NEW YORK STATE DEPARTMENT OF EDUCATION OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES

Petitioner

DECISION OF IMPARTIAL HEARING OFFICER

OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

Respondent Before: ______, Impartial Hearing Officer

The undersigned was designated by The State Education Department/Office of Adult Career and Continuing Education Services – VR (hereinafter, "ACCES" or "the Agency") to serve as Impartial Hearing Officer in the matter above.

After notice was given, a hearing was opened on	at the	District Office
of ACCES -VR,	The hearing	was scheduled to
begin at ACCES was represented by Assistant	nt District Offic	e Manager.
Petitioner was represented by		
also appeared on behalf.		
and testified on behalf o	of the Agency.	
, and testified on bel	half of the Petit	ioner.
Exhibits		
IHO 1 - Notice of Hearing		
IHO 2 - Notice of Hearing		

IHO 3 -	Due Process Request
Agency 1 -	Case Note 1
Agency 2 -	Case Note
Agency 3 -	Individualized Diagnostic Vocational Evaluation (Abilities, Inc.)
Agency 4 -	Case Note
Agency 5 -	Case Note
Agency 6 -	405.00 College and University Training Policy
Agency 7 -	Fact Sheet VR-844
Agency 8 -	Case Note
Agency 9 -	IPE (Change - dated
Agency 10 -	IPE (Change – dated
Agency 11 -	Case Note
Agency 12 -	Case Note
Agency 13 -	Decision by IHO (dated
Agency 14 -	Case Note
Agency 15 -	Letter from to (dated)
Agency 16 -	IPE (Change – dated
Agency 17 -	Case Note
Agency 18 -	Case Note
Agency 19 -	Case Note
Agency 20 -	Case Note
Agency 21 -	
	Case Note
Agency 22 -	Case Note
Agency 22 - Agency 23 -	
•••	Case Note
Agency 23 -	Case Note
Agency 23 - Agency 24 -	Case Note Case Note Email Thread
Agency 23 - Agency 24 - Agency 25 -	Case Note Case Note Email Thread Resume –
Agency 23 - Agency 24 - Agency 25 - Agency 26 -	Case Note Case Note Email Thread Resume – Android Developer
Agency 23 - Agency 24 - Agency 25 - Agency 26 - Agency 27 -	Case Note Case Note Email Thread Resume – Android Developer Case Note

Agency 30 -	Email			
Petitioner's	А	Graduation Status/miscella	neous	
Petitioner's	В	Letter from - C	OTR (dated	
Petitioner's	С	New Transfer St	udent Checklist	
Petitioner's	D	Summary Report for Comp	outer Network Support Special	list
Petitioner's	Е	Communit	ty College Fact Book	
Petitioner's	F	Letter from		
Petitioner's	G	Email from	to	(dated

Issue

The parties agreed that the issue for the Impartial Hearing Officer to decide is whether the Agency will sponsor **and the agency** in a program to earn a Bachelor of Science Degree. (R. 28).

Opening Statements

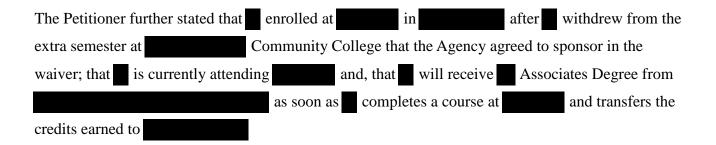
The Agency stated, through	its represen	tative,	that the Petitioner,	
came to the Agency in	and that	requested college sp	onsorship at that time.	goal was to
earn an Associates Degree and to become a computer support specialist.				

The petitioner struggled academically while was enrolled in Associates Degree program. We was not able to complete either the program's core courses or the required remedial courses within the time frames mandated by Agency. The Agency was not able to sponsor the Petitioner for final semester after the time frames embodied in Agency Policy was applied.

The Agency granted a request for a waiver of its time limitation policy to afford the Petitioner with one last semester to complete remedial course requirements. The Petitioner did not complete remedial course requirement at the conclusion of the semester.

The Agency remains willing to provide the Petitioner with job placement services. The Petitioner is now seeking Agency sponsorship so that the Petitioner can earn a Bachelor of Science Degree.

The Petitioner, through **and the second seco**



The Petitioner also asserts that wants to have a Functional Testing Evaluation (FTE) if request for sponsorship in a Bachelor of Science program is denied because current employment goal of computer specialist requires the performance of physical tasks that cannot perform.

Testimony

is a certifed rehabilitation counselor who has worked as a vocational rehabilitation counselor (VRC) with the Agency for the grant years. If earned a Master's Degree in vocational rehabilitation counseling from the formation of the grant o

began working with the Petitioner at the end of recommended that the Petitioner undergo a Diagnostic Vocational Assessment after noting impairments that included and a

The vocational assessment recommended against college level academics. It did recommend

enrollment in a trade school with employment goals that included computer support specialist, computer network support specialist, computer automated teller machine and office machine repairs. VRC considered the results of the DVE while making subsequent decisions involving the services that the Agency would provide to the Petitioner.

An initial IPE identified computer network support specialist as the Petitioner's employment goal. on behalf of the Agency, also agreed that the Agency would provide college sponsorship on a probationary basis that required the Petitioner to earn grades of not less than a C. The Petitioner's ability to pass remedial classes would also be considered for purposes of determining future college sponsorship. (R. 67 – 68).

Counselor advised the Petitioner that the Agency could no longer continue to sponsor enrollment in an Associate's Degree program at the Agency could no longer continue to sponsor Petitioner failed to pass remedial courses after attempts. (R. 80).

Agency since is a senior vocational rehabilitation counselor (SVRC). In has been with the Agency since in hold's a Master's Degree in rehabilitation counseling from the University of works with transition age Agency clients who are contemplating college as they move on from high school. If works with individuals who are seeking college training, trade school training, and job placement. If has been VRC is supervisor since is supervisory duties have included consultation, review, and approvals related to services received by or rquested for the Petitioner. If also reviews Individualized Plans for Employment (IPEs).

SVRC **Construct** offered into evidence a prior Decision involving the Agency and the Petitioner. The Decision, dated **Construct** was rendered by IHO **Construct** after a hearing that was held on **IHO Construct** the Agency was not required to provide the Petitioner with continuing sponsorship in pursuit of an Associate's Degree when, after numerous unsuccessful attempts, it was uncertain that the Petitioner could pass remedial courses that were required before the Petitioner could move onto core courses. The Decision applied to semesters up to and including the spring semester of **Construct**

After IHO **Construct** issued **Construction** Decision the Agency learned that the Petitioner was very close to earning **Construction** Associates Degree from **Construction** The Agency agreed to issue a waiver that would afford the Petitioner with sponsorship for the fall **Construction** semester only so that the Petitioner could complete the requirements necessary to receive **Construction** Associate's Degree. An amended IPE, that memorialized the one-semester waiver, pledged subsequent services that were limited to job placement. (**R** 98). The employment goal remained computer support specialist.

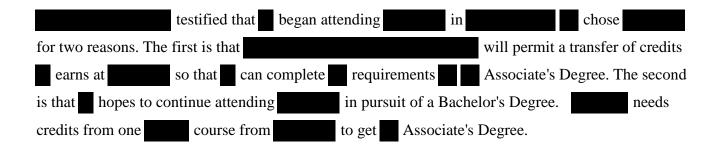
The Agency learned in that the Petitioner did not complete the fall semester at when VRC as asked the Petitioner to provide grades for the semester. The Petitioner advised VRC is that withdrew from a course because the Petitioner found the course to be too hard. Is suggested that and the Petitioner should discuss job placement services. The Petitioner responded by advising VRC is that wanted to enroll in a program geared to receiving a Bachelor's Degree.

In January **The** Petitioner enlisted the help of **The** a representative from CAP. requested a Functional Capacity Evaluation (FCE). The Agency stated that they have agreed to initiate the process for providing a FCE. However, the offer to provide an FCE requires the Petitioner to agree to accept job placement services. The Agency states that the Petitioner has acquired skills that render employable. The Agency also stated that they have offered to provide additional services related to securing a "work tryout" for the Petitioner.

asserts that the Petitioner's physical limitations render the Petitioner's current employment goal unrealistic because the Petitioner lacks the ability to use arm and hand. If the offered letters from an occupational therapist and a college professor that support assertions. If the wants an FCE so that the Agency will realize that the Petitioner's employment goal is not a viable one. If believes that if the Petitioner, is capable of doing work that is cerebral in nature; but not physical in nature. If stated that an FCE would establish the limits of the physical abilities.

stated that the Petitioner applied for jobs; but that is not a viable candidate

because does not have a Bachelor's Degree. further asserted that the Petitioner is not likely to be hired without one because lacks work experience that could compensate for lack of it.



Findings of Fact

On **Construction** Impartial Hearing Officer **Construction** held a hearing between the parties to this hearing to decide the issues of whether the Agency "properly denied sponsorship for additional semesters of college for the Consumer and whether the Consumer is eligible for a waiver for additional college sponsorship". Impartial Hearing Officer **Consumer** determined, in part, that the Petitioner (Consumer) was not eligible for additional college sponsorship by the Agency because the Petitioner "had reached the maximum benefits" that the Agency was permitted to provide. **Consumer** further decided that the Agency is not required to optimize services provided to the Consumer by continuing college sponsorship when it is uncertain if the Consumer can pass remedial reading, remedial writing, and remedial English courses necessary to progress onto core courses.

After Impartial Hearing Officer issued becision the Agency granted a waiver for the Petitioner to attend one final semester during the fall of so that the Petitioner could complete the last course necessary to earn an Associates Degree. The Agency agreed to grant the waiver with the understanding that the Agency would not provide any subsequent college related services; and, that the Agency would provide the Petitioner with job placement services at the conclusion of the semester.

The Petitioner withdrew from	in the fall of	did not
	in the run of	

complete the fall semester.

Discussion

The undersigned heard much of the testimony that the parties offered during the hearing on with a declared understanding that hearing the evidence from the former hearing would be limited to providing the undersigned with a complete background. The undersigned specifically advised the parties that the undersigned would not disturb the Decision rendered by IHO in also advised the parties that would only consider events that occurred after the prior Decision was rendered when deciding the issue presented for this hearing – whether the Agency's recent decision to deny the Petitioner's request for sponsorship in any college program and particularly a Bachelor's Degree - is supported by substantial evidence.

Both the Agency and the Petitioner, by way of the representatives, who included **the first states** and **the second states** are presentative from CAP, agreed that they will strive to obtain a Functional Capacity Evaluation. The undersigned will not address the FCE logistics in light of the agreement by the parties to arrange one.

from the fall semester; and, subsequent enrollment at another school in January The Petitioner has failed to raise any viable argument for disregarding, altering, or mitigating the Decision of IHO or for disregarding the agreement reached with the Agency when the Agency granted request for a waiver to attend to the Agency mathematical in the fall of

The Petitioner's conversion of request for college training from former pursuit of an Associate's Degree to present request to pursue a Bachelor's Degree is a distinction without a difference. Converting request from a request for sponsorship in pursuit of an Associate's Degree to pursuit of a Bachelor's Degree does not change the fact that any request makes remains subject to IHO Decision which applied the Length of Training provisions in the Agency's College and University Training Policy 405.

Decision

The Agency's determination to deny the Petitioner's request for additional sponsorship in a college training program that pursues a Bachelor's Degree is upheld.

Dated: New York

Impartial Hearing Officer

An Original or Copies of this Decision were mailed to:

Anne Sternbach ACCES-VR 89 Washington Avenue Room 560 EBA Albany, New York 12234

ACCES-VR		

