

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-324-C
)	
1. SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY, and)	
)	
2. THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA)	
)	
Defendant.)	

**ANSWER OF DEFENDANT SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, TO PLAINTIFF’S COMPLAINT**

Defendant, Southeastern Oklahoma State University, (“SEOSU”), for its answer to Plaintiff’s Complaint, admits Plaintiff’s allegations contained in the Complaint only to the extent specifically set forth below. To the extent any matters are not explicitly admitted, they are denied. SEOSU hereby provides its Answer as follows:

1. SEOSU admits Plaintiff has brought this action to enforce Title VII, but denies SEOSU or the Regional University System of Oklahoma (“RUSO”) subjected Dr. Rachael Tudor to unlawful sex discrimination and retaliation or that either defendant violated Title VII. SEOSU denies that it made any employment decision regarding Dr. Tudor based on gender or on her transgendered status.

2. SEOSU admits Dr. Tudor worked for Southeastern as a tenure track (ADMIT?) assistant professor from 2004 to 2011, but is without sufficient knowledge to admit or deny the remaining allegations in Paragraph 2.
3. SEOSU admits the allegations in Paragraph 3.
4. In response to Paragraph 4, SEOSU denies that SEOSU and RUSO are a single employer for all relevant purposes. SEOSU admits RUSO's Board of Regents is the governing board for SEOSU, and that RUSO's Policy Manual addresses the manner in which RUSO's and SEOSU's operations interrelate. SEOSU admits RUSO has the power to fix compensation and personnel duties at SEOSU, but RUSO has the power to delegate that power to the respective presidents pursuant to 70 O.S. §3510(d), which it has done. SEOSU denies its President must report to RUSO on all matters related to employment, discipline, and termination of faculty.
5. SEOSU admits the allegations in Paragraph 5.
6. SEOSU admits the allegations in Paragraph 6.
7. SEOSU admits the allegations in Paragraph 7.
8. In response to Paragraph 8, SEOSU admits Dr. Tudor filed a charge of discrimination, but denies the allegations contained in such charge. SEOSU is without knowledge sufficient to admit or deny the allegations regarding DOE's alleged referral to EEOC.
9. In response to Paragraph 9, SEOSU admits Dr. Tudor supplemented her charge of discrimination, but denies the allegations contained in the supplemental charge.
10. In response to Paragraph 10, SEOSU admits the EEOC notified Defendants of the supplemental charge of discrimination, that EEOC allegedly investigated these

charges, and that EEOC contends the investigation revealed Dr. Tudor was subjected to sex discrimination and retaliation (as well as religious discrimination, which is not alleged in this lawsuit). SEOSU admits that EEOC subsequently referred the case to the U.S. Department of Justice. SEOSU denies that reasonable cause was found to believe SEOSU discriminated or retaliated against Dr. Tudor. SEOSU also denies the EEOC notified Defendants of its reasonable cause or its findings. Specifically, EEOC continually refused to provide Defendants with any facts or evidence that allegedly supported EEOC's findings. SEOSU denies EEOC attempted to conciliate the charges in good faith, and further states that EEOC refused SEOSU's request for mediation, notifying SEOSU that this charge was not eligible for mediation.

11. SEOSU denies the allegations in Paragraph 11.

12. In response to the allegations in Paragraph 12, SEOSU admits Dr. Tudor began working at SEOSU in 2004 pursuant to a tenure track one year appointment, which had to be renewed on an annual basis for Dr. Tudor to continue employment at SEOSU. SEOSU further admits Dr. Tudor presented as a man when hired by SEOSU, but denies the remaining allegations.

13. SEOSU lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 13.

14. SEOSU admits the allegations in Paragraph 14.

15. SEOSU admits Cathy Conway, SEOSU's HR Director in 2007, communicated with Dr. Tudor to discuss transition as a female, but SEOSU denies all remaining allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. SEOSU admits Dr. Tudor began to go by the name “Rachel Tudor” and present as a woman at work during the 2007-2008 academic year, but is without sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 16.
17. SEOSU denies the allegations in Paragraph 17, and further states that Jane McMillan and Vice President McMillan specifically denied these allegations when interviewed by EEOC and/or the U.S. Department of Justice.
18. SEOSU admits, as alleged in Paragraph 18, the policy requires assistant professors to obtain tenure before the end of their seventh year as an assistant professor or their employment will be terminated. However, with permission from SEOSU President Minks to seek a one year extension from the RUSO Board, V.P. McMillian offered Dr. Tudor the ability to remain past the seven years so that she could have two years to fully address and supplement her portfolio for tenure. Dr. Tudor declined this offer, and was aware that as a result, her employment with SEOSU would end in May 2011.
19. SEOSU admits the allegations in Paragraph 19.
20. SEOSU denies the allegations in Paragraph 20. A notification letter is provided to each candidate regarding the decision at each level. At the end of the tenure process, the candidate is given a detailed letter documenting the reasons for denial or approval. Dr. Tudor received the notification letters and a detailed letter outlining the reasons for tenure denial.
21. SEOSU admits the allegations in Paragraph 21.
22. SEOSU admits the allegations in Paragraph 22.

23. SEOSU admits that Paragraph 23 contains statements included in SEOSU's Academic Policies and Procedures, but it presents a distortion of the process because it does not contain all of the applicable statements regarding the tenure process and the various levels of review. Specifically, Paragraph 23 omits the significant roles played by the Dean, Vice President of Academic Affairs, and the President, as well as the role played by the RUSO Board.
24. SEOSU is without sufficient knowledge or information to admit or deny whether preparations were taken by Dr. Tudor in the summer of 2009, as alleged in Paragraph 24. In addition, Dr. Tudor had applied for tenure and promotion to the position of Associate Professor the year before, in 2008, at which time the Department's Tenure and Promotion Committee for Dr. Tudor voted 5-0 against a recommendation for Tenure and Promotion. Upon the advice of a committee member, Tudor withdrew her application and portfolio.
25. SEOSU admits the allegations in Paragraph 25.
26. SEOSU admits it was at this meeting that Dean Scoufos learned Dr. Tudor was a transgender woman, but denies the remaining allegations in Paragraph 26.
27. As alleged in Paragraph 27, SEOSU admits Dr. Tudor told Dean Scoufos that she believed another faculty member in her Department had been discriminating against her since she had begun to present as a woman, and that she would prefer this member not serve on the Faculty Committee that would review her portfolio. When Dean Scoufos asked Dr. Tudor why she believed that faculty member was discriminating against her, Tudor stated that after her change, the faculty member did not ask Dr.

Tudor to accompany the honor students on field trips, such as cultural events to Dallas. Upon investigation, Dean Scoufos learned the honor trips had been stopped completely, and were wholly unrelated to Dr. Tudor. SEOSU denies the remaining allegations.

28. SEOSU admits the allegations in Paragraph 28.
29. SEOSU admits the allegations in Paragraph 29.
30. SEOSU admits the allegations in Paragraph 30.
31. SEOSU admits the allegations in Paragraph 31, but further states that notification letters do not contain explanations. Dr. Tudor received an explanation letter from Dr. McMillan after the process was complete, which was the standard procedure.
32. SEOSU admits the allegations in Paragraph 32.
33. SEOSU admits the allegations in Paragraph 33, but further states that notification letters do not contain explanations. Dr. Tudor later received an explanation letter. All candidates receive explanation letters once the process is complete.
34. SEOSU admits the allegations in Paragraph 34.
35. SEOSU admits that prior to Dr. Tudor receiving her explanation letter, she asked Vice President McMillan and Dean Scoufos for an explanation. Applicants are not permitted to have these types of discussions during the review process. SEOSU denies the remaining allegations in Paragraph 35, but further states that upon Dr. Tudor's request, she was allowed to place a document in her portfolio prior to the President's review.

36. SEOSU admits the allegations in Paragraph 36, because it was against SEOSU's policy to provide feedback to candidates during the tenure and promotion process, and thus, no candidates are given feedback until the end of the process. As previously stated, Dr. Tudor was provided an explanation at the end of the process.
37. SEOSU denies the allegations in Paragraph 37, and specifically states Dr. Tudor was treated no differently than other tenure applicants. After their portfolio submissions, applicants may be permitted to add publications to their portfolios. Dr. Tudor was given permission, and added a publication to her portfolio subsequent to its submission.
38. SEOSU admits that despite Dr. Tudor's knowledge of the tenure process, including the policy that explanations are not given until the tenure process is completed, she requested special treatment by filing a grievance, as alleged in Paragraph 38. Tudor was inappropriately attempting to obtain information that no candidate receives prior to completion of the tenure and promotion process.
39. SEOSU admits the allegations in Paragraph 39, and states that Tudor was provided an explanation at the end of the process.
40. SEOSU admits President Minks designated the Assistant Vice President to communicate to Dr. Tudor the FAC's recommendation and his decision regarding compliance with the recommendation. SEOSU denies the remaining allegations in Paragraph 40.

41. SEOSU admits the Assistant Vice President determined policy would be followed, and thus Dr. Tudor would not be given an explanation until the end of the process.

SEOSU denies the remaining allegations in Paragraph 41.

42. Candidates are not allowed to supplement their portfolios during the review process, except to add publications that are received after the portfolio has been submitted and before the process is complete. Dr. Tudor was allowed to add a publication during the review process. SEOSU denies the remaining allegations in Paragraph 42.

43. SEOSU admits the allegations in Paragraph 43.

44. SEOSU denies the allegations in Paragraph 44 to the extent it omits that prior to denying tenure, candidates are frequently given the option to withdraw their applications for tenure and promotion. The option may be proposed by the P&T Review Committee, the Department Chair, the Dean, or the Academic Vice President. Dr. Tudor was given the option of withdrawing her application and was given an offer of additional time, i.e. two years, to resubmit her application, but Dr. Tudor declined this offer. Dr. Tudor's decision to decline this offer in light of the consequences of tenure denial was unprecedented.

45. SEOSU cannot admit or deny the date which Dr. Tudor received Vice President McMillan's explanation letter; SEOSU admits the remaining allegations in Paragraph 45.

46. SEOSU denies the allegations in Paragraph 46. The explanation letter received by Dr. Tudor sets forth clear and distinct bases for denial of promotion and tenure, giving specific examples of the inadequacies of her research/scholarship and her university

service. It was because of these significant inadequacies that prior to the completion process, Dr. Tudor was given the option of withdrawing her application and given two years to bolster her portfolio so that it would meet the policy requirements for tenure and promotion.

47. SEOSU denies the allegations in Paragraph 47. It is the candidate's responsibility to provide accurate and complete information in her portfolio to support all claims of publications, editorship, and responsibilities.

48. SEOSU denies the allegations in Paragraph 48. SEOSU has allowed re-application for promotion, but never for tenure.

49. SEOSU has no knowledge of the specific date Dr. Tudor informed her Department Chair of an intent to re-apply for promotion and/or tenure, but admits the remaining allegations in Paragraph 49.

50. SEOSU admits Dr. Tudor submitted a grievance to President Minks on August 30, 2010 regarding "Improprieties and Due Process Violations by Administrators in Tenure and Promotion Process." In September 2010, the FAC sent a letter with its finding to Dr. Tudor, which stated, in part, that the FAC "concluded that the information required by the Academic Policies and Procedures Manual (APPM,4.4.6,1b.) was not provided." The FAC letter also concluded that "it is not empowered to address the issue of due process related to promotions and tenure". Given these two findings, the FAC concluded that it was "unable to act on the grievance." SEOSU denies the remaining allegations in Paragraph 50.

51. SEOSU denies the allegations in Paragraph 51 in that they are incomplete and do not accurately reflect the contents and meaning of the October 2010 letter.
52. SEOSU denies the allegations in Paragraph 52 in that they are incomplete and do not accurately reflect the contents and meaning of the October 2010 letter.
53. SEOSU admits the allegations in Paragraph 53. No applicant for tenure is allowed to reapply after final review and denial, and Dr. Tudor was aware of the consequences of her refusal to withdraw her application for tenure the previous year.
54. SEOSU denies that the contents and meaning of the letter are accurately reflected, but SEOSU admits that, in response to Dr. Tudor's grievance, as alleged in Paragraph 54, Vice President McMillan sent a letter to the FAC setting forth the entire rationale for not allowing Dr. Tudor to re-apply for tenure and promotion.
55. SEOSU admits Dr. Tudor submitted four letters of recommendation from tenured SEOSU English professors, but denies the remaining allegations in Paragraph 55. As set forth in Vice President McMillan's letter to the FAC, "a review of the letters supplied by Dr. Tudor in support of her grievance do not suggest substantial improvements in her scholarly activity or service in the five months since she was notified by the President of his decision to deny her application for tenure and promotion. In fact, many of the activities cited in the letters were present in her 2009-2010 portfolio."
56. SEOSU is without sufficient knowledge or information to admit or deny the allegations in Paragraph 56, but denies that such claims were supported by the

contents of Dr. Tudor's portfolio, as detailed in Vice President McMillan's letters to Dr. Tudor and to the FAC.

57. SEOSU admits the FAC recommended SEOSU permit Dr. Tudor to reapply for tenure and promotion, as alleged in Paragraph 57, but Vice President McMillan appealed the FAC's decision to President Minks, and provided a detailed memorandum supporting the appeal.
58. SEOSU admits the general subject matter of the allegations, but denies that President Walkup's letter is accurately summarized in Paragraph 58. Vice President Walkup's letter was extremely detailed, setting forth the applicable policies and procedures pertaining to promotion and tenure, and explaining the "terminal year rule, including that withdrawal of the application is the only way to avoid the "terminal year rule". His letter further explained the policy prohibiting renewal of appointment for a seven-year faculty member that had not obtained tenure, and that renewal could occur only if the President made a specific recommendation for waiver of policy. SEOSU further states that it is not bound by FAC recommendations, but may consider them.
59. SEOSU admits the allegations in Paragraph 59, but denies SEOSU discriminated against Dr. Tudor when it denied her 2009-2010 application for tenure, or at any other time during Dr. Tudor's employment at SEOSU.
60. SEOSU admits the allegations in Paragraph 60, but denies SEOSU retaliated or discriminated against Dr. Tudor because of her discrimination complaint, or at any other time during Dr. Tudor's employment at SEOSU.

61. As alleged in Paragraph 61, SEOSU admits Dr. Stubblefield issued a report addressing Dr. Tudor's discrimination and retaliation complaints, and that Dr. Stubblefield, after a thorough investigation of all relevant facts and circumstances, found that Southeastern had not discriminated against or retaliated against Dr. Tudor.
62. SEOSU denies the allegations in Paragraph 62.
63. SEOSU denies the allegations in Paragraph 63. Dr. Tudor's contract was non-renewed due to her failure to attain tenure.
64. SEOSU admits that after Dr. Tudor's application for tenure was denied, (and thus her contract would not be renewed after the academic year 2010-2011), the Faculty Senate (of which Dr. Tudor was a member) gave this award to Dr. Tudor, as alleged in Paragraph 64. There are no specific requirements to receive this award.
- 65.– 69. Paragraphs 65-69 do not assert factual allegations against SEOSU, and therefore do not require a response.
70. In response to Paragraph 70, SEOSU adopts and realleges its responses to Paragraphs 1-69.
71. SEOSU denies the allegations contained in Paragraph 71.
72. SEOSU denies the allegations contained in Paragraph 72.
73. SEOSU denies the allegations contained in Paragraph 73.
74. SEOSU denies the allegations contained in Paragraph 74.
75. In response to Paragraph 75, SEOSU adopts and realleges its responses to Paragraphs 1-74.
76. SEOSU denies the allegations contained in Paragraph 76.

77. SEOSU denies the allegations contained in Paragraph 77.

78. SEOSU denies the allegations contained in Paragraph 78.

IN RESPONSE TO PLAINTIFF'S PRAYER FOR RELIEF, AND EACH OF ITS SUBPARTS, SEOSU STATES THE FOLLOWING:

SEOSU did not engage in any discriminatory or retaliatory conduct, and therefore Plaintiff is not entitled to any of its requested relief.

AFFIRMATIVE DEFENSES

1. Plaintiff and/or Dr. Tudor have failed to exhaust administrative remedies.
2. Plaintiff has failed to conciliate in good faith.
3. Plaintiff and/or Dr. Tudor failed to mitigate damages.
4. All actions by SEOSU regarding Dr. Tudor were non-discriminatory, done in good faith, and done for legitimate business reasons.
5. Plaintiff was denied tenure and promotion because her work and her service did not meet the necessary standards, and therefore her portfolio did not meet SEOSU's policy requirements.
6. Plaintiff was given the opportunity to withdraw her portfolio due to the likelihood of tenure and promotion denial, but she refused.
7. Some or all of Plaintiff's claims are barred by statutes of limitations and/or laches.
8. SEOSU and RUSO are not a "single employer" as alleged by Plaintiff.
9. Failure to state a claim upon which relief can be granted.
10. Transgender is not a protected class under Title VII.

11. To the extent that Plaintiff pursues unfounded claims and claims for which it relies upon facts known to be untrue, and intentionally presents facts in a misleading fashion to the Court that are frivolous at best, SEOSU will pursue costs and attorney's fees from Plaintiff.
12. After-acquired evidence.
13. Eleventh Amendment immunity.
14. Sovereign immunity pursuant to the Tenth Amendment to the U.S. Constitution.

/s/Dixie L. Coffey

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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of April, 2015, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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