



The University of the State of New York

The State Education Department

State Review Officer

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No. 15-107

Application of the NEW YORK CITY DEPARTMENT OF EDUCATION for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability

Appearances:

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for petitioner, Ilana A. Eck, Esq., of counsel

Lawrence D. Weinberg, Esq., attorney for respondent

DECISION

I. Introduction

As further described below, this State-level administrative review is being conducted pursuant to an order of remand issued by the United States District Court for the Southern District of New York, which was issued pursuant to a mandate issued by the United States Court of Appeals for the Second Circuit (see E.H. v. New York City Dep't of Educ., 611 Fed. App'x 728 [2d Cir. May 8, 2015]; E.H. v. New York City Dep't of Educ., 12-CV-06639 [S.D.N.Y. Nov. 6, 2015]). This proceeding initially arose under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the district) previously appealed from the decision of an impartial hearing officer (IHO) which found that it failed to offer an appropriate educational program to respondent's (the parent's) son and ordered it to reimburse the parent for her son's tuition costs at the Rebecca School for the 2011-12 school year. The appeal must be sustained.

II. Overview—Administrative Procedures

In a due process proceeding conducted pursuant to the IDEA, the decision of an IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]). A party aggrieved by the decision of an IHO may appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and

indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]).

III. Facts and Procedural History

The factual background, including the student's educational history, was discussed in the prior State-level administrative decision relative to this appeal and, as such, need not be repeated again in detail, as the parties' familiarity with the facts therein is presumed (Application of the Dep't of Educ., Appeal No. 12-070).

Briefly, the hearing record indicates that the student demonstrates deficits in the areas of speech-language (receptive, expressive, and pragmatic skills), sensory processing and regulation, attention, motor planning, visual/spatial skills, social interaction, cognitive skills, academic skills, and adaptive skills (Parent Exs. F at pp. 1-9; G at pp. 1-8).¹ On February 14, 2011, a Committee on Special Education (CSE) convened to conduct the student's annual review and develop his individualized education program (IEP) for the 2011-12 school year (Dist. Exs. 4 at p. 2; 6 at p. 1). The CSE recommended that the student be placed in a 6:1+1 special class in a specialized school and receive related services of speech-language therapy, occupational therapy (OT), and counseling; the support of a 1:1 crisis management paraprofessional; adapted physical education; and a 12-month school year program (Dist. Ex. 4 at pp. 1, 5, 17).

By letter dated June 27, 2011, the parent rejected the district's program and further advised that she intended to enroll the student at the Rebecca School for the 2011-12 school year and seek the costs of the student's tuition from the district (Parent Ex. C at pp. 3-4). In a due process complaint notice dated June 27, 2011, the parent requested an impartial hearing, asserting that the district failed to offer the student a free appropriate public education (FAPE) for the 2011-12 school year (Parent Ex. A).

In a decision dated February 28, 2012, an IHO determined that the district failed to offer the student a FAPE for the 2011-12 school year, that the Rebecca School was an appropriate placement, and that equitable considerations favored an award of tuition reimbursement (IHO Decision at pp. 12-18). The IHO ordered the district to directly fund the student's tuition at the Rebecca School for the 2011-12 school year (*id.* at p. 18). In an appeal from the IHO's decision, the undersigned reversed those portions of the IHO's decision determining that the district failed to offer the student a FAPE for the 2011-12 school year and directing the district to directly fund the student's tuition at the Rebecca School (Application of the Dep't of Educ., Appeal No. 12-070).

The parent sought judicial review of the SRO decision in Application of the Dep't of Educ., Appeal No. 12-070 and the District Court found that this SRO correctly concluded that the district complied with the procedural requirements of the act, that the February 2011 IEP was substantively adequate, and that the student was not denied a FAPE for the 2011-12 school year (E.H. v. New

¹ The student's eligibility for special education programs and related services as a student with autism is not in dispute (34 CFR 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

York City Dep't of Educ., 2014 WL 1224417, at *4-*7 [S.D.N.Y. May 21, 2014]). Specifically, the District Court held that the parent's argument that the classroom paraprofessional lacked training to implement the February 2011 IEP goals was contradicted by the evidence in the hearing record that the IEP could have been implemented at the assigned public school site (id. at *6). The District Court also held that the informal functional behavioral assessment (FBA) relied upon by the CSE did not violate the IDEA because it was consistent with New York regulations governing FBAs (id. at *5; see 8 NYCRR 200.22). The District Court also held that the parent failed to raise the adequacy of the behavioral intervention plan (BIP) in her due process complaint notice, and so the issue was not properly before the IHO or the District Court (E.H., 2014 WL 1224417, at *5). The District Court further held that the parent's claim that the assigned school did not have space for him was without merit (id. at *7). Furthermore, the District Court found that "the adoption of the Rebecca School Floortime methodology in the IEP did not violate the procedural requirements" of the IDEA, and that the student was not denied a FAPE "[b]ecause the [district's] recommended program, as a whole, was appropriate and fulfilled the requirements of the [IDEA]" (id. at *6). Additionally, the District Court held that the use of the Rebecca School's goals to write the IEP did not violate the IDEA, and that the parent's arguments related to the assigned public school site were without merit (id. at *7).

On appeal, the Second Circuit affirmed the District Court's conclusions regarding the student's FBA and BIP, noting that "the SRO was . . . correct to find these arguments forfeited" (E.H., 611 Fed. App'x at 730-31). The Second Circuit also affirmed the District Court's determination regarding the parent's challenges to the student's assigned school (id. at 731). However, the Second Circuit found that neither the IHO nor this SRO "applied its expertise to determine whether the 'DIR/Floortime' methodology is necessary to implement the goals in the IEP" (id.). Accordingly, the Second Circuit remanded the case to the District Court, so that the Court could direct this SRO to determine "whether [the district] denied [the student] a FAPE by adopting the Rebecca School's goals without also adopting the 'DIR/Floortime' methodology" (id. at 731-32). The District Court, in turn, remanded the case to this SRO (E.H., 12-CV-06639 [S.D.N.Y. Nov. 6, 2015]).

Upon remand, I reviewed the record of the impartial hearing proceedings, prior state-level submissions and administrative decisions, the decision of the Second Circuit Court of Appeals, as well as the District Court's order of remand. As part of the review process, the parties were directed in a letter dated November 12, 2015 to focus on several issues related to the remand instructions: (1) whether the evaluative information before the CSE discussed or recommended a particular methodology for the student; (2) whether the participants at the CSE considered limiting the student to a particular methodology; (3) whether the parent specifically raised limiting the student to the "DIR/Floortime" methodology during the CSE meeting; (4) whether and when the parent identified methodologies that were previously tried and not successful for the student and whether the CSE was aware or should have been aware of that information; (5) whether any of the goals in the IEP contained language unique to the "DIR/Floortime" methodology and if so, whether district personnel would be capable of implementing such goals with the student; and (6) the extent to which any improper use of "DIR/Floortime" language in the goals would affect the student's ability to receive educational benefits under the IEP. The parties were further directed to identify their position with regard to whether they believed the hearing record contained sufficient evidence to adequately address the issues on remand. The parties then provided additional submissions, addressed below.

IV. Arguments upon Remand

In its submission upon remand, the district argues that there is no credible support for the parent's contention that the use of "DIR/Floortime" methodology was necessary to implement the annual goals included in the February 2011 IEP and further argues: that the annual goals could have been implemented in a setting that utilized another methodological model; that there was no evidence in front of the February 2011 CSE that the "DIR/Floortime" methodology was necessary for the student to receive educational benefit; and that the available evaluative information suggested that the student would have benefited from a more structured setting. The district alleges that the evaluative information available to the February 2011 IEP suggested the student benefitted from other methodologies, that the student had been able to attend for longer periods of time at his prior school placement which did not use "DIR/Floortime" methodologies, and that a July 2009 "Neuropsychological Evaluation" recommended a structured setting for the student with an Applied Behavioral Analysis (ABA)² type reward system and after-school programming. The district further alleges that the annual goals were discussed at the February 2011 CSE meeting, were modified in accordance with input from the student's Rebecca School teacher, and that the parent, the Rebecca School staff, and the parent's representative did not raise any objections to the annual goals during the meeting. The district asserts that none of the participants in the February 2011 CSE meeting raised any particular methodology as being necessary for the student to receive educational benefits. The district further asserts that only two of the annual goals in the December 2010 Rebecca School progress report were designated as Floortime goals, and that the remainder were designed to address academics, OT, counseling, and activities of daily living skills (ADL). Finally, the district asserts that overall, the annual goals were appropriate, addressed the student's identified areas of need, and would have allowed the student to make progress and receive educational benefits.

In her submission on remand, the parent specifically addressed each of the questions raised in the letter to the parties dated November 12, 2015. The parent notes that the evaluations available to the February 2011 CSE did not recommend any specific methodology, but argues that some of the evaluative material available to the CSE referenced concepts utilized in "DIR/Floortime". The parent asserts that the hearing record does not contain evidence indicating that the February 2011 CSE discussed methodology, but asserts that the district representative understood that "DIR/Floortime" methodology was utilized by Rebecca and that the goals in the Rebecca School progress report were written for that methodology. The parent also contends that the only evidence in the hearing record regarding past methodologies used with the student was the parent's June 2011 letter to the district indicating that ABA and TEACCH were not successful for the student in the past.³ The parent further asserts that the February 2011 IEP set forth annual goals that could not be implemented without the inclusion of "DIR/Floortime" methodology, and could not be implemented by a paraprofessional. The parent asserts that the annual goals included the terms

² ABA was described by the Rebecca School Program Director as being a methodology based "on operative conditioning of either rewarding or punishing of behavior to either have the behavior be reinforced or to extinguish the behavior" (Tr. p. 178). The district special education teacher described her use of a "holistic approach" to teaching, utilizing primarily ABA techniques, and how she would implement those techniques with her students (Tr. pp. 108-09).

³It appears that this references the Treatment and Education of Autistic and Related Communication Handicapped Children methodology.

"shared attention," "circles of communication," and "continuous flow of communication," which are specific – that is, unique - to "DIR/Floortime" methodology. The parent further contends that the terms "regulation," "preferred activities," and "preferred adult" are terms that are utilized by, but not exclusive to "DIR/Floortime" methodology, and are included in the February 2011 IEP. The parent also argues that the Floortime goals are intrinsic to the "DIR/Floortime" methodology and district personnel would not be able to implement the Floortime goals because they would need to "understand the DIR model" in order to implement "Floortime" as an intervention. The parent thus asserts that the February 2011 IEP denied the student the opportunity to receive educational benefits by adopting annual goals from the Rebecca School progress report without also adopting "DIR/Floortime" as the instructional methodology for implementing those goals.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP" (Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]; Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at *10 [S.D.N.Y. Feb. 9, 2007]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245; A.H. v. Dep't of Educ., 394 Fed. App'x 718, 720 [2d Cir. Aug. 16, 2010]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008], aff'd, 361 Fed. App'x 156 [2d Cir. Oct. 16, 2009]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007], aff'd, 293 Fed. App'x 20 [2d Cir. Aug. 19, 2008]).

The IDEA directs that, in general, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]; Perricelli, 2007 WL 465211, at *15). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; G.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552, 573-80 [S.D.N.Y. 2010], aff'd, 486 Fed. App'x 954 [2d Cir. Oct. 18, 2012]; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008] [noting that a CSE must consider, among other things, the "results of the initial evaluation or most recent evaluation" of the student, as well as the "academic, developmental, and functional needs" of the student]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see also Application of the Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9).

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy

in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85; M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at *7 [S.D.N.Y. Aug. 27, 2010]).

VI. Discussion

A. DIR/Floortime Methodology and the February 2011 IEP Goals

Following the judicial review of this matter through the federal court system, the determinations from Application of the Dep't of Educ., Appeal No. 12-070 have been upheld, apart from the matter on remand (E.H., 611 Fed. App'x at 728). The Second Circuit Court of Appeals remanded this matter so that this SRO could apply the "specialized knowledge and experience" of state administrators to a determination as to whether the district denied the student a FAPE by adopting the goals from the Rebecca School progress report without also adopting the "DIR/Floortime" methodology utilized at the Rebecca School (E.H., 611 Fed. App'x at 731-32).⁴ Following a comprehensive review of the hearing record and the supplemental submissions of the parties on remand, I find that the district did not deny the student a FAPE.

To provide background on the methodology at issue, "DIR/Floortime" stands for the Developmental, Individual Difference, Relationship-based model and is described as a "developmental, interdisciplinary framework that enables clinicians, parents and educators to construct a comprehensive assessment and intervention program based on the child's and family's unique developmental profile" (Parent Ex. I at p. 1). According to information provided by the Interdisciplinary Council on Development and Learning,⁵ the model allows the person working with the student to "enter the child's world, bring the child into a shared world, and, from there, interact with the child in ways that build the foundations for social, emotional, and intellectual development" (id.). "DIR/Floortime" includes understanding the child's "emotional, social, and intellectual level; individual differences in motor, sensory, and language functioning; and the existing caregiver, child and family functioning and interaction patterns" (id.). Testimony by the program director at the Rebecca School indicated that "Floortime" is "an intervention under the

⁴ Although the parent asserts in her supplemental submission that the goals in question could not be implemented by a paraprofessional, the District Court held that the parent's argument that the classroom paraprofessional lacked training to implement the February 2011 IEP goals was contradicted by the evidence in the record that the IEP could have been implemented at the assigned public school site (E.H., 2014 WL 1224417, at *6). Because the Second Circuit Court of Appeals did not address this issue, and remanded the matter to the SRO to address a specific question regarding methodology (E.H. 611 Fed. App'x at 731-32), and this issue is not properly before me on remand for an alternative determination.

⁵ The Interdisciplinary Council on Development and Learning was originally founded by Dr. Stanley Greenspan, the child psychiatrist who initially developed the "DIR/Floortime" model.

DIR model, specifically targeting the 'D' in DIR" (Tr. p. 179). It looks at "where a child is functioning developmentally at that time and then moving them up the developmental ladder" (*id.*).

The parent claims that the district denied the student a FAPE because it did not recommend the student be instructed with the methodology necessary to implement the annual goals included in the February 2011 IEP. The central issue is whether the annual goals included on the February 2011 IEP can be implemented without the use of "DIR/Floortime" methodology. Implicit in this question is whether or not the student required this methodology. Generally, it should be noted that the precise teaching methodology to be used by a student's teacher is usually a matter to be left to the teacher's discretion—absent evidence that a specific methodology is necessary (Rowley, 458 U.S. at 204; R.B. v. New York City Dep't of Educ., 589 Fed. App'x 572, 575-76 [2d Cir. Oct. 29, 2014]; A.S. v. New York City Dep't of Educ., 573 Fed. App'x 63, 66 [2d Cir. July 29, 2014], *aff'g* 2011 WL 12882793, at *16 [E.D.N.Y. May 26, 2011] [noting the "broad methodological latitude" conferred by the IDEA]; K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 86 [2d Cir. July 24, 2013]; R.E., 694 F.3d at 192-94; M.H., 685 F.3d at 257 [the district is imbued with "broad discretion to adopt programs that, in its educational judgment, are most pedagogically effective"]; see M.L. v. New York City Dep't of Educ., 2014 WL 1301957, at *12 [S.D.N.Y. Mar. 31, 2014] [finding in favor of a district where the hearing record did not "demonstrate[] that [the student] would not be responsive to a different methodology"]). As discussed in detail below, a review of the hearing record demonstrates that there was nothing available to the CSE at the time of the February 2011 CSE meeting that indicated "DIR/Floortime" methodology was necessary in order for the student to receive educational benefits.

Although the parent maintains that in the past the student had not been successful in programs utilizing TEACCH and ABA methodologies, the July 2009 neuropsychological consultation report reflects otherwise (Parent Exs. C at p. 3; G at pp. 1-3). The evaluator reported that the information contained in his July 2009 report was compiled through a direct clinical interview with the parent, review of the student's prior records and progress reports, parent and teacher behavioral rating scales, as well as his own detailed neuropsychological assessment (Parent Ex. G at p. 1). Based on this wide breadth of information, the neuropsychological report reflected that the student had made "discernable gains" up to that point, while receiving services through the Early Intervention Program and the Committee on Preschool Special Education (*id.*).

Specifically, the neuropsychological report indicated that the student attended a self-contained preschool classroom with a 6:1+2 staffing ratio for the previous two years and he was reported as having become more responsive to his name, able to establish more consistent and direct eye contact, somewhat more attentive and tolerant of remaining seated, less violent than he had been earlier, and as demonstrating ADL skills including dressing and undressing himself, fastening buttons, and using the toilet on a schedule without assistance (Parent Ex. G at pp. 2, 3). Additional progress reflected in the report included the student's ability to turn toward the speaker and/or make eye contact when his name was called with 75 percent consistency; imitate a single action with 90 percent accuracy; touch his head and lift his arms to command with 90 percent accuracy, given partial physical assistance; and show anticipation of classroom routines by independently removing his coat and hat (*id.* at p. 3).

With regard to methodology, the neuropsychological report indicated that the student "functioned most effectively when provided with reinforcers," and accordingly, that he was reported to demonstrate the ability to "sit and attend for a work session consisting of 40 trials,"

when provided with "strong reinforcers (typically M & M's)" (Parent Ex. G at p. 3). I note that this language is consistent with the parent's claim that the student had previously received instruction using ABA methodology; however, it is inconsistent with her claim that the methodology was unsuccessful with the student in the past (see Parent Ex. C at p. 3). Moreover, the neuropsychological report indicated that at home, the student's parents were "largely in accord with regard to the use of reward and disciplinary practices," which again, is consistent with ABA methodology (Parent Ex. G at p. 3). After weighing the report of the student's discernable gains made prior to his enrollment at the Rebecca School, as detailed above, against the parent's general statement in a June 2011 letter that TEACCH and ABA had not been successful in the past, I conclude that the evidence in the hearing record supports a finding that the student would have been able to make progress in a setting that did not utilize "DIR/Floortime" methodologies.

The parent faults the district CSE participants for failing to discuss methodology at the February 2011 CSE meeting. However, a review of the hearing record reveals that there was nothing available to the February 2011 CSE indicating that a specific methodology, including "DIR/Floortime" methodology, was necessary for the student to receive educational benefits. On the contrary, the neuropsychological report indicated that the student had previously benefited from the "magnitude of interventions that he had been exposed to" and further indicated that the student would "likely require a multi-faceted set of intensive, wraparound interventions" to address all areas of functioning (Parent Ex. G at p. 9). The neuropsychological report recommended, among other things, a "small, structured educational environment tailored to the needs of children with language and social-emotional disabilities" no larger than 8:1+1; a 12-month curriculum; an individual paraprofessional; intensive ABA, as well as behavioral interventions (id. at pp. 9-11). No mention of "DIR/Floortime" was made in the neuropsychological report (id. at p. 1).⁶ Furthermore, none of the other documents available to the CSE recommended or mandated a particular methodology (see Dist. Exs. 2; 4; Parent Ex. F). Moreover, the hearing record does not indicate that the parent or the Rebecca School staff raised methodology during the CSE meeting or that they requested that the student be limited to a specific methodology.⁷ Rather, the hearing record reflects that the parent, following a review of the goals, provided input for the development of one additional goal, and thereafter raised no objections to the goals as written at the February 2011 CSE meeting (Tr. pp. 56-57).

In summary, I find that neither the evaluative information available to the February 2011 CSE nor the parent or Rebecca School staff then working with the student suggested a need for the student to receive one specific methodology. The parent's assertion that the district representatives had familiarity with the methodology used at the Rebecca School does not have any conclusive weight in the analysis of this issue. Simply because the student's private school employed a specific methodology, it does not follow that all students at that school must continue their instruction in that methodology to receive educational benefits. An instructional methodology that so polluted a student's potential educational experiences so as to prevent the future use of other appropriate educational methodologies would be highly questionable practice

⁶ The referral for the July 2009 neuropsychological was made by the parent's educational advocate (Parent Ex. G at p. 1).

⁷ In her submission on remand, the parent concedes that there is no evidence in the hearing record indicating that the CSE—which included the parent, the Rebecca School staff, and the parent's representative (see Dist. Ex. 4 at p. 2)—discussed methodology or that any participant raised a need for a specific methodology.

in pedagogical terms.⁸ As there was no indication at the February 2011 CSE meeting that the student required a specific methodology to receive educational benefits, the district's failure to discuss a particular methodology is not a procedural violation (see R.B., 589 Fed. App'x at 576; P.S. v. New York City Dep't of Educ., 2014 WL 3673603, at *12 [S.D.N.Y. July 24, 2014] [failure to consider a specific methodology did not result in a denial of FAPE]).

In addition to the lack of discussion of "DIR/Floortime" methodology during the February 2011 CSE meeting, the parent now contends that in adopting the goals from the Rebecca School progress report, the CSE was also required to adopt the "DIR/Floortime" methodology utilized at the Rebecca School. Before reaching this issue, I will first identify which of the goals included on the February 2011 IEP are in contention. Although the parties were directed to identify in their supplemental submissions which goals are being challenged, neither party does so specifically.⁹ However, the parent alleges that certain terms are specific or exclusive to "DIR/Floortime" methodology. Those terms include "circles of communication," "flow of communication," and "shared attention." The parent also alleges that the terms "regulation," "preferred activities," and "preferred adult" are utilized in "DIR/Floortime" methodology, but concedes that those terms are not exclusive to that methodology.¹⁰ Based on the above, I will assume that the goals and objectives at issue are those that use terminology the parent alleges is specific to or related to the "DIR/Floortime" methodology.

The February 2011 IEP contains 15 annual goals with 40 corresponding short-term objectives designed to address the student's needs in the areas of pre-academics, sensory processing and integration, motor planning and sequencing, fine motor and visual spatial skills, expressive, receptive, and pragmatic language skills, oral motor skills, regulation and co-regulation skills, interaction skills, engagement skills, and ADL skills (Dist. Ex. 4 at pp. 6-14).¹¹

A review of the annual goals and short-term objectives in the February 2011 IEP reveals that the annual goals and short-term objectives contain terms that are arguably exclusive to "DIR/Floortime" methodology. Referencing the goals and short-term objectives by number in order that they appear in the February 2011 IEP,¹² the term "circles of communication" appears in

⁸ To be clear, I do not intend to suggest that use of the "DIR/Floortime" approach in fact prevents students from thereafter utilizing other methodologies.

⁹ The fact that the parties still cannot identify their respective positions on this issue after the countless hours spent litigating this case through the courts and the Second Circuit's remand on the issue of methodology and goals is inexplicable. It is a relatively straightforward question for the experienced practitioners in this case.

¹⁰ The parent addresses the term "regulation" in her supplemental submission, but does not discuss other related terms included in the February 2011 IEP, such as "co-regulation," "co-regulating strategies," "dysregulation," and "self-regulating strategies" (Dist. Ex. 4 at pp.). It appears that the parent intended for these related terms to be grouped in her general discussion of "regulation"; therefore, the parent's concession that "regulation" is not unique or specific to "DIR/Floortime" methodology, applies equally to these terms related to "regulation" and they are similarly not exclusive to "DIR/Floortime" methodology.

¹¹ I note that on page 13 of the student's February 2011 IEP, the two available listings for annual goals use the same language, with different corresponding short-term objectives, and they are therefore treated as one annual goal (Dist. Ex. 4 at p. 13).

¹² For numbering purposes, the two identical annual goals listed on page 13 of the IEP are both numbered as goal #13.

short-term objectives #18 and #19 and in annual goal #11 and its corresponding short-term objectives #29 and #30 (Dist. Ex. 4 at pp. 9, 12). The term "flow of communication" appears in short-term objectives #19 and #35 (id. at pp. 9, 13). Although the parent has identified "shared attention" as specific to "DIR/Floortime" and notes that the phrase appears five times in the December 2010 Rebecca School progress report, this term does not appear in the February 2011 IEP (see id. at pp. 1-18).

A review of the annual goals and short-term objectives further reveals that terms that the parent contends are used in, but concedes are not exclusive to, "DIR/Floortime" methodology also occur in some of the goals and short-term objectives. The term "regulation" appears in annual goal #10 and its corresponding short-term objectives (#27 and #28), and in annual goal #13 and its short-term objectives (#33 and #34) (Dist. Ex. 4 at pp. 11, 13). The term "preferred activity" appears in short-term objective #23 under annual goal #8, and the term "preferred adult" is used in short-term objective #37 under annual goal #14 (id. at pp. 10, 14).

With regard to the use of the "DIR/Floortime" terms "regulation," "preferred activity," and "preferred adult," the parent concedes that while these terms are used in "DIR/Floortime", they are "not specific" and "not unique" to "DIR/Floortime" methodology. In light of this concession, it is reasonable to presume that a certified special education teacher can accurately interpret and utilize these generic educational terms that are not exclusive to a particular methodology, and be able to implement goals which utilize these terms. I therefore find that these goals and short-term objectives, insofar as they included terminology utilized by but not unique or specific to "DIR/Floortime," could be implemented by the district without the inclusion of "DIR/Floortime" methodology and without staff specifically familiar with that methodology. As it is reasonable to assume that goals and objectives that include nonspecific educational terms could be implemented by a state-certified special education teacher, any determination that the district would not have implemented these goals would require speculation as to potentially employing unqualified teachers at the assigned school or how a teacher of the student at the assigned school might have approached implementation of the IEP, which would be inappropriate (see M.O. v. New York City Dep't of Educ., 793 F.3d 236, 244 [2d Cir. 2015] ["[s]peculation that the school district will not adequately adhere to the IEP is not an appropriate basis for unilateral placement"], quoting R.E., 694 F.3d at 195; G.B. v. New York City Dep't of Educ., 2015 WL 7351582, at *13-*14 [S.D.N.Y. Nov. 5, 2015]).

The parent further contends that because of the arguably exclusive "DIR/Floortime" language in the remaining goals, district staff would not have known how to implement these goals. However, as described below, the context of the IEP provides the meaning of some of these terms, as does the December 2010 Rebecca School progress report (see Dist. Ex. 4 at pp. 4, 9, 13; Parent Ex. F at pp. 1-3, 10).

A review of the student's present levels of social/emotional performance on the IEP reflected that the student utilized "circles of communication" in order to express his wants or needs (Dist. Ex. 4 at p. 4). The December 2010 Rebecca School progress report described opening and closing circles of communication as the most basic level of entering into two-way, purposeful communication, which is evidenced by "[the student] showing interest in or otherwise reacting to something another person initiated" (Parent Ex. F at p. 2). The report, as well as the IEP, indicated that this student opened and closed circles of communication specifically by using vocal approximations, facial expressions, gestures, signs, and pictures (Dist. Ex. 4 at p. 4; Parent Ex. F

at p. 2). For example, the student was reported to initiate with staff by taking their hand, or gaining eye contact and smiling; to initiate chase games by approximating the word "go" and then starting to run; and to make a request by pulling staff toward a toy or game that was out of reach and signing "give me" while he shifted his eye gaze from the desired object to the staff (Parent Ex. F at p. 2). The report reflected that the student communicated his response by moving a peer or adult's hand away to indicate that he did not want them to play (id.). The report also reflected that the student utilized pictures to make choices and to communicate his wants (id.).

Information in the Rebecca School progress report also sheds light on the meaning of the phrase "flow of communication" (Parent Ex. F at p. 3). The progress report indicated that a two-way problem solving interaction involves "stringing together more and more complex circles of communication in order to accomplish a task" (id.). The report reflected that the student had increased his ability to enter into a two-way problem solving interaction and stay in a "continuous flow" through chase games that expanded and lengthened his interactions (id.). IEP short-term objectives #19 and #35 specified the length of the continuous flow of communication that the student needed to perform in order to meet each of these objectives, 20 and 25 circles of communication respectively (Dist. Ex. 4 at pp. 9, 13).

The CSE had the December 2010 Rebecca School progress report at the time of the February 2011 CSE meeting and thus, also had the pertinent information regarding the meaning of the terms "circles of communication" and "flow of communication," the specific ways in which the student participated in circles of communication, as well as the number of circles of communication that this particular student was required to string together in a flow of communication (Tr. pp. 30-31).

With this information in mind, a review of annual goal #6 shows that, simply put, it targeted the student's ability to engage in reciprocal communication (Dist. Ex. 4 at p. 9). The short-term objective #18 under goal #6 specified that the student would close circles of communication by indicating that he wanted to end an interaction or activity, using his communication book, a verbal approximation, or a sign (id.). In more general language, the student would use these means to respond when a person initiates an interaction with him, thereby completing the back and forth interaction of two-way communication, or in "DIR/Floortime" terms, closing a circle of communication (id. at p. 9; see Parent Ex. F at p. 2).

While the term "circle of communication" is used specifically in DIR, a point which was noted in the FB case (FB, 2015 WL 5564446, at *24), the concept behind the term — reciprocal or two-way communication— is hardly unique to the "DIR/Floortime" approach, rather it is a basic tenant of social and language development that is addressed by many educational methodologies. Although the director of the Rebecca School may have testified that the term was specific to the "DIR/Floortime" methodology, she did not testify that the concept behind the term is exclusive to the methodology (see Tr. pp 179-81).

Short-term objective #19 under goal #6 required the student to engage in a "flow of communication" consisting of 20 "circles of communication" using gestures, facial expressions, verbal approximation, and the student's communication book (Dist. Ex. 4 at p. 9). In other words, this objective targeted the student's ability to participate in two-way communication by stringing together 20 back-and-forth interactions, which is described in "DIR/Floortime" terms as a flow of communication (Parent Ex. F at pp. 2, 3). Short-term objective #35 under annual goal #13 also

used the term "flow of communication," but specified the student would participate in 25 back-and-forth interactions in a "flow of communication" (Dist. Ex. 4 at p. 13).

Similarly, goal #11 addressed increasing the student's ability to participate in circles of communication—or back-and-forth interaction—during counseling sessions (Dist. Ex. 4 at p. 12). In this setting, the corresponding short-term objective (#29) specified that the student would open and close one to two circles of communication, or in other words, participate in two-way communication with the counselor for one to two back-and-forth interactions (*id.*). Short-term objective #30 required that the student maintain longer strings of two to three circles of communication with the counselor, or two to three back and forth interactions (*id.*).

In addition, the February 14, 2011 IEP contained two annual goals with six short-term objectives (annual goals #13 and #14 and short-term objectives #33 through #38) that were carried over from the December 2010 Rebecca School progress report and were labeled as "Floortime Goals" in that report (*compare* Dist. Ex. 4 at pp. 13, 14, *with* Parent Ex. F at p. 10). The parent contends that "Floortime goals" are intrinsic to the "DIR/Floortime" methodology and that as such, district personnel would be unable to implement these "Floortime goals" without an understanding of the "DIR/Floortime" model and its functional, emotional, developmental levels. However, despite the Rebecca School's label of these goals as "Floortime" goals, as noted above, the parent's claim is belied by the fact that the language that appears in these goals and short-term objectives is not unique to "DIR/Floortime" methodology, but rather, is unremarkable in that it is also used by other methodologies. A review of the goals and short-term objectives in question reveals that, with one exception, none of the language included in the "Floortime" goals is exclusive to "DIR/Floortime" methodology and could be implemented using other methods of instruction (Dist. Ex. 4 at pp. 13, 14).¹³

Contrary to the parent's contention that the annual goals that were initially designated as "Floortime" goals in the Rebecca School report must be implemented using "DIR/Floortime" methodology, the goals in the February 2011 IEP were written in a methodologically agnostic way and describe the instruction required by the teacher as well as what is expected of the student in order to achieve them. Specifically, the first of the "Floortime" goals (goal #13) addressed increasing the student's ability to stay in a "co-regulated" interaction while he is upset, or dysregulated (Dist. Ex. 4 at p. 13). Using non-exclusive educational terminology, the first objective (#33) not only described for the implementing teacher what the student would be expected to do—accept "co-regulating" strategies—but in addition, gave examples of the particular "co-regulating" strategies the teacher should implement—deep pressure input or deep breathing from a trusted adult who was calm and quiet (*id.*). The short-term objective further provided the teacher with the purpose of the objective—to decrease the length and intensity of periods of dysregulation, as well as the criteria for mastery—one out of three opportunities (*id.*).¹⁴

¹³ Only one short-term objective includes a "DIR/Floortime" specific phrase, "continuous flow of communication for 25 circles" (Dist. Ex. 4 at p. 13). As discussed above, the Rebecca School progress report and the IEP itself contained information describing the meaning of these terms (Dist. Ex. 4 at p. 4; Parent Ex. F at pp. 2, 3).

¹⁴ In contrast, the short-term goal associated with the first "Floortime goal" in the December 2010 Rebecca School progress report indicated that the purpose of the goal was so that the student would be "available for shared attention in the classroom" (Parent Ex. F at p. 10). In adopting the short-term objective (#33) for the February 2011 IEP, the CSE dropped the allegedly exclusive language relating to "shared attention," leaving the purpose of the short-term objective as decreasing the length and intensity of periods of dysregulation (Dist. Ex. 4 at p. 13).

The second short-term objective under goal #13 (objective #34) also provided the information necessary for a teacher to implement it, as well as the purpose of the objective; namely, that the student would practice concepts of very slow, medium, and fast pace movement in semi-structured games, in order to expand his ability to "regulate" his body (*id.*). As such, this goal, and its corresponding short-term objectives, could have been implemented in a setting that did not utilize "DIR/Floortime" instruction and by a teacher without specific training in "DIR/Floortime" methodology.

The term "preferred adult" appears in short-term objectives #35 and #37 (Dist. Ex. 4 at pp. 13, 14). The parent admits that this term is not exclusive to "DIR/Floortime" methodology. It is reasonable to expect that a teacher with no knowledge of "DIR/Floortime" would understand that a "preferred adult" means an adult that the student prefers (Dist. Ex. 4 at pp. 13, 14), and as such, these objectives could also be implemented and met through other than "DIR/Floortime" instruction. The parent asserts that the terms "preferred activities" and "preferred adult" are features of the "DIR/Floortime" methodology and relate to the "R" in the "DIR" model. While "DIR/Floortime" may use these terms to ensure that learning is intrinsically motivating for the student and leads to building relationships (*see* Tr. pp. 175-76), by using these non-exclusive terms in the IEP, the CSE was not necessarily also adopting the underlying theory of the "DIR/Floortime" model, as these terms could also be appropriately used outside of the "DIR/Floortime" methodology. For example, by using the term "preferred adult" in short-term objectives #35, the CSE acknowledged the student's difficulty in completing the objective (a continuous back and forth flow of communication) by providing a support to help motivate the student to complete the objective (that it would be completed with a preferred adult) (Dist. Ex. 4 at p. 13).

Finally, annual goal #14, as well as short-term objectives #36 and #38 do not contain any of the terms alleged to be exclusive to "DIR/Floortime" (Dist. Ex. 4 at pp. 13, 14).¹⁵ In addition, they included a straightforward description of what was expected of both the teacher and the student in order to implement and meet each of them (*id.*). As above, I find these objectives could have also been implemented and met without utilizing "DIR/Floortime" instructional methodologies.

Based on the above, the parent's contentions regarding the necessity for "DIR/Floortime" methodology to be utilized to implement the annual goals and objectives included in the February 2011 IEP are without merit (*see A.D. v. New York City Dep't of Educ.*, 2013 WL 1155570, at *12 [S.D.N.Y. Mar. 19, 2013] [affirming the SRO's rejection of the parents' contention that the assigned classroom could not implement the annual goals in the IEP, which contention noted that they were also related to the DIR methodology]). In this instance, I find that the inclusion of IEP goals and short-term objectives containing language specific to DIR/Floortime methodology, absent a recommendation for the use of the methodology in the student's IEP, did not render the IEP inappropriate.

¹⁵ Short-term objective #38 uses the term "familiar adult" instead of the term "preferred adult," which was identified by the parent as related to "DIR/Floortime"; however, neither term is exclusive to "DIR/Floortime" and the objective could be completed using the term's generic meaning similar to the discussion of the term "preferred adult" above.

This is not the first instance where courts have grappled with the question of whether or not terms that are allegedly exclusive or specific to a particular methodology being included in an IEP required the inclusion of that methodology to provide a FAPE, and at least one court has questioned whether a teacher at a proposed school would have been able to implement annual goals including "DIR" specific methodology given her testimony that she was unfamiliar with the terminology and did not utilize such language in her classroom (F.B. v. New York City Dep't of Educ., 2015 WL 5564446, at *16 [S.D.N.Y. Sept. 21, 2015]; see G.B., 2015 WL 7351582, at *18-*19). However in this matter, unlike in F.B., there is no testimony from a teacher at the assigned school suggesting that the school would be unable to implement the annual goals and short-term objectives as written. As discussed above, although the annual goals and short-term objectives included some language specific to "DIR/Floortime," the IEP and Rebecca School progress report sufficiently described the terms at issue in a way that a special education teacher would have been able to implement those goals and objectives.

Additionally, even if the full inclusion of "DIR/Floortime" methodology in the February 2011 IEP was required to effectively implement these goals, this would not necessarily provide a sufficient basis upon which to find that the district denied the student a FAPE (G.B., 2015 WL 7351582, at *18-*19 [where it was undisputed that a student's assigned school did not utilize "DIR" methodology, and that several of the short-term objectives in the IEP utilized allegedly exclusive "DIR" terms like "circles of communication," the court determined that those short-term objectives "could not be implemented" by the district, but also found that this, standing alone, was insufficient to find a denial of a FAPE], citing F.B., 2015 WL 5564446, at *24, *26). In this case, the remaining goals adequately addressed the student's needs in the areas of pre-academic skills in reading and math, processing and integrating sensory information (including a sensory diet), engaging with peers and adults, gross and fine motor skills (including motor planning and sequencing), oral motor skills, food tolerance, visual spatial skills, improving receptive and expressive communication skills, activities of daily living, and safety awareness (Dist. Ex. 4 at pp. 6-12, 14). Therefore, even if the goals that utilized the "DIR/Floortime" terminology in the February 2011 IEP (including both sets of terms described above, those alleged to be exclusive and those conceded to be non-specific) were unable to be implemented, this would not, on its own, deprive the student of a FAPE by preventing the student from receiving educational benefits in his areas of need from the IEP in accordance with the Rowley standard.

Having addressed the specific question raised on remand, I further note that under the IDEA and State and federal regulations, a determination of the appropriateness of a particular set of annual goals and short-term objectives for a student turns not on their suitability for a particular methodology, but rather on whether the annual goals and short-term objectives are consistent with and relate to the identified needs and abilities of the student (see 20 U.S.C. § 1414[d][1][A][i][II]; 34 CFR 300.320[a][2][i]; 8 NYCRR 200.4[d][2][iii]). As described in greater detail above, not only are the allegedly exclusive "DIR/Floortime" terms contextualized and explained in the body of the IEP itself, the goals also relate directly to the student's identified needs and abilities. Specifically, the IEP indicated that the student had "specific language delays," described his delays in cognitive functioning, and his abilities with regard to communication skills and specific conceptual knowledge of numbers, shapes, and positional words (Dist. Ex. 4 at pp. 3-4). The IEP further described his limited ability to reference his peers, his difficulty remaining regulated, his abilities and limitations with regard to self-regulating strategies, and reflected what can trigger his dysregulation (id. at p. 4). This description of the student's needs and abilities is consistent with and relates directly to the goals and short-term objectives outlined above, and so I therefore

conclude that those goals are appropriate overall for the student. Furthermore, for the reasons outlined above, the goals in the student's February 2011 IEP are appropriate without the implementation of "DIR/Floortime " methodology, and the inclusion of both terms related to and exclusive to "DIR/Floortime" methodology did not deny the student a FAPE as it would be expected that a special education teacher (without specific training in DIR/Floortime) would have been able to implement the goals as written.

VII. Conclusion

The instant case presents a situation in which a student received a particular instructional methodology in a private school. The district, drafting an IEP with the goal of providing the student with a FAPE, utilized documentation from that school in order to provide the most up-to-date statement of his present levels of performance and to formulate appropriate goals to allow him to make measurable progress. The parent subsequently asserted that the district erred by failing to include this methodology in its instructional plan, despite a lack of evidence that the student required use of the private school's methodology in order to make academic progress, and despite not having asserted the need for a particular methodology at any point in the CSE process. Even if the student received educational benefits from instruction at the private school using "DIR/Floortime" methodology, absent any evidence in the hearing record that the student required that methodology to receive educational benefits, the district is not constrained in the choice of methodologies it may implement, much less limited to the specific methodology used by the private school. Following a comprehensive review of the hearing record, detailed above, I reiterate my conclusions that the goals of the February 2011 IEP, as written, are not only appropriate overall, but could have been implemented without using "DIR/Floortime" methodology.

I have considered the parties' remaining contentions and find them without merit.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision dated February 28, 2012 is modified, by reversing those portions which determined the district failed to offer the student a FAPE for the 2011-12 school year and ordered the district to fund the student's tuition costs at the Rebecca School for the 2011-12 school year.

Dated: **Albany, New York**
 January 13, 2016

JUSTYN P. BATES
STATE REVIEW OFFICER