

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

In the matter of

██████████ ██████████

Petitioner,

Against

ADULT CAREER AND CONTINUING EDUCATION SERVICES
VOCATIONAL REHABILITATION (ACCES-VR)

Respondent,

FINDINGS OF FACT AND DECISION

Before: ██████████ S ██████████, Impartial Hearing Officer

For Petitioner: ██████████ ██████████

For ACCES-VR: ██████████ ██████████ Assistant District Office Manager and ██████████ ██████████, VRC

Dates of Hearing: ██████████ 2017 & ██████████, 2017

Place: ACCES-VR ██████████ District Office

██████████
██████████ NY 1 ██████████

INDIVIDUALS WHO APPEARED ON ██████████ 2017

██████████ Consumer Petitioner
- ACCES-VR District Manager
██████████ ACCES-VR Vocational Rehabilitation Counselor

INDIVIDUALS WHO APPEARED ON ██████████ 2017

██████████ Consumer Petitioner
██████████ ACCES-VR Assistant District Manager

PRELIMINARY STATEMENT

I am an Impartial Hearing Officer, approved by the State Education Department. I was appointed to this Hearing by letter dated [REDACTED] 2017 from Anne Sternbach, Senior Vocational Rehabilitation Counselor.

The Impartial Hearing began at [REDACTED] a.m. on [REDACTED] 2017 at the ACCES-VR [REDACTED] District Office located at [REDACTED] New York [REDACTED]. Petitioner was advised in the letter dated [REDACTED] 2017 about the [REDACTED] [REDACTED]) and [REDACTED] right to representation. Petitioner was not represented by counsel but was aware of [REDACTED] right to counsel and waived that right. The Impartial Hearing was not concluded on [REDACTED] [REDACTED] 2017 and was scheduled to continue, by letter dated [REDACTED] 2017 from Anne Sternbach, Senior Vocational Rehabilitation Counselor. Petitioner was advised again in the letter dated [REDACTED], 2017 about the [REDACTED] [REDACTED] e [REDACTED] [REDACTED]) and [REDACTED] right to representation. Petitioner was not represented by counsel on the second day of the Impartial Hearing but was aware of [REDACTED] right to counsel and again waived that right. The Impartial Hearing began at [REDACTED] a.m. on [REDACTED] 2017 at the ACCES-VR [REDACTED] District Office located at [REDACTED] [REDACTED] [REDACTED], New York [REDACTED] and was completed on this second day.

A list of the exhibits offered into evidence is attached to [REDACTED] decision. The transcripts were fully received by this IHO on [REDACTED] 2017.

ISSUES

Whether ACCES-VR should provide support for suitable and customized service internship as a paralegal which is selected to lead to job competence and marketability.

Whether ACCES-VR should provide a new vendor to offer placement services.

Whether ACCES-VR should provide Petitioner a new Vocational Rehabilitation Counselor to be assigned to [REDACTED] case.

PETITIONER'S POSITION

Petitioner's position is that ACCES-VR has not appropriately serviced [REDACTED] needs in providing [REDACTED] with an appropriate vocational counselor, providing [REDACTED] with an appropriate vendor and failing to provide [REDACTED] with the tools for appropriate job placement. The Petitioner believes ACCES-VR has failed [REDACTED] since the moment [REDACTED] first contacted ACCES-VR and spent the majority of [REDACTED] testimony supplying the history of [REDACTED] case, as [REDACTED] stated, "Again, I'm trying to cover five hearings minimum in this one." (Tr.330)

At the time of requesting the impartial hearing, Petitioner was enrolled at Hunter College Continuing Education Programs having completed the Fall 2016 semester and enrolled for the Spring 2017. (Ex. M & P) Also, at the time of the hearing request, Petitioner's current vocational rehabilitation counselor was in the process of trying to secure a vendor with an internship. (Tr.349-350) However, Petitioner's position is that [REDACTED] was not being given the support [REDACTED] needed to secure a suitable and customized internship as there were delays in communications to [REDACTED] and delays on actions being taken on [REDACTED] requests. (Tr.346-347) The lack of communication in the Petitioner's expectation of an appropriate timeframe was the main reason [REDACTED] requested [REDACTED] hearing. (Tr.350) This interpretation, coupled with Petitioner's

position that ACCES-VR has failed to provide support to secure a suitable and customized internship, is ■■■ request that ACCES-VR secure ■■■ a new vendor for placement services. At the time of the Impartial Hearing, Petitioner was no longer with the vendor ■■■ was provided for placement services at the time ■■■ requested the hearing. (Tr. 349-350) The crux of Petitioner's position with regard to the vendors is that each involved a significant number of miscommunications, none of them were meeting ■■■ expectations of efficiency and they all failed to have the contacts ■■■ was expecting to help ■■■ enter the field ■■■ was pursuing at that time. (Tr. 204-209; 214-215; 217; 220-227; 243-262) None of the vendors were trustworthy or professional in Petitioner's opinion based on ■■■ experience with each.

With regard to the last issue of a new vocational rehabilitation counselor, Petitioner's position is that ■■■ current vocational rehabilitation counselor is "not competent to be a vocational counselor." (Tr. 212) Petitioner believes that ■■■ current vocational rehabilitation counselor does not "understand what to do about anything in a case like" ■■■ "and ■■■ does not grasp concepts, and ■■■ doesn't think about money or anything, that somehow ■■■ has ■■■ picture of a bureaucracy that" ■■■ "doesn't know anything about in ■■■ head." (Tr. 218) It is further Petitioner's position that there were misunderstandings between ■■■ and ■■■ current vocational rehabilitation counselor on ■■■ assignments for job placement and how those situations were handled. (Tr.314) ■■■ also believes that ■■■ current vocational rehabilitation counselor "doesn't know what is expected of ■■■" leading to further issues as ■■■ had certain expectations of ■■■ that ■■■ was not fulfilling. (Tr. 228; 316)

Petitioner maintains that ACCES-VR failed to service ■■■ needs; that ■■■ vocational rehabilitation counselor was not skilled or competent enough to meet ■■■ expectations; and that

the vendors [REDACTED] was provided were untrustworthy, unprofessional and did not meet [REDACTED] expectations.

ACCES-VR's POSITION

ACCES-VR's position is that they have been, and are still currently, trying to provide Petitioner with a suitable and customized internship as a paralegal chosen to lead to job competence and marketability. In addition, they were securing a new vendor for an internship. (Tr. 54) Lastly, it was ACCES-VR's position that a new vocational rehabilitation counselor was necessary as Petitioner's current vocational rehabilitation counselor is aware of the [REDACTED] of Petitioner's case and was working toward meeting [REDACTED] goal as outlined in [REDACTED] individualized plan for employment. (Ex. 3)

ACCES-VR maintains that they never denied Petitioner support to secure a suitable and customized service internship as a paralegal, that they approved and approved [REDACTED] for Hunter College and that at the time of Petitioner's request for a hearing, and at the time of the hearing, they were in the process of securing vendors for this internship.

LAWS, REGULATIONS, AND POLICIES

ACCES-VR Policy 100.00 Consumer Involvement Policy (February 2007), (hereafter referred to as The Policy) defines the partnership between vocational rehabilitation counselors and individuals with disabilities. It also notes the parameters for which individuals have control over their individualized plans for employment (hereafter referred to as IPE). The Policy states that one major goal of the rehabilitation process is to foster the greatest degree of autonomy and responsibility, as devised by an individual. It states that individuals should and are encouraged to be independent and responsible in developing the IPE, including but not limited to scheduling

their own appointments, researching investigatory assignments and performing other tasks with full support and guidance of their counselors, as needed. (Ex.1)

The Policy further states that consumer choice does not mean that they have complete control and that the vocational rehabilitation counselor will apply their professional judgement and expertise of applicable law, regulations, and policies.

DECISION

The Hearing on this matter was to determine three issues: whether ACCES-VR should provide support for suitable and customized service internship as a paralegal that is chosen to lead to job competence and marketability; whether ACCES-VR should provide a new vendor to provide placement services; and whether ACCES-VR should provide Petitioner with a new Vocational Rehabilitation Counselor to be assigned to ■ case.

It is the decision of this Impartial Hearing Officer after careful review of testimony, evidence, policies, regulations, and law relating as follows:

PETITIONER’S REQUEST FOR NEW VENDOR AND SUPPORT FOR SUITABLE AND CUSTOMIZED SERVICE INTERNSHIP

The Petitioner’s request for a new vendor is a moot issue, as at the time of the request for the hearing and at the time of the hearing, ACCES-VR was already in the process of securing a new vendor for the Petitioner and Petitioner was no longer working with the prior vendor. (Tr. 54; 349-350) While Petitioner did testify that ■ vocational rehabilitation counselor was in the process of securing a new vendor and internship, ■ described it as a “pro forma gesture but not an offer to help me find an internship that would be adequate to my needs, no.” (Tr. 379) ■

concern was that the offer made by [REDACTED] vocational rehabilitation counselor was vague. In fact, when [REDACTED]. [REDACTED], Petitioner's vocational rehabilitation counselor, testified about the new vendors and internship, [REDACTED] was not descriptive regarding who the possible two vendors were or what the internships may entail. However, it is clear from Petitioner's testimony that the request for this Hearing was solely the result of wanting an answer from [REDACTED]. [REDACTED] regarding a possible internship [REDACTED] was developing through a different school than Hunter College. During the period leading up to the request for a hearing, Petitioner was working with [REDACTED] advocate [REDACTED]. [REDACTED] testified that [REDACTED] informed [REDACTED] that [REDACTED] filed for a hearing just to get an answer from [REDACTED]. [REDACTED] because [REDACTED] believed [REDACTED] was taking too long to give [REDACTED] an answer.

(Tr.350-351)

Therefore, it is the decision of this Hearing Officer that Petitioner's requests for suitable and customized service internship as a paralegal that is chosen to lead to job competence and marketability and the request for a new vendor are moot. As is clear from the testimony of [REDACTED] and Petitioner, ACCES-VR is already in the process of securing a new vendor and an internship as [REDACTED] seeks; in addition, to the fact that in [REDACTED] own testimony, Petitioner states that [REDACTED] requested [REDACTED] Hearing solely to get [REDACTED]. [REDACTED] to answer [REDACTED] questions regarding an internship [REDACTED] was attempting to secure at a different institution than Hunter College where [REDACTED] was currently being sponsored by ACCES-VR.

**PETITIONER'S REQUEST FOR NEW VOCATIONAL REHABILITATION
COUNSELOR**

Petitioner in [REDACTED] direct testimony made several references to [REDACTED] belief that [REDACTED] [REDACTED] has failed to meet [REDACTED] expectation and [REDACTED] has also stated that [REDACTED] is incompetent as a vocational counselor.

However, throughout [REDACTED] direct testimony, Petitioner gives credit and appreciation to [REDACTED] [REDACTED] related to numerous situations. [REDACTED] states that [REDACTED] set [REDACTED] up with the New York Paralegal Association which was a "sincere effort" by [REDACTED]. [REDACTED]. (Tr. 184) [REDACTED] states later that "[REDACTED] is just [REDACTED] [REDACTED]. [REDACTED] is quite correct that [REDACTED] seems to have made all the right moves...." and then goes on to discuss the misunderstandings or different expectations between [REDACTED] and [REDACTED] [REDACTED] (Tr. 185) Petitioner later testifies "[REDACTED] being very responsible, because [REDACTED] really does mean well, [REDACTED] really does well, [REDACTED] set up a meeting so that we would all three meet together..." (Tr.217) And again [REDACTED] notes, "I left out a very important fact with the meeting. [REDACTED] did something very important and very thoughtful. [REDACTED] mentioned that this was urgent." (Tr.221-222)

It is clear from the testimony that there have been miscommunications surrounding the expectations between [REDACTED] and Petitioner. In [REDACTED] direct testimony Petitioner at one point testified "[REDACTED] doesn't say many words, so I just assumed that [REDACTED] knows exactly what we both agree on..." (Tr. 316) This Hearing took two days and much of the Petitioner's testimony surrounded background information that involved a prior vocational rehabilitation counselor. [REDACTED] is Petitioner's second vocational rehabilitation counselor and it is clear from [REDACTED] testimony, and Petitioner's testimony, that [REDACTED] is performing [REDACTED] duties and attempting to meet

Petitioner's goals. While Petitioner does not believe [REDACTED] attempts to meet [REDACTED] goals satisfy [REDACTED] personal standards, it is the decision of this Hearing Officer that there is no need to change vocational rehabilitation counselor and therefore that request is denied. There is a lot of background to Petitioner's case as is evident from the lengthy testimony of Petitioner and [REDACTED] [REDACTED] is aware of the background. The history is relevant to the case's progress. It would be counterproductive to change counselors at this point. However, it is clear that [REDACTED] and Petitioner need to work out a better system to clearly communicate with each other and verbalize expectations as well as to not make assumptions as to what the other is thinking or expects; this appears to be the crux of the issue between Petitioner and [REDACTED]

For the reasons stated above and supporting testimony and evidence Petitioner's requests for support for suitable and customized service internship and a new vendor are moot and Petitioner's request for a new vocational rehabilitation counselor to be assigned to [REDACTED] case is denied.

Dated: [REDACTED] 2017

[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.

██████████ IMPARTIAL HEARING ██████████ 2017

████████████████████ Documentary Evidence List of Exhibits

- Exhibit A Resume
- Exhibit B Correspondence from ██████████, Vocational Rehabilitation Counselor dated ██████████ 2013
- Exhibit C Neuropsychological Assessment/Vocational Evaluation dated ██████████, 2013
- Exhibit D Physical Exhibits of Petitioner's publications
- Exhibit E Vocational Evaluation Examination conducted by ██████████ dated ██████████
- Exhibit F Draft ACCES-VR: Individualized Plan for Employment (IPE)
- Exhibit F Email Correspondence dated ██████████, 2014, with ██████████ ██████████ from ACCES-VR and ██████████ ██████████ ██████████
- Exhibit H Email Correspondence between ██████████ & ██████████, Esq. ██████████ Program Director
- Exhibit I HALO Branded solutions
- Exhibit J Email Correspondence between ██████████ & ██████████, Esq. ██████████ Program Director
- Exhibit K Handbook of Child Custody Edited by ██████████
- Exhibit L Not Admitted into Evidence
- Exhibit M Hunter College Office of Continuing Education Invoice/Receipt, Transcript & Summary Dated ██████████ 2016

- Exhibit N Email Correspondence between [REDACTED] & [REDACTED] from [REDACTED], Job Placement Counselor
- Exhibit O Not Admitted into Evidence
- Exhibit P Continuing Education at Hunter College Transcript dated [REDACTED] 2017
- Exhibit Q New York State Education Department Adult Career & Continuing Education Printout
- Exhibit R Regional Office Memorandum No. 98-34 by Nell C. Carney, Commissioner Rehabilitation Services Administration
- Exhibit S US Department of Education Office of Special Education and Rehabilitation Services Policy Directive dated [REDACTED] 2001.
- Exhibit T ACCES-VR Case Chronology

ACCES-VR Documentary Evidence List of Exhibits

- Exhibit 1 New York State Education Department Consumer Involvement Policy
- Exhibit 2 Case Law: Matter of Goldstein v. Office of Vocational & Educational Services For Individuals with Disabilities of the New York State Educ. Dept.
- Exhibit 3 Individualized Plan for Employment (IPE) dated [REDACTED]/16

ARBITRATOR Documentary Evidence List of Exhibits

- Exhibit 1 Notice of Hearing dated [REDACTED] 2017
- Exhibit 2 Notice of Hearing dated [REDACTED], 2017