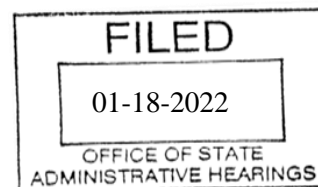


**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

IN RE C [REDACTED] E [REDACTED],  
Petitioner.

*Petition for Direct Appeal to the Georgia  
Office of State Administrative Hearings*

Docket No.: [REDACTED]  
[REDACTED]-OSAH-DIRECT APPEAL-  
PET\_GVRA-44-Boggs



**FINAL ORDER**

**I. INTRODUCTION**

Petitioner C [REDACTED] E [REDACTED], by and through his attorney, has filed a Petition for Direct Appeal in which he seeks an order to file a hearing request directly with this Court pursuant to O.C.G.A. § 50-13-41(a)(1) and Ga. Comp. R. & Regs. 616-1-2-.03(2). The Petitioner is requesting a hearing to challenge a decision by the Georgia Vocational Rehabilitation Agency (“GVRA”). GVRA filed a response in opposition to the Petition for Direct Appeal.

Having reviewed both parties’ submissions, and for the reasons stated below, the Court hereby **GRANTS** the Petition for Direct Appeal.

**II. UNDISPUTED FACTS**

Based on the parties’ submissions in this matter, the following facts appear to be undisputed:

1.

GVRA provides vocational rehabilitation services to eligible individuals in Georgia.<sup>1</sup> The Petitioner, who is blind, executed a written Individualized Plan for Employment (“IPE”)<sup>2</sup> with

---

<sup>1</sup> See O.C.G.A. § 49-9-5.

<sup>2</sup> An IPE, as defined by federal law, is a written document “designed to achieve a specific employment outcome . . . that is selected by the individual consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choices.” 34 C.F.R. § 361.45(b)(2); see also 29 U.S.C. § 722(b).

GVRA on or around May 11, 2022. The IPE’s list of “Planned Services” includes a section titled “Rehabilitation Technology,” which states in part:

IN HOUSE

AWT [Assistive Work Technology] evaluation, if deemed necessary

**Objective of Service and How It Will be Measured**

To obtain an AWT evaluation, if deemed necessary, once employment is obtained to see if accommodations are needed and whether they will be provided by GVRA, or employer, or combination of the two.

Measured by AWT evaluation and report.

(Petition for Direct Appeal [Petition], p. 1 and attached IPE; Agency Response to Petitioner’s Request for Direct Appeal [Response], unnumbered p. 2 and Resp. Ex. 2.)<sup>3</sup>

2.

The Petitioner began a job at the World of Coca-Cola on May 16, 2022, as a Guest Relations Ambassador. However, he was removed from the work schedule three days later, on May 19, 2022. According to the Petitioner, the World of Coca-Cola removed him from the schedule “to determine the reasonable accommodations he would need on the job.” (Petition, p. 1; Response, unnumbered pp. 2-3.)

3.

On June 1, 2022, counsel for the Petitioner contacted GVRA by email to request that the AWT evaluation mentioned in the Petitioner’s IPE take place “as soon as possible.” (Petitioner, p. 1 and attached email; Response, unnumbered p. 3.)

---

<sup>3</sup> Both parties submitted copies of the IPE in their respective pleadings. Both copies of the IPE appear to be missing page 7 of the document.

4.

On June 25, 2022, GVRA conducted what it termed a “worksite evaluation” at the World of Coca-Cola. According to a document drafted by Tracy Stepney, a rehabilitation technologist with GVRA, the agency was “unable to recommend or identify any assistive technology that would allow a blind employee to meet the demands of the positions explored at this facility.” (Petition, p. 2 and attached Assistive Technologist Report; Response, unnumbered p. 3 and Resp. Ex. 5.)

5.

In a letter dated July 19, 2022, the Coca-Cola Company notified the Petitioner he was being terminated from his position as a Guest Services Ambassador at the World of Coca-Cola. The letter stated that “[t]he conclusion is that [the Petitioner] would be unable to perform all of the essential functions of the role, with or without reasonable accommodation.” (Petition, p. 3 and attached letter; Response, unnumbered p. 3.)

6.

At no point during the Petitioner’s employment with Coca-Cola did GVRA conduct what either party considers to be an “AWT evaluation.” (Petition, pp. 3-4; see generally Response.)

### **III. Hearing Request**

7.

In his Petition for Direct Appeal, the Petitioner lays out the following timeline for his request for a hearing to challenge GVRA’s purported failure to complete the AWT evaluation:

- On July 29, 2022, the Petitioner submitted by email a request for a review and redetermination by GVRA of its purported decision not to complete an AWT evaluation. The request for this review and redetermination was made pursuant to GVRA Policy § 136.1.01.
- By August 16, 2022, having not received a response on the request for review and redetermination, the Petitioner sent a second email to GVRA, asking the agency to advance the matter to this Court for an administrative hearing.

- In a letter dated September 14, 2022, GVRA’s general counsel, Greg Bagley, notified the Petitioner of the following:

Mr. E [REDACTED]’ [i.e., Petitioner’s] IPE specifies that an AWT evaluation be performed, if deemed necessary once Mr. E [REDACTED] obtains employment to see if accommodations are necessary . . . . To date, Mr. E [REDACTED] has not obtained employment. Accordingly, GVRA has not failed to provide Mr. E [REDACTED]’ [sic] with all services included on his IPE and have [sic] not denied any service called for by his IPE. No issues have been presented regarding the “provision or denial or services” to Mr. E [REDACTED] by GVRA thus, GVRA policy § 136.1.01 does not apply.

(Petition, pp. 3-4 and various attachments.)

#### IV. CONCLUSIONS OF LAW

##### A. Overview of Petitions for Direct Appeal

8.

A petition for direct appeal may be filed with this Court when the following occurs:

- (1) A party seeks an administrative hearing to challenge an adverse action taken by a state agency over which this Court has jurisdiction;
- (2) The party has submitted a request for a hearing to that agency; and
- (3) after at least 30 days (or a shorter period allowed by law), that agency does not send the hearing request to this Court for docketing and scheduling.

O.C.G.A. § 50-13-41(a); Ga. Comp. R. & Regs. 616-1-2-.03(2). Put simply, a petition for direct appeal allows a party to directly ask this Court to proceed with scheduling and holding a hearing, even if the agency delays referring the party’s original hearing request. Id.

9.

Even if all three requirements listed above are met, a judge with this Court can preside over a hearing only if she has authority to do so under the law. Pursuant to the Administrative Procedure Act (“APA”), OSAH’s jurisdiction is limited to “contested cases.” O.C.G.A. §§ 50-13-2(2), 50-13-41(a)(1). A “contested case,” in turn, is defined as “a proceeding, including . . . licensing, in

which the legal rights, duties, or privileges of a party are *required by law* to be determined by an agency after an opportunity for hearing.” Id. § 50-13-2(2) (emphasis added).

10.

The granting or denial of a petition for direct appeal shall be within the Court’s discretion. Ga. Comp. R. & Regs. 616-1-2-.03(2)(d). However, the Court’s determination shall not be based on the merits of the purported contested case. Id.

### **B. Parties’ Arguments**

11.

In this matter, the Petitioner contends he has a right to a hearing before this Court regarding GVRA’s purported failure to complete an AWT evaluation, as requested by the Petitioner and as specified in his IPE. In support of his right to a hearing, the Petitioner points to GVRA policies found in the latter’s Client Services Policy Manual (“Client Manual”).<sup>4</sup> Policy 136.1.01 states as follows, in pertinent part:

An individual who does not agree with a decision by VR [i.e., GVRA’s Vocational Rehabilitation Program] regarding the provision or denial of services, including inaction or failure to act with reasonable promptness, may request review and re-determination of the decision. The request shall be in writing.

Policy 142.1.01, et seq., address the next steps following the GVRA’s internal review and redetermination:

142.1.01      If the reportable individual/applicant/client (individual) is not satisfied with the decision resulting from the administrative review, and mediation is not appropriate, they may request to continue with an impartial hearing before an Administrative Law Judge (ALJ) of the Office of State Administrative Hearings (OSAH).

---

<sup>4</sup> See Georgia Vocational Rehabilitation Agency, “Manuals,” available at <https://gvs.georgia.gov/get-know-us/publications/manuals> (last visited Jan. 11, 2023). The Court hereby takes official notice of this manual; **the parties have 10 calendar days from the date of this Order to file any written objections to the Court taking official notice of the manual.** See Ga. Comp. R. & Regs. 616-1-2-.18(b).

- 142.1.02 The request to continue with an impartial hearing shall be directed to VR Leadership, or their designee, with copies to the Policy Unit.
- 142.1.03 The request must be made in writing within ten (10) calendar days from receipt of the administrative review decision.
- 142.1.04 GVRA General Counsel’s Office, within thirty (30) calendar days after receipt of the request from the individual, shall request the impartial hearing process continue by notifying the OSAH.

....

12.

GVRA, in turn, argues the Petitioner does not have a right to either an agency-level review/redetermination, nor an administrative hearing before this Court. The agency asserts that both its Client Manual and federal law—specifically, the Rehabilitation Act of 1973, 29 U.S.C. § 720 et seq., and its corresponding regulations, 34 C.F.R. Part 361—do give individuals the right to challenge GVRA determinations regarding the “provision or denial” of vocational rehabilitation services. In this instance, however, GVRA asserts there has been no “provision or denial” or services. Rather, the Petitioner first needs to satisfy certain prerequisites—as required by his IPE—before GVRA could proceed with actually “providing” the service in question, the AWT evaluation.

**C. Analysis**

13.

As noted supra, the Court at this time shall not address the merits of the identified dispute concerning the AWT evaluation. See Ga. Comp. R. & Regs. 616-1-2-.03(2)(d). The sole focus here is whether the Petitioner is entitled to a hearing before this Court to adjudicate that dispute. Thus, the Court first examines whether the dispute would constitute a “contested case”—i.e.,

whether his “legal rights, duties, or privileges are required by law to be determined after an opportunity for a hearing.” See O.C.G.A. §§ 50-13-1(2), 50-13-41(a).

14.

The crux of GVRA’s argument is that the Petitioner does not have a right to a hearing because (i) Policy § 136.1.01 initiates the review/reconsideration proceedings only when an individual disagrees with GVRA’s decision about the “provision or denial” of services, and (ii) GVRA has never outright “denied” or “failed to provide” the AWT evaluation. This position, however, goes more to the merits of the actual dispute between the parties, rather than address the Petitioner’s right to a hearing under the law. And the law, in turn, shows he does have a right to a due process hearing. Federal regulations call for GVRA to develop procedures whenever a recipient of services “is dissatisfied with *any determination* made by personnel of the designated State unit that *affects the provision of vocational rehabilitation services.*” 34 C.F.R. § 361.57(a) (emphasis added.) The Code of Georgia, in turn, states a party is entitled to a hearing if “aggrieved by *any action or inaction* of” GVRA. O.C.G.A. § 49-9-13 (emphasis added). Echoing the Georgia statute, GVRA’s own Client Manual holds that an appealable decision regarding the “provision or denial of services” can address the agency’s “*inaction or failure to act* with reasonable promptness.” Client Manual, § 136.1.01 (emphasis added). Based on the information before this Court, it is GVRA’s alleged *inaction* in initiating the AWT evaluation, or its purported *failure to act* on said evaluation, about which the Petitioner is dissatisfied and seeks relief. It appears beyond question that an AWT evaluation, or lack of one, “affects the provision of vocational rehabilitation services.” See 34 C.F.R. § 361.57(a). GVRA certainly can disagree with the Petitioner’s claims about whether the IPE and/or relevant law required the agency to provide the AWT evaluation during his time with the World of Coca-Cola. But such disagreement would

not foreclose the right to a hearing; rather it forms the very issue to be adjudicated—i.e., whether GVRA in fact has improperly denied or failed to provide a service due to the Petitioner. Accordingly, the Court concludes the Petitioner does have a contested case, pursuant to O.C.G.A. § 50-13-2(2).

15.

The question next turns to whether all the requirements have been met for the instant Petition for Direct Appeal to be granted. The Petitioner asserts that he asked GVRA on August 16, 2022, for a hearing before this Court, and well more than 30 days have passed without the case being referred here. These facts, on their face, would satisfy the requirements for the granting of a direct appeal petition. See O.C.G.A. § 50-13-41(a); Ga. Comp. R. & Regs. 616-1-2-.03(2). Arguably, one could assert the matter is not ripe for this Court, as GVRA has not yet completed a review/redetermination per its own policy. See Client Manual, Policy §§ 142.1.01 to -.04. The Court, however, rejects such reasoning for the following two reasons.

16.

First, Georgia Code Section 49-9-13 states that an individual receiving vocational services who is “aggrieved by any action or inaction” of GVRA is entitled to a hearing “in accordance with Chapter 13 of Title 50, the ‘Georgia Administrative Procedure Act,’ and in accordance with applicable federal laws and regulations.” In turn, the Georgia Administrative Procedure Act, or APA, calls for an agency to refer contested cases to this Court if the hearing “is not presided over by the agency head or board or body which is the ultimate decision maker.” O.C.G.A. § 50-13-41. The Court could not identify any federal or state statutes, regulations, or policies calling for GVRA’s executive director, as the “agency head,” to preside over a GVRA due process hearing. Rather, federal statute requires the due process hearing to be conducted by an “impartial hearing



officer.” See 29 U.S.C. § 722(c)(1)-(5); 34 C.F.R. § 361.57(g). Nor does GVRA’s “administrative review/redetermination” procedure, as described in Policy § 136.1.01 et seq. and § 138.1.01 et seq., meet the requirements of a hearing held under the APA.<sup>5</sup> Thus, given that (i) the Petitioner has a right to a due process hearing and thus has a contested case against GVRA; (ii) the Petitioner filed a request for a due process hearing; and (iii) 30 days have passed since the request for a hearing was submitted without GVRA referring the case to this Court, the grounds for a petition for direct appeal have been met. See O.C.G.A. § 50-13-41(a); Ga. Comp. R. & Regs. 616-1-2-.03(2).

17.

Second, denying the instant Petition for Direct Appeal on the grounds that GVRA has not yet completed a review/redetermination would lead to an absurd result, whereby the agency could stall a party’s right to a due process hearing. A review of federal statutes and regulations did not uncover any requirement for this type of agency-level review as a prerequisite for a due process hearing. Rather, federal regulations grant GVRA the option of creating an “informal dispute resolution” process, whereby requests for review can be resolved without a formal hearing. See 34 C.F.R. § 361.57(c). But the same regulations note that this “informal process must not be used to deny the right of an applicant or recipient [of vocational services] to a hearing.” Id. To bar the Petitioner from adjudicating this dispute in accordance with the APA, simply because GVRA refuses to complete its own optional internal-review process, would be a denial of the Petitioner’s right to a due process hearing under state and federal law.

---

<sup>55</sup> Namely, the administrative review is conducted by “VR Leadership” or a designee, and not specifically the executive director. Client Manual, §§ 136.1.07, 138.1.01. The administrative review also is described as being a document review, telephone review, or a face-to-face review. Id. § 138.1.04. If a face-to-face review is conducted, the VR Leadership would have “full discretion” over the conduct of the review, as opposed to following the APA. Id. § 138.1.05.

**V. ORDER**

Accordingly, for the foregoing reasons, the Petition for Direct Appeal is hereby **GRANTED**. The contested case shall be docketed (with a **different case number**) and scheduled for a hearing on the next available date.

**SO ORDERED**, this 18th day of January, 2023.

*Lisa Boggs*  
\_\_\_\_\_  
**Lisa Boggs**  
**Administrative Law Judge**

