2015 - #11

STATE OF NEW YORK

In the Matter of

[redacted]

and

ACCES-VR, [redacted] NY

RECEIVED
AUG 17 2015
BY:

An impartial hearing was held:

June 16, 2015

[redacted], IHO

Apparences:

June 16, 2015

[redacted], Esq. [redacted] representing [redacted]

[redacted], [redacted]

[redacted], Esq. representing NYS Education Department on behalf Of ACCESS-VR

For ACCESS-VR

[redacted], Senior Vocational Rehabilitation Counselor

[redacted] Senior Vocational Rehabilitation Counselor

[redacted] Senior Vocational Counselor.

For Plaintiff

[redacted], client

Present as an observer: [redacted], District Office Manager, [redacted]

Stenographer: [redacted]

Documents

Entered June 16, 2015

ACCESS-VR

S-1	Application for VR Services	10/03/13	1 page
S-2	Background information	11/18/13	6 pages
	Special case note	11/18/13	1 page
	Referral case note	11/18/13	4 pages
	Service summary list: release date	2/4/14	1 page
S-3	Case note	2/4/14	1 page
S-4	Case note & Referral summary list		5 pages
S-5	Case note / eligibility	3/13/14	4 pages
S-6	Case note IEP Development	3/14/14	2 pages
	IPE (original date	3/14/14)	3 pages
	Case note	3/14/14	5 pages
S-7	Case note	4/18/14	1 page
	Assistive Technology Service Report	4/17/14	3 pages
S-8	Case note	6/18/14	1 page
	Letter [redacted]	6/18/14	1 page
	Case note	6/27/14	1 page
	Email (?) [redacted]	6/27/14 & 5/21/15	1 page
	Case note	7/11/14	1 page
	Case note	7/16/14	1 page
	Case note Closure Summary	7/16/14	1 page
S-9	Application for VR Services	9/26 14	1 page
S-10	Case note	9/25/14	1 page
S-11	Case note	10/23/14	2 pages
	IPE	10/23/14	2 pages
	Service summary list	10/23/14	1 page
	Case note (referral rehab tech)	10/23/14	4 pages
	Case note (referral defensive driving)	10/23/14	4 pages
	Calculation consumer cost	10/25 14	1 page
	Case note	9/29/14	1 page
	Case note	10/23/14	1 page
S-12	email: [redacted]	12/15/14	
	IPhone response [redacted]	12/15/14	1 page
	Case note	12/22/14	1 page
S-13	Case note	12/23/14	2 pages
	College fact sheet undated		2 pages
	Case note (email to [redacted]	12/23/14	1 page
	Case note	12/23/14	1 page
	Case note	1/5/15	2 pages
	Letter: to [redacted]		1 page
	Letter: to [redacted]		1 page

S-14	Case note	1/6/25	1 page
	Letter: [redacted]		1 page
	Case note	1/6/15	1 page
S-15	Letter: to [redacted]		2 pages
S-16	Case note 1/7/15		2 pages
	Letter: [redacted]	1/7/15	
	[redacted]	12/18/14	
	[redacted]	12/17/14	3 pages
S-17	Case note	1/13/15	1 page
	Case note	1/14/15	1 page
	Case note	1/16/15	2 pages
S-18	Case note	1/20/15	1 page
	Case note	1/23/15	1 page
	Email: [redacted]	4/8/15	1 page
	Email [redacted]		1 page
	Case note	4/9/15	1 page
	Case note	4/13/15	1 page
C-19	Case note	1/26/15	6 pages
C-20	405.00 College & University Training Policy Amended April 2009		11 pages
	100.00 Consumer Involvement Policy February 2007		2 pages
	1000.00P Consumer Involvement Procedure February 2007		6 pages
	206.00 Infividuallized Plan for Employment Polich and Procedure Revised February 2008		17 pages
	34CFR 361.45 Development of the individualized plan for employment		3 pages
	Memo: [redacted]	9/3/04	2 pages
	Memo: [redacted]		3 pages

CAP	Client Assistance Program
ACCES-VR	Adult Career and Continuing Education Services-Vocational Rehabilitation
VESID VR	Vocational and Educational Services for Individuals with Disabilities (now ACCESS-VR)
IPE	Individual Program for Employment

PLAINTIFF

C-1	34 C.F.R.361-47 Record of services		3 pages
C-2	34 C.F.R 361-52 Informed choice		pages
C-3	29 U.S.C.A. 723 Vocational Rehab Services		5 pages
C-4	Authorization for release of information	6/8/15	1 page
C-5	Case note: [redacted]	11/14/13	1 page
C-6	Case note: [redacted]	3/17/14	1 page
C-7	emails: [redacted]	3/20; 24; 30/15	3 pages
C-8	emails: [redacted]	3/16 & 3/18/15	3 pages
C-9	Case note	9/25/14	1 page
C-10	College fact sheetVR844	4/20/14	3 pages
C-11	Case note: [redacted]	1/6/15	1 page
C-12	Case note: [redacted]	1/6/15	1 page
C-13	email: [redacted]	1/6/15	1 page
C-14	Case note: [redacted]	1/7/15	2 pages
C-15	Case note: IPE Draft	1/7/15	4 pages
C-16	Case note: [redacted]	1/7/15	2 pages
C-17	Case note: [redacted]	3/13/14	4 pages
C-18	Case note: [redacted]	1/13/15	1 page
C-19	Case note: [redacted]	1/14/15	1 page
C-20	ACCESS-VR Policy 405.00	amended 4/2009	14 pages
C-21	Case note: [redacted]	1/16/15	2 pages
C-22	Case note: [redacted]	1/23/15	1 page
C-23	Letter: [redacted] IPE incl.	3/14/14	4 pages
C-24	Letter: [redacted] IPE incl.	10/23/14	3 pages
C-25	Letter: [redacted]	7/23/14	2 pages
	C-3 attached. To letter		
C-26	Letter: [redacted]	1/28/15	1 page
	Attached: Case note [redacted]	1/28/15	2 pages

ISSUE (S):

Denial by ACCES-VR to support Spring 2015 semester to attend Clarkson University.

PLAINTIFF POSISTION

The decision to attend Clarkson was final on January 6, 2015. ACCESS-VR based their decision not to fund on erroneous and unauthorized information received from [redacted] mother.

RESPONDENT POSITION

[redacted] decided to attend Clarkson University too late for ACCESS-VR to complete the necessary documentation for funding the semester.

FINDINGS OF FACT

[redacted] has been a client of ACCESS-VR since November 2013. Her original application was for assistance with treatment and tutoring in reading, to improve speed and fluency, organization, and memory and an assessment for assistive technology to assist her in her school work.

Psychological evaluations were twice authorized to obtain accommodative services. [redacted] failed to attend both of the authorized evaluations. An assistive technology evaluation was also scheduled. [redacted] did not complete the evaluation. Evaluations used by ACCESS-VR were obtained from [redacted] (mother of client). The evaluation was administered in March 2014 in Ohio.

There is no record of [redacted] receiving a high school diploma. The last school indicated in the record was Florida Visual School with an estimated graduation date of January 24, 2015. (Case note 12/23/14). In testimony (T. p. 204) [redacted] stated that she was a home school student.

[redacted] investigated both Kings College and Clarkson University as schools to attend in pursing her indicated goal of working with students with disabilities through a program using music as an instructional tool.
She also indicated that she was interested in attending Emory, University of Chicago, UNC, and Columbia (Case note: 9/25/13). However, she undertook the process of enrolling in Kings College and Clarkson and received acceptance at both.

ACCESS-VR decided to plan for the spring semester based on the fact that [redacted] had completed thirty-six credit hours at the Clarkson School and thus could enter as a second year student.

[redacted] received acceptance letters from Kings College dated December 18, 2014. and the Financial Award letter dated 1/7/15. (S-16.)

She also received an acceptance letter from Clarkson University dated January 6, 2015. (C-13)

Clarkson University started classes on January 8, 2015.

The class schedule had not been finalized as of the starting day of classes.

The IEP was submitted in Draft Form as so stamped. There are no signatures at the end of the document nor is it dated. (C-15)

DECISION

[redacted] made her decision to attend Clarkson on January 6, 2016 at a meeting with [redacted], [redacted] and [redacted]. (C-22)

ACCESS-VR assumed that [redacted] had the necessary communication with her daughter to relay her decisions to the agency. [redacted] did nothing to correct this impression. [redacted] attended several meetings and signed necessary required documents. [redacted] statement that her mother attended for support is not supported in documents or testimony. [redacted] statement that she made the decisions and that her mother and counselors were there for support is inaccurate. Decisions regarding programs are jointly make by client and counselor(s)

Testimony and submitted evidence is rife with communication problems and decisions that did not fully comply with state and federal regulations.

The client did not adequately notify nor communicate with the counselors at ACCESS_VR in a timely manner. ACCESS-VR delayed it's decision not to fund the semester at Clarkson until the classes had already started. ACCESS-VR established the date of April 15 for the fall semester and September 15 for the spring semester. (405.00 College and University Training Policy) Counselors have the ability to adapt the timeline as the situation dictates.

The decision as to which school to attend was January 6, 2105 for classes starting on January 8, 2015. Clearly this is too late for adequate preparation required by the agency to react in a timely manner.

If [redacted] wishes to continue with ACCESS-VR in planning for the Spring Semester, she should establish immediate contact with her counselor and jointly plan the process necessary for implementations of her program. This requires effective means of communicating with both parties and to maintain contact by keeping all appointments informing ACCESS-VR in a timely manner. Decisions will require agreement of both parties before implementation can be effected.

I find for ACCESS-VR.

This decision based on:

Rehabilitation Act of 1973 amended in 1998 "Title 1: Vocational Rehabilitation Serviced (i))Dii) (B) Acts of determinations of commissioner Sec 101 State Plans (c) (A) (B) Designated State Unit (1)
(II) (III) (IV) plans are developed by the appropriate state agency dealing with persons with disabilities. The plan is reviewed by the Federal Agency and approved. ACCESS-VR policy is the implementation of the State Plan as required in the Rehabilitation Act PL 105-220

Case Law: Matter of Goldstein 199 AD2nd 776. 1) VESID (now ACCESS_VR) counselors are professionals whose opinions may re relied upon by hearing officers when deciding cases involving rejection of consumer requests for services
2) Consumers may not disregard VESID (now ACCESS-VR) suggestions about services and then use the hearing process to obtain their preferred services.

Federal Regulations

34 CFR 361.45	Development of IPE
34 CFR 361.47	Record of Services
34 CFR 361.52	Informed Choice
329 USCA 723	Vocational Rehabilitation Services

ACCES-VR policy is the implementation of legislation both federal and New York State.

405.00	College and University Training Policy
100.00	Consumer Involvement Procedure
206.00	IPE Policy and Procedure

Title IV Rehabilitation Act Amendments of 1988
Code of Federal Regulations Part IV

Dated: August 10, 2015

[redacted]

[redacted] IHO