

Ten Year Age Difference Between Prospective Adoptive Parent and a Child Being Adopted

(Reviewed 08/23/24)

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Introduction

Family Code 8601 (a)(b) requires that a prospective adoptive parent is at least 10 years older than the child being adopted. It further states that if there are circumstances in which it is in the best interest of the child and all other parties, the court may approve the adoption without regard to the ages of the child and the prospective adoptive parent or parents.

Policy

If a prospective adoptive parent is not at least 10 years older than the child being adopted, the SW will consult with PSS to determine if the current circumstances are in the best interest of all parties.

If the SW and PSS determine it is in the child's best interest to pursue the adoption, the SW will request written approval from the court prior to moving forward with an adoption finalization.

Criteria for Exception

When a prospective adoptive parent is less than 10 years older than the child, assess for the following:

If...	Then...
<p>the prospective caregiver is related to the child as a stepparent, sister, brother, aunt, uncle, or first cousin, and adoption is in the best interest of all parties,</p> <p>NOTE: If that person is married, it must be determined that adoption by that person and that person's spouse, is in the best interest of all parties.</p>	<p>the SW will consult with their PSS about a possible exception prior to requesting approval from the court.</p>

Criteria for Exception(cont.)

If...	Then...
<p>(cont.) the prospective caregiver is related to the child as a stepparent, sister, brother, aunt, uncle, or first cousin, and adoption is in the best interest of all parties,</p> <p>NOTE: If that person is married, it must be determined that adoption by that person and that person’s spouse, is in the best interest of all parties.</p>	<p>The following will be discussed during consultation as a part of the assessment:</p> <ul style="list-style-type: none"> • Does the prospective adoptive caregiver have a relationship to the child that would allow for an exception? • Is it in the best interest of all parties to move forward with an adoption? • Are there any concerns specifically related to the age difference of the prospective adoptive parent and the child that need to be discussed with the family and/or reported to the court?
<p>After consultation, it is determined that this is an appropriate placement regardless of the age difference,</p>	<p>request approval from the court to move forward with the adoptive placement.</p>
<p>After consultation, it is determined that an exception should NOT be made for the age difference,</p>	<p>explain the reasons for your decision to the family, document your decision in CWS/CMS, and move forward with a new adoptive placement match for the child.</p>

Requesting Approval from the Court

Step	Who	Action
1	SW	<p>Document your request for an approval to an exception of the ten year age difference requirement in the 366.26 report. If this request is being made after the 366.26 date, request approval in a Status Review Report or an ex-parte request to the court.</p> <p>Documentation should include:</p> <ul style="list-style-type: none"> • The nature of the relationship between the prospective adoptive parent and the child. • An assessment of the benefits of this adoptive placement and a clear statement as to why an exception would be in the best interest of all parties. • Any concerns that have been discussed with the family regarding the age difference and the result of those discussions.

Requesting Approval from the Court (cont.)

Step	Who	Action
2	PSS	Verify that the information and assessment is in the 366.26 report, Status Review Report, or ex-parte request.
3	SW	<p>Submit the report to court and request that the following findings be made:</p> <ul style="list-style-type: none">• The court finds the (specific relationship to child) to be a prospective adoptive parent.• Pursuant to Family Code Section 8601(b), adoption is in the best interest of the parties and is in the public interest despite the age difference between the child and the (specific relationship to child). <p>If the court approves the exception, move forward with the adoptive placement.</p>

References

Family Code 8601 (a) & (b)

Alignment with SET

This policy aligns with [SET Value 3](#), helping children and youth achieve their full potential and develop lifelong relationships.
