A. The Juvenile Court's Denial Of The Petition For Modification Based On Lack Of Progress In Counseling Was Error Because It Was Undisputed That [parent] Could Not Make Progress In The Counseling To Which DHHS Had Referred Her.

As previously described, the juvenile court denied [parent]'s petition, because her "supporting declaration and attachments show that she still has not made progress with counseling. No benefit to child." (CT 248.) The evidentiary basis for the court's finding that [parent] had "not made progress with counseling" was the October 3, 2002 "closing summary" by Mr. Vickland attached to [parent's] petition (CT 257), which revealed that though [parent] had completed the recommended thirteen sessions, she had not addressed any issues relating to her children.

> My recommendation regarding this case is to consider that although she attended all sessions, she did not make use of the sessions in exploring issues. I would recommend she be evaluated for S.S.I. I am unsure of her intellectual functioning or her ability to understand expectations of her. She appears unaware of her interactions with others. She could talk for a whole session, going on tangents from one subject to another, and another.

(CT 257, emphasis added.)

Mr. Vickland's observations and thoughts about [parent]'s case confirmed in October the eventuality that Dr. Frank had foretold in April. Dr. Frank had concluded that [parent] was "mild[ly] mentally retarded" and that "she may qualify for Alta Regional Services," and that she may benefit from medication. (CT 146.) Specifically, Dr. Frank believed that [parent] would not benefit from the "insight oriented psychotherapy" offered by Mr. Vickland. Rather, Dr. Frank believed [parent] "could best be served by in-home services and practical hands-on demonstrations of how to manage children's behavior." (CT 147, emphasis added.) Dr. Frank stressed that [parent]'s identified psychological problems must be "successfully" addressed before she can parent her children. (CT 147.)

The record demonstrates that none of Dr. Frank's recommendations were acted upon by Ms. Holmes, except for the referral for a medication assessment — and that referral came more than four months after Dr. Frank communicated his report to Ms.

Holmes. Thus, Mr. Vickland's conclusions were predetermined, because [parent] was engaged in a process — designed by DHHS — that held no possibility of success or benefit to her efforts at reunification.

> Family reunification efforts must be tailored to fit the unique challenges suffered by individual families unless a Welfare and Institutions Code section 361.5 disability is proven by clear and convincing evidence. In other words, the juvenile dependency system is mandated by law to accommodate the special needs of disabled . . . parents.

(*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1792, emphasis added.)

The Court of Appeal's observations from a decade and a half ago in another case ring equally true for [parent]:

> Everyone was aware that [the mother] had mental limitations. They had access from the onset to a psychological evaluation . . . identifying [her] as being mildly mentally retarded. They failed to arrange a second evaluation until after [the mother] had participated in the required counseling programs in which, not surprisingly, she failed to show signs of progress. . . . Even though [the mother] tried hard and took some of the classes three times, she was unable to understand the skills or to apply them. . . .[¶] . . . And yet [her] disabilities were not considered in determining what services would best suit her needs.

(*In re Victoria M.* (1989) 207 Cal.App.3d 1317, 1329.)

Dr. Frank's suggestion that [parent] may be eligible for regional mental health services was of extraordinary significance here as well.

> Regional centers . . . are specifically designed to provide services to persons such as [the mother]. The services available through regional centers include: ". . . specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, and includes, but is not

> limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, sheltered employment, mental health services, recreation, counseling of the individual with such disability and of his family, protective and other social and sociolegal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities." (Welf. & Inst. Code, § 4512, subd. (b).)

(*In re Victoria M.*, *supra*, 207 Cal.App.3d at pp. 1329-1330.)

And yet, no referral to Alta Regional Center was made, or apparently even considered here.

> Welfare and Institutions Code section 4620 . . . provides in part: "In order for the state to carry out many of its responsibilities as established in this division, the state shall contract with appropriate agencies to provide fixed points of contact in the community for persons with developmental disabilities and their families, to the end that such persons may have access to the facilities and services best suited to them throughout their lifetime. It is the intent of this division that the network of regional centers for persons with developmental disabilities and their families be accessible to every family in need of regional center services."

(*In re Victoria M.*, *supra*, 207 Cal.App.3d at p. 1329.)

As with the mother in *Victoria M.*, neither regional services nor any other service identified by Dr. Frank was considered, though the law requires that referrals to "[s]uch services . . . should have been made at the outset." The inadequacy of the services provided to [parent] precluded her ability to successfully litigate her petition for modification. The juvenile court denied her petition without a hearing because she had failed to make a showing that she was kept from making due to the negligent omissions by DHHS. Principles of due process abhor the surreal tactics employed here whereby it was demanded by the government that [parent] make a showing that the government itself arbitrarily and capriciously withheld her from making. (*Alvarado* v. *Superior Court* (2000) 23 Cal.4th 1121, 1146-1147 [comparing the government's arbitrarily withheld identity of a

key witness while demanding a criminal defendant answer the charges against him to a "Star Chamber"]; *Michael P.* v. *Superior Court* (2001) 92 Cal.App.3d 1036, 1045 [describing the withholding of evidence material to the defense of criminal charges and juvenile dependency allegations as "kafkaesque" and "palpabl[y] unfair"]; *People* v. *Henley* (1999) 72 Cal.App.4th 555, 565-566 [describing the placing of the burden of proof on a party while simultaneously arbitrarily restricting the evidence available to meet that burden as a "Catch 22"].)[1]

[1]Lack of reasonable services may be raised in an appeal from a subsequent appealable order despite the lack of objection. (*In re Maria S.* (2000) 82 Cal.App.4th 1032, 1040.)