UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL 'O' JS-6

Case No.	2:15-cv-01458-CAS (SSx)	Date	July 24, 2017
Title	TROY BEEMER V. UNIVERSITY OF SOUTHERN CALIFORNIA		

Present: The Honorable	CHRISTINA A. SNYDER	
Catherine Jeang	Laura Elias	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Phillip VanAllsburg, III	Puneet Sandhu

Proceedings: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Filed June 26, 2017, dkt. 70)

I. INTRODUCTION

On February 27, 2015, Troy Beemer initiated this action against the University of Southern California ("USC"). Dkt. 1. Beemer alleges four claims against USC for (1) disability discrimination in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. §794 ("Section 504"); (2) failure to make a reasonable accommodation in violation of the Americans with Disabilities Act ("ADA"); (3) disability discrimination and sexual harassment in violation of the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq. ("Unruh Act"); and (4) gender discrimination in violation of Title IX, 20 U.S.C. § 1681. Id. The gravamen of Beemer's complaint is that he faced sexual harassment and disability discrimination while enrolled in USC's Nurse Anesthetist program.

On June 26, 2017, USC filed the instant motion for summary judgment on all of Beemer's claims. Dkt. 70 (the "Motion"). In support of the Motion, USC has filed a memorandum, dkt. 70-1, a statement of uncontroverted facts, dkt. 70-2 ("SUF"), and three declarations with accompanying exhibits, dkts. 70-3 through 70-5. On July 7, 2017, Beemer filed an opposition.[1] Dkt. 72. On July 10, 2017, USC filed a reply. Dkt. 73. On July 14, 2017, USC lodged transcripts from Beemer's deposition. Dkt. 74.

[1] This matter was noticed for a hearing on July 24, 2017. Thus, pursuant to the Local Rules, plaintiff's opposition was untimely. See C.D.Cal. L.R.7–9 (requiring that opposing papers be filed no later than 21 days before a noticed hearing - July 3, 2017

Having carefully considered the parties' arguments, the Court finds and concludes as follows.

II. BACKGROUND

Commencing in August 2011, Beemer sought to become a Certified Registered Nurse Anesthetist ("CRNA") by enrolling in USC's two-year CRNA program (the "Program"). In his first year completing the Program, Beemer underwent eye surgery, suffered neck and back injuries in an unrelated car accident, and claims to have been inappropriately touched and sexually harassed by staff at a hospital affiliated with USC's Program. Beemer did not complete the Program. The gravamen of Beemer's complaint is that USC failed to reasonably accommodate his physical injuries and disabilities or adequately respond to and prevent sexual harassment during his first clinical rotation.

Beemer has not file a statement of genuine disputes or any evidence in opposition to the Motion. Thus, "the Court may assume that the material facts as claimed and adequately supported by [USC] are admitted to exist without controversy." C.D.Cal. L.R. 56–3. The Court describes the facts supported by USC here.

A. The Program

When anesthesia is administered to a patient, a CRNA is responsible for patient safety. The CRNA almost always remains in the operating room throughout an entire surgery or procedure in which anesthesia was used. To become a CRNA, a registered nurse must complete an educational program accredited by the Council on Accreditation of Nurse Anesthesia Programs ("Council on Accreditation") and pass a certifying examination administered by the National Board for Certification and Recertification of Nurse Anesthetists. The Council on Accreditation requires that any accredited program be at least 24 months long or the part-time equivalent of a 24-month program. The Council on Accreditation also requires that a CRNA program curriculum "prepare[] the student for the full scope of current practice in a variety of work settings and require[] a

here). However, there does not appear to have been any prejudice because of Beemer's untimely opposition. Accordingly, USC's request that the Court disregard the untimely opposition is **DENIED**.

minimum of 550 clinical case," including a specific number of cases in various categories. SUF No. 6.

USC's Program is accredited by the Council on Accreditation. The Program requires participants to complete 45 units of instruction, including 32 clinical units, over six semesters (ordinarily 24 consecutive months). The Program begins in the fall. During the Spring Semester of the first year, participants engage in clinical training three full days each week. Thereafter, students spend 4 to 5 full days each week performing clinical rotations until they graduate. The Program is designed so that students take the five clinical courses in sequence from their second semester onward. Each clinical course builds upon the skills learned and objectives achieved in the previous courses.

In order to ensure that students see a sufficient number and variety of clinical cases, USC partners with hospitals around the greater Los Angeles Area, which volunteer to train a certain number of students each semester. At all times relevant here, several of USC's affiliate sites had specialties that permit students to complete clinical rotations in specific patient-contexts. For example, Cedar-Sinai Medical Center partnered with USC to offer "General" rotations as well as thoracic cases, neurosurgical cases, and obstetrics cases. Dkt. 70-4 Ex. D. The cases at each hospital are different, requiring that students do clinical work in different places. For example, Cedar-Sinai Medical Center was the only affiliate where students could work on advanced neurosurgical anesthesia and thoracic cases, both of which must be completed in order to sit for the national qualifying examination. Similarly, Children's Hospital Los Angeles ("CHLA"), a pediatrics hospital, does not offer gynecology, geriatric, or other advanced cases. Both hospitals were affiliated to the Program, but students could not complete all their clinical courses at CHLA because they would not be sufficiently exposed to different types of patients and cases.

B. Beemer's First Two Semesters

On November 3, 2011, the Program Director, Dr. Michele Gold, sent Beemer a letter advising him that his mid-semester GPA was below 3.0 in a physiology course. The letter further informed Beemer that a grade below 3.0 could result in his being placed on academic probation.

In January 2012, Beemer was assigned to Harbor-UCLA Medical Center ("Harbor") for his first clinical training course, ANST 505.[2] In February 2012, Beemer underwent nose, sinus, and eye surgery. He was given a few days off from the Program to recover from the surgery. He does not remember requesting any additional time and, instead, returned to the Program.

During clinical rotations, instructors at the affiliate hospital give feedback to the students using an electronic system. In April 2012, Dr. Teresa Norris, one of Beemer's professors, accessed the electronic system to review student progress and discovered that one of Beemer's instructors had given Beemer low marks, several of which indicated that Beemer could not meet course objectives without instructor assistance. The reviewing instructor, Ralph Quinonez, a CRNA, stated that there were "gaps" in Beemer's critical thinking ability. As students perform their clinical rotations, they are required to complete a care plan for each assigned patient. Students are required to prepare care plans the day before a procedure so that instructors can review students' plans before allowing them to administer anesthesia to a patient. During the Spring Semester 2012, Norris reviewed one of Beemer's care plans and found it deficient. Beemer failed to identify safety issues from the patient's history, including how long the patient had been diabetic, her medication dosage, or how frequently she took medications. In Norris's words, the care plan was "at best, C-grade work." Dkt. 70-5 ¶ 7. On April 9, 2012, because Beemer's care plans had been poorly prepared, Gold asked instructors at Harbor to excuse Beemer from clinical training by 3 p.m. on Wednesdays and Thursdays to give him more time to prepare care plans for the following day (his clinical days were Wednesday through Friday).

Although Beemer does not recall the exact dates on which harassment occurred, Beemer contends that he faced sexual harassment while working at Harbor in Spring Semester 2012. On one day in January or February 2012, a Harbor CRNA, Maria Valmidiano said "multiple times throughout the day to other providers" that "she was

[2] USC designates clinical courses using the abbreviation "ANST" followed by the course number. Students begin in ANST 505 and then proceed through ANST 507, ANST 509, ANST 511, and ANST 513 in order.

pimping [Beemer]."[3] July 2016 Depo. 80:16-17[4]. At an undetermined time in January or February 2012, Beemer complained about Valmidiano's comments to a Harbor staff member, Tina Manibhai, who ensured that Beemer would not be scheduled to work with Valmidiano thereafter.

At an undetermined time in March or April 2012, Beemer claims that a CRNA at Harbor, Dee Faulk, inappropriately touched him. Beemer contends that he was sitting at a desk reviewing work for the next day when Faulk walked up to him, leaned over and touched his arm, leg, and groin. He described the touching thus:

> She was touching my arm up and down . . . and my right leg, and my groin and genitals as well . . . [w]ith both hands.

Id. 66:11-17. Beemer testified during his deposition that "there were other times where she would kind of like touch my upper back or scratch my upper back," and that,

[3] USC has offered evidence that "pimping" is a term commonly used in medical academia to refer to the pedagogical practice of asking students fast-paced, increasingly difficult questions to test their knowledge. Beemer testified that he was unaware of any such meaning in medical academia.

When asked whether Valmidiano did anything else to him that he considered inappropriate, Beemer further testified that Valmidiano made a derogatory comment about Asian drivers. Although inappropriate, Beemer, who is not Asian, did not consider the comment to be directed at mocking him.

[4] Plaintiff now resides in Michigan. On July 12, 2016, plaintiff's original deposition was scheduled to occur in Los Angeles. Plaintiff arrived nearly three hours late (just before noon) and left less than four hours later to travel back to Michigan. Dkt. 41. The Magistrate Judge ordered plaintiff to appear for an additional deposition, which occurred on March 9, 2017. Id. USC has submitted transcripts from these two depositions. They are the only deposition transcripts presently before the Court. For purposes of this order, the Court refers each transcript using the date of the deposition. For example, citations to the transcript of July 12, 2016, take the following form "July 2016 Depo."

although he could not remember how many times, she touched his back on fewer than ten occasions. Id. 66:23-67:19. On one occasion, Beemer testified, Faulk told him, "[y]ou know Troy, I'm still a young woman and I want to start dating again," then asked him how old he was. July 2016 Depo. 74:1-6. No one else at Harbor did anything that Beemer considered sexual harassment.[5]

On April 6, 2012, Beemer was in a car accident that resulted in a neck and back injury.[6]

On April 11, 2012, Quinonez complained to Gold about Beemer's performance at Harbor. On April 12, 2012, the Associate Program Director, Dr. Karen Embrey, Gold, and Beemer met to discuss Beemer's performance at Harbor and Quinonez's complaint. During the meeting, Beemer reported Faulk's inappropriate touching to Gold and Embrey.[7] Immediately after the meeting, Gold removed Beemer from Harbor. As Gold has explained here:

[5] At an undetermined time during his clinical rotation at Harbor, a staff member known to Beemer as "Paul" said that he could not believe the poor quality of people being admitted to the Program and looked at Beemer. Beemer does not believe Paul's comment was related to Beemer's gender and does not know if it was related to his disability. Beemer believes he reported Paul's comment to USC during that semester, but does not recall to whom.

[6] Neither party has offered evidence describing the scope of plaintiff's injuries, the nature of the car accident, or what sort of recovery timeline it required. The record before the Court only states that plaintiff suffered an unidentified "injury to [his] back and neck area" and had a "back and neck issue" thereafter. March 2017 Depo. 40:3-10. Additionally, in his correspondence with the Program director, Beemer stated that he experienced "health issues . . . secondary to the car accident [he] was involved in." Dkt. 70-4 Ex. X. Other than these abstruse references, the record provides no further detail.

[7] Beemer testified that he reported Faulk's conduct to Embrey and Gold in "the first week or two of April" 2012. The only record evidence of a meeting between the three people appears to have been the April 12, 2012 meeting.

> After hearing what Mr. Beemer had to say, I determined that the best thing to do was to excuse Mr. Beemer from the remainder of his clinical training course at Harbor-UCLA. There were only seven days of clinical training left in the [Spring Semester 2012] at that point. I anticipated that he could make up the missed training time in a subsequent clinical rotation at another clinical affiliate site.

[8]Dkt. 70-4 ¶ 25. Beemer did not return to Harbor.

Norris was responsible for determining Beemer's grade in ANST 505. The grade was based upon the following three factors: (1) a score for clinical preparation and care plan review ("mainly, the [instructors'] clinical evaluations," dkt. 70-5 ¶ 11) (70% of final grade), (2) a score on a substance abuse examination (10%), and (3) a score on an anesthesia knowledge examination (20%). To determine the first factor, Norris used a formula identified in the course syllabus for converting instructor evaluations into an average clinical evaluation score. Norris combined that score with Beemer's scores on the two examinations to determine a raw score. She then reviewed written comments from instructors. Based upon those comments and her own review of students' written care plans, she revised scores upward "if merited." Id. ¶ 13. She did not revise any scores downward because she only uses the comments to increase scores, particularly if a student is "on the cusp of two grades" and the comments warrant giving them the higher grade. Id. Norris did not penalize Beemer for the seven days of clinical work that he could not complete at the end of the semester nor did she consider any instructor evaluations from Faulk, Valmidiano, or "Paul."[9] Based upon his clinical evaluation numbers, Beemer earned 46 out of 70 possible points for his clinical work. He received a 100% score on his substance abuse evaluation and an 83.33% score on his anesthesia knowledge examination, translating to 10 out of 10 points and 16.66 points out of a possible 20, respectively. Thus, Beemer's raw score was 72.66 out of 100, a C. After

[8] There is no indication in the record whether USC determined that Faulk inappropriately touched Beemer. The only evidence presently before the Court describing Faulk's conduct is Beemer's deposition testimony about Faulk.

[9] Norris found a handwritten evaluation by Faulk, but, in light of Beemer's complaints, did not consider it. There is no evidence of any evaluations by Valmidiano or a staff member named "Paul."

reviewing the comments about Beemer in his instructors' evaluations, Norris decided that an increase from 46 to 53 points was appropriate. That change increased his grade to a 79.66 percent, a B-, which was his final grade in ANST 505. Consistent with Program policy, Beemer's B- grade resulted in his being placed on academic probation.

On May 7, 2012, Gold and Beemer signed a "Probation Contract" requiring him to demonstrate proficiency in the clinical objectives of ANST 505 during his upcoming ANST 507 course.

C. Summer Semester 2012

Beemer was assigned to a different hospital for ANST 507 during the Summer Semester 2012, namely the Los Angeles County-USC Medical Center ("LAC-USC"). Beemer began his clinical rotation at LAC-USC in May 2012. In May 2012, Beemer began requesting time off to attend physical therapy and doctor appointments relating to his April 6, 2012 car accident. The Program asked Beemer to schedule appointments around his class and clinical schedule as much as possible, but otherwise permitted him to miss clinical rotations whenever necessary. The Program permitted Beemer to take all of his requested time off, including a full week of May 2012. When plaintiff took a week off from the Program, Gold requested that Beemer provide a medical clearance upon his return. When Beemer returned, he had a doctor's note indicating that he could return to work at "FULL DUTY-NO RESTRICTIONS."

After Beemer returned from the week off, he missed a class and failed to communicate with his instructors at LAC-USC as well as Gold. On June 12, 2012, Gold counseled Beemer to notify his instructors in advance of absences and to attend class and clinical rotations to the extent possible around his medical appointments. Gold also asked that Beemer be more prompt and consistent in responding to emails.

At an undetermined time in June or July 2012, Beemer informed Gold that he felt he was unable to continue clinical training because of his car accident and ongoing treatment. Gold and Beemer discussed potential options and Beemer decided to take an incomplete for ANST 507. Beemer signed an "Assignment of Incomplete Form," indicating that he would complete his clinical training hours for ANST 507 during the Fall Semester 2012. Because Beemer would be completing his ANST 507 rotations during the Fall Semester 2012, he would not commence ANST 509 until Spring Semester

2013, thereby delaying his graduation from the Program by one semester. Beemer did not return to clinical training during the Summer Semester 2012.

D. Fall Semester 2012

On the deadline to register for Fall courses, Beemer informed Gold that he could not return to clinical training because of his ongoing care and back injuries. Beemer requested that he be permitted to continue his non-clinical coursework during Fall Semester 2012 without making up the ANST 507 clinical hours as planned. USC granted Beemer's request and asked for a doctor's note confirming Beemer's inability to participate in clinical rotations. Beemer provided a doctor's note indicating that he was "unable to work in a clinical setting secondary to his ongoing care."

One of Beemer's non-clinical courses during Fall 2012 was ANST 508, entitled "Research: Investigative Inquiry." The course was taught by Gold. As part of the course, Gold assigns students to work in pairs on a research project that accounts for 40% of their final grade. The ANST 508 syllabus stated that students should contact the USC Office of Disability Services and Programs ("DSP") if they needed an accommodation during the course.

On October 2, 2012, Gold emailed Beemer to ask whether Beemer anticipated returning to clinical training in January 2013, as anticipated. Beemer responded that he expected to return to clinical training in Spring Semester 2013. In order to ensure that Beemer was prepared to return to clinical training after a seven-month hiatus, Gold, in consultation with other Program faculty, prepared a "Contract of Study" listing conditions for Beemer's return to patient care. The Contract of Study included the following conditions:

- obtain a medical release to return to work,
- complete specific simulation workshops alongside the first-year students to refresh anesthesia skills and knowledge of patient safety issues,
- improve upon email communication, and
- complete the requirements of the Probation Contract.

Dkt. 70-4 Ex. S. On October 15, 2012, Beemer signed the "Contract of Study."

On October 29, 2012, Gold emailed Beemer about his absence from "a board review session," and his leaving class early without explanation. Dkt. 70-4 ¶ 39. Beemer did not respond. On October 31, 2012, Beemer missed a simulation workshop listed in his Contract of Study. On November 5, 2012, Gold asked Beemer to see him after class, but Beemer left without speaking to Gold. On November 6, 2012, Gold emailed Beemer to schedule a meeting later that afternoon about Beemer's Contract of Study, his absences, and his failure to answer emails. On the same day, Gold emailed Beemer regarding his failure to return signed "credentialing documents" that were required for his proposed clinical rotation in Spring 2013. The forms had been due on October 22, 2012. Dkt. 70-4 Ex. V. Beemer did not respond to either of these November 6, 2012 emails.

On November 7, 2012, Beemer's research partner in ANST 508 informed Gold that Beemer was not responding to communications about their joint project. On November 8, 2012, Beemer's research partner emailed Beemer (and copied Gold) stating that he was unsure of Beemer's plan to accomplish or start their joint project, but that he intended to proceed alone because "week-after-week" he had not heard back from Beemer. Dkt. 70-4 Ex. U. Beemer did not respond to his partner's email.

On November 9, 2012, Beemer missed a second workshop required by his Contract of Study. On November 12, 2012, Beemer missed ANST 508.

On November 13, 2012, Gold sent Beemer a letter regarding Beemer's absences, failure to complete requirements in the Contract of Study, failure to respond to communications, and continuing failure to return the necessary credentialing documents for his clinical rotation in Spring 2013. The November 13, 2012 letter further stated:

> Following discussion with the USC Graduate School, this letter serves as an academic warning. You must meet with me and the Program administrative faculty, Dr. Norris and/or Dr. Embrey by November 20th, 2012, to develop a timeline for completion of the above items. In addition, the failure to attend two workshops (airway and GASP 2) may preclude you from beginning ANST 507 Clinical Residency this spring 2013. As a reminder, you are on clinical probation, and ANST 507 has an incomplete for your grade. If these items are not resolved at the end of fall semester 2012 on Friday December 7, you will be dismissed from the program of Nurse Anesthesia.

Please contact me as soon as possible.

Dkt. 70-4 Ex. V.

As of November 19, 2012, Gold had not received any response from Beemer. Gold emailed Beemer a copy of the November 13, 2012 letter and asked when Beemer would be available to meet the following day. Beemer responded on November 19, 2012, via email. Embrey, Gold, and Beemer met on November 20, 2012, to discuss Beemer's return to clinical training. Gold asked Beemer to prepare a written plan for his return to treating patients, expecting him to explain how and when he would complete the requirements of the Contract of Study.

On November 28, 2012, Beemer provided a written response and "Plan for Returning to Clinical Training." Beemer's written response/plan was principally a list of demands. It stated the following:

1. Immediately be removed from clinical probation, including grade change.
2. Complete Fall 2012 courses.
3. Complete research project, with exception of class presentation.
4. Register for ANST 507 and 509 for Spring 2013, and receive 507 grade change.
5. Complete rotations for ANST 507 and 509 at either CHLA or LAC-USC.
6. Register for ANST 511and 513 for Summer 2013.
7. Complete rotations for ANST 511and 513 at either CHLA or LAC-USC.
8. Complete Capstone Case Study during Summer 2013.
9. Graduate from USC Program of Nurse Anesthesia in August 2013.
10. I am willing to consider the two observation days, but GASP & airway workshop are not necessary.
11. Due to my continued rehab from the car accident, it would be nice to have some flexibility in my clinical schedule.
12. No longer be forced to write pathophysiology 'write-ups' the night before clinical, as they only inhibit my learning and do not appear to be listed in the syllabus.
13. If I do go back to LAC-USC Medical Center, I should not be assigned to work with Jim Carey, Dr. Norris, or Dr. Embrey.

Dkt. 70-4 Ex. X. Gold reviewed Beemer's proposal and determined that some of his requests appeared to be requests for accommodations related to a disability. On November 29, 2012, Gold sent a letter to Beemer explaining that, pursuant to Program and USC policy, requests for accommodation of a disability should be submitted in the first instance to DSP. Gold told Beemer that if DSP approved accommodations, the Program would follow DSP's instructions, including Beemer's request that he not be required to give a class presentation in ANST 508.

In his declaration here, Gold explains that it was "not possible" for Beemer to take two clinical courses at the same time and for him to graduate in August 2013 because the clinical courses build upon one another and each require four to five full days of work each week. Dkt. 70-4 ¶ 47. Gold avers that there "is not enough time in a day or in a week to take two clinical courses simultaneously" and Beemer "would not be able to complete the minimum number of specialty cases or the overall requirement of at least 550 cases in the remaining two semesters." Id. Gold further avers that Beemer's request that he not be forced to complete care plans before patient procedures would violate Council on Accreditation requirements. Id. ¶ 48.

Beemer was scheduled to give his class presentation on December 3, 2012, in ANST 508. Gold never received any instructions from DSP or a doctor's note from Beemer about the presentation, but Beemer did not give his presentation. Beemer submitted his research project paper to Gold for review. The rubric in the ANST 508 course syllabus refers to the research project as a "Methodology project." To complete the project, the syllabus states:

> Each student pair is expected to identify a research question or clinical practice issue; it may be relevant to nurse anesthesia or another point of interest. This question or issue will be the focus of your project. The question is to be framed using the PICO format (explained in class). The project is a 30 minute presentation and paper proposing steps to utilize relevant research in a specific clinical or academic setting.

Dkt. 70-4 Ex. Q. It further stated that student projects must discuss a minimum of four research articles supporting both sides of their identified research question and how the project would be graded. The syllabus stated that specific points would be allocated to, among other things, how well students examined the research methodologies of the

academic papers discussed and whether students included a "table of research studies" as attached to the syllabus. Beemer's paper analyzed and critiqued the American system of medical malpractice. Beemer's paper, which has been submitted here alongside Gold's comments and grading, did not identify and analyze at least four academic studies in the field, it did not analyze research methodologies, and it did not include the requisite table of research. In Gold's view, Beemer had not performed the assignment in accordance with the syllabus and had submitted "a policy paper" instead. Dkt. 70-4 ¶ 50. Gold gave Beemer 17 points out of a possible 40 for the research paper and zero points out of a possible 10 for the presentation. Beemer received a D in ANST 508.

On December 6, 2012, Gold sent Beemer a letter reminding him of his obligations under the Contract of Study.

E. Spring Semester 2013 Onward

On December 10, 2012, Beemer met with Gold and informed Gold that he believed he could not return to clinical training as scheduled for January 2013. Gold worked with USC staff to ensure that Beemer was granted a medical leave of absence effective January 2013. On December 21, 2012, DSP sent Gold a memorandum listing accommodations for which Beemer had been approved. The letter approved Beemer to receive time and a half on examinations as well as enlarged print on handouts and exam paperwork. It did not list any other accommodations.

In March 2013, Edward Roth, the then-Director of DSP, asked Gold whether it would be possible for Beemer to complete his clinical training at only three sites: LAC-USC, CHLA, and Keck Hospital. Gold concluded that it was not possible to ensure Beemer got the minimum number and variety of clinical cases at those three sites. According to Gold, at a minimum, Beemer would have to complete a clinical rotation at Cedars-Sinai Medical Center to ensure he received enough specialty cases, including advanced neurosurgical and thoracic cases, which are unavailable at LAC-USC, CHLA, or Keck Hospital. Gold requested that Beemer contact him and see if they could come up with other accommodations that would allow Beemer to complete the Council on Accreditation requirements. Beemer never contacted Gold.

On May 29, 2013, Gold emailed Beemer advising him to contact the Registrar's office and the Financial Aid office regarding his leave of absence, which had been

approved for Spring Semester 2013. Beemer did not respond. In November 14, 2013, at Beemer's request, Gold forwarded an email to Beemer from December 20, 2012, stating that he had been approved for medical leave during Spring Semester 2013.

No later than "early 2014," Beemer acknowledges that he was healthy enough to work as a registered nurse. March 2017 Depo. 173:25-174:4. Beemer did not return to the Program and does not recall whether he ever made any effort to contact USC about returning from medical leave. March 2017 Depo. 172:8-11.

III. LEGAL STANDARDS

Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the initial burden of identifying relevant portions of the record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each claim upon which the moving party seeks judgment. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

If the moving party meets its initial burden, the opposing party must then set out specific facts showing a genuine issue for trial in order to defeat the motion. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); see also Fed. R. Civ. P. 56(c), (e). The nonmoving party must not simply rely on the pleadings and must do more than make "conclusory allegations [in] an affidavit." Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990); see also Celotex, 477 U.S. at 324. Summary judgment must be granted for the moving party if the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322; see also Abromson v. Am. Pac. Corp., 114 F.3d 898, 902 (9th Cir. 1997).

In light of the facts presented by the nonmoving party, along with any undisputed facts, the Court must decide whether the moving party is entitled to judgment as a matter of law. See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 631 & n.3 (9th Cir. 1987). When deciding a motion for summary judgment, "the inferences to be drawn from the underlying facts ... must be viewed in the light most favorable to the party opposing the motion." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citation omitted); Valley Nat'l Bank of Ariz. v. A.E. Rouse & Co., 121

F.3d 1332, 1335 (9th Cir. 1997). Summary judgment for the moving party is proper when a rational trier of fact would not be able to find for the nonmoving party on the claims at issue. See Matsushita, 475 U.S. at 587.

IV. DISCUSSION

As an initial matter, the Court notes that Beemer's four and a half page memorandum in opposition to this motion does not dispute the evidence offered by USC. Plaintiff's few evidentiary references in opposition to the motion do little to direct the Court to record evidence supporting plaintiff's position, let alone demonstrating a material issue of disputed fact. The district court is not required "to scour the record in search of a genuine issue of triable fact. [Courts] rely on the nonmoving party to identify with reasonable particularity the evidence that precludes summary judgment." Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996). To the extent that evidence exists that is inconsistent with the background set forth above, plaintiff has either failed to submit it or failed to bring it to the Court's attention. Accordingly, based upon the undisputed facts set forth above, the Court proceeds to evaluate whether they entitle USC to summary judgment or whether the facts permit competing, reasonable inferences in plaintiff's favor.

A. Plaintiff's Disability Discrimination Claims

Plaintiff's disability discrimination claims all require similar proof. The Unruh Act states that any violation of the ADA shall also constitute a violation of the Unruh Act. Cal. Civ. Code § 51(f). Similarly, Section 504 of the Rehabilitation Act and the ADA are subject to nearly identical analyses. See Douglas v. California Dep't of Youth Auth., 285 F.3d 1226, 1230 n. 3 (9th Cir. 2002) ("The ADA has no federal funding requirement, but it is otherwise similar in substance to the Rehabilitation Act, and cases interpreting either are applicable and interchangeable." (quotation marks omitted)). To establish a prima facie claim for disability discrimination, Beemer must show:

(1) he qualifies as disabled within the meaning of these statutes;
(2) he was "otherwise qualified" to remain a student in the Program, i.e. he can meet the essential eligibility requirements of the school, with or without reasonable accommodation;
(3) he was dismissed because of his disability; and

(4) USC receives federal financial assistance (for the Section 504 claim), is a public entity (for the ADA claim), and/or is a business establishment (for the Unruh Act claim).

Zukle v. Regents of Univ. of California, 166 F.3d 1041, 1045 (9th Cir. 1999); Cal. Civ. Code § 51(b). Schools operating professional training programs are not required to "lower or to effect substantial modifications of standards to accommodate a handicapped person." Se. Cmty. Coll. v. Davis, 442 U.S. 397, 413 (1979) (nursing program did not have to admit a deaf student). Nor is a professional school required to make "substantial modification[s] [to] its curriculum," such as rearranging sequential courses or permitting students to proceed without completing prior courses. Zukle, 166 F.3d at 1049.

> [I]n the school context, . . . the plaintiff-student bears the initial burden of producing evidence that she is otherwise qualified. This burden includes the burden of producing evidence of the existence of a reasonable accommodation that would enable her to meet the educational institution's essential [] requirements. The burden then shifts to the educational institution to produce evidence that the requested accommodation would require a fundamental or substantial modification of its program or standards. The school may also meet its burden by producing evidence that the requested accommodations, regardless of whether they are reasonable, would not enable the student to meet its academic standards. However, the plaintiff-student retains the ultimate burden of persuading the court that she is otherwise qualified.

Id. at 1047.

As an initial matter, Beemer was not dismissed from the Program. This undisputed fact alone appears to entitle USC to summary judgment. On December 10, 2012, Beemer requested medical leave and was granted medical leave. Gold's March 2013 request that Beemer reach out to him to discuss ways for Beemer to return to the Program and meet its clinical requirements went un-answered by Beemer. Thereafter Beemer does not appear to have sought to enroll in courses or otherwise return to the Program. To the extent that Beemer may contend he was *unable* to return to the Program because of its failure to accommodate his disability, the Court cannot discern from the evidence why

that would have been the case.[10] Out of an abundance of caution, the Court will proceed to analyze the other elements of plaintiff's disability discrimination claims. Assuming arguendo that plaintiff was, at least, constructively dismissed from the Program, USC is still entitled to summary judgment.

It is unclear exactly what Beemer's disability is and how he contends that it should have been accommodated. The December 21, 2012 DSP accommodation instructions appear to have been directed at plaintiff's eyesight (requiring enlarged type) and/or cognition (additional time for examinations). However, none of plaintiff's requests in his "Plan for Returning to Clinical Training" appear to have been related to his eyesight. Instead, at least one appears to have been related to his car accident and/or treatment regimen. See e.g. No. 11 ("Due to my continued rehab from the car accident, it would be nice to have some flexibility in my clinical schedule"). In opposition to the instant motion, plaintiff only mentions his request that clinical rotations take place at LAC-USC, CHLA, or Keck Hospital. Opp'n at 4 ("Plaintiff has asserted that he would have been

[10] In his opposition, plaintiff argues:

> The Defense has also asserted that Mr. Beemer was never Dismissed by the Program. While technically accurate, Mr. Beemer was ultimately denied access to the Program by the U.S.C. failing to accommodate his disability, requiring him to travel by car longer than he would be able to endure.

Opp'n at 5. To the extent that Beemer argues that clinical work had to occur at particular hospitals in order to make Beemer's commute shorter, plaintiff has not directed the Court to any evidence supporting his argument. Plaintiff has not presented evidence of where he lives, where the hospitals are, why other forms of transportation were unavailable, why he cannot endure driving, or how driving relates to his disability. Although the Court has not scoured every page of the voluminous record offered by USC, the Court cannot discern any evidence referring to plaintiff's commute or driving-related pain. When plaintiff first requested that his clinical work occur at CHLA or LAC-USC, plaintiff said he wanted to work at those locations to "obtain as much pediatric experience as possible before I graduate," and work in an environment that was "already familiar." Dkt. 70-4 Ex. X. Plaintiff's November 28, 2012 proposal to return to clinical rotations does not appear to have made any reference to driving or his potential commute.

able to complete the Program at facilities within a reasonable driving distance so as to accommodate the chronic pain he experienced as a result of the April 2012 automobile accident.").

Although the Court cannot discern exactly which accommodation(s) plaintiff contends he was denied by USC, it is clear that USC repeatedly sought to accommodate, and did accommodate, plaintiff's injuries and treatment regimen in numerous ways. The record evidence demonstrates that plaintiff was permitted to attend all of his treatment and physical therapy appointments and that when he requested time off for his injuries, his requests were granted. To the extent that plaintiff's repeated absences from ANST 508 and simulation workshops were not authorized and caused concern among Program staff, the Court can discern no evidence that these absences were related to plaintiff's disability – he appears to have thought the workshops would be a waste of his time. See Dkt. 70-4 Ex. X ("I am willing to consider the two observation days, but GASP & airway workshop are not necessary"). When plaintiff was unable to complete his clinical program during Summer Semester 2012, he was permitted to postpone completion of his remaining hours until Fall Semester 2012. Thereafter, at plaintiff's request, the ANST 507 hours were further postponed to Spring Semester 2013, during which plaintiff took medical leave. To the extent that plaintiff suffered a disability which did not interfere with his ability to do normal coursework, but prevented him from performing clinical work, the Program's solution – postponing completion of clinical hours to a later date – appears to have been reasonable.

The few accommodations that plaintiff was denied would have required a substantial alteration of the Program or would not have permitted plaintiff to meet Program standards. In November 2012, plaintiff requested that his future clinical rotations be at CHLA or LAC-USC. In March 2013, plaintiff added Keck Hospital to his list of permissible sites. However, USC has offered undisputed evidence that CHLA, LAC-USC, and Keck Hospital would not have been appropriate locations for plaintiff to complete his requisite clinical rotations. According to Gold, plaintiff would, at the very least, have to complete a rotation at Cedar-Sinai Medical Center in order to work on certain, requisite cases. Without completing such a rotation, plaintiff could not meet national accreditation requirements. In opposition, plaintiff appears to argue that USC is required to demonstrate "the volume of cases" at plaintiff's requested hospitals. Opp'n at 4. On the contrary, USC's primary argument is about the requisite *variety* of cases rather than the volume of cases. More fundamentally, where USC has presented

evidence that would entitle it to summary judgment, the burden shifts to plaintiff to offer evidence demonstrating a material issue of disputed fact. Gold's unequivocal assertion as director of the Program that *only* Cedar-Sinai Medical Center would afford Beemer an opportunity to work on neurosurgical cases, for example, satisfies USC's initial burden here. Plaintiff has failed to present evidence that neurosurgical cases were unnecessary or available outside Cedar-Sinai Medical Center. "The federal judiciary is ill equipped to evaluate the proper emphasis and content of a school's curriculum." Doherty v. S. Coll. of Optometry, 862 F.2d 570, 576 (6th Cir. 1988). Thus, the Court is required to accord deference to "an educational institution's academic decisions" as well as its "determination that a reasonable accommodation is not available." Zukle, 166 F.3d at 1047. Plaintiff provides no evidence contradicting Gold's assessment of the Program curriculum and, particularly in these circumstances, the Court is not able to find USC's policy to be unreasonable. Thus, Gold's description of the available cases and claim that CHLA, LAC-USC, and Keck Hospital lacked sufficient case diversity to meet Program requirements is sufficient to demonstrate that plaintiff was requesting an unreasonable accommodation.

Plaintiff's request to double-enroll in clinical courses during the Spring and Summer Semesters of 2013 so that he could graduate on-schedule was similarly unreasonable. According to Gold, there simply are not enough hours in the day or week to complete all of the work two clinical courses would have required. Furthermore, the courses build upon one another in a sequence. These considerations alone, suggest that plaintiff's request was unreasonable. They are exactly the type of accommodations rejected in Zukle. 166 F.3d at 1049 (court had "little difficulty concluding" that medical school was not required to permit a student to start clinical clerkships before completing prior clerkships) ("We defer to the Medical School's academic decision to require students to complete courses once they are begun and conclude, therefore, that this requested accommodation was not reasonable.").

Even assuming that it would have been feasible and appropriate for Beemer to enroll in two clinical courses simultaneously for two semesters in a row, USC's concern that, as of December 2012, Beemer was not prepared to return to clinical rounds appears to have been well-founded and unrelated to Beemer's disability.[11] The only clinical

[11] Additionally, it is unclear how plaintiff contends he would have physically performed the work of two, simultaneous clinical rotations. By requesting medical leave

course completed by Beemer resulted in his being placed on academic probation. As a result of his probationary status and the substantial period in which Beemer was not in a clinical course, faculty requested in the Contract of Study that Beemer complete several workshops and additional study to ensure that patients would be safe in his care. The record evidence demonstrates that Beemer first agreed to the faculty's proposal and subsequently failed to attend the requisite workshops – apparently for reasons unrelated to his disability. Beemer's repeated failure to communicate with his peers and faculty as well as his failure to timely complete credentialing documents only reinforced faculty concerns during Fall Semester 2012, a period in which USC reasonably expected Beemer to demonstrate that he was ready to return to caring for patients.

In light of the foregoing, the Court finds that there are no material issues of disputed fact requiring trial on plaintiff's disability discrimination claims. At bottom, the undisputed evidence only supports inferences in USC's favor - plaintiff was afforded reasonable accommodations and denied unreasonable ones. See Doherty, 862 F.2d at 575 ("refusal to waive the clinical proficiency requirement was not a failure to reasonably accommodate the plaintiff"); McGuinness v. Univ. of New Mexico Sch. of Med., 170 F.3d 974, 979 (10th Cir. 1998) (medical school reasonably required student with anxiety to repeat coursework that he failed rather than permit the student to advance); Kaltenberger v. Ohio Coll. of Podiatric Med., 162 F.3d 432, 436 (6th Cir. 1998) (request for abbreviated remedial course in lieu of repeating full semester was not reasonable). Thus, plaintiff was not "otherwise qualified" to remain in the Program and USC's management of Beemer's academic requirements did not constitute discrimination on the basis of Beemer's disability.

USC's motion is **GRANTED** with respect to plaintiff's disability discrimination claims.

during Spring Semester 2013, Beemer appears to have acknowledged that he was not medically ready to return to *any* clinical work, let alone work the equivalent of 8 to 10 full days in a single week.

B. Plaintiff's Remaining Claims

Plaintiff's sexual harassment claim pursuant to the Unruh Act and gender discrimination claim pursuant to Title IX do not withstand the motion for summary judgment.

As an initial matter, both remaining claims are barred by the statute of limitations. Plaintiff's claim for sexual harassment in violation of the Unruh Act is subject to the two-year personal injury statute of limitations in California. See West Shield Investigations & Sec. Consultants v. Superior Court, 82 Cal. App. 4th 935, 952, 98 Cal. Rptr. 2d 612 (2000), as modified on denial of reh'g (Aug. 23, 2000) (discussing prior disagreement among federal courts and adopting the personal injury limitation period); Gatto v. Cty. of Sonoma, 120 Cal. Rptr. 2d 550, 559 (2002) (agreeing with West Shield, in pertinent part, that the sexual harassment provisions of Cal. Civ. Code §§ 51 et seq. are subject to a personal injury statute of limitations established by statute); Cal. Civ. Code § 335.1 (personal injury actions subject to two-year limitation period). Plaintiff's Title IX claim predicated upon the same sexual harassment allegations is also subject to the two-year statute of limitations. See Stanley v. Trustees of California State Univ., 433 F.3d 1129, 1135 (9th Cir. 2006).

Plaintiff appears to contend that he was sexually harassed by Faulk and Valmidiano while he was enrolled in ANST 505 at Harbor. On April 12, 2012, Gold removed Beemer from Harbor to ensure that any sexual harassment that may have occurred would stop. There is no evidence of sexual harassment occurring after April 2012, when Beemer stopped working at Harbor. Thus, plaintiff's claims accrued no later than April 2012. The statute of limitations thus expired no later than April 2014. Plaintiff filed this action in February 2015, at least 10 months after the two-year statute of limitations expired. Accordingly, USC is entitled to summary judgment on plaintiff's sexual harassment and gender discrimination claims.

Plaintiff's Title IX claim further fails because plaintiff cannot establish that USC was "deliberately indifferent" to the sexual harassment such that USC should be liable for Faulk's acts. See Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998). To prove a violation of Title IX, plaintiff must show USC had actual knowledge of sexual harassment and responded to that knowledge with deliberate indifference. See Reese v. Jefferson Sch. Dist. No. 14J, 208 F.3d 736, 739 (9th Cir. 2000). Plaintiff cannot do so

here. The undisputed facts establish that USC immediately responded when Beemer reported what he perceived as sexual harassment. On April 12, 2012, Beemer reported Faulk to Gold and Embrey and they promptly removed him from Harbor, where he might interact with Faulk or face harassment in the future. Beemer does not present any evidence that USC exercised control of Faulk (a CRNA at an affiliate hospital) nor does plaintiff argue that USC was required to take different remedial action. To the extent that plaintiff bases his Title IX claim upon Valmidiano's "pimping" comments, the undisputed evidence similarly demonstrates that, as soon as Beemer reported the conduct, Manibhai arranged Beemer's schedule to ensure he would never work with Valmidiano again. Accordingly, plaintiff cannot establish that USC was deliberately indifferent to sexual harassment.

In light of the foregoing, USC's motion for summary judgment is also **GRANTED** with respect to plaintiff's claims for sexual harassment and violation of Title IX.

V. CONCLUSION

USC's motion for summary judgment is **GRANTED**.

IT IS SO ORDERED.

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