MEMORANDUM TO POINTS AND AUTHORITIES

INTRODUCTION

This petition challenges a number of serious errors that occurred at the twelve-month review hearing. Appellant, Alice A., is a 21 year old mother of two young children. She has been diagnosed as "mildly mentally retarded." By the time of the twelve month review hearing, Alice had completed both of the court-ordered reunification services programs. However, neither of the service providers felt that Alice had really benefited from these programs because they noted that she seemed to have serious comprehension problems and was incapable of completing the homework assignments correctly.

Although the agency received the results of a court-ordered psychological evaluation that disclosed Alice's disability less than two months after the second six-month reunification period began, the agency did not share the results of the psychological evaluation with Alice's counsel nor did it amend Alice's case plan to tailor her services to someone with her limitations. Instead, it did nothing. At the twelve-month review hearing, the agency recommended that Alice's children not be returned to her because she did not have separate housing even though finding separate housing was never a requirement of her reunification plan.

The juvenile court ordered that Alice's children not be returned to her but did not specify the facts upon which that decision was based in spite of the statutory requirement that it do so. Further, in spite of the fact that the agency essentially admit-ted that Alice had not been provided with reasonable reunifica-tion services because "it was not her fault" that she did not benefit from the services that were provided, the juvenile court found that reasonable services had been provided.

For the reasons set forth below, these errors require the issuance of writ ordering reversal of the twelve-month review orders in this case.

INTEGRATED STATEMENT OF THE CASE AND STATEMENT OF FACTS

On April 9, 2004, the Cow County Department of Social Services ("the agency") filed a petition pursuant to Welfare and Institutions Code[1] section 300, subdivision (b) alleging that Denny A. and Tony A. came within the jurisdiction of the juvenile court because Denny had suffered nonaccidental burns on his legs and facial injuries that their mother, Alice A., had either caused or failed to protect Denny from, and that she failed to obtain prompt medical treatment for the child's injuries. (CT[2] 1, 5.)

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[1] All section references hereinafter are to the Welfare and Institutions Code unless otherwise indicated.

[2] There are two Clerk's Transcripts in this case, one for each child. The two transcripts are substantially the same. References to the Clerk's Transcript are references to the Clerk's Transcript in Denny's case (Superior Court No. 507200) unless otherwise indicated.

Alice told investigating authorities that the burns on the child's legs had occurred on April 1, 2004 while Denny was in the care of the his babysitter, Sara C. (CT 10.) The babysitter told Alice that she had left Denny sitting on the kitchen counter next to a hot stove. (CT 10.) Alice also said that the babysitter called her at work on April 1, 2004, to tell her that Denny had a gotten a black eye from being hit in the face with a tetherball. (CT 10.) That evening, Alice discovered a cut on Denny's nose when she went into the room at the babysitter's house where the child had been put to bed. She thought that he had hit his face on a bed frame next to where he was sleeping. (CT 10-11, 49.) She called her parents who came over and treated the cut. (CT 87.) The babysitter denied causing any of the child's injuries. (CT 10, 49.)

Alice admitted that about two weeks previously, Denny had returned from the babysitter with scratches on his face. The babysitter told her that Tony had scratched Denny. Alice did not believe that this was the case and reported the incident to the sheriff's department. Nevertheless, she continued to use Sara C. to care for the children while she worked because she had no one else to watch her children. (CT 49, 88.)

Alice took the child to the doctor on April 5, 2004, for treatment of a cold but failed to mention the burns on the child's legs. (CT 49, 50.). The doctor's office called Child Protective Ser-vices. Both the agency and the police investigated. (CT 53, 79-89.) The agency detained the children on April 7, 2004 and filed the section 300 petition. (CT 1, 2.) The police eventually decided not to pursue a prosecution because Alice passed a polygraph exam-ination that established that she did not know how Denny had incurred his injuries. (CT 217; RT 9-10.)

Alice was separated from Denny L., who is her husband and the children's father. (CT 50, 55.) Alice left him and moved back in with her parents because he was not supporting her and the children, was never home, and never spent time with the children. (CT 55.) For the five months prior to the initiation of the dependency proceedings, Alice was living with a roommate and trying to make it on her own. (CT 55.) After the petition was filed, Alice had to move back in with her parents because she was fired from her job and lost her TANF funding. (CT 55.) Denny L. appeared at the detention hearing (CT 25)

but failed to appear at the jurisdiction hearing. (CT 150.) He did not participate in his case plan (CT 180). and did not participate further in any of the proceedings in the case. (CT 226.)

Alice submitted on the petition after it was amended at a combined jurisdiction/disposition hearing held on May 25, 2004. (CT 5, 165.) The court ordered that the children be removed from Alice's custody and that reunification services be provided to her. (CT 166.) The reunification plan called for Alice to attend a parenting class and an anger management class.[3] (CT 63-64.) At that point, Alice had already attended five parenting classes and two anger management classes and was visiting regularly. (RT 12; CT 58.)

The children's counsel expressed some concern at this hearing that the parenting class might not be enough to help Alice. (RT 10.) Ms. Costa, the social worker, suggested that there should be assessment after Alice completed the parenting class and that if the assessment indicated that she needed additional help, she could be referred to the Parents Resource Center. (RT 11.) The children's counsel indicated that the proposal for the assessment and an additional referral would satisfy her concerns and the court approved of that plan. (RT 11.)

Alice continued to live with her parents until September 8, 2004 when she moved in with her maternal grandmother. (CT 211, 214.) Her children were initially placed with Lori L., the paternal grandmother. (CT 209, 217.) Alice's mother, Victoria A., provided child care while Lori L. was at work. The children were with Alice at Victoria's house every day from 6:30 a.m. to 7:00 p.m., except for the two days a week that Alice attended her classes. (CT 213.) Alice applied for a number of jobs at various places but was turned down. Alice believed that part of the problem was that she "has some spelling problems" (CT 212.) She wanted her social worker, Mr. Nada, to help her with some job training. (CT 212.) On September 28, 2004, after Alice had moved out of the house, the agency decided to place the children

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[3] At this point in the case, the agency apparently assumed that Amber was the perpetrator and that the child's injuries had been inflicted in anger. This later proved not to be the case but the agency did not amend the reunification plan to delete this requirement. Alice completed the anger management program. (CT 252.)

with Victoria because Lori L. was overwhelmed and had difficulty dealing with Denny. (CT 216, 217.)

In his report for the six month review hearing (§361.21, subd. (e)), held on October 19, 2004, Mr. Nada reported that Alice had attended the anger management program regularly but had difficulty comprehending the material. (CT 179.) The progress report from the program counselor, Mr. Winner, indicated that Alice had completed 13 out of 16 sessions but that she had not benefited from these classes, "mainly because she has low comprehension of and in the use of the English language; concrete or abstract reasoning is seemingly beyond her capabilities; *i.e,* she has never completed any home-work assignment, and can not [sic] conceptualize or discuss the context of what the assignments were purported to achieve or what she has learned from the homework assignment." (CT 193.) Mr. Winner recommended that a psychological evaluation be done to ascertain Alice's level or capability to function as an independent person and, if she is capable, to recommend what level or kind of vocational training would help her become a self-sustaining person. (CT 194.)

The progress report from the counselor at the parenting class indicated that Alice had missed some appointments but had completed eight out of ten parenting classes. She had not yet completed six "packets" and still needed to do the parent-child labs. (CT 191.)

In the context of reporting Alice's difficulties in compre-hending that material, the social worker reported that Alice was assessed by the Lone Mountain Regional Center (LMRC) for a possible developmental delay but was determined not to qualify for the regional center's services. (CT 181, 231-233.) The regional center recommended that Mr. Nada refer Alice to the Disablity Services Department at Cow County Junior College for classes to improve her reading and writing skills. Mr. Nada told the regional center that he had already thought of this and would be looking into this program for Alice. (CT 233.) There is no evidence in the record that Mr. Nada ever referred Alice to this program.

On October 21, 2004, Mr. Winner notified the social worker that Alice had completed the anger management program. (CT 235.) He indicated that her last two sessions were uneventful and that his recommendations concerning Alice had not changed. (CT 235.) On October 26, 2004, the parenting class counselor reported that Alice had only one more class to attend and three packets

and parent/child labs to complete before she was done with her parenting classes. (CT 236.)

The social worker recommended that the agency continue to provide services to Alice. The case plan attached to the report continued to require Alice to complete the anger management and parenting classes (CT 185, 186.) Although the CASA had recommended that Alice be provided with a Basic Life Skills class and vocational training and the regional center recommended that she be referred to the Disability Services Department at the junior college, Mr. Nada did not recommend any additional services.

At the six-month review hearing held on November 2, 2004, the court ordered that Alice continue to receive reunification services. In light of Mr. Winner's report, the court also ordered that Alice participate in a psychological evaluation. (CT 226.)

The children remained placed with Victoria A. until Decem-ber 10, 2004. They were returned to the home of the paternal grandmother, Lori L., after Victoria's husband was charged with driving under the influence. (CT 298.)

On December 24, 2004, the psychologist, Dr. Freud, provided his report to Mr. Nada. Dr. Freud concluded that Alice had an IQ of 65 which is "indicative of Mild Mental Retardation." (CT 285.) According to Dr. Freud,

> the Verbal IQ of 65 demonstrates that she has a very poor fund of general information, does not abstract very well, has poor calculation skills, has difficulty remembering and learning new material, and struggles with practical and social judgement. I believe that this is her primary problem rather than a diagnosable mental illness.

(CT 285.) Dr. Freud concluded his report by reiterating that Alice's reasoning, knowledge and judgment are impaired by diminished intellectual functioning" and recommending to Mr Nada that Alice's "reunification plan, if not already in place, needs to consolidate this persisting disability." (CT 285.)

Mr. Nada did not amend the case plan to take into account the fact that Alice had this disability nor did

he share this report with counsel until early April 2005[4]. (RT 23, 28, 29.) When Alice's counsel finally learned of the report, he contacted county counsel and asked that the report be sent to the regional center. (RT 23.) After the regional center received the report, it again concluded that Alice was not eligible for its services but asked for additional records. (RT 24.) The agency did nothing to obtain those records. (RT 24, 29-30.) Alice's counsel obtained those records in early May and submitted them to the regional center. (RT 26.) Alice received no response from the regional center until the day of the 12-month review hearing when she was orally advised that she was not eligible for regional center services. (RT 24.)

The school records showed that Alice had been diagnosed as mentally retarded at least three times by various school districts. In 1996, the Freebie School District concluded that Alice was disabled because of "mental retardation." It referred to an earlier 1993 report that indicated that Alice was functioning in the "mentally-retarded range." (RT 30-31.) In 1999, a psychologist for the Cow County Unified School District concluded that Alice was retarded with an IQ in the 55 to 65 range. (RT 31.)

Mr. Nada's initial report for the 12-month review hearing recommended that reunification services be terminated. (CT 243.) Because of that recommendation, there was no service plan for Alice attached to the report.

An attached report from the parenting program noted that Alice had completed all of the required classes and labs but that she was slow to grasp the materials because of comprehension problems and that she did not interact with her children very much in the labs. (CT 27-280.) The report recommended that if Alice was to reunify with her children, she should be provided with an in-home support service, such a Leaps and Bounds, to assist her in raising her children. (CT 280.)

The twelve month review hearing was held on December 2, 2005. (CT 347; RT 18-40.) Both Alice's counsel and the child's counsel objected that reasonable services had not been provided because of the agency's failure to do

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[4] It appears that the report was served on counsel as an attach-ment to the 12-month review report that was filed with the court on March 29, 2005. (CT 243.)

anything to amend the ser-vice plan to take Alice's disability into account, failure to notify the service providers of Alice's condition so that they could amend their services to take Alice's disability into account, and failure to timely notify counsel of Dr. Freud's report so that counsel could pursue the matter with the regional center on Alice's behalf. (RT 29-32.) Counsel for the agency admitted that Alice's failure to make as much progress as the agency would have liked was "not her fault" (RT 27) but argued that the only source of services for people who are mentally retarded is the regional center and that there was nothing else the agency could have done for her. (RT 26.)

The juvenile court concluded that the regional center was the only source of services to assist Alice in properly completing her case plan and that even if the Dr. Freud's report had been provided earlier, the conclusion that regional center would have reached a different conclusion about Alice's eligibility for services was purely speculative. (RT 36.) The court then found that return of the children to Alice's custody continued to create a substantial risk of detriment to them, that reasonable services had been provided, that Alice had participated regularly in the case plan and but had made only limited progress. (RT 37.) The court went on to order that reunification services be terminated and set a section 366.26 hearing for April 2, 2006. (RT 38.)

On December 6, 2006, Alice filed a timely notice of intent to file this petition. (CT 391.)

ARGUMENT

I

THE JUVENILE COURT'S DETRIMENT FINDING IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

Section 366.21, subdivision (f) is the statute that sets forth the procedures the juvenile court must follow at a 12-month review hearing. That statute provides in pertinent part:

> At the permanency hearing, the court shall determine the permanent plan for the child, which shall

> include a deter-mination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . .
>
> The social worker shall have the burden of establishing that detriment.

Section 366.21, subdivision (c) requires the social worker to file a report with the court containing his or her recommendations for disposition of the matter at that hearing. The statute specifi-cally requires the social worker who recommends that the child not be returned to parental custody to "specify why the return of the child would be detrimental to the child."

The juvenile court made a detriment finding in this case but there is nothing in the social worker's report to support the find-ing that return to parental custody would have been detrimental to the children. The sole statement in the social worker's report concerning detriment is as follows:

> Alice . . . was given 12 months to reunify with her children and has no suitable residence to provide for their care. The children would continue to be at risk if returned to her cus-tody, as she resides with her boyfriend and his family. Ms. A. has stated her boyfriend will not be a part of her child-ren's lives, yet she remains in his home and has decided against pursuing her own residence

> although CSA has pro-vided a Pro Family worker to assist her to seek housing.

(CT 252.) No additional evidence concerning detriment was offered at the hearing.

This statement of detriment contains no facts that demon-strate how or why the children would be at risk if the children were returned to her custody to live with her in the boyfriend's home. There is no evidence that the agency had checked out the boyfriend and found him or his home to be unsuitable for the children in any way. The only evidence in the record concerning the boyfriend is that the boyfriend, Manuel C., has two children of his own--a nine year old and a one year old. (CT 213.) There is no evidence that he has abused or neglected his own children and no evidence that his home is uninhabitable or is otherwise not a safe place for children. A parent's lack of separate housing, in and of itself, may not serve as the basis for a detriment finding.

In *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 773, the agency recommended against returning a child to her father's custody because he lived in shared housing with relatives and had no home of his own. There was no evidence that the father was ever told by the agency or by the juvenile court that separate housing was a condition of having his children returned to him. The juvenile court accepted the agency's recommendation and concluded it could not safely release the child to the father's custody because of his housing situation. The court of appeal re-versed that finding and the order denying him custody of the child. Noting that the agency had the burden of proving that re-siding in that household would constitute a significant danger to the child, the court held that the agency had presented no evi-dence that showed that the child would be at risk. The court further held that the juvenile court erred in just accepting the agency's judgment on the issue because the agency "specifically had the burden of *proving* the contention, it was entitled to no such deference." (*Ibid*: emphasis in the original.)

In *In re Danielle M*. (1989) 215 Cal.App.3d 1267, the court reversed a finding that it would be detrimental to place the father's children with him based on the social worker's argument that there was risk to the children because he was unemployed and living with his mother. In doing so, the court said,

> Here there was no evidence of how [the father's] lack of employment and a separate residence would adversely affect his daughters, and to hold these factors detrimental *per se* is unthinkable. . . . "The issue presented by this appeal is very clearly drawn. Can a court lawfully deprive a parent who is able to provide good care, of the custody of his/her child simply because the parent is unemployed and shares a home with his/her parent? The negative answer urged by appellant is absolutely required unless this court decides to license social services to remove all children from the unemployed and from those who by choice or necessity share a home with a friend or relative. Such intrusiveness must not be tolerated by a free society."

(*Id.* at p. 1271.) The fact that the parent does not have separate housing, in and of itself, does not establish that there is a substantial risk of detriment to the children if they are returned to the parents' custody in that housing situation. Much more is required. The agency has the burden of establishing that return to parental custody would pose a substantial risk of detrimental to the child and must set forth the evidence of that detriment in the social worker's report. The agency did not do so in this case.

Alice's case plan contained no requirement that she obtain her own housing as a condition of having her children returned to her. (CT 63-64.) Her lack of separate housing was not a reason her children became dependents of the court--her poor judgment in the selection of babysitters and failure to act promptly to protect her children when she discovered that the babysitter was hurting them were the bases for the dependency. Alice had completed two programs designed to address these issues and although she did not necessarily comprehend everything those programs tried to teach her, the agency neither asserted nor es-tablished that a similar situation was likely to arise again in the future or was likely to arise if she resided with Manuel.

There is similarly no evidence that Alice was advised that if she did not obtain separate housing her children would not be returned to her. Consequently, her failure to have obtained separate housing, particularly in the absence of any evidence of detriment if the children were to live with her in that housing, may not

be used to support a conclusion that the children cannot be safely returned to her custody.

> What [the agency] was required to establish was that releasing [the child] to [the father's] custody would "create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (Welf. & Inst. Code, § 366.22, subd. (a).) *That standard*, while vaguely worded to be sure, *must be construed as a fairly high one.* It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member.
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> We do not get ideal parents in the dependency system. But the fact of the matter is that we do not get ideal parents anywhere. Even Ozzie and Harriet weren't really Ozzie and Harriet. Ideal parents are a rare--if not imaginary--breed. Some of us get luckier than others when it comes to parents, and most who work in this system are able to look back and realize how fortunate they were. But the State of California is not in the business of evaluating parents and redistribut-ing their offspring based upon perceived merit.
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> The parents who come through the dependency system are more in need of help than most. If we are lucky, they are parents who can learn to overcome the problems which landed their children in the system, and who can demon-strate the dedication and ability to provide for their child-ren's needs in an appropriate manner. They will not turn into superstars, and they will not win the lottery and move into a beachfront condo two blocks from a perfect school.
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> This is a hard fact to accept. We are dealing, after all, with children, and the dedicated people who work so hard to help these families are understandably desirous of providing those children the best possible circumstances in which to grow up. But there are times when we have to take a step back and make sure that we are not losing sight of our

> mandate. We are looking for passing grades here, not straight A's.

(*David B. v. Superior Court, supra,* 123 Cal.App.4th at pp. 789-790; emphasis added.)

In light of the fact that the agency cited Alice's housing situation as the sole reason why the children would be at risk if they were returned to her custody and provided no evidence of any kind as to how return to Alice's custody in that home would be detrimental for these children, there is no evidentiary basis for the court's finding that the children could not be safely returned to Alice's custody. Therefore, the order maintaining the children in continued out-of-home placement must be reversed.

II.

THE JUVENILE COURT'S REASONABLE SERVICES FINDING IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Section 366.21, subdivision (f), also provides that

> The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian.

Whenever a child is removed from parental custody, the juvenile court is required to ensure that reasonable reunification services are provided to the family unless and until a determi-nation is made pursuant to section 361.5 subdivision (b) that the case falls within one of the statutory exceptions to the require-ment that services be provided. (§361.5 subd. (a), (c); *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) When reunification services are ordered, the reunification plan "must be specifically tailored to fit the circumstances of each family [citation], and must be designed to eliminate those conditions which led to the juvenile court's jurisdictional finding." (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777) While "[r]eunification services need not be perfect. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969), . . . they should be tailored to the specific needs of the particular fam-ily. (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 810.)" (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972.) "Each reunifica-tion plan must be appropriate to

the particular individual and based on the unique facts of that individual. (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1458.)" (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

At the six month review hearing in this case, it was apparent from Mr. Winner's report that Alice had serious problems in comprehending the materials being presented in the services programs mandated by her service plan. (CT 192-193.) Consequently, the court ordered a psychological evaluation to determine the level of Alice's ability to function. (CT 226.) Alice cooperated in the psychological evaluation and in December 2004, less than two months into the second six-month reunification period, the agency received Dr. Freud's report. That report indicated that the reason Alice was having so much difficulty comprehending the content of the anger management and parenting classes was that she had an IQ of 65. As a result, she had a poor fund of general knowledge, did not "abstract" very well, had poor calculation skills, was limited her ability to remem-ber and learn new material, and struggled with practical and so-cial judgment. Dr. Freud informed Mr. Nada that Alice's reasoning, knowledge, and judgment were impaired by this disability and recommended that her reunification plan should take these problems into account. (CT 285.) The agency's response to this information was to do nothing. There were many things that the agency could have and should have done to tailor Alice's reunification plan to meet her individual needs. Instead, it did nothing

First, Mr. Nada could have made a new referral to the regional center as soon as he got the report. He did not do so. If he truly believed that the regional center was the only agency that could provide services to someone with Alice's condition, then a prompt referral and a new assessment was immediately called for. The clock was running on Alice's reunification period. Instead of making a prompt referral, Mr. Nada did nothing. Second, upon learning of Alice's condition, Mr. Nada could have referred Alice to the Basic Life Skills Classes recommended by the CASA in her six month review report. (CT 220.) Instead, he did nothing.

Third, Mr. Nada could have referred Alice to the Disability Services Department at the junior college that had been recommended by the regional center the first

time it assessed Alice in August 2004. (CT 233.) The regional center had con-cluded that Alice had a learning disability (CT 231) which should have been a clue that Alice was unlikely to be able to successfully learn in a program that involved homework packets that she was required to complete and turn in, as was the case with the both the parenting program and the anger management program. (CT 191, 193.) Mr. Nada did not make any changes in Alice's reunification plan at the six-month review hearing in response to this recommendation so that she had some chance of being able to learn the material. Nevertheless, when he received Dr. Freud's report that indicated that Alice had trouble remembering and learning new material because of her disability, he certainly should have considered a referral to the Disability Services Department at the junior college as a way to address this problem. Instead, he did nothing.

Fourth, if Mr. Nada thought that it was so important for Alice to get separate housing, even though he knew she could not get a job because of her poor skills, he could have referred her to a vocational training program for the disabled where she could learn some job skills as was recommended by the CASA in her six-month review report. (CT 220.) Instead, he did nothing.

Fifth, Mr. Nada could have referred Alice to an in-home support program that could come into the grandmother's home where the children were being cared for during the day and demonstrate parenting skills as was recommended by the parent-ing class counselor in a February 8, 2005 letter to Mr. Nada. (CT 279-280.) Instead, he did nothing.

Sixth, having received the information on February 8, 2005 that Alice had not really benefited from the parenting class, Mr. Nada could have referred Alice to the Parent Resource Center for further assistance and with an explanation of her special needs as recommended by the children's counsel and the initial social worker at the disposition hearing. (RT 11.)

Seventh, Mr. Nada could have provided a copy of Dr. Freud's report to Alice's attorney as soon as he got it and asked him for suggestions as to how to deal with regional center and what else should be done to address Alice's disability. Instead, he did nothing.

In April, after being prompted by county counsel, who was prompted by Alice's counsel, Mr. Nada finally submitted Dr. Freud's report to the regional center.

When the regional center again responded, on April 16, 2005, that Alice was not eligible for its services but asked for more information, Mr. Nada did nothing. (RT 30.) He did not attempt to obtain the requested records. He did not contact counsel and ask that counsel obtain the requested records. Instead, he did nothing. Again, if the regional center was indeed the only agency that could provide services to someone with Alice's disability, it would seem that a prompt response to the regional center's request was called for. At that point, Alice had completed both of the required classes and was receiving no court-ordered services of any kind. If Mr. Nada believed that Alice's completion of those classes was insufficient to justify returning her children to her custody, it was incumbent upon him to locate and provide additional services that would enable Alice to learn the things he felt she needed to learn in order to get her children back. Instead, he did nothing.

Mr. Nada's failure to inform counsel of the April letter denying eligibility but asking for additional information had another adverse effect on Alice. Because counsel did not know of the new denial, counsel was not in a position to advise Alice concerning her right to appeal the regional center's decision. (RT 32.) Alice was required to exercise her appeal rights within 30 days of the decision. (§4710.5.) Had Mr. Nada informed Alice's counsel of the April 2005 letter from the regional center, counsel could have filed an appeal on Alice's behalf and the matter might have been resolved in mediation, an informal meeting, or other administrative proceedings before the twelve-month review hearing. However, instead of contacting counsel, Mr. Nada did nothing.

It is important to note that Mr. Nada was not prevented from taking further steps to tailor the reunification plan to Alice's needs by the fact that the case was between the six and the twelve-month reviews when he received the psychological evaluation. Section 16501.1 sets forth the social worker's obligations insofar as case plans are concerned. Subdivision (d) of that statute provides that case plans must be updated at least every six months in conjunction with each status review hearing held pursuant to section 366.21, but it also requires that the case plan must be updated as the needs of the child and family dictate. Subdivision (d)(12) provides that the case plan must be included in

the court report and considered at each review hearing, but specifically provides that modifications to the case plan made during the period between review hearings need not be approved by the court if the social worker's supervisor determines that the modifications further the goals of the plan. Thus, Mr. Nada was required by section 16501.1, subdivision (d) to update the case plan when he learned to Alice's disability from Dr. Freud in December and he was not required to get court permission to modify the plan so long as he had supervisory approval to do so. Instead, he did nothing.

It appears that the agency and perhaps the court were proceeding on the assumption that all the agency had to do for a parent who is mentally impaired is to make a referral to the regional center and if the regional center decides not to do anything, they have done their duty to provide reasonable services. To the extent that the agency may be relying on *In re Victoria M.* (1989) 207 Cal.App.3d 1317, a case in which this court found that the same agency had failed to provide reasonable services to a developmentally disabled mother because it did not refer her to the regional center, that reliance is misplaced. While this court did find that the failure to refer that mother to the regional center was a failure to provide reasonable services, it also found that, even though many other services were offered to the mother, those services were inadequate because no accommo-dation was made for the mother's special needs even though everyone was aware that the mother had mental limitations. (*Id.* at p. 1329.) "In light of [the mother's] limitations, the services offered were insufficient." (*Id.* at p. 1330.)

In this case, the county counsel argued that the regional center was the only way the agency could provide services to a parent with mental limitations was to refer to them to the regional center. (RT 25-25.) The juvenile court concluded that because the regional center continued to insist that Alice did not qualify for its services, there were no other services available to address Alice's limited capabilities and that reasonable services were therefore provided to her. (RT 36-37.) As we have seen, this finding is not supported by the record. The record shows that several other professionals recommended other services to Mr. Nada that could have assisted someone with Alice's disabilities, including the Disability Services Center at the junior

college, the Leaps and Bounds in-home support program, vocational training programs for the disabled, the Parent Resource Center, and Life Skills Classes. But instead of investigating the availability of these services or making referrals to them, Mr. Nada did nothing.

While a referral to the regional center is certainly appro-priate in cases where the parent appears to have limited mental capacity, the refusal of the regional center to provide services does not relieve the agency of its obligation to make accommoda-tions for that parent's limitations when designing and implement-ing the reunification plan. Such accommodations could have and should have been made for Alice's disability in the programs that were part of her reunification plan. Instead of tailoring the par-enting class and anger management classes for someone who cannot read and write very well (as the parenting skills counselor did in *Victoria M., supra*, 207 Cal.App.3d at p. 1329), Alice was given written homework and then criticized when she could not complete the assignments correctly. (CT 193.)

In *David B. v. Superior Court, supra*, the court faulted the agency for doing something very similar when it claimed that it had provided the father with reasonable services in finding housing by providing him with a list of housing resources without taking into account that he could not read the list because he was illiterate. (123 Cal.App.4th at p. 791.) Because no other services that were tailored to Alice's disabilities were offered or provided, there is simply no evidence to support the court's finding that reasonable services were provided in this case.

Before the juvenile court may find that reasonable services have been provided, the

> the record should show that the supervising agency iden-tified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the par-ents in areas where compliance proved difficult (such as helping to provide transportation and offering more inten-sive rehabilitation services where others have failed).

(*David B. v. Superior Court, supra*, 123 Cal.App.4th at pp 793-794 [quoting *In re Riva M.* (1991) 235 Cal.App.3d 403,

414].) The agency made no effort to offer services that were designed to remedy the problems caused by Alice's disability. It made absolutely no effort to assist Alice in those areas where compliance proved difficult because of her disabilities. It gave her standard reunification services designed for people of average intelligence and made no attempts to find other services or redesign the services already offered when it became clear six months into the case that Alice lacked the intellectual ability to benefit from those services. That being the case, the court's finding that the agency provided reasonable services designed to overcome the problems that caused Alice to continue to be deprived of the custody of her children is not supported by substantial evidence and must be reversed.

CONCLUSION

In light of the foregoing, this court is respectfully requested to issue a writ of mandate ordering reversal of the December 2, 2006 review hearing order insofar as it was not supported by any evidence of detriment to the children if they were returned to Alice's custody and found that reasonable services were provided to Alice during the second six-month reunification period.

Dated: January 20, 2006

Respectfully submitted,

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Alice A.

CERTIFICATION OF WORD COUNT

I. Janet G. Sherwood, hereby certify under penalty of perjury under the laws of the State of California that, according to the word processing program used to prepare this brief, petitioner's memorandum of points and authorities contains 6600 words.

Dated: January 20, 2006

Janet G. Sherwood