

DECISION

**THE NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF ADULT CAREER AND CONTINUING
EDUCATION SERVICES-VOCATIONAL REHABILITATION**

In the Matter of:

[REDACTED]

Petitioner

-Against-

**Office of Adult Career and Continuing
Education Services-Vocational Rehabilitation (ACCES-VR),**

Respondent

Before:

[REDACTED]
Impartial Hearing Officer

For Petitioner:

[REDACTED] Petitioner

For Respondent:

[REDACTED]
Director of Counseling, [REDACTED]
ACCES-VR

[REDACTED]
Senior Vocational Rehabilitation Counselor, ACCES-VR

[REDACTED]
Vocational Rehabilitation Counselor, ACCES-VR

Place:

Office of Adult Career and Continuing Education
Services-Vocational Rehabilitation

[REDACTED]

Date:

[REDACTED]

INTRODUCTION

On ██████████ the Office of Adult Career and Continuing Education Services – Vocational Rehabilitation (“ACCES-VR” or “Agency”) of the New York State Department of Education appointed me to act as the Impartial Hearing Officer (IHO) in a case brought by ██████████ Petitioner (“Participant”). The Participant requested the hearing by filing a due process request with ACCES-VR dated ██████████¹ (Arbitrator Ex. 1). A list of exhibits is attached to this decision.

ISSUE

Whether ACCES-VR improperly denied college support towards the IPE goal of ██████████ to the Petitioner. (t. 9-10)

PETITIONER’S POSITION

Petitioner asserts that ACCES-VR employees denied ██████████ college sponsorship without advance notice as required. In addition, in calculating the years of sponsorship the Agency took in to account times when ██████████ was not in school. The Petitioner seeks to have college support towards ██████████ IPE goal of preschool ██████████ to be resumed.

RESPONDENT’S POSITION

It is the position of the Respondent that the ██████████ ACCES-VR office provided ██████████ ██████████ with more than ██████████ years of college sponsorship, despite concerns with the duration and the ability to reach the goal of ██████████. The policy of the Agency limits the duration of college sponsorship and the Respondent had exceeded that limit.

¹ The hearing was originally scheduled for ██████████ but was adjourned at the request of the Participant.

FINDINGS OF FACT

██████████ has been receiving services, in the form of college sponsorship, from the Agency since in or around ██████████ when ██████████ was attending ██████████ ██████████ College. The policy of the Agency, §405.00 College and University Training Policy, states:

While students are generally expected to follow the usual timeframes for achieving a two- or four-year degree, if needed, ACCES-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, and four additional semesters will be allowed to complete a four-year program. These allowances include all part-time training and can be pro-rated for students who have completed coursework toward the degree. These time frames are cumulative and include any change in school, major course of study and case re-opening after partial completion, unless a significant change in the individual's situation provides good cause for additional time.

At the time sponsorship began ██████████ had ██████████ semesters left for ██████████ associates degree. ██████████ obtained ██████████ associates degree and then ██████████ enrolled in ██████████ College for ██████████ bachelor's degree. ██████████ took several years off from school for various reasons. ██████████ Director of Counseling ("DOC"), testified that the Agency, in applying §405.00 length of training to ██████████ case, only counted the semesters that were actually sponsored for ██████████. The policy of the agency does allow for part time attendance in college but the policy regarding duration remains the same. (t. 42-43, 48, 56-57, Ex. A, 4)

On ██████████ case was closed by the Agency. A Closure Summary Case Note by ██████████ stated that ██████████ had missed the deadline to be re-admitted to ██████████ College for the ██████████ semester and ██████████ was unsure if ██████████ would be re-admitted in time for the ██████████ semester. The case was closed

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because the Participant failed to follow through and obtain readmittance by the ██████████ semester. However, ██████████ was advised that ██████████ when ██████████ was ready to resume vocational services ██████████ could contact the Agency. In ██████████ ██████████ contacted the Agency to obtain college sponsorship. On ██████████ met with ██████████ Director of Counseling, and advised that ██████████ had been attending college but had to withdraw due to deaths in the family. When ██████████ attempted to re-enroll at ██████████ ██████████ was told ██████████ would be on academic probation, and when ██████████ tried to re-apply for services with the Agency ██████████ was never called for intake. ██████████ discussed with ██████████ the fact that ██████████ had attended school for approximately ██████████ semesters and needed to complete at least ██████████ credits for a degree in ██████████. They also discussed the fact that ██████████. ██████████ was ██████████ years old, and probably would not graduate for at least ██████████ years, and could face age as a barrier to employment. At that time, in ██████████ ██████████ informed the Participant that the Agency might only be able to support ██████████ to ██████████ semesters. ██████████ also informed ██████████ that the Agency would not sponsor graduate school. (t. 44-45, 47, Ex. 8, 9)

██████████ case was assigned to ██████████ Vocational Rehabilitation Counselor (“VRC”) in ██████████ when the Participant requested a change of VRC. ██████████ and ██████████ met with ██████████ and ██████████ representative from the Client Assistance Program (“CAP”) ██████████ on or about ██████████ to discuss ██████████ goals and the next steps in that program.² At that meeting the ██████████ was asked the number of credits needed to complete ██████████ degree, an estimated date of graduation and what is needed to move forward in order to complete the degree. ██████████ was

² ██████████ noted that every meeting that ██████████ had with ██████████ was also attended by ██████████ ██████████ never met independently with ██████████ and every e-mail that was sent to arrange meetings, or address any concerns, included ██████████ (t. 61, 68)

unable to provide that requested information. There was also a recommendation by ██████████ ██████████ that there be an Assistive Technology Evaluation. The purpose of an Assistive Technology Evaluation is to assess a person's needs with respect to assistive technology in order to enhance a person's productivity and it could consist of software or hardware. Further, it provides support for individuals in recognition that many people have challenges in processing information, organizing and planning their work for school and may not be able to listen and process without assistance. ██████████ was evaluated by an ██████████ provider. An evaluation report was generated and provided to the parties and reviewed by the VCR with ██████████ and ██████████ representative. The recommended equipment was ordered by the Agency and delivered to ██████████.³ The evaluation also recommended training for ██████████ in the use of the software and equipment which was also paid for by the Agency.⁴ ██████████ never indicated that there was any problem or issue with the assistive technology ██████████ was provided with. (t. 60-68, Ex. 10, 12, 13, 14, 48)

██████████ met with ██████████ and ██████████ representative at least once a year. The Participant was also required to submit transcripts and ██████████ would be asked if there were any issues on the campus with taking courses. In addition, every year when the VRC met with ██████████ and ██████████ representative ██████████ was informed of college duration limits. Every year ██████████ reviewed the College Fact Sheet with ██████████ representative. The College Fact Sheet includes various requirements and limitations, including the

³ The Assistive Technology evaluation recommendation included, but is not limited to, the following: multifunction printer, Kurzweil training software, Microsoft Office software, Olympus Digital Recorder, Dragon Dictate software, Bagatrix college Algebra/Pre-Calculus software and Mavis Beacon Typing software. (t. 63, Ex. 48)

⁴ ██████████ testified that after completing the training for the equipment ██████████ ██████████ admitted that ██████████ was not using the assistive technology and could not provide an explanation. ██████████ was urged to practice what ██████████ had learned in training and utilize all devices both on and off campus. (t. 65, Ex. 22)

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duration of training limits. ██████████ testified that all college students are required to review and sign the form and are provided with a copy. ██████████ did not agree with the duration limits and noted it on all but one of the forms ██████████ signed. (t. 66-68, 96, Ex. 34, 35, 36, 37)

██████████ testified that initially, in ██████████ ██████████ did not have concerns about ██████████ ██████████ ability to move forward and reach ██████████ IPE goal. However, by ██████████ ██████████ was having concerns. One concern was that ██████████ did not meet independently with the VCR. Generally, when meeting with participants in ██████████ office they meet independently because going forward when they go to work a person will be working independently. ██████████ noted that self-advocacy is a significant part of moving forward in the work world. The VCR testified that ██████████ had strong concerns with ██████████ ██████████ ability to self-advocate and work independently without supports which ██████████ noted in ██████████ case notes. ██████████ testified that in addition to assistive technology ██████████ requested tutors for ██████████ classes before even beginning the class. ██████████ ██████████ was advised that the Agency policy required that ██████████ would have to start the class and then meet certain other requirements before being provided with funding for tutors by the Agency. ██████████ was ultimately provided with tutors when requested and would request addition hours for tutors which was often partially provided. The VRC noted numerous times in ██████████ Case Notes that ██████████ has significant concerns with ██████████ ██████████ potential for employment based on the challenges ██████████ faces every semester even with supports. ██████████ noted on ██████████ “...VRC also has concerns on the participant completing ██████████ degree in the time frame ██████████ outlined. Additional VRC concerns center on the consumer attending p/t, ██████████ ability to follow through, take

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responsibility for ■■■ actions and ability to attend/focus.” ■■■ testified that even with ■■■ concerns ■■■ continued to provide the Participant with college sponsorship because wanted to give ■■■ the benefit of the doubt and the opportunity to improve and succeed. However, the end goal for the Agency when providing services is employment, including college sponsorship. The fact that a person is found to be eligible for services does not mean that receipt of services is open-ended. The services must be cost effective and the assessment is ongoing. (t. 39-40, 69-71, Ex. 2, 18, 20, 22, 24, 25, 29, 30)

■■■ testified that for the most part ■■■ attended ■■■ on a part time basis. Every year ■■■ would bring in a letter from ■■■ psychotherapist which stated that based on ■■■ mental health condition ■■■ needed to attend college part time. ■■■ Senior Vocational Rehabilitation Counselor (“SRVC”) testified that the Agency sponsored the Participant over a period of ■■■ years, from ■■■ for a total of ■■■ semesters. ■■■ noted that there was a pattern of ■■■ taking incompletes, sometimes ■■■ did makeup work to get the credits and other times ■■■ did not. There was also a pattern of withdrawals. ■■■ is ■■■ ■■■ supervisor and has been since ■■■ Upon reviewing the case with ■■■ the SVRC questioned the number of semesters sponsored and noted that there had been a constant concern noted, over the years, about the ability of ■■■ to be successful in reaching ■■■ IPE goal of ■■■ However, ■■■ gave the Participant the benefit of the doubt and approved the plans for a time. A review of the credits attempted, ■■■ and the credits earned, ■■■, revealed that while the Participant had more than enough credits for a bachelor’s degree (120) ■■■ did not have the course requirements for ■■■ degree. Nor did ■■■ have the requisite credits to do student

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teaching. When asked when ██████ would graduate ██████ said ██████ which was then pushed to ██████ but there has been no firm date. ██████ noted that numerous accommodations have been made, especially in the area of tutoring. In some instances, ██████ noted that even when provided with tutoring there were times when ██████ would not receive credit or would have to withdraw. (t. 43-44, 71-75, 78-81)

A meeting was held on ██████ with ██████ ██████ representative, ██████ ██████ In the course of the meeting the VRC, SVRC and DOC discussed with the Participant and ██████ representative the concerns that they had with ██████ ability to work as a ██████ the number of semesters that had been sponsored, ██████ pattern of withdrawals and incompletes even with supports and ██████ part time status. ██████

██████████ was advised that the Agency would no longer be providing college sponsorship. The goal of the Agency is employment and though they had exceeded the limits of the college sponsorship duration it did not appear that becoming a ██████ ██████ was a realistic goal. The Agency was not closing the case but wanted to explore options with the Participant. ██████ asserts that the Agency violated their own policy in that they were required to give ██████ advance notice prior to terminating sponsorship. ██████ states that the policy requires that if the Agency is going to suspend funding based on academic performance the decision must be made after the participant is given a reasonable opportunity to improve. ██████ also testified that ██████ did not agree with policy relating to duration set forth on the College Fact Sheet because people with disabilities have different needs and that ██████ has a ██████ as well as a ██████ (t. 74, 81-82, 87-92, Ex.4, 34, 35, 36, 37, B, C)

CONCLUSION

I find that ACCES-VR acted appropriately when the decision was made to cease sponsoring the Participants college tuition. I credit the testimony of ██████████ DOC, ██████████ VRC and ██████████ SVRC and the documents submitted by the Respondent. I find that they support a finding that the Participant was afforded college sponsorship over and above what is set forth in §405.00 College and University Training Policy despite significant concerns regarding the ultimate ability of the Participant to achieve the IPE goal of ██████████. It was unclear when the Participant would obtain the credits necessary for a degree in ██████████ or the requisite credits to do ██████ student teaching. I am not persuaded by ██████████ argument that the college sponsorship was terminated based on academic performance and therefore, under §405.00, ██████ was entitled to advance notice in order to improve. It is clear from the testimony of the Agency employees that ██████████ part time attendance and pattern of withdrawals and incompletes were a concern, but I do not find that it was the ultimate reason for terminating college sponsorship. ██████████ argues that because ██████ has a ██████████ ██████ should be afforded more time to obtain ██████ degree. It is unclear from the record whether the VRC, SVRC and DOC were aware that there was a formal diagnosis by ██████████ ██████████ in ██████. However, even without that knowledge the Participant was provided by the Agency with significant supports in the areas of Assistive Technology and tutors as well as time. Further, the purpose of ACCES-VR is to work with people with disabilities and I find ██████████ argument that because ██████ has a learning disability ██████ should be afforded more time than other people with disabilities

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to have no merit. The mission of ACCES-VR is to assist individuals with disabilities to obtain competitive employment. While the Agency employees did not believe that ██████████ would reach ████████ IPE goal of ██████████ they still wanted to explore other options after the termination of college sponsorship.

In view of the foregoing the Due Process Request filed by the Consumer is dismissed.

██████████
Impartial Hearing Officer

Dated: ██████████

RIGHT TO APPEAL

This decision will become final and ACCES-VR will begin to implement the decision within 20 (twenty) days. If Petitioner disagrees with my decision, ████████ may seek judicial review of my decision in either New York State Supreme Court or United States District Court.

EXHIBITS

Arbitrator Exhibit I.	Notice of Hearing dated, with attached Due Process Request various, 6 pages
Participants Exhibit A.	Individualized Plan for Employment, ██████████ pages
Participants Exhibit B.	Speech language evaluation, dated ██████████
Participants Exhibit C.	Speech language evaluation, dated ██████████
Agency Exhibit 1.	§100, Participant Involvement Policy, revised 2017, 4 pages
Agency Exhibit 2.	§202, Eligibility for services Policy, April 2009, 8 pages
Agency Exhibit 3.	§204, Assessment Policy, revised July 2017, 5 pages
Agency Exhibit 4.	§405, College and University Training Policy, amended April 2009, 18 pages
Agency Exhibit 5.	Summary of Limits on Duration and Cost of VR Services Pro-10-02, undated, 6 pages
Agency Exhibit 6.	Matter of Goldstein decision, dated 12/16/93, 3 pages
Agency Exhibit 7.	ACCES-VR Administrative Review Decision for ██████████, dated 1/██████████, 5 pages
Agency Exhibit 8.	Case note by ██████████, dated ██████████ 1 page
Agency Exhibit 9.	Case Note by ██████████ dated ██████████ 1 page
Agency Exhibit 10.	Case Note by ██████████ dated ██████████, 3 pages
Agency Exhibit 11.	Case Note by ██████████ dated ██████████ 2 pages
Agency Exhibit 12.	Case Note by ██████████ dated ██████████ 4 pages
Agency Exhibit 13.	Case Note by ██████████ dated ██████████ 2 pages
Agency Exhibit 14.	Case Note by ██████████ dated ██████████ 3 pages
Agency Exhibit 15.	Case Note by ██████████ dated ██████████ 2 pages
Agency Exhibit 16.	Case Note by ██████████ dated ██████████ 3 pages

Agency Exhibit 17.	Case Note by ██████████ dated ██████ 2 pages
Agency Exhibit 18.	Case Note by ██████████ dated ██████ 4 pages
Agency Exhibit 19.	Case Note by ██████████ dated ██████ 3 pages
Agency Exhibit 20.	Case Note by ██████████ dated ██████ 3 pages
Agency Exhibit 21.	Case Note by ██████████ dated ██████ 4 pages
Agency Exhibit 22.	Case Note by ██████████ dated 1 ██████ 3 pages
Agency Exhibit 23.	Case Note by ██████████ dated ██████, 3 pages
Agency Exhibit 24.	Case Note by ██████████ dated ██████, 5 pages
Agency Exhibit 25.	Case Note by ██████████ dated ██████ 3 pages
Agency Exhibit 26.	Case Note by ██████████ dated ██████ 2 pages
Agency Exhibit 27.	Case Note by ██████████ dated ██████ 3 pages
Agency Exhibit 28.	Case Note by ██████████ dated ██████ 4 pages
Agency Exhibit 29.	Case Note by ██████████ dated ██████, 4 pages
Agency Exhibit 30.	Case Note by ██████████ dated ██████ 4 pages
Agency Exhibit 31.	Case Note by ██████████ dated ██████ 3 pages
Agency Exhibit 32.	Case Note by ██████████ dated ██████ 2 pages
Agency Exhibit 33.	Case Note by ██████████ dated ██████, 2 pages
Agency Exhibit 34.	College Fact Sheet, dated ██████, 3 pages
Agency Exhibit 35.	College Fact Sheet, dated ██████ 2 pages
Agency Exhibit 36.	College Fact Sheet, dated ██████ 2 pages
Agency Exhibit 37.	College Fact Sheet, dated ██████ 2 pages
Agency Exhibit 38.	College Grid for ██████████ undated, 2 pages
Agency Exhibit 39.	College Transcript for ██████████ dated ██████ 3 pages
Agency Exhibit 40.	College Transcript for ██████████ dated ██████ 4 pages
Agency Exhibit 41.	College Transcript for ██████████ dated ██████ 4 pages
Agency Exhibit 42.	College Transcript for ██████████ dated ██████ 4 pages
Agency Exhibit 43.	College Transcript for ██████████ dated ██████ 4 pages

Agency Exhibit 44.	College Transcript for ██████████ dated ██████ 4 pages
Agency Exhibit 45.	College Transcript for ██████████ dated ██████ 4 pages
Agency Exhibit 46.	College Transcript for ██████████ dated ██████ 5 pages
Agency Exhibit 47.	Occupational Information Network Printout, undated, 14 pages
Agency Exhibit 48.	Assistive Technology Evaluation, dated ██████ 8 pages