

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

In the Matter of [REDACTED]

Petitioner

against

Adult Career and Continuing Education Services-Vocational Rehabilitation,

Respondent

FINDINGS OF FACT AND DECISION

Before: [REDACTED], Impartial Hearing Officer

For the Petitioner: Pro Se

For ACCESS-VR:

Date of the Hearing: [REDACTED]

Place of the Hearing: [REDACTED]

PERSONS WHO APPEARED ON [REDACTED]

- [REDACTED] - Petitioner
- [REDACTED] - District Office Manager ACCESS-VR
- [REDACTED] - Director of Counseling ACCESS-VR
- [REDACTED] - Vocational Rehabilitation Counselor ACCESS-VR

PRELIMINARY STATEMENT

I am an Impartial Hearing Officer approved by the State Education Department. I was appointed by Anne Sternbach, Senior Vocational Rehabilitation Counselor of the Office of Adult Career and Continuing Education Services –Vocational Rehabilitation (ACCESS-VR). The appointment was sent to me and the Petitioner (“Consumer”) in a letter sent by Anne Sternbach on [REDACTED]

The Impartial Hearing began at [REDACTED] on [REDACTED] at the ACCESS-VR [REDACTED] located at the [REDACTED] [REDACTED]

[REDACTED] advised in the letter dated [REDACTED] about the Client Assistance Program (CAP) and [REDACTED] rights to have someone represent [REDACTED]. [REDACTED] waived [REDACTED] right to representation.

A list of the exhibits offered into evidence during the hearing is attached to the decision. The transcript was received by this IHO on [REDACTED]

ISSUES

1. Should ACCESS-VR be financially responsible for the payment of Petitioner's educational expenses while attending [REDACTED] from [REDACTED] to the present?
2. Should Petitioner's employment goal be changed from office and administrative support worker with Spanish speaking or bilingual Spanish/English clients to elementary Spanish teacher?

CONSUMER'S POSITION

The Consumer's position is that ACCESS-VR should support [REDACTED] goal to become an elementary school Spanish teacher and pay for [REDACTED] educational expenses incurred as the result of [REDACTED] enrollment in pre-Master's program at [REDACTED]

ACCESS-VR'S POSITION

ACCESS-VR's position is that the Consumer's current IPE goal for employment as an office and administrative support worker with Spanish speaking and bilingual Spanish/English speaking clients is still appropriate. This goal has been mutually agreed upon by the parties. When the Consumer indicated a desire to become a teacher, [REDACTED] was requested to participate in a psychological evaluation to determine [REDACTED] fitness to be a teacher and [REDACTED] declined to participate. Additionally the consumer did not obtain the approval of ACCESS-VR prior to enrolling at [REDACTED] and incurring educationally related expenses. Furthermore the Consumer's participation in placement services was sporadic. In fact [REDACTED] was offered an employment position which [REDACTED] declined. In view of these facts, ACCESS-VR should not be responsible for the expenses incurred by the Consumer at [REDACTED]

FINDINGS OF FACT

- [REDACTED] (hereinafter referred to as the “Consumer”) met with [REDACTED], [REDACTED] Vocational Rehabilitation Counselor at ACCESS-VR [REDACTED] as indicated in the Case Note dated [REDACTED] to request a change in [REDACTED] employment goal to elementary Spanish teacher. At that time [REDACTED] informed the Consumer that ACCESS-VR would not support the requested change based upon the reasoning that was used to deny [REDACTED] prior request to become a Spanish interpreter. The primary reason was the Consumer’s severe learning disability which would impact [REDACTED] ability to be a teacher. (VR Ex 1)

- The Consumer and ACCESS-VR had agreed to change [REDACTED] vocational goal to Office or Administrative Support with Spanish-Speaking or Bilingual Spanish/English clients in a signed Individualized Plan for Employment dated [REDACTED]. The Consumer also agreed to continue placement services with [REDACTED] to find employment. Additionally, [REDACTED] suggested a further evaluation which would address [REDACTED] request to change [REDACTED] goal to elementary Spanish teacher to which the Consumer agreed. (VR Ex. 2)

- The learning disability referred to by [REDACTED] was detailed in [REDACTED] comprehensive psychological evaluation dated [REDACTED] that had been used to justify the Consumer’s prior request to be a Spanish interpreter. (VR Ex. 3, T. 23, 26,) [REDACTED] described the Consumer’s “difficulties with attention...memory difficulties...verbal fluency difficulties...verbal processing problem...” The report found the Consumer to have a “Generalized Learning Disability” and “Executive Processing Deficits which could interfere with the Learning Process”. Additionally it was noted that “deficits in Executive Processing...difficulties in Sustaining Attention, Shifting Attention, Planning Ahead,

Emotional Control and Working Memory”. ██████████ stated if these issues could not be resolved, the Consumer should not continue with pursuing ██████████ education in Spanish. (VR Ex.

3) Based upon the evaluation, ██████████ believed that the Consumer’s learning disability would impact most of the skills the Consumer would need as a teacher. (T.24, 26)

- Nevertheless, ██████████ was willing to refer the Consumer for another evaluation this time by ██████████ in order to further explore ██████████ strengths and to determine ██████████ suitability for teaching as an employment goal. (T. 29) However, the Consumer has thus far refused to meet with ██████████ (T. 30)

- ACCESS-VR had referred the Consumer to ██████████ to provide job placement services. consistent with ██████████ employment goal in ██████████ (T. 30) ██████████ is a vendor that ACCESS-VR uses to assist consumers in finding employment opportunities. (T. 51) Outside vendors such as ██████████ are used to provide job development services because the volume of consumers serviced by ACCESS-VR. However, ██████████ had difficulty getting making contact with the Consumer. (VR Ex. 4, T. 30-1, 32, 51, 52)

- In spite of ACCESS-VR’s refusal to agree with the Consumer’s request to change ██████████ employment goal to teaching, the Consumer proceeded to enroll a pre-Master’s program at ██████████ and to incur educational expenses. (IHO Ex. 2, Consumer’s Ex. 1, 2, 3, T.77, 79).

- The Consumer has also applied to take the GRE and has taken the New York State Teacher Certification Examination. (Consumer Ex. 4, 5).

- When it was discovered that the Consumer was attending ██████████, ██████████ offered to meet with the Consumer at its ██████████ to no avail. (T. 45)

- ACCESS-VR was unaware that the Consumer had applied for a position with ██████████ ██████████ and that it would have supported ██████████ it had known. (T. 47, 48)

- ██████████ Director of Counseling for the ACCESS-VR ██████████ met

with the Consumer on [REDACTED] in order to discuss the current state of [REDACTED] vocational planning. (T. 58) At the meeting, [REDACTED] informed the Consumer that ACCESS-VR would continue to support [REDACTED] to achieve [REDACTED] current mutually agreed upon goal employment goal as stated in [REDACTED] IPE of office or administrative support work with Spanish speaking or bilingual or Spanish/English speaking clients. (T. 58, 59) At the same time, [REDACTED] did not agree to provide further training at [REDACTED]. (T. 60)

- The meeting of [REDACTED] was memorialized in a Case Note dated the same day. (ACCESS-VR Ex. 5) The Consumer was reminded of [REDACTED] lack of cooperation in meeting with [REDACTED] and participating in the evaluation. The Consumer responded that [REDACTED] was busy with doctor appointments twice a month and with classes at [REDACTED]. The Consumer was offered alternatives for services to achieve [REDACTED] goal. The Consumer informed [REDACTED] that [REDACTED] had turned down a job at the [REDACTED] because it conflicted with [REDACTED] class schedule.

- [REDACTED] informed the Consumer that [REDACTED] lack of cooperation and communication (T.80) precluded ACCESS-VR from considering any request in the change of [REDACTED] goal to teacher. (T. 63)

- ACCESS-VR had no responsibility assist the Consumer with accommodations and support while [REDACTED] attended [REDACTED] because that was not the mutually agreed upon goal in [REDACTED] IPE according to [REDACTED]. (T 65-7) [REDACTED] further testified that any services provided to the Consumer must be related to [REDACTED] vocational goal and not solely for the reason that the Consumer desired those services. (T. 72)

- [REDACTED] shared the concerns of [REDACTED] that the results of [REDACTED] psychological evaluation casts serious doubts on the Consumer's probability of success in position of teacher. (T. 82)

- [REDACTED] stated that it is possible that the Consumer's IPE goal could be reevaluated if warranted if the Consumer received a favorable report from [REDACTED] (T.87-8)

- The Consumer's failure to be fully invested in job placement activities and [REDACTED] refusal to be evaluated by [REDACTED] did not weigh in [REDACTED] favor when [REDACTED] requested a change in [REDACTED] employment goal to teacher. (T. 87)
- The Consumer declined a potential job with the [REDACTED] because it did not provide benefits, it was part-time and it primarily served the elderly. The Consumer did not believe [REDACTED] would be gainfully employed. (T. 84)
- The Consumer did not provide any substantiation for [REDACTED] allegation that [REDACTED] the psychologist may be biased against Latin Americans and Spanish speaking people. (T.94-5)
- The Consumer's claim that [REDACTED] was not uncooperative because the ACCESS-VR and its contractor, [REDACTED], was not substantiated. (T.101)
- The Consumer acknowledged that the current goal on [REDACTED] IPE to be clerical. (T. 102)
- The Consumer did apply for a clerical position with the [REDACTED] [REDACTED] for which [REDACTED] took a civil service exam. However [REDACTED] did not score high enough to be hired. Thereafter the Consumer filed a claim with the New York State Department of Human Rights which was dismissed. (T. 104 – 106)
- The Consumer acknowledged that [REDACTED] enrolled at [REDACTED] without the prior approval of ACCESS-VR. (T.108)
- The Consumer's belief that [REDACTED] would prejudge [REDACTED] in terms of [REDACTED] ability to be a teacher is without substantiation. (T. 108-9)

LAWS, REGULATIONS AND POLICIES

ACCESS-VR Consumer Involvement Policy 100.00 encourages the involvement of consumers and their families concerning the provision of programs and services.

ACCESS-VR Individualized Plan for Employment Policy and Procedure describes the contents of the IPE and the procedure to be followed in developing and IPE.

ACCESS-VR Policy and Procedure 405.00 provides that ACCESS-VR will contribute towards training beyond a baccalaureate level when one or more of the following criteria is met: 1) the consumer requires graduate training in order to enter the profession; which is an agreed upon employment goal on the IPE, or the significance of the disability limits the consumer's ability to function in an entry level job while simultaneously training at the graduate level required to maintain the job.

In the Matter of Goldstein v. VESID, et al., 199 A.D. 2d 766, 605 N.Y.S. 425 (1993). In *Goldstein*, the Court held that while ACCESS-VR Policy 100.00 encouraged consumer involvement in the development of the IPE, it did not give Consumer's complete control over their program.

In the Matter of Murphy v. VESID, et al., 92 N.Y. 477, 683 N.Y.S. 139 (1998), the Court of Appeals held that the Federal Rehabilitation Act does not require services to achieve a person's highest level of employment and it is ACCESS-VR that makes the final decision with respect to the contents of the IPE including the listed goal and scope of services to be provided. In that case, the Consumer who was attending undergraduate school requested that her plan be changed to add law school. The Court upheld the determination of VESID denying her request because she could obtain employment without a law degree.

DECISION

The Consumer and ACCESS-VR mutually agreed to an Individualized Plan for Employment (IPE) dated [REDACTED] which provided as a work goal: Office or

Administrative Support Worker with Spanish-Speaking or Bilingual Spanish/English Clients. (ACCESS-VR Ex. 2).

Although the Consumer requested a change in [REDACTED] employment goal to include graduate school, [REDACTED] request was not agreed to by ACCESS-VR (ACCESS-VR Ex. 2 and Ex. 3; T. 24, 26, 58-60).

Therefore because the Consumer's request to change [REDACTED] employment goal was not supported by ACCESS-VR based upon [REDACTED] report (ACCESS-VR Ex. 3) and because it has not been demonstrated that the Consumer cannot obtain employment without a graduate degree, there is no basis to change the Consumer's current goal.

As a result, ACCESS-VR has no responsibility to reimburse the Consumer for expenses [REDACTED] has incurred as the result of [REDACTED] enrollment at [REDACTED] without prior approval from ACCESS-VR.

Dated: [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.

