

DECISION

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

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In the Matter of:

[REDACTED]

Petitioner

-Against-

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

Respondent

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JUL 13 2015

BY: *[Signature]*

**Before:** [REDACTED], Esq.  
Impartial Hearing Officer

**For Petitioner:** [REDACTED], Petitioner

**For Respondent:** [REDACTED]  
District Manager, [REDACTED] District Office  
ACCES-VR  
[REDACTED]  
Vocational Rehabilitation Counselor, ACCES-VR  
[REDACTED]  
Director of Counseling, ACCES-VR

**Place:** Office of Adult Career and Continuing Education  
Services-Vocational Rehabilitation  
[REDACTED] District Office  
[REDACTED]  
[REDACTED] New York [REDACTED]

**Date:** May 29, 2015

## **INTRODUCTION**

On April 30, 2015 the Office of Adult Career and Continuing Education Services – Vocational Rehabilitation (“ACCES-VR”) of the New York State Department of Education appointed me to act as the Impartial Hearing Officer (IHO) in a case brought by [REDACTED] Petitioner (“Consumer”). The Consumer requested the hearing by filing a due process complaint with ACCES-VR dated April 7, 2015 (Arbitrator Exhibit #2). A list of exhibits is attached to this decision.

## **ISSUE**

Whether ACCES-VR, under its policies and procedures, approved the Consumers self-employment plan in order for the Consumer to move forward and invest money in the project and take classes. If so, is the self-employment plan still open for review based on the ACCES-VR requirement that additional documents and information be submitted by the Consumer. (t. 24-25)

## **PETITIONER’S POSITION**

Petitioner asserts that he had a plan for self-employment which was approved by his vocational rehabilitation counselor (“VC”) which went to a self-employment review committee and was approved by the committee. Based on that approval the Consumer proceeded with his self-employment plan and spent money to take a class. The Consumer contends that when his VC was transferred to another office for a promotion the new VC was not aware of the approval of the self-employment plan and the [REDACTED] [REDACTED] ACCES-VR office attempted to use this change to have the Consumer start the process for self-employment plan approval from the beginning.

## RESPONDENT'S POSITION

It is the position of the Respondent that the Consumers self-employment plan was provisionally approved but that there was additional information that is required under ACCES-VR's policies and procedures before the self-employment plan is fully approved.

## FINDINGS OF FACT

The Consumer was transferred to the [REDACTED] ACCES-VR office from the [REDACTED] office in 2006. The purpose of the transfer was to allow the Consumer to receive placement services through a firm in [REDACTED] and be placed as a computer programmer. The Consumer was assigned to VC [REDACTED]. An Individualized Plan for Employment ("IPE") was developed dated 8/24/06. The work goal was computer programmer to be attained by 6/30/07. (Ex. E) By the end of 2006 the Consumer had indicated that he was changing his career goal and was looking at self-employment opportunities. Communication between the Consumer and VC was sporadic with long periods of time when there was no contact. In November, 2009 the Consumer advised the VC that he was looking at several employment possibilities including self-employment. In February of 2011 the Consumer was still looking at self-employment and was interested in becoming a wine broker for a vineyard in California. In April of 2012 the Consumer was still looking at various self-employment ventures but had not found one that worked for him and, the VC considered that they were still in the career exploration phase. (t. 62-70) Pursuant to ACCES-VR's Policies and Procedures §206.00 Individualized Plan for Employment Policy and Procedure the IPE must be reviewed at

least annually by the individual and the counselor. As no employment or self-employment possibility was found, [REDACTED] testified that he periodically updated the Consumer's original IPE though no changes were made. (t. 70, Ex. A) The VC testified that there were frequent gaps in communication though he would speak to the Consumer periodically to discuss the latest employment idea but as of early 2013, nothing had been formalized. (t. 71, 90, 106-08)

On or about 6/17/13 the VC and Consumer met in the ACCES-VR office. At that time the Consumer advised that he had a self-employment goal which consisted of establishing an internet website for people interested in do-it-yourself projects. The Consumer was looking for funding from ACCES-VR and wanted to present his concept to the self-employment review team. The self-employment review team was comprised of the VC, the District Manager [REDACTED] and the Director of Counseling, [REDACTED]. The VC noted in his chronological notes dated 6/17/13, that the Consumer would also be looking for other sources of funding. (t. 71-72, Ex. I) In August, 2013 the Consumer presented a power point presentation to the self-employment review team. The presentation was done remotely and the team was provided with copies of the power point presentation. (Ex. G) The maximum ACCES-VR grant was \$11,000 and there was concern by the team about how any funding would be allocated, as well as how long it would take to generate revenue from the venture and how the business would sustain itself over several years. It was also suggested that the Consumer look to the Social Security Administration for a Plan to Achieve Self-Support ("PASS plan") as it, from the view of ACCES-VR, had the potential to provide additional income to the Consumer

during the developmental phase beyond what ACCES-VR could fund.<sup>1</sup> The VC also expressed concerns about the name of website, titled [REDACTED] (t. 75-78)

Following the presentation to the self-employment review team there were a number of emails between the Consumer and VC regarding a decision on the plan, the Consumer felt that one of the members was not in favor of the project, criteria for profitability of the project and business startup courses. In a series of emails dated 10/25-10/29/13 the Consumer advises the VC that he has found a business course being given by General Assembly from November, 2013 to February, 2014 at a cost of \$3,250. In the course of the emails in a discussion about payment the Consumer advises that he is aware that in order for ACCES-VR to provide funding the vendor must be approved by New York State. In an email dated 11/12/13, the VC advises the Consumer that the self-employment committee has agreed to provide sponsorship for the self-employment plan and states that they should set up a time to meet and discuss "concrete next steps". The VC testified that they liked the concept and though approval had been given, he still had concerns about the sustainability of the plan. Specifically, that there were details missing which would need to be put in to place in order for ACCES-VR to fund the plan. The following day, 11/13/13, the VC sends an email to the Consumer advising that ACCES-VR cannot fund the General Assembly course as they are not an approved vendor for the State. The Consumer responds that same day that he will pay for the class himself and as there is another class he wants to take with General Assembly he would like information

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<sup>1</sup> The Consumer is vehement in his insistence that the PASS plan is for people on SSI and he receives SSDI and that it is not a means of getting additional funding. For the purposes of this inquiry the PASS plan is not an issue. (t. 92, Ex. 1)

on how long it takes to get accredited as a vendor so he can pass the information on. (Ex. 1, Ex. H, t. 73, 79-83, 97,100, 116, 191-92)

While there was a series of emails between the VC and the Consumer between the August 2013 and November 2013 communication ceases after the approval of the self-employment plan and discussion of course payment. This is in spite of the fact that the VC has advised that they must meet to discuss the “next concrete steps” for the self-employment plan. The VC testified that he did not have any communication with the Consumer and four months after the approval for self-employment they had received no additional information regarding the plan. The VC submitted an IPE Development for Changes Case Note dated 4/11/14 (Ex. I) which noted that the Consumer “...has continued, episodically, to advocate for assistance with establishing a self-employment plan...to date none have demonstrated any real feasibility as sustainable employment.” On 3/31/14 the receptionist at the ACCES-VR office called the Consumer at the direction of the VC to ask about his work status but found that the phone number was not working. This was followed up with a letter to the Consumer dated 4/1/14 requesting a reply and employment information. (t. 86-88, Ex. 3) On 6/27/14, the VC sent an email to the Consumer advising that he may need to close his case, as it had been open for 7 years and he was having a hard time justifying leaving it open. ( Ex. 1) The Consumer testified that he was surprised by this email from the VC as they had often been out of communication for long periods but concedes that he should have been updating the VC on his progress regarding business plan development. The Consumer called the VC. The VC advised the Consumer to have the primary draft of the business plan done by October. The Consumer testified that they agreed to have him check in with the VC midpoint between

the call and the October date. In August, 2014 the Consumer testified that he contacted the VC as agreed and got no response. He tried again a few weeks later and received an email response from the VC dated 9/2/14 that indicated that the VC was promoted and was no longer in the [REDACTED] office. The email also provided him the name of his new VC, [REDACTED]. The Consumer emails [REDACTED] back that same day and asks to speak to him off the record as he views his former VC as his only supporter for his self-employment plan. [REDACTED] advises that he cannot be involved in the matter any longer and that the Consumer will have to take it up with his new VC [REDACTED]. (t. 177-80, Ex. 1, Arbitrators Ex. 3)

[REDACTED] Director of Counseling testified that she was assisting [REDACTED] in going through the cases that had been transferred from [REDACTED] caseload. She noted that they had not had contact with the Consumer in a while. On October 17, 2014 she called the emergency number for the Consumer and spoke to his father who provided an alternate phone number for the him. [REDACTED] and left a message and than scheduled an appointment for the Consumer to meet his new VC. On October 28, 2014 the Consumer met with his new VC, [REDACTED]. The VC brought the Consumer to [REDACTED] office to discuss his self-employment plan. The Consumer advised [REDACTED] that he believed that his self-employment plan had been approved by ACCESS-VR. [REDACTED] reviewed the file and noted that [REDACTED] had never changed the IPE to reflect self-employment. She testified that she could see that there had been discussions about self-employment and that the self-employment committee had wanted to move forward with a self-employment plan but there had not been enough

details for a formal IPE to be written. [REDACTED] reviewed the Consumer's power point which was in the file and asked the Consumer if that was his business plan. The Consumer verified that it was his business plan. She testified that she advised the Consumer of the things that were missing from the plan, including but not limited to details on finances, no marketing plan, no organizational structure and no detailed list of products and services. As it was presented she would not have enough information to write a formal IPE change to specify self-employment as the goal and show how the money would be allocated. The Consumer was advised that the business plan needed to be redone and ACCES-VR would provide funding for a business consultant to assist. The Consumer maintained that his self-employment plan was already approved based on the 11/12/13 email from [REDACTED] and that he would only agree to update his plan and see a business consultant if he was guaranteed that whatever he submitted was going to be approved. [REDACTED] spoke to her supervisor who agreed that the Consumer should be given the opportunity to update his business plan and provide a business consultant and give him the chance to resubmit the plan. [REDACTED] called the Consumer about her discussion with her supervisor but he disagreed with that decision and she then advised him of his due process rights. (t. 122-26, 141-43, 185, Ex. 1, G & H)

[REDACTED] testified that §1301.00 Self-Employment Policy requires a well thought out, realistic first-year business plan that includes the best possible estimate of revenues and expenses and plan evaluation by an outside expert when necessary. The VC must ask for enough detail to get a comprehensive picture of the Consumer's business plan. The

Consumer is required under the policy to complete a Self-Employment Planning Form (VES-70) or go through an independent evaluation and accept counseling from experts or consultants if recommended by ACCES-VR. This information is to determine if a plan is going to be feasible and/or profitable. The self-employment policy specifically states that when a consumer asks for more than \$5,000 in startup costs, that the Consumer must work with a small business development center. [REDACTED] further testified that under ACCES-VR's policies it is made clear that they are not the sole source of support in achieving vocational goals nor should it be implied that they are committing financially to the achievement of a goal that they have agreed to. (t. 127-33, Ex. B, C, D & F) [REDACTED] stated that there was no IPE developed with a self-employment goal for the Consumer but that if there had been it would be reviewed continuously to make sure that the steps that need to be taken are being taken to assist the Consumer in successfully reaching their goal. (t. 134-35, Ex. A)

### CONCLUSION

I find that ACCES-VR, through the self-employment review committee, approved the Consumer's self-employment plan. That approval was, however, provisional in that there were steps to be taken, information and answers to be provided by the Consumer and a business plan to be developed in accordance with the policies and procedures of ACCES-VR. I credit the testimony of [REDACTED] and the evidence submitted detailing the policies and procedures followed by ACCES-VR for self-employment, development of an IPE, Consumer Involvement Policy and Assessment.

The testimony of [REDACTED] was clear and credible, that while he supported the concept of the self-employment plan, he still had concerns and information that needed to be provided. In his 11/12/13 email to the Consumer advising that the self-employment plan had been approved, the VC specifically states that they would have to meet to discuss "concrete next steps". The testimony and documentary evidence show that after emails the following day (11/13/13) there was no direct communication between the VC and the Consumer for seven months. The next contact occurred when on 6/27/14 the VC emailed the Consumer to advise him that the case was going to be closed. The Consumer testified that he called the VC and conceded that he should have kept the VC updated on his progress regarding his business plan development. The VC advised him to have a draft business plan ready by October 2014. By the Consumer's own testimony he was aware that he needed to work on a business plan to be presented to his VC.

The Consumer seeks to be reimbursed in the amount of \$3,250 for the cost of taking a course related to his self-employment plan, which he asserts was approved by his VC. He further states that he spent the money for the course on the strength of his approval for his self-employment venture by the self-employment review team. This reimbursement is denied. While the exact title of the course is not named in the due process complaint the Consumer testified regarding a course that he was going to take and in both his testimony and documentary evidence it is clear that he was aware that he would not be reimbursed for this course by ACCES-VR. In his testimony and documentary evidence the Consumer is aware that in order to be reimbursed the course provider would have to

be an approved vendor for ACCES-VR which this provider was not. The Consumer testified that he would be paying for the class on his own.

I do not find the actions of ACCES-VR unreasonable when the Consumer visited his newly assigned VC, [REDACTED]. They were attempting to work with the Consumer according to the policies and procedures in place for the purposes of a self-employment plan. What is unclear is why the Consumer was resistant to sharing the business plan that he testified he had been working on in the interim since first obtaining approval in November, 2013 and his meeting with [REDACTED] and his new VC in October of 2014 as well as his insistence that the original business plan/power point was full and complete. It is further unreasonable to insist that he would only provide additional information and/or go to a professional to assist him in preparing a business plan if he was guaranteed that whatever he submitted would be approved.

The Consumer also asserts that the [REDACTED] Office was out to "kill" his project and that his ACCES-VR file had been tampered with to remove documents favorable to him. I find nothing in the record to support this claim. Compounding the problem is the issue of sporadic communication between the VC and the Consumer. The VC failed to be proactive in contacting the Consumer regularly and specifically advising him of what steps needed to be taken to proceed with a plan for self-employment. That being said I do not find that the Consumer relied to his detriment on the approval of his self-employment project and that he was aware that additional work needed to be done and communicated to his VC.

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



Impartial Hearing Officer

Dated: July 9, 2015

**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 he may seek judicial review of my decision in either New York State Supreme Court or United States District Court.

**EXHIBITS**

Arbitrator Ex. 1	Notice of Hearing, dated 4/29/15, 2 pages
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Arbitrator Ex. 2	Impartial Hearing Request, dated 4/7/15, 4 pages
Arbitrator Ex. 3	Petitioner's written testimony, undated, 5 pages
Petitioner Ex. 1.	Various emails between [REDACTED] and [REDACTED] dated 3/12/13-3/7/15, 42 pages
Petitioner Ex. 2	Emails between [REDACTED] and [REDACTED], dated 4/3/15-4/17/15, 4 pages
Petitioner Ex. 3	Various letters/Case Notes, dated 4/1/14-3/4/15, 5 pages
Petitioner Ex. 4	Emails between [REDACTED] dated 4/15/15-4/16/15, 3 pages
Respondent Ex. A	Individualized Plan for Employment Policy and Procedure, 17 pages
Respondent Ex. B	Consumer Involvement Procedure, 6 pages
Respondent Ex. C	Assessment Policy, 5 pages
Respondent Ex. D	Self-Employment Policy, 10 pages
Respondent Ex. E	Individualized Education Plan for [REDACTED] dated 8/24/06, 4 pages
Respondent Ex. F	Self-Employment Planning form, 15 pages
Respondent Ex. G	Power Point Presentation, dated 8/16/13, 7 pages
Respondent Ex. H	Case Notes by [REDACTED], 10/17/14-2/5/15, 3 pages
Respondent Ex. I	Case Notes by [REDACTED], 8/24/06-4/11/14, 11 pages
Respondent Ex. J	Goldstein Case, dated 12/19/93, 1 page