

The University of the State of New York
The State Education Department
Office of Adult Career and Continuing Education Services -
Vocational Rehabilitation (ACCES-VR)

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In the matter of

[REDACTED]

Petitioner,

- against -

ADULT CAREER AND CONTINUING EDUCATION SERVICES –
VOCATIONAL REHABILITATION (ACCESS-VR),

Respondent.

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FINDINGS OF FACT AND DECISION

Before: [REDACTED] Impartial Hearing Officer

For Petitioner: [REDACTED] with assistance from mother, [REDACTED]

For ACCES-VR: [REDACTED]

Date of Hearing: [REDACTED]

Place: [REDACTED]

INDIVIDUALS WHO APPEARED ON NOVEMBER 9, 2015

- [REDACTED] – Consumer-Petitioner
- [REDACTED] – Consumer’s Mother
- [REDACTED] – ACCES-VR Assistant District Manager
- [REDACTED] – ACCES-VR Vocational Rehabilitation Counselor
- [REDACTED] – ACCES-VR Senior Vocational Rehabilitation Counselor

PRELIMINARY STATEMENT

I am an Impartial Hearing Officer, approved by the State Education Department. I was appointed to this Hearing by letter dated [REDACTED] from [REDACTED]

Rehabilitation Provider Specialist. Petitioner, [REDACTED] requested an adjournment of the original hearing date and the hearing was changed from [REDACTED] to [REDACTED]

Petitioner requested several additional adjournment of the hearing and the date were then changed from [REDACTED] to [REDACTED]; [REDACTED] to [REDACTED]; [REDACTED] to [REDACTED]; [REDACTED] to [REDACTED]; [REDACTED] to [REDACTED] and [REDACTED] to [REDACTED]

The Impartial Hearing began at 10:34 am on [REDACTED] at the ACCES-VR [REDACTED] District Office located at [REDACTED] Petitioner was advised in the letter dated [REDACTED] and the subsequent letters dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] about the Client Assistance Program (CAP) and [REDACTED] right to representation. Petitioner was not represented by counsel, but used the assistance of [REDACTED] mother at the hearing.

A list of the exhibits offered into evidence is attached to this decision. The transcripts were fully received by this IHO on [REDACTED]

ISSUE

Whether ACCES-VR reasonably denied the Petitioner's request for tutors and note taking services to assist [REDACTED] with [REDACTED] classes at Nassau Community College?

PETITIONER'S POSITION

Petitioner's position is that ACCES-VR unreasonably denied [REDACTED] tutors and note takers and should be providing [REDACTED] with such services. The Petitioner believes ACCES-VR unreasonably denied services for tutors and notes takers to assist [REDACTED] during [REDACTED] 2014-2015 school year at college. At the time of requesting the impartial hearing Petitioner was enrolled at

decision goes on to state that ACCES-VR would coordinate with the Disabled Student's Office at Nassau Community College to provide class notes and a scribe if required. (Tr. 36.) (Ex. 5.)

ACCES-VR states that they were in communication with Petitioner's Disability Services Counselor, [REDACTED] at Nassau Community College regarding what was specifically needed from Nassau Community College to satisfy ACCES-VR policy to provide tutoring services for the Petitioner. (Ex. 7.) In working with the Center for Students with Disabilities, ACCES-VR states they were informed that Nassau Community College was securing note takers for Petitioner and that they were provided scribes for tests at the testing center on campus for Petitioner. (Tr.39.) (Ex. 7.)

In addition to working with Petitioner's Disability Services Counselor at Nassau Community College regarding services for notetaking and tutoring, ACCES-VR states they were also securing assistive technology for the Petitioner. (Tr. 29; 44.) (Ex. 9.)

ACCES-VR states that Petitioner was receiving notetaking services through Nassau Community College and that tutoring services were also provided through the academic department offices. ACCES-VR was also in communications with [REDACTED] who is the [REDACTED] of the Center for Students with Disabilities at Nassau Community College. ACCES-VR communicated what is needed from Nassau Community College to [REDACTED] in order for ACCES-VR to provide tutoring services to Petitioner. [REDACTED] informed ACCES-VR [REDACTED] would work on securing the necessary documentation and [REDACTED] confirmed that Petitioner was being provided notetaking services for [REDACTED] classes. (Tr. 55-56.) (Ex. 12.) ACCES-VR states they received follow-up communication with [REDACTED] who confirmed the notetaking services and tutoring services were available through the college for Petitioner. ACCES-VR states that [REDACTED] also informed ACCES-VR that none of Petitioner's professors were responding to

the request for letters stating Petitioner's need for tutoring to satisfy ACCES-VR's policy. (Tr. 47-48.) (Ex. 10.)

ACCES-VR states they continued to work with the Center for Students with Disabilities at Nassau Community College to identify potential tutors for Petitioner should Petitioner's professors provide the required documentation for ACCES-VR to provide such services and that they continued to keep Petitioner apprised of the status. (Tr. 66; 67-68; 69-70.) (Ex. 14;15;16.)

By [REDACTED] 2014 ACCES-VR states that the Center for Students with Disabilities informed them that Petitioner did not need tutoring as [REDACTED] had received a B+ on [REDACTED] psychology test without any tutoring or extra help. It was also around this time, that ACCES-VR states they were informed by the Center for Students with Disabilities that Petitioner had a non-degree status. (69-71.) (Ex. 16.) ACCES-VR states that part of their policy for sponsoring a consumer for college, the individual must matriculate and therefore for ACCES-VR to sponsor Petitioner for future semesters [REDACTED] must matriculate. (Tr. 70-71.)

ACCES-VR states that there came a time when Petitioner stopped communicating with them and it was unclear what [REDACTED] status was with college. (Tr. 72-73.) (Ex. 17.) After more time passed with no word from Petitioner, ACCES-VR states they contacted [REDACTED] who is a finance officer in the Department of Finance for Nassau Community College to inquire of Petitioner's status of enrollment. A response from [REDACTED] stated that Petitioner had no activity on [REDACTED] account since fall of 2014. (Tr. 74.) (Ex. 18.)

ACCES-VR maintains that they never denied Petitioner the services of tutoring or notetaking but that they were working within the confines of policy and that they were working closely with Nassau Community College to secure services with the college and obtain documentation for ACCES-VR to provide services. It was also ACCES-VR's position that the

hearing was moot as Petitioner was no longer enrolled in college in the Spring of 2015, Fall of 2015 and was not registered for the Spring of 2016.

LAWS, REGULATIONS AND POLICIES

ACCES-VR Policy 405.00 College and University Training Policy (April 2007 [Amended April 2009]), (hereafter referred to as The Policy) defines the parameters for which ACCES-VR may assist in supporting college training. It defines college training as academic training leading to a degree given on a postsecondary level at a college, business college or university. The policy further states that it applies to certificate programs that are eligible for TAP and Pell Support and for which consumers are matriculated at the college. The policies states that college training may be provided with ACCES-VR only when the Individualized Plan for Employment establishes a specific employment goal requiring this level of training. (Ex. 1.)

The College and University Training Policy states that if college is required to achieve the employment goal of the consumer then the IPE must be developed in order for ACCES-VR to support college training. The Policy also states that during the assessment of an individual's ability to participate in college it may be useful to consult with the disabled student services coordinator at the college of interest. In addition, during the assessment assistive technology needs should be considered as part of the process. Individuals interested in assistance from ACCES-VR for college training must apply by April 15 for the fall semester or September 15 for the spring semester as outlined in the policy. (Ex. 1.)

The Policy discusses determining support services for the consumer. It states that the ACCES-VR counselor should work with the consumer and a representative of the college to determine the nature and needs of the student regarding ■ academic activities. It states that when possible the counselor should address these matters prior to the beginning of the semester

so that arrangements can be in place when classes begin. In addition, it states that the counselor should review the college's website to determine services customarily provided to students with disabilities. (Ex. 1.)

With regards to the tutorial services that ACCES-VR may provide the Policy states that such services may be paid for but that it is a limited amount of tutoring services. It specifically states that "the tutoring need must be required to successfully complete a required course. Tutoring resources available through the college will be fully explored and utilized prior to ACCES-VR support." (ACCES-VR Policy 405.00 College and University Training Policy.) The policy goes on to state, "Students must provide documentation to their counselor regarding the need for tutoring in a required course, such as a letter from their instructor or academic advisor regarding the student's performance in the course and the number of tutorial hours recommended to improve performance." (ACCES-VR Policy 405.00 College and University Training Policy.) It is required by the policy that counselors follow up with the college to confirm that there are no tutoring services available through the college and if there are no such services then the counselor should work with the Disabled Student Services Coordinator to identify tutors that meet the requirements of ACCES-VR and the consumer. (Ex. 1.)

DECISION

The Hearing on this matter was to determine whether the decision by ACCES-VR was unreasonable at the time the decision was made.

It is the decision of this Impartial Hearing Officer after careful review of testimony, evidence, policies, regulations and law relating to this matter that ACCES-VR's denial of Petitioner's request for tutoring and notetaking services was not unreasonable. In fact, the testimony and evidence clearly shows that ACCES-VR never denied Petitioner's request for said

services and was working within the confines of policy to provide said services. The Administrative Review decision specifically states that such services are authorized and can be implemented upon receiving the required documentations. (Ex. 5.) As required by the Policy (Ex. 1) ACCES-VR was awaiting documentation regarding the need for tutoring in ■■■ required courses, such as a letter from Petitioner's instructor or academic advisor regarding Petitioner's performance in the course and the number of tutorial hours recommended to improve ■■■ performance. This requirement was explained to Petitioner on several occasions and to Nassau Community College in order for ACCES-VR to provide the services. (Tr. 24; 35-36; and 52-53.) In addition, ACCES-VR was in communication with Nassau Community College to follow-up regarding the required documentation, regarding on campus tutoring and notetaking services. (Tr. 39; 47-48; and 55-56.) In addition, ACCES-VR was in the process of securing computer equipment and assistive technology for the Petitioner to assist ■■■ with ■■■ schooling, specifically notetaking and ■■■ paper writing. (Tr.29; and 148-149.) However, there was delay due to quotes from the provider and then Nassau Community College advised ACCES-VR that Petitioner was a non-degree status which triggered a halt on the order coupled with the hospitalization of Petitioner therefore the computer equipment and assistive technology equipment never came to fruition. (Tr. 69-71.)

It is clear from the record and evidence that Petitioner was receiving notetaking services through the Nassau Community College (Tr. 39; 55-56; 47-48; and 115-116). Through Petitioner's own testimony and notebooks ■■■ confirmed ■■■ was receiving notetaking services. (Tr. 115-116). Petitioner was not happy with how the process by which ■■■ would obtain the notes as Nassau Community College required the notes to be brought to the Center for Students with Disabilities so that they can document the notes received, which Petitioner felt was

cumbersome and caused a delay for [REDACTED]. However, as per the Policy, the service was being provided as required and therefore Petitioner was not denied this service.

The testimony from both Petitioner and ACCES-VR proves that there was substantial miscommunication on the part of Nassau Community College and what the college was doing with providing services and required documentation. This was not the fault of either Petitioner or ACCES-VR.

With regards to the tutoring services, ACCES-VR was following the Policy and never denied Petitioner's request but instead was working with Nassau Community College to secure the required documentation. . (Tr. 47-48; 55-56; 66; 67-68; and 69-70.) (Ex. 10; 12; 14;15; and 16.) However, it appears that ultimately Nassau Community College stated it was their opinion that the tutoring services were not needed as Petitioner had received a B+ in a class. (69-71.) (Ex. 16.) In addition, the school confirmed that Petitioner never took advantage of the tutoring services offered through the departments at the school. In fact, Petitioner testified that [REDACTED] GPA at the end of the semester was 3.7 and that was all on [REDACTED] own, no assistance of tutoring. (Tr. 142.)

There is overwhelming and convincing testimony and supporting evidence that the ACCES-VR never denied Petitioner's request for tutoring and notetaking services but instead was working with Nassau Community College and within the confines of policy to provide Petitioner with what [REDACTED] needed to complete [REDACTED] required courses successfully.

There was not testimony from Petitioner or evidence on what actions [REDACTED] took to secure the required documentation from [REDACTED] professors for the tutoring, that ultimately the college stated was not necessary due to Petitioner's grades. The only evidence provided by Petitioner was some emails. (Ex. A.) The authenticity of the emails is questionable. However, the emails are

addressed to Petitioner's counselor [REDACTED] at Nassau Community college and are addressing grievances and issues that Petitioner has with [REDACTED] and [REDACTED] assistance with getting [REDACTED] the services [REDACTED] was requesting. These emails do not prove that ACCES-VR was denying Petitioner [REDACTED] services but instead show that there was miscommunication on the part of Nassau Community College.

For the reasons stated above and the supporting testimony and evidence ACCES-VR did not unreasonable deny Petitioner's request for tutoring and notetaking services.

Dated: [REDACTED]

[REDACTED] Impartial Hearing Officer

APPEAL NOTICE

Please take notice that this is a final decision. If you disagree with the decision, you may seek judicial review through action in a court of competent jurisdiction.