

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
441 4<sup>th</sup> Street, NW, Suite 540-S  
Washington, DC 20001-2714

B.L.,  
Petitioner,

v.

DISTRICT OF COLUMBIA  
DEPARTMENT ON DISABILITY  
SERVICES,  
REHABILITATION SERVICES  
ADMINISTRATION  
Respondent

Case No.: 2010-DDS-000XX

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**FINAL ORDER**

**I. Introduction**

This Order concludes that the Department on Disability Services, Rehabilitation Services Administration (“RSA”) acted unlawfully when it terminated vocational rehabilitation services to the Petitioner, B.L. RSA also unlawfully attempted to amend Ms. B.L.’s Individualized Plan for Employment. I also conclude that there is insufficient evidence to show that RSA improperly failed to pay for Ms. B.L.’s books for her first year at Marymount University.

A Prehearing Order, issued on May 11, 2011, identified the following issues to be determined at the hearing in this case:

1. Whether RSA provided proper notice that it would not fund costs of Ms. B.L.’s post-secondary education for the 2010-2011 academic year;
2. Whether RSA improperly did not pay the cost of books for Ms. B.L. for the 2009-2010 academic year;

3. Whether RSA improperly has not paid the cost of tuition, room and board, books and tutoring for Ms. B.L. for the 2010-2011 academic year

The evidentiary hearing occurred on May 30 and June 2, 2011. Joseph Cooney, Esq., represented Ms. B.L. and Shakira Pleasant, Esq., represented RSA. Based on the testimony of the witnesses, my evaluation of their credibility and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

### **A. Ms. B.L.'s Application**

Ms. B.L. applied for vocational assistance from RSA in 2009, when she still was in high school. She attended Kingsbury School (“Kingsbury”) and presented a comprehensive evaluation conducted at that school as part of her application for services from RSA. Respondent’s Exhibit (“RX”) 204. The evaluation diagnosed her with several disabilities, including Attention Deficit/Hyperactivity Disorder, Reading Disorder, Disorder of Written Expression, and Mathematics Disorder. *Id.* at 17. It recommended that she choose a college program that would accommodate students with learning disabilities and that she receive several specific accommodations in college. In particular, it recommended that any foreign language requirement in college be waived due to her auditory processing difficulties, and that any non-required language course that she decided to take be graded pass/fail. *Id.* at 18.

RSA found her eligible for services and began to work with her to complete an individualized plan for employment (“IPE”). Ms. B.L.’s employment goal is to become an international attorney with a particular concentration in serving Spanish-speaking clients. To

pursue that goal, she wanted to enroll at Marymount University in Arlington, Virginia and to pursue a degree in international business.

**B. The IPE**

Several RSA counselors have worked with Ms. B.L. and her family since she first applied for services. The counselor who worked with her to finish the IPE was Shonda Pertilla-Sissoko. Ms. Pertilla-Sissoko prepared an IPE that reflected Ms. B.L.'s goal to become an international attorney and specified the services that RSA would provide to help Ms. B.L. achieve it. Petitioner's Exhibit ("PX") 100. Those services included: tuition, fees, and books at Marymount, tutoring services from David McBride, a tutor who had worked with Ms. B.L. when she was in high school, and a laptop computer. PX 100 at 4.

Ms. B.L. also wanted to board at Marymount and requested that RSA pay that cost. Ms. Pertilla-Sissoko did not believe that RSA should pay for Ms. B.L.'s room and board charges. Her supervisor disagreed, however, and instructed Ms. Pertilla-Sissoko to include room and board at Marymount as one of the services that would be provided pursuant to the IPE. Therefore, the IPE states that RSA will pay for Ms. B.L.'s room and board at Marymount. PX 100 at 4. There is no evidence of the reason for the supervisor's decision.

Ms. B.L. and her father signed the IPE on July 29, 2009, and Ms. Pertilla-Sissoko signed it the next day. PX 100 at 6. The IPE states that it is a "plan of action," not a contract, and also says that RSA "may change the terms and conditions for the provision of any Rehabilitation services based on relevant changes in rules, policies procedures or funding at the time of periodic reviews". *Id.* Although the IPE lists services to be provided between 2009 and 2013, *id.* at 4-6, it contains a client financial participation amount (\$289) only for the 2009-10 academic year, and

that amount was subject to review of the tax returns to be filed by Ms. B.L.'s parents. *Id.* at 5. The IPE also required Ms. B.L. to notify RSA of "any financial changes," to provide "current and accurate financial information in order to determine my financial need," and to submit annual financial aid applications to Marymount and to various federal and District of Columbia student aid programs. *Id.* at 2.

### **C. The Initial Dispute About Financial Information**

Although the IPE was completed in July 2009, Ms. B.L.'s parents had not yet filed their 2008 income tax returns. They had received an extension of the filing deadline until October 15, 2009. Mr. B.L. has experienced difficulty in receiving timely earnings information from one or more partnerships in which he is a partner and regularly obtains an extension to file his and his wife's returns.<sup>1</sup>

During the fall of 2009, Ms. Hava Amim replaced Ms. Petrilla-Sissoko as Ms. B.L.'s vocational counselor. RSA paid Ms. B.L.'s fall semester tuition, fees, books and board charges at Marymount, along with the tutoring charges. A dispute arose concerning the spring semester charges, however, because RSA did not receive the 2008 tax returns from Ms. B.L.'s parents. As a result, Ms. Amim sent a letter terminating Ms. B.L.'s services from RSA on January 15, 2010. RX 202. Ms. B.L. and her parents sought an administrative review at RSA, as permitted by 29 DCMR 137. The administrative review decision provided that Mr. B.L. agreed to provide additional income tax information and recommended that Ms. Amim review that information for compliance with RSA's financial participation rules, 29 DCMR 124.10 and 124.14. RX 205B. Ms. Amim reviewed that information, and then rescinded the termination of services.

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<sup>1</sup> There is an ongoing dispute between Mr. B.L. and the general partner, which makes it difficult for him to obtain the information.

#### **D. Non-Payment for Books**

The IPE states that RSA will pay for Ms. B.L.'s books at Marymount. PX 100 at 4. RSA sent a purchase order to the Marymount bookstore authorizing purchase of books for the fall 2009 semester and delivery of them to Ms. B.L.. RX 210A. Ms. B.L. received those books. Based on the uncontradicted testimony of RSA's witnesses, I find that the bookstore did not send RSA an invoice asking for payment for the books. As a result, RSA has not paid for them.

#### **E. Attempts to Change the IPE**

Ms. B.L. completed her first year at Marymount in May 2010. RSA did not contact her or her parents to request updated financial information, nor did it schedule an annual review of the IPE. During the summer of 2010, Ms. B.L. asked RSA to fund tutoring in Spanish and the purchase of Rosetta Stone software to help her prepare for a Spanish course that she was planning to take during the fall semester. Her new counselor at RSA, Stephen Lewis, denied that request because Ms. B.L. was not enrolled in a Spanish course during the summer. RX 206A. When Ms. B.L. began the fall 2010 semester in August, she renewed her request for the Rosetta Stone software. Mr. Lewis agreed to that request, since she was enrolled in a Spanish course. RSA purchased the software and arranged an appointment for September 15, 2010 for her to pick it up. RX 206E. His original e-mail informing Ms. B.L. and her parents that the software was available also said: "We also need to complete the IPE process," but contained no further explanation. RX 206F.

When Ms. B.L. and her father arrived at Mr. Lewis' office on September 15, he gave them an amended IPE, PX 101, and told them that they had to sign it in order for Ms. B.L. to receive the Rosetta Stone software. The amended IPE that Mr. Lewis had prepared differed

significantly from the IPE signed in July 2009. It changed the employment goal from “international attorney” to “lawyers.” PX 101 at 1. Mr. Lewis made the change in reliance on the statement in the evaluation from Kingsbury that language requirements should be waived for Ms. B.L. in college due to her auditory processing difficulties. RX 204 at 18. The revised IPE also provided that RSA would pay nothing for the services described in the plan, other than \$919.45 to be paid to Mr. McBride for tutoring (out of a projected cost of \$4,000). It listed Pell grants, DC tuition assistance grants and other educational grants as the source of funds to pay all other costs. Paradoxically, even though the stated purpose of the meeting was for Ms. B.L. to pick up the Rosetta Stone software that RSA already had purchased (described as “assistive technology”, the amended IPE stated RSA would not pay for it. PX 101 at 4. The amended IPE also did not list Ms. B.L.’s room and board at Marymount as a service that would be provided.

Ms. B.L. and her father objected to the changes in the IPE and did not sign the amended version. The meeting lasted for about 15 minutes. Because Mr. Lewis said that signing the amended IPE was a condition for receiving the Rosetta Stone software, they left without it. On September 24, 2010, Mr. Lewis e-mailed Ms. B.L. a new version of the amended IPE. PX 102. At the top of the first page of that document, the word “Deactivated” appears. The significance of that word is not apparent, and no witness provided an explanation. The principal differences between the two amended IPEs are that the “deactivated” IPE (PX 102) states that RSA will pay the full \$4,000 of Mr. McBride’s tutoring fees, and will pay \$2,686 of Marymount’s \$11,450 tuition, with the client paying \$1,864 and various grants paying the remainder. PX 102 also says that RSA will pay for Ms. B.L.’s books and includes the Rosetta Stone software (“assistive technology”) as an item that RSA will provide. Mr. Lewis’ e-mail to Ms. B.L. asked her to let

him know when she received it, but does not give any other explanation of the document. PX 102.

Ms. B.L.'s parents filed their 2009 income tax returns in October 2010, again having obtained an extension to do so. They did not send a copy to RSA. There is no evidence that RSA asked for those returns at any time before it terminated services to Ms. B.L. I credit Mr. B.L.'s uncontradicted testimony that RSA requires a specific form to accompany financial information such as tax returns.<sup>2</sup> RSA did not send him that form, and it was not available on RSA's website. There also is no evidence that RSA scheduled an annual review of Ms. B.L.'s IPE.

#### **F. The Termination Letter**

RSA did not pay Ms. B.L.'s tuition, board and book charges for the fall 2010 semester at Marymount. Ms. B.L. sent a letter on October 22, 2010 asking when RSA would do so. RX 201B. In response, Ms. Amim, who had become Mr. Lewis' supervisor, sent Ms. B.L. a letter on October 29, 2010. RX 201A. The letter made four points:

1. RSA denied Ms. B.L.'s request to pay for her room and board at Marymount because she had "not provided the annual documentation necessary to show that you meet one of the exceptions under 29 DCMR 122.9." RX 201A at 1. The letter stated that listing of room and board on the original IPE "was in error" because there was no documentation in her case file showing any grounds to allow it. *Id.* at 2, note 3. The letter referenced an August 24, 2010 e-

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<sup>2</sup> That testimony is corroborated by RSA's rules. During the times at issue in this case, those rules required clients and others whose financial information was necessary to "[c]omplete the financial statement prescribed" by RSA. 54 D.C. Reg. 6020, 6044 (June 27, 2007) (former 29 DCMR 124.8(a)). The current version of that requirement, adopted in 2011, is 29 DCMR 124.6(a), which requires filing RSA's Economic Status Report Form annually.

mail to Ms. B.L.'s mother requesting documentation for the request for room and board, but no such e-mail is in evidence.

2. RSA said that it would not pay Ms. B.L.'s tuition and fees because Ms. B.L. and her parents had not participated in either an annual review of their financial participation or an annual review of the IPE to assess her progress in achieving her employment goal. RX 201A at 2.

3. Ms. B.L.'s employment goal of international attorney needed to be revised based upon the recommendations in the assessment prepared at Kingsbury. *Id.*

4. Ms. B.L. was required to sign the draft amended IPE prepared by Mr. Lewis no later than November 5, 2010, in order for RSA to pay her tuition and fees at Marymount. *Id.* The letter does not state whether she should sign the draft presented by Mr. Lewis on September 15 or the "deactivated" IPE sent by Mr. Lewis on September 24.

The letter contained information on Ms. B.L.'s right to request a hearing or informal resolution of the dispute if she disagreed with RSA's decision. Ms. B.L. filed a hearing request shortly after receiving the letter.

### **G. Subsequent Documentation**

After filing the hearing request, Ms. B.L. obtained two documents addressing some of the concerns that RSA had expressed. The first is PX 104, a letter from Dr. Aman Savani, a neurologist who has treated Ms. B.L. for migraine headaches. Dr. Savani states that having an on-campus room is important for Ms. B.L. because she needs to have access to a quiet, dark

room to rest when her migraines occur. There is no evidence that Ms. B.L. provided any documentation of this need before the hearing in this case.

The second document is PX 105, a letter from Dr. Iscoe, the psychologist who performed the evaluation at Kingsbury. Dr. Iscoe states that her recommendation to waive any foreign language requirement was to “ensure that a language *requirement* does not become an obstacle to Ms. B.L.’s academic success in college.” *Id.* (emphasis in original.) Dr. Iscoe explained that Ms. B.L.’s learning disabilities make language learning more challenging for her, but language study is not counter-indicated for her if she makes extra efforts to study a language. *Id.*

### **III. Conclusions of Law**

#### **A. Overview of the Rehabilitation Act**

The Rehabilitation Act of 1973, 29 USCS § 701 *et seq.*, provides federal grants to states to provide vocational rehabilitation services to individuals with disabilities. State participation is voluntary, but states that choose to participate must comply with federal regulations. *Id.* In the District of Columbia, RSA is the agency charged with implementing the Rehabilitation Act. *See* 34 CFR § 361.57(b)(2); D.C. Official Code § 32-331; Mayor’s Order 2002-173, dated October 14, 2002; and 29 DCMR 100 - 199.

Once a client is found eligible for vocational rehabilitation services, RSA, in collaboration with the client, must develop an Individualized Plan for Employment (“IPE”). The IPE must identify the client’s employment goal and must specify the particular vocational rehabilitation services needed to achieve that goal. 29 DCMR 110.5.

The law requires that the formulation of an IPE must be a collaborative effort between the client and RSA. 34 CFR § 361.45(d); 29 DCMR 110.5 (b) and (c). The client and an agency vocational counselor both must participate in the preparation of the IPE. *Buchanan v. Ives*, 793 F. Supp. 361, 366 (D. Maine 1991); *Hedgepeth v. North Carolina Division of Services for the Blind*, 153 N.C. App. 652, 657, 571 So. 2d 262, 266 (2002). Indeed, RSA's regulations specifically provide that an IPE must be prepared in a manner that gives the client "the opportunity to exercise informed choice" in selecting an employment outcome, and the services and settings to be used to achieve that outcome. 29 DCMR 110.5(b). Both the client and RSA's vocational counselor must agree to, and sign, the IPE. 29 DCMR 110.5(c).

RSA's regulations specifically address the process for amending an IPE. RSA must "ensure" that

[t]he IPE is amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the Rehabilitation Services Administration or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services;

29 DCMR 110.5(f).

Federal law contains a similar requirement. 34 C.F.R. § 361.45(d)(6). RSA also must "ensure" that there is an annual review of the IPE by the client and a qualified vocational rehabilitation counselor to assess the client's progress in achieving the employment goal. 29 DCMR 110.5(f); 34 C.F.R. §361.45(d)(5).

## **B. The Termination of Services to Ms. B.L. was Unlawful**

RSA terminated Ms. B.L.'s services because she failed to provide updated financial information, failed to participate in an annual review of the IPE and would not sign a revised IPE. None of these reasons was a proper basis for termination in the circumstances of this case.

### **1. Financial Information**

Federal regulations permit, but do not require, RSA to require clients or their families to contribute to the cost of vocational rehabilitation services based on need. 34 CFR § 361.54(b). RSA has elected to do so and has issued rules to determine appropriate financial contributions. 29 DCMR 124. Those rules require that the client, his or her spouse, any person who claims the client as a dependent for federal income tax purposes, and any person who must provide financial information on the client's free application for federal student aid must participate in a financial needs test. 29 DCMR 124.4. The regulation, therefore, required that both Ms. B.L. and her parents submit financial information to RSA for it to use in calculating RSA's contribution to the cost of Ms. B.L.'s services.

The regulations, as well as Ms. B.L.'s original IPE, required updates of the financial information submitted to RSA. PX 100 at 2; 29 DCMR 122.10(g). After Ms. B.L. completed the 2009-10 academic year, RSA did not receive any updated financial information. RSA cited the absence of that information as a reason not to provide services to Ms. B.L. for 2010-11 and beyond. RX 201A. RSA claimed that it needed the 2009 tax returns to evaluate the financial contribution that it would make and that the B.L.s should have submitted the tax returns as soon as they were ready in October 2010. The B.L.s, however, say that RSA did not ask for that information and that they had no way to submit it because RSA did not give them the proper forms.

Both sides could have done a better job of communicating with each other about the financial issues, but I conclude that the responsibility for the absence of the financial information must fall upon RSA. RSA's regulations expressly required clients to complete its prescribed financial statement, *see note 2 supra*, yet RSA never provided that statement to Ms. B.L. or her parents. A party whose actions prevent another party from performing its legal obligations has no right to complain if those obligations are not fully performed. *In re Estate of Drake*, 4 A.3d 450, 454 (D.C. 2010); *Aronoff v. Lenkin Co.*, 618 A.2d 669, 682-83 (D.C. 1992); *Reiman v. International Hospitality Group*, 558 A.2d 1128, 1132-34 (D.C. 1989).<sup>3</sup> The absence of financial information, therefore, was not a valid reason for terminating services to Ms. B.L..

## **2. The Annual Review**

RSA's October 29, 2010 letter also stated that Ms. B.L. had not participated in the annual review of the IPE required by 34 C.F.R. § 361.45(d) and 29 DCMR 110.5(e). No annual review ever occurred, but RSA never made arrangements for one. The meeting with Mr. Lewis on September 15, 2010, was not such a review. The purpose of the meeting was to pick up the Rosetta Stone software. The cryptic statement in RX 206F that "[w]e also need to complete the IPE process," could have been a reference to the need to amend the IPE to authorize the software. Whatever its meaning, the statement certainly fell far short of informing Ms. B.L. and her parents that the meeting would be an annual review, which involves assessing Ms. B.L.'s progress toward completing her goals, as well as the presentation of required financial information pursuant to 24 DCMR 122.10(g). It was RSA's responsibility, not that of Ms. B.L.

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<sup>3</sup> This principle, known as the "prevention doctrine" is primarily applicable in contract cases. The Court of Appeals has recognized, however, that the prevention doctrine is a " 'principle of fundamental justice.' " *Aronoff, supra*, 618 A.2d at 682, quoting 5 S. Williston, *A Treatise on the Law of Contracts*, § 677 at 224 (3<sup>rd</sup> ed. 1961). It is appropriate to apply that doctrine in this context as well.

or her parents, to “ensure” that an annual review took place. 34 C.F.R. § 361.45 and 29 DCMR 110.5. Because RSA failed in that responsibility, the non-occurrence of a review was not a valid reason for terminating services to Ms. B.L.<sup>4</sup>

### **3. Failure to Sign the Amended IPE**

Both at the September 15 meeting and in the October 29 letter, RSA insisted that Ms. B.L. sign an amended IPE that it had prepared. Without any input from Ms. B.L., RSA’s new IPEs changed her employment goal, eliminated room and board at Marymount from the IPE, and drastically reduced the amounts RSA would pay for the authorized vocational rehabilitation services. RSA’s unilateral action violated 29 DCMR 110.5(f) and 34 C.F.R. § 361.45(d)(6), which require that any amendment to an IPE, if necessary, must be made by the client “in collaboration” with RSA.

RSA’s clearest violation was the change in Ms. B.L.’s employment goal without any prior notice or discussion. An employment goal in an IPE must be “chosen by the eligible individual consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice.” 29 DCMR 112.2(a). Mr. Lewis, not Ms. B.L., chose the new employment goal of “lawyers.” While his concern about Ms. B.L.’s language abilities may have been a reason for additional discussion with her, that concern in no way justified a unilateral change to the IPE. The Kingsbury evaluation upon which Mr. Lewis relied did not suggest that Ms. B.L. should not study a foreign language under any circumstances; it recommended that any language requirement be waived and that any voluntary

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<sup>4</sup> Of course, if Ms. B.L. unreasonably failed to participate in an annual review that RSA arranged, her lack of cooperation might be a reason for terminating services, but there is no evidence of any such failure in this record.

language course be graded pass/fail. RX 204 at 18. The evaluation certainly suggested that Ms. B.L.'s goal might be difficult due to her disability, but the very purpose of the Rehabilitation Act is to assist clients in overcoming disabilities, not to erect pre-emptive barriers when those disabilities make a goal harder to achieve. Ironically, RSA was telling Ms. B.L. that her goal was impossible at the same time it was arranging for the Rosetta Stone software that would help her achieve that goal. In short, there was no basis for RSA to insist that Ms. B.L. sign one of the revised IPEs as a condition of receiving continued services.

To be sure, the law requires that there must be a signed IPE, agreed to by RSA, in order for RSA to provide services to any client. 29 DCMR 119.1. RSA has both the right and the responsibility to seek to change an IPE if it believes that circumstances warrant any changes, and RSA has no obligation to fund impossible vocational goals. *Murphy v. Office of Vocational and Educational Services*, 92 NY 2d 477, 488, 705 N.E.2d 1180, 1185 (1998) (clients do not have “final or exclusive decision making authority to determine their own goals”). But RSA must engage in the collaborative process mandated by the regulations. It may not simply present a new plan to a client and demand that the client take it or leave it, as happened here.<sup>5</sup> There must first be a process of proposing amendments, explaining RSA's reasoning, listening to the client's position and attempting to work out differences. That is a collaborative process and that did not happen here. A hearing request is a last resort for resolving differences that remain after the collaborative process has taken place. It is not a substitute for that process. RSA's unilateral action in this case unlawfully required Ms. B.L. to file a hearing request because RSA did not follow the process required by law.

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<sup>5</sup> Indeed, it is not even clear which plan RSA demanded that Ms. B.L. take or leave – the September 15 draft plan or the September 24 “deactivated” plan. RSA's October 29, 2010 letter, RX 201A, does not say.

### **C. Books for the 2009 Academic Year**

RSA's regulations state that a provider of goods must submit an invoice for those goods to RSA. 29 DCMR 120.4. Because Marymount's bookstore did not submit an invoice, RSA had no obligation to pay for the books delivered to Ms. B.L.

### **D. The Notice Requirement**

Both federal law and RSA's regulations require RSA to provide notice to a client of the right to challenge any decision affecting the provision of vocational rehabilitation services. 34 C.F.R. § 361.57(b)(2)(iv) (notice must be given "[w]henver vocational rehabilitation services for an individual are reduced, suspended or terminated"); 29 DCMR 146.1 (notice must be given "at the time of any action affecting the applicant's or client's claim for services").

Ms. B.L. argues that RSA's failure to pay her tuition, room and board and other expenses at the outset of the fall 2010 semester was a suspension or termination of services and that RSA should have notified her of that action at that time. Although RSA notified her on October 29, 2010, of its requirement that she sign a new IPE or face termination of her services, Ms. B.L. contends that the notice was too late.

There are two reasons why Ms. B.L. is not entitled to relief on this claim. First, it is not clear that there is any additional remedy available to her, beyond those mandated by this Order. Regardless of whether RSA notified Ms. B.L. at the start of the semester in August, instead of in October, she will receive an appropriate remedy for that entire semester and beyond. Second, because the financial information from Ms. B.L.'s parents could not be obtained before the semester began, it was reasonable to expect that any final decisions regarding RSA's share of

Ms. B.L.'s expenses would have to await submission of the tax return information that was available only in October, after the semester began. The mere act of waiting for that information, required both by law and the original IPE, was not a suspension of services to Ms. B.L. The actionable suspension or termination did not occur until RSA sent the October 29 letter, RX 201A, which contained proper notice.

### **E. The Remedy**

What is the appropriate remedy? As to the amendment of the vocational goal on the IPE, the answer is simple. RSA's unilateral amendment is unlawful, and the IPE must be changed to reflect Ms. B.L.'s current goal of international attorney. To the extent that the statements in the Kingsbury evaluation cause concern for RSA, it should evaluate the entire record, including Ms. B.L.'s progress in her Spanish courses, and can propose any amendments it believes are appropriate. If the parties disagree about any proposed amendments, Ms. B.L. can request a hearing.

As to the financial issues, the B.L.s argue that the original IPE, which requires RSA to pay the entire cost of services, except for the client financial participation amount of \$289, must remain in effect unless and until there is a valid amendment of the IPE. RSA contends that it cannot be estopped from changing the IPE in order to make sure that it complies with the law, including the financial participation requirements.

While the parties debate whether or not the original IPE estops RSA from making any changes, I do not decide whether the law of estoppel applies here. Instead, I am enforcing the original IPE, PX 101, as written. That IPE lists Ms. B.L.'s employment goal, the services needed to achieve that goal, and the tentative client financial participation amount for the 2009-

2010 academic year, pending review of the 2008 tax returns. It contains no commitments for funding the required services for any other years.

Until the IPE is amended properly, therefore, Ms. B.L. is entitled to the services provided in PX 101. The IPE, however, gives her no right to any specific financial participation in the cost of those services beyond the first academic year. Instead, RSA's regulations govern her rights on that issue. As noted above, she has the right (and the obligation) to participate in an annual review, including a review of the financial participation amounts. 29 DCMR 122.10(g). Because RSA erroneously failed to provide that review, the remedy is to require such a review as soon as possible.

I have considered 43 CFR § 361.57, which says that RSA may not "institute a suspension, reduction or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and IPE development . . . , pending a decision by a hearing officer . . . ." Ms. B.L. argues that, according to § 361.57, the services called for in the original IPE, and RSA's contribution to those services, should have continued pending the outcome of this case.

As written, the IPE does not mandate any financial contributions from any source after the first year. Section 361.57, therefore, does not compel RSA to fund Ms. B.L.'s education at the same rate as her first year. When an IPE is subject to contingencies, the obligation to perform under § 361.57 must account for those contingencies in the plan itself. Thus, while the *services* had to continue until the IPE was properly amended, RSA has the right to re-evaluate its *contribution* to the cost of those services based on updated financial information.

## **V. Order**

Based on the findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2012:

**ORDERED**, that RSA's proposed amendment of Ms. B.L.'s IPE is **REVERSED**. The IPE must remain the same until a proper amendment process has taken place. If the parties are unable to agree upon amendments after the proper collaborative process has taken place, Ms. B.L. may request a hearing to resolve any disputes; and it is further

**ORDERED**, that RSA's termination of services to Ms. B.L. is **REVERSED**. Within 10 days of the service date of this Order, RSA must provide Ms. B.L. with any form necessary to submit financial information required by 29 DCMR 122 and 124 for the 2010-2011 and 2011-2012 academic years. Within 20 days of the service date of this Order, Ms. B.L. and her family shall submit any financial information requested by RSA for those academic years. Within 30 days of the date of this Order, RSA shall inform Ms. B.L. of the required financial participation, if any, by her family for those academic years; and it is further

**ORDERED**, that RSA shall ensure that an annual review of Ms. B.L.'s IPE occurs within 30 days of the service date of this Order. During the annual review, the parties shall confer in good faith about any non-financial modifications to Ms. B.L.'s IPE, including, but not limited to, the addition or elimination of any services in the IPE. At the conclusion of any good faith negotiations, if the parties disagree on any issue, RSA shall send Ms. B.L. a statement of its position on those issues. To the extent that Ms. B.L. disagrees with RSA on any issue, she may request a hearing to resolve the dispute; and it is further

**ORDERED**, that during the annual review, the parties also shall discuss a schedule for the submission of any client financial information needed by RSA to determine the client

participation amount for the 2012-2013 academic year. If the parties are unable to agree upon such a schedule, Ms. B.L. may request a hearing to resolve the dispute; and it is further

**ORDERED**, that any party may ask for reconsideration or relief from this Order as stated below; and it is further

**ORDERED**, that any party may appeal this Order by following the instructions below.

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\_\_\_\_\_/s/\_\_\_\_\_  
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John P. Dean  
Principal Administrative Law Judge