

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



FILED
OSAH

JUN 02 2017

M [REDACTED] M [REDACTED]
Petitioner,

v.

GEORGIA VOCATIONAL
REHABILITATION AGENCY,
Respondent.

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Docket No.: [REDACTED]
[REDACTED]-OSAH-GVRA-VR-44-Woodard

Kevin Westray, Legal Assistant

INITIAL DECISION

I. Introduction

Petitioner M [REDACTED] M [REDACTED], by and through N [REDACTED] C [REDACTED], his mother and personal representative, requested a hearing in response to an informal administrative review determination issued by Respondent, the Georgia Vocational Rehabilitation Agency (GVRA), on March 14, 2017. An evidentiary hearing was held on May 12, 2017 before the undersigned Administrative Law Judge of the Office of State Administrative Hearings. Ms. C [REDACTED] participated in the hearing on Petitioner's behalf. Crystal Perry, Esq., represented GVRA.

For the reasons indicated herein, GVRA's action is **AFFIRMED**.

II. Findings of Fact

1. Mr. M [REDACTED] is an "individual with a disability" under the rules and regulations governing State Vocational Rehabilitation Services.¹ During the period relevant to this Decision, he received vocational rehabilitation services through GVRA. *Testimony of N [REDACTED] C [REDACTED] Testimony of Andrea Lester.*

2. Beginning in April 2015, Andrea Lester was Mr. M [REDACTED]'s rehabilitation counselor. In September 2015, she developed an "Individualized Plan for Employment" ("Work Plan") in collaboration with Mr. M [REDACTED]. This Work Plan called for Mr. M [REDACTED]

¹ See 34 C.F.R. § 361.42.

██████████ to receive job readiness training, counseling and guidance, work evaluations, and personal/social adjustment training. Some of these services, namely the job readiness and personal/social adjustment training, were provided at Emory University. *Exhibit R-5; Testimony of Andrea Lester.*

3. In late 2016, Mr. M ██████████ was accepted into the Inclusive Digital Expression and Literacy (IDEAL) program, a post-secondary education program, at Georgia State University. He thereafter attended the IDEAL program in the spring semester of 2017. Through the IDEAL Program, Mr. M ██████████ attended film and career development classes in a general education setting, and also met weekly with an assistant teacher to develop study skills. *Exhibit P-1; Testimony of N ██████████ C ██████████*

4. Georgia State University's IDEAL program is not nationally certified as a comprehensive transition program. Georgia State has applied for, but has yet to receive, such certification. *Exhibit P-1; Testimony of Andrea Lester; Testimony of Constance Creel, Policy and Appeals Advisor.*

5. While Mr. M ██████████ was participating in the IDEAL program, Ms. C ██████████ contacted Ms. Lester and requested that the vocational rehabilitation program provide financial assistance for Mr. M ██████████ to attend the program. However, after she determined that, pursuant to program policy, GVRA could provide financial assistance for post-secondary education only where it was provided by a certified comprehensive transition program, and that the IDEAL Program had yet to obtain the requisite certification, Ms. Lester informed Ms. C ██████████ and Mr. M ██████████ that their request for financial assistance had been denied. *Exhibit R-1; Testimony of Andrea Lester.*

6. After Ms. C [REDACTED] requested that GVRA reconsider its initial determination, GVRA commenced informal administrative review proceedings. *Exhibit R-2.*

7. On March 14, 2017, Itowoho Ekanemesang, Service Area Manager, GVRA, notified Mr. M [REDACTED] that she had conducted an informal administrative review and concluded that GVRA had appropriately denied the requested services pursuant to Policy 451.1.02, which allowed for financial assistance for post-secondary education services only where they were provided by an “approved institution[] classified as a Certified Comprehensive Training Program.” Ms. C [REDACTED] thereafter requested a hearing, whereupon the matter was referred to the Office of State Administrative Hearings for adjudication. *Testimony of Andrea Lester; Exhibits R-3, R-6.*

8. At the hearing, Ms. C [REDACTED] contested the GVRA’s decision to deny financial assistance for her son’s participation in IDEAL given the shortage of similar satisfactory programs in the state. She suggested that, in the alternative, GVRA should retroactively cover the cost of Mr. M [REDACTED] participation in IDEAL once Georgia State successfully obtained national certification. *Testimony of N [REDACTED] C [REDACTED]*

III. Conclusions of Law

1. As this case concerns GVRA’s denial of Mr. M [REDACTED]’ request for additional public assistance benefits, Mr. M [REDACTED] bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1)(e). The standard of proof is by a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2. In Georgia, the Vocational Rehabilitation Program is administered by the Georgia Vocational Rehabilitation Agency (GVRA). O.C.G.A. § 49-9-1 et seq. In its administration of the Program, GVRA is required to follow Federal regulations provided in Title 34 of the Code of

Federal Regulations. 34 C.F.R. Part 361. Pursuant to Federal regulations, GVRA has issued policy for the VR Program in its Client Services Policy Manual (hereinafter "the Manual"). Ga. Vocational Rehab. Agency, Vocational Rehabilitation, Client Services Policy Manual, *available at* <https://gvs.georgia.gov/sites/gvs.georgia.gov/files/Policy%20Manual%20February%2015%202017%20protected.pdf> [hereinafter V.R. Manual]; see 34 C.F.R. § 361.50.

3. Section 451.1.02 of the Manual provides

The GVRA may assist with tuition, required fees, books/supplies and, as appropriate, maintenance (housing and meals) only at an approved institution classified as a Certified Comprehensive Transition Program.

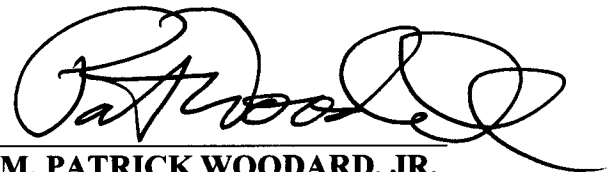
V.R. Manual § 451.1.02.

4. In the present case, Mr. M [REDACTED] does not dispute that Georgia State University's IDEAL program is not a Certified Comprehensive Transition Program. Accordingly, pursuant to its policy, GVRA was not permitted to provide Mr. M [REDACTED] with the financial assistance he requested. Although Ms. C [REDACTED] requests that GVRA retroactively cover the cost of Mr. M [REDACTED]' participation in the IDEAL program once Georgia State successfully obtains certification, such a remedy is not mandated by GVRA's policy, and the Court will not impose one in the absence of express statutory or regulatory authority.

IV. Decision

Based on the foregoing findings of fact and conclusions of law, it is the Initial Decision of the undersigned that GVRA's action is **AFFIRMED**.

SO ORDERED, this 2nd day of June, 2017.



M. PATRICK WOODARD, JR.
Administrative Law Judge