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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
RACHEL TUDOR,	)	
	)	
Plaintiff-Intervenor	)	
v.	)	CASE NO. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY, and	)	
	)	
THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA,	)	
	)	
	)	
Defendants.	)	

JOINT STATUS REPORT AND DISCOVERY PLAN

Date of Conference: July 23, 2015

Appearing for Plaintiff: Allan Townsend and Shayna Bloom

Appearing for Plaintiff-Intervenor: Jillian T. Weiss, Ezra Young and Brittany Novotny

Appearing for Defendants: Dixie Coffey and Jeb Joseph

Jury Trial Demanded ☑ - Non-Jury Trial ☐

1. **BRIEF PRELIMINARY STATEMENT**.

The United States of America ("United States") and Dr. Rachel Tudor (collectively "Plaintiffs") both allege that Defendants Southeastern Oklahoma State University ("SOSU") and the Regional University System of Oklahoma ("RUSO") discriminated against Dr. Tudor on the basis of sex, in violation of Title VII of the Civil Rights Act ("Title VII"), when (1) they denied Dr. Tudor's 2009 application for tenure

and promotion and (2) refused to let her apply for tenure and promotion in 2010. Plaintiffs further allege that Defendants retaliated against Dr. Tudor in violation of Title VII when they refused to let her apply for tenure and promotion in 2010.

Dr. Tudor has also asserted a hostile work environment claim on the basis of sex under Title VII.

Southeastern Oklahoma State University ("SOSU") and the Regional University System of Oklahoma ("RUSO") allege Dr. Tudor was denied tenure because her portfolio was extremely deficient in certain required areas, and therefore did not meet SOSU's policy requirements for tenure and promotion. Defendants deny that SOSU made any employment decision regarding Dr. Tudor on the basis of sex. Defendants also deny that either defendant subjected Dr. Tudor to unlawful sex discrimination, a hostile work environment, or retaliation.

2. **JURISDICTION**.

This Court has jurisdiction over this Title VII sex discrimination and retaliation lawsuit under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345. There are no objections to jurisdiction.

3. **STIPULATED FACTS**.

a. Dr. Rachel Tudor began employment at SOSU on August 1, 2004 as an Assistant Professor, which is a tenure-track position.

b. Based on the number of Defendants' total employees, the $300,000 damage cap at 42 U.S.C. § 1981a(b)(3)(D) applies to this case.

c. On or about November 29, 2009, Dr. John Mischo, then-Chair of the English Department at SOSU, recommended that Dr. Tudor receive tenure and promotion to Associate Professor.

d. In February 2010, Dr. Douglas McMillan, Vice President for Academic Affairs at SOSU, recommended that Dr. Tudor not receive tenure and promotion to Associate Professor.

e. On August 30, 2010, Dr. Tudor filed a discrimination complaint with SOSU's Affirmative Action Officer, Dr. Clare Stubblefield.

4. **CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT**.

a. Plaintiff – United States:

The United States contends that the Defendants, acting as a single employer for purposes of Title VII, discriminated against Dr. Tudor because of her sex and retaliated against her because she engaged in activity protected by Title VII. The Defendants discriminated against Dr. Tudor on the basis of sex when they (i) denied the application for tenure and promotion that she submitted during the 2009-10 academic year and (ii) refused to let her apply for tenure and promotion during the 2010-11 academic year. The United States also contends that the Defendants retaliated against Dr. Tudor in violation of Title VII when they refused to permit her to apply for tenure and promotion during the 2010-11 academic year.

The Defendants claim that they denied Dr. Tudor's application for tenure and promotion because she was not qualified. This reason is a pretext for sex discrimination. Among other things, the United States will prove at trial that: (1) the Defendants treated Dr. Tudor differently than similarly situated non-transgender professors who conformed to traditional gender stereotypes during the Defendants' review of her tenure and promotion application; (2) the Defendants deviated from their own established policies and procedures in ways that adversely affected Dr. Tudor's ability to obtain tenure and promotion; and (3) the Defendants' decisionmakers in this case made statements and took actions which indicated that they did not want Dr. Tudor to obtain tenure or promotion because of her gender identity, gender transition, and non-conformance with gender stereotypes.

Shortly after Dr. Tudor made Title VII-protected complaints about the Defendants' discrimination, the Defendants decided not to permit her to apply for tenure and promotion during the 2010-11 academic year. At first, the Defendants conceded that no policy prohibited Dr. Tudor from applying for tenure and promotion during the 2010-11 academic year but they still decided not to let her apply. After Dr. Tudor grieved that decision, the Defendants changed their position and falsely claimed that their policies prohibited professors from applying for tenure more than once. The United States will present this and other evidence at trial to prove that the Defendants' reasons for refusing to permit Dr. Tudor to apply for tenure and promotion during the 2010-11 academic year were a pretext for discrimination and retaliation.

The United States seeks individual monetary relief for Dr. Tudor in the form of

back pay; compensation for lost employee benefits; and compensation for Dr. Tudor's loss of enjoyment of life, damage to her professional reputation, and other non-economic damages. The United States is also seeking injunctive relief, as described in the Complaint (ECF No. 1 at 19-20), which would include, among other things, an order that Defendants revise their policies, provide training to their employees, and award Dr. Tudor the position of Associate Professor with tenure.

b. Plaintiff—Dr. Tudor:

After Dr. Tudor disclosed her intent to transition to female during the 2007- 08 school term, Southeastern's administrators instituted a campaign of harassment and bullying on the basis of sex and sex stereotyping, including gender, gender expression, and gender identity, and adopted an attitude of adversarial and hostile demeanor. This harassment continued through Tudor's termination from Southeastern in May 2011. Dr. McMillan made statements that were repeated to Dr. Tudor that her gender expression and gender identity were offensive to him. Southeastern administrators, including but not limited to Dr. McMillan, openly denied the legitimacy of Dr. Tudor's feminine gender expression and female gender identity and encouraged others under their direction to do the same, including restricting use of gender-appropriate restrooms and wearing of certain traditionally feminine articles of clothing. The Defendants provided and maintained a health insurance plan for all faculty, including Dr. Tudor, that had an explicit exclusion for transgender health care, as a result of which, Dr. Tudor was unable to receive coverage for medically necessary care, she was forced to bear out-of-pocket costs, and was subjected to humiliation. As a part of this course of conduct, University administrators repeatedly interfered with the tenure review process over the course of two years. This hostile environment unreasonably interfered with Dr. Tudor's ability to perform her job duties, and resulted in tangible job actions.

Dr. Tudor also makes the same contentions as the United States listed above in 4(a).

Dr Tudor seeks the same relief as the United States listed above in 4(a). In addition, she seeks relief relating to the hostile work environment to which she was subjected, including, among other things, compensatory damages for loss of enjoyment of life, damage to her professional reputation, and other non-economic damages, and injunctive relief, including, among other things, an order that Defendants revise their policies, and provide training to their employees.

c. Defendants:

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 SOSU regarding Dr. Tudor were non-discriminatory, done in good faith, and done for legitimate business reasons.

5. Dr. Tudor was denied tenure and promotion because her work and her service did not meet the necessary standards, and therefore her portfolio did not meet SOSU's policy requirements.

6. Some or all of Plaintiffs' claims are barred by statutes of limitations and/or laches.

7. SOSU and RUSO are not a "single employer" as alleged by Plaintiff.

8. While employed at SOSU, Dr. Tudor never submitted a complaint or grievance regarding any incidents which she now alleges subjected her to a hostile work environment.

9. While employed at SOSU, Dr. Tudor never submitted a complaint or grievance of sex discrimination.

10. Dr. Tudor's EEOC charges did not include a hostile work environment claim.

11. EEOC's investigation of Dr. Tudor's charges did not include a hostile work environment claim.

12. EEOC's determination did not address a hostile work environment charge.

13. SOSU was never notified of an EEOC charge of hostile work environment.

14. RUSO was never named by Dr. Tudor in an OCR or EEOC charge of discrimination or retaliation.

15. RUSO was never notified of any EEOC charge against RUSO.

16. On or before November 2008, Dr. Tudor filed a written request for promotion and tenure and a portfolio of her work with the Chair of SOSU's Department of English, Humanities, and Languages, Dr. John Mischo.

17. In response to Dr. Tudor's 2008 tenure request, the tenure and promotion committee voted 5-0 against recommending Dr. Tudor for tenure and promotion. Upon the advice of the department chair, Dr. Tudor subsequently withdrew her application.
18. In January 2010, Dr. Scoufos, Dean of the School of Arts and Sciences at SOSU, recommended that Dr. Tudor not receive tenure and promotion to Associate Professor because Dr. Tudor's portfolio was extremely deficient in certain areas, and thus did not meet SOSU policy requirements for tenure and promotion.
19. In approximately January 2010, SOSU recommended to Dr. Tudor that she withdraw her portfolio due to its deficiencies, and offered Dr. Tudor a one-year extension to allow her two more years to work on supplementation to her portfolio. Dr. Tudor declined this offer.
20. Dr. Tudor's application for tenure was not forwarded to the RUSO Regents during the 2009-2010 academic year, thus Dr. Tudor did not receive tenure and SOSU did not promote her to Associate Professor.
21. Despite Dr. Tudor's knowledge that she was not eligible for tenure due to her prior tenure denial, in August 2010, Dr. Tudor informed the new Chair of the Department of English, Humanities, and Languages, Dr. Randy Prus, that she (Dr. Tudor) intended to apply again for tenure and promotion to Associate Professor during the 2010-11 academic year.
22. In compliance with SOSU and RUSO policy, Dr. Tudor was notified of the decision not to renew her appointment for the 2011-2012 academic year on or about February 23, 2011.
23. Neither Plaintiff nor Intervenor are entitled to any of the relief sought herein.

5. **APPLICABILITY OF FED. R. CIV. P. 5.1 AND COMPLIANCE**.

Do any of the claims or defenses draw into question the constitutionality of a federal or state statute where notice is required under 28 U.S.C. § 2403 or Fed. R. Civ. P. 5.1?

☐ Yes ☑ No

6. **MOTIONS PENDING AND/OR ANTICIPATED**

The United States and Dr. Tudor do not anticipate filing any motions at this time. The Defendants anticipate filing motions for summary judgment.

7. **COMPLIANCE WITH RULE 26(a)(1)**.

Have the initial disclosures required by Fed. R. Civ. P. 26(a)(1) been made?
☐ Yes ☑ No
If "no," by what date will they be made?
RESPONSE: July 31, 2015

8. **PLAN FOR DISCOVERY**.

A. The discovery planning conference (Fed. R. Civ. P. 26(f)) was held on July 15, 2015.

B. The parties anticipate that discovery should be completed within twelve months.

C. In the event ADR is ordered or agreed to, what is the minimum amount of time necessary to complete necessary discovery prior to the ADR session?
RESPONSE: The Parties agree that ADR would be most effective after the completion of discovery.

D. Have the parties discussed issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced, pursuant to Fed. R. Civ. P. 26(f)(3)(C)?

☑Yes ☐No The parties discussed these issues and intend to continue this discussion in a conference call that we are currently trying to schedule.

E. Have the parties discussed issues relating to claims of privilege or of protection as trial-preparation material pursuant to Fed. R. Civ. P. 26(f)(3)(D)?

☑ Yes☐ No

To the extent the parties have made any agreements pursuant to Fed. R. Civ. P. 26(f)(3)(D) and Fed. R. Civ. P. 502(e) regarding a procedure to assert claims of privilege/protection after production and are requesting that the court include such agreement in an order, please set forth the agreement in detail below and submit a proposed order adopting the same.

RESPONSE: The parties agree to the procedure described in the attached proposed order.

F. Identify any other discovery issues which should be addressed at the scheduling conference, including any subjects of discovery, limitations on discovery, protective orders needed, or other elements (Fed. R. Civ. P. 26(f)) which should be included in a particularized discovery plan.

RESPONSE: The parties have agreed and request that the Court order that discovery will take place for twelve months. The deadline for parties' expert reports should be four months before the discovery deadline and the identification of any rebuttal experts (and their reports) should be due six weeks after production of the expert reports.

The parties have also agreed and request that the Court order that each "side" will be able to take twenty depositions. The United States and Dr. Tudor are on one side of the litigation and Southeastern Oklahoma State University and the Regional University System of Oklahoma are on the other side of the litigation.

The parties will draft a confidentiality agreement acceptable to all parties in the form of a protective order to be "so ordered" by the Court.

9. **ESTIMATED TRIAL TIME**: Five days.

10. **BIFURCATION REQUESTED**: ☐ Yes ☑ No

11. **POSSIBILITY OF SETTLEMENT**: ☐ Good ☐ Fair ☑ Poor

12. **SETTLEMENT AND ADR PROCEDURES**:

A. Compliance with LCvR 16.1(a)(1) - ADR discussion: ☑ Yes ☐ No

B. The parties request that this case be referred to the following ADR process:

☐ Court-Ordered Mediation subject to LCvR 16.3
☑ Judicial Settlement Conference following the close of discovery.
☐ Other _____
☐ None - the parties do not request ADR at this time.

13. Parties consent to trial by Magistrate Judge? □ Yes ☑ No

14. Type of Scheduling Order Requested. ☑ Standard - ☐ Specialized

Submitted this 21st day of July, 2015.

/s/ *Allan Townsend*
Allan Townsend
US Dept of Justice Civil Rights Division-DC
950 Pennsylvania Avenue NW
Rm 49258 PHB
Washington, DC 20530
Telephone: (202) 305-3302
Facsimile: (202) 514-1005
Allan.Townsend@usdoj.gov
Attorney for United States of America

/s/ *Jillian T. Weiss*
Jillian T. Weiss
Admitted Pro Hac Vice
Law Office of Jillian T. Weiss, P.C.
P.O. Box 642
Tuxedo Park, NY 10987
Telephone: (845) 709-3237
Facsimilar: (845) 915-3283
jtweiss@jtweisslaw.com
Attorney for Intervenor Plaintiff

/s/ *Dixie L. Coffey*
DIXIE L. COFFEY, OBA#11876
Assistant Attorney General
Oklahoma Attorney General's Office
Litigation Division
313 NE 21st Street
Oklahoma City, OK 73105
Telephone: 405.521.3921
Facsimile: 405.521.4518
dixie.coffey@oag.ok.gov
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2015, I electronically transmitted the foregoing Joint Status Report and Discovery Plan to the Clerk of the Court using the ECF System for filing and service upon all counsel of record.

/s/ *Jillian T. Weiss*
Jillian T. Weiss
Law Office of Jillian T. Weiss, P.C.
P.O. Box 642
Tuxedo Park, NY 10987
jtweiss@jtweisslaw.com
Attorney for Intervenor Plaintiff

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

UNITED STATES OF AMERICA, Plaintiff RACHEL TUDOR, Plaintiff-Intervenor v. SOUTHEASTERN OKLAHOMA STATE UNIVERSITY, and THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA, Defendants.	)	CASE NO. 5:15-CV-00324-C

CONSENT ORDER REGARDING INADVERTENT DISCLOSURE OF PRIVILEGED DOCUMENTS

The parties agree and the Court ORDERS that a disclosure of information contained within documents, things, and electronically stored information ("ESI") that is protected by attorney-client privilege, work product protection, or governmental privileges does not operate as a waiver in this case if: 1) the disclosure is inadvertent; 2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and 3) the holder promptly took reasonable steps to rectify the error once discovered.

If the producing party inadvertently discloses information that it asserts is privileged or protected, it will promptly notify the receiving party and provide the production date, wave number and volume of the production media, (if

applicable), and the Bates number(s) or Document ID (for native files) of all material that it believes contains the inadvertently disclosed information.

If a production contains information that the receiving Party believes is privileged or protected and was inadvertently produced, it will promptly notify the producing Party and provide the Bates number(s) or Document ID (for native files) of the item it believes was inadvertently produced. Within 14 days after receiving notification, the producing Party may make a written request for return of the material. If the producing Party does not send a written request for return of the material to the receiving Party within 14 days, the producing Party waives all claims of privilege or protection as to the material.

When the receiving party receives a written demand for return of the material, it will make reasonable, good faith efforts to promptly redact, return or destroy all inadvertently produced material identified by the producing party. If copies of inadvertently produced materials are captured on the receiving Party's Backup System, the receiving Party will over-write those copies according to its established procedures.

If the receiving party must destroy or delete production media (*e.g.,* CD) in order to destroy or delete inadvertently produced material, then the producing Party will provide a duplicate copy of the production media, minus only the inadvertently produced material, within 14 days of its written request for return of the material to the receiving party.

If the receiving party intends to challenge the claim of privilege or

protection or the inadvertence of the production, it will keep one copy of the inadvertently produced material in a sealed envelope or a sequestered location while seeking a ruling from the Court.

It is so ORDERED this __ day of _____, 2015.

_____
ROBIN J. CAUTHRON
United States District Judge