



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 7, 2016

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Mr. Alan Clay
Director
Pima Medical Institute-Seattle
9709 3rd Avenue NE, No. 400
Seattle, Washington 98115

Re: PIMA Medical Institute-Seattle
OCR Reference No. 10162072

Dear Mr. Clay:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against PIMA Medical Institute-Seattle (PMI). The complaint alleges that:

1. PMI discriminated against a student, on the basis of disability, by dismissing her from PMI's radiology program in April 2015 and again in January 2016 because of her disability (or perceived disability) due to XXXXX; and
2. PMI retaliated against the student by changing her clinical placement in the fall 2015 term from a site in XXXXX Washington to a site in XXXXXX, Washington after she complained of sexual harassment at the XXXXX site to PMI administrators.

OCR enforces section 504 of the Rehabilitation Act of 1973 and title IX of the Education Amendments of 1972. These laws prohibit discrimination and retaliation on the bases of disability and sex in programs and activities receiving federal financial assistance from the U.S. Department of Education. PMI receives federal financial assistance from this Department.

OCR's findings of fact and conclusions, set forth below, are based upon information and documents provided by the complainant and PMI. With respect to Allegation No. 1, OCR determined that the evidence did not support a conclusion that PMI failed to comply with Section 504. With respect to Allegation No. 2, OCR determined that there was sufficient evidence to support a conclusion that PMI failed to comply with the Title IX procedural requirements at 34 CFR 106.71 which incorporate by reference the prohibition against retaliation found at 34 CRF 100.7 (e). After notifying PMI of the identified violations, OCR entered into discussions with PMI regarding a Settlement Agreement (Agreement) that would serve to voluntarily resolve this violation. PMI has made a commitment in the Agreement to undertake actions that, when completed, will fully address the violation identified by OCR.

Findings of Fact

1. PMI has policies and procedures which prohibit discrimination on the basis of disability. Specifically, these policies and procedures state that PMI does not discriminate on the basis of disability in admission or access to, or treatment or employment in, its programs and activities.
2. PMI also has policies and procedures regarding complaints of discrimination on the bases of race, national origin, color, sex, disability and age. The procedures state that students must submit the substance of the grievance in written form to PMI and meet with PMI administrators. The procedures state that retaliation for filing a grievance is strictly forbidden and that any person engaging in retaliatory conduct will be disciplined.
3. During the 2013-2014 academic year, the student was enrolled in the radiology program at PMI. On or about April 29, 2014, the student was terminated from the radiology program because she failed two courses which were not offered again until the next semester. On or about August 22, 2014, the student re-enrolled in the radiology program for the 2014-2015 school year and began make-up classes.
4. On or about November 3, 2014, the student underwent XXXXX surgery and informed PMI that she would be absent from school. By letter to the student dated October 30, 2014, PMI requested that the student complete a doctor's authorization to clear her to return to work following her surgery. The student was absent from class for several days following surgery and provided notice to PMI on November 17, 2014, that she was placed on bed rest by her physician.
5. The student returned to PMI on January 5, 2015, after being cleared by her physician and began her externship at the Veteran's Administration (VA) Hospital in XXXXXX. The student's physician did not place any disability-related restrictions on her clinical participation and the student did not request any disability-related accommodations from PMI for her clinical placement at the VA Hospital.
6. On February 23, 2015, the VA Hospital's clinical instructor completed an "Evaluation of Technical and Effective Skills" sheet regarding the student. The student received a score of 80-85 out of 100 on three components, and received a score of 70-80 out of 100 on 10 components. On that same date, the student met with the PMI clinical director to discuss the student's poor progress and performance expectations at the externship site. The student was then put on a performance improvement plan. Subsequent competency evaluation forms completed by a site technologist at the VA Hospital showed satisfactory progress in exam, set technique and use of equipment.
7. By letter dated March 24, 2015, the lead technologist and clinical instructor at the VA Hospital informed PMI that the site was removing the student as an extern because the student: (a) failed to comply with the assignment sheet requirements for externship continuance; (b) failed to recognize potential danger to patients, (c) argued with a staff technologist over positioning limitations of a particular patient's hip based on her own hip problems; (d) continued extraneous

personal conversations with patients; and (e) lacked focus and ability to listen and learn from staff technologists.

8. The PMI clinical externship handbook states that each clinic site has the right to request the permanent removal of a student from their site. The handbook states that the student may or may not be assigned to another externship site depending on the reason for the removal. If the student is not re-assigned, the student will be terminated from the PMI radiology program.
9. On March 25, 2015, the student was terminated from the PMI radiology program for a second time. The “Change in Status” form stated that the student’s termination from her clinical site at the VA Hospital was a terminable offense from the PMI program as stated in the clinical externship handbook.
10. In an undated letter from the PMI program director to the student, the student was provided information about her termination from the program in response to her request. The letter stated that the student began her externship at the VA Hospital on January 5, 2015, and the site informed PMI approximately 8 weeks into the rotation that the student was not meeting the site’s expectations. Specifically, the letter stated that the VA Hospital expressed patient safety issues, lack of focus, lack of performance, inability to retain basic information about positioning, and being argumentative with staff. The letter stated that the student was informed that improvement was critical for her to remain at the site, and that the site terminated the student because her performance did not improve. The letter cited provisions of the clinic externship handbook which stated that termination from an externship site is a terminable offense which can result in termination from the radiology program.
11. It is the position of the student that she was terminated from the PMI radiology program in March 2015 because of her perceived disability status following XXXXXX surgery. The student stated that, although she was cleared by her physician to return to work without any restrictions, she had to XXXXXX during her recovery and believed the existence of XXXXXX led to her termination. Specifically, the student believes her disability was the reason for her termination because PMI never informed her as to why she was being terminated, and the verbal feedback she received from the VA Hospital was positive.
12. It is the position of PMI staff that the student was terminated from the PMI radiology program because of performance issues which resulted in the site requesting that she be removed from the site as an extern. PMI staff stated that termination from a clinical site is a basis for termination from the PMI program, and denied that the student’s XXXXXXXXXXXX surgery or recovery was a factor in the student’s termination.
13. On August 31, 2015, the student was readmitted to the PMI radiology program and was placed at XXXXX Hospital in XXXXX Washington for an externship. The student did not have any disability-related restrictions placed on her clinical participation by her physician and did not request any disability-related accommodations from PMI for her clinical placement at XXXXX Hospital.

14. By e-mail dated September 28, 2015, the XXXXXXXXXXXX Hospital clinical instructor informed the PMI clinical director that the site had concerns about the student's progress. Specifically, the e-mail stated that the student was not confident in her ability to position, that the student did not remember information from day to day, and that the student needed to be taught more basic actions than the last set of students. The clinical instructor's e-mail also noted that the student shared too much information that was not pertinent to patient exams.
15. On September 28, 2015, a meeting was held with the student and PMI's clinical director, program director and campus director. The purpose of the meeting was to discuss concerns regarding the student's clinical performance at XXXXXXXXXXXX Hospital. PMI records reflected that the meeting participants specifically discussed concerns related to the student's inconsistent performance of exams; retention of knowledge; struggle to develop a smooth routine in the x-ray room during patient exams; lack of confidence in knowledge around positioning; and sharing too much personal impertinent information with the staff and patients, especially regarding health concerns of herself and her family members. PMI's meeting notes reflected that the student acknowledged the concerns, expressed a desire to remedy negative perceptions, and agreed to practice in the areas of routine, positioning and equipment.
16. During the September 28, 2015, meeting, the student told the PMI administrators that inappropriate jokes were being exchanged between site staff and other students at the clinical site, and that she felt uncomfortable. PMI administrators asked the student to send them an e-mail detailing the specific incidents of concern regarding the alleged inappropriate behavior.
17. By e-mail dated October 1, 2015, the student informed PMI's campus director, clinical director and program director that she was experiencing inappropriate behavior at the site that she thought was unprofessional. Specifically, the e-mail stated that conversations between other students and staff had some sexual connotations but that she had not participated in the interactions. The student's e-mail did not contain any specific information regarding the alleged inappropriate conversations.
18. By e-mail dated October 6, 2015, the program director again requested that the student provide details of the alleged inappropriate conversations.
19. On October 6, 2015, the program director interviewed the two other PMI students assigned to XXXXXXXXXXXX Hospital to determine whether they heard of or engaged in any inappropriate conversations while at the site. The students responded that they had not.
20. By e-mails dated October 6, 7 and 9, 2015, the student informed PMI that she was having difficulty remembering specific information about the inappropriate conversations because she failed to write it down, and that she needed a few more days to respond.
21. By e-mail dated October 20, 2015, the student provided a more detailed description of the alleged inappropriate comments at the site. In her e-mail, the student described graphic conversations between the two other students and staff at XXXXXX that related to topics of a sexual nature.

22. On October 21, 2015, PMI administrators contacted the student and asked her not to go to the clinic, but that she should come in on the following day for a conference.
23. On October 22, 2015, PMI administrators met with the student and informed her that they did not want to keep her at the site if she felt uncomfortable, and that she would be moved to a clinical site at the XXXXX Hospital in XXXXXXXXXXXX, Washington. The student responded that she liked working at XXXXXXXXXXXX Hospital in XXXXX, Washington and thought that she was being punished for providing information about the unprofessional comments at XXXXXXXXXXXX Hospital. PMI administrators informed the student that they could not keep her at a site where she felt uncomfortable. On or about October 23, 2015, the student was transferred to the XXXXX Hospital in XXXXXXXXXXXX, Washington.
24. In an e-mail to the student on October 23, 2015, the program director informed the student that the transfer to the XXXXX Hospital in XXXXXXXXXXXX, Washington was not intended to be punitive. The program director's e-mail informed the student that "Based on your concerns that you brought out our attention, both in e-mail and in person, that you were being subjected to inappropriate comments and/or jokes of a sexual nature, we felt it best to move you to a different site. We did so for your well-being."
25. It is the position of the student that the XXXXXXXXXXXX site placed a burden on her due to the additional transportation cost and inconvenience of a ferry commute, and that the transfer was made to retaliate against her for raising concerns of sexually inappropriate comments that were made between students and staff at the XXXXX site.
26. PMI staff interviewed by OCR specifically denied that the student's transfer from XXXXXXXXXXXX Hospital to the XXXXX Hospital was taken to retaliate against the student for raising concerns of alleged inappropriate behavior at XXXXXXXXXXXX Hospital. Rather, staff stated that the student's transfer was made because they thought it would be "a better fit" for the student. Specifically, staff informed OCR that the XXXXX Hospital had zero tolerance for any questionable behavior because it was a XXXX XXXXX hospital. In addition, staff told OCR that the student was having performance issues at XXXXXXXXXXXX Hospital which were similar to the issues she experienced at the other sites, and thus they believed that the XXXXX Hospital would be a good change for the student.
27. PMI staff interviewed by OCR stated that the student in this case was moved to a different clinical site rather than PMI attempting to remedy the alleged hostile environment because the situation at XXXXXXXXXXXX Hospital did not involve students or employees at PMI who were making the alleged comments. PMI staff stated that they did speak with the XXXXXXXXXXXX Hospital clinical instructor and the individual in charge of radiology, but they were unaware of any inappropriate behavior or comments by their staff.
28. All students must sign a "Clinic Site Placement Agreement" upon enrollment to PMI which states that they understand placement at a clinic site might not be close to home and may result

in a commute of a few hours to and from the clinic site. The student in this case signed this Agreement on August 23, 2012.

29. It is the position of PMI staff interviewed by OCR that, although the student raised transportation issues as a concern regarding the site transfer, the student was not treated differently than other students with respect to clinical site assignments. Specifically, PMI staff stated that students are made aware upon enrollment that site assignments may not be convenient for their situation, and that students are placed as far away as Portland, Oregon, which is a 3 hour drive from PMI's main campus. PMI staff told OCR that two other PMI students were also placed at the XXXXX Hospital in XXXXXXXXXXXX during the same time period as the student in this case.
30. During the 2014-2015 and 2015-2016 academic years, one other student in addition to the student in this case was transferred/re-assigned between clinical sites. This other student had pregnancy complications and was re-assigned to a short-term rotation for her to observe at a hospital setting near where she resided. This student was subsequently placed on bed rest by her physician and withdrew from the program.
31. On December 14, 2015, the clinical instructor at the XXXXX Hospital completed an "Evaluation of Technical and Effective Skills" sheet for the student, which stated that the student was not progressing and was "subpar by far compared to her peers." The sheet stated that the student needed to be repeatedly told about mistakes she was making and did not seem to remember what they told her. The sheet also stated that the student was making daily mistakes and that it took her "a very long time" to perform simple exams.
32. On December 14, 2015, administrators at PMI met with the student and informed her that the XXXXX Hospital had given her the same type of feedback as previous sites. PMI administrators explained to the student she would have to make some changes in her interactions and study habits to get better evaluations.
33. On January 2, 2016, the student sent a letter to PMI's campus director and program director regarding the December 14, 2015, meeting. The student explained that it had been a hardship to learn protocols in a short time, that she would like to be treated fairly, and that there were higher expectations placed on her from PMI instructors and clinical instructors. The student did not raise any disability-related concerns in this letter.
34. On January 3, 2016, the student submitted an action plan to PMI's campus director and program director. The plan stated that the student would discuss protocols and positions with on-site technicians between patients, practice positioning, study for upcoming tests and assignments, and read chapters assigned for the week.
35. By e-mail dated January 14, 2016, the clinical instructor at the XXXXX Hospital informed PMI's program director that the student had "improved only slightly" and that they were "very concerned with her progress." Specifically, the e-mail stated that the student did not know the protocols,

shot images of the wrong anatomy several times, placed the wrong letter markers on exams, did not absorb the information or remember it, and had little ability to recognize when she made a mistake.

36. By e-mail dated January 20, 2016, the clinical instructor at the XXXXX Hospital informed PMI's program director that the site was continuing to have issues with the student. Specifically, the e-mail stated that the student was told to have a staff technologist with her at all times while shooting images; however, the student continued to take images by herself. The e-mail also stated that they would like to have her removed from the facility.
37. On or about January 21, 2016, the PMI clinical director informed the student not to return to the XXXXX Hospital, and that PMI needed to meet with the student to determine the next course of action. On January 25, 2016, the PMI clinical director met with the student to inform her that she was being terminated from the radiology program, and a "Change of Status" form was completed. The stated reason for action on the form was that "the student has been terminated from her clinical site, which is grounds for termination from the radiology program. Per the course catalog, students are allowed a maximum of two re-enrollments and the student is therefore not eligible for re-enrollment."
38. It is the position of the student that she was terminated from the PMI radiology program in January 2016 because of her perceived disability status following XXXXX surgery. The student stated that she believes her disability was the reason because PMI never informed her as to why she was being terminated.
39. It is the position of PMI staff that the student was terminated from the PMI radiology program in January 2016 because of performance issues which resulted in the site requesting that she be removed from the site as an extern. PMI staff stated that termination from a clinical site is a basis for termination from the PMI program, and denied that the student's XXXXX surgery was a factor in the student's termination.
40. During the 2014-2015 academic year, two students, including the student in this case, were terminated from the PMI radiology program due to academic deficiencies. During the 2015-2016 school year, three students, including the student in this case, were terminated from the PMI radiology program due to academic deficiencies.

Analysis and Conclusion-Issue No. 1-Disability Discrimination

The issue investigated was whether PMI discriminated against the student, on the basis of disability, when it terminated her from radiology program in April 2015 and again in January 2016.

The regulations implementing Section 504 at 34 CFR 104.4(a) and 104.43(a) provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be

denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. With respect to postsecondary education services, a qualified individual with a disability is one who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity.

In this case, OCR found that during the 2014-2015 academic year, the student was enrolled in PMI radiology program and notified PMI that she would be undergoing XXXXX surgery in November 2014. Upon the student's return to the program in January 2015, the student was cleared by her physician to return to clinical duties, had no restrictions on her ability to perform clinical duties, and did not request any disability-related accommodations for participation in the PMI externship component of the program. OCR found that the student was subsequently terminated from PMI in March 2015 because the student's externship site removed her from the site due to poor progress and failure to meet performance expectations.

OCR also found that upon the student's readmission into the PMI radiology program during the 2015-2016 academic year, the student continued to experience performance concerns at the two clinical sites in which she was placed, which resulted in her termination from the program in January 2016.

The evidence did not support a finding that the student's termination from the PMI radiology program in March 2015 or January 2016 was inconsistent with PMI's established policies and procedures regarding termination or that the student's disability or perceived disability was a factor in PMI's decision to terminate the student. Because the evidence established that PMI provided a legitimate, non-discriminatory reason for terminating the student from the program on both occasions, OCR has determined that the evidence does not support a conclusion that PMI failed to comply with Section 504 with respect to the issue investigated.

Analysis and Conclusion-Issue No. 2-Retaliation

The issue investigated was whether PMI changed the student's clinical placement in the fall 2015 term from a site in XXXXX, Washington to a site in XXXXXXXXXXXX, Washington to retaliate against her because she complained of sexual harassment at the XXXXX site to PMI administrators.

The Title IX regulation at 106.71 incorporates the prohibitions against retaliation found at 34 CFR 100.7(e) in the regulation implementing title VI of the Civil Rights Act of 1964. That provision states that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.

To establish a violation of Title IX with respect to an allegation of retaliation, the evidence must show that: (1) the complainant was engaged in a protected activity; (2) the complainant experienced a materially adverse action by the recipient; (3) there is a causal connection between the protected activity and the materially adverse action; and (4) there is no legitimate, non-discriminatory reason

for taking the adverse action, or the identified legitimate, non-discriminatory reason is pretext for retaliation.

In this case, OCR found that, during a meeting on September 28, 2015, between PMI staff and the student to discuss performance issues at a clinical site, the student reported concerns about perceived inappropriate conversations of a sexual nature between site staff and other students at the clinical site that made her feel uncomfortable. After PMI staff requested clarification regarding those concerns, the student provided a detailed description of the alleged inappropriate sexual comments in an e-mail to PMI on October 20, 2015. Raising concerns regarding alleged sexual harassment is a protected activity under Title IX.

OCR found that, immediately after the student's October 20 e-mail in which she provided greater detail of the alleged inappropriate sexual comments, the student was told by PMI not to return to the clinical setting in which the alleged inappropriate comments were made. OCR also found that within 48 hours, PMI transferred the student to another clinical site located in XXXXXXXXXXXX, Washington, a location which the student did not request and which required her to incur ferry expenses and added commute time. OCR has determined that the added commute time and ferry fare was an adverse action imposed on the student given that she had previously been placed at a location that did not impose these same transportation issues. While students are made aware upon enrollment that site assignments may not be convenient for their situation, the presumption is that a student would be placed at these less convenient sites for reasons related to the program and their clinical training, rather than to remedy what the student perceives as inappropriate comments and jokes of a sexual nature at the site.

With respect to PMI's reasons for moving the student in this case to the XXXXXXXXXXXX site, PMI sent a contemporaneous e-mail to the student on October 23, 2015, which informed her that they felt it was best to move her to a different site "based on your concerns that you brought out our attention, both in e-mail and in person, that you were being subjected to inappropriate comments and/or jokes of a sexual nature." During interviews after the complaint was filed with OCR, PMI staff also stated that they believed the XXXXX Hospital would be a better fit for the student because the site had zero tolerance for inappropriate conduct like that reported by the student. PMI staff also told OCR that the student was having performance issues at XXXXXXXXXXXX Hospital and they thought it would help her to have a change. However, based on PMI's own statements in the October 23 e-mail to the student and its admission that it believed the XXXXX Hospital would not tolerate sexual harassment of students, OCR concludes that the primary reason for changing the student's clinical site from XXXXX to XXXXXXXXXXXX was because of the student's reported concern of inappropriate comments of a sexual nature, and that the student's performance issues were a secondary reason for the re-assignment.

Based on the above, the evidence is sufficient to establish that: (1) the student was engaged in a protected activity under Title IX because she reported alleged sexual harassment; (2) the student's transfer to a clinical site in XXXXXXXXXXXX constituted an adverse action because she incurred additional transportation burden and cost; (3) PMI stated in an e-mail generated at the time of the transfer that the transfer was because the student had reported the alleged sexual harassment; and (4) PMI did not provide a legitimate, non-discriminatory reason for taking the adverse action.

Therefore, OCR concludes that PMI is not in compliance with Title IX with respect to the issue investigated.

PMI has voluntarily agreed to resolve the above described violation as set forth in the enclosed Agreement which, when fully implemented, will resolve the identified violation. OCR will monitor PMI's implementation of the Agreement and will close the complaint when OCR determines that the terms of the Agreement have been satisfied. PMI's first monitoring report is due by October 21, 2016.

This letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the PMI's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that PMI may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you and your staff for your cooperation during the investigation of this complaint. If you have any questions, please contact Tania Lopez, Senior Attorney, by telephone at (206) 607-1623, or by e-mail at tania.lopez@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Settlement Agreement

cc: Law Offices of Mesch Clark Rothschild