

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

In the Matter of [REDACTED] [REDACTED]

Petitioner

-against-

Adult Career and Continuing Education Services –
Vocational Rehabilitation (ACCESS-VR)

Respondent

FINDINGS OF FACT AND DECISION

Before: [REDACTED] Impartial Hearing Officer

For Petitioner: [REDACTED] [REDACTED] Petitioner's Father and [REDACTED] [REDACTED] pro se

For Access-VR: [REDACTED] Assistant District Office Manager, [REDACTED] District Office

Date of Hearing: [REDACTED] 2017, 2:00 pm

Place of Hearing: ACCESS-VR
[REDACTED] District Office
[REDACTED]
[REDACTED] New York [REDACTED]

Persons Present for the Hearing:

[REDACTED]	ACCESS-VR District Office Manager
[REDACTED]	ACCESS-VR Senior Vocational Rehabilitation Counselor
[REDACTED]	Petitioner's Father
[REDACTED]	Petitioner

PRELIMINARY STATEMENT

I am an Impartial Hearing Officer approved by the State Education Department. I was appointed to [REDACTED] hearing by Kevin G. Smith, Deputy Commissioner of the Office of Adult Career and Continuing Services. [REDACTED] appointment was made in a letter sent to me and the Petitioner (“Consumer”), [REDACTED] [REDACTED] by Anne R. Sternbach, ACCESS-VR Senior Vocational Rehabilitation Counselor, dated [REDACTED], 2017 which reflects the amended time of 2:00 pm for the hearing. The date and time of the hearing was confirmed by the parties.

The impartial hearing started at 2:00 pm on [REDACTED] 2017 at the ACCESS-VR [REDACTED] [REDACTED] District located at [REDACTED] [REDACTED] New York [REDACTED] Consumer was advised in the appointment letter about the [REDACTED] [REDACTED] and [REDACTED] right to legal representation. The Consumer appeared pro-se and waived [REDACTED] right to representation. The Consumer’s father (“Father”) [REDACTED] [REDACTED] presented the Consumer’s case.

A list of the exhibits offered into evidence is attached to the decision. The transcript of the hearing was received by the IHO on [REDACTED] 2017.

ISSUE

Whether ACCESS-VR properly denied sponsorship for additional semesters of college for the Consumer and whether the Consumer is eligible for a waiver for additional college sponsorship.

CONSUMER’S POSITION

The Consumer and ACCESS-VR developed an Individualized Plan For Employment (“IPE”) dated [REDACTED] 2014, (R.5). The IPE identified the Consumer’s work goal as Computer Network Support Specialist and other related job titles. As part of [REDACTED] work goal, the Consumer requested funding for college computer courses toward a certificate in computer mix media technology at Queensborough Community College (“QBCC”). (R.1A). The Consumer completed two remedial classes at QBCC prior to applying for services with ACCESS-VR. The Consumer

chose the computer certificate course at QBCC because it focuses on ■ interests in computer programming, networking, computer graphics and digital art. The Consumer also expressed an interest to combine the computer courses with core courses to obtain an AA degree at QBCC.

In the IPE, ACCESS-VR's evaluation of progress toward the Consumer's work goal included "sponsorship of computer classes on a trial basis, to be used as an assessment to determine the appropriateness of [a] college work goal." (R.5). The Consumer enrolled in the computer mix media technology program and the AA degree program at QBCC beginning with the spring semester 2014. ACCESS-VR paid for the Consumer's college tuition at QBCC for a total of six semesters (spring/fall 2014; spring/fall 2015 and spring/fall 2016). However, after the sixth semester, the Consumer did not complete ■ AA degree program. The Consumer and ACCESS-VR then completed a changed IPE on August 11, 2016 and the Consumer's work goal remained the same. (R.10). However, ACCESS-VR stated that it would not pay for any additional semesters of classes at QBCC after the fall 2016 semester. (R. 10).

Overall the Consumer did very well in ■ computer courses at QBCC, especially in ■ web tech and computer robotics classes. (R.7). ■ maintained an average GPA of 3.50 for each semester and an overall GPA of 3.30 for the spring 2016 semester by getting A's and B's in ■ computer classes. The Consumer had difficulty passing ■ core courses, failing ■ final exams in remedial reading and remedial writing. ■ received a D+ in science. By the end of the fall 2016 semester, the Consumer will most likely finish all but one computer class in ■ computer technology curriculum. (R.9). The Consumer has to complete a minimum of 2-3 semesters of core courses for ■ AA degree, consisting of remedial reading, remedial writing, social studies, humanities and English classes. (R.9). The Consumer requested that ACCESS-VR fund these semesters, beginning with the spring 2017 semester.

The Consumer wants ACCESS-VR to continue paying for additional semesters at QBCC. The Consumer argues that the Consumer has done exceptionally well in ■ computer courses, and ■ is on the verge of passing ■ remedial writing class, which means that under ACCESS-VR policy and procedure section 405.00 College and University Training Policy – Length of Training, the Consumer has demonstrated "a significant change in the individual situation [which] provides for good cause for [payment] of additional time". (R.5). The Consumer's Father argues that good cause exists for payment of additional time and a waiver because the Consumer is doing very well

in remedial writing and will complete an intensive reading course during the winter session at QBCC. (R.14A). The Consumer's Father argues that Consumer is progressing toward passing ■ remedial writing class. (R.12). The Consumer's Father is confident that the Consumer will be able to obtain ■ AA degree in the remaining 2-3 semesters and without ACCESS-VR funding, the Consumer will have to withdraw from QBCC and sit home and do nothing. In support of a waiver, the Consumer presented ■ QBCC transcript (P.1); a writing assignment in which the Consumer received a grade of B (P.2); a reference letter from the Consumer's academic advisor at QBCC (P.3); a reference letter from the Consumer's high school math teacher (P.3); a reference letter from the Consumer's engineering technology instructor at QBCC and a reference letter from the Consumer's classmate (P.3). The Consumer's evidence is proof that ■ is doing well and a waiver for additional college sponsorship is warranted. The Consumer's Father argues that the Consumer is a genius in computers and robotics and it would be a waste of the Consumer's talent if ■ is not allowed to complete ■ AA degree at QBCC because ACCESS-VR will not pay for additional semesters. (Tr. 80, 91,100).

ACCESS-VR's POSITION

ACCESS-VR's position is that it has paid the maximum amount allowed for college sponsorship under state policy. ACCESS-VR maintains that the Consumer's college sponsorship for an AA degree was always on a probationary basis, to be determined by the Consumer's ability to pass ■ remedial and core courses in the "the usual timeframe for achieving a two-year degree, plus two additional semesters." (R.2). ACCESS-VR funded the maximum 6 semesters of college for the Consumer, allowing the Consumer to complete all but one of the computer classes for a certificate in computer mix media technology, but the Consumer has not been able to complete ■ AA degree in the same timeframe. ACCESS-VR has also stated that the "significant change" language exception contained in section 405.00 College and University Training Policy – Length of Training applies to consumers who have a significant change in their disability, impairment or health requiring hospitalization and a stay of their studies. ACCESS-VR argues that ■ exception does not apply to the Consumer who does not have a significant change in ■ disability or health.

ACCESS-VR's position is that it would apply for a waiver and would sponsor the Consumer for the fall 2017 semester if the Consumer passes █ courses for the spring 2017 semester. ACCESS-VR has stated that it would not pay or reimburse the Consumer for the spring 2017 semester because the courses are remedial courses in reading and writing which the Consumer must pass to advance to the remaining core courses for █ AA degree.

FINDINGS OF FACT

1. The Consumer at the hearing did not offer any testimony. █ Father presented the Consumer's case. The Consumer applied for and was found to be eligible for ACCESS-VR services on December 23, 2013. (R.1A) The agreed employment goal for the Consumer is Computer Network Support Specialist and other related job titles. (R. 2). The Consumer has expressed █ interest in computer technology. (P. 1-3).
2. ACCESS-VR evaluated the Consumer and agreed to pay for computer classes which are necessary to the Consumer's work goal. ACCESS-VR did not agree that an AA college degree was necessary to the Consumer's work goal and college sponsorship was on a probationary basis. ACCESS-VR agreed to allow the Consumer to attend QBCC with the goal of completing computer courses to obtain a certificate in computer mix media technology and to allow the Consumer to compete core courses necessary for an AA degree. (R. 3-4).
3. In 6 semesters at QBCC, the Consumer received grades of B or better in █ computer classes, and has completed all but one of the computer classes needed for the certificate in computer mix media technology. The Consumer has done well in █ computer technology classes, but has not been able to pass █ remedial writing class which is necessary for the Consumer to progress to other core courses for █ AA degree. (R.12).
4. The Consumer's Father was aware that the shorter certification class in new media tech would be easier than the AA degree program for the Consumer. (R.1A). After the fall 2016 semester, ACCESS-VR believes that the Consumer's ability to complete the minimum 2-3 semesters of core courses for an AA degree is tenuous, based on the case history

impressions/evaluations of the Consumer's abilities and the Consumer's grades in ■ non-computer classes at QBCC. (R.3, 9, 12).

5. The Consumer's Father is sure that the Consumer will pass remedial writing by spring 2017 and will pass the remaining core courses within the projected additional 2-3 semesters necessary for an AA degree. The Consumer's Father is focused on the Consumer obtaining an AA degree and ■ stated that if the Consumer was denied additional funding, ■ would dropout from QBCC, stay home on disability and ■ genius would be wasted. (Tr. Pg.100).

LAWS, REGULATIONS AND POLICIES

Title 1 of the Rehabilitation Act of 1973 provides for a variety of services to assist persons with disabilities to achieve an employment outcome and may include training at the college level. 29 U.S.C. § 701, et seq. ACCESS-VR policy and procedure 405.00 College and University Training Policy (April 2007) provides that generally ACCESS-VR will contribute towards a college degree if it is required to achieve the work goal as agreed to in the IPE. Section 405.00 – Length of Training states that “students are generally expected to follow the usual timeframes for achieving a two-or four-year degree, [and] if needed, ACCESS-VR will provide financial contribution for up to one semester in addition to each required academic year to complete required course work. For example, two additional semesters will be allowed to complete a two-year program”. (R.2).

ACCESS-VR Policy 100.00 Consumer Involvement Policy (February 2007), stresses the importance of a consumer/individual “to be as independent as they desire in designing and fulfilling their individualized plans for employment (IPE).” A number of appellate court decisions recognize this policy. See e.g. Goldstein v. VESID, 199 A.D. 2d 766, 769, 605 N.Y.S. 2d 425, 427 (3rd Dep’t 1993). While this policy encourages consumer involvement, it does not mean that consumers “have complete control over their programs. Vocational rehabilitation counselors must review, consider and approve all IPEs.” See Policy 100.00.

The New York State Court of Appeals has held that while the Rehabilitation Act requires the provision of necessary services, it does not require the provisions of services to help a person achieve the highest possible level of employment. It is “ACCESS-VR that makes the final decision with respect to the contents of the [IPE], including the listed goal, eligibility and the scope of services to be provided.” Murphy v. VESID, 92 N.Y. 2d 477, 488, 705 N.E. 2d 1180, 1185, 683 N.Y.S. 2d 139, 144 (1998) (citation omitted). The Court of Appeals held that the “legislative goal is to empower eligible individuals with the opportunity to access their maximum employment, not to provide individuals with idealized personal preferences for actual optimal employment.” Id.

DECISION

The Consumer has cognitive disabilities and physical disabilities which limits ■ speech and physical activities. The Consumer rarely spoke at the hearing and it was the Consumer’s Father who argued the Consumer’s case. The ACCESS-VR case notes (R. 1A, 3, 4 and 5) indicate that the Consumer’s Father was vocal and active in deciding the Consumer’s work goal in the IPE and in pushing for AA degree classes to be included as a milestone in the initial IPE. (R.5). ACCESS-VR approved the initial IPE and contributed to the Consumer’s college courses for six semesters allowing for the Consumer to pursue ■ AA degree. The Consumer was not able to complete ■ AA degree in the six semester timeframe. The Consumer’s Father made an emotional argument for a waiver, pointing to the tremendous progress the Consumer made in ■ computer courses and the high grades ■ received.

I have reviewed the testimony and evidence presented at this hearing and I have applied the relevant policies, regulations and laws applicable to the issues presented at this hearing. I find that ACCESS-VR has properly denied the continued sponsorship of the Consumer’s spring 2017 college tuition. ACCESS-VR recognizes the progress the Consumer has made in ■ computer studies and does not dispute that the Consumer will find employment in the area of computer technology. ACCESS-VR does not dispute that the Consumer will complete ■ AA degree. However, after 6 semester of college sponsorship, ACCESS-VR has no choice but to stop college sponsorship because the maximum benefits for payment of college have been reached. I find that ACCESS-VR is bound by the limits and length of training stated in section 405.00, having sponsored 6 semesters of college for the Consumer which is the maximum amount of sponsorship.

I find that the Consumer's progress toward passing ■ remedial writing course is not "significant change" under section 405.00 which warrants funding of the Consumer's spring 2017 college semester because ACCESS-VR's interpretation and application of the rule is correct. I find that the significant change exception in the rule applies to any changes in a consumer's physical disability, impairment or health that may interrupt that consumer's studies warranting a waiver of the time limits. I find that ACCESS-VR acted reasonably in proposing a possible waiver for additional sponsorship for the fall 2017 semester and perhaps to completion of the Consumer's AA degree, if the Consumer passes the courses in ■ spring 2017 semester. I find that ACCESS-VR's proposal is consistent with the IPE which emphasized the probationary basis of college for the Consumer. I find that despite the Consumer's Father's arguments, ACCESS-VR has not stopped all support for the Consumer. ACCESS-VR stated that it will continue to provide counseling and guidance to the Consumer during the spring 2017 semester if the Consumer continues with ■ remedial courses, and if the Consumer decides to find a job in the area of computer technology. I find that the Consumer has not provided any evidence that an AA degree is required to complete ■ IPE work goal of computer network support specialist and that the Consumer will be forced "to stay at home and do nothing" without an AA degree. In the changed IPE dated August 11, 2016, the Consumer expressly acknowledged that ACCESS-VR would not continue college sponsorship after the fall 2016 semester. I find that ACCESS-VR is not required to optimize the services provided to the Consumer by continuing college sponsorship for an AA degree, when it is uncertain if the Consumer can pass remedial reading, remedial writing and English 101 to progress onto to ■ remaining core classes. Lastly I find that ACCESS-VR has presented detailed background, developmental, IPE and chronological case notes showing that the Consumer and ■ father were informed of every decision and proposal regarding the time limits of the Consumer's college sponsorship.

Dated: ■ 2017

_____, Impartial Hearing Officer

APPEAL NOTICE

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