

FOR YOUR INFORMATION

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Issue 22-01

Date: 01/26/22

Parent-Child Relationships:

From the Detention Hearing to the 366.26 Hearing and the Parent-Child Beneficial Relationship Exception

The purpose of this FYI is to provide CSWs information regarding a parent's ability to present evidence at a contested WIC 366.26 hearing in an effort to establish the parental-benefit exception to avoid termination of parental rights, pursuant to WIC 366.26(c)(1)(B)(i). The parental-benefit exception applies when the juvenile court "finds a compelling reason for determining that termination of parental rights would be detrimental to the child" when the "parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (WIC 366.26(c)(1)(B)(i).)

CSWs serve an essential role to the juvenile court by providing unbiased information and professional assessments and recommendations. The California Supreme Court has endorsed the concept that CSWs are a "special arm of the court to investigate the status of children and report." (*In re Malinda S.* (1990) 51 Cal.3d 368, 377, fn. 8; citing *Swain v. Swain* (1967) 250 Cal.App.2d 1, 8.)

To that end, it is important that, **throughout the life of a case**, CSWs document 1) the **nature and quality** of the interaction between the child and parent, 2) the extent of the **emotional attachment** the child has to the parent, and 3) the **frequency and duration** of family time and other parent-child contact during the dependency proceedings. Refer to [Procedural Guide 0400-504.00, Family Time](#) for detailed information regarding family time that should be included in every court report. Additional details that should be included in court reports are set forth below.

In May 2021, the California Supreme Court issued an opinion providing new guidance on the application of the parental-benefit exception at the 366.26 hearing. (*In re Caden C.* (2021) 11 Cal.5th 614.)

At a contested WIC 366.26 hearing, the parent must prove, by a preponderance of the evidence, the following:

1. Consistent and regular family time and contact between the parent and the child.

CSWs should document in court reports:

- Whether the parent maintained regular family time and contact with the child **to the extent permitted by court orders.**



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- Whether the family time and contact continued or developed a **substantial, positive, emotional attachment** from the child to the parent.
- The **dates and duration the parent engaged** in family time with the child, the dates the parent **cancelled or failed to appear** for family time, and the parent had with the child.

2. An assessment whether a substantial, positive, emotional attachment from the child to the parent exists is based on several factors, including but not limited to:

- The age of the child;
- The portion of the child's life spent in the parent's custody;
- The positive or negative effect of the interaction between the parent and the child;
- The child's particular needs and how the parent does or does not meet them;
- How the child feels about, interacts with, looks to, or talks about the parent;
 - Consider asking the child how he or she feels about the family time and/or the parent, if determined to be developmentally appropriate.
- How much comfort, nourishment, physical care, and/or sense of security and stability the parent provides the child during the family time and other contacts;
- Whether the child views the parent as more of a friend or playmate rather than a parent;
- Whether the child is ambivalent, detached, or indifferent to the parent;
- Whether the relationship has negative features, from the perspective of the child (i.e. child is parentified).

3. Does severing the relationship outweigh the security, finality, and sense of belonging an adoption would provide? Factors include, but are not limited to:

- What would life be like for the child in the adoptive home without the parent in the child's life (how, if at all, would the child be affected);
- Whether severing the relationship would cause emotional instability and preoccupation leading to acting out, difficulties in school, insomnia, anxiety, or depression;
- Whether adoption would create a sense of stability the child needs;
- Whether a parent's struggles with substance abuse, mental health issues, or other problems make termination of parental rights more or less detrimental to the child;
 - The parent's struggles with issues such as those that led to dependency are relevant only to the extent they inform the specific questions before the court: whether the child would benefit from continuing the relationship and be harmed, on balance, by losing it; not whether the parent is likely to ever resume custody of the child.
- Whether the parent's conduct, related to the reasons for dependency or otherwise, 1) impacted the amount of family time or contact with the child, 2) the nature of that family time or contact, or 3) negatively affected the parent-child relationship or the stability of the child's placement;
- Whether losing the relationship with the parent would harm the child to an extent not outweighed, on balance, by the security of a new, adoptive home.

Factors that cannot be considered by the court and DCFS and must be avoided when assessing if the child has a substantial, positive, emotional attachment with the parent and/or whether severing the relationship would be detrimental to the child:



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- A comparison of the parent's abilities as a caregiver with those of the potential adoptive parent.
- A parent's inability to regain custody – a parent's struggles are relevant to the extent that they provide the court with information necessary for the areas set forth above.
- A post-adoption contact agreement – the court must assume the termination of parental rights terminates the parent-child relationship.
- That a parent only has monitored or virtual family time with the child.
 - The California Supreme Court in *Caden C.* and subsequent Court of Appeal opinions have established that a parent may continue or develop a substantial, positive emotional attachment with the child during monitored or virtual family time.
- Whether the parent has continued or developed a parental role toward or primary attachment for the child.
 - Refrain from the use of terms such as parental role or primary attachment in assessments and recommendations; instead focus on the extent, if any, of a substantial, positive, emotional attachment the child has toward the parent.

Although the parent has the burden to prove the parent-child beneficial relationship exists to prevent the court from terminating parental rights, DCFS should provide the court with the detailed information set forth above in the WIC 366.26 court report. Consult with the SCSW and County Counsel for assistance with assessments, recommendations, and the court report when there are questions regarding the existence of the parental-child beneficial relationship exception.

In re Caden C. (2021) 11 Cal.5th 614.



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