

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, DC 20002

OSSE
Student Hearing Office
May 28, 2013

PETITIONER,
on behalf of STUDENT,¹

Date Issued: May 24, 2013

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the “Petitioner” or “AUNT”), under the Individuals with Disabilities Education Act, as amended (the “IDEA”), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“DCMR”). In her Due Process Complaint, Petitioner alleges that Respondent District of Columbia Public Schools (“DCPS”) has denied the Student a Free Appropriate Public Education (“FAPE”) by not timely complying

¹ Personal identification information is provided in Appendix A.

with the placement order in a January 26, 2013 Hearing Officer Determination² concerning Student.

Student, an AGE adolescent, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on March 22, 2013, named DCPS as respondent. The undersigned Hearing Officer was appointed on March 25, 2013. The parties met for a resolution session on April 9, 2013 and were unable to reach an agreement. The 45-day deadline for issuance of this Hearing Officer Determination began on April 22, 2013. On April 18, 2013, the Hearing Officer convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before the undersigned Impartial Hearing Officer on May 22, 2013 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person, and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by COMPLIANCE CASE MANAGER and DCPS COUNSEL.

Petitioner testified and called as witnesses Compliance Case Manager, ASSISTANT PRINCIPAL, EDUCATIONAL ADVOCATE, SPED CASE MANAGER and EDUCATIONAL CONSULTANT. DCPS re-called, as its only witness, Compliance Case Manager. Petitioner's Exhibits P-1 through P-30 were admitted into evidence without objection, with the exception of Exhibits P-3, P-9, P-12 through P-14, P-17 and P-18, which were admitted over DCPS' objections; Exhibit P-27, which was withdrawn and Exhibit P-5, to which DCPS' objection was sustained. DCPS' Exhibits R-1 through R-4 were admitted without objection. At the

² The prior Hearing Officer Determination was completed by the hearing officer and emailed to counsel on Saturday, January 26, 2013. It was date-stamped on the next business day, January 28, 2013, by the Student Hearing Office. In this decision, I will refer to the prior decision as the "January 26, 2013 HOD."

conclusion of Petitioner's case in chief, DCPS made a motion for a directed finding against the Petitioner, which I denied. Counsel for the respective parties made opening and closing statements. Neither party requested leave to file a post-hearing memorandum.

Prior to the due process hearing, I granted in part, and denied in part, DCPS' motion to dismiss. In my April 26, 2013 order, I denied the motion to dismiss for want of jurisdiction under the IDEA and for failure to state a claim upon which relief may be granted. I granted the motion, in part, and dismissed Petitioner's claims under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, for want of subject matter jurisdiction.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and DCMR tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

- Whether DCPS has denied Student a FAPE by failing to implement certain requirements of a January 26, 2013 HOD, including to:
 - a) Place Student in a full-time, segregated, therapeutic environment, either in a public or nonpublic school, in which the student will have no interaction with her nondisabled peers, be educated in small, special education classes with no more than ten students in each class, and have the opportunity to earn credits toward a diploma;
 - b) Provide Student art therapy at least once a week and access to a de-escalation room with one-on-one instruction when needed, and behavioral supports, including behavioral management strategies integrated in her classroom throughout the school day; and
 - c) Investigate and implement strategies to ensure that Student arrives at school, and remains in school, every day of the school year.

and

- Whether DCPS denied Student a FAPE by modifying her IEP on March 18, 2013, without convening an IEP meeting and without ensuring the participation of Petitioner in the development of the revised IEP.

For relief, the Petitioner requests that DCPS be ordered to place Student in a full-time, segregated, therapeutic environment, to provide Student art therapy at least once a week and access to a de-escalation room with one-on-one instruction when needed, and behavioral supports, including behavioral management strategies integrated in her classroom throughout the school day, and to investigate and implement strategies to ensure that Student arrives at school, and remains in school, every day of the school year, all as provided in the January 26, 2013 HOD. In addition Petitioner requests that DCPS be ordered to review and revise Student's IEP as appropriate, ensuring that Petitioner participates in the IEP meeting. Petitioner also seeks an award of compensatory education to compensate Student for educational harm resulting from DCPS' alleged failure to implement the requirements of the January 26, 2013 HOD.

PRIOR ADMINISTRATIVE ADJUDICATION

On January 26, 2013, Impartial Hearing Officer Frances Raskin issued a Hearing Officer Determination concerning Student in Case No. _____ The issues for adjudication in that case included,

- A. Whether Respondent, DCPS, denied the Student a free, appropriate, public education ("FAPE") due to its failure to implement her December 3, 2010, behavior implementation plan ("BIP") from December 3, 2010 through the end of the 2010-2011 school year;
- B. Whether Respondent denied the Student a FAPE by failing to provide her an appropriate placement from May 19, 2011 through May 2012 by failing to place her in a full-time, therapeutic placement with staff trained to educate students with severe behavioral problems;
- C. Whether Respondent denied the Student a FAPE during the 2011-2012 school year by failing to implement her June 13, 2011, individualized education program ("IEP"), *i.e.*, by failing to address her truancy, which resulted in the Student missing ninety percent of the school year;
- D. Whether Respondent denied the Student a FAPE during the 2011-2012 school year by failing to place her in a full-time therapeutic placement with staff trained to educate students with severe behavioral problems; and

E. Whether Respondent denied the Student a FAPE by failing to identify a school for her to attend, or provide her an appropriate placement, for the 2012-2013 school year.

January 26, 2013 HOD, Exhibit P-2, pp. 3-4. In her Conclusions of Law, Hearing Officer Raskin held, *inter alia*, that DCPS had denied Student a FAPE by failing to provide her an appropriate educational placement, identified as a “segregated, therapeutic environment,” for the 2012-2013 school year. In her final order, Hearing Officer Raskin ordered DCPS to,

[W]ithin twenty school days of this Order, and for the remainder of the 2012-2013 school year, Respondent shall place the Student in a full-time, segregated, therapeutic environment, either in a public or nonpublic school, in which the Student will have no interaction with her nondisabled peers, be educated in small, special education classes with no more than ten students in each class, and have the opportunity to earn credits toward a diploma in all of her academic classes;

[T]hat, in this full-time, segregated, therapeutic environment, Respondent shall provide the Student art therapy at least once a week, access to a de-escalation room with one-on-one instruction when needed, and behavioral supports, including behavioral management strategies integrated in her classroom throughout the school day; and

[T]hat Respondent shall, for the remainder of the 2012-2013 school year, investigate and implement strategies to ensure the Student arrives at school, and remains in school, every day of the school year.

Id. p. 23.

FINDINGS OF FACT³

After considering all of the evidence, as well as the arguments of counsel, this Hearing Officer’s Findings of Fact are as follows:

STIPULATIONS OF THE PARTIES

A. Student, as of April 30, 2013, was currently enrolled at DCPS and lived at ADDRESS in Washington, D.C. CITY HIGH SCHOOL cannot provide the services ordered by the January

³ The parties declined to stipulate to my adopting the relevant findings of fact from the January 26, 2013 HOD. Accordingly, my findings of fact in this decision shall be made independently, based upon the evidence received at the May 22, 2013 due process hearing and the stipulations of the parties.

26, 2013 HOD. See Notice of Stipulations, April 30, 2013.

B. NON-PUBLIC SCHOOL 2 is able to implement the requirements of the January 26, 2013 HOD, except that it does not provide Art Therapy. Stipulation of Counsel on the Record.

FINDINGS OF FACT

1. Student an AGE female, resides with Aunt in the District of Columbia. Aunt is Student's legal guardian. Testimony of Aunt.

2. Student is eligible for special education and related services under the primary disability classification, Emotional Disturbance ("ED"). Exhibit P-24. Because of the frequency and intensity of Student's disability-related behaviors, City High School cannot manage Student. Student requires a segregated, therapeutic educational environment. January 26, 2013 HOD. City High School is unable to provide Student a FAPE. Stipulation of the parties.

3. Following issuance of the January 26, 2013 HOD, DCPS immediately undertook to identify a school that would be able to implement the HOD's requirements for (a) a full-time, segregated, therapeutic environment, in which the Student would have no interaction with her nondisabled peers, be educated in small, special education classes with no more than ten students in each class, and have the opportunity to earn credits toward a diploma in all of her academic classes; and (b) the provision of art therapy at least once a week, access to a de-escalation room with one-on-one instruction when needed, and behavioral supports, including behavioral management strategies integrated in her classroom throughout the school day. NON-PUBLIC SCHOOL 1, located in suburban Virginia, was able to implement all of these requirements. Testimony of Compliance Case Manager. On January 28, 2013, Compliance Case Manager sent a referral packet for Student to Non-Public School 1. An interview for Student and Aunt at Non-Public School 1 was arranged for February 22, 2013. ADMISSIONS DIRECTOR from Non-

Public School 1 arranged to pick up Student and Aunt at their residence to drive them to Non-Public School 1 for the interview. Testimony of Compliance Case Manager, Exhibit R-4.

Student refused to participate in an interview at Non-Public School 1. The morning of the scheduled interview, she took the bus to City High School. Aunt had to cancel the interview. Testimony of Aunt. Compliance Case Manager contacted Student by telephone and told her she needed to go to the interview. Student said she would go. However, when Compliance Case Manager attempted to reschedule the interview, Student again refused to go. On March 13, 2013 and March 25, 2013, Compliance Case Manager attempted to discuss Non-Public School 1 or another private school with Student, in person, at City High School, but Student was absent from school when he went there to see her. Exhibit R-4, Testimony of Compliance Case Manager.

Admissions Director went to City High School to tell Student about the program at Non-Public School. Testimony of Compliance Case Manager. In the end, these efforts were all unavailing. Student refused to go to Non-Public School 1 and Petitioner does not know what it would have taken to get her to go there. Testimony of Aunt.

4. In an email dated February 22, 2013, Petitioner's Counsel wrote Compliance Case Manager that he understood that Student's refusal to go to private school interviews made Compliance Case Manager's job more difficult and counsel agreed that he would not immediately enforce the 20 school day deadline to place student, set in the January 26, 2013 HOD. Exhibit R-2.

5. Pending Student's placement at a non-public school, DCPS arranged for an art therapist from API to provide services to Student at her home. At first Student participated, but by the end of the first session and thereafter, even though the art therapist continued to go to the home, Student would not participate in the art therapy. Testimony of Aunt.

6. On April 8, 2013, at the request of Compliance Case Manager, DCPS' Non-Public and Transition Unit sent an email to the admissions officer at Non-Public School 2 about Student's placement needs. Exhibit R-2. On April 9, 2013, Non-Public School 2 sent DCPS a conditional acceptance letter for Student. Exhibit R-1. On April 10, 2013, DCPS issued a Prior Written Notice changing Student's placement to Non-Public School 2. Exhibit R-2. Aunt was unavailable to visit Non-Public School 2 until April 30, 2013. Exhibit R-2.

7. Student is now enrolled at and attending Non-Public School 2. The programming director at Non-Public School reports that Student is doing well at the private school and has excellent attendance. Student has not gotten into physical or verbal altercations at Non-Public School 2. Testimony of Compliance Case Manager. Non-Public School 2 is able to implement the requirements of the January 26, 2013 HOD except that it does not have staff on its faculty to provide Art Therapy. Stipulation of Petitioner. At Non-Public School 2, there is a 'quiet room' and there are two social workers on staff to provide behavioral support. Non-Public School would have no objection to DCPS' sending an art therapist to the school to work with Student. Testimony of Compliance Case Manager.

8. Student's IEP team met at City High School on February 21, 2013 for the annual review of Student's IEP. Aunt attended the meeting. The IEP team agreed, *inter alia*, to increase Students Behavioral Support Services to 6 hours per month and to change the behavioral services present levels of performance and annual goals. The school social worker, who attended the IEP meeting, left the meeting early to enter these changes on DCPS "Easy IEP" computer program. However, before the changes could be entered, the draft IEP was inadvertently "finalized." In order to override the computer program to correct the IEP form, it was necessary to go through the process of "Amending" the IEP form. SPED Case Manager

issued an “Amended Individualized Education Program (IEP)” on March 18, 2013. Although this form states there was a meeting convened for the amendment, there was no meeting. The changes on the amendment form were only those behavioral support changes adopted by the IEP team at the February 21, 2013 IEP meeting. SPED Case Manager explained to Aunt by telephone why she was issuing the misnamed Amended IEP and assured her that no changes had been made to what Student’s IEP team had agreed upon at the February 21, 2013 IEP annual review meeting. Testimony of SPED Case Manager.

9. I found all witnesses, notably Compliance Case Manager, SPED Case Manager and Aunt, to be credible. I did not find credible so much of Educational Advocate’s testimony that there is no staff at Non-Public School 2 to provide behavioral support.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument and legal memoranda of counsel, as well as this Hearing Officer’s own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Burden of Proof

The burden of proof in a due process hearing is normally the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

ANALYSIS

1. HAS DCPS HAS DENIED STUDENT A FAPE BY FAILING TO IMPLEMENT CERTAIN REQUIREMENTS OF THE JANUARY 26, 2013 HOD?

The January 26, 2013 HOD specified that DCPS must place Student in a “full-time segregated therapeutic [school] environment” within twenty school days of the order. Petitioner alleges that DCPS has denied Student a FAPE because DCPS did not comply with the placement requirements of the HOD until Student enrolled in Non-Public School 2 in May 2013. As I explained in my April 25, 2013 Decision and Order denying DCPS’ motion to dismiss, there is no specific provision in the IDEA addressing enforcement of hearing officer decisions. Case law has indicated that a party must appeal directly to state or federal court to compel enforcement of a final decision made by a due process hearing officer. *See, e.g., Robinson v. Pinderhughes*, 810 F.2d 1270, 1272 (4th Cir. 1987). However, if an LEA’s non-compliance with a hearing officer order results in failure to provide FAPE, this failure may constitute a separate, actionable, violation of the IDEA. *Cf. Sellers by Sellers v. School Bd. of City of Manassas*, 141 F.3d 524, 531 (4th Cir. 1998) (Simple failure to provide a child with a free appropriate public education constitutes a violation of the statute.) Therefore, Petitioner’s burden of proof in this case was to show both that DCPS did not comply with the requirements of the January 26, 2013 HOD and that DCPS’ non-compliance constituted a failure to provide Student a FAPE. I find Petitioner has not met that burden.

In the January 26, 2013 HOD, Hearing Officer Raskin ordered DCPS to:

- a) Place Student in a full-time, segregated, therapeutic environment, either in a public or nonpublic school, in which the student will have no interaction with her nondisabled peers, be educated in small, special education classes with no more than ten students in each class, and have the opportunity to earn credits toward a diploma;
- b) Provide Student art therapy at least once a week and access to a de-escalation room with one-on-one instruction when needed, and behavioral supports, including behavioral management strategies integrated in her classroom throughout the school day; and

- c) Investigate and implement strategies to ensure that Student arrives at school, and remains in school, every day of the school year.

Although DCPS was not able to implement the full-time therapeutic placement within twenty school days, by February 27, 2013, as required by the HOD, I find that DCPS' failure to meet that deadline was not, *ipso facto*, a denial of FAPE. An apt analogy is to compare the time frame for beginning services under a child's new IEP. The IDEA does not specify a time period for implementing the provision of FAPE to a child after an IEP is developed. However, Federal regulations require that once an IEP is adopted for a disabled child, a Local Education Agency ("LEA") must ensure that, "[a]s soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(b)(2). In *D.D. ex rel. V.D. v. New York City Bd. of Educ.*, 465 F.3d 503 (2nd Cir. 2006), the Second Circuit Court of Appeals analyzed this regulation's "as soon as possible" requirement:

[W]e conclude that § 300.342(b)(1)(ii) [predecessor regulation to 34 C.F.R. § 300.323(b)(2)] means what it says: States must implement a student's IEP "as soon as possible" after it has been developed. In other words, Plaintiffs' right to a free appropriate public education requires that their IEPs be implemented as soon as possible. "As soon as possible" is, by design, a flexible requirement. It permits some delay between when the IEP is developed and when the IEP is implemented. It does not impose a rigid, outside time frame for implementation. Moreover, the requirement necessitates a specific inquiry into the causes of the delay. Factors to be considered include, but are not limited to: (1) the length of the delay, (2) the reasons for the delay, including the availability of the mandated educational services, and (3) the steps taken to overcome whatever obstacles have delayed prompt implementation of the IEP. Nonetheless, just because the as-soon-as-possible requirement is flexible does not mean it lacks a breaking point. "It is no doubt true that administrative delays, in certain circumstances, can violate the IDEA by depriving a student of his right to a 'free appropriate public education.'" *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F.3d 377, 381. FN13 (2nd Cir.2003).

DD, *supra* at 514. Adopting the same approach as the Court in *DD*, I conclude that the provision of FAPE, pursuant to an HOD order, must be effected as soon as possible. However, there must

be some flexibility in the time frame.

I find that in the present case, DCPS has implemented the January 26, 2013 as soon as possible. The first school day after the HOD was issued, DCPS sent Student's referral packet to Non-Public School 1, a private school that was able to implement all of the requirements of the HOD. Non-Public School 1 required an admissions interview before accepting Student to its program. Student, an Age adolescent, refused to be interviewed. Despite the very considerable efforts of Case Compliance Manager and Admissions Director, not to mention the Petitioner herself, Student could not be persuaded to interview for Non-Public School 1 and the school, therefore, declined to issue a letter of acceptance. Under these facts, DCPS cannot, reasonably, be blamed for not complying with the January 26, 2013 HOD's twenty-school day deadline to place Student. *Cf. Garcia v. Board of Educ. of Albuquerque*, 2007 WL 5023652, (D.N.M. 2007) (IDEA does not provide a remedy for this kind of case – chronic truancy – where the access to a free and appropriate public education is wide open, but the student refuses to attend school and refuses the numerous and extensive educational opportunities afforded to her.) Indeed, in an email to Compliance Case Manager, Petitioner's Counsel acknowledged that Student's refusal to go to private school interviews made Compliance Case Manager's job more difficult and counsel agreed that he would not immediately enforce the HOD's 20 school day deadline.

A minor student's oppositional behavior does not, of course, relieve an LEA of its obligation to provide a FAPE. *See, e.g., Lauren P. ex rel. David P. v. Wissahickon School Dist.*, 2007 WL 1810671, 7 (E.D.Pa.2007), *rev'd in part on other grounds*, 310 Fed.Appx. 552, 2009 WL 382529 (3rd Cir. 2009) (LEA's inconsistency of approach to Student's behavioral problems, including lateness, absences, and failure to complete assignments, resulted in denial of FAPE.) In this case, DCPS never stopped trying to place Student in the setting ordered in the January 26,

2013 HOD. Compliance Case Manager attempted, repeatedly, to meet with Student only to find she was absent from school. He also stayed in contact with Petitioner's Counsel. By April 8, 2013, DCPS had identified another private school, Non-Public School 2, where Student is now enrolled, which met the school setting requirements of the January 26, 2013 IEP. DCPS issued a notice of placement for Non-Public School 2 on April 10, 2013. Although Student did not begin attending Non-Public School 2 until May 2013, this additional delay was due to Aunt's unavailability to visit the school, not to DCPS' inaction.

In sum, the January 26, 2013 HOD required DCPS to place Student in the full-time, segregated school environment by February 27, 2013. DCPS identified an appropriate placement for Student the week after the HOD was issued. DCPS actually made the successful placement at Non-Public School 2 on April 10, 2013, some 25 school days after the February 27, 2013 deadline. Considering (i) the length of the delay, (ii) the reason for the delay – Student's refusal to interview at Non-Public School 1, and (iii) the persistent efforts of DCPS to place Student in an appropriate school, I find that DCPS implemented the substantive placement requirements of the January 26, 2013 HOD as soon as possible, and Student was not denied a FAPE.⁴ *See D.D., supra.* DCPS prevails on this issue.

⁴ In the January 26, 2013 HOD, Hearing Officer Raskin also ordered DCPS to provide Student weekly art therapy services, and to “[i]nvestigate and implement strategies to ensure that Student arrives at school, and remains in school, every day of the school year.” Non-Public School 2 does have a formalized attendance protocol intended to prevent truancy. *See* Email from PROGRAM DIRECTOR to Compliance Case Manager, May 7, 2013, Exhibit R-2. The private school does not offer art therapy services. The evidence received at the May 22, 2013 due process hearing does not establish that Student does, or does not, require art therapy services in order to receive a Free Appropriate Public Education. *See A.I. ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 167 (D.D.C.2005) (The standard set out by the U.S. Supreme Court in determining whether a child is receiving a FAPE, or the “basic floor of opportunity,” is whether the child has “access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” *Id.*, quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)) The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential commensurate with the opportunity provided

2. DID DCPS DENY STUDENT A FAPE BY MODIFYING HER IEP ON MARCH 18, 2013, WITHOUT CONVENING AN IEP MEETING AND WITHOUT ENSURING THE PARTICIPATION OF PETITIONER IN THE DEVELOPMENT OF THE REVISED IEP?

On March 18, 2013, DCPS issued an “Amended Individualized Education Program (IEP)” for Student. Petitioner contends that DCPS violated the IDEA by issuing an amended IEP without convening an IEP meeting. The IDEA requires that changes to an IEP be made by the entire IEP team at an IEP team meeting, unless the parent agrees not to convene the IEP team. *See* 34 CFR § 300.324(a)(4), (a)(6). The evidence in this case establishes that the changes reflected in the March 18, 2013 IEP amendment were in fact made by the entire IEP team at the February 21, 2013 IEP meeting, which Petitioner attended. SPED Case Manager, who was called as a Petitioner’s witness, explained that at the February 21, 2013 IEP meeting, the IEP team decided that changes were needed to the Present Levels of Performance and Annual Goals in the Emotional, Social and Behavioral Development section of the IEP, and that Student’s Behavioral Support Services should be increased. However, due to problems using the DCPS computerized IEP program (“Easy IEP”), the LEA was unable to enter these changes on Student’s IEP at the February 21, 2013 meeting. SPED Case Manager had to go through the steps of issuing the March 18, 2013 amended IEP in order to record the IEP changes, made by the IEP team at the February 21, 2013 meeting. SPED Case Manager’s undisputed testimony

other children. *Iapalucci, supra*, at 198. Petitioner argues that Hearing Officer Raskin’s holdings regarding art therapy and attendance strategies for Student are conclusive in this case under the doctrine of collateral estoppel. The elements of collateral estoppel are: 1) identity of issue in a prior case; 2) full litigation of issue in a prior case; and 3) necessity of resolution of the issue to the decision in the prior case. *United States v. Andrews*, 479 F.3d 894, 900 (D.C.Cir.2007). The party invoking collateral estoppel bears the burden of establishing that the conditions for its application have been satisfied. *Herbert v. Architect of Capitol*, 839 F.Supp.2d 284, 299 (D.D.C.2012). Here, Petitioner has not attempted to meet that burden. That is not to say that Hearing Officer Raskin’s order for DCPS to provide art therapy services and to implement attendance strategies cannot be enforced. As noted in this decision, a party must appeal directly to state or federal court to compel enforcement of a Hearing Officer Determination.

establishes that there were no changes to Student's IEP, except those that were made by the entire IEP team at the February 21, 2013 IEP meeting. DCPS prevails on this issue.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ORDERED:

All relief requested by Petitioner herein is denied.

Date: May 24, 2013

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. §1415(i).