Progress is forward momentum.
- “Minimal” progress would be used where there is nearly no progress. It could be appropriate in the following case:
  - The primary plan is reunification, the concurrent is adoption. Reunification efforts are going well and seem likely to succeed. Six months ago DHHS placed the child in a placement that is willing to adopt if necessary, but DHHS is not doing more toward adoption. Here you need to consider if this is adequate to ensure progress towards permanency. If there are issues that would need to be resolved in case reunification efforts fail, then describe what needs to happen (like resolving paternity, relative searches, etc.).
- No progress would be used in cases like the following: plan of guardianship but no guardians identified, plan of independent living but no skill-building being provided.

## **Finding “M” – CONTINUED NEED FOR OUT-OF-HOME PLACEMENTS**

### **Possible answers**

- M1 The board finds there is a continued need for out of home placement.
- M2 The board finds there is no longer a need for out of home placement.
- M3 The child is in a trial home visit.

### **Follow-up finding to M2 if there is no longer a need to be out-of-home.**

- M20 The child should be returned to parent(s) from whom removed.
- M21 Custody should be granted to the non-custodial parent and the case closed.
- M22 The child’s adoption, guardianship, or other permanency should be finalized.

### **Follow-up finding to M3 if the child is in a trial home visit.**

- M30 Continued court oversight is needed.
- M31 Continued court oversight is not needed and the case should close.

### **Basis for the determination:**

We are specifically required by Nebraska law to make this finding. After considering the other findings and the totality of the child’s case this should be readily apparent.

## **Finding “N” – IS REUNIFICATION A POSSIBILITY? IF NOT, WHAT SHOULD BE THE PLAN?**

### **Possible answers**

- N1 Return of the child/children to the parent(s) from whom removed is likely or may be possible.
- N2 Return of the child to the parent(s) from whom removed has occurred through a trial home visit.
- N3 Return of the child to the parent(s) from whom originally removed is unlikely.

### **Follow-up finding to N3 if return is not likely.**

- N30 The board recommends custody be granted to the non-custodial parent and the case closed.
- N31 The board recommends referral for termination of parental rights and/or completion of adoption.
- N32 The board recommends referral for termination of parental rights and/or completion of guardianship.
- N33 The board recommends a planned, permanent living arrangement other than adoption or guardianship.
- N34 The board recommends permanent placement with a relative without adoption or guardianship.

**Basis for the determination:**

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

**Considerations regarding returning the child home:**

- Is there evidence that can be cited that return is not possible? If not in most cases it should be considered possible.
- Are parental rights no longer intact? Obviously the return of the child is not likely.
- Has a termination hearing been set? Then return may not be likely.
- Have the parents made no progress in spite of multiple services and adequate time? Then return may not be likely.
- Is it very early in the case? Then return may be possible.

**Considerations regarding an appropriate plan if return is not likely or possible:**

- Has the child expressed a preference? For example, a teen may be willing to be in a guardianship but not want to be adopted. In that case his/her wishes may need to taken into consideration.
- 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 social security dependent payments, and/or Medicaid eligibility. It is not necessary to terminate parental rights in order to achieve a guardianship.
- Federal law allows for a placement with relative that does not involve an adoption or guardianship. This would likely seldom, if ever, be used.

**Finding “P” – DO GROUNDS FOR TERMINATION OF PARENTAL RIGHTS APPEAR TO EXIST? IF THEY DO, WOULD IT BE IN THE CHILD’S BEST INTERESTS?**

**Possible answers**

- P1 Grounds for termination of parental rights appear to exist.
- P2 Grounds for termination of parental rights do not appear to exist.
- P3 Whether or not grounds for termination of parental rights exist cannot be determined due to \_\_\_\_\_.
- P4 The required finding on grounds for termination of those rights does not apply due to (parent rights not intact, parents deceased, etc.).

**Follow-up finding if grounds appear to exit.**

- P10 Termination would be in the child’s best interests.
- P11 Termination would not be in the child’s best interests.

### **Basis for the determination:**

This finding must be consistent with prior findings.

- The Nebraska Foster Care Review Act 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 this 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 TPR case through the anticipated appeal of the court's decision. This can be frustrating for both local boards and FCRO staff.
- To find grounds appear to exist the board must identify all subsections of §43-292 that apply and give rationale. In addition, the board must find that it could be proven that this is in the child's best interests. The 15 of 22 months provision must be accompanied by another section and best interests of the child.
- **Keep in mind that not only must one of the elements listed in 43-292 exist (on next page), but also termination of parental rights must be in the child's best interest.**
- If there are no parents, whether deceased, rights relinquished or terminated, or both parents have yet to be determined such as with an abandoned infant, use not applicable.

What if there are grounds, but it is not in the child's best interests?

- 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 child and the parents, or the progress being made by the parents. 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.

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

#### **43-292[1] abandonment prior to filing petition**

The parents have intentionally 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. Also, in the case of purported fathers, he must have had reason to know or believe the child existed and that he could be the parent.

#### **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.

**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, 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.

**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.

**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 find that such condition will continue for a prolonged indeterminate period.

**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.

**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 best interests needs to be proven. It can also be argued that parents must have been given a reasonable chance to remediate during that time.

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

**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 the board is considering this reason, there needs to be a discussion of why the abuse is “serious.”

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

The parent of the juvenile has been found by a court to have subjected the juvenile to aggravated circumstances, including, but not limited to, abandonment, torture, chronic

abuse, or sexual abuse. See the appendix for more information about aggravated circumstances.

**43-292 (10) 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.**

**43-292(11) one parent has been convicted of felony sexual assault of the other parent under 28-319.01 or 28-320.01 or a comparable crime in another state.**

## DEFINING “DOCUMENTATION”

The following should help define what is, and is not, included in the term “documentation.” Documentation is a type of information that may be in electronic or written form. **All types of documentation can be used, but they may be given different weight.** There are three major classifications of documentation.

1. Legal Documents.
  - a. Legal documents used as a basis for the rationale for a finding may include Birth Certificates, Court Orders, notarized statements, etc.
2. Reports that are signed and dated.
  - a. Some examples include evaluations, assessments, case plans/court reports, emails from legal parties, and completed questionnaires.
3. Narratives, notes, and minutes.
  - a. Some examples could include caseworker narratives, caseworker records of discussions with service providers and/or legal parties’ family group conference minutes, notes, etc.

Review Specialists may reasonably cite the sources for the documentation within the body of the FCRO’s recommendation reports. For example: (SDM<sup>1</sup> Family Strengths & Needs Assessment dated 10/1/2016). Case managers, lead agency workers, family support workers, and other worker’s narratives may be considered and different weight may be given each. For example, a family support worker may be reporting on what they directly observed during a visitation.

In addition, you will get information from legal and concerned parties who attend your reviews.

There may be times that conflicting information will need to be cited and clarification requested. There may also be occasions when there is insufficient information about a particular topic, even after attempts to contact the party (such as case manager or the placement). Your review specialist will work with his or her supervisor on the most expeditious means of bringing the necessary issues to the appropriate party’s attention.

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<sup>1</sup> Structured Decision Making is a proprietary product that DHHS is using to ensure consistency.