



PERSONS WHO APPEARED ON DECEMBER 15, 2014

██████████ Assistant District Manager

██████████ Consumer-Pro Se

## FINDINGS OF FACT AND DECISION

On December 15, 2014, I conducted an impartial hearing pursuant to a due process complaint filed by [REDACTED], a Consumer, regarding a claim filed under the Rehabilitation Act of 1973, (29 U.C.S. 701, et. seq). The Consumer requested the hearing by filing the due process request with the Office of Adult Career and Continuing Service (ACCES) on September 30, 2014. The hearing was held at the ACCES office located at [REDACTED], New York [REDACTED]. A list of exhibits offered into evidence is annexed to this decision.

### **ISSUE:**

Whether ACCES acted appropriately when they denied the Consumer's request to provide financial assistance to attend the School of Audio Engineering ("SAE").

### **CONSUMER'S POSITION:**

The Consumer contends that ACCESS inappropriately denied his request to attend SAE and that his counselor's were "mean" and "racist." He also contends that ACCES inappropriately denied his request for a new counselor.

### **ACCES' POSITION:**

ACCES contends that the Consumer's employment history and his performance on a Vocational Evaluation Assessment demonstrated that job training at the SAE was an inappropriate educational and employment goal for the Consumer. ACCES also contends that the Consumer's counselors were not "mean" and/or "racist" in their treatment of the Consumer.

### **LAW:**

ACCES is the New York State Agency authorized to administer federal funds under the Federal Rehabilitation Act of 1973 ("ACT"), which is codified at U.S.C. 701 et. Seq. ACCES administers a federal program under Title I of the Act to assist eligible individuals in achieving their employment goals. The purpose of the ACT is to develop comprehensive programs that will maximize the employment of disabled individuals and their integration into society. (Section 2(b)). However, the ACT does not confer any entitlement to vocational rehabilitation (Section 102(a)(3)(B)).

To implement the ACT at the state level, ACCES had promulgated various written policies. The Consumer Involvement Policy establishes various mechanisms that

allow the consumer to play a major role in developing his Individual Plan for Employment (IPE). However, the consumer does not have complete control of his/her program (Exhibit A-5).

**EVIDENCE:**

██████████ is the Consumer's counselor. Ms. ██████████ testified that after the Consumer requested to attend SAE, she referred him to ██████████ ██████████ for a vocational evaluation to help her determine whether attending SAE was appropriate for the Consumer. The Evaluation results indicated that the Consumer had improved his academic skills, which were now above the elementary level (Tr. 15). However, based on the Consumer's overall performance, which showed that the Consumer had inadequate attention, tardiness, erratic behavior as well as modest self-regulatory skills, the evaluator, and consequently the counselor, concluded that attending SAE and/or a college level objective was inappropriate for the Consumer. Additionally, the Evaluator noted that "food service" and/or "retail" were also inappropriate for the Consumer based on his present set of employment skills (TR. 17, Exhibit V-3). In conclusion, the Evaluator recommended that the Consumer be referred for a prevocational program and supportive employment. It was also recommended that the Consumer be referred for a psychological evaluation and therapeutic interventions (Exhibit V-3).

██████████ is Ms. ██████████ supervisor (Tr. 19). Mr. ██████████ testified that based on his review of the vocational assessment and the Consumer's work history, which indicated that he had been fired from his last three jobs because of performance and attendance issues, Mr. ██████████ could not support the Consumer's goal of attending SAE. Mr. ██████████ also testified that based on the Consumer's present level of skills, a referral to supportive employment was appropriate (Tr. 22, 26).

██████████ conducted an "administrative" review of the Consumer's request to attend SAE. Ms. ██████████ testified that when she asked the Consumer what his understanding of the job goal was, the Consumer gave her a vague answer that "they work in music studios" (Tr. 31). Ms. ██████████ also testified that the Consumer believed SAE was appropriate because he had recently obtained a GED (Tr. 32). Ms. ██████████ explained that although the Consumer met the entrance requirements for SAE, she did not

believe that it was an appropriate vocational or employment goal for the Consumer based on his vocational profile. Ms. [REDACTED] also opined that based on her review, she believed that ACCES followed the appropriate VR polices in determining the services that ACCES VR can provide to the Consumer (Tr. 34).

The Consumer testified that he believes that he can succeed at SAE, in part, because he recently earned a GED. He also testified that the decision by ACCES denying him funding was wrong and that he believed that he was eligible for financial aid had he attended SAE (Tr. 37, 38). Furthermore, the Consumer told ACCES that he wanted to be a “producer” and that he believes that ACCES has sent other consumers to SAE. Finally, the Consumer testified that he requested a new counselor because he wanted to move forward with his case (Tr. 39, Exhibit C-1).

#### **ANALYSIS:**

In the Matter of Goldstein, 199 AD2d 766 (Third Dept. 1993), the court found that the detailed testimony of the VESID (Now ACCES) counselor supported by the documentary evidence and the opinion of treating specialist, provided substantial evidence in support of VESID’s determination to close the consumer’s case. Id.

Before making its decision not to fund the Consumer’s placement at SAE, the ACCES counselor, and her supervisor, reviewed the Consumer’s work history and referred the Consumer to the [REDACTED] for a vocational assessment. As indicated above, the vocational assessment supported the Counselor’s decision to deny the Consumer’s request to attend SAE. Additionally, the Consumer’s work history and his present level of work skills demonstrate that the Consumer is not yet ready to participate in a competitive college program, which is further support of the Counselor’s decision not to place the Consumer at SAE. Additionally, there is no evidence in the record to support the Consumer’s request for a new counselor or that the Consumer was treated in a “mean” or “racist” manner. As such, the Consumer’s Due Process Complaint is dismissed.

**ORDERED:**

The Consumer's Due Process request, dated September 30, 2014, is dismissed with prejudice.

Dated: [REDACTED]

January 27, 2015

[REDACTED]  
[REDACTED] Esq.-IHO

Exhibit List:

**ACCES:**

1-IPE

2-DPC 9/30/14

3-Vocational Evaluation [REDACTED]

4-Administrative Review

5-Consumer Involvement Policy

6-Matter of Goldstein

**Consumer:**

1- Letter 10/27/14

2- Brochure-SAE