

The University of the State of New York
The State Education Department
Office of Adult Career and Continuing Education Services –
Vocational Rehabilitation (ACCES-VR)

In the matter of [REDACTED] [REDACTED]

Petitioner,

-against-

**Adult Career and Continuing Education Services – Vocational Rehabilitation
(ACCES-VR),**

Respondent.

FINDINGS OF FACT AND DECISION

Before: [REDACTED] [REDACTED], Impartial Hearing Officer

For Petitioner: [REDACTED] [REDACTED] [REDACTED], M.A, C.R.C.
Director, NYC Human Resources Administration

[REDACTED] [REDACTED] Petitioner

For ACCES-VR: [REDACTED] [REDACTED], Assistant District Office Manager

Date of Hearing: [REDACTED] 2016

Place: ACCES-VR [REDACTED] District Office
[REDACTED]

PERSON'S WHO APPEARED ON [REDACTED] 2016:

[REDACTED]

Petitioner

M.A, C.R.C.

Director, NYC Human Resources Administration

[REDACTED]

ACCES-VR Assistant District Office Manager
Vocational Rehabilitation Counselor
Senior Vocational Rehabilitation Counselor

PRELIMINARY STATEMENT

I am an Impartial Hearing Officer, approved by the State Education Department. I was appointed to this Hearing by Kevin G. Smith, Deputy Commissioner of the Office of Adult Career and Continuing Education Services (“ACCES-VR” or “the Agency”). I was notified of the appointment by letter Notice of Hearing of Anne Sternbach, Senior Vocational Rehabilitation Counselor, dated July 13, 2016, sent to me and petitioner [REDACTED] [REDACTED] (“the Consumer”). (IHO Exhibit I).

The Impartial Hearing began at 10:00 am on [REDACTED] 2016 at the ACCES-VR [REDACTED] District Office located at [REDACTED], [REDACTED] New York, NY [REDACTED]. [REDACTED] was advised in the Notice of Hearing about the Client Assistance Program (CAP) and [REDACTED] right to have someone represent [REDACTED]. [REDACTED] did not have a CAP representative, but was accompanied by an advocate: [REDACTED] [REDACTED] I, M.A, C.R.C., Director, NYC Human Resources Administration Special Services Administration Vocational Rehabilitation Services.

A list of the exhibits offered into evidence is attached to the decision. I received the transcript on [REDACTED] 2016.

ISSUE

Whether ACCES-VR properly denied petitioner’s request for funding for a M.S.W. graduate school program.

CONSUMER’S POSITION

[REDACTED] wants ACCES-VR to sponsor [REDACTED] through a graduate program in social work at the Columbia University School of Social Work, which accepted [REDACTED] on

May 23, 2016 (Respondent Exhibit 9, p. 3). [REDACTED] I, [REDACTED] advocate, alleged (T. 78-84) that during a meeting on July 15, 2015, [REDACTED] clearly informed the Agency that [REDACTED] wanted to finish [REDACTED] B.A. degree at St. Joseph's College to qualify for a M.S.W. program and become a social worker. The advocate argued that the senior vocational rehabilitation counselor present at the July 15, 2015 meeting never informed the Consumer that a waiver was required to continue at the private college (rather than a SUNY or CUNY program), and that ACCES-VR wasted time by sending the Consumer to CUNY for an "evaluation." [REDACTED] stated that [REDACTED] requires a M.S.W. to become self-sufficient as a social worker. [REDACTED] said that the ACCES-VR "micro-managed" [REDACTED] case, and that Agency staff treated [REDACTED] in a hostile manner.

[REDACTED] testified (T. 85-96) that at the July 15, 2015 meeting [REDACTED] was adamant that [REDACTED] goal was to finish [REDACTED] B.A. and obtain a M.S.W., for employment as a social worker. [REDACTED] said that on July 15, 2015, [REDACTED] the senior vocational rehabilitation counselor, asked to meet with [REDACTED] alone, to apologize for inferring that [REDACTED] "abused the system" and was using the Agency as a scholarship source. During their meeting, [REDACTED] told [REDACTED] that [REDACTED] goal was to attend graduate school, and expressed that goal to [REDACTED] as well. [REDACTED] said that there was miscommunication at the meeting, which [REDACTED] acknowledged in his email statement that at the meeting they "were not able to cover everything as intended." (Consumer's Exhibit A). [REDACTED] stated that a M.S.W. is required for consideration for employment in the social services field, and that the Master's degree is listed as a requirement for "Counselors, Social Workers, and other Community and Social Service

Specialists” in the ONET Dictionary of Occupational Titles, 4th Edition (Consumer Exhibit B)¹.

ACCES-VR’s POSITION

██████████ an Agency Assistant District Office Manager, made an opening statement on behalf of ACCES-VR. At issue is the Consumer’s claim that █████ informed █████ counselor on July 15, 2015 that █████ career goal was a M.S.W. The Agency’s position is that █████ █████ expressed an interest in becoming a social worker, that █████ intended to seek employment upon completing █████ B.A. Degree, and that █████ signed an IPE for college sponsorship only, with the goal of "community or social service occupation." (T. 19-20). █████ █████ submitted into evidence the IPE Development for Original IPE Case Note dated July 31, 2015, which reported that █████ █████ “...disclosed █████ would like to complete █████ Bachelor’s Degree in Community Health and Human Services at St. Joseph’s College in an effort to secure stable, full-time employment in the field.” (Respondent Exhibit 1). The Agency submitted a July 16, 2015 email from █████ █████ to █████ counselor stating that █████ wanted to complete █████ bachelor’s degree to complete █████ employment goal. (Respondent Exhibit 3). The IPE dated August 18, 2015 and signed by █████ █████ on August 31, 2015 was admitted into evidence (Respondent Exhibit 2); it provides for a work goal of “Community or Social Service Occupations (21-0000)”, and the services to be provided are St. Joseph’s College tuition and attendant expenses. ACCES-VR denied the Consumer’s request for

¹ Pursuant to agreement between the parties, the Consumer was to submit an ONET job title description, and the Agency would have opportunity to respond (T. 98). The Consumer submitted an ONET job title description (see below), and the Agency in turn submitted one; both are made a part of the record.

graduate school sponsorship, because it was not required to achieve the IPE employment goal, as mandated by Agency policy (Respondent Exhibit 4). ACCES-VR policy states that a Consumer has input but not complete control into an IPE, and counselors must review, consider and approve all IPEs. (Respondent Exhibit 5). The Agency submitted post-hearing an ONET job title description for “Social and Human Service Assistants” (Respondent Exhibit 9)².

██████████ an Agency Vocational Rehabilitation Counselor, testified (T. 30-51) that █████ met █████ █████ in June, 2015, when they discussed █████ educational and vocational background, and █████ vocational intentions. █████ █████ had experience in the human services field, and was interested in the social services field. █████ had attended a private college, but needed 35 to 40 credits to get █████ degree, and wanted ACCES-VR assistance to complete the degree requirements. Agency policy limits college degree assistance to the rates charges by SUNY/CUNY programs, so █████ █████ determined that █████ █████ should seek a waiver, based on the fact that if the Consumer transferred to a SUNY/CUNY program █████ would lose credits and it would cost more for █████ to obtain a degree there than by finishing █████ program at the private college. On July 15, 2015, █████ █████ met with █████ supervisor, █████ █████ and █████ █████ advocate; █████ █████ provided documentation that SUNY/CUNY would not accept all █████ credits, and it would be more efficient to finish █████ degree at the private college. █████ █████ and the supervisor requested a waiver, which ACCES-VR granted, and █████ █████ was able to finish █████ B.A. at the private college with Agency

² See Footnote 1 above

sponsorship. [REDACTED] notes of the July 15, 2015 meeting were submitted into evidence (Respondent Exhibit 8). [REDACTED] stated that [REDACTED] goal was employment in the social services/human services area, and that the B.A. would provide more confidence and opportunity than relying solely on past experience. [REDACTED] maintained communication with [REDACTED] until May, 2016; most of their communication concerned the Consumer's requests for additional materials and transportation expenses. In May, 2016, [REDACTED] sent an email to [REDACTED] that [REDACTED] had graduated, but felt [REDACTED] had better employment opportunity with a M.S.W., and attached a letter that [REDACTED] was accepted to Columbia University's graduate program (Agency Exhibit 7). [REDACTED] consulted with [REDACTED] about the Consumer's request for graduate school sponsorship; it was determined that [REDACTED] was able to pursue employment with the B.A., and ACCES-VR would not sponsor [REDACTED] graduate degree.

[REDACTED] an Agency Senior Vocational Rehabilitation Counselor, testified (T. 55-74) that he was [REDACTED] acting supervisor when he first met [REDACTED] in June, 2015; he worked with [REDACTED] to develop the Consumer's IPE and assisted obtaining the waiver for [REDACTED] private college tuition. [REDACTED] did not recall that [REDACTED] requested Agency sponsorship for graduate school, until [REDACTED] made the due process request. On July 15, 2015, [REDACTED] met with the Consumer, [REDACTED] advocate, and [REDACTED] and discussed ACCES-VR policy regarding the tuition cap waiver. [REDACTED] and [REDACTED] approved the preliminary waiver application, and it was sent for final approval by the Agency's Albany office, which approved the waiver. [REDACTED] completed [REDACTED] degree in two semesters. On

July 23, 2015, [REDACTED] sent an email to the Consumer stating that the July 15, 2015 meeting was “somewhat chaotic” and they were not able to cover everything as intended.

FINDINGS OF FACT

1. [REDACTED] [REDACTED] is eligible for ACCES-VR services because [REDACTED] has a documented disability that causes functional limitations that impact [REDACTED] ability to obtain and/or maintain employment. (Respondent Exhibit 1).

2. [REDACTED] [REDACTED] applied for ACCES-VR services in June, 2015. [REDACTED] had already earned 90 credits towards a Bachelor’s Degree in Community Health and Human services at St Joseph’s College, and wanted ACCES-VR sponsorship to finish [REDACTED] degree and secure full-time employment. (Respondent Exhibit 1). On August 1, 2015 [REDACTED] [REDACTED] wrote to [REDACTED] vocational rehabilitation counselor that [REDACTED] needed “...38 credits to complete my bachelors degree at St. Joseph’s and this is what I would like to do in order to complete my employment goal.” (Respondent Exhibit 3).

3. On July 15, 2015, [REDACTED] [REDACTED] verbally advised [REDACTED] that [REDACTED] wanted to attend a graduate program to achieve a M.S.W. (T. 87).

4. ACCES-VR policy limits the amount of college tuition and fee payment to the amount charged by SUNY/CUNY. After it was determined that transfer to a SUNY/CUNY program would cause the Consumer to lose credits and take longer to earn [REDACTED] degree, [REDACTED] [REDACTED] counselor decided to apply for a waiver so that ACCES-VR would pay for [REDACTED] tuition at St. Joseph’s. The waiver was granted. (T. 34-37, 58).

5. On August 31, 2015, [REDACTED] signed an IPE that listed a work goal as “Community or Social Service Occupations” and provided for payment of [REDACTED] St. Joseph’s College tuition and related expenses. (Respondent Exhibit 2).

6. In May, 2016, [REDACTED] completed [REDACTED] coursework, graduated and obtained [REDACTED] Bachelor’s Degree. (Respondent Exhibit 7).

7. On May 24, 2016, [REDACTED] wrote to [REDACTED] vocational rehabilitation counselor that [REDACTED] had been accepted into the Columbia University School of Social Work graduate program, and requested that ACCES-VR sponsor [REDACTED] in the Master’s Degree program; [REDACTED] goal was to become a licensed clinical social worker. (Respondent Exhibit 9).

8. ACCES-VR declined to sponsor [REDACTED] in a graduate program, and [REDACTED] requested the instant hearing on June 27, 2016. (IHO Exhibit II).

LAWS, REGULATIONS AND POLICIES

Title I of the Rehabilitation Act of 1973 provides for a variety of services to assist persons with disabilities to achieve an employment outcome and may include training at the college level. 29 U.S.C. § 701, et seq.

ACCES-VR Policy 100.00 Consumer Involvement Policy (February 2007), stresses the importance of individual’s “to be as independent as they desire in designing and fulfilling their individualized plans for employment (IPE).” See Goldstein v. VESID, 199 A.D.2d 766, 769, 605 N.Y.S.2d 425, 427 (3d Dep’t 1993). However, while the policy encourages involvement, it does not mean that Consumers “have complete control over their programs. Vocational rehabilitation counselors must review, consider and approve all IPEs. They will apply their professional judgment, vocational rehabilitation expertise, applicable laws, regulations, and policies, sound planning considerations, and responsible use of public funds.” (Respondent Exhibit 5).

ACCES-VR policy states that it “...will contribute toward training beyond the baccalaureate level when one or more of the following criteria are met: 1. The Consumer requires graduate training in order to enter the profession, which is an agreed upon employment goal on the IPE, or 2. The significance of disability limits the

Consumer's ability to function in an entry-level job while simultaneously completing additional training at the graduate level required to maintain the job." (Respondent Exhibit 4).

The New York State Court of Appeals has held that while the federal Rehabilitation Act requires necessary services, it does not require services to achieve a person's possible level of employment and that "it is ACCES-VR that makes the final decision with respect to the contents of the [IPE], including the listed goal, eligibility and the scope of services to be provided." Murphy v. VESID, 92 N.Y.2d 477, 488, 705 N.E.2d 1180, 1185, 683 N.Y.S.2d 139, 144 (1998) (citation omitted). In Murphy, the petitioner's Individualized Written Rehabilitation Program (IWRP) (as the IPE was then denominated), was to complete a Bachelor's Degree. Id. At 480, 705 N.E.2d at 1181, 683 N.Y.S.2d at 140. When petitioner was close to obtaining that degree, █████ was accepted at Syracuse Law School and requested that VESID amend the IWRP to include funding for a law degree. Id. At 481, 705 N.E.2d. 1181, 683 N.Y.S.2d at 140. Petitioner had not requested this degree originally, and it was not listed in █████ written plan. Id. At 483, 705 N.E.2d 1182, 683 N.Y.S.2d at 141. Since █████ could obtain the agreed upon employment without a law degree, VESID decided that █████ was not entitled to further training. Id. At 481, 705 N.E.2d 1181, 683 N.Y.S.2d at 140. The Court of Appeals upheld this determination, stating that the "legislative goal is to empower eligible individuals with opportunity to access their maximum employment, not to provide individuals with idealized personal preferences for actual optimal employment." Id.

In a similar case, the Appellate Division, Third Department had previously upheld VESID's refusal to fund a graduate degree program, holding that while the Rehabilitation Act requires necessary services, it does not require those services to be maximized. Romano v. VESID, 233 A.D.2d 829, 636 N.Y.S.2d 179 (3rd Dep't 1996). In Romano, the petitioner had an approved IWRP in which social work was the stated vocational goal. Id. At 829, 636 N.Y.S.2d at 179. Pursuant to this IWRP, VESID authorized funding for an Associates Degree in Human Services. Id. When VESID determined that the employment opportunities with an Associates Degree were limited, it later amended the IWRP to include funding for a Bachelor's Degree in Social Work. Id.

In holding that VESID need not fund a Master's Degree in Social Work, the court stated that while the Federal Rehabilitation Act requires funding for "maximum employment," it does not require VESID to sponsor every credential desired by the petitioner. Id. At 830, 636 N.Y.S.2d at 180. The Court of Appeals in Murphy cited and favorably commented upon the Romano decision. 92 N.Y.2d at 487, 705 N.E.2d at 1184, 683 N.Y.S.2d at 143.

DECISION

After reviewing the facts of this hearing and the policies, regulations, and law relating to this matter, I have decided that ACCES-VR's denial of the Consumer's request for graduate school funding was proper. There is no dispute that [REDACTED] has a disability that qualifies [REDACTED] for ACCES-VR services, and ACCES-VR granted [REDACTED] application for services by providing tuition and related expenses for [REDACTED] to finish the Bachelor's Degree program at St. Joseph's College. I credit the casenotes made by [REDACTED] contemporaneously with the July 15, 2015 meeting, which state that [REDACTED] goal was completion of [REDACTED] bachelor's degree and a job in the social/human service field. While [REDACTED] advised [REDACTED] verbally that [REDACTED] wanted to pursue a M.S.W., [REDACTED] emails submitted into evidence refer only to finishing [REDACTED] college degree, and [REDACTED] signed the IPE with a Community or Social Service Occupation as an employment goal, and ACCES-VR sponsorship of college tuition and related expenses as the services to be provided. It was not until [REDACTED] graduated from college in May, 2016 that [REDACTED] gave written notice to ACCES-VR of [REDACTED] intention to attend graduate school, and requested Agency sponsorship through the graduate program. In denying [REDACTED] request, the ACCES-VR counselors who worked with [REDACTED] acted according to ACCES-VR policy, applicable laws, regulations, and policies, sound planning considerations, and responsible use of public funds. I credit the testimony of the ACCES-VR witnesses that [REDACTED] was qualified for employment in [REDACTED] chosen field, and that employment opportunities were available. I note that the ONET job category "Counselors, Social Workers, and Other Community and Social Services Specialists" covers a broad spectrum of human services/social services positions, some of which require a Bachelor's Degree (e.g., Respondent Exhibit 10), and some of which require a Mater's Degree (e.g., Consumer Exhibit B). A graduate degree is not required

for [REDACTED] [REDACTED] to achieve [REDACTED] IPE employment goal. ACCES-VR is not required to optimize the services provided to a Consumer. It has provided [REDACTED] [REDACTED] with opportunity to access [REDACTED] maximum employment, and properly denied the application for graduate school funding.

Dated: [REDACTED]

[REDACTED] Esq., Impartial Hearing Officer

APPEAL NOTICE

Please take notice that this is a final decision. If you disagree with the decision, you may seek judicial review through action in a New York State or United States District Court of competent jurisdiction.

LIST OF WITNESSES

[REDACTED] [REDACTED] Petitioner

[REDACTED]
[REDACTED] Vocational Rehabilitation Counselor
[REDACTED] Senior Vocational Rehabilitation Counselor

List of Exhibits admitted into Evidence:

IHO:

- | | | |
|-----|---------------------------|---------|
| I. | Notice of Hearing | 7/13/16 |
| II. | Impartial Hearing Request | 6/27/16 |

Consumer:

- | | | |
|----|---------------------------------|---------|
| A. | Emails: [REDACTED] - [REDACTED] | 7/23/16 |
| B. | ONET Job Description | Undated |

ACCES-VR:

- | | | |
|-----|---|----------|
| 1. | IPE Development for Original IPE Casenote | 7/31/15 |
| 2. | IPE | 8/18/15 |
| 3. | Email: [REDACTED] - [REDACTED] | 7/16/15 |
| 4. | ACCESS-VR Policy re: Graduate School | Undated |
| 5. | ACCESS-VR Consumer Involvement Policy | Undated |
| 6. | <u>Matter of Goldstein</u> | 12/16/93 |
| 7. | Email: [REDACTED] - [REDACTED] | 5/24/16 |
| 8. | Case Note | 7/15/15 |
| 9. | Email: [REDACTED] - [REDACTED] with attachments | 5/24/16 |
| 10. | ONET Job Description | Undated |