

ISSUE

Was Respondent proper in discharging Petitioner from MCTI?

FINDINGS OF FACT

1. On October 7, 2019, Petitioner and MRS completed an Individualized Plan for Employment (IPE) that included “All Other Hand Workers” as Petitioner’s employment goal. (Exhibit A; Testimony)
2. Under Petitioner’s prior IPE, Petitioner was attending MCTI, a rehabilitation training and education center for adults with disabilities in Michigan. MCTI operates like a small college campus where the students live in dorms and attend training and classes on the campus. (Exhibits C, D; Testimony)
3. On REDACTED 2019, MCTI staff received a complaint from a student that someone was looking at her through her dorm window while she undressed. (Exhibit E; Testimony)
4. During the investigation of the above incident, it was discovered that there was a rumor on campus about a video of a female student sleeping in the nude. (Exhibit E; Testimony)
5. Following the investigation, it was discovered that Petitioner and two other students were the students peeping at female students through the student’s dorm windows. A video of one of the incidents was found on Petitioner’s cell phone. Petitioner was removed from campus while an investigation proceeded. (Exhibit E; Testimony)
6. On October 25, 2019, after a thorough investigation, Petitioner was notified in writing that his behavior amounted to a violation of MCTI’s inappropriate behavior and sexual harassment policies. Petitioner was informed that it was recommended that he be discharged from MCTI, without the possibility of return. The letter informed Petitioner that he had the right to appeal the findings. Petitioner requested an appeal. (Exhibit F; Testimony).
7. On November 20, 2019, following an administrative review, it was determined that MCTI was upholding the decision to discharge Petitioner from MCTI. (Exhibit H; Testimony)
8. On December 6, 2019, Petitioner filed a request for hearing to contest his discharge from MCTI. (Exhibit G; Testimony)
9. On February 14, 2020, MRS notified Petitioner that his case was being closed because he had achieved the employment goal from his October 7, 2019 IPE. (Exhibit B; Testimony)

CONCLUSIONS OF LAW

The purpose of Title I of the Rehabilitation Act of 1973, as amended, 29 USC § 720 *et seq*, is to provide for “a comprehensive, coordinated, effective, efficient, and accountable program of vocational rehabilitation which is an integral part of a statewide workforce investment system, and designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, and capabilities, interests and informed choice, so that such individuals may prepare for and engage in gainful employment.” P.L. 105-220 § 100(a)(2).

Applicants are eligible for MRS services if they have a physical or mental impairment that constitutes or results in a substantial impediment to employment and if they require services to prepare for, secure, retain or regain employment consistent with their abilities and capabilities. Applicants who have been determined to have a disability under the SSDI (Title II) and/or SSI (Title XVI) program of the Social Security Act are presumed to be eligible for MRS services provided they intend to achieve an employment outcome consistent with their individual circumstances. 34 CFR 361.42; MRS Policy 3100.

Once an individual has completed an application for services, an assessment of eligibility and priority for service shall be conducted and an eligibility determination made within 60 days unless exceptional and unforeseen circumstances beyond the control of Michigan Rehabilitation Services (MRS) preclude a determination within 60 days and MRS and the individual agrees to a specific extension of time or trial work experiences with supports.

To the maximum extent possible and appropriate, the assessment shall consist of a review of existing data, be conducted in integrated settings, and be consistent with the applicant’s informed choice. 34 CFR 361.41, 34 CFR 361.42; MRS Policy 3125.

Once an eligibility determination has been made, a vocational needs assessment is conducted to determine the goals, nature and scope of rehabilitation services to be included in the Individualized Plan for Employment. The emphasis shall be on using existing and current information to the maximum extent possible, and information provided by the individual and by the individual’s family, as appropriate. When current or existing information is not sufficient to assess vocational rehabilitation needs, a comprehensive assessment of the individual’s strengths, resources, priorities, concerns, abilities, capabilities and rehabilitation needs, including the need for supported employment, shall be provided. The comprehensive assessment shall be limited to information that is necessary to identify rehabilitation needs and to develop an individualized plan for employment. To the degree needed, the comprehensive assessment shall include such things as an assessment of the personality, career interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the client and the medical, psychiatric, psychological, neuropsychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual. 34 CFR 361.45; MRS Policy 3275.

Applicants and eligible individuals shall be full and active participants in their vocational rehabilitation. They shall have the opportunity to obtain information about options and make informed choices throughout their rehabilitation program including: evaluation and assessment services and providers. The applicant shall be involved in providing and securing existing assessment information to the maximum extent possible. 34 CFR 361.52; MRS Policy 2255. Clients are responsible for providing information needed to determine eligibility and to develop an IPE. 34 CFR 361.38, 361.46 & 361.57; MRS Policy 2250.

Eligibility shall be continually reassessed as part of routine counseling and guidance provided to the individual. Eligibility for ongoing services is contingent upon the individual continuing to meet all agency eligibility criteria. 34 CFR 361.43; MRS Policy 3225.

The Individualized Plan for Employment (IPE) shall be a written document prepared on a form approved by Michigan Rehabilitation Services (MRS). It shall be developed so that it affords the eligible individual meaningful opportunity to exercise informed choice in the selection of the employment goal, the specific vocational rehabilitation services required to achieve the employment goal, the entities that will provide services, and the methods of service provision. The IPE shall be signed by the individual or, as appropriate, the individual's representative and by a qualified MRS rehabilitation counselor. Planning and approval of the IPE shall be conducted within the framework of a counseling relationship. Counselor approval of an IPE verifies that the IPE is consistent with MRS policies and guidelines, is complete and is expected to lead to an employment outcome. The IPE shall be designed to achieve the employment goal of the individual and shall include a specific employment goal in an integrated setting. The employment goal shall be consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. 34 CFR 361.45, 34 CFR 361.46; MRS Policy 5050.

An Individualized Plan for Employment (IPE) amendment shall be developed when, as a result of the annual review or at any other time, the IPE needs to be revised. An IPE Amendment shall not take effect until agreed to and signed by the Michigan Rehabilitation Services (MRS) counselor and the individual or, as appropriate, the individual's representative. A copy of the amendment shall be provided to the individual and, as appropriate, to the individual's representative. 34 CFR 361.45; MRS Policy 5150.

The IPE shall have a specific employment goal, in an integrated setting, consistent with the individual's strengths, resources, priorities, concerns, abilities, and capabilities, taking into account the individual's interests and informed choice. Achievement of an employment outcome shall mean entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment; telecommuting; self employment; or any other type of employment in an integrated work setting that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. 34 CFR 361.45, 34 CFR 361.56; MRS Policy 5025.

MCTI may be used as appropriate for vocational assessment and as an employment training resource for MRS applicants, eligible individuals, and others who qualify.

The Michigan Career and Technical Institute (MCTI) is a residential public post-secondary vocational training facility which also provides comprehensive and individualized rehabilitation services. MCTI is accredited by CARF and the North Central Association. It is operated by Michigan Rehabilitation Services and may accept participants for enrollment referred by Michigan Rehabilitation Services (MRS) counselors, individuals with disabilities referred by other agencies and organizations, and individuals who are not disabled. Students must be 18 years of age or older at the date of enrollment.

In considering whether MCTI is a suitable training institution for a customer, the MRS Home Counselor is strongly encouraged to review the MCTI Student Handbook with the customer to ensure that the individual has enough information about MCTI to make an informed decision about seeking enrollment in its programs. Copies of the student handbook can be obtained by calling the MCTI reception desk at 1-269-664-4461 or accessed on-line www.michigan.gov/mcti. MRS Policy 8050.

The following policies from MCTI's student handbook were considered in Petitioner's case:

INAPPROPRIATE BEHAVIOR: MCTI's mission is to prepare you for a job. Therefore, you are expected to conduct yourself as if you are in a work environment. This means that you must respect the rights and feelings of others, as well as, respect school facilities, school property, and the personal property of others. It also means that you must accept responsibility for your own behavior and manage your own time such as, class attendance, medical appointments, etc.

Physical security and an environment free of harassment are necessary for individuals if they are to successfully pursue their education, therefore, no student shall:

1. Cause or threaten physical harm to another or endanger the physical safety of another.
2. Engage in misconduct as defined by MCTI Misconduct and Non-Discrimination Policy.
3. Continuously or persistently intimidate another individual to coerce that individual into some action or avoidance of action.
4. Engage in repeated, unwanted verbal or written communication or personal contact with another individual, including stalking or bullying.
5. Possess, manufacture, or use any drug prohibited by state or federal laws. (see drug and alcohol policy)
6. Possess, distribute, or use any alcoholic beverages on campus

7. Damage, deface or destroy the property of another person or the school.
8. Tamper with or misuse MCTI's fire and safety equipment including but not limited to fire extinguishers, fire hoses, and alarm systems.
9. Remove property or goods from their assigned place without proper authorization or accept goods or property which have been procured without proper authorization.
10. Knowingly provide false information to any office or individual acting on behalf of MCTI.

MCTI Handbook, p 43

NON-DISCRIMINATION AND MISCONDUCT POLICY: MCTI is committed to promoting and maintaining a learning and working environment free of sexual harassment, misconduct and discrimination. Examples may include acts of sexual violence, sexual harassment, domestic violence, dating violence and stalking. MCTI affirms its commitment to promoting the goals of fairness and equity in all aspects of its operations.

The Non-Discrimination policy applies to all members of the MCTI community including administrators, supervisors, staff, vendors or others who conduct business with MCTI or participate in a MCTI-sponsored program. Members of the MCTI community, guests and visitors have the right to be free from all forms of misconduct. MCTI has established an

Equity and Compliance Team (ECT) that will take prompt and effective steps to end misconduct and harassment, prevent its recurrence and remedy any discriminatory effects on the victim and others as appropriate. The Equity and Compliance Team includes the Title IX Coordinator who oversees the policy implementation and develops the education and prevention program designed to address the MCTI community culture. MCTI uses the preponderance of the evidence (also known as "more likely than not") as a standard for proof of whether a violation occurred. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

MCTI provides several resources and services to assist students and staff in addressing issues involving sex discrimination, harassment and misconduct. Throughout the year, MCTI staff and students will participate in training to promote awareness, review policies, review the investigation and hearing process, risk reduction and campus safety and resources.

MCTI Handbook, p 45

SEXUAL MISCONDUCT:

Investigations: In the event that sexual misconduct does occur, MCTI takes the matter very seriously. MCTI employs interim protection measures such as interim suspensions, and/or no contact orders in any case where a student's behavior represents a risk of violence, threat, pattern or predation. A student wishing to officially report such an incident may do so to the Title IX Coordinator, Program Manager, or Administrator.

When MCTI learns of an incident related to sexual misconduct or relationship violence, regardless of whether the alleged victim is the individual who reports, MCTI has an obligation to conduct, when possible, an investigation. Trained counselors will conduct the investigations under the oversight of the Title IX Coordinator, the Title IX Administrator and the Director. Investigations will include interview of the Reporting Party, Respondent and any witnesses. A review of evidence, such as electronic and written material, will be conducted if any such evidence exists. Both the Reporting party and the Respondent will be notified of the outcome of an investigation and provided with an opportunity to respond before the final report is issued. MCTI will use its best efforts to complete its investigations of sexual misconduct within 60 calendar days, although this timeframe may be extended for good cause. Throughout the process, the Reporting Party and Respondents may have an advisor or support person of their choice present.

Prevention: MCTI implements several intervention approaches toward the prevention of sexual misconduct and victimization. Students enrolling in the comprehensive vocational evaluation program engage in structured male and female group activities focused on topics related to healthy interactions, prevention and risk reduction. School resources are reviewed during the student's engagement in the group sessions and reviewed with the students assigned Vocational Counselor. MCTI Counseling Staff and/or Michigan State Police provides educational seminars regarding Title IX to staff and students. Informational materials are distributed reviewing strategies to reduce the incidence of sexual assault.

MCTI Handbook, p 73

SUSPENSION OF STUDENTS AND REMOVAL OF NON-STUDENTS FOR DISRUPTIVE BEHAVIORS: Should a student, guest or visitor display disruptive behavior, verbal threats, act in a threatening manner, or act in any manner that warrants concern for the safety and well-being of students and/or staff, the following guidelines will be enacted:

1. Person in authority or Dorm staff on duty determines that the actions of an individual are disruptive and potentially or obviously detrimental to the safety and well-being of that individual, other students, or staff and these actions are beyond the controls of the staff on duty.

2. After exhausting all usual control methods, the staff member on duty will direct the individual to leave campus. The staff will direct the student to contact his or her home counselor and MCTI vocational rehabilitation counselor for information on a return date or appeal hearing information.
3. If the individual remains uncooperative and refuses to leave campus, the individual will be removed by the police as requested by the staff in charge. Refusal by the individual to leave may result in the arrest of the offending individual.
4. If a student appeals to re-enter MCTI, the MCTI vocational rehabilitation counselor and the MCTI Director along with the Manager of Student Services, will meet with the student to determine the feasibility of re-enrollment.

MCTI Handbook, p 54

STUDENT RESPONSIBILITY - STUDENT CODE OF CONDUCT:

As a student at MCTI, I will:

- Treat other students and staff with respect at all times.
- Participate in the planning of my program and inform the staff of any changes.
- Be well groomed and appropriately dressed for all occasions.
- Be responsible for my behavior, both in class and after hours.
- Be truthful and honest in my classroom and dormitory life.
- Learn and develop work skills in order to get a job.
- Follow campus rules and policies
- Conduct myself in a manner that does not violate any state, local, or federal laws.

MCTI is a community of students and the rules and regulations of MCTI are the laws of the community. MCTI students who enjoy the rights of citizenship in the school community must also accept the responsibilities of citizenship. A basic responsibility of those who enjoy the rights of citizenship is to respect the laws of the community.

As citizens of the school community, students need to understand and adhere to all school policies and rules and be willing to accept the responsibilities that go along with their rights and privileges.

MCTI Handbook, p 86

FREEDOM FROM ABUSE, FINANCIAL EXPLOITATION, RETALIATION, HUMILIATION AND NEGLECT: MCTI staff strive to provide an environment in which students receiving services will always be treated with respect and dignity regardless of disability or other potential deficit areas. Staff will ensure that students are not exploited for monetary, sexual, or personal gain and are not subjected to embarrassment, abuse, or disparagement.

MCTI Handbook, p 85

Respondent's Site Manager testified that she has been the Site Manager for the Lansing MRS District Office since December 2018. Respondent's Site Manager described her job duties and indicated that prior to becoming the Site Manager she was a Consultant for MRS. Respondent's Site Manager also indicated that she has served as an MRS Counselor on the campus of MSU and as a transition counselor for MRS. Respondent's Site Manager testified that she has a BA in Music Education from Murray State University in Kentucky and received an MA in Counseling from MSU in 2008.

Respondent's Site Manager testified that she is familiar with Petitioner as she sometimes gets involved in individual cases. Here, Respondent's Site Manager indicated that she got involved with Petitioner's case when MRS received Petitioner's request for hearing. Respondent's Site Manager testified that her involvement in Petitioner's case involved a review of Petitioner's case files from MRS and MCTI and speaking with other managers and counselors. Respondent's Site Manager pointed out that Petitioner's MRS Counselor at the time is no longer working for MRS as she opened a private counseling practice.

Respondent's Site Manager reviewed Petitioner's October 2019 IPE and indicated that this was his most current IPE. Respondent's Site Manager explained the concept of informed choice, which means options have been discussed and individuals are able to pick what is the best fit for them. Respondent's Site Manager noted that it is the customer's choice to pursue what MRS has available or go a different route.

Respondent's Site Manager testified that education is not an ultimate goal in an IPE, but rather would be a service leading to a goal of employment. Respondent's Site Manager indicated that education was not a part of Petitioner's most recent IPE. Respondent's Site Manager indicated that after 90 days of successful employment, Petitioner's MRS case was closed and he was sent the closure letter in Exhibit B.

Respondent's Site Manager described MCTI and how a customer is accepted at MCTI. Respondent's Site Manager noted that Petitioner was enrolled at MCTI and once a customer is enrolled, MRS' role is to make sure the customer's IPE is still followed.

Respondent's Site Manager noted that a customer at MCTI continues to have a counselor at MRS, but there are also counselors on site at MCTI to assist with day to day issues.

Regarding the incident at MCTI involving Petitioner, Respondent's Site Manager noted that Petitioner's MRS Counselor was notified of the incident verbally and then in writing. Respondent's Site Manager indicated that Petitioner and his mother than met with his MRS Counselor and completed the new October 2019 IPE.

Respondent's Site Manager testified that her knowledge about the incident with Petitioner at MCTI was that it involved Petitioner taking video of a young lady without clothing. Respondent's Site Manager testified that there was video proof of the incident and Petitioner admitted to the conduct. Respondent's Site Manager testified that MCTI performed an investigation, talked to all of the students involved, reviewed their own policies and decided to discharge Petitioner.

Respondent's Site Manager testified that MRS continued to work with Petitioner by developing the IPE in Exhibit A, which supersedes the old one that contained the MCTI referral. Respondent's Site Manager noted that the IPE containing the referral to MCTI is no longer in effect.

MCTI's Director of Student Services testified that she has served as the Director for the past five years and previously worked at MCTI as an admissions counselor and a vocational evaluator. MCTI's Director of Student Services indicated that she has an MA from MSU and an Associate Degree from Mott Community College. MCTI's Director of Student Services explained the purpose of MCTI and noted that it is part of MRS. MCTI's Director of Student Services testified that MCTI is one of only eight such institutions in the country and it offers 13 training programs. MCTI's Director of Student Services testified that MCTI is run like a small college campus. MCTI's Director of Student Services noted that many students at MCTI are on the autism spectrum and the majority have learning disabilities.

MCTI's Director of Student Services reviewed the admission process for MCTI. MCTI's Director of Student Services noted that everyone accepted into the program undergoes a psychological evaluation. MCTI's Director of Student Services testified that MCTI is a dorm setting with limited supervision, so they are very careful about who they admit to the program. MCTI's Director of Student Services reviewed the policies above from the MCTI Student Handbook applicable to Petitioner's case.

MCTI's Director of Student Services testified that she became familiar with Petitioner through the investigation process following the incident in September 2019. MCTI's Director of Student Services noted that Petitioner was one of three students window peeping a female student and a video of the incident was found on Petitioner's phone. MCTI's Director of Student Services testified that she spoke to Petitioner during the investigation and learned that the peeping happened more than once. MCTI's Director of Student Services indicated that Petitioner mentioned another student may have taken a video but Petitioner denied any responsibility at first. MCTI's Director of Student Services indicated that once she found out there was a video, she called law enforcement.

MCTI's Director of Student Services testified that it took two rounds of interviews before Petitioner admitted his involvement in the incident. MCTI's Director of Student Services noted that when questioned initially about the incident on the first night, Petitioner denied any involvement. MCTI's Director of Student Services testified that it was only when confronted with the video that Petitioner admitted his involvement and apologized. MCTI's Director of Student Services testified that Petitioner indicated he did not know that he could not do it, referring to the peeping and taking a video.

MCTI's Director of Student Services testified that after the investigation the decision was made to discharge all three students. MCTI's Director of Student Services noted that law enforcement also interviewed all of the students and sent the case to the local prosecutor. In making the decision to discharge the students, MCTI's Director of Student Services testified that she looked at the intent of the parties, the fact that the behavior was repeated, and the fact that Petitioner kept the video on his phone. MCTI's Director of Student Services noted that the blinds to the girls' rooms were drawn, but there was some damage to the blinds that allowed the video to be taken. MCTI's Director of Student Services noted that there are no sidewalks in this courtyard outside of the rooms and there is really no reason for students to be back there.

MCTI's Director of Student Services testified that MCTI then conducted a Title IX investigation, the findings of which are found in Exhibit F. MCTI's Director of Student Services reviewed the orientation procedure at the school and explained several different types of orientation that the students go through, so they know where to turn to for help. MCTI's Director of Student Services noted that they review with students their rights and responsibilities, talk about non-discrimination policies, as well as the drug and alcohol policy. MCTI's Director of Student Services testified that the students also undergo a health services orientation, which describes what counseling and medical services are available on campus. MCTI's Director of Student Services noted that MCTI also has both a men's issues group and a women's issues group.

MCTI's Director of Student Services testified that MCTI made no decision about Petitioner's readmission and that he would be able to reapply in the future. However, MCTI's Director of Student Services indicated that Petitioner's past behavior would be considered and there was no guarantee he would be readmitted.

Petitioner's mother testified that they were really excited when Petitioner was accepted to MCTI. Petitioner's mother indicated that he did a good job at his first step in the program, but the incident at issue occurred the first weekend he was alone on campus with friends. Petitioner's mother testified that when Petitioner was discharged from MCTI she made him go to Meijer to apply for a job and he ended up getting that job. Petitioner's mother noted that Petitioner probably could have gotten the job without MRS' help but that MRS did assist him. Petitioner's mother testified that at the time of the investigation, staff at MCTI told Petitioner he could appeal the decision and that a judge would have the final say. Petitioner's mother indicated that Petitioner was also told there was a chance he could go on a behavioral plan, so that is why he appealed.

Petitioner testified that he was confused and needed some help when he got to campus and he did not know where to go for help. Petitioner indicated that he did not know that the program manager was there to help him with personal problems; he thought the program manager only offered academic help. Petitioner indicated that he did not know who to talk to, so he went to hang out with a friend on campus and that is when this incident happened. Petitioner testified that he has received counseling since he got home and now understands more what he did was wrong and why it was wrong. However, Petitioner testified that if the school had done a better job explaining where he should go for help this might not have happened.

Based upon the foregoing findings of fact and conclusions of law I find that Respondent was proper in discharging Petitioner from MCTI and that Petitioner has failed to prove, by a preponderance of the evidence, that Respondent's decision was improper. Here, the behavior that lead to Petitioner's discharge is not in dispute. That behavior clearly violated numerous MCTI policies and was serious enough to warrant a discharge from the program. Petitioner window peeped at female students while they were undressing or unclothed, videotaped one of the incidents, and kept the video on his phone. Petitioner denied the actions when first confronted and tried to push the blame on to others. Even now, some seven plus months later, Petitioner still chooses to blame the school for not providing adequate information about counseling instead of accepting responsibility for his own actions. It is clear from the testimony at hearing and the exhibits presented that MCTI conducts a very thorough and comprehensive orientation for all new students. Petitioner was certainly given information about where to go and whom to ask for help if he needed it. As such, Petitioner's assertion that this incident could have been avoided if the school did a better job of educating him rings hollow. Therefore, based on the evidence presented, Respondent's decision should be upheld.

DECISION AND ORDER

For all of the reasons stated in the foregoing opinion, MRS's decision to discharge Petitioner from MCTI is AFFIRMED.

NOTICE: THE PETITIONER HAS NOW EXHAUSTED ALL AVAILABLE ADMINISTRATIVE REMEDIES. ANY FURTHER APPEAL OF THIS DECISION IS THROUGH JUDICIAL REVIEW. ANY PARTY MAY BRING A CIVIL ACTION IN ANY STATE COURT OF COMPETENT JURISDICTION OR IN A DISTRICT COURT OF THE UNITED STATES OF COMPETENT JURISDICTION.