

On February 18, 2015 and February 26, 2015, I conducted an impartial hearing pursuant to the Rehabilitation Act of 1973 concerning the vocational rehabilitation of Mr. [REDACTED] at the [REDACTED] ACCESS-VR District Office at [REDACTED] New York [REDACTED]. Mr. [REDACTED], assistant district office manager of the [REDACTED] Office, represented ACCESS-VR (Agency), and the Consumer appeared pro se. A list of the witnesses who testified and the documents received into evidence is attached to this final decision.

RECEIVED
MAR 23 2015
BY: *[Signature]*

ISSUES

The issues before me are:

- 1) Whether ACCESS-VR should complete an "individualized plan for employment" (IPE) for the Consumer that includes the vocational goal of registered nurse or psychiatric nurse.
- 2) Whether the Consumer should be sponsored for approximately 27 credits to obtain an associate's degree in nursing at the [REDACTED] Community College. (Tr. 19)
- 3) Whether the Consumer should be sponsored for approximately 37.5 credits from an online program at [REDACTED] College and someone to help him pass the nursing exam. (Tr. 19-20)
- 4) Whether the Consumer may transfer his file from the [REDACTED] Office to the [REDACTED] Office. (Tr. 20-1)

THE POSITION OF THE CONSUMER

The Consumer's long-held personal vocational goal is to become a registered nurse or a psychiatric nurse.¹ His position is that he has been accepted into a nursing program at the [REDACTED] Community College, that he is passing courses there, and that he is capable of fulfilling his personal goal. He wants the Agency to sponsor him to complete courses needed to become a nurse and to provide him with assistance to pass the nursing exam. The Consumer also wants to transfer his file to the [REDACTED] Office where he attends school and has medical appointments. Furthermore, he does not believe that he has a "therapeutic" relationship with the staff in the [REDACTED] Office. (Tr. 13)

¹ To be a psychiatric nurse, one must first be a registered nurse and then take additional training (Tr. 85, 129; Ex. 12)

THE POSITION OF THE AGENCY

The Agency does not question the Consumer's eligibility for ACCES-VR services. (Tr. 10) He meets the criteria for Most Significantly Disabled due to three or more serious limitations requiring multiple rehabilitation services for six months or longer. (Ex. 9 at 5) The Agency questions whether the Consumer can accomplish his personal stated vocational goal of working as a registered nurse or psychiatric nurse based upon the nature of his disability. "Desire does not equal ability." (Tr. 159-60) The Agency wants to conduct a neuropsychological examination of the Consumer to determine whether his personal goal of becoming a registered nurse is a realistic and attainable vocational goal for ACCES-VR. The Agency contends that the transfer of the Consumer's file to another office is "premature" at this time, although it may be appropriate at some time in the future. (Tr. 11-12)

FINDINGS OF FACT

Mr. [REDACTED] is a thirty-five year old man who has learning disabilities and medical conditions. (Ex. 9 at 3) He has a complex and heart-wrenching family history. He came from a large biological family with seven brothers and two sisters. (Tr. 221) But he was placed in a series of foster homes due to abuse and neglect, and he was molested as a child twice. (Tr. 224-6) The Consumer attended a number of different schools and special education programs, including mainstream classes, BOCES, a 6:1:1 class, and a 12:1:1 class. (Tr. 227) At the age of sixteen, he withdrew from school entirely. (Tr. 226)

But Mr. [REDACTED] did not become a grim statistic. Instead, Mr. [REDACTED] took control of his life, and he began to advocate for himself. (Tr. 229) He testified that, "despite all of this, I prevailed." (Tr. 226) He completed a GED and an associate degree in applied sciences and health care management from the [REDACTED] Institute of Technology. (Ex. O; Tr. 229-30, 234) The Consumer learned that he could not become a registered nurse with his associate's degree from the [REDACTED] Institute of Technology. (Tr. 233) But he did not give up on his dream of becoming a nurse. Instead, he took the science courses he needed at [REDACTED] College. (Tr. 237-8) He then went to the [REDACTED] County campus of [REDACTED] University where he was accepted into

the nursing program and lived in a dormitory. (Tr. 242) He had medical issues and he did not complete the courses at [REDACTED] so he was dropped from the nursing program there. (Tr. 243-4) The Agency knew that the Consumer attended [REDACTED], and that there was an issue of him having an outstanding balance to pay so he does not have a transcript from [REDACTED]. (Tr. 172)

Nursing is a challenging field. Individuals awarded an Associate of Science in Nursing are qualified to sit for the National Council Licensure Examination (NCLEX-RN) examination, and apply for licensure as a registered nurse. (Tr. 276) A Bachelor of Science in nursing is not necessary to be a registered nurse. To be a psychiatric nurse, one must be a registered nurse first. (Tr. 85) The Agency uses the O-NET website that describes tasks for nurses working in a hospital. But Mrs. [REDACTED] recognizes that some nurses work with one patient at a time as a private duty nurse, a visiting nurse, in a doctor's office, or other potential positions. (Tr. 86-7) The Agency expressed concern about the Consumer dealing with emergencies, but the Consumer's cross examination questions of the Agency witness established that he has certification and work experience as a lifeguard who must deal with emergencies. (Tr. 94-5) Furthermore, he has certification Pediatric Advanced Life Support, Advanced Cardiac Life Support, Basic First Aid, CPR and AED, American Red Cross Nurse, and he completed a number of FEMA Emergency Management Institute courses to obtain certificates of achievement. (Ex. U) The Consumer has a number of other marketable skills. He can drive a car, although his license expired and he does not have the money to renew it, and he speaks some Spanish. (Tr. 296) Although I find that the Consumer is well-organized, he does not know how to put these certificates, skills, and work experiences into a resume. (Tr. 296)

Mr. [REDACTED] has a long association with the Agency because he has had three ACCES-VR and VESID² files in the [REDACTED] Office over a period of more than ten years. (Tr. 135, 174) It is not possible to review the current situation in isolation, especially because the Consumer wants to have his file transferred out of the [REDACTED] office, in part, due to the nature of

² VESID is the former name of ACCESS-VR in New York State.

his long-term relationship with the Agency staff in the [REDACTED]. The Consumer testified: "No one ever listened to me." (Tr. 252)

First File:

There was confusion as to when the Consumer first came to the Agency and what happened while this first file was open. Mrs. [REDACTED], then his vocational counselor, estimated that the first file opened in approximately 2000. (Ex. 16; Tr. 52) Mr. [REDACTED] and the Consumer thought that this file opened in approximately 2006. (Ex. 2 at 3; Tr. 176) Documentation establishes that Mr. [REDACTED] first file was opened on November 22, 2002. (Ex. 16) The Consumer's vocational goal at that time was to become a lifeguard. (Tr. 134) Mr. [REDACTED] believed that this previous file was closed as unsuccessful without the Consumer obtaining work. (Tr. 175) However, when the Agency produced a computer record, it established that the Consumer's first file was closed as "status 26," which means that the consumer completed his vocational experience to "full conclusion" with training or services that led to employment. (Tr. 180) The Consumer's vocational goal at that time was to become a lifeguard, he met his goal, and he worked as a lifeguard at a state hospital. (Tr. 231)

Second File:

The Consumer's second file opened in 2009 with an effective date of May 3, 2013. His personal goal was to become a nurse. (Ex. 16; Tr. 136) His vocational counselor was then Ms. [REDACTED] and Mr. [REDACTED] was also involved in the case. (Ex. 16; Tr. 184, 206) Mr. [REDACTED] confirmed that the second file was open for four years. (Tr. 182) The Agency never developed an IPE for the Consumer and it is still unclear why the second file was open for four years without ever developing an IPE or even a vocational goal for the Consumer. (Tr. 183, 136)

When the second file first opened, the Agency wanted a psychological evaluation of the Consumer and gave the Consumer a list of vendors who provide psychological services that are billed to the agency. The Agency paid for a comprehensive psychological evaluation of Mr. [REDACTED] by [REDACTED], Ph.D., one of the contracted psychologist vendors, on April 20, 2009. (Ex. Q; Tr. 98) Dr. [REDACTED] evaluated the Consumer, and he noted that [REDACTED] was

alert, fully oriented, pleasant, and cooperative.” (Ex. Q at 2) Dr. [REDACTED] also found that the Consumer had dyslexia and dyscalculia, medical conditions, and questioned the possibility of other issues. Dr. [REDACTED] noted the Consumer’s strong verbal skills and weak non-verbal skills, although he gave the Consumer a high GAF score of 75. The Global Assessment of Function (GAF) on the DSM-IV measured the severity of the individual’s impairment of functioning due to the condition. The higher the score, the less of an impact the disability has on the individual’s functioning. A GAF of 75 is a high score that means:

“71 - 80 If symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family argument); no more than slight impairment in social, occupational, or school functioning (e.g., temporarily falling behind in schoolwork.”³

Dr. [REDACTED] considered the Consumer’s goal of obtaining a B.A. in nursing, and his “only reservations are that his learning problems might ultimately keep him from his goal. Hopefully he is in contact and receives help through his college’s learning disability services.” (Ex. Q at 5)

The following year, the Consumer still had no IPE. The Agency wanted a second evaluation of the Consumer, and again the Agency paid for Dr. [REDACTED] to conduct it. This time, Dr. [REDACTED] conducted a psycho-educational evaluation dated April 4, 2010, and the Consumer cooperated. He reported Mr. [REDACTED] previous high verbal reasoning and expression and his significant weakness in non-verbal activities as established by the previous year’s testing. (Ex. R at 1) Dr. [REDACTED] conducted new educational testing, and he concluded:

“In my opinion, [REDACTED] should be able to complete programs leading to his work in the medical field. He will need some remedial help and guidance due to his academic difficulties. The important thing is that [REDACTED] has very good verbal understanding and expressive skills” (Ex. R at 2)

It appears that at some time immediately following this second psychological evaluation, the Consumer’s second file was closed in error. On July 21, 2010, VESID sent the Consumer a letter that states: “We apologize for closing your case in error.” (Ex. S) It appears that the file reopened following the letter.

³ American Psychiatric Association, DSM-IV-TR, page 34

The second file closed again on May 3, 2013 due to the Consumer's alleged "failure to cooperate." (Ex. 16) The Agency's position is that during the time that the second file was open, the Consumer attended a number of colleges, and he did not always keep in contact with his vocational counselor. (Tr. 182) The Agency reported that the Consumer was "inconsistent" and "uncooperative." The Consumer explained, "It is not that I'm bouncing around. I didn't know what is going on. The problem is I learned as I went along. It's not because I'm defiant, uncooperative." (Tr. 246) Furthermore, the Consumer ran out of money and student loan options to continue in school. (Tr. 291)

On June 25, 2013, one month after his second file closed, the Consumer filed a request for an impartial hearing. (Ex. L) It appears that the Consumer never had this requested impartial hearing, and he still did not have an IPE.

Third File (Current File)

Whether or not there was an impartial hearing in response to the Consumer's request for one on June 25, 2013, the Consumer's third file, which is the current file, opened on August 7, 2013. This was three months after the second file closed and two months after the impartial hearing request.

By this time, Mr. [REDACTED] was already accepted in a nursing program at SUNY [REDACTED], and he wanted support for it. Mrs. [REDACTED] was his vocational counselor again, and she explained that the Agency usually conducts evaluations and makes a determination before it offers support in an IPE. (Tr. 53, 54-5) As the Consumer did not want a third evaluation and he was already in school, **they decided to "use the semester" at SUNY [REDACTED] as an evaluation. (Tr. 54)** The Agency offered to transfer the Consumer's file to an ACCES-VR Office near [REDACTED] New York, but the Consumer did not want it transferred. (Tr. 173) Mr. [REDACTED] began at [REDACTED] with good grades. (Ex. P; Tr. 268) Then he took care of his ill mother who ultimately passed away, so he took a medical withdrawal from SUNY [REDACTED] on November 26, 2013. (Ex. P at 4, Ex. 8: Tr. 54, 268-9) The Agency did not hear from the Consumer between December 2013 and August 2014. (Tr. 54)

In August 2014, the Consumer returned to the ACCES-VR [REDACTED] office and he informed the Agency that he was already accepted to the [REDACTED] Community College ([REDACTED]) nursing program. (Tr. 54) He requested that ACCES-VR support his attendance there and provide him with an IPE with the vocational goal of registered nurse or psychiatric nurse.

Before deciding on an appropriate vocational goal, the Agency wanted a third psychological evaluation. (Tr. 187-8) The Consumer had the [REDACTED] [REDACTED] conduct a six-day comprehensive cognitive and education evaluation between October 23, 2014 and December 10, 2014. (Ex. 7) The Consumer gave this eighteen-page evaluation to the Agency. The Agency found that the [REDACTED] evaluation suggested accommodations for academic classes, but it did not suggest accommodations the Consumer would need on the job as a nurse. (Tr. 70-1, 73) Rather than simply ask Dr. [REDACTED] or the [REDACTED] for this additional information, the Agency now wants a fourth evaluation of the Consumer.

Even now, the Agency still wants a neuropsychological evaluation to determine whether Mr. [REDACTED] will be able to work as a nurse and what type of accommodations he might need to work as a nurse. (Tr. 59) Mr. [REDACTED] suggested the neuro-psychological evaluation because:

“Again, it really does behoove us to take the next step so that we can get a much more in-depth assessment to look at cognitive function, the organic roots of a person’s personality to make up their ability to respond in a social interaction, all of these things that go into having the consumer be able to be successful in the job and to function within society and the people they are working with.” (Tr. 200, 202)

Mr. [REDACTED] currently attends a nursing program at [REDACTED]. This semester, he is taking two three-hour classes: pharmacology for three credits and pathophysiology for three credits. (Tr. 277-8) The Consumer renewed his request for an IPE with the vocational goal of registered nurse or psychiatric nurse. He also asked that his file be transferred to the [REDACTED] District ACCES-VR Office where he attends school and has medical appointments. The Consumer again requested a due process impartial hearing on August 12, 2014 to review his request for “sponsorship for [REDACTED] College, Psychiatric nursing as well, therapeutic support from [REDACTED] district office staff members.” (Ex. K at 1) On December 16, 2014, Mr. [REDACTED] Associate Vocational Rehabilitation Counselor, denied the Consumer’s request to transfer to the

Office. (Tr. 156-7; Ex. 9) The same day, the Consumer filed another impartial hearing request dated December 16, 2014. (Ex. G)

Conclusions of Law

Vocational Rehabilitation (ACCES-VR) is a Federal and State funded program that provides services to help individuals with disabilities enter, or return to, employment. It is designed to help individuals with disabilities compete successfully with others in earning a livelihood. The entire focus of the program is employment based upon an individual employment outcome. The Rehabilitation Act of 1973 defines an employment outcome with respect to an individual at 29 U.S.C. Sec. 2(11) as:

“(A) entering or obtaining full-time or, if appropriate, part-time competitive employment in the integrated labor market;

(B) satisfying the vocational outcome of supported employment; or

(C) satisfying any other vocational outcome the Secretary may determine to be appropriate (including satisfying the vocational out come of self-employment, telecommuting, or business ownership), in a manner consistent with this Act.”

See also 34 C.F.R. § 361.5(b)(16), and 8 NYCRR § 247.1(5)

An eligible individual receives an “individualized plan for employment” (IPE) that sets out the consumer’s vocational goal and the supports and services the Agency will provide to help the consumer achieve that vocational goal. The New York State regulations establish the process for developing the IPE. 8 NYCRR Section § 247.11(2)

“Process for developing the individualized plan for employment.

- A. The plan shall be developed by the individual with the assistance of a vocational rehabilitation counselor to the extent the individual determines. The plan shall be a written document using forms provided by the agency and must be agreed to and signed by the individual or, if appropriate, the individual's representative. It must also be approved and signed by a qualified vocational rehabilitation counselor employed by the agency. . . .
- B. The plan shall be developed promptly after an individual is determined to be eligible for vocational rehabilitation services. To the extent possible, the employment outcome and the nature and scope of rehabilitation services must be determined based on the data used for the assessment of eligibility.

- C. If additional data are necessary, the agency shall conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and needs, including the need for supported employment services, of an eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual. The comprehensive assessment must be limited to information that is necessary to identify the rehabilitation needs of the individual and develop the individualized plan for employment and may, to the extent needed, include:
- i. an analysis of the pertinent medical, psychiatric, psychological, neuropsychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual;
 - ii. an analysis of the individual's personality, career interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational and environmental factors that affect the employment and rehabilitation needs of the individual;
 - iii. an appraisal of the individual's patterns of work behavior and services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;
 - iv. a referral for the provision of rehabilitation technology services, to assess and develop the individual's capacities to perform in a work environment; and
 - v. an exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which shall be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

D. The program shall be designed to achieve an employment outcome that is consistent with the individual's unique strengths, priorities, concerns, abilities, capabilities, career interests and informed choice.”
8 NYCRR Section § 247.11(2)

In this case, there are a number of issues concerning the development of an IPE for Mr.

[REDACTED] First, the New York State ACCES-VR regulations mandate that the IPE be developed “**promptly**” after the Consumer is determined to be eligible for vocational rehabilitation services. The Agency policy defines this time limit as 90 days.

“The IPE should be developed as soon as possible, within 90 days of the determination of eligibility. If the counselor anticipates that IPE development will be delayed, the consumer

will be informed regarding the reasons for the delay and the steps necessary to develop the IPE. This information must be documented in the record of services using a case note which includes the IPE Pending Reasons header. A letter is available in CaMS to inform the consumer of the need to extend the time necessary to develop the IPE. “
Policy 200.6 Individualized Plan for Employment Policy and Procedure Revised
February 2008

Mr. [REDACTED] second file opened in 2009, and the Agency never developed an IPE for him. The Agency can send a consumer for an evaluation and that might extend the 90 day timeline, but the Agency never documented the delay appropriately when Mr. [REDACTED] had the first evaluation with Dr. [REDACTED] in 2009. After the first evaluation, the Agency sent the Consumer for another evaluation in 2010. But the Agency still did not develop an IPE for him or document the delay properly. His file opened and closed twice more, but the Agency never developed an IPE for Mr. [REDACTED] at all.

The Consumer’s third and current file opened on August 7, 2013, and the Agency wanted a third evaluation. The Consumer took the initiative to obtain a comprehensive eighteen-page evaluation that was conducted over six days as opposed to the shorter assessments previously conducted by Dr. [REDACTED], the Agency-paid psychologist. Again, if the Agency wanted additional questions answered, they could have gotten the Consumer’s consent to ask those questions of the [REDACTED] evaluator. Instead, the Agency requested a fourth evaluation in the form of a neuropsychological evaluation. It is not a question of whether the Agency has authority to request neuropsychological evaluations. (Ex. E) It is a matter of whether the Agency actually needs the information generated by a neuropsychological evaluation to develop an IPE and the further delay it would cause to the development of an IPE for this Consumer.

I find that the Agency engaged in a pattern of delay that left the Consumer in vocational limbo without any guidance in program selection or support. I find that the Agency violated 8 NYCRR Section 247.11(2)(B) and its own policy 200.6 in failing to promptly develop an IPE for Mr. [REDACTED] when his second and third files were open.

Second, the Agency is supposed to conduct a comprehensive assessment when it needs additional data to develop an IPE. But the comprehensive assessment “must be limited to

information that is necessary to identify the rehabilitation needs of the individual and develop the individualized plan for employment . . . " 8 NYCRR Section §247.11(2)(C) Mr. [REDACTED] testified that the Agency wants a "much more in-depth assessment to look at . . . the organic roots of a person's personality . . . all of these things that go into having the consumer be able to be successful in the job and to function within society , , , ."

I find that this proposed neuropsychological evaluation exceeds the scope of a comprehensive assessment that must be limited to information that is necessary to identify the rehabilitation needs of the individual and develop the individualized plan for employment. It is not necessary to delve into the "organic roots" of the Mr. [REDACTED] disability or to assess his ability to function within society. These are matters beyond the scope of ACCES-VR. Ms. [REDACTED] was willing to use a successful semester in the SUNY [REDACTED] nursing program as an evaluation. I find that the Consumer's successful completion of a semester of two nursing courses in [REDACTED] can serve as an additional assessment instead of the semester at SUNY [REDACTED].

Third, ACCES-VR fosters the participation and independence of consumers. "ACCES-VR will assist the individual to be as independent as possible when deciding on how much assistance they need in developing the IPE and choosing among options." (Policy 100.00; Ex. 4 at 3) The IPE "shall be developed by the individual with the assistance of a vocational rehabilitation counselor to the extent the individual determines." 8 NYCRR Section § 247.11(2)(A) The consumer is supposed to make an informed choice with the assistance of the vocational counselor. It is a consumer-driven process.

"ACCES-VR's policy on consumer involvement is intended to support consumers in making informed and meaningful choices about their goals and options for achieving them, in a manner consistent with sound public policy and the use of public funds. . . ."

and

"While individuals are encouraged to actively participate and make meaningful choices, consumer choice does not mean that they have complete control over their programs. Vocation rehabilitation counselors must also apply their professional judgment; applicable laws, regulations, and policies, sound planning considerations; and responsible use of public funds. . ."

ACCESS-VR Policy Section 100.00.

See also *In the Matter of Sharon Barbee*, 234 A.D.2d 646; 650 N.Y.S.2d 488; 1996 N.Y. App. Div. LEXIS 12347 and *In the Matter of Arthur Goldstein*, 199 A.D.2d 766, 605 N.Y.S.2d 425, 1993 N.Y. App. Div. LEXIS 12020.

In this case, the Agency had it backwards. The Consumer repeatedly stated that he wanted to work as a registered or psychiatric nurse and that he did not need much assistance in developing his IPE. He found his own educational program at SUNY [REDACTED] and then at [REDACTED]. What he needed was services and supports in an IPE. But the Agency never agreed or disagreed with his vocational goal, and it never provided him with any assistance in developing an IPE. The Agency took control of the decision-making process rather than support Mr. [REDACTED] in making his decision, and then it never made a decision. Instead, it just delayed the process by insisting on additional evaluations. Meanwhile, Mr. [REDACTED] chose programs and took courses the best he could without any support from ACCES-VR, and he is considered Most Significantly Disabled.

If the Agency did not agree with Mr. [REDACTED] personal goal, it was supposed to inform him of that and help him explore other employment options. (Tr. 186) Mr. [REDACTED] admitted that the Agency never worked with the Consumer on an alternative vocational goal, but he blamed the Consumer for that failure. (Tr. 215)

HEARING OFFICER: I'm looking literally at a conference table filled with papers that's spilled onto a second conference table. I have heard testimony about a six years on and off relationship between this consumer and the agency. Under all that paper, in all those years, is there a letter, e-mail, anything that says to this consumer that being a registered nurse may not be an appropriate goal and here are some other related options that you might consider, or please come in and let's talk about some of the other options? Is there anything like that, at all?" (Tr. 217)

Mrs. [REDACTED] thought that she discussed the possibility of other related employment options, but there is no record of any such discussion. (Tr. 140-1, 143-4) Mr. [REDACTED] was not "quite sure . . . that his counselor has had discussions with him about looking at alternatives." (Tr. 218) If she did, there may not be anything in writing. (Tr. 219)

I find that the Agency violated its own policy 100.00 by failing to assist Mr. [REDACTED] to be as independent as possible when deciding on how much assistance he needed in developing the IPE and choosing among options. I also find that the Agency violated New York State regulation 8 NYCRR Section § 247.11(2)(A) when it failed assist him to develop an IPE. Essentially, the Agency thwarted the Consumer in developing an IPE.

Conclusions

I find that Mr. [REDACTED] has established that his personal goal of “registered nurse” with an associate degree in nursing is a realistic vocational goal for him because:

- The Consumer has been accepted in a number of challenging nursing programs;
- The Consumer is now pursuing an associate degree in nursing at [REDACTED];
- Dr. [REDACTED], an Agency vendor, found a more challenging bachelor program in nursing as an option for the Consumer if he had accommodations;
- The Consumer has a history of overcoming tremendous obstacles and persevering.

If Mr. [REDACTED] decides to pursue a Bachelor of Arts degree in nursing later or wants to become a psychiatric nurse, he may pursue these long-ranged goals on his own once he is working as a registered nurse with an associate’s degree. The Agency is not responsible to provide assistance passing the nursing examination as that is a service that the [REDACTED] [REDACTED] Community College should provide to the Consumer under Section 504 of the Rehabilitation Act of 1973 and the American with Disabilities Act. ACCES-VR is not responsible to provide the Consumer with support for the Bachelor of Arts degree in nursing, the support for passing the nursing examination, or any future support toward psychiatric nursing.

The Agency does not oppose the transfer of Mr. [REDACTED]’s file to the [REDACTED] office, but claims that the transfer is “premature” at this time. Considering that the Consumer has been at the [REDACTED] office for years, that his third file has been open since August 7, 2013 and he still does not have an IPE, nothing can be premature at this time. I find that the Consumer has established good reasons to transfer his file to the [REDACTED] Office at this time because:

- He is in school in [REDACTED];
- He has medical appointments in [REDACTED]; and
- He needs to have a fresh start with an Agency office that will provide him with prompt and timely services and supports.

Mr. [REDACTED] has prevailed.

Order

I hereby order ACCES-VR to:

1. Within ten business days of receipt of this decision, transfer the Consumer's entire three files to the [REDACTED] Office, and assign him to a vocational counselor there.
2. Within thirty calendar days of the transfer, develop a written IPE for the Consumer with the vocational goal of "registered nurse" with an associate's degree in nursing.
3. The IPE must include support and funding for completion of an associate degree in nursing at [REDACTED] or another comparable nursing program. Funding should include books and any required equipment and uniforms to the maximum allowed under ACCES-VR policies.
4. Although the Consumer did not request this assistance, I **suggest** that the Agency assist the Consumer to draft an appropriate resume for use in obtaining employment.

Dated: March 23, 2015

[REDACTED]

[REDACTED]

Impartial Hearing Officer

WITNESSES

ACCES-VR

████████████████████ Vocational Counselor

██████████, Associate Vocational Rehabilitation Counselor

Consumer

Mr. ██████████ Consumer

EXHIBITS

ACCES-VR

- 1 Notice of Hearing, dated Jan. 28, 2015, 2 pages
- 2 Request for Hearing, dated Dec. 16, 2014, 3 pages (Same document as Ex. K)
- 3 Draft IPE, unsigned, dated October 31, 2014, 3 pages
- 4 Consumer Involvement Policy No. 100.00, 3 pages
- 5 College and University Training Policy, 405.00, 21 pages
- 6 Assessment Policy, 200.00, 5 pages
- 7 ██████████ Cognitive and Educational Evaluation, dated Nov. 20, 2014, 18 pages
- 8 Letter dated 11/26/13, 1 page
- 9 Case notes dated 12/16/14, 6 pages
- 10 Omitted
- 11 Omitted
- 12 Job description for psychiatric nurse, 2 pages
- 13 O-NET Summary Report for Registered Nurses, dated 2/17/15, 7 pages
- 14 Department of Labor Document concerning career option websites, 1 page
- 15 general health care resources, 3 pages
- 16 CAMS System search results, 1 page

Consumer

- A [REDACTED] nursing program, 1 page
- B Request for neurological assessment, dated Oct. 21, 2014, 3 pages
- C Letter concerning dated June 18, 2013, 2 pages
- D E-mail concerning OCR complaint, case no. 02-15-3001, 5 pages
- E Neuropsychological Evaluation policy, 1282.00, 25 pages
- F Due process policy, 105.00, 5 pages
- G Due process request, Dec. 17, 2014, 3 pages
- H Letter from Department of Education dated 12/23/14, 2 pages
- I US Department of Education OCR, (7 pieces of paper some double-sided, 10 pages)
- J To the Consumer, dated 4/8/10, 2 pages
- K Due process request dated 8/12/14, 4 pages (Same document as Ex. 2)
- L Transmission document dated 6/25/13, 1 page
- M Consumer to ACCES VR, dated Dec. 17, 2013, 2 pages
- N Letter from [REDACTED] dated 8/1/14, 1 page
- O GED and Associate's in Applied Science Health Care Management certificates, 2 pages
- P Letter from SUNY [REDACTED] and records, dated Nov. 26, 2013, 15 pages
- Q Comprehensive psychological evaluation, dated 4/20/2009
- R Psycho-educational evaluation, dated 1/4/10, 5 pages
- S [REDACTED] letter, dated 1/1/10
- T Administrative review decision, dated 10/21/10 and attachment
- U Earned certifications, 10 pages
- V Description of nursing program at [REDACTED], 12 pages (6 sheets double sided)
- W Group of medical and psychiatric evaluations and documents, 15 pages

TRANSCRIPT CORRECTIONS

Page 200, line 20: "organic roots" not "routes"

Page 227, line 23: Corrected to 6:1:1 and 12:1:1