

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

In the Matter of [REDACTED] [REDACTED]

-against-

THE OFFICE OF ADULT CAREER AND CONTINUING
EDUCATIONAL SERVICES-VOCATIONAL
REHABILITATION (ACCES-VR)

APPEARANCES:

FOR PETITIONER:

[REDACTED] *Pro Se*

FOR RESPONDENT:

[REDACTED] [REDACTED] ACCES-VR [REDACTED] Office

ISSUES PRESENTED AND THE POSITION OF THE PARTIES

Petitioner [REDACTED] has appealed a decision by ACCES-VR to not provide services that [REDACTED] sought, specifically, services that [REDACTED] asserts will enable [REDACTED] to eventually operate a not-for-profit agency on behalf of underserved people in New York City. Initially, [REDACTED] sought a clerical program called the [REDACTED]. ACCES-VR denied participation because [REDACTED] goal was not to become a secretary. [REDACTED] believed that [REDACTED] needed this program to teach [REDACTED] basic skills related to such activities as computer operation. However, between the time of first hearing was adjourned, and the second hearing, [REDACTED] position changed somewhat. [REDACTED] now seeks assistance by means of a business training program to assist [REDACTED] in operating a not-for-profit organization. ACCES-VR states that it needs a business plan from [REDACTED] in order to provide the requested services, including completing a form VES-70.

██████ responds that ██████ needs assistance completing the form. ██████ also needs financial assistance up to the maximum of \$11,000.00. In addition, at the second hearing, ██████ sought a different counselor. ACCES-VR takes the position that the request for a new counselor was not part of the process challenge and believes this issue should not be considered in this matter. Rather the proper course of action is for ██████ to request a new counselor pursuant to ACCES-VR protocol. ██████ has agreed to pursue this course of action. ACCES-VR voiced no opposition to the thrust of the hearing changing from participation in the Good Skills Program to the other assistance set forth.

PROCEDURAL HISTORY TO DATE

This matter was initially heard before me on ██████ 2016. At the hearing, it appeared to me that both parties have acted with good intentions. ACCES-VR recognized that ██████ could be entitled to some services, including participation in an appropriate program. It was a matter of both sides communicating effectively as to resolve the dispute in a way both sides found satisfactory. As a result, I suggested conducting a second session in which the parties attempted to resolve any matter that impacted on the failure to resolve ██████ concerns. The parties agreed.

A second session was conducted on ██████ 2017. The parties testified regarding efforts by, and to assist ██████ Following the hearing, I was informed by ACCES-VR that regardless of attempts by the parties to informally work through any disagreements, this proceeding was a due process hearing, not mediation. ACCES-VR further directed that I was to issue a formal ruling consistent with this format consisting of a formal hearing.

EVIDENCE PRESENTED AT THE HEARING

At the hearing, ACCES-VR detailed the type of assistance its resources enable it to provide generally and services that resources generally preclude it from providing. In connection with consumers who seek assistance in starting and operating their own business, ACCES-VR uses a consultant who reviews plans developed by the consumer. Tr. 139-140. However, resources preclude ACCES-VR from using self-employment evaluation teams. Tr. 142-43.

██████████ testified that it is the responsibility of ██████████ to work with ██████████ counselor to create to the best of ██████████ ability a business plan and then ACCES-VR will show the plan to the consultant. Tr. 150-151. ACCES-VR will provide up to \$11,000.00 in start-up costs. However, the regulations require the consumer to contribute 10% of the amount provided by ACCES-VR or an in-kind contribution related to the business. Tr. 161-64. ACCES-VR has used the services of a consultant with experience reviewing plans for small business related to not-for-profit activities. Tr. 153.

██████████ presented as an ambitious and highly qualified individual, notwithstanding a concession that ██████████ suffers from anxiety, Tr. 108, and lacks a college degree. Tr. 166. ██████████ has advocated on Capitol Hill and in connection with actions of the New York State Office of Mental Health. Tr. 165. I find that ██████████ is qualified for self-employment and has presented in a way that shows ██████████ has substantial potential to operate the kind of not-for-profit advocacy organization that ██████████ seeks to operate.

CONCLUSIONS OF LAW AND DECISION

The ACCES-VR policy and procedures set forth the consumer and agency's responsibilities when an individual seeks assistance in becoming self-employed. The parties have conceded that each side has particular responsibilities. See ACCES-VR Policy & Procedure 1301. I first find that the starting of a not-for-profit organization to advocate for the underserved population is an appropriate career goal.

Consistent with mutual obligations, [REDACTED] is to complete to the best of [REDACTED] ability the Self-Employment Planning Form (VES-70). Once [REDACTED] has completed this, ACCES-VR will assist [REDACTED] in completing this form. Following the completion of this form with the assistance of ACCES-VR, ACCES-VR shall forward the plan to an independent consultant. While the regulations authorize the use of a self-employment team, testimony indicated that financial constraints warranted the use of an independent consultant instead. Testimony further indicated that one or more consultants used by the ACCES-VR office that services [REDACTED] ([REDACTED]), possess the ability to provide assistance in this case. Hence, ACCES-VR must utilize the services of the person whom it deems can provide the most benefit to [REDACTED]. The regulations make clear that ACCES-VR conceded at the second hearing, ACCES-VR regulations authorize up to \$11,000.00 in startup costs. See ACCES-VR Policy & Procedure 1301. Because I find that [REDACTED] is a highly motivated intelligent individual, I find that [REDACTED] is entitled to the \$11,000.00 start-up costs while ACCES-VR can insist on the 10% in-kind contribution. This includes some non-financial in-kind contribution if [REDACTED] lacks the resources to contribute \$1,100.00.

I find that ACCES-VR need not provide a new counselor to [REDACTED]. ACCES-VR has taken the position that this issue is not before me at this time. [REDACTED] decided not to oppose this

position and agreed to proceed according to agency protocol in [REDACTED] attempts to change counselors. However, to the extent that the nature of particular assistance that [REDACTED] has sought has changed over time, I find that the specific failure of ACCES-VR to oppose the addressing of the change of services in this hearing constitutes a waiver of any opposition.

DISPOSITION

Upon completion of the Self-Employment Planning Form (VES-70) by [REDACTED] ACCES-VR shall assist [REDACTED] in completion of the form. ACCES-VR shall then forward the form to a consultant for further assistance. Following assistance from the consultant in terms of completing the Self-Employment Planning Form, ACCES-VR shall provide the \$11,000.00 start-up costs.

PLEASE TAKE FURTHER NOTICE

This is a final decision. If a party disagrees with this decision, the party may seek judicial review through an action in a court of competent jurisdiction.¹

This decision is rendered [REDACTED] 2017.

[REDACTED]
Impartial Hearing Officer

¹ The term “action” refers not only to actions at law but also special proceedings under the New York Civil Practice Law and Rules.