

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
and)
)
DR. RACHEL TUDOR,)
)
Plaintiff/Intervenor,)
)
v.)
)
SOUTHEASTERN OKLAHOMA)
STATE UNIVERSITY,)
)
and)
)
THE REGIONAL UNIVERSITY)
SYSTEM OF OKLAHOMA,)
)
Defendants.)

Case No. 5:15-CV-00324-C

**DR. RACHEL TUDOR’S RESPONSE AND OPPOSITION TO
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

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I. Introduction

Ten years ago, Dr. Rachel Tudor bravely announced to her colleagues at Southeastern Oklahoma State University (“Southeastern”) that she would be transitioning from male to female. Neither Southeastern nor its governing board, the Regional University System of Oklahoma (“RUSO”), had express protections in place. Though Tudor received tremendous support from her colleagues and students, a small but powerful cadre of administrators placed Tudor in their crosshairs.

Tudor endured years of hostilities. She was threatened with termination if she used women’s restrooms on campus. She endured a health plan that specially excluded care she needed which was otherwise available to her nontransgender female peers. She also endured sporadic slights and ridicule. For fear of losing her job, Tudor suffered much of this in silence and set her eyes on tenure and promotion—a means to stay at a school she to this day still loves, alongside her colleagues who still miss her.

Of course, no federal lawsuit results where things end well. Over a two-year period, Southeastern’s top administrators deprived Tudor of a fair and impartial evaluation of her tenure and promotion portfolio. In the 2009-10 cycle, they denied her application and refused to even proffer explanations for their denials. Those same administrators later manufactured rationales that cannot stand up to scrutiny. Close in time to Tudor stepping up her

complaints, the administration barred her from attempting a reapplication in the 2010-11 cycle on the incredible pretense that her reapplication would tear apart the university (it would not) and reapplication violated policy (it did not). Despite the Southeastern faculty standing behind Tudor and support pouring in from within and outside of Oklahoma, the administration nonrenewed Tudor, kicking her to the curb at a time when she should have been celebrating a major and hard-earned career milestone.

Over the last ten years, Southeastern and the rest of our nation have made great strides towards welcoming women, like Tudor, whose path in life is a bit different but nonetheless deserving of both basic decency and the full protection of Title VII. For all the reasons set forth below, Dr. Tudor respectfully requests that that the Court deny Defendants' Motion for Summary Judgment and allow Tudor to bring the facts to a jury of her peers.

II. Response to Defendants' Statement of Undisputed Facts

1. The deposition excerpt Defendants cite establishes Tudor's year of and name at birth, both of which she admits. *See* ECF No. 177-1 at 188:4–8. If Defendants intended to argue Tudor “was born male” and/or her “biological sex” is male because she is a transgender woman, this is disputed. *See Exhibit 1* at 2 (providing medical definition of “sex”); *id.* at 3 (providing medical definition of “biological sex” and distinguishing “birth sex” from “biological sex”).

2. Admitted.

3. Tudor presented herself as male at Southeastern from Fall 2004 until just prior to Fall 2007; Tudor has presented herself as female from Fall 2007 through present.

4. Partially denied. Tudor complained orally and in writing and otherwise opposed hostilities and discrimination prior to and during the 2009-10 application process. *See, e.g., Exhibit 3* at 3–12 (collecting complaints between 2007 and end 2009-10 cycle).

5. Admitted that Southeastern had multiple stages of tenure and promotion review. However, tenure and promotion decisions were ultimately the providence of the faculty. In rare situations where there was disagreement between the faculty and administration, policy required that the administration provide rationales justifying a departure from the faculty's decision. *See, e.g., Exhibit 18* ¶ 6(b)(ii); *id.* ¶ 6(b)(iii); *id.* ¶ 6(d); *id.* ¶ 6(e).

6–8. Tudor denies that paragraphs 6 to 8 are material to the resolution of this Motion because her 2008-09 application does not speak to the discrimination, retaliation, and hostilities she faced in connection with the 2009-10 and 2010-11 cycles.

9. Admitted.

10. The English Department committee voted as a unit to approve

Tudor's 2009-10 application. **Exhibit 4** at 155: 6–12 (committee had “one vote”); **Exhibit 5** at 141:6–15 (similar). Moreover, Defendants misrepresent the role of administration in tenure and promotion decisions. *See, e.g.*, evidence cited *supra* Resp. 5.

11. Tudor admits that her 2009-10 portfolio was reviewed by Dean Scoufos. However, Scoufos' original denial letter did not provide a rationale for denial beyond curiously suggesting (but not specifying) her decision turned on a supposed lack of documentation rather than merit (**Exhibit 65**). After the 2009-10 cycle, Tudor got back her portfolio and discovered Scoufos placed (see, e.g., **Exhibit 66**; **Exhibit 68**) a backdated letter (**Exhibit 27**) in the portfolio. Scoufos' rationale in the backdated letter is mere pretext for discrimination (see, e.g., **Exhibit 68**). *See infra* Part III ¶¶ 10–11.

12. Admitted.

13. Tudor admits that McMillan did not recommend her for promotion and tenure in the 2009-10 cycle. But McMillan's denial letter did not articulate any rationale (**Exhibit 67**). McMillan never provided his rationale to Tudor (see, e.g., **Exhibit 8** at EEOC183). Curiously, McMillan did write a letter to Tudor dated in April 2010 but dispatched to Tudor in June 2010, wherein he claims to tell Tudor Minks' rationale for denial but not his own (**Exhibit 9** at PI1200–01 [letter]; *id.* at PI1202 [envelope postmarked June 9, 2010]). Minks/McMillan's articulated rationale is mere

pretext for discrimination. *See infra* Part III ¶¶ 10–11.

14. Admitted.

15. Denied. *See Exhibit 3* at 65–66.

16. Denied. Dean Scoufos’ and McMillan’s characterizations of the “offer” does not speak to whether the discrimination or retaliation occurred and thus are immaterial. Moreover, Mischo did not characterize the “offer” as a “generous.” *See, e.g., Exhibit 5* at 199:9–15 (characterizing the “offer” as an “ultimatum”); *id.* at 197–200 (agreeing with the overall veracity of **Exhibit 3** at 65–66).

17. Denied. Tudor declined to withdraw her 2009-10 application on April 6, 2010 (see evidence cited *supra* Resp. 15 and 16), but her decision did not necessitate that her application be rejected by Minks. Indeed, Tudor tried to speak with Minks to answer any questions he might have (see, e.g., **Exhibit 41**), but he refused Tudor and denied her application (**Exhibit 40**). Similarly, Tudor’s refusal to withdraw her application did necessitate that the administration prohibit her reapplication—policy at the time allowed reapplication (see, e.g., **Exhibit 10** [April 1, 2010 email between administrators and counsel discussing fact that Tudor could reapply next cycle]; **Exhibit 43** at 55:5–25, 56:4–16, 57:2–5, 57:24–25 [reapplication permitted even if president previously denied application]).

18. Tudor received a perfunctory denial letter from Minks in late

April 2010 (**Exhibit 40**), but received McMillan's letter which contained Mink's purported rationales for denial in June 2010 (**Exhibit 9** at PI1202 [postmarked June 9, 2010]).

19. Denied. During this period, neither Southeastern nor RUSO policy prohibited reapplication.¹

20. Tudor admits that she sent a letter to the U.S. Department of Education on or about August 31, 2010 wherein she alleged gender discrimination and hostilities.

21. Tudor denies that paragraph 21 is material. The fact that males and/or females were granted promotion and/or tenure in the 2009-10 and 2010-11 cycles is immaterial as to whether Tudor faced discrimination because of her gender.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

¹ See, e.g., **Exhibit 10** (policy would "let [Tudor] reapply" in the 2010-11 cycle); **Exhibit 11** at 243:12-21 (agreeing with "options" in **Exhibit 10**); **Exhibit 12** ("The policy states that an application for tenure may occur in the fifth, sixth or seventh year. I recognize that the policy does not proscribe a subsequent application . . ."); **Exhibit 43** at 55:5-25, 56:4-16, 57:2-5, 57:24-25 (reapplication permitted even if president previously denied application); **Exhibit 17** ¶ 6(b) (reapplication permitted); *id.* ¶ 6(d) (others reapplied after denial). See also **Exhibit 14** at 23:23-25 and 24:1-2 (Southeastern's policies subject to RUSO's); **Exhibit 15** (RUSO professors allowed to reapply); **Exhibit 39** (Oct. 1, 2010 email from Prus to Scoufos notifying of formation of Tudor's 2010-11 tenure and promotion committee).

26–31. Tudor denies that paragraphs 26–31 are material to resolution of this Motion. Tudor’s claims deal exclusively with the work environment at Southeastern and the circumstances surrounding her 2009-10 and attempted 2010-11 tenure and promotion applications. Moreover, Defendants’ Exhibit 11 (ECF No. 177-11) is inadmissible for use at summary judgment for the reasons set forth in Tudor’s motion *in limine* (ECF No. 189).

32. Admitted.

33. Tudor denies that paragraph 33 is material to resolution of this motion. See substantive response and evidence cited *supra* Resp. 26–31.

34. Admitted that Southeastern had a harassment policy, but it did not reach the kind of hostilities Tudor endured.²

35. Admitted that Southeastern had a discrimination policy, but it did not reach the kinds of discrimination Tudor endured. See evidence cited *supra* Resp. 34.

36. Denied. Tudor complained about hostilities, including some objectionable utterances. See, e.g., **Exhibit 3** at 3–20 (gathering dozens of complaints); **Exhibit 2** ¶ 10(a)–(c); **Exhibit 61** at 221:2–4; *id.* 221:22–25

² See, e.g., **Exhibit 17** ¶ 8(a)–(d); *id.* ¶8(5) (“faculty members were are risk of being fired if they made their gay and/or transgender status public”); *id.* ¶ 8(f) (absence of express protections had a “chilling effect on faculty”); *id.* ¶ 8(g); **Exhibit 18** ¶ 10(a)–(h); **Exhibit 2** ¶ 2(b)–(d); **Exhibit 19** at EEOC66 (“being transgender is not a protected status”); **Exhibit 20** (March 2, 2011 emails discussing the need to revise policies so that they protect the “LGBTs”); **Exhibit 31** at 190:2–8; **Exhibit 13** at 157:7–17.

(confirming Tudor made complaints about Scoufos' pronoun use).

37. Denied. The restroom restriction was imposed on Tudor as a condition of her employment.³

38. Tudor admits she thanked Conway for not summarily firing her in 2007 (**Exhibit 2** ¶ 2(a)).

III. FACTS PRECLUDING JUDGMENT AS MATTER OF LAW

1. Some Southeastern staff and administrators did not consider Tudor to be female because she is a transgender woman.⁴

³ See, e.g., **Exhibit 3** at 22–23 (describing June 1, 2007 call with Conway); **Exhibit 2** ¶ 2(b). See also **Exhibit 5** at 39–42 (Mischo was told Tudor would not use the women's restrooms); *id.* at 41 (“someone other than Dr. Tudor had decided Dr. Tudor would use the unisex restroom”); **Exhibit 14** at 67:3–13 (Southeastern “made arrangements for a gender-neutral bathroom” for Tudor); *id.* at 68:12–18 (gender-neutral restroom in Morrison was Southeastern's “solution” for Tudor); **Exhibit 43** at 39–43 (Weiner directed Conway to place restroom restriction on Tudor); *id.* at 45–46 (Weiner thought women in Tudor's department objected to her using women's restrooms and thus imposed restroom restriction). *But see* **Exhibit 18** ¶ 5(c) (women in Tudor's department accepted her as female); *id.* ¶ 5(e) (no problems with Tudor's gender within the department); **Exhibit 17** ¶ 5(d) (similar).

⁴ **Conway** had obvious discomfort with transgender people, restroom access, and Tudor's gender in particular. See, e.g., **Exhibit 31** at 40:13–23 (might not be legal in Tenth Circuit to allow transgender woman to use restroom matching her gender); *id.* at 127 (“law” might require genital reconstruction surgery in order for a transgender person to use restroom); *id.* at 61–63 (call with Babb about Tudor's restroom use [referencing notes taken during call, **Exhibit 32** at DOJ12] and law concerning restroom access); *id.* at 70:13–23 (did not know if Tudor was female thus used male pronouns to refer Tudor); *id.* at 91–94 (uncomfortable with Tudor's gender transition; feared others at Southeastern would object due to Tudor's presumed genital configuration); *id.* at 209 (uncertain if Tudor is female given “[a]ll this documentation is about her being transgender”); **Exhibit 30** (using male pronouns to refer to Tudor in 2010; Stubblefield making light of the pronoun misuse in response).

Because **Minks** knew Tudor is transgender (**Exhibit 33** at 31: 8–16), he attests he did not know if she was female (*id.* at 32:8–11) or male (*id.* at 31:13–16). Minks'

2. Since Tudor's separation, Southeastern revised its harassment and discrimination policies so that they expressly protect transgender persons who face gender discrimination and hostilities.⁵

3. During Tudor's employ, Defendants' fringe benefit health plans categorically excluded coverage of treatments sought for gender dysphoria by transgender persons despite otherwise covering the same treatments for nontransgender persons seeking care for other conditions.⁶ In Fall 2016,

discomfort identifying Tudor's gender (and refusal to identify the gender of anyone else at his deposition other than Attorney Coffey) suggests Minks has a bias against transgender persons and tried to hide it by disclaiming the ability to discern the gender of others. *Compare Exhibit 33 id.* at 32–34 (Minks claiming inability to identify genders of persons attending deposition) *with Exhibit 34* (memorialization of gender presentations of persons whom Minks was asked to identify).

McMillan testified under oath to struggling with Tudor's gender and transgender people more generally. *See, e.g., Exhibit 35* at 221–22 (describing religious beliefs about gender and change of gender); *id.* at 223 (similar discussion with regards to Tudor); *id.* at 239–40 (unsure if transgender people should use restroom matching their presented gender); *id.* at 240 (uncertain whether possible to change gender); *id.* at 241–42 (contrasting transgender restroom restrictions with race based restroom restrictions, concluding it is wrong to exclude based on race but uncertain whether exclusion based on being transgender is okay).

⁵ *See, e.g., Exhibit 21* (May 2015 email publicizing change); **Exhibit 22** at PI002073 (May 2017 policy—identifying old policies amended by new policy); *id.* at PI002113 (“freedom from discrimination and harassment based on gender identity or transgender status”); *id.* (treat employees in accordance with gender identity); *id.* at 2114 (mandating that restroom be accessible “consistent with an individual's gender identity”); **Exhibit 17** ¶ 9(a)–(c); **Exhibit 18** ¶ 14(a)–(b).

⁶ *See* ECF No. 28 ¶ 67 (admitting exclusion); ECF No. 29 ¶ (67) (admitting exclusion). Defendants' plans covered breast reconstruction (**Exhibit 23** at 125) and hormones such as estrogen (*id.* at 111) for conditions other than gender dysphoria, but their plan excluded reconstructive surgery (*id.* at 107–09) and hormones (*id.* at 108–09) sought by transgender persons to treat gender dysphoria. During this period, Defendants were empowered to seek out plans without the exclusion (*id.* at 114).

Defendants removed the exclusion, showing it was feasible to have a plan without the exclusion. *See Exhibit 24* at PI002065 (partially removing exclusion); *id.* at PI002121 (removing surgical component of exclusion).

4. During Tudor's employ, Defendants did not evaluate whether their health plans complied with federal laws. *See, e.g., Exhibit 23* at 93–94; *id.* at 128–29; **Exhibit 31** at 179:11–16. Defendants had no policies to redress employee complaints about the health plan (**Exhibit 23** at 73). None of Defendants' employees grieved their health plan or otherwise challenged an exclusion (*id.* at 82), showing there was no avenue to grieve exclusions.

5. During Tudor's employ, there were virtually no safeguards against bias during the tenure and promotion process. The only check on bias from the Dean was the VPAA or President (**Exhibit 14** at 185:14–25 and 186: 2); the only check on the VPAA's decision was the President (*id.* at 188:3–5.). There was no written policy or established process allowing a faculty member to grieve the President's tenure and promotion decision, even if the President was accused of bias (*id.* at 188:6–16; **Exhibit 64** at 108:22–25 and 109:1–10; 165:13–21 and 166:1; 169:14–18; 172:8–15). Defendants' policies now allow redress of all decisions, including those made by the President (*see, e.g., Exhibit 28* ¶ 22(b); **Exhibit 14** at 188:10–16; **Exhibit 64** at 166–69).

6. During Tudor's employ at Southeastern: Tenure was granted

where the candidate qualified in the combined areas of teaching, scholarship, and service. *See, e.g., Exhibit 16* at 3. “Excellence” only had to be shown in two of three criteria. *See Exhibit 18* ¶ 6(a). Southeastern weighed teaching more heavily than other criteria. *See, e.g., Exhibit 16* at 3–4 (interpreting Southeastern’s policies). Aside from Tudor, administrators provided their rationales for voting for or against promotion/tenure directly to the candidate before the process was over.⁷

7. “Peer review” of a tenure and promotion application can reveal whether university decision-makers inappropriately took into account factors other than merit in making a decision on an application. *See, e.g., Exhibit 14* at 183:15–25; *id.* at 184:14–23.

8. Dr. Parker, an expert on tenure and promotion, attests that Tudor’s 2009-10 and 2010-11 portfolios were on par with if not better than portfolios of successful English Department comparators. *See generally Exhibit 16*.

9. As to Tudor’s 2009-10 application: She was qualified as to

⁷ *See, e.g., Exhibit 25* ¶¶ 9–11 (Mark Spencer’s experience); *Exhibit 14* at 201:17–25 and 202:2–6 (typical practice to provide decision and rationale directly to candidate during process; agreeing it was “inappropriate” for Scoufos and McMillan to withhold rationales until “the process was over”); *Exhibit 43* at 62:8–15 (similar); *id.* at 63:5–23 (Tudor is the only person not given rationales for denial mid-process). Administrators also allowed professors other than Tudor to get feedback on their application while it was still pending and improve it prior to the president’s final decision. *See, e.g., Exhibit 25* ¶¶ 12–17 (Mark Spencer’s experience).

teaching,⁸ scholarship⁹, *and* service¹⁰.

10. Scoufos (**Exhibit 27**) and McMillan/Minks (**Exhibit 9**) did not actually believe the rationales they cited for rejecting Tudor's 2009-10 application.¹¹

11. Scoufos' (**Exhibit 27**) and McMillan/Minks' (**Exhibit 9**)

⁸ See, e.g., **Exhibit 27** ("there is evidence that Tudor is a generally effective classroom teacher"); **Exhibit 16** at 6 ("ample evidence that Tudor is an excellent teacher").

⁹ See, e.g., **Exhibit 16** at 17–18 (evaluating Tudor's scholarship at time of 2009-10 portfolio and concluding it is stronger than comparators in English Department).

¹⁰ See, e.g., **Exhibit 16** at 25–26 (describing Tudor's service as on par with comparators).

¹¹ **Scoufos's** original denial letter (**Exhibit 65**) claimed Tudor lacked documentation to support her application but did not claim Tudor lacked merit. When Scoufos replaced the original denial letter with a backdated letter (**Exhibit 27** [backdated letter]; see also **Exhibit 68** and **Exhibit 66**) she set forth rationales that she did not believe to be true in January 2010. For example, Scoufos claimed Tudor had only one peer review publication and this was insufficient (but see **Exhibit 36**, where Scoufos inquires months after January 2010 whether open mic publication should be counted as scholarship). For example, Scoufos claimed there was no recommendation from the Department Chair (**Exhibit 27**) but in January 2011, Scoufos told Walkup that the Department Chair's evaluation form (which she had) was the equivalent to a letter of recommendation (**Exhibit 42**).

McMillan never provided his rationales to Tudor, but he did write a letter on Minks' behalf articulating rationales that neither actually believed (**Exhibit 9**). Compare **Exhibit 9** at PI1200 (claiming deficiency in number scholarship activities, and that three activities meet tenure standard but five do not) *with* 83:9–17 (must be "ongoing, continuous element" of scholarship to warrant tenure) and **Exhibit 35** at 99:5–10 (McMillan claiming he asked Scoufos what an open mic chapbook was when he evaluated Tudor's portfolio in February 2010) and **Exhibit 26** (Scoufos inquiring as to what an open mic chapbook is in April 2010). Compare **Exhibit 9** at PI1200 (construing Southeastern's Native American Symposium as local and thus not scholarship) *with* **Exhibit 50** at DOJ456 (Southeastern self-study report authored in part by Minks, McMillan, and Scoufos; identifying the Symposium as a "regional conference that brings in international participants to Southeastern's campus"). Compare **Exhibit 9** at PI1201 (service was deficient because it was heavily stacked with departmental committees) *with* **Exhibit 35** at 88:14–18 (identifying "continuousness" as "most critical piece" of service demonstration).

rationales for denying Tudor's 2009-10 application are not worthy of credence.¹²

12. As to Tudor's 2010-11 application: She was qualified as to teaching¹³, scholarship (even stronger than in the 2009-10 cycle)¹⁴, and service¹⁵.

13. McMillan did not actually believe the rationales he cited in the October 2010 memorandum (**Exhibit 12**) wherein he barred Tudor's reapplication in the 2010-11 cycle.¹⁶

¹² **Tudor's scholarship: Exhibit 16** at 17–18 (Tudor's 2009-10 portfolio demonstrated she had more peer review articles than comparators who got tenure and promotion); *id.* at 18 (Scoufos' and McMillan's low ratings of Tudor's scholarship were "puzzling"); *id.* (Scoufos and McMillan both undercounted Tudor's peer review publications); *id.* (Scoufos and McMillan counted as scholarship accepted but not yet published peer review articles for comparators but not Tudor); **Exhibit 16** at 17 ("[b]ecause Parrish's record shows no scholarship produced during her time at Southeastern, I see no reasonable cause for rating her record of scholarship above the record of scholarship for Professor Tudor"). **Tudor's service: Exhibit 16** at 25 ("Given the difficulty of making meaningful distinctions among the service records of various candidates, it seems perplexing that all candidates except Tudor were considered by the administrators beyond their department to have served the University with distinction.")

¹³ See evidence cited *supra* note 8. See also **Exhibit 29** at PI1299 ("Tudor's teaching is exemplary").

¹⁴ See, e.g., **Exhibit 16** at 19 (evaluating eight peer review articles which should count towards scholarship in Tudor's 2010-11 portfolio and concluding on balance portfolio "shows an even much stronger scholarly profile, stronger than Cotter-Lynch's in terms of actual accomplished publication, and far stronger than Parrish's and Spencer's portfolios"); **Exhibit 29** at PI1300 ("Tudor has far exceeded any stated or unstated standard for scholarly production at this university").

¹⁵ **Exhibit 16** at 25; **Exhibit 29** at PI1299–300 ("Tudor not only amply fulfills service expectations for faculty members, but is exemplary in the range, depth, and dedication she has shown in service to our university").

¹⁶ Among other things, McMillan knew that university policy allowed Tudor to reapply in the 2010-11 term—as evidenced by an email chain months prior where

14. There is also evidence that the rationales McMillan listed in the October 2010 memorandum (**Exhibit 12**) are not worthy of credence.¹⁷

15. Southeastern administrators and RUSO general counsel Charles Babb repeatedly interfered with, sabotaged, and otherwise undermined Tudor's efforts to grieve mistreatment at Southeastern.

- a. **"FAC1" appeal.** Tudor filed an appeal with the Faculty Appellate Committee in February 2010 (**Exhibit 45**) demanding that Scoufos and McMillan provide her with rationales for their decisions to deny her 2009-10 application. The FAC1 found a violation of policy and ordered Scoufos and McMillan to provide their rationales to Tudor (**Exhibit 46**). McMillan interfered with the FAC1 process by advising Weiner to not timely notify Tudor of FAC1's decision and to later send Tudor a letter

Tudor's entitlement to reapply was settled (**Exhibit 10** at EEOC919). *See also Exhibit 37* (former Regent Ogden expressing concern the bar on application and denial of 2009-10 application rationales were pretextual).

¹⁷ For example, though McMillan claimed it would be "impossible" for Tudor to fix deficiencies he identified in 2009-10 cycle in a single year (**Exhibit 12**), others disagree. *See, e.g., Exhibit 4* at 149–50. There was also no evidence Tudor's reapplication would sow discord at Southeastern. *Compare Exhibit 12* (claiming not in "best interests of the university" and would be "disruptive to School of Arts and Sciences" and "will potentially inflame the relationship between faculty and administration") *with Exhibit 17* ¶ 7(e)–(h); **Exhibit 18** ¶ 8 ("administration's refusal to allow Tudor's reapplication made things exponentially more tense between the faculty and administration"). *See also Exhibit 18* ¶ 13(b)–(c) (McMillan claimed Southeastern's faculty did not support her and did not want her to return in 2014; Cotter-Lynch attests faculty did not feel this way and endeavored to disprove McMillan's false claims to President Burrage).

(**Exhibit 8**) wherein the administration refused to provide McMillan's and Scoufos' rationales to Tudor. *See also Exhibit 43* at 64–71 (Weiner describing McMillan's rationale for delaying delivery of **Exhibit 8** to Tudor).

- b. **“FAC 2” appeal.** Tudor filed another appeal with the Faculty Appellate Committee in August 2010 (**Exhibit 48**) regarding the administration's improprieties during her 2009-10 cycle. Defendants interfered with this process. Babb, Stubblefield, and Bryon Clark attended a FAC2 meeting (**Exhibit 6**). Babb advised FAC2 that Tudor's appeal could not be heard by FAC2 because he deemed it to not be a due process complaint. Babb also directed that, to the extent Tudor's appeal pointed to discrimination, FAC2 also could not hear it (setting up Tudor's discrimination issues to only be assessed by Stubblefield). The FAC2 ultimately dismissed Tudor's appeal on the grounds articulated by Babb (see, e.g, **Exhibit 60**).
- c. **Stubblefield “investigation.”** Tudor filed an internal discrimination and environment complaint in August 2010 (**Exhibit 47**), grieving mostly issues in the 2009-10 cycle. In October 2010, Tudor advised Stubblefield of McMillan's bar on her application (see, e.g., **Exhibit 52**) and formally amended

her complaint to add a retaliation claim (**Exhibit 53**). Despite Stubblefield being close friends with McMillan and deeming him incapable of discrimination (*see, e.g., Exhibit 61* at 24:14–25 and 25:1–3; *id.* at 129:22–25 and 130:1–16; *id.* at 132:23–25 and 133:1–3), she was assigned to investigate. Stubblefield conducted a sham investigation. She did not ask McMillan whether he was biased against Tudor because of her presented gender (*see, e.g., Exhibit 61* at 129:11–15; *id.* 138:5–11 and 138:17–21). She sought out legal opinions stating that transgender people were not protected by law or policy (*see, e.g., Exhibit 19*). She did only perfunctory interviews (*see, e.g., Exhibit 18* ¶ 9; **Exhibit 2** ¶ 10(f)). She took no steps to investigate Tudor’s retaliation claim (*see, e.g., Exhibit 61* at 163:2–15; **Exhibit 54** at [investigatory notes ending in mid-Sept. 2010—weeks before Tudor even filed retaliation claim]). She fed sensitive information about her investigation to the respondents (*see, e.g., Exhibit 58*) and did not share similar information with Tudor (**Exhibit 2** ¶ 10(h)). Stubblefield also shared working drafts of her investigatory report with McMillan and gave him the opportunity to edit and make corrections as he saw fit (*see, e.g.,*

Exhibit 59).¹⁸ Stubblefield’s final report found that Tudor did not face discrimination, but failed to address Tudor’s hostile work environment (**Exhibit 61** at 218:13–25 and 219:1–7 [claiming Tudor’s “hostile attitude” complaint was construed as a direction to investigate whether Tudor got “what she wanted”]), and retaliation claims. Tudor appealed Stubblefield’s report (**Exhibit 56**), which was heard by Minks—despite the fact that his own actions were the subject of her discrimination and retaliation complaints. Minks summarily sided with Stubblefield (**Exhibit 57**).

- d. **“FAC3” appeal.** Tudor filed another appeal with the Faculty Appellate Committee in late October 2010 (**Exhibit 44**) after she was barred from reapplication. McMillan conspired with Clark for the latter to serve as the liaison, which would be “cleaner,” contemplating court action (**Exhibit 7**). Clark was tasked with keeping deadlines, sharing information, and making up new rules for the process. The FAC3 ordered the administration (**Exhibit 55**) to let Tudor reapply. The administration refused to comply with the FAC3 order, and

¹⁸ Stubblefield admits that asking someone being investigated what she should or should not do is inappropriate. See **Exhibit 61** at 173:21–25 and 174:1–9.

Clark created new rules mid-process (**Exhibit 49**) that allowed the President to sit over the FAC3 as final appellate reviewer despite the fact that his own actions were the subject of the appeal. The new rules were never approved by the Faculty Senate (as was required at the time) and they have never been used in any other appeal (before or since). Tudor grieved the new rules (**Exhibit 62**) but her grievance was summarily denied (**Exhibit 63**). Minks overruled the FAC3 order (**Exhibit 51**).

16. During the 2010-11 cycle, English Department instructor Wilma Shires was promoted to a tenure-track assistant professor position. Ever since, Shires has taught the same classes Tudor taught. In the 2017-18 cycle, Dr. Shires is applying for promotion from assistant to associate professor with tenure. If Shires succeeds, she will have the same physical office, hold the same job, and teach the same classes Tudor would have if she had been given promotion and tenure in the 2009-10 or 2010-11 cycles. *See Exhibit 18 ¶ 15(a)–(j)*.

17. Defendants learned of many of the issues Tudor grieves in this lawsuit from third parties prior to Tudor's separation at the end of May 2011. *See, e.g., Exhibit 38* (sampling of complaints); **Exhibit 18 ¶ 12(a)–(d)** (describing complaints and authenticating supporting exhibits of complaints).

IV. STANDARD OF REVIEW

In addition to the standard articulated by Defendants (SJ Mot. at 177 at 9–10), Dr. Tudor points out that employers must do more at summary judgment than proffer a bald, self-serving defense. “An articulation not admitted into evidence will not suffice. Thus, the [employer] cannot meet its burden merely through an answer to the complaint or by argument of counsel.” *Texas Dep’t of Community Affairs v. Burdine*, 450 U.S. 248, 255 n.9 (1981).

V. ANALYSIS & AUTHORITIES

A. Tudor is protected by Title VII.

Defendants argue Tudor cannot make out a *prima facie* case on her discrimination (SJ Mot. at 19–20) and retaliation (*id.* at 28) claims because she is a transgender woman. Defendants’ rehash the argument they posed in their motion to dismiss (see, e.g., ECF No. 30 at 3 n.1). But this Court has already decided that Tudor is a member of a protected class,¹⁹ which is law of the case.²⁰

¹⁹ In denying Defendants’ motion to dismiss, this Court held that Tudor is protected under Title VII insofar as she is female but Defendants regarded her as male and further held that insofar as the discrimination Tudor alleges occurred “because of Dr. Tudor’s gender [...] she falls within a protected class.” ECF No. 34 at 5.

²⁰ “The law of the case doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *United States v. Monsivais*, 946 F.2d 114 (10th Cir. 1991) (*citing Arizona v. California*, 460 U.S. 605, 618 (1982) (cleaned up)). *See also United States*

Moreover, Defendants fail to convincingly explain why *Etsitty v. Utah Transit. Auth.*, 502 F.3d 1215, 1220 (10th Cir. 2007)²¹ deprives Tudor of any protection from gender discrimination. Defendants' reliance on the United States Attorney General's recent pontifications on the nature of sex are neither sacrosanct nor evidence of scientific fact. *Contra* SJ Mot. at 19–20. Moreover the United States recognizes Tudor as female (**Exhibit 26**) and its former expert in this case (now assumed by Tudor), has provided the Court with an report opining on this issue which is supported by fact, rather than Defendants' wishful thinking on the eve of trial. *See generally* **Exhibit 1**.

B. Hostile Work Environment Claim

1. Tudor has established a *prima facie* case.

For Tudor to survive summary judgment on her hostile work environment claim, she must show that a rational jury could find the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment and that she was targeted because of her gender. *Morris v. City of Colo. Springs*, 666 F.3d 654, 663–64 (10th Cir. 2012). Tudor must also show that she was offended by the

v. Webb, 98 F.3d 585, 587 (10th Cir. 1996) (“Under law of the case doctrine, findings made at one point during the litigation become law of the case for subsequent stages of the same litigation.”).

²¹ Though not dispositive, perhaps of interest to the Court: **Exhibit 13** at 147–53.

work environment and a reasonable person would likewise be offended. *Id.* at 664.

Evidence supports Tudor’s environmental claim. Tudor experienced more than a handful of sporadic insults, incidents, or comments.²² Every single day over the course of a four-year period, Tudor endured restrictions on her restroom access (Part II ¶ 37), restrictions on her dress and make-up (**Exhibit 2** ¶ 2(b), and her fringe benefit health plan subjected her to unequal coverage of treatment (Part III ¶ 3). Tudor was targeted by these policies because she presented herself as female but Defendants treated her as if she were male.²³ *See* ECF No. 34 at 5. Peppered throughout this same period, Tudor was also subjected to discrete hostilities

²² Defendants argue Tudor’s environmental claim cannot be predicated on hostilities she did not immediately grieve at Southeastern or individually list in her EEOC filings (SJ Mot. at 12–13). But with an environmental claim, an employee need only file a charge within the statutory time period to redress like constituent hostilities. “It does not matter . . . that some of the component acts of the hostile work environment fall outside of the statutory time period.” *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002). So long as “an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court.” *Id.* Where there is a relationship between the acts alleged after and before the filing period, all acts shall be considered part of the same environmental claim. *Duncan v. Manager, Dep’t of Safety, City and Cnty. of Denver*, 397 F.3d 1300, 1308–09 (10th Cir. 2005). Here, Tudor grieves policies, practices, and discrete hostilities which targeted her because of her presented gender and/or retaliatory hostilities related to the former. The hostilities are linked in time—clustered in unbroken four year period—making them part of the same hostile environment.

²³ Part III ¶ 1 (evidence of individual actors failure to regard Tudor as female); Part III ¶ 3 (evidence that Tudor’s health plan exclusion operated by regarding her as other than female because she is transgender thereby depriving her of coverage of care accessible to other females).

from administrators targeting her gender (see, e.g., Part II ¶ 36 [complaints about pronoun misuse by Scoufos]), as well as gender neutral hostilities²⁴ (see, e.g., **Exhibit 3** at 65–66 [Scoufos’ ultimatum in April 2010]), and the Kafkaesque appeals and grievance proceedings she desperately pursued in hopes of securing the job she earned (Part III ¶ 15(a); Part III ¶ 15(b); Part III ¶ 15(c)).

Looking at the totality of the circumstances, the environment was subjectively hostile as evidenced by Tudor’s many complaints and the environment’s impact on her (**Exhibit 2** ¶ 5; *id.* ¶ 8(a)–(d); *id.* ¶ 9(a)–(c)). The environment is also objectively hostile—as a reasonable person in Tudor’s shoes would deem it objectionable. Indeed, Tudor’s as well would be deemed colleague Cotter-Lynch attests to as much (see, e.g., **Exhibit 18** ¶ 11(a)–(d)).

2. Defendants cannot invoke *Faragher/ Ellerth* defense.

Under *Faragher/ Ellerth*, an employer may avoid liability for hostilities it failed to redress where it establishes two elements: (1) the employer exercised reasonable care to prevent and promptly correct any statutorily prohibited harassment, and (2) the employee unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer.

²⁴ “Facially neutral abusive conduct [Tudor grieves] can support a finding of [gender] animus sufficient to sustain a hostile work environment claim when that conduct is viewed in the context of overly [gender]discriminatory conduct.” *O’Shea v. Yellow Tech. Servs., Inc.*, 185 F.3d 1093, 1098 (10th Cir. 1999).

Stapp v. Curry Cty. Bd. Comm'rs, 672 Fed.Appx. 841 (10th Cir. 2016).

Defendants fail at the first step. The bare fact that Defendants had policies in place during Tudor's employ is insufficient to warrant summary judgment in their favor. Defendants must demonstrate (and Tudor must fail to counter) that the policies could redress the hostilities alleged. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 72–73 (1986) (general nondiscrimination policy or one that fails to expressly identify the kind of discrimination complained of does not alert employees to the employer's interest in correcting that form of discrimination); *Debord v. Mercy Health Sys. of Kan., Inc.*, 737 F.3d 642, 653 (10th Cir. 2013) (employee whom points to deficiencies in policies rebuts employer's showing that policies satisfy the first element of *Faragher/Ellerth*). Defendants cannot meet this bar.

At the time of Tudor's employ, Defendants' policies did not expressly reach the kinds of discrimination and hostilities Tudor endured (see, e.g., Part II ¶¶ 34–35; Part III ¶¶3–4; Part III ¶ 5). Moreover, since Tudor's departure, Defendants have changed their policies so that they now expressly protect transgender persons from gender hostilities (Part III ¶ 2) and the health plan no longer contains the illicit exclusion (Part III ¶ 3). These changes are evidence that Defendants' policies were deficient during Tudor's employ. *See Debord*, 737 F.3d at 653.

Defendants also fail at step two. Despite believing her complaints

to be futile (**Exhibit 2** ¶¶ 6, 7(a)–(e)), Tudor pursued remedial measures available to her at Southeastern (see, e.g., **Exhibit 61** at 218–19 [admitting Tudor grieved hostile environment at Southeastern]) as well as many discrete hostilities that are constituent parts of her environmental claim (see, e.g., Part III ¶ 15(a); *id.* ¶ 15(b); *id.* ¶ 15(c)). *Contra* SJ Mot. at 15 (“Defendants were deprived of any opportunity to conduct an investigation of the alleged harassment.”)

Second, the evidence makes clear that Defendants had actual knowledge of a critical mass of constituent hostilities. For instance, because Defendants themselves imposed and controlled hostile policies, like the health plan exclusion and about the restroom restrictions—no grievance notifying them of these repugnant policies was necessary. Additionally, Tudor grieved the environment generally, citing specific incidents through internal grievances and appeals *in writing* through her many grievances and appeals. As to other constituent hostilities, Tudor complained repeatedly to coworkers, mid-level administrators, and high-level administrators dozens of times both orally and in writing (**Exhibit 3** at 3–20). Tudor and third parties also complained publicly and directly to RUDO about many of the hostilities; Defendants still did nothing (see, e.g., Part III ¶ 17; **Exhibit 13** at 60–61 [RUSO detailing timing of response and steps to investigate]).

In response to all of these complaints—Defendants did nothing. This

deafening response defeats a *Faragher/Ellerth* defense. *See Fuller v. City of Oakland*, 47 F.3d 1522, 1529 (9th Cir. 1995) (“An employer whose sole action is to conclude that no harassment has occurred cannot in any meaningful sense be said to have ‘remedied’ what happened. Denial does not constitute a remedy.”).

C. Sex Discrimination (Failure to Promote Claim²⁵)

Tudor has shown a prima facie case. In order to establish her *prima facie* case, Tudor needs to show that she is a (1) member of a protected class; (2) she applied for and was qualified for a position; (3) despite being qualified, she was rejected; and (4) after her rejection, the position was filled. *Jones v. Barnhart*, 349 F.3d 1260, 1266 (10th Cir. 2003).

Tudor can show a *prima facie* case. She is a member of a protected class (ECF No. 34 at 5–6). It is undisputed that Tudor applied for promotion and tenure in the 2009-10 cycle. There is also evidence that Tudor was qualified for the position (see, e.g., Part III ¶ 9), which is sufficient to survive summary judgment.²⁶ As to the fourth factor, Tudor need not necessarily show another

²⁵ In her Complaint, Tudor alleges that Defendants discriminated against because of her sex when they (a) denied her tenure and promotion application in the 2009-10 cycle (“failure to promote claim”) (see ECF No. 24 ¶¶ 162, 172) and (b) denied her the opportunity to reapply for tenure and promotion in the 2010-11 cycle, resulting in her termination (“termination claim”) (see ECF No. 24 ¶¶ 163, 164, 171, 172). But, Defendants move for summary judgment only on Tudor’s failure to promote claim. *See* SJ Mot. at 17–27.

²⁶ *Edwards v. Okla.*, 2017 WL 401259, at *2 (W.D.Okla. 2017) (Cauthron, J.) (quoting *EEOC v. Horizon/CMS Healthcare Corp.*, 220 F.3d 1184, 1193 (10th Cir.

person was promoted at the exact time she was not. *Cf. Weinberger v. Okla.*, 2007 WL 593572 at *6 (W.D.Okla. 2007) (Cauthron, J.) (evidence of disfavorable treatment sufficient in university setting). Tudor points to evidence that similarly situated colleagues received promotions around the same time with substantially similar credentials (see generally **Exhibit 16**). *See also Exhibit 18* ¶ 15(a)–(j) (providing background on Wilma Shires, whom has ostensibly taken Tudor’s spot at Southeastern, evidence “same job” still exists). Defendants contention that Tudor cannot show discrimination because male and female comparators were treated better is without merit. Tudor need only show she was unfavorably treated; she need not show persons of her same gender were uniformly mistreated. *See Perry v. Woodward*, 199 F.3d 1126, 1137 (10th Cir. 1999).

Nondiscriminatory rationale is pretextual. Defendants argue that they denied Tudor’s 2009-10 application because it was “deficient” (SJ Mot. at 26). To survive summary judgment, Tudor need only show that there is a genuine dispute of material fact as to whether Defendants’ articulated reason is pretextual. *Perry*, 199 F.3d at 1135. She can establish pretext by pointing to “such weaknesses, implausibilities, inconsistencies, incoherencies,

2000) (“relevant inquiry at the prima facie stage is not whether an employee is able to meet all the objective criteria adopted by the employer, but whether the employee has introduced some evidence that she possesses the objective qualifications necessary to perform the job sought”).

or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them unworthy of credence." *Jones v. Barnhart*, 349 F.3d 1260, 1266 (10th Cir. 2003). Examples of pretext include, "prior treatment of plaintiff," "disturbing procedural irregularities (e.g., falsifying or manipulating . . . criteria); and the use of subjective criteria." *Garrett v. Hewlett-Packard Co.*, 305 F.3d 1210, 1217 (10th Cir. 2002) (cleaned up).

Tudor points to disturbing procedural irregularities in the 2009-10 cycle. For example, Scoufos refused to give her rationales to Tudor and later planted a backdated letter in Tudor's portfolio spelling out rationales after the fact (Part II ¶ 11). McMillan refused to provide *his* rationales for denial to Tudor, which he held to even after FAC1 ordered him to disclose them (Part III ¶¶ 15(a)). After Minks denied Tudor's application, he directed McMillan to write to Tudor purportedly memorializing Minks' (but not McMillan's) rationales. Making this odder still, McMillan's letter, dated in April 2010, was not dispatched to Tudor until June 2010 (Part II ¶ 13). Other oddities include that mid-process, the administration pressured Tudor to withdraw her application and threatened her with retaliation if she failed to comply (Part II ¶¶ 16–17).

Even if we treat the rationales in Scoufos' backdated letter and the Minks/McMillan letter as Defendants' nondiscriminatory rationales—these

evidence subjectivity giving rise to pretext. As Dr. Parker's report explains in excruciating detail, Scofos' and McMillan/Minks' evaluations of Tudor's scholarship (**Exhibit 16** at 17–18) and service (*id.* at 24–25) are puzzling—they do not map onto Southeastern's articulated criteria for tenure and promotion evaluation and they are totally irreconcilable with decisions made with regards to comparators whom qualified for tenure and promotion. On balance, construed in Tudor's favor, Scofos and McMillan/Minks' undervaluing of Tudor's qualifications, taking into account their prior acts and biases (see, e.g., Part III ¶ 1) can be construed as evidencing sex-based bias against Tudor. *Cf. Weinberger*, at *6.

Taken together, the foregoing facts are more than enough to give rise to pretext. *See Edwards*, at *4 (*quoting Johnson v. Weld Cnty., Colo.*, 594 F.3d 1202, 1211 (10th Cir. 2010)) (summary judgment improper where employee combats employers' reasons with “evidence that the employer didn't really believe its proffered reasons for action and thus may have been pursuing a hidden discriminatory agenda”).

D. Retaliation Claim

Tudor has made a prima facie case. In order to establish her *prima facie* case, Tudor must show that she (1) engaged in protected activity; (2) she suffered an adverse employment action; and (3) there was a causal connection between the protected activity and the adverse action.

Timmerman v. U.S. Bank, N.A., 483 F.3d 1106, 1123–24 (10th Cir. 2007).

Tudor meets this bar. First, it is beyond dispute that Tudor engaged in protected activities (both participatory and oppositional). For example, on August 30, 2010, Tudor filed internal grievances at Southeastern (see, e.g., Part III ¶ 15(b); *id.* ¶ 15(c)) and sent a letter to the U.S. Department of Education (“DOE”) complaining of discrimination and hostilities (Part II ¶ 20) in connection with the 2009-10 cycle. Tudor also informally complained to her colleagues (see, e.g., **Exhibit 3** at 13–15; **Exhibit 66**). Second, Tudor also suffered an adverse action. Being denied the opportunity to apply for tenure and promotion both deprived Tudor of an opportunity to seek promotion and tenure at Southeastern (a promotion) *and*, because 2010-11 was her “terminal year,” had the effect of triggering a nonrenewal, which resulted in her termination at the end of Spring 2010. Both the denial of an opportunity to apply and a decision triggering termination are adverse actions. Third, there was a causal connection between Tudor’s opposition to the administration’s treatment of her in the 2009-10 cycle. Within 36 days of Tudor filing the FAC2 appeal, the grievance initiating the Stubblefield “investigation,” and sending a letter to the DOE, McMillan issued his memorandum barring her reapplication in the 2010-11 cycle (**Exhibit 12**). See *Ramirez v. Okla. Dep’t of Mental Health*, 41 F.3d 584, 596 (10th Cir. 1994) (one and one-half month period between protected activity and adverse

action may, by itself, establish causation).

Nonretaliatory rationale is pretextual. To avoid summary judgment Tudor need only point to a dispute of material fact undergirding Defendants' proffered nonretaliatory rationale. She can do so. Defendants argue that Tudor's reapplication in the 2010-11 cycle was barred because reapplication was "extraordinary [] and contrary to administrative practice" where a professor's application had been denied by the President in a prior cycle (SJ Mot. at 28–29). Yet, evidence shows that there was no automatic bar on reapplication and others were treated more favorably (see Part II ¶ 19). Moreover, to the extent that McMillan now claims policy prohibited reapplication after denial by the president, this is a shift from McMillan's rationale memorialized in the very memorandum he wrote to bar Tudor's reapplication and is thus unworthy of credence. **Exhibit 12** ("I recognize that the policy does not proscribe a subsequent application").

VI. Conclusion

For the reasons set forth herein, Dr. Tudor respectfully requests the Court deny Defendants' Motion for Summary Judgment.

Dated: October 13, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2017, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young

Ezra Young (NY Bar No. 5283114)

Exhibit 1

Expert Report of George R. Brown, MD, DFAPA

U.S. et al. v. Southeastern Okla. St. Univ. et al., 5:15-cv-00324-C (W.D. Okla.)

I. Qualifications and Experience

I am a Professor of Psychiatry and Associate Chairman of the Department of Psychiatry at East Tennessee State University in Johnson City, Tennessee. I am board-certified in adult psychiatry. I was named a Fellow of the American Psychiatric Association in 1998 and a Distinguished Fellow in 2003.

I have specialized training and expertise in the diagnosis and treatment of Gender Identity Disorder and Gender Dysphoria (“GID/GD”). I have authored or coauthored 38 papers in peer-reviewed journals and 19 book chapters on topics related to GID/GD, including the chapter on GID/GD in *Treatments of Psychiatric Disorders*, (3rd Ed. 2001), the definitive text on the diagnosis and treatment of psychiatric disorders published by the American Psychiatric Association. I have been a practicing psychiatrist since 1987. Over the last 33 years, I have evaluated, treated, and/or conducted research with between 600 and 1000 individuals with gender disorders in person, and over 5100 patients with gender dysphoria during the course of research-related chart reviews.

Since 1987, I have been extensively involved with the World Professional Association of Transgender Health (“WPATH”), the only international association of medical, surgical, and mental health professionals specializing in the evaluation and treatment of, transsexual, transgender, and gender non-conforming people (WPATH is the same organization which was previously known as the Harry Benjamin International Gender Dysphoria Association until 2006). I served on the Board of Directors of WPATH from 1993-1997 and from 2001 – 2007 and from 2010-2014. I also served on the Executive Committee of this organization as Secretary-Treasurer from 2007-2009. In addition, I was a coauthor in the development and publication of the World Professional Association of Transgender Health Care’s Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7 (published in 2011 and currently in use), and in the previous 2 versions (versions 5 and 6). I served as a member of WPATH’s Standards of Care Revision Committee from 1990-1998 and have been Co-Chairman or a member of that Committee from 2001 to present. These standards for the medical treatment of GID/GD represent the consensus of specialists in the field, and have been recognized as the definitive standards by a number of jurisdictions in the USA and Canada. My current responsibilities involve conducting the largest studies ever developed concerning the health of, and health disparities in, transgender/gender dysphoric people, as well as providing national training programs on transgender health care on a national basis in the Veterans Health Administration

and for the Department of Defense. More detailed information about my background and experience can be found in my curriculum vitae, which is attached as Exhibit 1.¹

II. Opinions

I have been asked to render expert opinions in the following areas:

- (1) The factors that medical professionals consider when determining a person's sex.
- (2) The traits of "gender" and "gender identity," how they relate to a person's sex, and how they relate to "sexual identity."
- (3) The traits of being "transgender" and "transsexual" and how they relate to a person's sex.
- (4) The condition of "gender dysphoria" (previously called gender identity disorder).
- (5) Treatment of gender dysphoria and gender identity disorder.

In forming my opinions, I have relied on my scientific education and training, my research experience, my knowledge of the scientific literature in the pertinent fields (a nonexhaustive list of those references are included at the end of this document), and my 33 years of clinical experience in evaluating, treating, and conducting research with patients with sexual and gender identity issues and gender identity/gender dysphoria disorders. My opinions are set forth below. I may wish to supplement these opinions or the bases for them as a result of new scientific research or publications or in response to statements and issues that may arise in my area of expertise.

A. Summary of Opinions/Conclusions

"Sex" is complex and requires more than a cursory glance at a newborn's genitalia. Sex involves biological constructs that may or may not be readily observed, and includes the important component of gender. "Gender" involves both gender identity and gender role/expression. Gender identity is an internal, subjective sense of oneself as masculine, feminine, or occasionally some other sense of gender that does not fit readily into the "binary" construct of male/masculine and female/feminine that predominates in our Western culture. Gender role, or expression, is the objective presentation that each of us has as we dress, behave, and interact in society in ways that are understood by others as masculine, feminine, or occasionally some other gender role/expression that does not seem to fit into the binary construct of male/masculine or female/feminine. Everyone has a gender identity and role, and in the vast majority of people, there is consonance between the sex of assignment at birth

¹ Please see Exhibit 2 for information about my compensation for preparing reports and testifying in this case.

("birth sex") and both gender identity and role. Rarely, there is significant incongruity between "birth sex" and one's gender identity, which can result in a set of clinically significant symptoms described in psychiatric manuals as "gender dysphoria" (GD).

Treatment of GD is guided by the WPATH standards of care, and many individuals with this diagnosis can be fully cured of all symptoms with appropriate treatment. Treatment typically consists of psychological evaluation and therapy, hormonal therapy, living in the felt gender role, and, for some, irreversible surgeries to bring the body into alignment with the subjective experience of gender identity. Part of this transition necessitates the legal assumption of an identity that is consistent with gender identity, e.g. driver's license, amended/changed birth certificate, passport.

B. Determining a person's sex

A person's "sex" is not exclusively or solely defined by one's anatomy or ability to procreate as was often believed in the past (Ovesey and Person, 1973). "Biological sex" is a broad and complex concept that consists of a number of variables, including gender and gender identity, genital anatomy (internal and externally visible), secondary sexual characteristics, brain anatomy, sexual orientation, hormonal levels in the brain and body, and chromosomal complement. Most commonly, the factors that constitute biological sex align and there is little variation. For example, for the vast majority of men, there is a total matching of chromosomes (XY), sexual organ appearance as male (penis and testicles), male hormone levels (predominantly testosterone), and the overall psychological sense of being a man. The American Psychological Association defines "[s]ex as a person's biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female)." "Birth sex" is another term frequently used in medical professionals' discussions of sex, and refers to the sex of assignment at birth as recorded on a birth certificate. "Birth sex" (the sex of assignment at, or near, the time of birth) can be recorded as only "male" or "female" and as such, is an administrative binary terminology that does not take into account the complexity of human experience.

The variables identified above and their role in determining a person's sex are discussed in more detail below.

1. Gender and gender identity

Gender is a component of sex, and like sex, has both a subjective and an objective component. The subjective sense of oneself as masculine, feminine, both, neither or some other gender is commonly referred to as gender identity, is a critical component in determining a person's sex, and is inextricably linked, although partially distinct, from sexual orientation. Gender role is the objective, social expression of gender identity and is usually aligned with gender identity. Most people give no thought to their gender

identity and whether or not it matches their physical anatomy because no conflict exists. For example, most men get up in the morning, put on clothes that identify them as men in our society, and experience no conflicts or incongruity between their sense of being a man and how they look anatomically and how they present themselves in society as men. However, in rare individuals (recent estimates are 4.6/100,000 births; Arcelus, 2015), gender identity and gender role may not align, and gender identity may not align with the other components of sex. For example, transsexual persons generally experience a lack of alignment between their subjective sense of themselves (gender) and their genital/physical anatomy. Note that “sex” is an integral part of the term “transsexual” (discussed below) which indicates the linkage between gender and sex.

A person’s “gender identity” is a component of one’s biological sex and refers to “one’s sense of oneself as male, female, or transgender” (American Psychological Association, 2006). The American Psychiatric Association defines gender identity as a “category of social identity and refers to an individual’s identification as male, female, or occasionally, some category other than male or female.” (APA, DSM-5, 2013, pg 451). When one’s gender identity and other biological characteristics are not congruent, the individual may experience gender dysphoria (defined below). While “birth sex” (sex of assignment at birth) is usually congruent with a child’s gender identity (as experienced and expressed later in childhood), children are sometimes born with anatomical, hormonal, and/or chromosomal variations that do not align with the “birth sex” (genital anatomy) that was recorded by a physician at or near the time of birth. Such children may then develop gender identities and roles that do not align with their “birth sex.”

All individuals, not just transgender individuals (who are discussed in section II.C below), have a gender identity. Studies have shown that gender role, as an expression of gender identity, is usually established early in life, by the age of 2-3 years old, and that gender role (behaving as a typical boy or girl in our culture) usually displays very little malleability over time for the vast majority of people (Stoller, 1968), especially after the onset of puberty. Children as young as one year old may display gender-specific behaviors readily recognizable as associated with the “other” sex (Zucker and Bradley, 1995, Chapter 1, page 11).

Gender identity is distinguishable from and exists separately from sexual orientation, which refers to whom a person is sexually attracted. Just as with other individuals, transgender people can have sexual identities/orientations as heterosexual, homosexual, bisexual or asexual.

2. Genital anatomy (internal and externally visible)

A critical component in determining a person’s sex is the genital anatomy, which includes both internal (not observable) and external (observable) components. It is the

appearance of the observable external genitalia that determines the classification of “birth sex,” the sex of assignment at birth, and whether “Male” or “Female” is registered on a birth certificate.

3. Primary and Secondary sexual characteristics

Primary sexual characteristics are those features that are not subject to the hormonal changes associated with puberty. These typically include: testes, prostate, seminal vesicles, penis, in “birth sex” males, and ovaries, vagina, uterus, fallopian tubes, clitoris, labia in “birth sex” females. Secondary sexual characteristics are those physical features that develop under the influence of rising levels of sex steroid hormones beginning at puberty. Examples include breasts in women, “Adam’s Apple” (enlargement of the front part of the laryngeal cartilage) in men, facial hair in men, widening of the pelvis in women, deepening of the voice in men, and hip-to-waist measurement ratios that are lower in adult females, on average, compared to adult males. These physical changes are dependent on production of adequate amounts of estrogens in females and testosterone in males.

4. Brain anatomy

Brain anatomy is another determinant of a person’s sex. Many areas of the brain are different between males and females (“sexually dimorphic” areas of the brain), due to genetics and the amounts of sex steroid hormones present in the developing fetal brain (from any source, including from the woman carrying the fetus).

It is well known that the brains of “birth sex” men and women differ in size in many regions of the brain. These include specific parts of the brain that are visible on MRI studies, including the hippocampus, caudate nucleus, and anterior cingulate gyrus, to name a few, that are larger in “birth sex” women and the amygdala and gray matter volumes that are larger in “birth sex” men. Most studies of gender-typical male and female brains also indicate that the right hemisphere is larger in men than in women.

5. Sexual orientation

“Sexual orientation” refers to the sex of those to whom one is sexually and/or romantically attracted. The term “sexual identity” is often used interchangeably with sexual orientation. Categories of sexual orientation typically have included attraction to members of one’s own “birth sex” (gay men or lesbians), attraction to members of the other “birth sex” (heterosexuals), and attraction to members of both sexes (bisexuals). Rarely, some individuals report that they have no attraction to either sex (“asexual”). While these categories continue to be widely used, research has suggested that sexual orientation does not always appear in such definable categories and instead occurs on a continuum. In addition, some research indicates that sexual orientation is fluid for

some people; this may be especially true for women (Nichols, 2004; Peplau and Garnets, 2000).

Although usually aligned, sexual expression/role may or may not be consistent with the subjective sexual identity. For example, a person who has male genitals, a male-differentiated brain, male secondary sexual characteristics (e.g. facial hair, Adam's apple, strong upper body strength), XY chromosomal complement, male levels of brain and body testosterone, and sexual attraction to women (i.e., a heterosexual sexual orientation) as well as a subjective sexual identity as a heterosexual male may nonetheless engage in occasional same-sex sexual behaviors, indicating that sexual identity/orientation and sexual role/behavior may not always align.

6. Hormonal levels in the brain and body

The relative levels of estrogen and testosterone (and their metabolites, or what is left after they are processed by the body) present in the brain and body are also factors that determine a person's sex. Estrogen and testosterone are referred to as "sex steroid hormones" and testosterone and its byproducts are referred to as "androgens." Both the brain and the body have receptors for estrogen and testosterone, which means that the brain and various organs in the body are changed by the presence, or absence, of these two major hormone classes. For example, it is known that both testosterone and estrogen are present in all people, but the relative amount of estrogen compared to testosterone is typically far, far higher in female bodies than in male bodies, whereas the amount of testosterone is typically far greater in male bodies than in female bodies. Variabilities in the amount of these sex hormones, both before and after birth, can have major consequences on the primary and secondary sexual characteristics, the likelihood of homosexual or heterosexual orientation, and the gender role behavior of people with these variances. For example, defects in prenatal sex hormone production can result in ambiguously appearing genitalia at birth, or misclassification of "birth sex" as female when the baby meets the criteria for male sex otherwise (MacGillivray and Mazur 2005). "Birth sex" females with much higher levels of androgens early in life (e.g., congenital adrenal hyperplasia, a genetic absence of an important sex steroid enzyme) may appear to have male genitalia at birth even though they have typically female chromosomes (46XX; see below). Gender identity in these girls is typically female, while gender role behavior may be masculine ("tomboys") and the likelihood of homosexual identity and orientation is much higher (Zurenda and Sandberg, 2003). There are many such conditions, present in both "birth sex" males and females, and collectively these conditions are known as "intersex," disorders of sex development, or "atypical sexual development." (Mazur, et al, 2007).

7. Chromosomal complement

Chromosomes are an important determinant of sex. Typically, most people have 46 total chromosomes, two of which are “sex chromosomes” known as X and Y. The usual situation is for “birth sex” females to have a 46XX pattern, and for “birth sex” males to have a 46XY pattern. If the genes associated with the chromosomes are also typical, there is production of sex steroid hormones in various amounts and at various times during typical physical development such that 46XX is associated with female sex, female genitals, female gender identity and role (see below), and in a similar way, 46XY is associated with male sex, male genitals, male gender identity and role. A single gene on the Y chromosome is responsible for the differentiation of a human embryo into a “birth sex” male fetus with testicular development at approximately 6 to 7 weeks into a pregnancy (Mazur, et al, 2007).

In a fetus with 46XX chromosomes, no testosterone/androgens are secreted, and therefore female genitalia develop.

Uncommonly (but not rarely), there are genetic abnormalities in the fertilized egg that lead to chromosome patterns that are different from either 46XX or 46XY. Examples are numerous and can be found in Mazur, et al, 2007. Classic examples include Turner's Syndrome, estimated at 1:2500 live “birth sex” females (46XO, where one sex chromosome is missing), Klinefelter's Syndrome, where an extra X chromosome is present (for example, 47XXY, 48XXYY). This nonheritable genetic abnormality is present in 1:600 live “birth sex” males (Nielsen and Wohlert, 1991).

Some, but not all, disorders of the sex chromosomes are associated with atypical sexual organ appearance, higher rates of homosexuality, bisexuality, or asexuality (that is, little to no sexual attraction to anyone or interest in having sexual relations). Some, but not all, may have atypical gender identity and/or gender role development as well. The key point is that the presence of a typical 46XX or 46XY chromosome pattern is relevant for determining a person's sex but not sufficient, in and of itself, to determine a person's sex.

C. What it means to be transgender or transsexual

The term “transgender” is a relatively recent term used as an umbrella concept for anyone who experiences any significant degree of “mismatch” between subjective gender identity and objective physical/anatomic sex. The term “transgender” is also used to describe people who have transitioned to living as a gender different from what they were assigned at birth. Many people who self-identify as transgender may have only transient problems which may or may not reach a threshold for a psychiatric diagnosis as defined below. “Transsexual” is frequently used to describe people whose gender identity is substantially inconsistent with the sex they were assigned at birth and

such individuals usually seek social transition and some type of medical, psychological, and/or surgical intervention(s) to align their physical anatomy with their subjective gender identity. Therefore, many researchers in this field of study consider the smaller group of transsexual people to be a subset of the much larger group of transgender persons. In any event, the population of transgender people is not known, as there are no large population-based studies. Since many people who self-identify as transgender do not come to clinical attention and gender identity questions are generally not asked on census forms or medical documents, it is not currently possible to know the size of this population. Estimates for transsexual people, who are more likely to come to clinical attention, vary widely, but are listed as from 0.005% to 0.014% for “birth sex” males and from 0.002% to 0.003% of “birth sex” females (APA, DSM-5, 2013, pg 454).

Although the precise etiology of transsexualism is unknown (Ettner, 2007; Lev, 2004), most experts in the study of transgender phenomena agree that there is likely a biological basis for transsexualism and perhaps other transgender phenomena. Even those who espouse the idea that postnatal factors, such as familial interactions, play an important role in gender identity development suspect that biological factors play a role in “inducing a vulnerability that then allows the psychosocial factors within the family to exert their effect” (Bradley, 1985, p. 175).

Much of the evidence in support of a biological basis for gender identity (typical or atypical) is based on comparison studies of the brains of transsexual persons using imaging techniques with live subjects or measurements taken post-mortem (after death). Such techniques were not possible a short time ago, but nonetheless, the concept of a “critical period effect” during fetal brain development was espoused decades ago as an explanation for why some (few) individuals experience gender nonconformity (Kimura 1992). Although it is not possible to directly study the developing human brain before birth, it was proposed that the hormones present in the bloodstream surrounding the developing brain at certain, undetermined critical periods in brain sexual differentiation was altered to the extent that the “brain sex” did not match the otherwise “normal” anatomic/genital sex at birth. This theory more recently received support in a study of fetal testosterone exposure, which showed that amniotic fluid levels of testosterone for “birth sex” male and female fetuses correlated positively with male-typical play patterns in both “birth sex” male and female children (Auyeung, et al, 2009).

Zhou and others reported in 1995 that areas of the brain known to differ in size between men and women generally could be studied in transsexual persons. At least one of these sexually dimorphic brain regions in male-to-female transsexual subjects was consistent with the size seen in “birth sex” females, and not males.

Additional support for a biological basis for transsexualism was reported by Luders and colleagues, who analyzed MRI data of 24 male-to-female (MtF) transsexuals not yet treated with cross-sex hormones in order to determine whether gray matter volumes in the brains of MtF transsexuals more closely resemble people who share their “birth sex” (30 control men), or people who share their gender identity (30 control women). Results revealed that MtF transsexuals showed a significantly larger volume of regional gray matter in the right putamen compared to the control group of non-transsexual, “birth sex” men. These researchers concluded that their findings provided new evidence that transsexualism is associated with a distinct cerebral pattern, which supports the assumption that brain anatomy plays a role in gender identity.

Savic and Stefan (2011) studied the brains of male-to-female transsexuals compared to “birth sex” controls of the same sexual orientation. The brains of the MtF subjects differed from controls in several regions (e.g., smaller volumes in the putamen and thalamus in MtF). They concluded: “Gender dysphoria is suggested to be a consequence of sex atypical cerebral differentiation.”

Additional studies in support of the hypothesis that gender dysphoria (defined below) is caused by sex atypical differentiation of parts of the brain before birth due to genetic and/or an early organizational effect of testosterone levels during fetal brain development include: Giedd J, Castellanos F, et al, 1997; Green R and Keverne E, 2000; van Goozen S, Slabbekoorn D, et al, 2002; and Swaab D, 2007.

Finally, several other studies have also found distinctive brain patterns in transsexual subjects that differ from what would be expected to be seen in non-transsexual subjects of the same “birth sex” in post-mortem studies: Kruijver F, Zhou J, et al, 2000; Berglund H, Lindstrom P, et al, 2008.

There is a spectrum of severity in the disconnect between subjective gender identity and “birth sex”, with gender dysphoric transsexualism (see D. below) being on the far end of this spectrum. The evidence for transsexualism arising from strictly, or mostly, postnatal influences (such as family interactions, social factors, maternal/paternal rearing styles) is not compelling; nor is the theory that transsexualism is “a lifestyle choice.” Importantly, “birth sex” males who consider themselves to be females (“transwomen” or “male-to-female transsexuals”) and have a female gender identity and female gender role are considered to be women, and not men, whether or not they have had any surgery to alter the appearance or function of their genitalia. Likewise, “birth sex” females who self-identify as male (“transmen”, “female-to-male transsexuals”) and have a male gender identity and gender role are considered to be men and not women irrespective of whether they have had any surgical interventions to change their bodies.

D. The condition of gender dysphoria

Gender dysphoria (GD) is both a symptom complex and a psychiatric diagnosis. As a set of symptoms, gender dysphoria is a mixture of mood symptoms (irritability, depression, anxiety) and mental distress or discomfort based on the experience of a mismatch between the sex of the body (“birth sex”) and the inner, subjective sense of gender. There are degrees of severity of gender dysphoria symptoms, ranging from mild to severe, and such symptoms may be episodic. It is well known that gender dysphoric persons may live in denial of those symptoms and sometimes make life choices that they feel are likely to “purge” cross-gender feelings, e.g. joining the military or pursuing other hypermasculine pursuits in the case of gender dysphoric “birth sex” males (Brown, 1988; 2015; Brown and McDuffie, 2010). It is therefore not uncommon for adults later in life to first “come out” or acknowledge to others their transgender feelings (Lev, 2004).

The Diagnostic and Statistical Manual of Mental Disorders (DSM 5; APA, 2013) is the current, generally recognized authoritative handbook on the diagnosis of mental disorders relied upon by mental health professionals in the United States, Canada, and other countries. Its content reflects a non-ideological, science-based, and peer-reviewed process by experts in the field who have varying perspectives. Prior to the current iteration of the DSM, persons with clinically significant levels of GD symptoms were diagnosed with Gender Identity Disorder (GID).

That diagnosis has since been replaced by the diagnosis of GD in recognition that the essence of the diagnosis is the treatable symptom complex of gender dysphoria, and not a disorder of identity, which remains fixed irrespective of treatment. Most adult patients who would meet the criteria for the past diagnosis of GID would meet the criteria for the current diagnosis of GD. Both GD and GID are diagnostically coded the same (302.85).

Individuals with GID/GD, experience a persistent and recurrent discordance between their anatomical “birth sex” and psychological gender. “Birth sex” males with GID/GD, for example, feel female in their mind and emotions. Individuals with GD are, in essence, psychologically in the “wrong body” and experience significant emotional distress as a result.

The diagnosis of GD in the DSM-5 (pgs 451-459) involves two major diagnostic criteria for adolescents and adults, synopsized below:

- A. A marked incongruence between one’s experienced/expressed gender and assigned gender, of at least 6 months’ duration, as manifested by at least two of the following:

1. A marked incongruence between one's experience/expressed gender and primary and/or secondary sex characteristics
 2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experience/expressed gender.
 3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
 4. A strong desire to be of the other gender
 5. A strong desire to be treated as the other gender
 6. A strong conviction that one has the typical feelings and reactions of the other gender
- B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas as of functioning.

Diagnoses of gender dysphoria may also be designated by one, or both, of two "specifiers:" gender dysphoria with a disorder of sex development; post-transition gender dysphoria (e.g., an individual who has transitioned, or is in the process of transitioning to the desired /felt gender—with or without legalization of gender change) and has undergone, or is preparing to have, at least one cross-sex medical procedure or treatment regimen (for example, regular cross-sex hormonal treatment or gender reassignment surgeries). Like all psychiatric diagnoses, symptoms must be of significant severity to cause notable distress and/or dysfunction in a person's life. The presence of gender nonconformity alone is insufficient to warrant a psychiatric diagnosis.

There is a general agreement in mainstream psychiatry that GID/GD is a legitimate mental disorder and it is recognized as such in standard medical texts (Saddock and Saddock, 2007; Gabbard, 2007). For example, GD, as defined in various iterations of DSM since 1980, is defined and explained in numerous psychiatric textbooks and resources. The term "transsexualism" is no longer a diagnostic term, having been replaced by GID and GD, but the term is still used in professional circles, scholarly works, and treatment guidelines to refer to persons on the extreme end of a continuum of gender dysphoric symptoms (Coleman, et al, 2012).

The World Health Organization also recognizes the discordance between anatomical sex and gender as a disorder in its publication, The International Classification of Diseases (known as ICD 10). The ICD and DSM codes are generally now compatible with each other. The code for transsexualism in ICD-10 corresponds with the DSM-5

diagnosis of GD. While DSM-5 is the primary diagnostic tool used by mental health professionals in the United States, the ICD is also used in this country, predominantly for research, billing and coding purposes.

In spite of research evidence in support of a biological basis for GID/GD, there are no commercially available or reliable biological or laboratory tests that are used in clinical practice to diagnose GID/GD. This is true for virtually all of the mental disorders in the DSM-5 and its predecessors. In fact, Strategic Objective #1 of the National Institute of Mental Health (NIMH) is to “define the mechanisms of complex behaviors,” including molecules and genomic factors (NIMH, 2015). This statement is in recognition that even in 2016, we don’t know the definitive root cause for mental disorders listed in DSM-5, and we do not have objective tests of body, brain, or fluids that definitively diagnose any mental disorders.

A diagnosis of GID/GD is made by a mental health professional who has training and experience with this disorder and who conducts an in-depth evaluation of the patient, preferably with access to past medical records and collateral history from others who know the individual. The American Psychiatric Association and WPATH (Coleman, et al, Standards of Care, Version 7, 2012) recognize that such diagnoses can be made by a range of trained and experienced mental health professionals.

E. Treatment of Gender Dysphoria (previously Gender Identity Disorder)

Many people initially do not understand their cross-gender feelings and do not have a language for such feelings until well into adulthood. Many “birth sex” males report an extensive history of cross-gender feelings and cross-dressing followed by a variety of attempts to eradicate such feelings, including by marrying and having children or by excessive involvement in stereotypical male behavior (for example joining the military), a phenomenon known as “flight into masculinity” for transgender women (people who transition from male-to-female; Brown, 1988; McDuffie and Brown, 2010; Brown and Jones, 2015). Attempts to repress and suppress gender identity are ultimately unsuccessful and the cross-gender feelings return, often stronger. It may not be until later in life that a person learns that there is a name for their cross-gender feelings. Individuals with severe and prolonged gender conflict frequently have a frantic preoccupation with trying to change their anatomic sex to match their psychological gender. The severe end of the spectrum of GID/GD (which is often referred to as transsexualism) is characterized by significant symptoms of gender dysphoria, whereas many transgender individuals may not experience the symptoms of gender dysphoria, or only to a mild extent or only transiently.

Early attempts at treatment to change transsexuals’ gender identity to that congruent with “birth sex” were demonstrated to be ineffective in most cases, prompting the

American Medical Association as early as 1972 to support medical and surgical interventions as the treatment of choice for transsexualism (AMA, 1972). Others noted that psychotherapy, often with associated cross-sex hormonal treatment, was of benefit for some transsexual people with respect to life adjustment, but not for changing one's gender identity (Lothstein and Levine, 1981; Seikowski, 2007). In fact it has been stated that there are no demonstrable, successful "conversions" of transsexual persons' gender identities through the use of psychotherapy (Monstrey, et al, 2007, pg 89), a form of psychotherapy known today as "reparative therapy" or "conversion therapy." These types of therapy are widely considered to be unethical by professional organizations based on the premise that gender identity and sexual identity/orientation are not "changed" by conversion psychotherapies and that emotional harm has been demonstrated in many who have received such therapies in the past (Daniel, et al, 2015). The federal Substance Abuse and Mental Health Services Administration recently issued a report showing that conversion therapy is not an appropriate therapeutic approach based on the evidence. The report also included similar consensus statements developed by an expert panel held by the American Psychological Association in July 2015. The professional organization that was arguably the most involved with attempting to convert both homosexual and transgender persons' identities decades ago has also strongly come out against the use of psychotherapy to attempt to change either sexual or gender identity:

"Psychoanalytic technique does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an individual's sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes." (American Psychoanalytic Association, 2012).

WPATH has developed Standards of Care ("SOC") for the evaluation and medical treatment of persons with GID/GD. WPATH has over 1000 members worldwide, approximately 70% of whom are in the United States. These members are physicians, psychiatrists, psychologists, social workers, surgeons, and other health professionals who specialize in the diagnosis and treatment of GID/GD. The "SOC" were first developed in 1979. Currently in the seventh version, the SOC are considered to be authoritative for the evaluation and treatment of gender dysphoria (Coleman, et al, 2012). There are no other comprehensive, widely accepted, medical standards of care for the treatment of GID/GD. As with all medical standards, the SOC are guidelines that can be modified based on the individualized patient circumstances and the health care professional's clinical judgment.

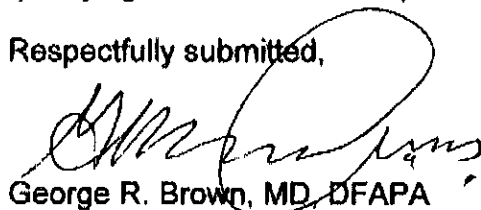
The medical treatment of a person diagnosed with GID/GD is based upon an individualized plan involving one or more of three major components: (1) hormonal

reassignment to the felt/experienced gender identity; (2) 12 continuous months of living in a gender role that is congruent with the patient's identity (previously known as the "real-life experience") and (3) surgery to change the genitalia and, in some cases, secondary sexual characteristics. These elements have been referred to as triadic therapy. Other treatments may also be sought, including electrolysis, voice therapy, breast augmentation, facial reconstruction, etc. (Coleman, et al, 2012). Although it is not an explicit requirement for surgical treatment, it is recommended that patients who seek such procedures have regular contact with a mental health or other medical professional.

Under the SOC, hormone therapy and surgery have established eligibility and readiness criteria that should be met prior to approval for these somatic treatments. Eligibility criteria generally involve timelines of successful experience with one mode of therapy before the next step should be undertaken. Readiness criteria involve the clinician's assessment of whether the client has demonstrated sufficient consolidation of an evolving gender identity to move on to the next step of transition.

The minimum criteria for genital surgery includes the requirement that one have a persistent, well-documented history of gender dysphoria, the capacity to consent to treatment, be of the age of majority and have any significant medical or health care conditions well-controlled. Lastly, a person seeking genital surgery must generally undergo 12 continuous months of living in a gender role that is congruent with the patient's identity, and obtain two letters of referral from experienced clinicians in a qualifying mental health discipline.

Respectfully submitted,



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DECLARATION OF RACHEL JONA TUDOR

1. I worked as a tenure track assistant professor at Southeastern Oklahoma State University (“Southeastern”) from Fall 2004 until late May 2011.
2. **Conversations with Cathy Conway in 2007.**
 - a. During the June 1, 2007 meeting, Conway told me that VP Douglas McMillan wanted to summarily fire me because of my “lifestyle” (referencing my gender transition). Conway told me that I would not be summarily fired. In response, I thanked Conway for her professionalism for not firing me.
 - b. During the June 1, 2007 meeting, Conway told me that Southeastern had harassment and discrimination policies. Conway then told me that if I used the women’s restroom going forward, that that would be considered sexual harassment of my female colleagues and would violate Southeastern’s policies. Conway also told me that if I did not abide her direction to not wear short skirts and to not use too much makeup, that I would be sexually harassing my male colleagues and would also be in violation of Southeastern’s policies. Conway told me that if I used the women’s restrooms and/or did not abide by the dress and

make-up restrictions, that I would be in violation of Southeastern's policies and that I would be fired.

c. Based on the restroom and dress, and make-up restrictions Conway put on me during the June 1, 2007 meeting, it was my understanding that Southeastern's harassment and discrimination policies did not protect me from gender discrimination I experienced because I am transgender.

d. After my June 1, 2007 meeting with Conway, I was fearful to complain about harassment and discrimination I experienced at Southeastern. Conway had made clear to me during our meeting that Southeastern's policies did not protect me because I am transgender.

3. Some Hostilities between 2007 through early 2010. Between my 2007 meeting with Conway and Scoufos' denial of my 2009-10 tenure and promotion application, I endured many hostilities at Southeastern.

a. For example, I was forced—by Conway's instruction—to not use women's restrooms on campus, relegating me to only the few single-stall handicap restrooms that were far away from my classes and office, inconvenient, often busy when I needed to use them, and for which I felt humiliated at having to use (rather

than the women's restroom, like my female colleagues), and for which I felt distress having to inconvenience colleagues, staff, and students who needed to use these because of their disabilities. During this period I was fearful to even try to use the women's restroom because I was worried that I would be deemed to be harassing my nontransgender female colleagues, and I would be fired for violating Southeastern's harassment policy, as per my 2007 conversation with Conway.

- b.** For example, I was vigilant about how I was dressed and how my make-up looked at work, because I was fearful that if I did not get things just right that I would be fired for violating Southeastern's harassment policy, as per my 2007 conversation with Conway.
- c.** For example, due to the categorical exclusion on Southeastern's health plan, I was unable to get medically necessary healthcare covered to treat my gender dysphoria and otherwise had to pay for what I could afford out of pocket. During this period I paid for my hormones and blood work out of pocket. During this period, I ruled out trying to pay for surgery though I desperately needed it because I could not afford to cover it out of pocket. Though I found the existence of the categorical exclusion to be hostile, I

was unaware at the time that I could grieve the exclusion to anyone at Southeastern or elsewhere. Southeastern never trained me on the fact that I could grieve a health plan exclusion of any kind. No one in Southeastern's HR department ever told me that I could grieve a health plan exclusion of any kind. I never knew a colleague at Southeastern during this period who had grieved a health plan exclusion in any way. I also did not think that—given my conversation with Conway in 2007—Southeastern's harassment and discrimination policies could be used to address this issue since the exclusion treated me unequally because of my gender in relation to the fact that I am transgender.

4. I was afraid to complain between 2007 and early 2010.

During this period, I was afraid to complain about anything at Southeastern that touched on my gender or the fact that I am transgender. Though I did, from time to time, bring up issues with close friends and colleagues, I remained largely silent because I was afraid of what would happen if I said anything.

- a.** I was afraid to complain because I was fearful that if I complained it would affect the Southeastern administration's decisions on my tenure and promotion applications. Specifically, I thought that if I tried to keep silent for as long as possible, that

by the time the administration reviewed my application that they would not hold the fact that I am transgender against me so long as I did not complain about hostilities.

- b. I was afraid to complain because—based on my 2007 conversation with Conway—it was my understanding that Southeastern’s policies did not protect transgender people from gender discrimination or hostilities.
- c. I was afraid to complain because, during this period, Southeastern’s written harassment and discrimination policies did not expressly protect transgender or gay people. I believed that the lack of express protections meant that I was not protected from gender hostilities or discrimination on campus.
- d. I was afraid to complain because, during this period, I was the only transgender person at Southeastern and, to my knowledge, the only out transgender person ever at Southeastern.
- e. I was afraid to complain because, during this period, many of my gay colleagues were closeted on campus because they feared if they came out at work that they would be fired for being gay. They similarly feared that because Southeastern lacked express protection for gay employees, that they could be fired for being

gay and Southeastern's policies would be no impediment to their termination.

5. **Breaking point in early 2010.** In early 2010, Dean Scoufos denied my 2009-10 promotion and tenure application, recommended me for nonrenewal (essentially, that I be terminated with no option to reapply) and she refused to give me her rationales for denying my application. Close in time, VP McMillan similarly denied my application and refused to give me his rationales for denial. It was around this time that I reached a breaking point. Scoufos' and McMillan's denials, their refusals to provide me rationales for their decisions, Scoufos' attempt to get me fired (by recommended that I be nonrenewed), and Scoufos and McMillan's refusals to even meet with me to discuss the matter put me over the edge. The totality of all I had been dealing with—the restroom restriction, the dress and make-up restrictions, the health plan exclusion—and everything else was overwhelming and I could not endure the hostilities in silence anymore.
6. **I was afraid to complain between early 2010 until my separation in late May 2011.** During this period, I remained very afraid about complaining about hostilities (as well as discrimination and retaliation) at Southeastern. However, the totality of the

circumstances made it so intolerable that I went ahead and complained even though I felt like my complaints would be futile.

7. Why I complained so many times between early 2010 and until my separation in late May 2011.

- a. I complained again and again during this period, despite knowing at the time that Southeastern's harassment and discrimination policies did not expressly protect transgender people from gender discrimination and hostilities.
- b. I complained again and again during this period despite the fact that the administration created new rules on how to adjudicate my third Faculty Appellate Committee ("FAC3") appeal in the middle of the process so that they would not have to abide by the FAC3's order.
- c. I complained again and again during this period despite the fact that—in nearly all of my complaints and grievances—even if I won, the administration appealed my wins to President Minks who ultimately decided (even in grievances where he was the respondent) that there was no violation.
- d. Towards the end of my time at Southeastern, I started complaining directly to the Regional University System of Oklahoma ("RUSO"). At the time, I did not know that as a

Southeastern professor I was allowed to complain about issues at Southeastern to RUSO. No one had ever trained me on this kind of complaint and I did not know of any policies that allowed such complaints. I nevertheless complained to RUSO at this time—despite thinking my complaints were futile—because I hoped that RUSO would step in, investigate, and help me to fix things. Despite my best efforts, nothing changed.

- e. At bottom, I complained again and again because I was trying to do my best to let everyone know what was happening to me was not right. I did my best to complain, to document my complaints, and to give Southeastern the opportunity to fix things. Despite my best efforts, nothing changed. Things only got worse.

8. How I felt between 2007 and before early 2010.

- a. During this period I felt stressed and scared about my restroom use, the dress restrictions, and the health plan exclusion. I was also fearful that if I experienced any other hostilities or discrimination on campus that I might be fired if I complained.
- b. Despite the hostilities I experienced during this period, it was somewhat tolerable in the sense that I believed that I could endure them in silence for a limited period of time. I recall thinking that, so long as I got tenure I could try to get through

this. I remember thinking that if I got tenure, I would have some job security and could try to circle back and fix the hostilities that were hurting me.

- c. Though it was hard to deal with the everyday burden of the restroom restriction, dress restrictions, and health plan exclusion I was, for much of this period, able to function normally. I do not recall crying frequently during this period. I do not recall crying while I was in my office at Southeastern at all during this period. I recall that I had a healthy sleep schedule, a good appetite, and I was regularly exercising (as I had for my whole life up to this point). I also recall that I took great joy in taking my dog, Ginger, a chow-mix, to the park near my house (which was blocks away from Southeastern's campus) during the day. Though I am naturally a shy and somewhat quiet person, during this period I did not hesitate to be sociable with my colleagues on campus. Nor did I hesitate to be out in public generally during this period.
- d. During this period, also I was stressed, that stress did not impair my ability to socialize with friends and colleagues on campus. For example, if I saw a friend or colleague while I was in the library, or in the student union, or elsewhere I would often stop and say

hello to them and chat with them. I would not hesitate to take a friend or colleague up on an invitation to have lunch on campus.

9. How I felt between early 2010 and my separation in late May 2011.

- a. I reached a breaking point in early 2010, around the time that Scoufos and McMillan denied my 2009-10 application, refused to give me their rationales for doing so, and Scoufos recommended that I be nonrenewed (essentially, terminated). For me, the totality of everything tipped things over the edge.
- b. During this period, I felt distraught and upset much of the time. I recall crying a lot. I cried when I was at home alone with my dog, Ginger. I sometimes closed the door to my office at Southeastern and cried there. I did my best to hide my crying from my colleagues and friends, but on a few occasions the totality of what I was enduring became so overwhelming that I could not hide it and I broke down crying. For much of this period I had trouble sleeping. I also lacked an appetite and struggled to eat enough food. I also could not bring myself to regularly exercise and stopped doing exercises that had once brought me joy. I stopped taking runs. I struggled to attend yoga and pilates classes that I had once loved. It also became very difficult for me to be in public

around other people. To that end, I stopped taking Ginger to the park near my house during daylight hours—it hurt me to do it to Ginger, but I started only taking her to the park at night and before sunrise so that we could avoid other people.

- c. During this period, I became hyper-vigilant while I was on Southeastern's campus. After the Southeastern administration barred me from reapplying in the 2010-11 cycle in October 2010, I became fearful that if VP McMillan or Scoufos saw me socializing with my friends and colleagues on campus that my friends and colleagues would be punished. To this end, I tried to avoid being seen for any extended amount of time with my friends and colleagues on campus. If I saw a friend or colleague somewhere on campus outside of our Department offices, I would greet them, but I would do my best to not stick around long enough for us to be seen together.

10. **Stubblefield “investigation.”**

- a. Stubblefield investigated a complaint I filed in August 2010 and an amended complaint I filed in October 2010 between late August 2010 and the issuance of her final report in early January 2011. In my complaints, I complained about discrimination during the 2009-10 cycles, retaliation when McMillan barred me

from reapplying during the 2010-11 cycle, and also more generally about hostilities permeating my work environment.

- b. When I met with Stubblefield in person, I told her repeatedly that I was grieving hostilities at Southeastern. I did everything in my power to communicate this to Stubblefield. I gave her examples of hostilities—such as Scoufos using male pronouns to refer to me rather than female pronouns; my conversation with Conway where I was advised that VP McMillan wanted to fire me because of my “lifestyle”; how upset and stressed I was about the denial of my 2009-10 application and all of the oddities of process around that which caused me great distress and had contributed to making my day-to-day work life intolerable.
- c. When I met with Stubblefield in person, I repeatedly told her that I thought I was facing discrimination and hostilities because I am a transgender woman. Over time, I feared that Stubblefield was being obtuse or simply lacked appropriate training to even understand what I was talking about when I said I was experiencing discrimination and hostilities because I am a transgender woman. I tried to educate Stubblefield on this issue. For instance, at one point I sent Stubblefield a “Dear Colleague” letter from the U.S. Department of Education which talked about

how hostilities and bullying of transgender people is inappropriate and violates federal law. A true copy of the email and the guidance I sent to Stubblefield are attached hereto as **Exhibit A** (the email is bates marked PI696 in the lower right hand corner; the “Dear Colleague” letter is bates marked PI558 to PI567 in the lower right hand corner).

- d. During Stubblefield’s “investigation,” I felt stressed and concerned that I was in a position where I had to educate the person conducting the investigation of my internal complaints on bias and hostilities that transgender people face. I felt stressed and concerned that Stubblefield did not appear to understand that, as a transgender person, I was protected from gender bias and hostilities. I felt stressed and concerned that Stubblefield did not seem to know what hostilities and bias transgender people face let alone how to investigate these issues.
- e. When I met with Stubblefield in person, I told her that I was concerned, among other things, that VP McMillan had religious beliefs that made him think that as a transgender woman, I should not be treated like other women are treated. I specifically told Scoufos that she should ask other people about VP McMillan’s religious beliefs concerning transgender people.

- f. When I met with Stubblefield in person, it felt like her investigation was perfunctory. Stubblefield asked me very few questions about my complaints. When I tried to give her details about issues, she seemed uninterested and rarely asked follow up questions.
- g. At no point during her investigation did Stubblefield advise me that I was entitled to any relief before the investigation was over. For example, I was never given the opportunity to temporarily cease contact with VP McMillan or anyone else I complained about.
- h. At no point during her investigation did Stubblefield share information with me about what steps she was taking to investigate my complaints. She did not tell me who she was interviewing (or planned or did not plan to interview). She did not tell me what the “test” was for a discrimination complaint. She did not send me draft copies of her report to review or correct. She did not share with me anything about how the administrators I named in my complaints were responding or give me the opportunity to respond to what they had told her during the course of her “investigation.”

- i. A few months after Stubblefield began her “investigation”—but before she issued her final report in early January 2011—I started asking Stubblefield when her investigation would be over. I sent Stubblefield several emails to this end. Stubblefield kept assuring me it would be over soon, but she kept moving back her expected date of completion. Stubblefield’s delay in issuing her final report caused me a great deal of stress. It felt to me like time was running out—that if Stubblefield did not act there was no way that, even if she found in my favor, I could get the relief I had requested and I would be pushed out of Southeastern no matter what.
11. **I want to return to Southeastern.** Despite everything that I went through and how long I have been away, I sincerely want to return to Southeastern. I have profound respect and affection for my former colleagues in the English, Humanities, and Languages Department. I still have a passion for teaching, scholarship, and service. I still deeply believe in the mission of American universities and want to contribute to and be part of the Southeastern community once again. I am ready and able to move on with my life and will endeavor to do my best to pick up the pieces and do the job that I

trained for, worked hard for, and ultimately earned. I feel like I have been in exile for the last seven years. I want to go home.

I state under penalty of perjury that the foregoing is true and correct.

Executed on (date) 10/12/17 in (location) Plano, TX

Rachel Tudor
Rachel Jona Tudor

Exhibit A

Rachel Tudor

From: Rachel Tudor
Sent: Monday, November 08, 2010 1:53 PM
To: Claire Stubblefield
Subject: Dept of Ed
Attachments: Dear Colleague Letter.docx; Guidance Targeting Harassment Outlines Local and Federal Responsibility.docx

Dear Dr. Stubblefield,

I thought you might be interested in a recent update and clarification of U.S. Dept of Education Guidelines on Title IX inclusion of gender orientation. I highlighted the relevant section on pages 9-10.

Cordially,

Rachel Tudor, PhD
Dept of English, Humanities & Languages
Southeastern Oklahoma State University
1405 North 4th Ave.
Durant, OK 74701
580.745.2588
rtudor@se.edu



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

October 26, 2010

Dear Colleague:

In recent years, many state departments of education and local school districts have taken steps to reduce bullying in schools. The U.S. Department of Education (Department) fully supports these efforts. Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential. The movement to adopt anti-bullying policies reflects schools' appreciation of their important responsibility to maintain a safe learning environment for all students. I am writing to remind you, however, that some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department's Office for Civil Rights (OCR). As discussed in more detail below, by limiting its response to a specific application of its anti-bullying disciplinary policy, a school may fail to properly consider whether the student misconduct also results in discriminatory harassment.

The statutes that OCR enforces include Title VI of the Civil Rights Act of 1964¹ (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972² (Title IX), which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973³ (Section 504); and Title II of the Americans with Disabilities Act of 1990⁴ (Title II). Section 504 and Title II prohibit discrimination on the basis of disability.⁵ School districts may violate these civil rights statutes and the Department's implementing regulations when peer harassment based on race, color, national origin, sex, or disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.⁶ School personnel who understand their legal obligations to address harassment under these laws are in the best position to prevent it from occurring and to respond appropriately when it does. Although this letter focuses on the elementary and secondary school context, the legal principles also apply to postsecondary institutions covered by the laws and regulations enforced by OCR.

Some school anti-bullying policies already may list classes or traits on which bases bullying or harassment is specifically prohibited. Indeed, many schools have adopted anti-bullying policies that go beyond prohibiting bullying on the basis of traits expressly protected by the federal civil

¹ 42 U.S.C. § 2000d *et seq.*

² 20 U.S.C. § 1681 *et seq.*

³ 29 U.S.C. § 794.

⁴ 42 U.S.C. § 12131 *et seq.*

⁵ OCR also enforces the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, and the Boy Scouts of America Equal Access Act, 20 U.S.C. § 7905. This letter does not specifically address those statutes.

⁶ The Department's regulations implementing these statutes are in 34 C.F.R. parts 100, 104, and 106. Under these federal civil rights laws and regulations, students are protected from harassment by school employees, other students, and third parties. This guidance focuses on peer harassment, and articulates the legal standards that apply in administrative enforcement and in court cases where plaintiffs are seeking injunctive relief.

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.



PI000558

Page 2- Dear Colleague Letter: Harassment and Bullying

rights laws enforced by OCR—race, color, national origin, sex, and disability—to include such bases as sexual orientation and religion. While this letter concerns your legal obligations under the laws enforced by OCR, other federal, state, and local laws impose additional obligations on schools.⁷ And, of course, even when bullying or harassment is not a civil rights violation, schools should still seek to prevent it in order to protect students from the physical and emotional harms that it may cause.

Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.⁸

A school is responsible for addressing harassment incidents about which it knows or reasonably should have known.⁹ In some situations, harassment may be in plain sight, widespread, or well-known to students and staff, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on a school bus, or through graffiti in public areas. In these cases, the obvious signs of the harassment are sufficient to put the school on notice. In other situations, the school may become aware of misconduct, triggering an investigation that could lead to the discovery of additional incidents that, taken together, may constitute a hostile environment. In all cases, schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the school to incidents of harassment.¹⁰

When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.

If an investigation reveals that discriminatory harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile

⁷ For instance, the U.S. Department of Justice (DOJ) has jurisdiction over Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c (Title IV), which prohibits discrimination on the basis of race, color, sex, religion, or national origin by public elementary and secondary schools and public institutions of higher learning. State laws also provide additional civil rights protections, so districts should review these statutes to determine what protections they afford (e.g., some state laws specifically prohibit discrimination on the basis of sexual orientation).

⁸ Some conduct alleged to be harassment may implicate the First Amendment rights to free speech or expression. For more information on the First Amendment's application to harassment, see the discussions in OCR's Dear Colleague Letter: First Amendment (July 28, 2003), available at <http://www.ed.gov/about/offices/list/ocr/firstamend.html>, and OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Jan. 19, 2001) (Sexual Harassment Guidance), available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

⁹ A school has notice of harassment if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. For a discussion of what a "responsible employee" is, see OCR's Sexual Harassment Guidance.

¹⁰ Districts must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex and disability discrimination complaints, and must notify students, parents, employees, applicants, and other interested parties that the district does not discriminate on the basis of sex or disability. See 28 C.F.R. § 35.106; 28 C.F.R. § 35.107(b); 34 C.F.R. § 104.7(b); 34 C.F.R. § 104.8; 34 C.F.R. § 106.8(b); 34 C.F.R. § 106.9.

Page 3- Dear Colleague Letter: Harassment and Bullying

environment and its effects, and prevent the harassment from recurring. These duties are a school's responsibility even if the misconduct also is covered by an anti-bullying policy, and regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

Appropriate steps to end harassment may include separating the accused harasser and the target, providing counseling for the target and/or harasser, or taking disciplinary action against the harasser. These steps should not penalize the student who was harassed. For example, any separation of the target from an alleged harasser should be designed to minimize the burden on the target's educational program (*e.g.*, not requiring the target to change his or her class schedule).

In addition, depending on the extent of the harassment, the school may need to provide training or other interventions not only for the perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond. A school also may be required to provide additional services to the student who was harassed in order to address the effects of the harassment, particularly if the school initially delays in responding or responds inappropriately or inadequately to information about harassment. An effective response also may need to include the issuance of new policies against harassment and new procedures by which students, parents, and employees may report allegations of harassment (or wide dissemination of existing policies and procedures), as well as wide distribution of the contact information for the district's Title IX and Section 504/Title II coordinators.¹¹

Finally, a school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

When responding to incidents of misconduct, schools should keep in mind the following:

- The label used to describe an incident (*e.g.*, bullying, hazing, teasing) does not determine how a school is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications. So, for example, if the abusive behavior is on the basis of race, color, national origin, sex, or disability, and creates a hostile environment, a school is obligated to respond in accordance with the applicable federal civil rights statutes and regulations enforced by OCR.
- When the behavior implicates the civil rights laws, school administrators should look beyond simply disciplining the perpetrators. While disciplining the perpetrators is likely a necessary step, it often is insufficient. A school's responsibility is to eliminate the

¹¹ Districts must designate persons responsible for coordinating compliance with Title IX, Section 504, and Title II, including the investigation of any complaints of sexual, gender-based, or disability harassment. See 28 C.F.R. § 35.107(a); 34 C.F.R. § 104.7(a); 34 C.F.R. § 106.8(a).

hostile environment created by the harassment, address its effects, and take steps to ensure that harassment does not recur. Put differently, the unique effects of discriminatory harassment may demand a different response than would other types of bullying.

Below, I provide hypothetical examples of how a school's failure to recognize student misconduct as discriminatory harassment violates students' civil rights.¹² In each of the examples, the school was on notice of the harassment because either the school or a responsible employee knew or should have known of misconduct that constituted harassment. The examples describe how the school should have responded in each circumstance.

Title VI: Race, Color, or National Origin Harassment

- *Some students anonymously inserted offensive notes into African-American students' lockers and notebooks, used racial slurs, and threatened African-American students who tried to sit near them in the cafeteria. Some African-American students told school officials that they did not feel safe at school. The school investigated and responded to individual instances of misconduct by assigning detention to the few student perpetrators it could identify. However, racial tensions in the school continued to escalate to the point that several fights broke out between the school's racial groups.*

In this example, school officials failed to acknowledge the pattern of harassment as indicative of a racially hostile environment in violation of Title VI. Misconduct need not be directed at a particular student to constitute discriminatory harassment and foster a racially hostile environment. Here, the harassing conduct included overtly racist behavior (*e.g.*, racial slurs) and also targeted students on the basis of their race (*e.g.*, notes directed at African-American students). The nature of the harassment, the number of incidents, and the students' safety concerns demonstrate that there was a racially hostile environment that interfered with the students' ability to participate in the school's education programs and activities.

Had the school recognized that a racially hostile environment had been created, it would have realized that it needed to do more than just discipline the few individuals whom it could identify as having been involved. By failing to acknowledge the racially hostile environment, the school failed to meet its obligation to implement a more systemic response to address the unique effect that the misconduct had on the school climate. A more effective response would have included, in addition to punishing the perpetrators, such steps as reaffirming the school's policy against discrimination (including racial harassment), publicizing the means to report allegations of racial harassment, training faculty on constructive responses to racial conflict, hosting class discussions about racial harassment and sensitivity to students of other races, and conducting outreach to involve parents and students in an effort to identify problems and improve the school climate. Finally, had school officials responded appropriately

¹² Each of these hypothetical examples contains elements taken from actual cases.

and aggressively to the racial harassment when they first became aware of it, the school might have prevented the escalation of violence that occurred.¹³

- *Over the course of a school year, school employees at a junior high school received reports of several incidents of anti-Semitic conduct at the school. Anti-Semitic graffiti, including swastikas, was scrawled on the stalls of the school bathroom. When custodians discovered the graffiti and reported it to school administrators, the administrators ordered the graffiti removed but took no further action. At the same school, a teacher caught two ninth-graders trying to force two seventh-graders to give them money. The ninth-graders told the seventh-graders, "You Jews have all of the money, give us some." When school administrators investigated the incident, they determined that the seventh-graders were not actually Jewish. The school suspended the perpetrators for a week because of the serious nature of their misconduct. After that incident, younger Jewish students started avoiding the school library and computer lab because they were located in the corridor housing the lockers of the ninth-graders. At the same school, a group of eighth-grade students repeatedly called a Jewish student "Drew the dirty Jew." The responsible eighth-graders were reprimanded for teasing the Jewish student.*

The school administrators failed to recognize that anti-Semitic harassment can trigger responsibilities under Title VI. While Title VI does not cover discrimination based solely on religion,¹⁴ groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith. These principles apply not just to Jewish students, but also to students from any discrete religious group that shares, or is perceived to share, ancestry or ethnic characteristics (e.g., Muslims or Sikhs). Thus, harassment against students who are members of any religious group triggers a school's Title VI responsibilities when the harassment is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices. A school also has responsibilities under Title VI when its students are harassed based on their actual or perceived citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity.¹⁵

In this example, school administrators should have recognized that the harassment was based on the students' actual or perceived shared ancestry or ethnic identity as Jews (rather than on the students' religious practices). The school was not relieved of its responsibilities under Title VI because the targets of one of the incidents were not actually Jewish. The harassment was still based on the perceived ancestry or ethnic characteristics of the targeted students. Furthermore, the harassment negatively affected the ability and willingness of Jewish students to participate fully in the school's

¹³ More information about the applicable legal standards and OCR's approach to investigating allegations of harassment on the basis of race, color, or national origin is included in *Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance*, 59 Fed. Reg. 11,448 (Mar. 10, 1994), available at <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>.

¹⁴ As noted in footnote seven, DOJ has the authority to remedy discrimination based solely on religion under Title IV.

¹⁵ More information about the applicable legal standards and OCR's approach to investigating complaints of discrimination against members of religious groups is included in OCR's Dear Colleague Letter: Title VI and Title IX Religious Discrimination in Schools and Colleges (Sept. 13, 2004), available at <http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>.

education programs and activities (e.g., by causing some Jewish students to avoid the library and computer lab). Therefore, although the discipline that the school imposed on the perpetrators was an important part of the school's response, discipline alone was likely insufficient to remedy a hostile environment. Similarly, removing the graffiti, while a necessary and important step, did not fully satisfy the school's responsibilities. As discussed above, misconduct that is not directed at a particular student, like the graffiti in the bathroom, can still constitute discriminatory harassment and foster a hostile environment. Finally, the fact that school officials considered one of the incidents "teasing" is irrelevant for determining whether it contributed to a hostile environment.

Because the school failed to recognize that the incidents created a hostile environment, it addressed each only in isolation, and therefore failed to take prompt and effective steps reasonably calculated to end the harassment and prevent its recurrence. In addition to disciplining the perpetrators, remedial steps could have included counseling the perpetrators about the hurtful effect of their conduct, publicly labeling the incidents as anti-Semitic, reaffirming the school's policy against discrimination, and publicizing the means by which students may report harassment. Providing teachers with training to recognize and address anti-Semitic incidents also would have increased the effectiveness of the school's response. The school could also have created an age-appropriate program to educate its students about the history and dangers of anti-Semitism, and could have conducted outreach to involve parents and community groups in preventing future anti-Semitic harassment.

Title IX: Sexual Harassment

- *Shortly after enrolling at a new high school, a female student had a brief romance with another student. After the couple broke up, other male and female students began routinely calling the new student sexually charged names, spreading rumors about her sexual behavior, and sending her threatening text messages and e-mails. One of the student's teachers and an athletic coach witnessed the name calling and heard the rumors, but identified it as "hazing" that new students often experience. They also noticed the new student's anxiety and declining class participation. The school attempted to resolve the situation by requiring the student to work the problem out directly with her harassers.*

Sexual harassment is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. Thus, sexual harassment prohibited by Title IX can include conduct such as touching of a sexual nature; making sexual comments, jokes, or gestures; writing graffiti or displaying or distributing sexually explicit drawings, pictures, or written materials; calling students sexually charged names; spreading sexual rumors; rating students on sexual activity or performance; or circulating, showing, or creating e-mails or Web sites of a sexual nature.

In this example, the school employees failed to recognize that the “hazing” constituted sexual harassment. The school did not comply with its Title IX obligations when it failed to investigate or remedy the sexual harassment. The conduct was clearly unwelcome, sexual (e.g., sexual rumors and name calling), and sufficiently serious that it limited the student’s ability to participate in and benefit from the school’s education program (e.g., anxiety and declining class participation).

The school should have trained its employees on the type of misconduct that constitutes sexual harassment. The school also should have made clear to its employees that they could not require the student to confront her harassers. Schools may use informal mechanisms for addressing harassment, but only if the parties agree to do so on a voluntary basis. Had the school addressed the harassment consistent with Title IX, the school would have, for example, conducted a thorough investigation and taken interim measures to separate the student from the accused harassers. An effective response also might have included training students and employees on the school’s policies related to harassment, instituting new procedures by which employees should report allegations of harassment, and more widely distributing the contact information for the district’s Title IX coordinator. The school also might have offered the targeted student tutoring, other academic assistance, or counseling as necessary to remedy the effects of the harassment.¹⁶

Title IX: Gender-Based Harassment

- *Over the course of a school year, a gay high school student was called names (including anti-gay slurs and sexual comments) both to his face and on social networking sites, physically assaulted, threatened, and ridiculed because he did not conform to stereotypical notions of how teenage boys are expected to act and appear (e.g., effeminate mannerisms, nontraditional choice of extracurricular activities, apparel, and personal grooming choices). As a result, the student dropped out of the drama club to avoid further harassment. Based on the student’s self-identification as gay and the homophobic nature of some of the harassment, the school did not recognize that the misconduct included discrimination covered by Title IX. The school responded to complaints from the student by reprimanding the perpetrators consistent with its anti-bullying policy. The reprimands of the identified perpetrators stopped the harassment by those individuals. It did not, however, stop others from undertaking similar harassment of the student.*

As noted in the example, the school failed to recognize the pattern of misconduct as a form of sex discrimination under Title IX. Title IX prohibits harassment of both male and female students regardless of the sex of the harasser—i.e., even if the harasser and target are members of the same sex. It also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping. Thus, it can be sex discrimination if students are harassed either for exhibiting what is perceived as a stereotypical characteristic for their

¹⁶ More information about the applicable legal standards and OCR’s approach to investigating allegations of sexual harassment is included in OCR’s *Sexual Harassment Guidance*, available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

sex, or for failing to conform to stereotypical notions of masculinity and femininity. Title IX also prohibits sexual harassment and gender-based harassment of all students, regardless of the actual or perceived sexual orientation or gender identity of the harasser or target.

Although Title IX does not prohibit discrimination based solely on sexual orientation, Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination. When students are subjected to harassment on the basis of their LGBT status, they may also, as this example illustrates, be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment. In this example, the harassing conduct was based in part on the student's failure to act as some of his peers believed a boy should act. The harassment created a hostile environment that limited the student's ability to participate in the school's education program (e.g., access to the drama club). Finally, even though the student did not identify the harassment as sex discrimination, the school should have recognized that the student had been subjected to gender-based harassment covered by Title IX.

In this example, the school had an obligation to take immediate and effective action to eliminate the hostile environment. By responding to individual incidents of misconduct on an *ad hoc* basis only, the school failed to confront and prevent a hostile environment from continuing. Had the school recognized the conduct as a form of sex discrimination, it could have employed the full range of sanctions (including progressive discipline) and remedies designed to eliminate the hostile environment. For example, this approach would have included a more comprehensive response to the situation that involved notice to the student's teachers so that they could ensure the student was not subjected to any further harassment, more aggressive monitoring by staff of the places where harassment occurred, increased training on the scope of the school's harassment and discrimination policies, notice to the target and harassers of available counseling services and resources, and educating the entire school community on civil rights and expectations of tolerance, specifically as they apply to gender stereotypes. The school also should have taken steps to clearly communicate the message that the school does not tolerate harassment and will be responsive to any information about such conduct.¹⁷

Section 504 and Title II: Disability Harassment

- *Several classmates repeatedly called a student with a learning disability "stupid," "idiot," and "retard" while in school and on the school bus. On one occasion, these students tackled him, hit him with a school binder, and threw his personal items into the garbage. The student complained to his teachers and guidance counselor that he was continually being taunted and teased. School officials offered him counseling services and a*

¹⁷ Guidance on gender-based harassment is also included in OCR's *Sexual Harassment Guidance*, available at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

psychiatric evaluation, but did not discipline the offending students. As a result, the harassment continued. The student, who had been performing well academically, became angry, frustrated, and depressed, and often refused to go to school to avoid the harassment.

In this example, the school failed to recognize the misconduct as disability harassment under Section 504 and Title II. The harassing conduct included behavior based on the student's disability, and limited the student's ability to benefit fully from the school's education program (e.g., absenteeism). In failing to investigate and remedy the misconduct, the school did not comply with its obligations under Section 504 and Title II.

Counseling may be a helpful component of a remedy for harassment. In this example, however, since the school failed to recognize the behavior as disability harassment, the school did not adopt a comprehensive approach to eliminating the hostile environment. Such steps should have at least included disciplinary action against the harassers, consultation with the district's Section 504/Title II coordinator to ensure a comprehensive and effective response, special training for staff on recognizing and effectively responding to harassment of students with disabilities, and monitoring to ensure that the harassment did not resume.¹⁸

I encourage you to reevaluate the policies and practices your school uses to address bullying¹⁹ and harassment to ensure that they comply with the mandates of the federal civil rights laws. For your convenience, the following is a list of online resources that further discuss the obligations of districts to respond to harassment prohibited under the federal antidiscrimination laws enforced by OCR:

- *Sexual Harassment: It's Not Academic* (Revised 2008):
<http://www.ed.gov/about/offices/list/ocr/docs/ocrshpam.html>
- *Dear Colleague Letter: Sexual Harassment Issues* (2006):
<http://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html>
- *Dear Colleague Letter: Religious Discrimination* (2004):
<http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>
- *Dear Colleague Letter: First Amendment* (2003):
<http://www.ed.gov/about/offices/list/ocr/firstamend.html>

¹⁸ More information about the applicable legal standards and OCR's approach to investigating allegations of disability harassment is included in OCR's Dear Colleague Letter: Prohibited Disability Harassment (July 25, 2000), available at <http://www2.ed.gov/about/offices/list/ocr/docs/disabarassltr.html>.

¹⁹ For resources on preventing and addressing bullying, please visit <http://www.bullyinginfo.org>, a Web site established by a federal Interagency Working Group on Youth Programs. For information on the Department's bullying prevention resources, please visit the Office of Safe and Drug-Free Schools' Web site at <http://www.ed.gov/offices/OESE/SDFS>. For information on regional Equity Assistance Centers that assist schools in developing and implementing policies and practices to address issues regarding race, sex, or national origin discrimination, please visit <http://www.ed.gov/programs/equitycenters>.

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- *Sexual Harassment Guidance (Revised 2001):*
<http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>
- *Dear Colleague Letter: Prohibited Disability Harassment (2000):*
<http://www.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>
- *Racial Incidents and Harassment Against Students (1994):*
<http://www.ed.gov/about/offices/list/ocr/docs/race394.html>

Please also note that OCR has added new data items to be collected through its Civil Rights Data Collection (CRDC), which surveys school districts in a variety of areas related to civil rights in education. The CRDC now requires districts to collect and report information on allegations of harassment, policies regarding harassment, and discipline imposed for harassment. In 2009-10, the CRDC covered nearly 7,000 school districts, including all districts with more than 3,000 students. For more information about the CRDC data items, please visit <http://www2.ed.gov/about/offices/list/ocr/whatsnew.html>.

OCR is committed to working with schools, students, students' families, community and advocacy organizations, and other interested parties to ensure that students are not subjected to harassment. Please do not hesitate to contact OCR if we can provide assistance in your efforts to address harassment or if you have other civil rights concerns.

For the OCR regional office serving your state, please visit: <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>, or call OCR's Customer Service Team at 1-800-421-3481.

I look forward to continuing our work together to ensure equal access to education, and to promote safe and respectful school climates for America's students.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

Exhibit 3

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

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

**PLAINTIFF/INTERVENOR DR. RACHEL TUDOR’S RESPONSES TO
REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA’S
FIRST SET OF DISCOVERY REQUESTS**

TO: Defendant, Regional University System of Oklahoma
c/o Kindanee C. Jones, Dixie L. Coffey, and Jeb Joseph
Assistant Attorneys General
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*Attorneys for Defendant State of Oklahoma
Ex rel. Regional University System of Oklahoma
& Southeastern Oklahoma State University*

Randy Prus	SEOSU Professor	Unknown	SEOSU & RUSO	c/o SEOSU 1405 N 4 th Ave Durant, OK 74701
Lucretia Scoufos	SEOSU Executive Dean for Academic Affairs	Unknown	SEOSU & RUSO	c/o SEOSU 1405 N 4 th Ave Durant, OK 74701
Claire Stubblefield	SEOSU Affirmative Action Officer	Unknown	SEOSU & RUSO	c/o SEOSU 1405 N 4 th Ave Durant, OK 74701
Paula Smith-Allen	SEOSU Professor	Unknown	SEOSU & RUSO	c/o SEOSU 1405 N 4 th Ave Durant, OK 74701
Mark Spencer	SEOSU Professor	Unknown	SEOSU & RUSO	c/o SEOSU 1405 N 4 th Ave Durant, OK 74701
David Tafet	Journalist	Unknown	<i>Dallas Voice</i>	1825 Market Center Blvd. Suite 240 Dallas, TX 75207
Charles Weiner	Unknown	Unknown	Unknown	Unknown

Interrogatory No. 2: *Please identify and describe all reports or complaints, (as per definition nos. 8 and 9, above), made by you about sexual discrimination or harassment perpetrated by SEOSU and/or its agents.*

RESPONSE: Plaintiff/Intervenor objects to this Interrogatory on the grounds that it is unduly burdensome and unnecessarily cumulative or duplicative. Defendants are entitled to seek discovery reasonably calculated to ascertain whether Plaintiff/Intervenor has evidence of complaints of discrimination and/or harassment, but she need not produce or exactly describe each and every time she complained about discrimination and/or harassment perpetrated by SEOSU and/or its agents.

Subject to, and notwithstanding this objection, Plaintiff/Intervenor can attest to the following non-exhaustive list of complaints she made between 2007 and 2011:

Sometime in 2007, oral complaint to Dr. Jeffrey Gastorf. I began hormone therapy and started getting blood tests to monitor my hormone levels as part of my medically necessary treatment for gender dysphoria sometime in 2007. I recall that sometime in 2007 Dr. Gastorf advised that either he or a member of his staff had run my health insurance and/or checked with

the health benefits administrator and confirmed that there was a categorical exclusion on all care for gender transition, including but not limited to exogenous hormone treatment and blood tests to monitor my hormone treatment. I recall being very upset about this exclusion when Dr. Gastorf explained it to me.

August 2007 oral complaint to Jane McMillan. On my first day at work presenting as female, Jane McMillan came by my office to see how I was doing. During this meeting, McMillan asked me if I wanted to step out of the office and “go talk in the restroom.” I then complained to McMillan that I was not permitted to enter any multi-stall women’s restrooms on the SEOSU campus. I advised that SEOSU Human Resources had expressly prohibited me from using all multi-stall women’s restrooms on the SEOSU campus.

Sometime in 2009, oral complaint to Charlie Babb. Sometime in 2009 I attended an event on the SEOSU campus that I believe was titled “Respectful Workplace.” Charlie Babb, general counsel for RUSO, was the speaker. Among other things, Babb advised attendees that transgender employees were not a “protected class” and that transgender persons “can no more bring suit [for workplace discrimination] than people who tattoo their faces.” Babb callously laughed after making this remark. Babb went on to say—continuing to compare transgender persons to persons with tattoos on their faces— “you can fire them with impunity.” Continuing the analogy further, Babb said, “you would never hire someone who had tattooed their face, would you?” Babb laughed mockingly again. At that point I raised my hand (as I intended to publicly complain about Babb’s flagrantly offensive remarks), but Babb ignored me and moved on. I felt humiliated by Babb’s remarks as many of my friends and colleagues (including, but not limited to, Jane McMillan and Daniel Althoff) were in attendance. At some point during this event Babb distributed handouts to attendees. The handout was several pages long. After the

event was over, I introduced myself to Babb and complained to him that his statements about transgender persons were deeply offensive. I further complained to Babb that it was inappropriate to mock transgender people during an event billed as addressing issues in a “respectful workplace.” I also requested that Babb not make disparaging comments about transgender persons in future presentations. Though Babb listened to my oral complaints, Babb did not apologize for his remarks or offer any conciliatory words.

Late August 2009 oral complaint to Lucretia Scoufos. In late August 2009 I met with Lucretia Scoufos to discuss the process for applying for promotion and tenure during the 2009-10 term. During this meeting Scoufos asked me if there was anyone who I did not want on my committee. In response to Scoufos’ question, I advised that I thought Lisa Coleman had been treating me differently since I started presenting as female at work and that, because of this, I did not want Coleman to sit on my committee. I specifically told Scoufos that I thought that Coleman did not invite me on an honor’s field trip and that I thought I was not invited because of some kind of anti-transgender bias.

October 27, 2009 email complaint to John Mischo. On or about October 27, 2009 John Mischo sent me an email advising me that Lisa Coleman, Randy Prus, Paula Smith Allen, Mark Spencer, and Virginia Parrish had been assigned to my committee and that Lisa Coleman had been designated the committee chair. I replied to Mischo’s email and complained that I had already discussed this issue with Scoufos and we had agreed that Spencer would chair my committee. I also complained to Mischo that Scoufos had agreed that Coleman should not be on my committee and that Daniel Althoff would serve instead.

October 29, 2009 oral complaint to Lucretia Scoufos. On this day I met with Lucretia Scoufos, Mischo also attended the meeting. During this meeting I complained to Scoufos about

Coleman's placement on my tenure and promotion committee. During this meeting I reminded Scoufos that I had previously complained about what I believed at the time to be a bias incident involving Coleman. Despite my protest, Scoufos insisted on Coleman serving on my committee and chairing the committee.

January 19, 2010 email complaint to Kenneth Chinn. I complained to Mr. Chinn (then serving as Faculty Senate Chair at SEOSU) that my 2009-10 application for promotion and tenure was denied and that I believed that the denial violated SEOSU's written policies and procedures concerning applications for promotion and tenure.

January 19, 2010 email complaint to Jane McMillan. I complained to Jane McMillan that Dean Scoufos suggested denying my application for tenure and promotion and recommended a one-year terminal contract. In this email, I noted that "I've worked so hard to earn the acceptance of my colleagues and students—I guess administration was a bridge too far."

February 2010 oral complaints to John Mischo. I met with Mischo (at the time, Mischo was Chair of the English Department at SEOSU) on several occasions throughout February 2010. During these meetings I told Mischo that I believed that Scoufos and McMillan SEOSU had denied my 2009-10 application for promotion and tenure in violation of SEOSU's written policies and procedures concerning applications for promotion and tenure. During these conversations, I indicated that I believed that my application was denied because of sex discrimination.

February 2010 oral complaint to Mark Spencer. I orally complained to Spencer sometime in February 2010. I recall that I told Spencer that I believed that Scoufos and McMillan had denied my 2009-10 application for promotion and tenure in violation of SEOSU's written policies and procedures concerning applications for promotion and tenure. During these

conversations, I indicated that I believed that my application was denied because of sex discrimination.

February 4, 2010 email complaint to Mark Spencer. On this day I sent an email reply to Spencer further complaining about Scoufos' decision to vote against my tenure and promotion.

February 5, 2010 oral complaint to Jane McMillan. On this day I had lunch with Jane McMillan. During our lunch, I complained to Ms. McMillan that Dean Scoufos had denied my 2009-10 application for promotion and tenure. During this conversation, Ms. McMillan told me that her brother Douglas McMillan was prejudiced against transgender persons. I recall Ms. McMillan expressly telling me that she did not share her brother's prejudices.

February 16, 2010 email complaint to John Mischo. On this day I sent an email to Mischo and attached drafts of complaint letters addressed to Douglas McMillan and Scoufos. I asked Mischo for feedback on my complaint letters.

February 16, 2010 email complaint to Mark Spencer. On this day I sent an email to Spencer and attached drafts of complaint letters addressed to Douglas McMillan and Scoufos. I asked Spencer to give me feedback on my complaint letters.

February 16, 2010 email complaint to Virginia Parrish. On this day I sent an email to Parrish with drafts of complaint letters addressed to Douglas McMillan and Scoufos. I asked Parrish to give me feedback on my complaint letters.

February 19, 2010 email complaint to Corie Delashaw. On this day Delashaw emailed me advising that she had spoken to Kenneth Chinn about Scoufos and McMillan voting to deny my application for tenure and promotion. Delashaw asked me whether I was given a reason for the denials. I wrote back to Delashaw and advised that "McMillan didn't provide any reason—

just one single sentence: ‘This is to provide notification of my recommendation to the President that you NOT be granted promotion to Associate Professor with tenure’.” I further advised Delashaw that I would be requesting a meeting with Minks the next week “before he makes his decision” and that I planned to write to “McMillan and Scoufos requesting that they provide a rationale for their decisions.”

February 19, 2010 email complaint to Lucretia Scoufos. On this day I emailed Scoufos a letter wherein I complained about her vote to deny my application for promotion and tenure and requested that she provide me with a clear explanation of why she voted to deny my application. Mischo was cc’d on this email. Scoufos replied that “I do not discuss these matters over email” and advised me to contact her administrative assistant to make an appointment to see her.

February 19, 2010 email complaint to Douglas McMillan. On this day I emailed Douglas McMillan a letter wherein I complained about his vote to deny my application for promotion and tenure and requested that he provide me with a clear explanation of why he voted to deny my application. Mischo was cc’d on this email. McMillan replied that “It is my policy not to handle inquiries [*sic.*] like this by email. You should first make an appointment with [Scoufos], I believe she is fully capable of responding to your inquiry. If you are not satisfied with the answer you receive from Scoufos, you should make an appointment with my assistant . . . I also ask that you invite Dr. Scoufos and Dr. Mischo to the meeting.”

February 25, 2010 meeting with Lucretia Scoufos and John Mischo. I met with Scoufos at 2pm on this day. Mischo also attended this meeting. During this meeting I complained to Scoufos that she did not provide me with an explanation for why she voted to deny my 2009-10 application for promotion and tenure. Scoufos refused to give an explanation.

Scoufos advised me that she would not discuss her vote until after Minks voted.

February 26, 2010 email complaint to Mark Spencer. On this day I sent an email to Spencer complaining that Scoufos would not tell me why she voted against my application for tenure and promotion and that Douglas McMillan advised me that “he supports Scoufos—but she won’t explain her rationale—so you see the problem.” I then advised Spencer that I would be filing an appeal with the Faculty Appellate Committee and attached a draft of my complaint to the email.

February 26, 2010 email complaint to Corie Delashaw. On this day I sent an email to Delashaw advising her that Scoufos and McMillan had refused “to offer any explanation for their decision, so I’m filing an appeal with the faculty appellate committee.” I attached a draft of my complaint to the Faculty Appellate Committee.

February 26, 2010 written complaint to Lawrence Minks. I sent Minks (then the President of SEOSU) a written grievance requesting a hearing before the SEOSU Faculty Appellate Committee (FAC) alleging that I had been denied due process when Scoufos and Douglas McMillan refused to explain or otherwise provide substantive explanations for their decisions to oppose my 2009-10 application for promotion and tenure.

March 2, 2010 attempted oral complaint to Douglas McMillan. In late February 2010 I made an appointment to speak with McMillan to complain about Scoufos and McMillan not providing me with an explanation as to why they voted to deny my application for promotion and tenure. A meeting was booked for March 2, 2010 at 2.30pm. However, shortly before that meeting was convened I received an email from McMillan’s assistant informing me that, “Dr. McMillan would like to postpone the meeting until after the Faculty Appeals Committee and President make their decision. You will be contacted with a new meeting date and time.” I was

never contacted by McMillan or his assistant to advise of a new meeting date and time.

April 7, 2010 complaint letter to Lawrence Minks. On this day I sent Minks a letter complaining about Scoufos and McMillan's votes to deny my 2009-10 application for promotion and tenure as well as their refusal to provide me with explanations as to why they had voted to deny my application.

April 6, 2010 complaint letter to Lucretia Scoufos. On this day I sent Scoufos a letter wherein I complained about a meeting I had had with her earlier that day. In my letter, I complained that Scoufos had demanded during the April 6, 2010 meeting that I "withdraw my application for promotion and tenure." Lawrence Minks, Douglas McMillan, and John Mischo were cc'd.

April 9, 2010 email complaint to Mark Spencer. On this day I complained to Spencer that I had been called into Scoufos' office earlier that week and was "told to either withdraw my application for tenure or face termination." I advised Spencer that I had written Scoufos a letter complaining about that meeting. I also complained to Spencer that "I have verbally asked President Minks' assistant for an appointment without success" and attached a copy of the letter I sent Minks on April 7, 2010.

April 29, 2010 written complaint to Kenneth Chinn. On this day I sent Chinn a letter detailing my concerns about Scoufos and McMillan voting against my 2009-10 application for promotion and tenure. Among other things, I expressly advised Chinn that I believed that I was denied promotion and tenure because of sex discrimination.

April 2010 oral complaint to Lisa Coleman. Sometime in April 2010 I orally complained to Coleman about Scoufos and McMillan voting against my 2009-10 application for promotion and tenure and that I believed both Scoufos and McMillan violated SEOSU's written

policies and procedures concerning application for promotion and tenure. Among other things, I expressly advised Coleman that I believed that I was denied promotion and tenure because of sex discrimination.

April 2010 oral complaint to Corie Delashaw. Sometime in April 2010 I orally complained to Delashaw about Scoufos and McMillan voting against my 2009-10 application for promotion and tenure and that I believed both Scoufos and McMillan violated SEOSU's written policies and procedures concerning application for promotion and tenure. Among other things, I expressly advised Delashaw that I believed that I was denied promotion and tenure because of sex discrimination.

May 2010 oral complaint to Virginia Parrish. Sometime in April 2010 I orally complained to Parrish about Scoufos and McMillan voting against my 2009-10 application for promotion and tenure and that I believed both Scoufos and McMillan violated SEOSU's written policies and procedures concerning application for promotion and tenure. Among other things, I expressly advised Parrish that I believed that I was denied promotion and tenure because of sex discrimination.

May 2010 oral complaint to Dan Althoff. Sometime in May 2010 I orally complained to Althoff about Scoufos and McMillan voting against my 2009-10 application for promotion and tenure and that I believed both Scoufos and McMillan violated SEOSU's written policies and procedures concerning application for promotion and tenure. Among other things, I expressly advised Althoff that I believed that I was denied promotion and tenure because of sex discrimination.

May 5, 2010 written appeal to Lawrence Minks. On this day I sent a written appeal to Minks. In my letter I complained about Charles Weiner's decision on April 29, 2010 that Mink's

decision to vote against my 2009-10 application for promotion and tenure “moots the judgment of the Faculty Appellate Committee in regards to the Committee’s decision that Dr. Scoufos and Dr. McMillan should provide detailed written explanations that clearly delineate the factors that led to their decisions to disagree with the Faculty’s Tenure and Promotion Committee.”

August 30, 2010 written complaint to Lawrence Minks. On this day I sent a written grievance to Minks requesting a hearing before the Faculty Appeals Committee. Among other things, I alleged that my 2009-10 application for promotion and tenure had been denied because of sex discrimination.

August 30, 2010 written complaint to Claire Stubblefield. On this day I sent a written grievance to Stubblefield alleging, *inter alia*, that SEOSU’s decision to deny my 2009-10 application for promotion and tenure was discriminatory and expressly complained that bias was motivated by my sex.

August 31, 2010 written complaint to U.S. Department of Education. On this day I sent a letter to the Department of Education (“DOE”). The letter complained that my 2009-10 application for promotion and tenure had been denied and that I believed the denial was motivated by bias. This letter also complained of a hostile work environment. For example, the letter referenced “odious bullying” and “hostile attitude arising from discrimination” and “adversarial and hostile demeanor toward a Native American woman.” I have been advised that this letter was later forwarded by the DOE to the U.S. Equal Employment Opportunity Commission (“EEOC”).

September 14, 2010 email complaint to Claire Stubblefield. On this day I emailed Stubblefield and complained that Scoufos had originally placed a letter dated January 12, 2010 in my folder which did not set forth an explanation for why Scoufos voted against my 2009-10

application for promotion and tenure, and had, at some point between January 12 and September 14, 2010, placed a new apparently backdated letter in my folder that set forth explanations for denying my application that had never before been disclosed to me. I expressly complained that the second letter was different than the one sent to me by Scoufos in January 2010. I told Stubblefield that I was concerned that the new Scoufos letter was manufactured in an attempt to hide Scoufos' original denial letter. I attached copies of both of Scoufos' letters to this email.

September 14, 2010 email complaint to Mark Spencer. On this day I emailed Spencer and that Scoufos had originally placed a letter dated January 12, 2010 in my folder which did not set forth an explanation for why Scoufos voted against my 2009-10 application for promotion and tenure, and had, at some point between January 12 and September 14, 2010, placed a new apparently backdated letter in my folder that set forth explanations for denying my application that had never before been disclosed to me. I expressly complained that the second letter was different than the one sent to me by Scoufos in January 2010.

September 14, 2010 email complaint to Mark Mischo. On this day I emailed Mischo that Scoufos had originally placed a letter dated January 12, 2010 in my folder which did not set forth an explanation for why Scoufos voted against my 2009-10 application for promotion and tenure, and had, at some point between January 12 and September 14, 2010, placed a new apparently backdated letter in my folder that set forth explanations for denying my application that had never before been disclosed to me. I expressly complained that the second letter was different than the one sent to me by Scoufos in January 2010.

September 16, 2010 supplemental grievance to Charles Weiner. On this day I sent Charles Weiner (then an Assistant Vice President at SEOSU) additional written information supplementing my pending grievance regarding SEOSU's decision to deny my 2009-10

application for promotion and tenure.

September 24, 2010 oral complaint to Claire Stubblefield. On this day I orally complained to Stubblefield that Scoufos had originally placed a letter dated January 12, 2010 in my folder which did not set forth an explanation for why Scoufos voted against my 2009-10 application for promotion and tenure, and had, at some point between January 12 and September 14, 2010, placed a new apparently backdated letter in my folder that set forth explanations for denying my application that had never before been disclosed to me. I expressly complained that the second letter was different than the one sent to me by Scoufos in January 2010. I told Stubblefield that I was concerned that the new Scoufos letter was manufactured in an attempt to hide Scoufos' original denial letter.

September 24, 2010 email complaint to Byron Clark. On this day I sent an email to Clark complaining that Scoufos had originally placed a letter dated January 12, 2010 in my folder which did not set forth an explanation for why Scoufos voted against my 2009-10 application for promotion and tenure, and had, at some point between January 12 and September 14, 2010, placed a new apparently backdated letter in my folder that set forth explanations for denying my application that had never before been disclosed to me. I expressly complained that the second letter was different than the one sent to me by Scoufos in January 2010. I told Clark that I was concerned that the new Scoufos letter was manufactured in an attempt to hide Scoufos' original denial letter.

October 2010 oral complaint to William Fridley. Sometime in October 2010 I orally complained to Fridley (then serving as Chair of Personnel Policies Committee) that I believed SEOSU had denied my 2009-10 application for promotion and tenure in violation of SEOSU's written policies and procedures concerning applications for promotion and tenure. I also

indicated that I believed that my application was denied because of sex discrimination.

October 2010 oral complaint to Margaret Cotter-Lynch. Sometime in October 2010 I orally complained to Cotter-Lynch that I believed that SEOSU had denied my 2009-10 application for promotion and tenure in violation of SEOSU's written policies and procedures concerning applications for promotion and tenure. I also indicated that I believed that my application was denied because of sex discrimination.

October 7, 2010 email complaint to Daniel Althoff, John Mischo, Lisa Coleman, Mark Spencer, Paula Smith Allen, Virginia Parrish, and Randy Prus. On this day I sent an email complaint to Althoff, Coleman, Spencer, Smith Allen, Parrish, and Prus. In my email I complained that I had received a letter from Douglas McMillan advising me that I was not permitted to re-apply for promotion and tenure during the 2010-11 application cycle. I attached a copy of McMillan's letter to my email.

October 7, 2010 email complaint to Claire Stubblefield. On this day I sent an email complaint to Stubblefield alleging that McMillan's October 5, 2010 letter advising me that I was not permitted to reapply for promotion and tenure during the 2010-11 application cycle was retaliatory.

October 11, 2010 written complaint to SEOSU Faculty Appellate Committee and Lawrence Minks. On this day I sent a letter to the SEOSU Faculty Appellate Committee and Lawrence Minks, challenging SEOSU's decision to not permit me to re-apply for promotion and tenure during the 2010-11 application cycle.

October 14, 2010 complaint letter sent to Claire Stubblefield. On this day I sent a letter to Claire Stubblefield via email wherein I added additional allegations to the grievance I filed on August 30, 2010.

October 15, 2010 email to Margaret Cotter-Lynch. On this day I sent an email to Cotter-Lynch complaining about Douglas McMillan's decision to not let me re-apply for tenure and promotion during the 2010-11 application cycle and other matters.

October 15, 2010 email to John Mischo. On this day I sent an email to Mischo complaining about Douglas McMillan's decision to not let me re-apply for tenure and promotion during the 2010-11 application cycle and other matters.

October 28, 2010 amended complaint filed with Claire Stubblefield. On this day I filed an amended complaint with Claire Stubblefield, formally amending the complaint I filed with Stubblefield on August 20, 2010.

November 2010 oral complaint to Karen Prus. I visited Karen Prus sometime in November 2010 at the new Social Science building on the SEOSU campus. During our visit, Prus took me on a tour of the new building. At some point, Prus asked me if I would like to continue our conversation in the nearby women's multi-stall restroom. I then complained to Prus that I was not permitted to enter any multi-stall women's restrooms on the SEOSU campus. I then indicated that SEOSU Human Resources had expressly prohibited me from using all multi-stall women's restrooms on the SEOSU campus.

November 8, 2010 email to Claire Stubblefield. On this day I sent Stubblefield an email in connection with my pending grievances that advised her of a "Dear Colleague Letter" Issued by the U.S. Department of Education that explicitly stated that discrimination on the basis of gender identity is prohibited by federal law.

January 9, 2011 email complaint to Charla Hall. On this day I sent a letter (attached to an email) to Charla Hall (then serving as Chair of the FAC's hearing committee). This letter complained about Charles Weiner's January 4, 2015 letter wherein he informed me that, in his

capacity as the President's Designee, he disagreed with the findings of the FAC Hearing Committee.

Spring 2011 oral complaints to John Mischo, Lisa Coleman, Margaret Cotter-Lynch, Virginia Parrish, and Paula Smith Allen. I orally complained to Mischo, Coleman, Cotter-Lynch, Parris, and Smith Allen about Stubblefield's January 2011 report.

January 19, 2011 email to Lisa Coleman. On this day I sent an email to Coleman complaining about Stubblefield's January 2011 report. Among other things, I complained that Stubblefield's report did not mention an interview Stubblefield conducted with Coleman and heavily drew from statements attributed to Randy Prus.

January 31, 2011 email complaint to William Fridley. On this day I sent an email to Fridley complaining about an email I received from Byron Clark earlier that day. Specifically, I complained to Fridley that Clark (and other members of the SEOSU administration) did not appear to inform the Faculty Senate of *ex parte* changes to the Policies and Procedures Manual and, without Faculty Senate input, had adopted new policies and procedures by which my grievance would be administered.

February 7, 2011 email complaint to William Fridley. On this day I sent an email to Fridley wherein I attached a draft of my response to Byron Clark's January 31, 2011 email informing me of newly adopted policies and procedures that the SEOSU administration planned on using to administer my pending grievance. I asked Fridley for feedback on my draft letter.

February 7, 2011 email complaint to Corie Delashaw. On this day I sent an email to Delashaw wherein I complained about Byron Clark's January 31, 2011 email informing me of newly adopted policies and procedures that the SEOSU administration planned on using to administer my pending grievance.

February 7, 2011 email complaint to Byron Clark. On this day I sent an email to Clark. I attached a letter wherein I complained about Clark's January 31, 2011 email informing me of newly adopted policies and procedures that the SEOSU administration planned on using to administer my pending grievance.

February 11, 2011 email complaint to William Fridley. On this day I sent an email to Fridley complaining about an email I received earlier that day from Byron Clark advising me that the SEOSU administration would use the newly adopted policies and procedures outlined in Clark's January 31, 2011 email.

February 18, 2011 email complaint to Daniel Althoff, John Mischo, Margaret Cotter-Lynch, Mark Spencer, Paula Smith Allen, Randy Prus, Virginia Parrish, and Wilma Shires. On this day I sent an email to Althoff, Mischo, Cotter-Lynch, Spencer, Smith Allen, Prus, Parrish, and Shires. Among other things, I complained about Walkup's decision to issue his own "recommendation" that I not be permitted to apply for promotion and tenure during the 2010-11 application cycle as well as the SEOSU administration's decision to devise new policies and procedures for administering my grievance without input from the Faculty Senate.

March 4, 2011 appeal of Walkup's January 2011 decision. On this day I sent Byron Clark an appeal of Ross Walkup's January 2011 decision (made in Walkup's capacity as the President's Designee).

March 29, 2011 email complaint to Caryn Witten, Daniel Althoff, Janet Barker, John Mischo, Kim McGehee, Lisa Coleman, Margaret Cotter-Lynch, Mark Spencer, Paula Smith Allen, Randy Prus, Virginia Parrish, and Wilma Shires. On this day I sent an email to Althoff, Mischo, McGehee, Coleman, Cotter-Lynch, Spencer, Smith Allen, Prus, Parrish, and

Shires. In my email I advised that a new report shows “how widespread and hurtful discrimination is around the country—it is not just SE or Oklahoma,” and linked to an NPR.org news story that discussed the findings of a new report on transgender discrimination in the United States. That report is: NAT’L CTR. TRANSGENDER EQUALITY & NAT’L GAY & LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY (2011), *available at* http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

April 4, 2011 complaint email to Daniel Althoff, John Mischo, Kim McGehee, Lisa Coleman, Margaret Cotter-Lynch, Mark Spencer, Paula Smith Allen, Virginia Parrish, Wilma Shires. On this day I sent an email to Althoff, Mischo, McGehee, Coleman, Cotter-Lynch, Spencer, Smith Allen, Parrish, and Shires. Among other things, I complained that on April 2, 2011 Minks “decided to reject the judgment of the Faculty Appellate Committee and the formal request of the Faculty Senate to honor the FAC decision.”

April 28, 2011 email complaint to Anita Levy. On this day I sent an email complaint to Anita Levy (then the Senior Program Officer of the American Association of University Professors). Among other things, I complained about the SEOSU administration’s denial of my 2009-10 application for promotion and tenure and the SEOSU administration’s decision to not let me reapply for promotion and tenure during the 2010-11 application cycle.

May 2011 Oral complaint memorialized in article by David Tafet. I was interviewed by David Tafet during Spring 2011. Among other things, I complained to Tafet that my 2009-10 application for promotion and tenure had been denied and that I believed the denial was motivated by my sex. A copy of the final article published by the *Dallas Voice* on May 5, 2011.

July 2011 supplemental charge of discrimination filed with EEOC. On or about July

6, 2011 I filed a supplemental charge of discrimination with the EEOC.

Summer 2011 online petition seeking reinstatement. Sometime during Summer 2011 Margaret Cotter-Lynch launched an online petition hosted on thepetitionsite.com seeking reinstatement on my behalf. The petition was addressed to the attention of Sheridan McCaffree and the Regents of the Regional University System of Oklahoma. Upon information and belief, Cotter-Lynch hand delivered a printed copy of the petition with all 4080 signatories to RUSO sometime after October 22, 2011.

Publicly accessible blog entries calling for assistance and sharing information about discrimination and retaliation by SEOSU and RUSO agents and employees. Between 2011 and 2012 I wrote several entries on a publicly accessible blog. Among other things, these entries exhaustingly detail many of my experiences of discrimination and retaliation by SEOSU and RUSO and I sought help from members of the public. For example, in an April 18, 2011 entry I asked readers to reach out to the Regional University System of Oklahoma and provided contact information for Sheridan McCaffree.

Interrogatory No. 3: *Please identify each RUSO or SEOSU agent or employee who has admitted to you that he or she discriminated against, or harassed, you.*

RESPONSE: No RUSO or SEOSU agents have admitted directly to me that they have discriminated against and/or harassed me.

Interrogatory No. 4: *Please identify each person who has told you that he or she personally witnessed discrimination or harassment directed at you.*

RESPONSE: Plaintiff/Intervenor objects to this Interrogatory on the grounds that it is unduly burdensome and unnecessarily cumulative or duplicative. Defendants are entitled to seek discovery reasonably calculated to ascertain whether Plaintiff/Intervenor has evidence of discrimination and/or harassment, but she need not produce or exactly describe each and

every time a SEOSU or RUSO employee or agent advised her that they witnessed discrimination or harassment directed at Plaintiff/Intervenor.

Interrogatory No. 5: *Please identify each person who has been allowed to re-apply for tenure (after tenure denial) at Southeast Oklahoma State University, ("SEOSU").*

RESPONSE: Plaintiff/Intervenor is aware of the following persons who have been permitted to apply for tenure two or more times at SEOSU: Claire Stubblefield, William Fridley, Steve McKim, and Rachel Tudor (applied in 2008-09 and 2009-10).

Interrogatory No. 6: *Please identify all legal names and/or aliases by which Intervenor has been known, and the relevant dates/timespans for each moniker.*

RESPONSE: Plaintiff/Intervenor objects to this Interrogatory on the grounds that it is overbroad as to temporal scope. Plaintiff/Intervenor alleges she endured discrimination and retaliation from Summer 2007 through her termination in May 2011. Names and aliases that Plaintiff/Intervenor used outside of this period are not relevant and are not reasonably calculated to lead to relevant discovery. *See, e.g., Nuskey v. Lambricht*, 251 FRD 3, 9 (D.D.C. 2008) (recognizing that discovery requests in Title VII suits should request information reasonably related to the circumstances involved in the alleged discrimination and to a time frame involving the alleged discriminatory conduct); *Cazorla v. Koch Foods of Mississippi, LLC*, 287 F.R.D. 388, 390 (S.D. Miss. 2012) *on reconsideration in part*, No. 3:10CV135-DPJ-FKB, 2014 WL 281979 (S.D. Miss. Jan. 24, 2014) (denying discovery of other nicknames or aliases outside the employment period); *Benitez v. Am. Standard Circuits, Inc.*, No. 08 CV 1998, 2009 WL 4043290, at *5 (N.D. Ill. Nov. 23, 2009) (holding request for all documents relating to legal identity and aliases burdensome, harassing, overly broad and not relevant under Rule 26.)

Subject to and without waiving these objections, Plaintiff Intervenor first applied for a position with Defendants in 2004. At the time she was known by the name "Robert Tudor" as

well as “T.R. Tudor.” Plaintiff/Intervenor notified Defendant SEOSU in Summer 2007 that she had changed her name to “Rachel Tudor.” Plaintiff/Intervenor consistently went by the name “Rachel Tudor” thereafter.

Interrogatory No. 7: *Please identify and describe, (as per definition nos. 8, 9, and 10, above), the circumstances and date of the "phone call from an employee of Southeastern's human resources office" described in Paragraph 40 of Plaintiff/Intervenor's Complaint.*

RESPONSE: On or around June 1, 2007 I received a phone call from Cathy Conway. Conway advised me that she had spoken with John Mischo as well as Douglas McMillan about my transition to female. Conway then told me that there were certain “conditions” that I must abide by to continue my employment at SEOSU. Conway clarified that it was “very important” that I scrupulously abide by these conditions because Douglas McMillan had inquired as to whether I could be fired because I am a transgender woman. At some point, Conway told me that Douglas McMillan told her that my transgender “lifestyle” was an offense to his religious beliefs. I took Conway’s statement about McMillan’s inquiry as implying that I would be summarily terminated if I did not abide by the “conditions” set forth by Conway during the call.

Conway then went on to advise me of the “conditions” of continued employment. Conway counseled that I was not permitted to wear “short skirts” and advised to not “over do it on the makeup” and that “we’ll see how it goes.” Conway also advised that I was being restricted to one, single-stall restroom located on the second floor of the Morrison building. I was expressly counseled that I could not use any multi-stall women’s restroom on the SEOSU campus. After setting forth the conditions of continued employment, Conway advised that SEOSU would process my request to change my name and gender on my SEOSU records before the Fall 2007 semester started. Then the call ended.

I felt alarmed and threatened as a result of Conway’s call. I expected that transitioning to

female at work might be difficult, but I did not believe that I could be summarily terminated because of my sex. Conway's comments about McMillan's inquiry as well as his open prejudice against transgender persons were deeply disturbing and made me feel very anxious and fearful for my future at SEOSU.

Interrogatory No. 8: *Please identify and describe, (as per definition nos. 8, 9, and 10, above), the date and circumstances of Jane McMillan and/or Vice-President McMillan telling you that she/he, or anyone else considered you, your identity, or your lifestyle to be a grave offense to her/his sensibilities.*

RESPONSE: Plaintiff/Intervenor incorporates by reference her answer to Interrogatory No. 7.

In addition, on February 5, 2010 Plaintiff/Intervenor had lunch with Jane McMillan. During the lunch, Plaintiff/Intervenor complained to Ms. McMillan that Dean Scoufos had denied her 2009-10 application for promotion and tenure. During this conversation, Ms. McMillan told Plaintiff/Intervenor that her brother Douglas McMillan was prejudiced against transgender persons. Plaintiff/Intervenor recalls Ms. McMillan expressly telling Plaintiff/Intervenor that she did not share her brother's prejudices.

Interrogatory No. 9: *Please identify all persons of whom you are aware that have knowledge of the factual bases of the allegations contained in Plaintiff's Complaint.*

RESPONSE:

- a. Teresa Anderson
- b. Paula Smith Allen
- c. Dan Althoff
- d. Kenneth Chinn
- e. Lisa Coleman
- f. Margaret Cotter-Lynch
- g. Cathy Conway
- h. Byron Clark
- i. Corie Delashaw
- j. William Fridley
- k. Charla Hall
- l. Jeffrey Gastorf

- m. Pam Goodwin
- n. Lawrence Minks
- o. John Mischo
- p. Douglas McMillan
- q. Virginia Parrish
- r. Karen Prus
- s. Lucretia Scoufos
- t. Mark Spencer
- u. Claire Stubblefield
- v. Rachel Tudor
- w. Charles Weiner
- x. All persons listed in Plaintiff/Intervenor's Rule 26(a) disclosures.
- y. All persons listed in response to Interrogatory 2.

Interrogatory No. 10: *Please identify and describe, (as per definition nos. 8, 9, and 10, above), the date and circumstances of Intervenor being told by "an employee of Southeastern's human resources office" which restrooms Intervenor should use and not use, as alleged in Paragraphs 45 and 46 of Plaintiff/Intervenor's Complaint. This should include identification of the names of the person(s) who so directed Intervenor.*

RESPONSE: On or around June 1, 2007 I received a phone call from Cathy Conway. Conway advised me that she had spoken with John Mischo as well as Douglas McMillan about my transition to female. Conway then told me that there were certain "conditions" that I must abide by to continue my employment at SEOSU. Conway clarified that it was "very important" that I scrupulously abide by these conditions because Douglas McMillan had inquired as to whether I could be fired because I am a transgender woman. At some point, Conway told me that Douglas McMillan told her that my transgender "lifestyle" was an offense to his religious beliefs. I took Conway's statement about McMillan's inquiry as implying that I would be summarily terminated if I did not abide by the "conditions" set forth by Conway during the call.

Conway then went on to advise me of the "conditions" of continued employment. Conway counseled that I was not permitted to wear "short skirts" and advised to not "over do it on the makeup" and that "we'll see how it goes." Conway also advised that I was being restricted to one, single-stall restroom located on the second floor of the Morrison building. I was

expressly counseled that I could not use any multi-stall women's restroom on the SEOSU campus. After setting forth the conditions of continued employment, Conway advised that SEOSU would process my request to change my name and gender on my SEOSU records before the Fall 2007 semester started. Then the call ended.

I felt alarmed and threatened as a result of Conway's call. I expected that transitioning to female at work might be difficult, but I did not believe that I could be summarily terminated because of my sex. Conway's comments about McMillan's inquiry as well as his open prejudice against transgender persons were deeply disturbing and made me feel very anxious and fearful for my future at SEOSU.

Interrogatory No. 11: *Please identify and describe the details of all tenure-track professorships for which you have applied since leaving Southeastern Oklahoma State University.*

RESPONSE: Plaintiff/Intervenor objects to this Interrogatory on the grounds that it is unduly burdensome and unnecessarily cumulative or duplicative. Defendants are entitled to seek discovery reasonably calculated to ascertain whether Plaintiff/Intervenor has satisfied her obligation to mitigate damages, but she need not produce or exactly describe each and every application she submitted. *See, e.g., EEOC v. Unit Drilling Co.*, 2014 WL 3572219, *3 (N.D. Okla. 2014) (holding that party's request for "all job applications" during relevant time period was not proportionate to needs of the case).

Subject to and without waiving these objections, Plaintiff/Intervenor applied for teaching positions at over one-hundred institutions of higher education between Fall 2011 and accepting a position at Collin College in Summer 2012, including, but not limited to:

1. Arizona State University (Tempe, Arizona)
2. Averett University (Danville, Virginia)
3. Bainbridge College (Bainbridge, Georgia)
4. Ball State University (Muncie, Indiana)

Request for Admission No. 8: *Admit that in 2010 you were given the opportunity to withdraw your tenure application, but you refused that opportunity.*

RESPONSE: Plaintiff/Intervenor objects on the grounds that this Request for Admission is vague and incomprehensible insofar as the terms “opportunity,” “tenure application,” and “refused” are not defined. *See, e.g., Perez v. Aircom Management Corp., Inc.*, 2013 WL 45895 (S.D. Fla. 2013) (party’s failure to define phrase “indirectly purchased” in request for admission rendered request incomprehensible).

Subject to and without waiving these objections, Plaintiff/Intervenor denies this Request for Admission. Plaintiff/Intervenor admits that on or about April 6, 2010 Lucretia Scoufos called Plaintiff/Intervenor into a private meeting. During this meeting, Scoufos demanded that Plaintiff/Intervenor immediately withdraw her 2009-10 application for promotion and tenure and advised Plaintiff/Intervenor that if she withdrew her application that Plaintiff/Intervenor would be granted tenure during the 2010-11 academic year. Scoufos further promised that Plaintiff/Intervenor would be promoted during the 2011-12 academic year. Plaintiff/Intervenor then asked Scoufos to put the offer in writing or otherwise memorialize it. Scoufos refused to put the offer in writing or otherwise memorialize the offer. Scoufos then advised Plaintiff/Intervenor that she must immediately withdraw her 2009-10 application for promotion and tenure before the meeting ended. Plaintiff/Intervenor advised Scoufos that she could not withdraw her application without a written or other memorialization of the offer to grant tenure during the 2010-11 academic year and grant promotion during the 2011-12 academic year. Dean Scoufos again declined to memorialize the offer. At some point, Plaintiff/Intervenor and Scoufos discussed the possibility of Plaintiff/Intervenor reapplying for promotion and tenure during the 2010-11 cycle. At some point, Scoufos threatened Plaintiff/Intervenor with retaliation, stating, “you *may* reapply [for promotion and tenure in the 2010-11 cycle] but it doesn’t say we *have to* let you.” Scoufos

then added, “You may think you are safe because the date for non-renewal of your contract without cause has passed, but you may still be non-renewed with cause if you don’t withdraw your application.” Plaintiff/Intervenor then asked Scoufos if Scoufos was speaking on her own authority or on behalf of Douglas McMillan. Scoufos responded that she was speaking on behalf of Douglas McMillan and Lawrence Minks, and added that all three had met and they decided that Plaintiff/Intervenor must withdraw her 2009-10 application. Plaintiff/Intervenor then advised Dean Scoufos that she would not withdraw her 2009-10 application for promotion and tenure without a written offer, and the meeting ended.

Request for Admission No. 9: *Admit that you have been able to obtain tenure at any institution.*

RESPONSE: Plaintiff/Intervenor objects on the grounds that this Request for Admission is vague and incomprehensible insofar as the terms “able to obtain tenure” and “any institution” are not defined. *See, e.g., Perez v. Aircom Management Corp., Inc.*, 2013 WL 45895 (S.D. Fla. 2013) (party’s failure to define phrase “indirectly purchased” in request for admission rendered request incomprehensible).

Request for Admission No. 10: *Admit that you have never had the responsibility of determining whether or not to recommend a professor be granted tenure.*

RESPONSE: Plaintiff/Intervenor objects on the ground that this Request for Admission does not seek to establish a material fact, related to the elements of Plaintiff/Intervenor’s claims, as true in order to narrow the range of issues for trial. *See, e.g., Heggem v. Monroe Correctional Complex*, 2013 WL 146349, *2–*4 (W.D. Wash. 2013).

Plaintiff/Intervenor further objects on the grounds that this Request for Admission is vague and incomprehensible insofar as the terms “responsibility of determining” and “recommend” are not defined. *See, e.g., Perez v. Aircom Management Corp., Inc.*, 2013 WL

Exhibit 4

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
et al.)	
)	
Plaintiff,)	
)	
VS.	)	Civil Action No.
	)	5:15-CV-00324-C
)	
SOUTHEASTERN OKLAHOMA STATE)	
UNIVERSITY, et al.)	
)	
Defendant.)	

ORAL DEPOSITION OF
DR. RANDY PRUS
MARCH 9, 2016

ORAL DEPOSITION OF DR. RANDY PRUS, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and -numbered cause on the 9th day of March, 2016, from 8:58 a.m. to 4:52 p.m., before Chrissa K. Mansfield-Hollingsworth, CSR in and for the State of Texas, reported by machine shorthand, at the offices of U.S. Attorney's Office, located at 600 East Taylor Street, Suite 2000, Sherman, Texas, pursuant to the Federal Rules of Civil Procedure.

1 Q. Did you -- did you have any concern that the
2 other members of the promotion and tenure committee who
3 voted to recommend that Dr. Tudor get promotion and
4 tenure were motivated by any improper reasons for --
5 when they made their votes?

6 A. No.

7 Q. So the reasons that you voted to recommend not
8 granting promotion and tenure for Dr. Tudor were: One,
9 the application letter; two, the inclusion of the open
10 mic chat books; and, three, this issue of the timing of
11 this publication that you were just talking about; is
12 that correct?

13 A. Correct.

14 Q. In your view, were any of those deficiencies
15 correctable? Could Dr. Tudor have -- let me strike
16 that. In your view, could Dr. Tudor have corrected
17 those deficiencies when she applied the next year after
18 that?

19 MR. JOSEPH: Object to the form.

20 Q. (By Mr. Townsend) Well, let's take them one by
21 one. Strike that. So the application letter, the way
22 it was written, you would agree that could have been
23 corrected the next year?

24 A. Yes.

25 Q. And the issue with the open mic chat books, am

1 I right that you had a concern just about their
2 inclusion in the portfolio, correct?

3 A. Correct.

4 Q. So the next year if she had not included those,
5 that would have corrected that concern for you?

6 A. Correct.

7 Q. And then the other issue, the third issue about
8 the timing of the publication, was that just a matter of
9 including more detail about that so that you could
10 determine the timing of it?

11 MR. JOSEPH: Object to the form.

12 A. No.

13 Q. (By Mr. Townsend) All right. Could that issue
14 have been corrected just by changing the portfolio as
15 opposed to doing more work other than just changing?

16 MR. JOSEPH: Object to the form.

17 A. Yes, changing the portfolio.

18 Q. (By Mr. Townsend) Okay.

19 (Exhibit Number 8 marked)

20 Q. (By Mr. Townsend) I'm handing you what I've
21 marked Plaintiff's Deposition Exhibit 8. Are you
22 familiar with not necessarily this specific form but
23 this form template? So this one -- this form is Bates
24 number -- it's the Defendant's Bates prefix ending in
25 Number 1133 and going on to 1134. And this is a form

1 other, which is okay. I think I'm clear on what you
2 mean. Basically, the recommendation is in this
3 Exhibit 8 for tenure and promotion. And you obviously
4 didn't recommend that, so you didn't agree with that,
5 right?

6 A. I think you need to understand the committee
7 was one vote, all right? I was a part of a committee,
8 but ultimately the committee voted for tenure and
9 promotion. It's not that I was an individual separate
10 from that committee. I'm not like -- I wasn't a chair
11 at that point, and so keep that in mind. There was one
12 vote.

13 Q. Why do you think that's important to keep in
14 mind?

15 A. Because it's the work of a committee.

16 Q. Before Dr. Tudor applied for promotion and
17 tenure in 2009/'10, did she talk to you at all about
18 whether she was ready and qualified to go up for tenure
19 and promotion?

20 A. I don't recall.

21 Q. So did you think that Dr. Tudor's contributions
22 to the Native American Symposium counted as noteworthy
23 service activities?

24 MR. JOSEPH: I'm going to object to the
25 form.

Exhibit 5

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

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

ORAL DEPOSITION OF
JOHN BRETT MISCHO
MAY 5, 2016
VOLUME 1 OF 1

ORAL DEPOSITION OF JOHN BRETT MISCHO, produced as a witness duly sworn by me at instance of Plaintiff, was taken in the above styled and numbered cause on MAY 5, 2016, 8:32 AM to 5:12 PM, before Beth Howard, CSR, State of Texas, reported by Machine Shorthand, at The Office of the United States Attorney, 600 E. Taylor Street, Suite 2000, Sherman, Texas, pursuant to the Federal Rules of Civil Procedure, Notice of Deposition, and provisions stated on the record or attached hereto.

09:24:57 1 administration during the summer, when you were
09:24:59 2 department chair, was not common?

09:25:01 3 A. It was not common to be called to a meeting
09:25:04 4 without being told what it was. There were -- I believe
09:25:10 5 we would normally meet about once a week with the dean
09:25:15 6 or once every other week with the dean, which were
09:25:19 7 scheduled meetings, but, no, it would have been not
09:25:23 8 common.

09:25:23 9 Q. So one aspect of this meeting that was not
09:25:28 10 common was the fact that you were not told in advance
09:25:32 11 what would be discussed at the meeting?

09:25:35 12 A. I was not told in advance.

09:25:42 13 Q. So you said that Cathy Conway spoke at that
09:25:51 14 meeting, correct?

09:25:52 15 A. Yes.

09:25:52 16 Q. What did Ms. Conway say?

09:25:56 17 A. From what I recall of the meeting, it was
09:25:58 18 about restrooms, was all I recall of that discussion, or
09:26:05 19 mostly involved.

09:26:16 20 Q. Had you ever met with Ms. Conway before?

09:26:18 21 A. Not formally or in a meeting, no.

09:26:26 22 Q. Do you recall what Dean Mangrum said at the
09:26:29 23 meeting?

09:26:29 24 A. No.

09:26:31 25 Q. What did Ms. Conway say about restrooms at the

09:26:34 1 meeting?

09:26:40 2 A. I can't remember the specifics, but the -- the
09:26:44 3 decision that -- that they made was to use the
09:26:50 4 restroom -- the unisex handicap restroom in Morrison.

09:27:00 5 Q. So this meeting was about Dr. Tudor using that
09:27:04 6 unisex restroom?

09:27:05 7 A. From my recollection, that's what a great deal
09:27:08 8 of it was, yes.

09:27:09 9 Q. And Ms. Conway said that Dr. Tudor was told to
09:27:13 10 use that unisex restroom?

09:27:17 11 MS. COFFEY: Object to testimony -- I'm
09:27:18 12 sorry, object to the question. That misstates his
09:27:22 13 testimony.

09:27:22 14 Q. (BY MR. TOWNSEND) Let me back up. I'm not
09:27:24 15 trying to say what your testimony was right now. I'm
09:27:26 16 just asking you a question. Okay?

09:27:29 17 Did Ms. Conway say that Dr. Tudor was
09:27:32 18 told to use the unisex restroom?

09:27:37 19 A. I don't recall that, that she said that.

09:27:43 20 Q. What did Ms. Conway say about Dr. Tudor and
09:27:50 21 the unisex restroom?

09:27:52 22 A. I don't recall specifically who said what, but
09:27:56 23 what I recall of the meeting was that that was the
09:27:59 24 decision that had been made.

09:28:02 25 Q. What was the decision?

09:28:03 1 A. That Dr. Tudor use the restroom on the second
09:28:08 2 floor of Morrison.

09:28:09 3 Q. What was your understanding of who made that
09:28:11 4 decision?

09:28:12 5 A. I don't know who made the decision.

09:28:16 6 Q. Did you understand from that meeting that
09:28:22 7 Dr. Tudor had decided that she would use the unisex
09:28:34 8 restroom?

09:28:35 9 A. That's not my understanding, no.

09:28:36 10 Q. So it was your understanding from the meeting
09:28:39 11 that someone other than Dr. Tudor had decided that
09:28:41 12 Dr. Tudor would use the unisex restroom?

09:28:44 13 A. Yes.

09:28:49 14 Q. Was there any discussion about treating
09:28:51 15 Dr. Tudor as a woman going forward?

09:28:54 16 A. I don't recall.

09:29:00 17 Q. Was there any discussion of nondiscrimination
09:29:02 18 policies?

09:29:04 19 A. I can't remember.

09:29:09 20 Q. Did you get the sense that any of the people
09:29:12 21 in that meeting had discussed Dr. Tudor's gender
09:29:14 22 transition with each other before that meeting?

09:29:17 23 A. Yes.

09:29:17 24 Q. Who did you get the sense had discussed it
09:29:20 25 before that meeting?

09:29:26 1 A. At the meeting, it was clear to me that I was
09:29:32 2 the only person at the meeting that did not know about
09:29:36 3 the transition.

09:29:38 4 Q. And that was clear to you based on what was
09:29:41 5 said at the meeting?

09:29:43 6 A. Yes. At one point, I forget who, asked me if
09:29:48 7 I knew what this was about, and I said, "I have no
09:29:51 8 idea." And then I was informed what -- what it was.

09:29:56 9 Q. Do you remember anything about Dr. McMillan's
09:30:12 10 participation in this meeting?

09:30:13 11 A. No.

09:30:19 12 Q. Had you ever discussed what restroom an
09:30:29 13 employee at Southeastern would use before?

09:30:35 14 A. No.

09:30:41 15 Q. After that meeting, was there ever any
09:30:45 16 discussion about what restrooms an employee other than
09:30:50 17 Dr. Tudor would use at Southeastern?

09:30:52 18 A. With me, no.

09:31:00 19 Q. So when was the next time you saw Dr. Tudor
09:31:03 20 after this meeting that we've been talking about?

09:31:11 21 A. I would say within days, a week, two weeks. I
09:31:17 22 don't recall. Over that summer.

09:31:19 23 Q. Was Dr. Tudor working on campus that summer?

09:31:22 24 A. I don't think so.

09:31:25 25 Q. And when you saw Dr. Tudor after that meeting,

14:00:13 1 portfolio as well?

14:00:20 2 A. I -- I did not look at it or review it until
14:00:25 3 after the committee would have made its recommendation.
14:00:32 4 So I may have had possession of it, but I did not review
14:00:37 5 it.

14:00:40 6 Q. Do you remember anything about the Promotion
14:00:46 7 and Tenure Committee's deliberations from that year
14:00:50 8 of -- with respect to Dr. Tudor's application?

14:00:53 9 A. The department chair are -- chairs are not
14:00:56 10 part of that committee, and what the department chair
14:01:01 11 gets is the recommendation of the committee without
14:01:08 12 details or -- or at some times, at some points, we
14:01:15 13 didn't even get the result of a numerical vote; we were
14:01:20 14 just told approved or not approved. But I did not
14:01:23 15 discuss it with the committee, no.

14:01:28 16 Q. Do you recall what the recommendation was from
14:01:42 17 the Promotion and Tenure Committee on Dr. Tudor's
14:01:45 18 application during her fifth year of service?

14:01:52 19 MS. COFFEY: Object to form.

14:02:04 20 A. It's really hazy to me. I know that Dr. Tudor
14:02:10 21 began the procedure three times. Once it was withdrawn,
14:02:15 22 she withdrew it, but I do not recall which years those
14:02:20 23 were.

14:02:23 24 Q. (BY MR. TOWNSEND) Was the first time that she
14:02:25 25 applied the time that she withdrew?

16:12:56 1 Q. Were you aware of any other instances
16:12:59 2 where a -- Strike that.

16:13:54 3 At some point, did you have a meeting
16:13:56 4 with Dr. Scoufos, where Dr. Tudor also attended, and
16:14:03 5 Dr. Tudor asked Dr. ScoufosScoufos to explain the
16:14:05 6 reasons why she would not recommend Dr. Tudor for
16:14:10 7 promotion and tenure?

16:14:12 8 A. Yes.

16:14:17 9 Q. At that meeting, what did Dr. ScoufosScoufos
16:14:18 10 say?

16:14:29 11 A. I believe that was when Dean Scoufos asked
16:14:41 12 Dr. Tudor to withdraw the tenure and promotion
16:14:55 13 application and resubmit the next year.

16:15:16 14 (PLAINTIFF'S EXHIBIT 98 MARKED.)

16:15:32 15 Q. (BY MR. TOWNSEND) Showing you what's been
16:15:34 16 marked Plaintiff's Exhibit 98. Plaintiff's Exhibit 98
16:15:42 17 is Dr. Tudor's response to Defendants' Request for
16:15:48 18 Admission Number 8.

16:15:53 19 I'm going to represent to you,
16:15:57 20 Dr. Mischo, that starting in the second paragraph on the
16:16:05 21 first page of this exhibit, Dr. Tudor explained what she
16:16:12 22 believed happened at the meeting that I think you just
16:16:16 23 referenced. Could you please read that?

16:16:33 24 A. Second paragraph, Page 1?

16:16:29 25 Q. On the first page, in the second paragraph, it

16:16:35 1 begins, where I want you to read, "Plaintiff/Intervenor
16:16:39 2 admits that on or about April 6th, 2010 Lucretia Scoufos
16:16:44 3 called Plaintiff/Intervenor into a private meeting."

16:16:46 4 MR. TOWNSEND: And for the record,
16:16:46 5 "Plaintiff/Intervenor" is referring to Dr. Tudor.

16:16:49 6 A. Okay.

16:17:03 7 Q. (BY MR. TOWNSEND) Did you read until the point
16:17:58 8 on the second page where it says, "Request for Admission
16:18:03 9 Number 9"?

16:18:03 10 A. Right.

16:18:04 11 Q. Does this description of the meeting that
16:18:07 12 Dr. Tudor made in Plaintiff's Exhibit 98 comport with
16:18:24 13 your recollection of what happened at that meeting?

16:18:52 14 A. Allow me to read it again, please.

16:18:56 15 Q. Sure.

16:20:11 16 A. Okay. I'm sorry. The question?

16:20:14 17 Q. Does Dr. Tudor's description of what occurred
16:20:16 18 at this meeting in Plaintiff's Exhibit 98 comport with
16:20:23 19 your recollection of what occurred at the meeting?

16:20:37 20 A. I do recall the recommendation from Dean
16:20:46 21 Scoufos to withdraw the current application. I don't
16:20:57 22 recall Dean Scoufos making any promises or guarantees
16:21:02 23 regarding the next year of tenure or promotion.

16:22:23 24 Q. Is there anything else in the description in
16:22:24 25 Plaintiff's Exhibit 98 about this meeting that does not

16:22:29 1 comport with your memory of the meeting?

16:23:12 2 A. I can't say I can remember -- I think there
16:23:16 3 are two verbatim quotes, at the bottom of the first page
16:23:21 4 and then top of the second page. I can't recall
16:23:26 5 specific statements that closely.

16:23:34 6 Q. Do you remember whether statements were made
16:23:37 7 to that effect, even if you don't remember the exact
16:23:43 8 quote?

16:24:29 9 A. At the bottom of Page 65, or the first page, I
16:24:41 10 would say that's the gist, that statement. My
16:24:59 11 recollection is that it was an ultimatum.

16:25:12 12 Q. What was the ultimatum?

16:25:15 13 A. To accept the withdrawing -- either to
16:25:17 14 withdraw the application or not be renewed or not be
16:25:27 15 tenured or promoted the following year.

16:25:30 16 Q. So the quote on the top of Page -- the second
16:25:37 17 page of Plaintiff's Exhibit 98, which is paginated Page
16:25:40 18 66 --

16:25:40 19 A. Right.

16:25:41 20 Q. -- are you saying that the gist of that is
16:25:45 21 correct as well?

16:25:48 22 MS. COFFEY: Object; it mischaracterizes
16:25:50 23 his statement.

16:26:17 24 A. Again, my recollection is that it was a kind
16:26:20 25 of take it or leave it.

16:26:28 1 Q. (BY MR. TOWNSEND) What do you mean by "take it
16:26:29 2 or leave it"?

16:26:37 3 A. Either withdraw the application at that point
16:26:44 4 and reapply or be denied tenure and promotion.

16:27:09 5 Q. Did you think that was appropriate for
16:27:10 6 Dr. Scoufos to say?

16:27:14 7 A. No.

16:27:15 8 Q. Why not?

16:27:21 9 A. The -- to apply or not to apply for tenure and
16:27:32 10 promotion is the prerogative of the candidate, the
16:27:39 11 tenure and promotion candidate. No one else's. So....

16:28:04 12 Q. With the clarifications that you've made as
16:28:09 13 we've been discussing Plaintiff's Exhibit 98, does it
16:28:17 14 comport with your recollection of what happened at that
16:28:15 15 meeting?

16:28:28 16 A. To me, I would say it -- it does, with, again,
16:28:32 17 the exception that I don't recall there being any kind
16:28:38 18 of guarantee of promotion the following year.

16:28:44 19 Q. Did --

16:28:44 20 A. I don't recall that.

16:28:46 21 Q. Sorry. Did Dr. Scoufos give Dr. Tudor any
16:28:50 22 incentive to withdraw her application at this meeting?

16:28:58 23 A. The incentive would be to try again the
16:29:02 24 following year.

16:29:11 25 Q. But was it your understanding that she could

Exhibit 6

The Faculty Appellate Committee (FAC) met at 11:00am on September 22, 2010 to consider the grievance filed by Dr. Rachel Tudor. In attendance were Dr. Charla Hall, Dr. James Knapp, and Dr. Larry Prather (members of FAC) as well as Dr. Bryon Clark and Dr. Claire Stubblefield.

At 11:15am, a conference call with Charlie Babb (legal counsel for the RUSO Board) began. Mr. Babb provided information on the legal definition of discrimination in the workplace and offered guidance to the FAC regarding how to properly proceed when a grievance of discrimination in the workplace is filed.

Following the conference call, Dr. Clark identified the respondents in the case: Dr. Larry Minks, Dr. Doug McMillan, Dr. Chip Weiner, and Dr. Lucretia Scoufous. The timeframe in which a response to the grievance must occur was also reviewed.

After careful consideration, members of the FAC determined that Dr. Tudor's grievance did not state "the specific remedial action or relief sought" which is required according to Section 4.4.6 of the Academic Policies and Procedures Manual (specifically, Item 1b under Procedures for filing a grievance). In the final paragraph of her grievance, Dr. Tudor did ask the FAC to "...make appropriate and specific recommendations and remedies to ensure that the egregious violations of due process that occurred in my 2009-2010 application for tenure and promotion are not repeated in mine and other candidates' applications for tenure and promotion". However, according to Section 4.4.6 paragraph b of the Academic Policies and Procedures Manual, a formal grievance dealing with due process can be made "in matters not related to promotion and tenure".

Based on the information in the preceding paragraph, the FAC was unable to act on the grievance.

Members of the FAC then discussed the appropriate way to deliver the decision to Dr. Tudor. It was agreed that a hand-delivered, typed response was appropriate rather than an email.

The meeting adjourned at 12:30pm.

Prepared by: James L. Knapp, Ph.D.

September 23, 2010

From: Doug McMillan /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=DMCMILLAN
Subject: Appeal and Rose State
Date: November 16, 2010 at 6:07 PM
To: Bryon Clark /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=BKCLARK

My reading of the policy is that Ross should meet with the committee prior to release any written reports.

dm

From: Bryon Clark
Sent: Tuesday, November 16, 2010 3:34 PM
To: Doug McMillan
Subject: RE: Appeal and Rose State

Doug:

Is Ross suppose to meet with Charla before any written reports? I will talk to Ross and Charla when I return to campus on Thursday.

Thanks.

Bryon

From: Doug McMillan
Sent: Tuesday, November 16, 2010 11:47 AM
To: Bryon Clark
Subject: RE: Appeal and Rose State

Yes I have and he has designated Ross Walkup. Bryon please make sure that Charla understands that Ross is to meet with Ross before issuing any written reports. They need to be very familiar with the procedures before they issue any conclusions or recommendations.

Doug

From: Bryon Clark
Sent: Friday, November 12, 2010 6:50 PM
To: Doug McMillan
Subject: Appeal and Rose State

Doug:

Have you talked to President Minks about the designee for the Tudor grievance? I believe it is cleaner if either Ross or Sharon is selected; if I serve as the designee, it will probably be pointed out in court that you are my boss and that influenced my decision.

Have you talked to President Minks about the Aviation and the Rose State College proposal? I hope that a simple letter/memo is selected. The more that the OSRHE (and RUSO) has to look at, the more questions that we potentially have to answer.

Please advise.

Thanks.

Bryon

SEOSUEMAIL631

Exhibit 8



OFFICE OF ACADEMIC AFFAIR

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 413
DURANT, OK 74701-060

580-745-222
FAX 580-745-747
WWW.SE.ED



April 29, 2010

Dr. Rachel Tudor
Assistant Professor of English
Department of English, Humanities
and Languages

Dr. Tudor:

You recently received from President Minks a letter informing you that your request for tenure and promotion was denied. In President Minks' letter he formally instructs Dr. McMillan to provide you with the reason(s) as to why tenure and promotion were denied.

As my email of March 31, 2010, indicated, the Faculty Appellate Committee did meet and rendered a decision in regard to your appeal. Upon examination of the facts as presented the Faculty Appellate Committee recommended that your request for a detailed written explanation that clearly delineates the factors that led to Dr. Scoufos and Dr. McMillan decision to deny tenure and promotion be provided; however, it needs to be pointed out that there is no policy that stipulates that the Vice President and/or the Dean is compelled to provide reasons as to why tenure and promotion were denied. The President's authority, as delegated to him from the RUSO Board of Regents, is clearly spelled out in section 3.7.3 in the Policies and Procedures Manual. This section, and I quote, states that it is: "the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice."

I also took the additional step of consulting with the University's legal counsel in regard to this issue. He reviewed all the pertinent facts and also noted that in section 3.7.4 there is no requirement for anyone, including the President, to state their reasons if their recommendation is different than the recommendation of the Department Tenure and Promotion Committee. The policy only suggests that after the President makes his decision, if different than the recommendation of the Committee, he should state the reasons. Despite not being required to state his reasons, in this case the President has instructed Dr. McMillan to provide you with the information you requested. Dr. Minks' decision, in my view, moots your appeal and has brought this process to an end.

In accordance with section 4.4.6 in the Academic Policies and Procedures Manual you do have the right to appeal this decision to the President of the University. You will have 10 workdays from April 29, 2010, in which to do so. If no appeal is delivered to the President within the 10 workday period, the case is considered closed.

Respectfully,

A handwritten signature in black ink, appearing to read "Charles S. Weiner". The signature is fluid and cursive, with a large loop at the end.

Charles S. Weiner, Ed.D.
Assistant Vice President for Academic Affairs

pc: President Larry Minks
Interim Vice President Douglas McMillan
Dean Lucretia Scoufos



OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 413
DURANT, OK 74701-060

580-745-222
FAX 580-745-747
WWW.SE.ED

I, Rachel Tudor, received on April 29, 2010, from Dr. Charles Weiner, Assistant Vice President for Academic Affairs, a letter in regard to the decision rendered by the Faculty Appellate Committee.

Rachel Tudor

Rachel Tudor

4/29/10

Date

Exhibit 9




OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4137
DURANT, OK 74701-0609

580-745-2220
FAX 580-745-7474
WWW.SE.EDU

MEMORANDUM

TO: Dr. Rachel Tudor

FROM: Douglas N. McMillan, Ph.D. 
Interim Vice President of Academic Affairs

RE: Denial of Application for Tenure and Promotion

DATE: April 30, 2010

It is my understanding that you have been informed by President Minks of his decision to deny your request for tenure and promotion to associate professor. This authority to communicate the reasons for denial of tenure and promotion rests with the president as suggested in the Academic Policy and Procedures Manual Section 3.7.4. However, the President may delegate this authority under the RUSO Board Policy if he so desires. Dr. Minks has delegated the authority to me, as acting chief academic officer, to communicate the reasons for the denial of your application for tenure and promotion.

After careful review of your portfolio, it was determined that you do not currently meet the policy requirements for tenure and promotion in the areas of research/scholarship and contributions to the institution and/or profession. The Academic Policy and Procedures Manual stipulates that in order to be granted tenure and promotion your body of work in these areas should be both excellent and noteworthy.

An examination of the research/scholarship portion of your portfolio listed eight activities during your employment at Southeastern. These eight activities include two publications, one presentation at a regional symposium, one presentation at a local symposium, two editorships of the proceedings papers at a local symposium, and two "open-mic Chapbooks". The first three activities (the two publications and the presentation at the regional symposium) do appear to be examples of work which meet the excellent and noteworthy standard. However, the remaining activities fail to meet these standards. For example, the two Open-mic Chapbooks appear to be self-collected unpublished works which certainly do not reach the noteworthy and excellent standard. Additionally, in trying to verify your contribution as editor to the proceedings of the 2006 and the 2008 Native American Symposium, some confusing information was found. In fact, the link you provided to the 2006 symposium did not identify you as an editor and the link you provided for the 2008 symposium did not lead to any proceedings. Just as an aside, editing the proceedings at a local symposium does not meet an excellent and noteworthy accomplishment for a university faculty member. In summary, your efforts in scholarship and research

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

PI001200

appear to have yielded some appropriate work; however, the body of your work, since being employed at Southeastern, is either unverifiable or falls below the policy requirement for tenure and promotion.

The Academic Policy and Procedures Manual also requires that your service reach the noteworthy and excellent standard. A review of your university service reveals that since your employment at Southeastern began, until 2009 your service has primarily been limited to serving on internal departmental committees, such as, a program review committee, an assessment committee and a hiring committee, that clearly do not reach the policy requirement for tenure or promotion. In fact, out of eight activities you listed on your vita, four were internal departmental committees. Two of the remaining examples of service were not begun until 2009. This does not establish a record of service that is either noteworthy or excellent.

Subsequently, the reasons delineated in this memorandum formed the basis for the denial of your application for tenure and promotion.



OFFICE OF ACADEMIC AFFAIRS

1405 N. FOURTH AVE., PMB 4137
DURANT, OK 74701-0609



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Dr. Rachel Tudor
1124 N. 10th
Durant, OK 74701

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PI001202

Exhibit 10

Lucretia Scoufos

From: Charles Weiner
Sent: Thursday, April 01, 2010 9:38 AM
To: Doug McMillan; Larry Minks; Lucretia Scoufos
Cc: 'Babb, Charlie'
Subject: FW: Rachel Tudor

Importance: High
Sensitivity: Confidential



Let me put an addendum on to my previous email. Records indicate that she started at SE in 2004 so this is not her terminal year. Next year will be her terminal year. The two options are still viable. Dismiss her without cause or let her reapply. In either instance she will need to be notified by March 1st that she is not being reappointed or if she doesn't get tenure, than she will not be rehired.

Chip

Charles "Chip" Weiner, Ed.D.

Assistant Vice President for Academic Affairs
Director of Student Learning and Institutional Research
Coordinator, HLC/NCA Accreditation
Southeastern Oklahoma State University
1405 N. 4th Ave., PMB 4145
Durant, Oklahoma 74701-0609
580.745.2202
0.435.1327 x2202
0.745.7504 (fax)
cweiner@se.edu

Southeastern Oklahoma State University

From: Charles Weiner
Sent: Thursday, April 01, 2010 9:28 AM
To: Doug McMillan; Larry Minks; Lucretia Scoufos
Cc: 'Babb, Charlie'
Subject: Rachel Tudor
Importance: High
Sensitivity: Confidential

Good Morning All:

I had the most interesting conversation with Charlie Babb yesterday in regard to the Tudor appeal. I will try and enumerate everything that we talked about but there are places my handwriting is hard to read. First I will start off with the Fridley appeal. Charlie said everything there was fine, no problem. The Tudor appeal however has many different angles to it. First of all he concurred that the policies in question were conflicting. In this appeal there are four different policies at play. They are:

- 1.7.3 – Role of the President
- 3.7.4 – Role of the Faculty
- 4.4.6 – Faculty Grievance Policy

FILE COPY

4.6.3 – Procedure for Granting Promotion and Tenure

Each one of these policies played a role in this appeal. She filed her grievance under section 3.7.4 focusing on the part about reasons having to be provided if there was an adverse action taken. She requested that Drs. McMillan and Scoufos provide her with reasons as to why their recommendation was to deny granting tenure and promotion. The fallacy here is that the faculty member is provided an opportunity to request a due process hearing before any adverse action has been taken. According to Charlie this really isn't a due process issue but an administrative policy issue; however, it is stated that way in our Policies and Procedures Manual. She requested a due process hearing and based upon her complaint, the Faculty Appellate Committee met on March 22, 2010, and agreed with her grievance that reasons must be provided. I will admit that I had difficulty writing the letter and was very appreciate of Charlie's comments in regard to it. Here are the things that Charlie and I talked about in regard to this appeal:

- The policy does not require the dean or the VP to provide reasons
- The authority is vested in President and if he chooses to do so, he may provide reasons as to why
- Since this was her terminal year in the process Charlie wanted to know if we gave her that information in writing before March 1st
- If we did not provide her with written notice by March 1st than we are in violation of that policy (our policy is pulled directly from the RUSO policy)
- Our options are twofold -- at this point we can give her written notice that next year will be her last year at SE. If we give it to her now than we meet the March 1, 2011, deadline and we don't have to provide her any reason at all for anything. She is just being dismissed without cause. The second option would be to let her reapply for tenure and promotion next year, provide her with the reasons as to why she was denied this year, and inform her that if she does get tenure next year than she will not be reappointed. In this way we also meet the March 1st deadline.

If I understood Charlie correctly it would be in our best interest, and RUSO's best interest, to provide her with another year at Southeastern based upon the options presented above.

Charlie -- I hope I have stated everything correctly. I am sure that President Minks and Drs. McMillan and Scoufos will have questions for you. If I have misspoke in anyway please correct me by providing them with the correct information.

Chip

Charles "Chip" Weiner, Ed.D.
Assistant Vice President for Academic Affairs
Director of Student Learning and Institutional Research
Coordinator, HLC/NCA Accreditation
Southeastern Oklahoma State University
1405 N. 4th Ave., PMB 4145
Durant, Oklahoma 74701-0609
580.745.2202
800.435.1327 x2202
580.745.7504 (fax)
weiner@se.edu

Exhibit 11

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
RACHEL TUDOR,)	
)	
Plaintiff Intervenor,)	
)	
-vs-	)	5:15-CV-00324-C
)	
SOUTHEASTERN OKLAHOMA STATE)	
UNIVERSITY, and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendants.)	

DEPOSITION OF CHARLES BABB

VOLUME II

TAKEN ON BEHALF OF THE PLAINTIFF

IN OKLAHOMA CITY, OKLAHOMA

ON AUGUST 24, 2017

REPORTED BY: SUSAN NARVAEZ, CSR
DODSON COURT REPORTING & LEGAL VIDEO, INC.
425 NORTHWEST 7TH STREET
OKLAHOMA CITY, OK 73102
(405)235-1828
<http://www.dodsonreporting.net>

Charles Babb, Volume II

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1 A. I don't recall.

2 Q. (By Mr. Townsend) Did you think it was
3 appropriate for Dr. Weiner to wait to send the
4 letter?

5 MS. COFFEY: Object to form.

6 A. I don't recall.

7 Q. (By Mr. Townsend) Did Dr. Weiner ask
8 you whether you thought he should comply with
9 the request that he wait to send the letter?

10 MS. COFFEY: Object to form.

11 A. No.

12 Q. (By Mr. Townsend) Would you please
13 turn to Plaintiff's Exhibit 50?

14 A. Okay.

15 Q. Plaintiff's Exhibit 50 is an e-mail
16 thread that consists of two e-mails from Dr.
17 Weiner on April 1, 2010, correct?

18 A. They're both from Dr. Weiner, yes.

19 Q. And you were CC'd on both e-mails?

20 A. Yes.

21 Q. In the e-mail that Dr. Weiner sent on
22 April 1, 2010 at 9:28 a.m., on the second page
23 of the e-mail there's a policy at the top of
24 the page, 4.6.3, Procedure for Granting
25 Promotion and Tenure. Do you see that?

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1 A. Yes.

2 Q. Why don't you go ahead and read this
3 e-mail, the one sent at 9:28 a.m., and let me
4 know when you're done?

5 A. Okay.

6 Q. That Policy 4.6.3 that's referenced at
7 the top of the second page of Plaintiff's
8 Exhibit 50, do you remember the substance of
9 your conversation with Dr. Weiner about that
10 policy?

11 MS. COFFEY: Object to form.

12 A. I don't recall.

13 Q. (By Mr. Townsend) Do you recall what
14 that policy was?

15 A. I do not.

16 Q. All right. I'll have you take a look
17 at that and it might refresh your memory. It's
18 Plaintiff's Exhibit 7. Plaintiff's Exhibit 7
19 has a number of policies, but they're in
20 sequential order so you can turn until you get
21 to 4.6.3. Were you able to find it?

22 A. Yes.

23 Q. Please take a look at it and let me
24 know when you're done.

25 A. Okay.

Charles Babb, Volume II

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1 Q. Does that help you at all to remember
2 what you talked to Dr. Weiner about when you
3 discussed that policy?

4 MS. COFFEY: Object to form.

5 A. No.

6 Q. (By Mr. Townsend) The second to last
7 -- let's turn back to Plaintiff's Exhibit 50,
8 please.

9 A. Okay.

10 Q. The second to last paragraph in
11 Plaintiff's Exhibit 50 begins, "If I understood
12 Charlie correctly." Do you see that?

13 A. Right.

14 Q. It reads, "If I understood Charlie
15 correctly it would be in our best interest and
16 RUSO's best interest to provide her with
17 another year at Southeastern based upon the
18 options presented above." Did I read that
19 correctly?

20 A. Yes.

21 Q. Did Dr. Weiner understand you
22 correctly?

23 MS. COFFEY: Object to form.

24 Q. (By Mr. Townsend) As he stated in this
25 sentence?

Charles Babb, Volume II

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1 MS. COFFEY: Object to form.

2 A. Yes.

3 Q. (By Mr. Townsend) So you agreed with
4 Dr. Weiner that it would be in Southeastern's
5 and RUSO's best interest to provide Dr. Tudor
6 with another year at Southeastern based upon
7 the options presented in his e-mail?

8 MS. COFFEY: Object to form.

9 A. I don't read this as him saying that.
10 That's his understanding. I read this as him
11 restating.

12 Q. (By Mr. Townsend) Good point. Let me
13 ask it a different way then. So it was your
14 belief that you communicated to Dr. Weiner that
15 it would be in Southeastern's and RUSO's best
16 interest to provide Dr. Tudor with another year
17 at Southeastern based upon the options
18 presented in Dr. Weiner's e-mail that's in
19 Plaintiff's Exhibit 50?

20 MS. COFFEY: Object to form.

21 A. Yes.

22 Q. (By Mr. Townsend) And then the last
23 paragraph of Plaintiff's Exhibit 50, the first
24 sentence states, "Charlie, I hope I have stated
25 everything correctly." Do you see that?

Exhibit 12

PLAINTIFF'S
EXHIBIT

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OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4137
DURANT, OK 74701-0609

MEMORANDUM

580-745-2220
FAX 580-745-7474
www.SE.EDU

TO: Rachel Tudor

FROM: Douglas N. McMillan, *DM*
Interim Vice President for Academic Affairs

RE: Application for Tenure and Promotion during the 2010-2011 Academic Year

DATE: October 5, 2010

I have been informed by the Dean of the School of Arts and Sciences that you plan to submit a portfolio for tenure and promotion again for this academic year of 2010-2011. You will recall that during the review of your 2009-2010 academic year application you were extended an offer which would have allowed you an additional year to strengthen your portfolio and hopefully obtain tenure and promotion. Pursuant to policy, academic year 2010-2011 is your seventh year of tenure probation and therefore your terminal year at Southeastern. In my letter of April 30, 2010 I outlined certain deficiencies in scholarly activity and service which needed correcting in your portfolio. You were offered the opportunity to teach at Southeastern during the 2010-2011 and 2011-2012 academic years and then reapply for tenure and promotion during the 2011-2012 academic year if you would withdraw your 2009-2010 application. This offer, in effect, would have given you two years to correct the deficiencies in scholarly activity and service, which were outlined in my letter to you on April 30, 2010. To my astonishment, you declined this offer. At the time the offer was made it was my opinion that one year was insufficient for correcting the deficiencies in your portfolio. This is still my opinion.

After reviewing the Academic Policy and Procedure Manual, I find no policy that allows for an application for tenure in a subsequent year after being denied tenure and promotion in the previous year. The policy states that an application for tenure may occur in the fifth, sixth or seventh year. I recognize that the policy does not proscribe a subsequent application, however, since there is no specific policy, which addresses this issue, I believe the administration is charged with the responsibility of making a decision which is in the best interests of the university. I believe that allowing you to reapply for tenure and promotion so soon after your most recent denial is not in the best interests of the university. This is especially true given the nature and extent of needed improvement and the short amount of time which has passed since the portfolio deficiencies were enumerated. It is my opinion that allowing you to reapply will be disruptive to the School of Arts and Sciences, create unnecessary work for both your department and the administration, and will potentially inflame the relationship between faculty and administration. It is my decision as acting chief academic officer that your application/request and portfolio will not be accepted for review for the 2010-2011 academic year.

FILE COPY

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

Exhibit 13

To be filed under seal.

Exhibit 14

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

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

ORAL DEPOSITION OF
DR. JESSE SNOWDEN
MAY 3, 2016

ORAL DEPOSITION OF DR. JESSE SNOWDEN, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and numbered cause on May 3, 2016, from 8:27 a.m. to 4:10 p.m., before Tobi Moreland, CSR in and for the State of Texas, at the Office of the United States Attorney, 600 E. Taylor Street, Suite 2000, Sherman, Texas, pursuant to the Federal Rules of Civil Procedure and any stipulations made on the record.

1 A. Yes. 1972.

2 Q. You indicated that you received tenure in 1969.

3 Do you recall what year you applied?

4 A. I didn't apply.

5 Q. How did you come to be considered for tenure at
6 Millsaps?

7 A. I don't really know for sure, but I think the
8 department chair recommended me.

9 Q. Were you aware that you were under consideration
10 for tenure prior to being told that you had received
11 tenure?

12 A. No.

13 Q. Do you know what the criteria were for tenure
14 when you were interim president at Southeastern?

15 A. Yes.

16 Q. Do you know whether the criteria for tenure were
17 the same when you were president, interim president --
18 strike that.

19 Do you know whether the criteria for tenure were
20 the same when you were interim president at Southeastern
21 and in 2009/2010 school year?

22 A. No, I don't.

23 Q. Do you have any understanding of what the tenure
24 criteria were at Southeastern in 2009/2010?

25 A. I have some understanding because I don't think

1 the RUSO policy had changed in that time, and the
2 university requirements are based on the board
3 requirements.

4 Q. I'm going to ask that you be shown what's been
5 marked in a previous deposition as Plaintiff's Exhibit
6 No. 7. Dr. Snowden, please take a look at the document
7 and let me know when you've had a chance to look it over.

8 MR. JOSEPH: Valerie, just so I'm clear,
9 you're asking about Exhibit 7, which is EEOC303 through
10 349, 46 pages?

11 MS. MEYER: Yes, I am.

12 Q. (By Ms. Meyer) For the record, Dr. Snowden, I'm
13 not asking that you read the policy in its entirety, given
14 its length.

15 A. Okay.

16 Q. Have you seen this document before?

17 A. I've seen one similar to it, yes.

18 Q. Do you know what this document is?

19 A. I believe it's the RUSO policy or the -- I'm
20 sorry, the Southeastern policy on promotion and tenure, or
21 the personnel policies, which would include promotion and
22 tenure.

23 Q. Is this the policy -- is plaintiff's -- strike
24 that.

25 Is Plaintiff's Exhibit No. 7 the policy that was

1 A. Only later.

2 Q. How much later?

3 A. When I was interim president, the issue of
4 restroom use came up, and so I was aware of what was
5 transpiring there.

6 Q. And what was the issue with restroom use that
7 came up?

8 A. Well, apparently some of the staff in the
9 building where she was had objected, and so the EEO
10 officer was dealing with that and made arrangements for a
11 gender-neutral bathroom, which was in that building.

12 Q. And which building are you referring to?

13 A. Morrison.

14 Q. And who informed you that there were issues with
15 Dr. Tudor's restroom use?

16 A. I believe it was -- you know, I can't remember
17 exactly, but I think it was Vice-President Robinson, who
18 at that time was the EEO officer for the university.

19 Q. Were you told what the staff's objections were
20 to Dr. Tudor's restroom use?

21 A. Not in detail, just that they were
22 uncomfortable.

23 Q. Were you told that these staff members were
24 uncomfortable with Dr. Tudor's use of the women's
25 restroom?

1 A. Yes.

2 Q. Were you told how many staff members were
3 uncomfortable with Dr. Tudor's use of the women's
4 restroom?

5 A. No.

6 Q. Were you told who these staff members were?

7 A. No.

8 Q. Are you aware of whether these staff members had
9 filed a formal complaint about Dr. Tudor's use of the
10 restroom?

11 A. No, I'm not.

12 Q. What's your understanding of what action was
13 taken in response to these staff members' complaints?

14 A. My understanding is that the EEO officer met
15 with them and discussed a solution, and I believe
16 Dr. Tudor was part of that as well.

17 Q. And what was the solution that was generated?

18 A. The gender-neutral restroom in the building.

19 Q. So Dr. Tudor was asked to use the gender-neutral
20 restroom in Morrison?

21 MR. JOSEPH: Object to the form.

22 A. I can't say that exactly. I don't remember.

23 Q. (By Ms. Meyer) Do you know if Dr. Tudor was
24 still permitted to use the women's restroom in Morrison
25 after those conversations?

1 such as 12 months, someone's qualifications for tenure
2 could dramatically change?

3 MR. JOSEPH: Object to the form.

4 A. If they haven't changed in five or six years, I
5 would be skeptical of that. I'm not saying it's
6 impossible, but --

7 Q. (By Mr. Young) If, for example, someone had
8 been denied tenure because their scholarship had been
9 deemed below RUSO's required mark for excellence but they
10 shortly thereafter published three peer-reviewed articles,
11 would that be a dramatic change?

12 A. That's fairly dramatic. But at the same time,
13 you have to ask the question why it didn't happen before
14 such a traumatic event.

15 Q. You previously testified that when you were
16 vice-president of academic affairs that you floated the
17 idea of Southeastern submitting tenure and promotion
18 portfolios to persons outside the university for something
19 that you referred to as being sort of a peer review; is
20 that correct?

21 A. Correct.

22 Q. And you previously testified that you thought
23 this was a good idea because sometimes purely internal
24 evaluations of tenure or promotion portfolios can be
25 permeated by bias; is that correct?

1 A. Correct.

2 Q. Can you describe to me the sorts of bias that
3 you think emerge in purely internal evaluations?

4 A. Okay. I can think of a couple. One is obvious
5 friendships. People are working close together. They
6 don't want to say no to a friend. That's one.

7 Another is there are people in the department
8 who will be coming up themselves for promotion, perhaps in
9 the next year or two; and if they vote against someone,
10 they are afraid that that person will vote against them in
11 the future. So -- and especially in smaller departments,
12 that's a real issue whether they can be really as
13 objective as they should be. Even in large departments --
14 and when I was a department chair, as I said, we sent out
15 promotion and tenure documents to six outside reviewers at
16 other universities, and there would be three that were
17 selected by the department promotion and tenure committee
18 and three selected from a list given by the candidate.
19 With these, you were able to get -- not everybody would
20 respond, but most of them would, and they would give you a
21 pretty candid -- you didn't ask whether or not the person
22 should be promoted or tenured, but you asked about the
23 quality of their work.

24 Q. Are there any biases that can emerge at the
25 level of the dean's review of the tenure and promotion

1 portfolio?

2 A. Sure.

3 Q. What are those biases?

4 A. Basically if a person -- you know, deans are
5 human like everyone else, and they have their likes and
6 dislikes. If someone has, you know, repeatedly gotten on
7 the dean's bad side, perhaps that could color. That's the
8 reason for the multi-level review, by the way, because you
9 take as much of that out as you can by having as many sets
10 of eyes, preferably people who know what they're looking
11 at, to look at this and review it objectively. But bias
12 can occur anywhere, and it's the responsibility at each
13 level to not -- to get that out.

14 Q. Are there any steps that Southeastern took to
15 prevent bias from emerging at the dean's stage when you
16 were there for tenure and promotion evaluations?

17 MR. JOSEPH: Object to the form.

18 A. The main one when I was there was that they knew
19 they had a vice-president who had looked at hundreds of
20 promotion and tenure documents and would review it
21 independently.

22 Q. (By Mr. Young) So if a less experienced person
23 were in the vice-president of academic affairs' position,
24 it would be difficult to prevent bias from creeping in at
25 the dean's stage?

1 MR. JOSEPH: Object to the form.

2 A. Could be. Depends on the person.

3 Q. (By Mr. Young) What kind of biases can emerge
4 at the vice-president of academic affairs' stage?

5 MR. JOSEPH: Object to the form.

6 A. Probably the same kinds of things that could
7 occur at any level, if you just don't like someone. But
8 you would hope -- and I have -- in nearly 50 years in
9 higher education, I've never encountered that at the
10 vice-president level of someone who would not be objective
11 in considering someone for promotion and tenure. I won't
12 say it's never happened, but usually by the time a person
13 reaches that stage, they have enough experience to do it
14 the proper way.

15 Q. (By Mr. Young) So I'm not an academic, and I've
16 never reviewed a portfolio for tenure and promotion. How
17 would someone in the president's position, for example, be
18 able to tell if a vice-president for academic affairs'
19 recommendation was tainted by bias? Is there something
20 that you would look for?

21 MR. JOSEPH: Object to the form.

22 A. Well, the fact that I had done many of these
23 when I was president, I would certainly review it
24 independently. I don't know that every president does
25 that. They probably trust their chief academic officer to

1 be the one who really gives those a thorough review.

2 Q. (By Mr. Young) Are Southeastern presidents
3 required by the policy and procedures manual to
4 independently review tenure and promotion portfolios?

5 A. Yes.

6 Q. So if a president didn't independently review
7 the portfolio, that would be a violation of Southeastern
8 policy?

9 A. That would be my understanding.

10 Q. And I realize you only served as interim
11 president for a short period of time.

12 A. Right.

13 Q. But based upon your experience, what kinds of
14 biases can emerge at the president's stage of review?

15 MR. JOSEPH: Same objection.

16 A. I would say the same human things at other
17 levels. But again, I would hope that the board would not
18 appoint anyone president who would do that, who would take
19 a personal issue and use it against someone in that
20 context. I've never seen that happen.

21 Q. (By Mr. Young) If a faculty member suspected
22 bias at either the dean, the vice-president of academic
23 affairs' stage, or the president's stage, how would they
24 redress that at Southeastern?

25 A. They would go to the next higher -- if they

1 suspected the dean, for example, they would go to the
2 vice-president.

3 Q. And if they suspected the vice-president, who
4 would they go to?

5 A. The president.

6 Q. And if they suspected the president?

7 A. Well, I know Charlie doesn't want to hear this,
8 but the president reports to the RUSO Board in our system,
9 so --

10 Q. Are faculty members permitted to approach the
11 RUSO Board to redress president discrimination?

12 MR. JOSEPH: Object to the form.

13 A. Well, they have a process now where they can
14 even do it anonymously.

15 Q. (By Mr. Young) Did that process exist in 2007?

16 A. No, I don't think so. Maybe it --

17 THE WITNESS: Was that in effect in 2007?

18 Q. (By Mr. Young) He can't answer.

19 A. Okay. That's right.

20 Q. To your recollection?

21 A. I don't know. It was not in -- I don't believe
22 it was in force then. But the board has made it very easy
23 to bring grievances or indication of bias.

24 Q. Could a faculty member in 2007 file a grievance
25 with the faculty senate to redress bias in the tenure and

1 promotion process?

2 A. That would not be appropriate. They don't have
3 anything to do with this process. Now, there is an appeal
4 process.

5 Q. Can you please describe the appeal process?

6 A. Oh, gosh. If a faculty member does not agree
7 with the decision, they can -- now, this does not apply to
8 the president's decision, but anywhere up to that, they
9 can request a review board. And this is -- the appeals
10 committee is elected by the faculty senate or selected by
11 the faculty senate, and they review the case and report to
12 the president, who then makes a decision. The president
13 doesn't have to accept their recommendation, but he can or
14 she can.

15 Q. Do you recall having any discussions with
16 Vice-President McMillan about your directive about the
17 departmental guidelines for tenure and promotion after you
18 left Southeastern?

19 MR. JOSEPH: Object to the form.

20 A. No.

21 MR. YOUNG: Off the record.

22 (Discussion off the record.)

23 Q. (By Mr. Young) Dr. Snowden, I'm going to hand
24 you an exhibit that I'm going to ask the reporter to mark
25 as Plaintiff's Exhibit 68.

1 decisions.

2 Q. Can you give me examples of some of those
3 decisions she disagreed with?

4 A. She felt he tried to appease the faculty senate
5 too much, for example. I think that changed, and the
6 promotion and tenure policy is probably evidence of that.
7 She was very much against that.

8 Q. So in Dr. Scoufos's view, as communicated to
9 you, Dr. McMillan gave a lot of deference to the faculty
10 senate?

11 MR. JOSEPH: Object to the form.

12 A. Yes.

13 Q. (By Mr. Young) Was that a frequent complaint?

14 A. No. The only time it really came up was on this
15 promotion and tenure thing, which was just maybe last year
16 or year before last.

17 Q. What thing are you referring to?

18 A. That change of the two out of three
19 requirements, and he apparently signed off on that.

20 Q. And that was against Dr. Scoufos's own wishes?

21 A. Yeah. I think it's against RUSO policy as well.
22 That's the only really big disagreement I remember.

23 Q. And to clarify, you think the change in
24 requiring outstanding or excellent in the three
25 categories, scholarship, service, and teaching, changed a

1 year ago?

2 A. I think that's -- it could be a little longer
3 than that, but not much longer.

4 Q. Did Dr. Scoufos ever tell you that Dr. McMillan
5 had directed her to do something that she disagreed with
6 in her capacity as dean?

7 MR. JOSEPH: Object to the form.

8 A. Long after the fact, she confided in me that she
9 had had to notify Dr. Tudor of the decisions that
10 Dr. McMillan and the president had made, which was
11 really -- I agreed with her that that was not appropriate
12 because she had made her recommendation already and it was
13 beyond her at that time.

14 Q. (By Mr. Young) So what exactly did Dr. Scoufos
15 disagree with?

16 A. Being asked to be the messenger in some of the
17 decisions that had been made above her.

18 Q. So it's your understanding that Dr. Scoufos was
19 directed by Dr. McMillan to provide Dr. Tudor with
20 McMillan and Minks's decisions on Tudor's tenure
21 application; is that correct?

22 A. Yes.

23 Q. And Dr. Scoufos did not want to do that?

24 A. She resented having to do it because -- well,
25 nobody likes to be in confrontational situations. I

1 agreed with her. That was their -- the vice-president
2 should be -- should do that job, you know, or the
3 president.

4 Q. Why, in your opinion, should the vice-president
5 or the president be doing that job?

6 A. Because in the end, it was their decision, their
7 recommendation. They are at the top of the chain.

8 Q. Are you aware of how Dr. Scoufos voted on
9 Dr. Tudor's tenure and promotion portfolio?

10 A. I believe she did not recommend it. I found
11 that out long after the fact as well after all of this.

12 Q. Did Dr. Scoufos describe to you the exchange she
13 had with Dr. Tudor where she told Dr. Tudor about McMillan
14 and Minks's decision?

15 A. No, she didn't get into that much detail. But
16 it was just the idea of being asked to do that.

17 Q. You previously testified that when you were
18 vice-president of academic affairs that you directed the
19 deans who worked under you to communicate their rationales
20 to tenure and promotion candidates; is that correct?

21 A. Yes. That was during the process itself, not
22 after the final decision. That was transmitted directly.

23 Q. And your understanding is that Dr. Scoufos was
24 directed to tell Dr. Tudor Minks's and McMillan's
25 rationales when the process was over?

1 MR. JOSEPH: Object to the form.

2 A. Yes.

3 Q. (By Mr. Young) And that's what you believe was
4 inappropriate?

5 MR. JOSEPH: Object to the form.

6 A. Yes.

7 Q. (By Mr. Young) And that's what Dr. Scoufos told
8 you she believes to be inappropriate?

9 MR. JOSEPH: Object to the form.

10 A. Yes.

11 Q. (By Mr. Young) Are you aware that Dr. Tudor
12 asked Dr. Scoufos to give Dr. Tudor her rationales --
13 strike that.

14 Are you aware that Dr. Tudor asked Dr. Scoufos
15 to provide her with the rationales for why Dr. Scoufos
16 denied her application while the process was still going?

17 A. No.

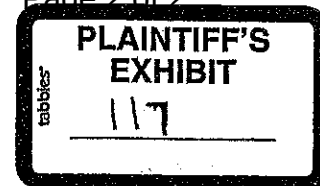
18 Q. Do you think that that would have been an
19 inappropriate request from Dr. Tudor?

20 A. No. No.

21 Q. Why not?

22 A. If -- as I said earlier, I believe that
23 candidates have the right to know why a decision is being
24 made, why a recommendation is being made. But that's not
25 a requirement in the system.

Exhibit 15



8. *Regional University System of Oklahoma to Identify:*

- a. *all professors who were denied tenure by the President (as opposed to withdrawing prior to the President rendering a decision) and then attempted to apply again for tenure in a subsequent year.*

We are assuming that this request seeks information from the other universities in the Regional University System of Oklahoma since this information relevant to Southeastern has either already been provided or could have been requested from Southeastern. If this assumption is incorrect, please advise and we will amend the response accordingly. Subject to this assumption, the other five universities in the system were polled with the following results:

East Central University
None

Northeastern State University
None

Northwestern Oklahoma State University
None

Southwestern Oklahoma State University
The President declined to recommend tenure in March 2010 on the following three members of the SWOSU faculty. All three were allowed to reapply for tenure in the Fall of 2010 and all three were granted tenure in March 2011.

Dr. Lisa Schroeder-Communications and Theater
Dr. Anthony Stein-Chemistry and Physics (Physics)
Dr. Curt Woolever-Chemistry and Physics (Chemistry)

University of Central Oklahoma
None

- b. *all professors from the Charging Party's department who have had their tenure applications denied.*

No tenure applications from the Charging Party's department [Education Instruction and Leadership] have been denied by the Regional University System of Oklahoma.

Exhibit 16

Expert Report of Robert Dale Parker, Ph.D.

U.S. et al. v. Southeastern Okla. St. Univ. et al., 5:15-cv-00324-C (W.D. Okla.)

This report compares the qualifications for promotion and tenure of Professor Rachel Tudor of Southeastern Oklahoma State University (which I will refer to as “Southeastern”) to the qualifications of other faculty in Professor Tudor’s department who were granted tenure and promotion. The comparison is based on the materials in the list attached to this report. They include the promotion portfolios of Professor Tudor and of four other faculty in the Department of English, Humanities, and Languages at Southeastern: Professors Janet Leigh Barker, Margaret Cotter-Lynch, Virginia A. Parrish, and Mark Spencer. (Professor Tudor’s complete 2009 portfolio was not available. I reviewed those portions of her 2009 portfolio that were available, and I also reviewed her 2010 portfolio.)

I recognize and respect that Professors Barker, Cotter-Lynch, Parrish, and Spencer each earned promotion and tenure at Southeastern. In no way do I question their qualifications or Southeastern’s decision to recognize their qualifications. Rather, I take it as self-evident that Southeastern’s decision to award Professors Barker, Cotter-Lynch, Parrish, and Spencer promotion and tenure defines a level of qualifications that Southeastern, by its own standards, has decided merits promotion and tenure. My charge in this report is to address whether, in my carefully considered professional judgment, Professor Tudor met Southeastern’s standards for promotion and tenure, based on a comparison between her qualifications and the qualifications of her colleagues. Therefore, my assignment was not to question the qualifications of any of Professor Tudor’s colleagues. Instead, my assignment was to apply Southeastern’s official written policies for promotion and tenure to a comparison between the qualifications of Professor Tudor and the qualifications of her colleagues whose achievements were recognized as meriting promotion and tenure. In the end, I believe Tudor’s portfolios indicate that she was more qualified for promotion and tenure than some of her colleagues who received promotion and tenure, but that opinion should not be interpreted to mean that any of her colleagues whose portfolios I have reviewed here should not have received promotion and tenure.

Credentials of the Reviewer

I have been asked to begin this report by summarizing my credentials. I am a professor of English at the University of Illinois, where I have taught since 1984. After completing a PhD in English in 1980 at Yale University, I taught at Yale and then at the University of Michigan. A widely published scholar and a recipient of the University of Illinois’s highest awards for both undergraduate and graduate teaching, I have also received our Department of English’s award for distinguished service, been named as a University Scholar, and been awarded a named appointment (a recognition for the university’s most distinguished faculty). My teaching and scholarship have focused on the study of American literature, including Native American literature, the specialty of Professor Tudor, and on the overall study of how we can best teach about literature, interpret it, and research about it. I have participated in the deliberations for over a hundred promotions at my own university and served a two-year term on the appeals committee for promotions in the College of Liberal Arts and Sciences (serving as acting chair for part of the first year and as chair in the second year). Several times the Dean of the College or

the Provost (who oversees the entire university's faculty) have asked me to serve on special appeals committees to advise them regarding rejected cases for promotion. Colleges and universities across the United States routinely ask me to review the records and publications of faculty under consideration for promotion. I have also been elected to five-year terms on the Executive Committee of the Division on Twentieth-Century American Literature and the Division on American Indian Literatures of the Modern Language Association, and have served as chair of each of those committees. I have served as well on the faculty board of the University of Illinois Press, the scholarly book publisher housed at my university, and on the editorial or advisory boards of 5 different scholarly journals, including such distinguished journals as *American Literary History*, *Modern Fiction Studies*, and *Studies in American Fiction*. Editors working for scholarly book publishers and for scholarly journals routinely ask me to review the work of scholars whose manuscripts they are considering for possible publication. I therefore have a wide acquaintance with the expectations for college and university faculty in departments of English, with the protocols for faculty promotions, and with the evaluation of scholarship in English. (For more information about my experience and background, please see the copy of my curriculum vitae attached to this report as Exhibit 1.¹)

Faculty Ranks, Tenure, and the Criteria for Faculty Promotions

According to Southeastern's Academic Policy and Procedures Manual, "The academic ranks of the University are professor, associate professor, assistant professor, and instructor" (section 4.5.1 Academic Rank). While some colleges and universities have more than just the "instructor" rank for non-professorial faculty, Southeastern's distribution of faculty ranks conforms to national standards. Professorial faculty at Southeastern (assistant professors, associate professors, and professors) are on what is called the tenure track (4.6 Tenure), meaning that they either have tenure or may eventually become eligible for tenure (4.6.2 Periods of Appointment and Tenure). Nationally, promotion from assistant professor to associate professor ordinarily includes the awarding of tenure. While Southeastern does not require promotion to associate professor to accompany the award of tenure, its policies make it likely that promotion to associate professor and tenure would come together. The policies stipulate that faculty members must serve for 5 years before receiving tenure, and they normally serve those 5 years in a professorial rank (4.6.2 and 4.6.5), which for beginning professors means the rank of assistant professor. The criteria for promotion (4.5.2 Promotion in Rank) and for achieving tenure (4.6.1 Academic Tenure) are similar (although the "noteworthy achievement" standards in 4.6.5 and 4.5.2.1 differ), and the same "Promotion and Tenure Review Committee" considers candidates for promotion and for tenure (4.6.3). In each of the cases under review in this report, a decision to promote an assistant professor to associate professor has accompanied a decision to award tenure, and the same portfolio was submitted for both purposes.

According to Southeastern's Policy and Procedures Manual, "Tenure is defined as continuous reappointment which may be granted to a faculty member in a tenure-track position" (4.6.1 Academic Tenure). At Southeastern, therefore, as at other colleges and universities in the United States, when faculty earn tenure, that means that they cannot be dismissed except in the

¹ For information about my hourly rate for services in connection with this case, please see Exhibit 2.

rare case of extreme circumstances (4.6.7 Causes for Dismissal or Suspension of Tenured Faculty). Tenure provides job security, but job security is not the ultimate purpose of tenure. Instead, in the American university system, tenure provides job security so that faculty will feel free to experiment and take risks in their teaching and scholarship without fearing that their experiments will put their employment at risk. For that reason, tenure lies at the foundation of the bold, innovative teaching and ambitious academic standards that have made American colleges and universities the envy of the world.

College and university professors work in three areas: teaching, research/scholarship, and service. This standard national practice matches the stated policy of Southeastern, which says that “Teaching, research, and service are the triad of professional responsibilities at the University” and that “Evaluation of faculty performance considers these three areas” (4.4.1). In that vein, Southeastern’s policies base promotions on “the faculty member’s performance in the categories of (1) effective classroom teaching, (2) scholarship, (3) service to institution, profession, and public, and (4) performance of non-teaching/administrative duties/assignments” (4.4.2 Faculty Evaluation System). Similarly, “all evaluations for tenure shall address at a minimum whether each candidate has achieved excellence in (1) teaching, (2) research or creative achievement, (3) professional service, and (4) University service” (4.6.1 Academic Tenure). As at any other school, therefore, when Southeastern considers a candidate for promotion from assistant professor to associate professor with tenure, or from associate professor to full professor, it reviews the candidate’s record in teaching, research/scholarship, and service.

Some schools define themselves as teaching schools. In teaching schools, the faculty usually teach more classes and have more modest expectations for research. Teaching schools focus decisions about promotion and tenure primarily on teaching and secondarily on research and service.

Southeastern’s “Faculty Development and Evaluation Policies” define it as “primarily a teaching University” (4.4.1 Introduction), which is the norm for regional universities. Except for faculty who are assigned non-teaching administrative duties, Southeastern faculty are supposed to be evaluated primarily on teaching. The written policies say that 15-25% of the evaluation should be based on scholarship and 15-25% on service, with the exact percentages to be negotiated, and with the remaining 50-70% of the evaluation based on teaching (4.4.2.1 Procedures). Southeastern’s policy statement consistently and repeatedly lists teaching as the first criterion for decisions about promotion and tenure. For example, it says that faculty appointed to associate professor must show “Demonstrated effective classroom teaching, research/scholarship, contributions to the institution and profession, and, in appropriate instances, successful performance of non-teaching or administrative duties” (4.5.2.1 General Guidelines). The same policy statement includes a review of the principles of “Effective Classroom Teaching” (4.5.2.2) before its parallel sections reviewing the principles of “Research/Scholarship” (4.5.2.3) and service, which it describes under the two categories of “Contributions to the Institution and Profession” (4.5.2.4) and “Performance of Non-Teaching or Administrative Duties” (4.5.2.5). The Guidelines for Achieving Tenure also list teaching first, naming “Demonstrated effective classroom teaching” before “research/scholarship, contributions to the institution and profession, and, in appropriate instances, successful performance of non-teaching or administrative duties” (4.6.5). Indeed, the same section of the Guidelines (4.6.5)

requires “Noteworthy achievement in classroom teaching,” while only requiring “at least one” of “research/scholarship, contributions to the institution and profession, or, in appropriate instances, performance of non-teaching or administrative duties.” By making noteworthy achievement in teaching a requirement without requiring noteworthy achievement in each of the other categories, Southeastern’s policies underline the central role of teaching over every other category of faculty work.

The central focus on teaching is repeated many times across the Academic Policy and Procedures Manual, with teaching always listed first, as it is in every document that I have seen from Southeastern and relating to this process. For example, the “Southeastern Oklahoma State University Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet” form begins with a section for teaching before it provides sections for scholarship and service. Southeastern’s central focus on teaching more than on scholarship and service is standard for a regional university.

Comparing the Portfolios: An Overview

How then does the picture of Tudor’s teaching, scholarship, and service, as represented by her 2009 and 2010 portfolios, compare to the picture of teaching, scholarship, and service in the promotion portfolios of the other candidates? To make that comparison, we must take into account the results of the promotion process for each candidate.

Overall, Cotter-Lynch’s portfolio indicates the strongest case for promotion and tenure among all the portfolios. After that, with Tudor’s 2009 portfolio as a gauge for comparison, I rank Professor Spencer’s and Tudor’s portfolios tied for second strongest, followed closely by Professor Barker’s portfolio. Spencer’s portfolio indicates the strongest service record, with a record equal to Tudor on teaching and below Tudor on scholarship.

As I will indicate below, Barker’s portfolio presents a slightly less convincing case for the strength of her teaching than we see in the portfolios of Tudor or Spencer. It also presents a scholarly profile stronger than Spencer’s, roughly equivalent to or slightly stronger than Tudor’s in 2009, while not nearly as strong as Tudor’s in 2010.

Next, I rank Parrish’s portfolio fifth out of the five portfolios (or sixth out of six, when we include Tudor’s 2010-2011 portfolio). Parrish ranks roughly in the same range as Barker, Spencer, and Tudor in the factual information provided about teaching, lower than Spencer in service, and lower than all the others in scholarship. As noted above, I do not question Parrish’s qualifications for promotion and tenure. Quite the contrary. I trust Southeastern’s decision to award her the promotion and tenure that she earned. But the portfolios show an even stronger record for Tudor than they show for Parrish. Given that Parrish’s record was recognized as worthy of promotion and tenure, it follows logically that a reasonable observer of the portfolios would conclude that Tudor’s even stronger record would also win recognition as worthy of promotion and tenure.

The comparisons change when Tudor’s 2010 portfolio, with its additional publications and testimonials from colleagues, is considered in place of her 2009 portfolio. While Cotter-

Lynch still ranks first, I see Tudor as a strong second, well above Spencer, Barker, and Parrish. I see no reasonable grounds for ranking Tudor's 2010 portfolio anywhere below second. The comparisons below will explain the observations and logic behind these conclusions.

Summary of rankings				
	Overall	Teaching	Scholarship	Service
1	Cotter-Lynch	Cotter-Lynch	Cotter-Lynch	Cotter-Lynch
2	Tudor 2010-2011	Tudor 2010-2011	Tudor 2010-2011	Spencer
3	Spencer, Tudor 2009-2010	Parrish, Spencer, Tudor 2009-2010	Barker, Tudor 2009-2010	Everyone else, roughly
4	(tie, as noted in row 3 above)	(tie, as noted in row 3 above)	(tie, as noted in row 3 above)	(tie, as noted in row 3 above)
5	Barker	(tie, as noted in row 3 above)	Spencer	(tie, as noted in row 3 above)
6	Parrish	Barker	Parrish	(tie, as noted in row 3 above)

Teaching

None of the documents anywhere in the array of documents I have been provided questions the high quality of Tudor's teaching. In Tudor's 2010 promotion portfolio, there is extensive documentation of her effective teaching from before the date of the 2009 portfolio, including two very favorable letters reporting classroom observations of her teaching by her department chair, Professor John Brett Mischo, one from February 2007 and one from March 2009. The 2010 portfolio also includes very favorable reports of classroom visits by Professor Randy Prus from April 2006 and February 2009 as well as an unsigned 2008 department chair's summary of student evaluations, presumably written by Mischo. The summary is very favorable. For example, it twice reports that "Responses were overwhelmingly positive."

The 2010 portfolio also provides yet more testimony in praise of Tudor's teaching in a very favorable letter reporting a May 2010 classroom observation from Professor F. Daniel Althoff, as well as extremely favorable letters from September 2010 reporting on Tudor's

teaching (and on her scholarship and service) from Professors Paula Smith Allen, Parrish, and Spencer and from the director of the Honors Program, Professor Lisa L. Coleman. Collectively, these letters and evaluations, along with nominations for a teaching award in both 2008 and 2009, present an extremely strong picture of Professor Tudor's excellence in teaching at Southeastern.

The question arises, then, how the record of Tudor's teaching, as represented by her 2009 and 2010 portfolios, compares to the record of teaching in the portfolios of the other candidates for promotion, namely, Professors Barker, Cotter-Lynch, Parrish, and Spencer. While I have done my best to compare the different portfolios' records of teaching, the evidence in their portfolios does not point to large differences between most of the candidates. All the candidates show strong teaching records.

Cotter-Lynch

I rank Cotter-Lynch's teaching more highly than Tudor's primarily because Cotter-Lynch was nominated for a teaching award each year she has taught at Southeastern, and in 2007 she also won the teaching award. The nominations and the award seem like a strong sign of excellent teaching. Other evidence also testifies to a strong record of teaching for Cotter-Lynch. The letters from senior colleagues who have observed her teaching are strong, as they are for Tudor. Like many of the other candidates' portfolios, Cotter-Lynch's portfolio includes sample syllabi. (Syllabi are course plans distributed to the students. They typically describe course goals, procedures, assignments, schedules, and other information about the course.) Cotter-Lynch's sample syllabi, representing 3 of the 9 different courses she has taught, are excellent. They are professionally composed and clearly, practically organized. They show a convincing sense of how to address her students at the point where the students begin and then bring them into the goals of her courses. The printouts of her computerized course evaluations show consistently high ratings, above institutional averages. While printouts are provided for only a small number of her courses, and only from one semester (Spring 2007), leaving open the question of how representative they may be, the printouts nevertheless show that she has attracted extremely high student evaluations for at least some of her courses. I attach little significance to the individual student evaluation forms selected from many different courses, because submitting only selected evaluation forms allows the instructor to pick and choose evaluations, whether they are representative or not. Similarly, I attach little significance to testimonies from a small number of individual students, because with so many students taught over a number of years, individual student testimonies could easily be unrepresentative.

Tudor

Similarly, we have ample evidence that Tudor is an excellent teacher. Unlike Cotter-Lynch's portfolio, Tudor's 2009 portfolio provides considerable information about her teaching for each course, in the form of substantial paragraphs of description. These impressively written paragraphs reveal a carefully reasoned teaching imagination and an impressive depth and breadth of thought and knowledge about teaching and about the humanities. They also show an admirable adaptability, both in general and regarding the needs of the particular students who enroll in her courses and at Southeastern in general. Her courses look extremely well adapted to

the specific population of students who take each different course. Tudor's portfolio documents an unusually extensive pattern of seeking out training in the use of technology for teaching, and the descriptions of her courses, both from her and from her colleagues, back up her extensive use of teaching technologies. The commitment to seek out additional training shows an impressive dedication to teaching. Tudor says that she "welcomed any interested colleagues to observe my classrooms." She also says that reports from those observations are included in her portfolio, but they are not included in the version of the 2009 portfolio that I was provided, which I understand is incomplete. They do appear in the 2010 portfolio, and—as noted above—they are very favorable and convincing. Like Cotter-Lynch, Tudor includes selected individual student evaluations, but again, I attach little significance to selected individual evaluations, as compared to a complete set of evaluations from every student in a course, or still better, from every student in every course. But none of the portfolios under review provides complete sets of evaluations. Tudor explains that she asked to have her classes evaluated by "statistical data analysis" but was told by Professor Mischo "that the department could not afford it." She acknowledges that "statistical data . . . is available from" her "first year of teaching at Southeastern," but says that it "does not accurately present my present skills or abilities and will not be included in my application." That seems reasonable, because statistical data reporting student evaluations from a teacher's first year of teaching at a new institution do not provide a reliable picture of that teacher's effectiveness in future years. None of the other candidates' portfolios provide statistical data reporting student evaluations from their first year at Southeastern. Barker and Cotter-Lynch include such data from a later year, but only for one semester, which (as noted above) puts in question whether the data they provide is representative. Tudor's 2009 portfolio includes no syllabi, perhaps because she includes an extensive description of each course, as noted above, or perhaps because the version of the portfolio that I have is incomplete. Her 2010 portfolio includes 2 syllabi. While the font of the syllabi is too small, they are extraordinary syllabi, among the best I have ever seen and certainly the best I have seen from Southeastern (with no disrespect to the others). They do not include the reading schedule, which she provides online, but they are extremely well-pointed to the particular body of students, to their level of experience, to what will help them learn procedurally and intellectually, and to what will help them learn to understand the value of what they study.

Spencer

Like Tudor, Spencer has an excellent teaching record. He provides helpful descriptions of each course, as Tudor does in her 2009 portfolio. While the descriptions do not show the depth of thought and imagination visible in Tudor's descriptions, they indicate a responsible, successful, hard-working teacher. He also provides a letter reporting a favorable classroom observation by Assistant Professor Caryn M. Witten. It seems unusual to rely on an evaluation from another professor of the same rank. The letter may be sincere, but one assistant professor evaluating another assistant professor could find that their shared circumstances make it difficult to provide a frank evaluation. Spencer also submits several selected individual student evaluation forms. As noted above for the other portfolios, selected individual evaluations are nice, but they are not very meaningful, because there is no way to tell whether they accurately represent other students' experience. Nevertheless, Spencer also lists two teaching award nominations and provides strong summaries from the department chair of the course evaluations for two different courses. Spencer's portfolio includes excellent sample syllabi. They are well-thought-through

and clear. In the courses that focus on novels, however, he may assign too much reading for students to complete and absorb in one course. He also gives a large proportion of class time to student presentations and to essays that the students write while in class. The student presentations and essays written during class may leave too little time for class discussion of the large number of books that Spencer requires the students to read. If I were evaluating his teaching, I would ask him to make sure that he had thought through the advantages and disadvantages of assigning so much reading and using so much class time for student presentations and writing, but I would also defer to his judgment about how to design a course that best matches his teaching style with the material for the course. Overall, both Tudor and Spencer have strong teaching records, without sufficient information in their portfolios to rank either above the other.

Parrish

Like Tudor and Spencer's portfolios, Parrish's portfolio shows a strong teaching record. Parrish was nominated once for a teaching award. She fills out her list of courses with itemized, bulleted, brief descriptions. Later in the portfolio, she also provides extremely detailed, professional descriptions of each course. In the realm of supporting documents, she provides a selection of seemingly unsolicited emails testifying to her good teaching, including 4 from students and one from a teacher of her past students. As indicated above, I do not put much weight on such documents, because with so many students taught over a number of years, individual student testimonies could easily be unrepresentative. They are like the selected individual student evaluation forms that I also put little weight on. Parrish provides several of those as well. Perhaps a poor teacher would not have such documents to submit, but I would expect that any decent teacher would have many documents like that to choose from. You can have one appreciative student in an otherwise unsuccessful class, so a letter or evaluation from one student does not prove much. Nevertheless, Parrish also submits reports of teaching evaluations by Professor Allen and Professor Witten (who by the time of her report is an associate professor). Both reports are confidently favorable and indicate high competence in Parrish's teaching. Parrish provides a large selection of extremely thorough syllabi. Her syllabi are well-designed to speak to the population of business-oriented students who typically take her classes in technical and professional writing. She also shows an appealing range as a teacher, for she skillfully adapts her thorough organization and sense of her students' needs to the very different needs of the students who take her screen-writing classes.

Barker

Barker's portfolio includes concrete, favorable reports about her teaching from Professors Allen, Mischo, Parrish, and Witten. Like her colleagues, she provides individual student evaluations and complimentary emails from students. But as described above, such documents cannot reliably testify to an overall record of good teaching. Barker has taught only 3 different courses during her years at Southeastern, far fewer than her colleagues. Tudor has taught 13 different courses, Cotter-Lynch 9 different courses, and Parrish and Spencer have each taught 7 different courses. Barker's portfolio includes syllabi and accompanying materials for 2 of her 3 courses. The materials for her course in Technical and Professional Writing are clear and practical. Her syllabus seems to think through every concern and issue without getting heavy-

handed about its foresight and advice. The materials for her Children's Literature course are imaginative, rigorous, and demanding. They skillfully address an audience of students who may not be experienced with as much reading as she assigns and may have difficulty fitting it into their schedules. She gives them precise directions while still leaving them space to use their imagination to work within those directions. The sample assignments look helpful for inexperienced students, and Barker even provides a handout of advice from previous students about how to do the work. The range and quantity of assigned reading are impressive. I wonder what would happen with a looser structure, but I much respect the careful thought that went into the design of this course. Students should learn a great deal from Barker's classes.

Like Cotter-Lynch, Barker provides statistical printouts of teaching evaluations, but also like Cotter-Lynch, she provides such statistics for only a small selection of courses. In a letter recommending Barker for promotion with tenure, Lucretia C. Scoufos, Dean of the School of Arts and Sciences, writes that Barker's "student ratings are consistently excellent, well above the university and national norms." The data in the portfolio are not consistent with this claim. The portfolio provides two sets of evaluation statistics, each following a different set of questions and a different pattern of reporting the results. For one course from 2010, the printouts report responses to two key questions. Specifically, for the "overall evaluation of this class," they report a mean (an average) of 4.56 on a scale of 1 to 5. For "Overall, I would rate the teaching ability of the instructor," they report a mean of 4.88. These are extremely high numbers, though no information is provided to indicate how they compare to university or national norms. For 3 courses in 2007, a different system of printouts reports responses to one key question, "Overall, I rate this instructor a good teacher." On that question, Barker's 3 courses had a mean of 4.50. Course by course, they received a 4.53, 4.33, and 4.55. (The printouts also report a unit mean (presumably referring to Barker's department) for that question of 4.62, higher than Barker's mean, and they report an institutional mean (presumably referring to Southeastern) of 4.46, just under Barker's mean. All these numbers are remarkably high for Barker as well as for the unit and the institution, which raises a question about whether enough faculty members' courses were surveyed to produce a reliable sample for comparison. Regardless, these numbers do not match Scoufos's claim that Barker's "ratings are consistently . . . well above the university and national norms." 4.50 is not "well above" 4.46, and it is lower than the mean for Barker's own departmental colleagues.

Scoufos also repeats a claim that appears in a letter recommending promotion and tenure from department chair Randy Prus, who writes that "In the department's recent Assessment Report for Distance Learning, Dr. Barker's on-line classes have the highest rate of retention." As in the case of isolated course evaluations that may not represent a consistent pattern, the information provided here is too selective for us to determine its value. When we have information about only one candidate, from only one short period (in this case, one isolated detail from a "recent" report), we cannot tell whether the information carries weight, or whether unrepresentative information has been cherry-picked so that, intentionally or not, it misrepresents the larger picture.

Amid the uncertainty caused by the inconsistent statistics, I do not feel confident about ranking Barker's teaching compared to the other candidates. There is no doubt that Barker's portfolio presents a strong teaching record. Even so, I would cautiously rank her teaching below

the teaching of most of her colleagues, so far as one can see from the limited evidence of the portfolios. Specifically, the comparative statistics indicate that Barker's courses attracted evaluations slightly below the unit mean. And unlike Cotter-Lynch, Parrish, Spencer, and Tudor, Barker was not nominated for a teaching award. I am therefore inclined to rate Barker's teaching highly, but not as highly as the teaching of the other faculty in this pool of portfolios.

Scholarship

For research/scholarship (which I will refer to as scholarship), I will review the portfolios of Professors Cotter-Lynch, Barker, Spencer, and Parrish and then compare them to the portfolio of Professor Tudor.

It may help to review the standards for judging scholarship before looking at the scholarly records of the individual candidates. When a college or university considers a candidate for promotion and tenure, it judges the record of scholarship on the basis of what the candidate has done since arriving at that college or university. Earlier work may serve as a potential predictor of future work and, in that light, may help an institution decide to hire someone. But when it comes to deciding whether to award a professor promotion or tenure, an institution considers what the candidate has done since arriving at that institution.

In contemporary college and university English departments, scholarship is an umbrella term that includes publishing critical discussions about literature, publishing research about literature or related topics, or publishing creative writing. It also includes presenting such work at professional conferences. These standard procedures for characterizing scholarship match Southeastern's written policies, which describe faculty scholarship as "research or creative achievement" (4.6.1 Academic Tenure; see also 4.5.2.3 Research/Scholarship). We can judge scholarship by considering one or more of five different markers of scholarly accomplishment:

1) Number and length of publications and presentations.

- Books. A book counts far more than an article, not only because it includes more writing but also because it requires more research and a larger scale of thinking.
- Articles. A substantial article counts more than a brief, minor article.
- Conference presentations. A conference presentation counts far less than an article, because conference presentations are unpublished, so that they are not available for other scholars to consult. They are presented orally and heard only by whoever happens to show up for the presentation, sometimes a very small number of people. They are also typically shorter than articles and not as fully backed up with cited evidence, because cited evidence is difficult to provide orally. While they are usually peer-reviewed (see #2 below), peer reviewers for conference presentations typically review only a short summary of the presentation, in part because at the time of peer review the full presentation has often not yet been written.

- Book reviews. A book review that simply reports on a book may prove useful for readers but carries almost no value as a scholarly accomplishment and as a credential for promotion and tenure. A book review that includes a serious scholarly discussion may count for a little more but does not usually represent original scholarship.

2) Peer-review. Peer-reviewed publication is the gold standard of scholarly achievement. When scholars complete a manuscript of their writing, they submit it to a scholarly journal or a scholarly book publisher. If the editors at a journal or publisher that uses peer review believe that the manuscript is promising, then they will send it to scholarly experts to review. Often, to ensure the experts' objectivity, they include no indication of who wrote the manuscript. The scholarly experts, known as peer reviewers, review the manuscript to determine if it meets the standards of the journal or publisher, and then to recommend that the journal or publisher publish the manuscript or decide not to publish it. Typically, at least two experts must agree that the manuscript deserves publication before the editors will decide to accept it for publication. Publications that are not peer-reviewed usually receive little or no credit for a promotion unless they are invited (as in number 3 below) or actually read (as in number 4 below) and seriously responded to by other scholars (as in number 5 below). More prestigious journals and book publishers tend to set higher standards and conduct more intense peer review. Most peer-reviewed manuscripts are not accepted for publication, because they do not survive the process of peer review successfully. Proposals for conference presentations also go through peer review, except, sometimes, when they are invited. By contrast, book reviews are not peer-reviewed.

In this report, I provide documented evidence, whenever it is available, to indicate whether a journal or other publication uses peer review, taking such evidence from the *Modern Language Association Directory of Periodicals* (as described below) or from a journal's own website. All such documents (including websites) are itemized in the list of accompanying documents attached to this report.

- 3) Invitations to contribute to a scholarly journal, to a book that includes chapters or articles by different scholars, or to a scholarly conference. For well-established scholars, that is to say, scholars who have published extensively and whose publications have attracted widespread respect from other scholars, invitations can replace peer review.
- 4) Actually reading the work and judging its quality and importance.
- 5) Published responses by other scholars.

Numbers 3 and 5 do not apply to the portfolios under consideration for this report, as none of them provides any evidence of invitations to contribute or of published responses to the work under examination. I will therefore compare the candidates' scholarship by focusing on categories 1, 2, and 4.

Cotter-Lynch

At the time she submitted her portfolio in 2009, Professor Cotter-Lynch's scholarship seemed to be on an upward trajectory, though it had not yet led to much publication. She had published one article about teaching, published without peer review by an online education company that I was not familiar with, a company that nevertheless gave the article an award. She provides a web address for the article, but the link is dead, and the article no longer appears elsewhere on that website. I found it, nevertheless, on the Wayback Machine (<https://web.archive.org/web/20080509122634/http://ablemedia.com/ctcweb/consortium/cotterlynchancientbiography.html>), an online archive of websites removed from their original locations and otherwise no longer available. This article reports Cotter-Lynch's day-by-day teaching strategy, including lesson plans and lecture notes, for part of one course, a part that focuses on the ancient historians Plutarch and Suetonius. While it makes no original scholarly contribution, it is an exceptional report and model of teaching, as good as any report of a professor's teaching strategy that I have seen. It speaks in sympathetic and practical terms to Southeastern freshman at the skill and knowledge level they bring to her class, and it also stretches them to develop skills of reading, interpretation, and reflection on writing and on civics that they can take with them to other courses and to the remainder of their lives. I learned several teaching strategies about how to get beginning students to expand their curiosity and their skill at interpretation. While it is unfortunate that this article is not easier to find, a publication of this kind suits a teaching-centered university such as Southeastern especially well. When Southeastern's policies describing faculty scholarship list what counts as scholarship at Southeastern, they begin with "adaptations of knowledge to the learning environment" (4.5.2.3 Research/Scholarship). Cotter-Lynch's article does not provide original scholarship, but it skillfully adapts already existing knowledge to the learning environment.

In 2009, when Cotter-Lynch submitted her portfolio, she was also the coeditor of a nearly complete book that collects scholarly essays from ten different scholars, a book that had a contract with Palgrave-Macmillan, a very respected publisher. When her promotion was under consideration, the book manuscript was scheduled to go through peer review soon. The contract reflects the publisher's expectation that the manuscript would pass successfully through peer review, but that process had not yet taken place when Cotter-Lynch was under consideration for promotion. She lists her own article in the book as peer-reviewed, but says the book had not yet gone through peer review, so it is not clear whether the peer review for the article was completed or anticipated. Most schools would not count an article in a book edited by the candidate as a credential toward that candidate's own promotion, but if the article successfully passes through peer review, then it seems to me worth crediting. Cotter-Lynch had another article manuscript undergoing peer review at the time she submitted her portfolio. She also reports that a Palgrave-Macmillan editor had expressed interest in the book manuscript she was working on. Such interest is a good thing, but the project had not yet reached the concrete stage of a finished book manuscript, let alone a manuscript that had gone through peer review and been accepted for publication. Therefore, it was far too early for that manuscript to count as a publication. Cotter-Lynch had also published one additional article and one book review, but they were published before she arrived at Southeastern. Her only publication since arriving at Southeastern was thus the article about teaching Plutarch and Suetonius.

Without any published work included in the portfolio for me to read and evaluate, I read the series of unpublished manuscripts included in the portfolio. They are excellent work. They offer a concrete, imaginative, and professional contribution to active discussions in current scholarship. As specialized studies of the history of early medieval women, early medieval women's writings, and the interpretation of early medieval accounts of dreams, they would require a specialist in those areas to provide a full evaluation of exactly how they fit into recent scholarship. But even someone such as myself, a non-specialist in those areas who has a more general acquaintance with medieval studies and a broad acquaintance with the history of literary criticism and with contemporary literary criticism, can see that these are very promising works. They consist of 3 conference presentations, somewhat repeating each other and not in the final forms they might eventually take in published work, plus the manuscript of the article to be included in the book that Cotter-Lynch was co-editing, and the other article manuscript then under consideration at a journal. Here and there they have a minor rough passage, especially (as one might expect) in the conference papers. For example, the article for the co-edited book confuses the theoretical concept of interpellation with another term, interpolation, which has a completely different meaning. (A peer reviewer should catch such things.) Nevertheless, Cotter-Lynch understands the concept well and uses it rigorously, and all her work seems imaginatively and constructively keyed to advancing active interests in the contemporary scholarly study of medieval women, their writings, and other writings about them, key areas in contemporary medieval studies.

Through the South Central Modern Language Association, Cotter-Lynch received a grant for a one-month residency at the Newberry Library, a major research library. Such a grant is an indicator of serious scholarship in progress. Since her arrival at Southeastern, she presented her work at 7 different conferences (her statement says she gave 4 presentations, but 7 appear on her list of presentations), including such major conferences as the International Medieval Congress, which is the major conference for medieval studies, and the conferences of the American Comparative Literature Association and the Modern Language Association. She also took a leadership role by organizing sessions at the Medieval Congress and leading a seminar at the Comparative Literature Conference. No one else in this set of portfolios has nearly so strong a record of presenting work at conferences. That record of strong conference presentations contributes to the impression that Cotter-Lynch's work was on an upward trajectory, with publications perhaps about to appear, even though, during her years at Southeastern, and by the time of this promotion, she had only one publication.

Barker

During her time at Southeastern, Professor Barker presented 4 papers at the major conference for the study of children's literature and volunteered to chair a session at that same conference. She does not provide her actual conference papers, but she does provide summaries of them. Her paper on the popular novel *Holes* is clever, smart, and well-informed. Her paper on three historical novels by Christopher Paul Curtis shows a keen understanding of the novels' racialized contexts. And her paper on Curtis's novel *The Watsons Go to Birmingham—1963*, which she expanded into an article, shows an excellent sense of the novel's tone and its changes in tone. The earliest of these conference papers, on girls in nineteenth-century fiction, seems less

original and rather forced into the theme of the conference, but otherwise relatively soundly conceived.

During her time at Southeastern, Barker also published a deeply researched, deeply thought-through article, “Racial Identification and Audience in *Roll of Thunder, Hear My Cry* and *The Watsons Go to Birmingham—1963*.” This article appeared in *Children’s Literature in Education*, an established education journal and a good venue for a scholar from a teaching-focused university such as Southeastern. Barker’s article is slow-moving and too long, but it is thorough and useful. Drawing on a wide range of surprisingly detailed research, Barker builds well-observed interpretations of the two novels she discusses. Noting that African American readers have received more attention in discussions of these novels, she also attends to white and, more broadly, non-black readers, and she compares the different contexts of response for differently positioned readers. Unlike many other critics who write about racially-inflected topics, Barker genuinely has read and understood the body of scholarship known as “critical race theory,” and she imaginatively brings it to bear on strategies for interpreting children’s literature. She concludes with a thoughtful, practical discussion of strategies for teaching racially conscious children’s literature to readers who may believe that we live, or should live, in an age of race-blind teaching. This article will serve as a valuable reference for teachers from middle school through high school, and for university teachers of future teachers.

Barker’s portfolio includes a letter testifying to the strength of her scholarship from Professor Lynne Vallone, a distinguished scholar of children’s literature at Rutgers University—Camden. Dean Scoufos’s letter recommending promotion and tenure for Barker makes much of the letter from Vallone, and the Faculty Promotion and Tenure Evaluation worksheet names the letter from Vallone, along with Barker’s published article, as the two facts testifying to Barker’s outstanding scholarship. But Vallone’s letter notes frankly that Barker was Vallone’s student, and that Vallone directed Barker’s dissertation, which disqualifies the letter as a reliable indicator of Barker’s credentials. Relying on that letter is the academic equivalent of relying on a parent testifying to the wonders of her own child. Vallone has a conflict of interest, because Barker’s success in winning promotion and tenure would provide a credential testifying to Vallone’s own success.

Spencer

Professor Spencer published a 326-page scholarly book and a 20-page scholarly article before arriving at Southeastern, but publications from before his arrival at Southeastern are not relevant to his consideration for promotion and tenure at Southeastern. When he applied for promotion and tenure, he had published only one book review during his time working at Southeastern. His portfolio provides a link for the review. The link no longer works, but I found it at another address (<https://scholarworks.iu.edu/journals/index.php/tmr/article/view/16706/22824>). It is professional and thoughtful work, but as a brief and modest book review, it does not represent a substantial contribution to original scholarship.

He also had 2 articles accepted for publication and scheduled to appear. His portfolio does not provide copies of the articles, but I acquired them through my university library. They

appeared in peer-reviewed journals, *The Explicator* and *Eureka Studies in Teaching Short Fiction*. According to the *Modern Language Association Directory of Periodicals*, *Eureka Studies* accepts a high percentage (60%) of the manuscripts submitted for its consideration, making it a comparatively easier journal to publish in, and thus making an article in *Eureka Studies* a less impressive credential than an article in most other journals. (For more about the *Modern Language Association Directory*, see below.) *The Explicator* had a certain vogue in the 1940s and 1950s, when it was new and represented a new trend sometimes known as “explication,” but for many decades now it has had a reputation for publishing undistinguished work. Department chair Mischo writes, in his December 1, 2006 letter to Dean Mangrum about Spencer: “there is a question as to the research significance of a venue such as *Explicator* and its standards of scholarly depth.” I believe that most informed scholars share that skepticism. It is difficult for a journal that publishes extremely short articles, as *The Explicator* does, to publish scholarship with ambition and depth.

Spencer’s article in *The Explicator*, a short, thoughtful reading of a famous poem by Emily Dickinson, argues skillfully for a new interpretation of the poem’s understanding of the Christian afterlife. The article is only one page long, however, and it does not address any other critics’ interpretations of the poem, even though a great many previous critics have written about the poem, as Spencer acknowledges. My own view is that Spencer’s plausible interpretation needlessly narrows the poem to one model of the Christian afterlife, but I would like to see the advantages and disadvantages of Spencer’s interpretation played out, in relation to other critics’ interpretations, at greater length.

The other article works on a larger scale both in length (10 pages) and in research. It offers a point-by-point comparison of William Faulkner’s most famous short story, “A Rose for Emily,” Robert Bloch’s novel *Psycho*, and Alfred Hitchcock’s film made from the novel. Spencer notes that others have mentioned similarities among these works, but he sets out to describe the similarities more extensively. He suggests that Hitchcock’s film makes few changes to the novel, but that those few changes heighten the film’s similarity to Faulkner’s story. Spencer grounds the article in his own experience teaching the 3 works together and implies that others might try the same in their own teaching, an approach that makes the article speak to the teaching-centered focus of Southeastern. As a Faulkner scholar myself, I would like to see a little more engagement with other critics’ interpretations of the story, but this is a reasonably well-researched article, proficiently executed with modest but interesting and plausible claims.

As I will indicate in the next paragraph, Spencer had a third article accepted while he was under consideration for promotion and tenure, an article about George Garrett’s novel *Death of the Fox*. In this article, Spencer draws on wide knowledge and research but has nothing new to say about his topic. Most of the article summarizes the novel’s plot. We teach our students not to summarize plot, because if people want plot, they can just read the novel. The task of the critic is not to describe the novel, but to interpret it. When Spencer is not describing plot, he mostly just describes the novel’s approach to its topic or focuses on recounting what Garrett himself or others have said about the novel, sometimes noting whether he agrees, but not providing any fresh or extended interpretation. Spencer shows a vast knowledge of materials and issues in and around *Death of the Fox* and a vast knowledge of other novels to compare it to. While this article shows more knowledge than Spencer’s other articles, it is nevertheless weaker work.

According to a May 18, 2016 letter from the Department of Justice to the writer of this report, “In the Spring of 2007, Dr. Spencer sent out four articles for publication and supplemented his portfolio with that information.” These 4 article manuscripts “were all ultimately published.” After Spencer submitted the article manuscripts, Southeastern President “Snowden, based on Dr. Spencer’s supplemented portfolio, recommended that Dr. Spencer receive tenure and promotion.” Only one of the 4 articles was accepted before Snowden’s decision, the article on *Death of a Fox*, though Spencer “is not sure whether he informed President Snowden” of that acceptance before Snowden’s decision. One of the articles was published by a journal that Spencer submitted to after Snowden’s decision.

After this precedent was set, providing decisive credit to Spencer’s submission of 4 article manuscripts, Tudor’s 2009 portfolio listed 11 submitted article manuscripts. It looks extremely peculiar that Spencer would be given so much credit for 4 submitted manuscripts, reported late in the process, that the mere report of submitting those manuscripts would reverse a recommendation against promotion and turn it into a recommendation for promotion, and yet Tudor was not given the same credit for nearly 3 times as many submitted manuscripts, reported 4-6 months earlier in the promotion-and-tenure-review process.

One could understand if Tudor were not credited for submitting article manuscripts, so long as the same standard had applied to Spencer. But it appears that Spencer was given a great deal of credit for a category of scholarly production when Tudor was not given the same credit for a great deal more production in the same category. That glaring contradiction stands out even when we consider only Tudor’s 2009 portfolio, without even taking into account her far more extensive 2010 portfolio.

Parrish

During her time as an assistant professor at Southeastern, Professor Parrish produced nothing that can count for a record of scholarly publication within Southeastern’s definition of “Scholarship/Research” (4.5.2.3). Like many of her colleagues, she published a number of items before she arrived at Southeastern, but after she began working at Southeastern she did not publish work that would count as scholarship. She did write 2 government reports, together totaling 4 pages. They are not peer reviewed, and they are not items I would consider scholarship or publications. They are work done on the side, not as part of her job as a professor. She also reviewed a textbook manuscript and a textbook proposal for commercial publishers. Being asked to do those reviews is not a sign of scholarly distinction. Textbook publishers do not ordinarily ask professors to review such things based on the distinction of the professors. Rather, they look for people who teach courses that might assign the published textbooks, trying to find professors at all different types of schools in different regions of the country. They hope to get useful suggestions for the manuscripts from a variety of different markets, but they also hope that the manuscript reviewers will themselves assign the books if they are published. In that context, Parrish’s completion of those manuscript reviews may indicate good citizenship, but it does not count as scholarship. Parrish lists 10 presentations at conferences or other events before she arrived at Southeastern, but only one since arriving at Southeastern, and that one is a local presentation at Southeastern itself, which usually disqualifies a presentation from counting as

scholarship in a promotion portfolio. A presentation of that kind counts as service, not as scholarship.

Parrish's sole publication from her time at Southeastern that comes even close to being scholarship consists of one three-page, non-peer-reviewed book review that merely summarizes the book. As noted earlier, in line with standard procedures, a book review that simply reports on a book does not count as scholarship. That standard procedure for judging book reviews matches Southeastern's written definition of scholarship, which describes scholarship as "the pursuit of new knowledge," and which provides a list of the different kinds of faculty scholarship, a list that does not include book reviews. It does include "articles in refereed [meaning peer-reviewed] or editor-evaluated publications" (section 4.5.2.3 Research/Scholarship). But book reviews are not articles, are not refereed or peer-reviewed, and are rarely editor-evaluated. Parrish's book review, which simply describes the book she reviews without providing any notable research or thinking of her own, does not advance the pursuit of new knowledge. Because Parrish's record shows no scholarship produced during her time at Southeastern, I see no reasonable cause for rating her record of scholarship above the record of scholarship for Professor Tudor, whose record as a scholar is far stronger both in quantity and in quality.

As noted earlier, I am not suggesting that Parrish did not deserve to receive promotion to associate professor with tenure. I have described her record of scholarship here merely so that I could compare her record to the record of Tudor and the other professors whose portfolios I have reviewed.

Tudor

In comparing Professor Tudor's record of scholarship to the scholarly records of her colleagues, I will first consider her 2009 portfolio and then her 2010 portfolio. In her 2009 portfolio, Tudor reports one presentation at a regional conference and one at Southeastern. The presentation at Southeastern would count toward service rather than scholarship. She also reports one article accepted for publication by *The Texas Review*, "Romantic Voyeurism and the Idea of the Savage." *The Texas Review* is not well-known outside its region, but it is a peer-reviewed journal. It is also a selective journal, meaning that it accepts a low percentage of submissions. I was not provided a copy of that article for the 2009 portfolio. (I was provided a copy for the 2010 portfolio, which I will address below.) As noted above, she also lists an unusually large number of articles submitted but not yet accepted. I was provided a copy of one of those articles, "Historical and Experiential Postmodernism: Native American and Euro-American," published in a peer-reviewed journal, the *Journal of Contemporary Thought* in 2009 (and added to Tudor's 2009 portfolio in February, 2010, according to emails from Southeastern provided by the Department of Justice). Just as a matter of counting, let us put these two peer-reviewed articles from the 2009 portfolio into comparative perspective. Aside from Tudor, only Barker had a published, peer-reviewed article. Cotter-Lynch had one accepted and published article, not peer-reviewed. Spencer had 2 accepted and not yet published articles (or 3, if we count the supplementary information that, as noted above, Spencer cannot recall whether he provided), each of them peer-reviewed, one of them extremely short, and none of them in highly selective journals. Spencer also had a book review. Parrish, with only a book review that merely

summarizes the book under review, had no publications that count as scholarly publication within Southeastern's definition of "Scholarship/Research" (4.5.2.3).

In that context, it is hard to see any good reason why the worksheets from the Dean of the School of Arts and Sciences, Lucretia Scoufos, and the Interim Executive Vice President for Academic Affairs, Douglas N. McMillan, assign Tudor's scholarship the possibly fatal rating of "needs improvement" (3 on a scale of 1 to 5). Granted, Scoufos dated her worksheet on January 14, 2010, before the news of Tudor's second accepted article in February, 2010. Scoufos writes in her January 12, 2010 letter that "there appears to be only one peer-reviewed paper . . . accepted, but not yet published." (In an English department, it could sound demeaning to refer to an article as a "paper," as if it were only a conference paper, but that is not the case in all fields, and I do not know Scoufos's field.) As noted above, Cotter-Lynch had no peer-reviewed articles. Barker had only one. And Spencer, at the same point in the process, had two accepted but not yet published peer-reviewed articles, short enough so that together they total less production than Tudor's one article, even without taking into account Tudor's report of many submitted articles. Less than a year earlier, on February 12, 2009, Scoufos recommended Parrish for promotion and tenure, even though Parrish had no articles. In those comparative contexts, I find Scoufos's evaluation of Tudor puzzling.

McMillan's evaluation of Tudor stands out as even more puzzling. McMillan signed the transmittal form for Tudor's 2009 portfolio on February 10, 2010. The next day, February 11, an email from Scoufos indicates that McMillan approved the decision to add to Tudor's portfolio the new information that she had a second accepted article. Indeed, McMillan's April 30, 2010 letter purporting to explain the reasons for the decision to deny Tudor's application for promotion and tenure acknowledges that Tudor has "two publications" that "do appear to be examples of work which meet[s] the excellent and noteworthy standard" required for promotion and tenure. As noted above, McMillan's worksheet, which is undated, assigns Tudor's scholarship the same possibly fatal rating assigned by Scoufos. Either McMillan completed the worksheet before learning of Tudor's additional publication, in which case the comparatively low rating on the worksheet should not have been relevant to McMillan's decision reached after learning the new information, or he completed the worksheet later and yet gave Tudor's scholarship the same rating that Scoufos gave it even though by that point Tudor had doubled her production of accepted, peer-reviewed articles. Either way, the rating and the decision are strikingly inconsistent with the decisions reached about the other candidates.

I have also seen one worksheet for Barker (undated and unsigned, so that I cannot tell whose ratings it records). Barker published less than Tudor, but this worksheet gives Barker an "outstanding" for scholarship (5 on a scale of 1 to 5). I have not seen worksheets for the other candidates, and reasonable people could debate the comparison between Tudor's 2009 and Barker's, and possibly Spencer's, records of published scholarship or scholarship accepted for publication. But even though different evaluators could reasonably rank Barker's, Spencer's, and Tudor's 2009 records of scholarship in different sequences, they could not reasonably put them in entirely different categories. And by no reasonable measure can Tudor's scholarship in 2009 rate lower than Parrish's scholarship, let alone so much lower that it lands in an entirely different category. And all that applies only if we simply *count* the publications.

If we take the more responsible path of actually reading Tudor's publications, then her scholarship stands out still more for its serious substance. The article about "Historical and Experiential Postmodernism" does not break major new ground, and it was published in a journal published in India that does not appear to be very selective and is not widely distributed in the United States. But it provides a sophisticated and well-informed synthesis, very valuable for teachers, and a more convincing sign of Tudor's own preparation for teaching than the usual pattern of articles that say something more original but not very meaningful. I appreciate the way that this article provides a genuinely critical yet still sympathetic distance on what other scholars and critics of Native American writing have said before Tudor. It has a substance equaled in these portfolios only in the article by Barker and in Cotter-Lynch's excellent work in progress, which at the time of her portfolio was not yet completed or accepted for publication. It is exactly the kind of scholarship that best serves a faculty member at a teaching-centered university.

While Tudor's 2009 portfolio already places her scholarly record second (roughly tied with Barker) among the 5 candidates' portfolios, her 2010 portfolio shows an even much stronger scholarly profile, stronger than Cotter-Lynch's in terms of actual accomplished publication, and far stronger than Parrish's and Spencer's portfolios, if still not as strong as Cotter-Lynch's, in terms of my own judgment of the actual written work. In addition to the 2 articles mentioned above, the 2010 portfolio includes another 6 articles published or accepted for publication, making a total of 8 articles. (It also includes a ninth article that editors asked her to revise for additional consideration, a standard practice that most accepted article manuscripts go through before they are accepted for publication.) Nothing in the pool of portfolios compares to this burst of publication from Tudor. The articles are relatively rather than completely up-to-date with current scholarship. Nevertheless, she did the work and had the skill and talent to do it well, both according to my own judgment and according to the judgment of objective peer reviewers. The journals (and in one case, edited book of essays) where these articles were slated to appear vary, and none of them is a top-flight journal. It is difficult for a scholar with the limited scholarly resources of a teaching-centered university like Southeastern to publish with a top-flight publisher or journal. The only publisher or journal in the entire set of portfolios that is even in the realm of a distinguished place to publish would be Palgrave-Macmillan, where Cotter-Lynch has a contract for her not yet peer-reviewed co-edited book manuscript. At the same time, 7 of the 8 places where Tudor has published articles or had articles accepted for publication rely on peer review (*ASEBL Journal*, *The Atrium*, *Diesis*, *Journal of Contemporary Thought*, *Research and Criticism*, *Teaching American Literature*, and *The Texas Review*). The remaining article was published in a book called *Diasporic Consciousness*, published by a German publisher, VDM Verlag, which does not use peer review, though the editor of the book would still have done her own review before deciding whether to accept the article. The peer review that Tudor's publications went through provides an objective standard of outside judgment unparalleled across the pool of portfolios under consideration. And it provides that objective standard of outside judgment for a total of 7 different publications. Perhaps someone could get lucky once or maybe even twice and slip an unworthy manuscript through the process of peer review. But that could not happen repeatedly. It could not happen 7 times.

I am extremely familiar with the process of peer review. I regularly peer review scholarly manuscripts for distinguished academic journals and book publishers. My own scholarly writing has gone through peer review numerous times, and I have coached and advised numerous less

experienced colleagues and former graduate students through the process. But I do not ask you merely to rely on my professional judgment. Instead, to illustrate the process of peer review in objective terms that do not rely on my own professional judgment, I have consulted the Modern Language Association Directory of Periodicals, the largest and most authoritative database of information about scholarly journals of literature and language. The Modern Language Association is the premier professional organization for the study of languages and literatures, and I have access to their database through EBSCO (a collection of electronic databases) at our library at the University of Illinois. EBSCO is also available at Southeastern, as I know because Tudor's syllabi indicate that she requires her students to use it through the Southeastern Library. Of Tudor's 8 articles, one appears in a book collection, which would not be listed in a directory of periodicals. The other 7 articles were published or accepted for publication in journals. Five of those journals appear in the directory. Of the remaining 2 articles, one appears in *Research and Criticism*, which is not listed in the directory, but which says on its website (<http://www.pencraftinternational.com/bookclub.htm>) that it conducts blind peer review (meaning that the reviewers do not see the names of the scholars whose work they review, the most objective form of peer review). The other appears in *Diesis*, which says on its website that it conducts blind peer review (<http://www.diesisjournal.org/submissions>). The Modern Language Association Directory of Periodicals also includes the 3 journals where Spencer had work accepted for publication and the one journal where Barker published.

The charts below show the directory's information about peer review for the 5 listed journals where Tudor has published, followed by the journals where Spencer and Barker have published. As neither Cotter-Lynch nor Parrish published in any journals between the time they arrived at Southeastern and the time they submitted their applications for promotion and tenure, the charts below are complete. I have calculated the acceptance rate based on the number of articles published per year divided by the number of article manuscripts submitted per year. Attached to this report, you will find copies of the printouts from the directory, the source of the information in the charts below, as well as copies of the websites listed above for *Research and Criticism* and *Diesis*.

Journals for Tudor's published articles	Article manuscripts submitted per year	Articles published per year	Acceptance rate	Number of peer readers
ASEBL Journal	13	3	23%	2
The Atrium	100	24	24%	4
Journal of Contemporary Thought	30-40	25	63-83%	2
Teaching American Literature	100	20-25	20-25%	2
The Texas Review	250	6	2%	5

Journals for Spencer's published articles	Article manuscripts submitted per year	Articles published per year	Acceptance rate	Number of peer readers
Eureka Studies in Teaching Short Fiction	50	30	60%	3 minimum
Explicator	300	100	33%	2-3
Lamar Journal of the Humanities*	50	10	20%	4

*As described earlier, Spencer had an article accepted in *Lamar Journal of the Humanities* late in the process of his consideration for promotion and tenure, and he does not remember whether he notified administrators of the acceptance. Therefore, it is not clear whether this journal is relevant for the chart above, but it is included, nevertheless, in the interest of considering the full range of possibly relevant data.

Journal for Barker's published article	Article manuscripts submitted per year	Articles published per year	Acceptance rate	Number of peer readers
Children's Literature in Education	"Varies"	20	Not calculable without information about the number of manuscripts submitted per year.	2

The information in these charts is far more reliable as an objective measure of Tudor's scholarship than the hunch of an administrator at Southeastern, who may not know the field and who may bring non-objective considerations into the decision-making process.

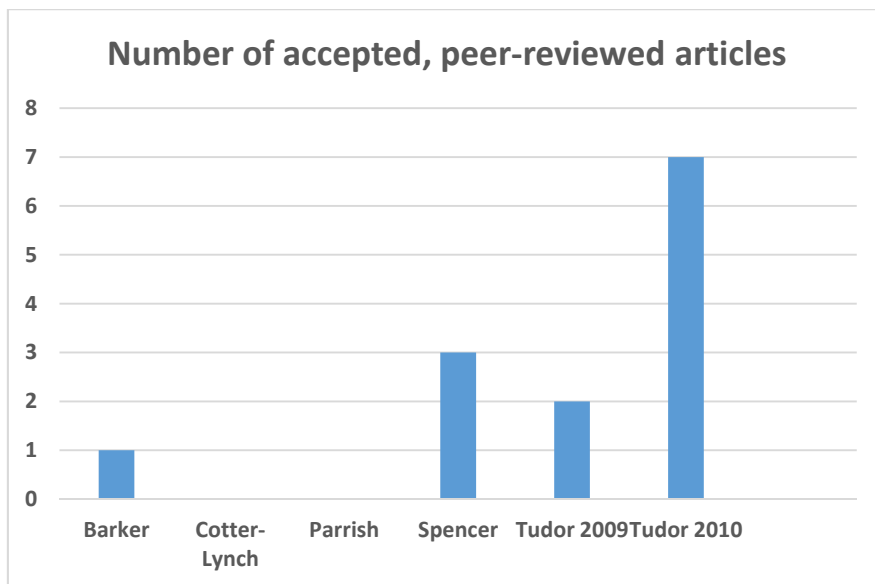
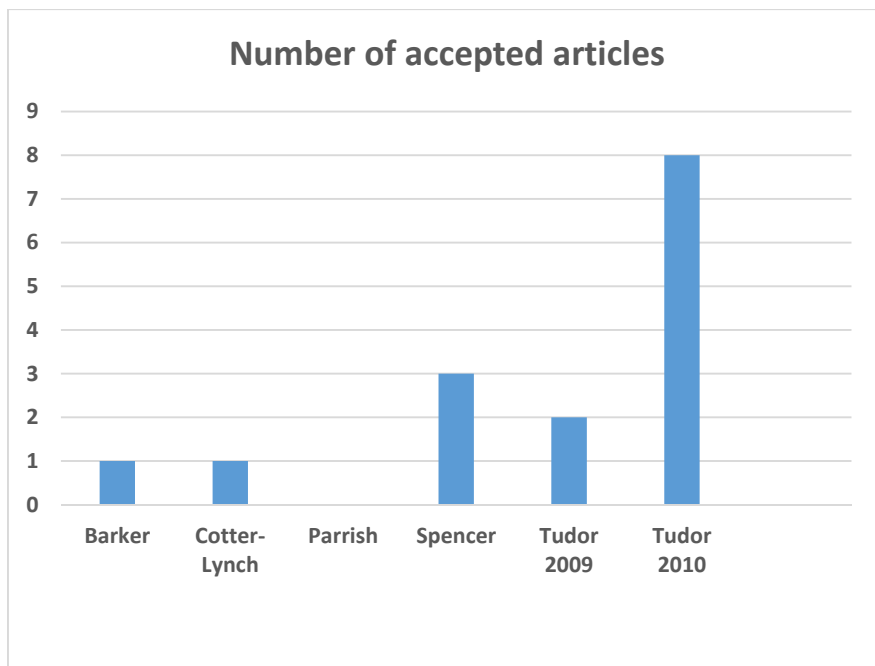
As an experienced scholar in the field, I will also provide brief evaluations of the 5 additional publications included in Tudor's 2010 portfolio and not in her 2009 portfolio, as well as brief evaluations of her other 2 new articles listed in the 2010 portfolio but not provided in that portfolio.)

- "Latin American Magical Realism and the Native American Novel." This article is knowledgeable, intelligent, and wise. It has a narrow focus, zeroing in on a critique of one particular scholarly book that may not need such a careful consideration, but the consideration is very well done.
- "*Pearl*: A Study in Memoir and First Person Narrative Poetry." This is an intelligent and proficient article, well researched through 2000. Some individual comments in the article could use revision to point them better at a scholarly audience, but the work overall shows genuine promise for a young scholar.
- "Romantic Voyeurism and the Modern Idea of the Savage." This article is intelligent, knowledgeable, and wide-ranging, more useful for teachers than we might find in the tight focus of a typical scholarly article. A few individual points could use revision, but again, the wisdom and ability stand out.
- In "The Ethics and Ethos of Eighteenth-Century British Literature" Tudor compares two eighteenth-century novels, *Pamela* and *Evelina*, to a postcolonial twentieth-century novel, *Wide Sargasso Sea*, which itself revises the nineteenth-century novel *Jane Eyre*. Tudor discusses how differences in social power shape these novels, focusing on gender, class, and race, a fairly predictable approach in contemporary criticism. The distinctiveness of the article comes in the comparison across centuries, including the argument that ideas made explicit in the later novel also play a large role in the earlier novels, even though the earlier novels show less awareness of those ideas.

- “A Reading of Jonathan Swift’s ‘A Modest Proposal’ Using Roman Jakobson’s Poetic Function” offers a skillful, intelligent, and sophisticated reading of Swift’s rhetoric and style. The grafting of Jakobson’s famous essay with Swift’s most famous essay comes across like a teaching exercise by a smart and ambitious beginner, though in that sense it helpfully addresses strategies for teaching Swift to undergraduates. I would like to see the impressively detailed reading of Swift’s language complemented by more dialogue with what other critics have said about it, but this is smart and imaginative work.
- “The Memoir as Quest: Sara Suleri’s *Meatless Days*.” A very solid article that can prove useful to people who teach or write about Suleri’s popular memoir. While this article is published in a South Asian journal that few readers in the United States will find, it makes sense to publish there about Suleri’s memoir of growing up in South Asia.
- “*The Ancient Child and House Made of Dawn: A New Interpretation*.” This article about N. Scott Momaday, a Pulitzer-Prize-winning, widely taught Native American novelist, is Tudor’s best work. It provides a strong interpretation deeply engaged with other critical responses. With updating, a more specific title, and perhaps an occasional cut of more personal reflections, this article definitely has the potential to appear in a distinguished journal of literary criticism.

Overall, Tudor’s articles move across a wide range of materials, with a focus on Native American studies and fiction. They also address related topics such as colonial and postcolonial writers, including Suleri and the Irish writer Jonathan Swift, in line with the common tendency of scholars to interpret Native American writing together with other postcolonial writing.

The charts below illustrate the number of accepted articles and the number of accepted, peer-reviewed articles for each candidate. (These charts include Spencer’s third article even though the administrators at Southeastern may not have known of its acceptance when they decided to recommend him for promotion and tenure.)



Service

Based on the portfolios available for consideration, it is difficult to draw meaningful distinctions among the service records of the 5 different candidates for promotion. The only meaningful differences I can readily identify come from Cotter-Lynch's nomination for an award for excellent service, and her service beyond Southeastern in organizing conference panels and leading a seminar of other scholars. I do not know how difficult it is to receive a nomination for excellent service, but the other candidates have not listed such a nomination or provided leadership in national settings beyond campus. Much of Barker's service seems to follow from

her classroom role as a teacher of future teachers of English, but I do not have enough information to judge how much such work goes routinely with the courses she taught or indicates an extra contribution on her own initiative, except to say that she also volunteered at the community elementary schools. Apart from those considerations, all the candidates seem to have similar records of service. Except for Barker, they all played roles on their department's Assessment, Planning, and Development Committee, which both Spencer and Tudor have chaired. Barker and Tudor also served on the Five-Year program Review committee, while Spencer and Tudor played key roles in organizing Southeastern's biannual Native American Symposium. Tudor's 2010 portfolio also indicates that she began working to organize a Gay Straight Alliance on campus and to provide other support and resources for LGBT students at Southeastern. Tudor and Cotter-Lynch both served on committees that hire new faculty, a crucial and extremely time-consuming task. All the candidates pitched in to help with the Honors program or other more or less routine tasks here and there. Spencer served as faculty advisor for the local chapter of Sigma Tau Delta, the international English Honor Society. Parrish and Tudor each served on the Faculty Senate, elected by their colleagues from across the University.

Given the difficulty of making meaningful distinctions among the service records of the various candidates, it seems perplexing that all the candidates except Tudor were considered by the administrators beyond their department to have served the University with distinction. Probably no one was better qualified to judge Tudor's service than those colleagues who worked with her most closely. Here is what they say.

- Professor Paula Smith Allen's 2010 letter says that "As a colleague, Dr. Tudor endeavors to carry (at least) her share of the workload within the department. I recall that, while still a relative newcomer . . . , Dr. Tudor led an assessment effort by the department with alacrity and foresight over a several-year period. She participates on committees and participates actively in planning and assessment. She works effectively with both faculty and staff members, and her demeanor is always professional regardless of the circumstances."
- Professor Lisa L. Coleman's 2010 letter praises Tudor's contribution to designing new courses, working on the Native American Symposium, serving the community, serving as a Faculty Senator, and working on department committees.
- Parrish's 2010 letter says that "Dr. Tudor has been instrumental in the preparation of assessment documents," praises her work on department committees, and says that "She is a vital member of the department through her service, astute thinking, contributions, and collegiality." She also praises Tudor for service "beyond the department as she currently serves on the Faculty Senate, has served and participated in the Oklahoma Scholar Leadership Enrichment Program . . . , and has been a tireless supporter, worker, and committee member for the Native American Symposium."
- Spencer's letter joins the chorus of praise for Tudor's service. "She is in her second year," he writes, "as a member of the Southeastern Faculty Senate, and before that she served for three years as chair of our Assessment, Planning, and

Development Committee, compiling and writing the annual assessment report. This is by far the most important departmental committee, as it oversees all aspects of curriculum development and assessment, potentially charting the course for years to come.” Spencer calls Tudor “one of the key members of the Native American Symposium Committee,” which he chairs. He praises her for “helping to plan and stage the event every other year. For the 2005 and 2007 symposia,” he adds, Tudor “served as co-editor with me of the published proceedings, reading and commenting on all the papers submitted, and joining in the selection of those to include.”

Surely it means a great deal that these colleagues who have worked so closely with Tudor think so highly of her contributions to service. The evidence in the portfolios indicates that Tudor and her colleagues work together to distribute the service more or less equally among themselves. Indeed, the similarity among the different candidates’ service records throws into doubt the very possibility of seeing Tudor’s service as less than the service of her colleagues. To judge her service as deficient would require a similar conclusion for at least 3 of the 4 other candidates who were deemed qualified for promotion and tenure. Therefore, I see no reasonable grounds for ranking Tudor’s service in such a way that it would contribute to denying her the promotion and tenure that her colleagues were granted for the same level of work for the University that they all served.

Once we put all this information and all these comparisons together across the 5 candidates’ records of teaching, scholarship, and service, the facts speak for themselves. The facts show no reasonable, objective, or fair grounds for denying Professor Tudor the same promotion that was granted to her colleagues.



Robert Dale Parker
Professor of English
University of Illinois

June 6, 2016

List of Documents Considered for This Report

This report was based on the following documents.

- Article by R. J. Tudor, “Historical and Experiential Postmodernism: Native American and Euro-American.” OAG/DLC/USA v. SOSU – CIV-15-324/004931-50.
- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Rachael J. Tudor, submitted by Lucretia C. Scoufos, 1/14/10. OAG/DLC/USA v. SOSU – CIV-15-324/001137-38.
- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Rachel J. Tudor, submitted by John Brett Mischo, 11/29/09. OAG/DLC/USA v. SOSU – CIV-15-324/001133-34.
- Memorandum on the subject of promotion and tenure recommendation (regarding Virginia A. Parrish), submitted by Lucretia C. Scoufos, 2/12/09. OAG/DLC/USA v. SOSU – CIV-15-324/007384.
- Memorandum of notification of promotion and tenure status (regarding Virginia A. Parrish), submitted by Larry Minks, 2/16/09. OAG/DLC/USA v. SOSU – CIV-15-324/007383.
- Letter approving promotion of Virginia Parrish, from Michael D. Turner, 4/20/09. OAG/DLC/USA v. SOSU – CIV-15-324/007381.
- Letter recommending Margaret W. Cotter-Lynch for promotion and tenure, from Lucretia C. Scoufos, 1/14/10. PI001960.
- Memorandum of notification of promotion status (regarding Margaret Cotter-Lynch), submitted by Douglas N. McMillan, 2/15/10. OAG/DLC/USA v. SOSU – CIV-15-324/007437.
- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Virginia Parrish, submitted by John Brett Mischo, 11/30/08. OAG/DLC/USA v. SOSU – CIV-15-324/007389-90.
- Letter recommending tenure and promotion for Virginia Parrish, from John Brett Mischo, 11/26/08. OAG/DLC/USA v. SOSU – CIV-15-324/007386-87.
- Letter recommending tenure and not promotion for Mark Spencer, from John Brett Mischo, 12/1/06. OAG/DLC/USA v. SOSU – CIV-15-324/007506-07.
- Letter recommending tenure and promotion for Mark Spencer, from C. W. Mangrum, 1/11/07. OAG/DLC/USA v. SOSU – CIV-15-324/007505.

- Letter recommending tenure and not promotion for Mark Spencer, from Douglas McMillan, 2/12/07. OAG/DLC/USA v. SOSU – CIV-15-324/007504.
- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Rachel J. Tudor, submitted by Douglas N. McMillan, not dated. OAG/DLC/USA v. SOSU – CIV-15-324/007703-04.
- Letter not recommending tenure and promotion for Rachel J. Tudor, from Lucretia C. Scoufos, 1/12/10. EEOC000855.
- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Janet Barker, not attributed or dated. OAG/DLC/USA v. SOSU – CIV-15-324/007470-71.
- Letter notifying Janet Barker of the decision to approve her promotion to associate professor with tenure, from Larry Minks, May 1, 2011. DOJ000156-57.
- Excerpt from Southeastern Academic Policies and Procedures Manual regarding the “Role of the Faculty” and “Faculty Participation.” EEOC000300-01.
- Letter recommending tenure and not promotion for Mark Spencer, from Douglas McMillan, 2/12/07. A different version of the other letter on the same topic from the same day. OAG/DLC/USA v. SOSU – CIV-15-324/012992.
- Excerpt from Southeastern Academic Policies and Procedures Manual regarding “Rank and Promotion” and “Tenure.” EEOC000327-35.
- Memorandum to Rachel Tudor from Douglas N. McMillan regarding denial of application for tenure and promotion, 4/30/10. EEOC000892-93.
- Promotion and Tenure Portfolio of Virginia A. Parrish. EEOC001676-2238.
- Promotion and Tenure Portfolio of Margaret Cotter-Lynch. EEOC002239-2474.
- Promotion and Tenure Portfolio of Rachel Tudor, 2010. EEOC003086-3271.
- Promotion and Tenure Portfolio of Mark Spencer. EEOC003521-3576.
- Portions of Promotion and Tenure Portfolio of Rachel Tudor, 2009. PI001308-35.
- Promotion and Tenure Portfolio of Janet L. Barker, 2010. DOJ000158-330.
- Letter recommending tenure and promotion for Margaret Cotter-Lynch, from John Brett Mischo, 11/29/09. PI001959.

- Letter recommending tenure and promotion for Margaret Cotter-Lynch, from Douglas McMillan, 1/14/10. OAG/DLC/USA v. SOSU – CIV-15-324/007437.
- Excerpt from Southeastern Academic Policy and Procedures Manual regarding “Faculty Development and Evaluation Policies.” EEOC000317-21.
- Letter approving tenure and promotion of Mark Spencer, from Jesse O. Snowden, 4/18/07. OAG/DLC/USA v. SOSU – CIV-15-324/007503.
- Letter to Robert Dale Parker from the Department of Justice, 5/18/16.
- Copies of emails from Prafulla Kar, Rachel Tudor, John Mischo, and Lucretia Scoufos documenting a new publication by Tudor, February 4 and February 11, 2010, and November 30, 2010. EEOC000063-64.
- Letter to Robert Dale Parker from the Department of Justice, 6/2/16.
- Southeastern’s “Faculty Senate Awards Policy,” Southeastern PDF provided by the Department of Justice.
- Article by Mark B. Spencer, “Dickinson’s Because I Could Not Stop for Death.”
- Article by Mark B. Spencer, “William Faulkner’s ‘A Rose for Emily’ and *Psycho*.”
- Article by Mark B. Spencer, “Recreating the Early Modern in the Postmodern: George Garrett’s *Death of the Fox*.”
- Article by Rachel Tudor, “A Reading of Jonathan Swift’s ‘A Modest Proposal’ Using Roman Jakobson’s Poetic Function.”
- *The Atrium* (journal) Fall 2010.
- Article by Rachel Tudor, “The Ethics and Ethos of Eighteenth-Century British Literature.”
- Article by Margaret Cotter-Lynch, “Teaching Ancient Biography.”
- Article by Jani L. Barker, “Racial Identification and Audience in *Roll of Thunder, Here My Cry* and *The Watsons Go to Birmingham—1963*.”
- Entries from the *Modern Language Association Directory of Periodicals* for the following journals: *ASEBL Journal*, *The Atrium*, *Journal of Contemporary Thought*, *Teaching American Literature*, *The Texas Review*, *Explicator*, and *Eureka Studies in Teaching Short Fiction*, accessed March 2, 2016

- Entry from the *Modern Language Association Directory of Periodicals for Children's Literature in Education*, May 4, 2016
- Entry from the *Modern Language Association Directory of Periodicals for Lamar Journal of the Humanities*, accessed May 18, 2016
- Website of journal *Research and Criticism*, <http://www.pencraftinternational.com/bookclub.htm>, accessed May 10, 2016
- Website of journal *Diesis*, <http://www.diesisjournal.org/submissions>, accessed May 10, 2016
- *The Atrium* (journal) website from 2013, accessed June 4, 2016.
- *Diesis* (journal) website from 2010, accessed June 4, 2016.
- *Teaching American Literature* website (journal) from fall 2009, accessed June 4, 2016.

Exhibit 17

DECLARATION OF DANIEL ALTHOFF

1. I am A Full Professor with tenure at Southeastern Oklahoma State University (“Southeastern”).
2. I started working at Southeastern in Fall 1998. Since that time, I have been in Southeastern’s English, Humanities, and Languages Department (“English Department”).
3. To my knowledge, Dr. Tudor is the first transgender professor at Southeastern.
4. To my knowledge, when Tudor transitioned from male to female, she was the only transgender person at Southeastern. Meaning, at the time, there were no other openly transgender faculty, staff, or students at Southeastern.
5. **Dr. Tudor’s gender transition.**
 - a. I recall that just before the start of the Fall 2007 term, Dr. Tudor hand delivered letters to me and other members of the English Department. A true copy of the letter I received is attached hereto as **Exhibit A** (bates marked PI002042 to PI002043) on the lower right hand corner).
 - b. When I was done reading the letter, I told Tudor that she was brave to transition to female while at Southeastern.

- c. After Tudor gave me her letter, I consistently used feminine pronouns to refer to Tudor and used only her female first name, Rachel, thereafter. I recall that all of my colleagues in the English Department did the same.
- d. To my knowledge, Tudor's gender transition was a non-issue with our English Department colleagues. I think some of my colleagues were surprised by Tudor's transition initially, but none of them ever said anything negative about Tudor's gender transition or her gender in my presence. Given the size of the Department, if there had been concerns raised I likely would have learned of them at some point.
- e. To my knowledge, Tudor's gender transition was a non-issue with students taking classes in the English Department. Southeastern has a relatively small student body. I do not recall ever hearing a student complain or say anything negative about Tudor's gender transition or her gender. Given the small size of Southeastern's student body, if there had been concerns raised by students I likely would have learned of them at some point.
- f. I do not have any knowledge of how Southeastern's administration immediately reacted to Tudor's gender transition or her gender. Between the time Tudor gave me her letter and her separation

from Southeastern at the end Spring 2011, the faculty and administration had very little direct interaction.

6. Southeastern's promotion and tenure process during Tudor's employ.

This is what I recall about the tenure and promotion processes in place while Dr. Tudor worked at Southeastern:

- a. Tenure track faculty could apply for promotion and tenure at any time, but applications were typically made sometime during their fifth, sixth, or seventh year at Southeastern.
- b. The common understanding was that if someone's application for tenure and/or promotion failed, they could reapply. I found this surprising.
- c. I recall that professors other than Tudor were permitted to withdraw their applications at any point during the tenure and promotion process without being penalized. Once withdrawn, these professors were permitted to reapply during the next application cycle.
- d. I recall that professors other than Tudor were permitted to reapply for tenure and/or promotion after their applications were rejected.

7. Tudor's attempt to reapply in the 2010-11 cycle.

- a. I recall that Tudor attempted to reapply for tenure and promotion in the 2010-11 cycle.

- b. Sometime in the middle of the 2010-11 term, I learned that Dr. Douglas McMillan refused to allow Tudor the opportunity to reapply in the 2010-11 cycle.
- c. Sometime thereafter, I learned that the Faculty Senate, which is the representative voice of the Southeastern faculty, voted to demand that the Southeastern administration let Tudor reapply in the 2010-11 cycle.
- d. Sometime thereafter, I learned more about the circumstances surrounding the Southeastern administration's refusal to allow Tudor to reapply for promotion and tenure in the 2010-11 cycle. I believed there to be many suspicious procedures cited in the administration's refusal memorandum and that it was otherwise totally unfair to deprive Tudor of the opportunity to reapply in the 2010-11 cycle. I had not at the time (and to this day have not) seen anything like the Southeastern administration's refusal to allow Tudor to reapply for promotion and tenure in the 2010-11 cycle.
- e. During the 2010-11 term, I believed that Tudor should be allowed to reapply for promotion and tenure and that, if her application merited promotion and tenure, she should be granted promotion and tenure.

- f. To my knowledge, the Southeastern faculty was unified in its desire that Dr. Tudor be allowed to reapply for promotion and tenure in the 2010-11 cycle.
- g. To my knowledge, the Southeastern campus was not in any way torn apart by Tudor's grievances against the Southeastern administrators or her appeals related to the tenure and promotion process in 2009-10 and 2010-11. To my recollection, the faculty was united behind Dr. Tudor.
- h. To my knowledge, if the Southeastern administration had allowed Tudor to reapply in the 2010-11 cycle, Southeastern's faculty, including myself, would have supported Tudor being allowed the opportunity to reapply for promotion and tenure. However, grant of reapplication itself would not have guaranteed Tudor would have been awarded promotion and tenure—it only would have given Tudor the opportunity to reapply.

8. Southeastern's nondiscrimination and harassment policies during Tudor's employ at Southeastern.

- a. Southeastern had nondiscrimination and harassment policies during this period, but I do not recall receiving training on these at any time and did not have a deep understanding of how these policies even worked. I generally knew that one could complain

about racial discrimination during this period. I do not recall specifically that one could complain about gender discrimination of any kind during this period.

- b. I recall that during this period, Southeastern's nondiscrimination and harassment policies were memorialized in writing. I recall that though some types of discrimination and harassment were expressly listed—such as race discrimination—other types were not listed. Specifically, I recall that during this period neither sexual orientation nor gender identity (or any other phrase that might capture transgender persons specifically or LGBT persons more broadly) were listed as protected categories in Southeastern's policies.
- c. I recall that during this period, I thought that the absence of specific language pointing to sexual orientation and/or gender identity (or any other phrase that might capture transgender persons specifically or LGBT persons more broadly) in Southeastern's policies meant that discrimination or harassment faced by gay or transgender persons was not redressable under Southeastern's policies and, more broadly, under Oklahoma state law.

- d. I recall that close in time to Tudor's termination from Southeastern, the Faculty Senate passed a resolution requesting that the administration revise Southeastern's policies to expressly protect gay and transgender persons from discrimination and harassment.
 - e. During this period, Southeastern essentially operated on a "don't ask, don't tell" basis with regards to sexual orientation and/or transgender status. It was my understanding that because Southeastern did not have any codified protections for gay and/or transgender persons, faculty members were at risk of being fired if they made their gay and/or transgender status public.
 - f. I personally found the absence of gay and/or transgender status protections during this period to have a chilling effect on faculty at Southeastern.
 - g. During this period, given the lack of express protections for gay and/or transgender persons on campus, it is not surprising that a gay and/or transgender faculty member who faced discrimination or harassment would not make complaints about it.
9. **Southeastern's nondiscrimination and harassment policies since Tudor left Southeastern.** This is what I know about Southeastern's current nondiscrimination and harassment policies:

- a. Shortly after President Burrage came to Southeastern, Southeastern changed its nondiscrimination and harassment policies.
 - b. Southeastern's policies now expressly protect gay and/or transgender persons from discrimination and harassment.
 - c. To my knowledge, it is now commonly understood by the faculty that Southeastern's policies protect gay and/or transgender persons from discrimination and harassment.
10. **Tudor's return to Southeastern.** To my knowledge, if Tudor were to return to Southeastern this would be a non-issue for the faculty. There is no bad blood between Tudor and the Southeastern faculty.

I state under penalty of perjury that the foregoing is true and correct.

Executed on (date) October 10, 2017 in (location) Durant, Oklahoma.



Dr. Daniel Althoff

Exhibit A

Dear Colleague.

I hope you will pardon this intrusion, but I am obliged to share some personal information with you. Please allow me to premise my disclosure with an acknowledgement of how much I value being a member of this community of educators and learners. I have labored my entire life to be a contributing member of such a community, and I feel privileged to be here. I want to be clear about this, because my retiring personality may have been misinterpreted by some as unfriendliness. The reason for this letter is that after a lifetime of searching, and with the assistance of professional guidance, I have come to the conclusion that I am also a member of another community—the transgender. Unfortunately, this community is frequently misunderstood, often ridiculed, widely discriminated against, and sometimes subject to violence. Hence, the necessity for this letter. I do not want being a member of the transgender community to cause discomfort or anxiety to members of my academic community. Please allow me to share a few basic facts about transgenderism. It is a part of one's core identity and is present from birth. Some say that it is not a choice, but I believe everything one does is an act of will with purpose. For me, the choice is either to be reclusive and unhappy, or to strive to find a place in life where I may be true to my core identity and create personal and professional relationships based on openness free from fear. Next, it is important to know that a transgender person is not a transvestite or crossdresser—it is not sartorial, it is physiological. I, for instance, have been following a physician prescribed regimen of hormone adjustment therapy for months. Finally, transgenderism has nothing to do with sex or sexual orientation. Perhaps the confusion comes from the unfortunate fact that our language uses “sex” and “gender” as synonyms. In actuality, transgenderism is a human and civil rights issue, and it should not be taboo to discuss it.

I assure you that I will continue to comport myself in a professional manner with attention to my responsibilities. I hope you will look on this occasion, as I do, as an opportunity for education and personal growth.

You probably have questions that I have not addressed. You are welcome to discuss them with me. My most pressing question is how you will respond to my revelation. I will listen to your opinion and value your advice.

Presently, I am planning on transitioning at the beginning of the Fall semester. I have legally changed my name to Rachel. After I transition, please address me by my new name with corresponding pronouns. I am keenly aware the period of transition will be confusing and awkward for everyone. Please let me know if there is anything I can do to put you at ease.

Very best regards,

R. Tudor

Exhibit 18

DECLARATION OF MARGARET COTTER-LYNCH

1. I am a Full Professor with tenure at Southeastern Oklahoma State University (“Southeastern”).
2. I started working at Southeastern in Fall 2005. Since that time, I have been in Southeastern’s English, Humanities, and Languages Department (“English Department”).
3. To my knowledge, Dr. Tudor is the first transgender professor at Southeastern.
4. To my knowledge, when Tudor transitioned from male to female, she was the only transgender person at Southeastern. Meaning, at the time, there were no other openly transgender faculty, staff, or students at Southeastern.
5. **Dr. Tudor’s gender transition.**
 - a. I recall that just before the start of the Fall 2007 term, Dr. Tudor hand delivered a letter to me and other members of the English Department. A true copy of the letter I received is attached hereto as **Exhibit A** (bates marked PI002042 to PI002043) on the lower right hand corner).
 - b. I first learned of Tudor’s gender transition from her letter.
 - c. On or around the day I received Tudor’s letter, myself and other female professors in the English Department invited Tudor to

have lunch with us. Our intent was to express support to Tudor and make clear to her that her female colleagues accepted her as one of us.

- d. After Tudor gave me her letter, I consistently used feminine pronouns to refer to Tudor and used only her female first name, Rachel, thereafter. I recall that all of my colleagues in the English Department did the same.
- e. To my knowledge, Tudor's gender transition was a non-issue with our English Department colleagues. Given the small size of the Department, if there had been concerns raised I likely would have learned of them at some point.
- f. To my knowledge, Tudor's gender transition was a non-issue with students taking classes in the English Department. Southeastern has a relatively small student body. I do not recall ever hearing a student complain or say anything negative about Tudor's gender transition or her gender. Given the small size of Southeastern's student body, if there had been concerns raised by students I likely would have learned of them at some point.
- g. I do not have any knowledge of how Southeastern's administration immediately reacted to Tudor's gender transition or her gender.

6. **Tenure and promotion policies in effect during Tudor's employ.**

a. During this period, it was my understanding that to get tenure and promotion to associate professor an applicant had to demonstrate they were qualified in teaching, scholarship, and service. It was also my understanding that an applicant need have some showing for each criteria, but only had to be "excellent" in two criteria.

b. **English Department criteria for promotion and tenure.**

- i. During my interview at Southeastern for the tenure-track position which later led to my current tenured position, Department Chair John Mischo told me that the English Department had its own criteria for tenure and promotion.
- ii. It was my understanding up through the time of my own successful application for promotion and tenure in the 2009-10 cycle that if I met the Department's criteria I would get promotion and tenure.
- iii. The English Department's criteria remained in place up through the 2009-10 cycle. A true copy of the Department's criteria is attached hereto as **Exhibit B** (bates marked PI1177 to PI1180 on the lower right hand corner).

c. **Department made tenure and promotion decisions.**

During Tudor's employ, it was my understanding that the Department's criteria gave specificity to Southeastern's policies for tenure and promotion which were in the Academic Policies and Procedures Manual ("APPM").

d. **APPM Policy 3.7.4.** During Tudor's employ, it was my further

understanding that APPM policy 3.4.7 (a true copy of which is attached hereto as **Exhibit C** [bates marked EEOC300 to EEOC301 on the lower right hand corner]), stood for the principle that tenure and promotion decisions were made at the department-level. I based this understanding on the portion of 3.7.4 highlighted in **Exhibit C**. More specifically, I understood that in tenure and promotion decisions, RUSO and the Southeastern administration should ultimately "concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail."

e. **Conversations leading up to 2009-10 cycle.** I had many

discussions leading up to the 2009-10 application cycle about the Department's criteria and the fact that tenure and promotion decisions were ultimately made at the department-level. In each conversation with my colleagues in the English Department, I

was reassured that tenure and promotion at Southeastern was decided at the department-level and according to the Department's criteria. Moreover, every application I had been aware of up to the 2009-10 cycle which had been approved at the department-level had been approved by the Dean, Vice President for Academic Affairs, and the President.

7. **My application for promotion and tenure in the 2009-10 cycle.** I applied for tenure and promotion to associate professor in the 2009-10 cycle. My application was approved at the departmental-level by the tenure and promotion committee and the department chair. My application was passed on to and approved by Dean Socufos, Vice President McMillan, and President Minks. I was notified via letter by President Minks sometime in May 2010 that I had been awarded promotion and tenure.
8. **Tudor's attempt to reapply in the 2010-11 cycle.** I recall that Tudor attempted to reapply for promotion and tenure during the 2010-11 cycle and that in October 2010 McMillan issued a memorandum barring Tudor from reapplying. I recall that around the time I learned of McMillan's bar on Tudor's reapplication that I thought the rationales he cited were ridiculous. I thought that Tudor was more than qualified for promotion and tenure. I also thought that McMillan's stated

rationale that Tudor's reapplication would "inflame the relationship between faculty and administration" was completely without merit—indeed, the administration's refusal to allow Tudor's reapplication made things exponentially more tense between the faculty and administration going forward.

9. **Stubblefield's "investigation."** Sometime in Fall 2010 Claire Stubblefield began an investigation into one of Tudor's complaints about her tenure and promotion issues at Southeastern. In the course of her investigation, Stubblefield called me into her office for questioning. During this meeting Stubblefield told me to secure my own tenure and promotion portfolio because it might be needed for "legal purposes" down the road. I do not recall Stubblefield asking me questions about my 2009-10 application or her trying to gather any information from me pertinent to her investigation. Indeed, it was my impression that Stubblefield was simply going through the motions. The meeting was fairly brief. Stubblefield asked me only perfunctory questions. It seemed to me that Stubblefield had already concluded that Tudor's problems would not be resolved at her level. I recall towards the end of the meeting that Stubblefield advised me to "look out for Rachel."

10. **Southeastern's nondiscrimination and harassment policies during Tudor's employ at Southeastern.**

- a. Southeastern had nondiscrimination and harassment policies during this period.
- b. I believe that near the time I was hired at Southeastern I was advised about these policies. I do not recall thinking about or inquiring as to whether Southeastern's policies protected gay and transgender people at that time.
- c. Some time after Dr. Tudor's transition from male to female, I started to wonder whether gay and transgender people were protected under Southeastern's policies.
- d. Some time after Dr. Tudor's transition from male to female, I thought that the absence of specific language pointing to sexual orientation and/or gender identity (or any other phrase that might capture transgender persons specifically or LGBT persons more broadly) in Southeastern's policies meant that discrimination or harassment faced by gay or transgender persons was not redressable under Southeastern's policies.
- e. Some time after Dr. Tudor's transition from male to female, I grew concerned that the absence of specific language pointing to sexual orientation and gender identity (or any other phrase that

might capture transgender persons specifically or LGBT persons more broadly) in Southeastern's policies would lead some employees to think that it was okay to discriminate against and/or harass gay and/or transgender persons at Southeastern.

- f. I recall that during this period, I personally thought Southeastern's policies should expressly protect sexual orientation and gender identity (or any other phrase that might capture transgender persons specifically or LGBT persons more broadly).
 - g. I recall that while Tudor was still at Southeastern, the Faculty Senate passed a resolution requesting that the administration revise Southeastern's policies to expressly protect gay and transgender persons from discrimination and harassment.
 - h. I recall that the Southeastern administration—specifically the Office for Academic Affairs, which at that time was headed by Douglas McMillan—did not respond to the Faculty Senate's resolution. As a result, Southeastern's policies were not amended during Tudor's employ to expressly protect gay and transgender persons from discrimination and harassment.
11. **Tudor's complaints and grievances at Southeastern and Tudor's work environment.**

- a. During the 2010-11 term, I learned that Tudor had filed several complaints and grievances at Southeastern. I recall discussing Tudor's options with her at the time. I recall discussing with Tudor many of the complaints, grievances, and appeals she filed during this period. I recall thinking at the time that, under Southeastern's policies, she had done everything should could to grieve the tenure and promotion issues internally.
- b. During the 2010-11 term, I learned from Tudor that she had been bared by the Southeastern administration from using the women's restrooms on campus since her gender transition. Prior to Tudor's disclosure, I do not recall ever seeing Tudor use a women's restroom at Southeastern. After Tudor's disclosure, I remember noticing that she only ever used the unisex handicap restrooms on campus.
- c. During the 2010-11 term, I noticed dramatic changes in Tudor. Tudor seemed very stressed a lot of the time. Whereas Tudor in the past had been upbeat at work, she at that point started to seem "beaten down" and appeared very tired. I recall at least one phone conversation I had with Tudor during this time where she broke down crying as we were discussing what was happening to her at Southeastern.

d. Thinking back to what I saw Tudor go through in her last years at Southeastern, if I were in her shoes, I would have felt like the environment was toxic and hostile. Indeed, I do not think I would have handled things as well as Tudor handled them given what she was forced to endure.

12. **My complaints about Tudor's treatment at Southeastern.**

a. In November 2010 I wrote a letter in support of Tudor's attempt to appeal McMillan's bar on her reapplication for promotion and tenure in the 2010-11 cycle. A true copy of my letter is attached hereto as **Exhibit D** (bates marked PI299 to PI300 on the lower right hand corner).

b. In April 2011 I sent an email to the Regional University System of Oklahoma ("RUSO") complaining about Tudor's treatment at Southeastern. An email thread that includes a true copy of my email sent on April 27, 2011 at 9:42am is attached hereto as **Exhibit E** (four pages marked "RUSOEMAIL425" in the lower right hand corner).

c. In April 2011 I made a public post on Facebook wherein I publicly grieved what happened to Tudor at Southeastern. An email thread containing the true text of my Facebook post is

attached hereto as **Exhibit F** (five pages marked “RUSOEMAIL601” in the lower right hand corner). The highlighted portions of **Exhibit F** represent the text that appeared in my Facebook post. The remaining text below the highlight is a statement of facts that I believe I received directly from Tudor around this time. The comments that appear below the text are comments that were left on my public Facebook post.

- d. In or around April 2011, I printed and mailed copies of an online petition which had garnered more than 4,000 signatures in support of Tudor. I sent copies of the petition with all the signature pages to RUSO in a large box. Inside the box were marked envelopes addressed to each regent. Prior to mailing the petition, I called Sheridan McAffree at RUSO who gave me RUSO’s mailing address and advised me how to send the petition to the RUSO regents’ attention. A true copy of the first page of that petition I sent to the RUSO regents is attached hereto as **Exhibit G** (bates marked PI815 in the lower right hand corner). To my knowledge the RUSO regents received the petitions I sent to them. However, the RUSO regents never responded to me about the petition.

13. **Conversations with Southeastern faculty and administrators between 2014 and 2015.**

- a. Sean Burrage became president of Southeastern in May 2014.
- b. *McMillan's untrue statement about the Southeastern faculty's support of Tudor.* In or around late August or early September 2014, I heard that Douglas McMillan had told people that the Southeastern faculty did not support Dr. Tudor and that the faculty did not want her to return to Southeastern. Shortly thereafter, I brought up McMillan's statements at a meeting of Southeastern's chapter of the American Association of University Professors ("AAUP"). Virginia Parrish and Chris Morretti and other professors were in attendance. During the meeting, we discussed the fact that we believed McMillan's statement was inaccurate. Chris Morretti (who was then the Chair of the Faculty Senate) suggested that the Faculty Senate formally poll the faculty to gather proof of the faculty's true sentiments regarding Tudor. The members in attendance voted that Virginia Parrish and I meet with President Burrage to inform him of the chapter's support for Rachel, disagreement with Dr. McMillan, and the Faculty Senate's willingness to conduct a faculty poll on the question.

c. *Conversation with President Burrage.* Shortly after the AAUP chapter meeting, Parrish and I met with President Burrage in his office. Parrish and I told Burrage about McMillan's statement. We advised him that we were coming to him as representatives of the faculty. We told him that McMillan's statement was not in line with the faculty's sentiments, and that the Chair of the Faculty Senate was prepared to formally poll the faculty to prove we both supported Tudor and wanted her to return to Southeastern. Burrage did not try to defend McMillan's statement. Nor did Burrage suggest that he needed or desired a poll of the faculty to ascertain the faculty's support of Tudor or her return to Southeastern. At some point later in the discussion, I recall that Burrage pointed to a stack of documents on his desk that appeared to be related to Tudor's court case. Burrage then said, "I am just trying to get my head around this stuff." Burrage never followed up with us on this issue.

d. *Another conversation with President Burrage.* In or around April 2015, I recall having a conversation with President Burrage at a state-level meeting of the AAUP hosted at Southeastern. At some point during the meeting, Burrage pulled

me aside and told me that Southeastern would be changing its policies to expressly protect gay and transgender persons from discrimination and harassment. Burrage told me that these revisions were a “no brainer” and that they should have happened a “long time ago.”

14. **Southeastern’s nondiscrimination and harassment policies since Tudor left Southeastern.**

- a. Southeastern’s policies now expressly protect gay and transgender persons from discrimination and harassment.
- b. To my knowledge, it is now commonly understood by all administrators, faculty, and staff that Southeastern’s policies protect gay and transgender persons from discrimination and harassment.

15. **Wilma Shires.**

- a. Wilma Shires is currently a tenure-track assistant professor in the English Department at Southeastern.
- b. In 2010, Shires was promoted from instructor to a tenure-track assistant professor in the English Department.
- c. During Tudor’s employ at Southeastern, Tudor’s area of specialization within the English Department was Native American literature.

- d. Upon Tudor's separation from Southeastern in 2011, Shires took over Tudor's core classes, including all of the Native American literature classes Tudor taught.
- e. Upon Tudor's separation from Southeastern in 2011, Shires was assigned the office Tudor had previously occupied. Shires is still assigned that same office today.
- f. Wilma Shires is currently applying for promotion to assistant professor with tenure in the 2017-18 cycle.
- g. I am a member of Shires' departmental tenure and promotion committee for the 2017-18 cycle.
- h. It is my understanding that if Shires is awarded promotion and tenure in the 2017-18 cycle, that Shires will obtain a position that is equivalent to the one Tudor sought through her own applications in the 2009-10 and 2010-11 cycles.
- i. Shires wears stereotypically feminine clothing, has feminine mannerisms, has a stereotypically feminine voice, and otherwise holds herself out as and is recognized as female by all at Southeastern.
- j. I have no reason to believe that Shires is a transgender woman.

16. **Tudor's return to Southeastern.** To my knowledge, Southeastern's faculty would welcome Tudor back to Southeastern and the English Department would warmly welcome Tudor back.

I state under penalty of perjury that the foregoing is true and correct.

Executed on (date) Oct 12, 2017 in (location) McKinney, TX

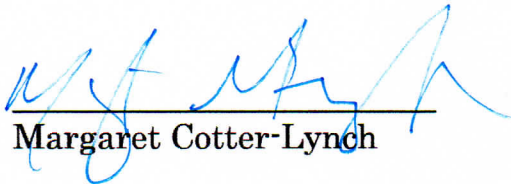

Margaret Cotter-Lynch

Exhibit A

Dear Colleague.

I hope you will pardon this intrusion, but I am obliged to share some personal information with you. Please allow me to premise my disclosure with an acknowledgement of how much I value being a member of this community of educators and learners. I have labored my entire life to be a contributing member of such a community, and I feel privileged to be here. I want to be clear about this, because my retiring personality may have been misinterpreted by some as unfriendliness. The reason for this letter is that after a lifetime of searching, and with the assistance of professional guidance, I have come to the conclusion that I am also a member of another community—the transgender. Unfortunately, this community is frequently misunderstood, often ridiculed, widely discriminated against, and sometimes subject to violence. Hence, the necessity for this letter. I do not want being a member of the transgender community to cause discomfort or anxiety to members of my academic community. Please allow me to share a few basic facts about transgenderism. It is a part of one's core identity and is present from birth. Some say that it is not a choice, but I believe everything one does is an act of will with purpose. For me, the choice is either to be reclusive and unhappy, or to strive to find a place in life where I may be true to my core identity and create personal and professional relationships based on openness free from fear. Next, it is important to know that a transgender person is not a transvestite or crossdresser—it is not sartorial, it is physiological. I, for instance, have been following a physician prescribed regimen of hormone adjustment therapy for months. Finally, transgenderism has nothing to do with sex or sexual orientation. Perhaps the confusion comes from the unfortunate fact that our language uses “sex” and “gender” as synonyms. In actuality, transgenderism is a human and civil rights issue, and it should not be taboo to discuss it.

I assure you that I will continue to comport myself in a professional manner with attention to my responsibilities. I hope you will look on this occasion, as I do, as an opportunity for education and personal growth.

You probably have questions that I have not addressed. You are welcome to discuss them with me. My most pressing question is how you will respond to my revelation. I will listen to your opinion and value your advice.

Presently, I am planning on transitioning at the beginning of the Fall semester. I have legally changed my name to Rachel. After I transition, please address me by my new name with corresponding pronouns. I am keenly aware the period of transition will be confusing and awkward for everyone. Please let me know if there is anything I can do to put you at ease.

Very best regards,

R. Tudor

Exhibit B



English, Humanities, & Languages Tenure / Promotion Guidelines

Understanding Regarding Evaluation Procedures

Applicants with one item from Category 1, High Merit, Level A, will be considered strong candidates for tenure / promotion. OR, Applicants with two or more items from Category 1, High Merit, Level B, will be considered strong candidates for tenure / promotion. Applicants with items exclusively from Category 1, Commendable Merit, may or may not be considered strong candidates for tenure / promotion. It is understood that activity in Category 2 is valuable and expected but is not sufficient in and of itself for tenure and/or promotion.

It is understood that scholarly publication by peer-review is intensely competitive and will therefore carry more weight than solicited and other categories of publication as well as more weight than conference presentations.

Category 1 Scholarly Publication

High Merit Achievement

Level A

Book Publications through Peer-Reviewed / Refereed / Blind Submission

- 1 scholarly monograph
- 2 edited collection
- 3 academic textbook
- 4 book-length scholarly translation

Level B

Periodical Publications through Peer-Reviewed / Refereed / Blind Submission

- 1 peer-reviewed articles
- 2 article-length translations
- 3 collections of creative work (poetry, fiction, or performance of dramatic work)
- 4 publication of paper in conference proceeding via competitive peer review

Editing Scholarly Journals

- 1 editing peer-review journals
- 2 editing conference proceedings

Proof of peer review will be established with copy of journal submission criteria explicitly or implicitly stating that the publication underwent peer review. An "article" will be no less than five published pages.

Commendable Achievement

Publications through Solicitation, Contract, or Short Publications

- 1 solicited articles
 - 2 book reviews
 - 3 reference book entries
 - 4 scholarly notes (e.g., *Explicator*)
 - 5 individual creative works of (poetry, fiction, or performance of dramatic work)
 - 6 publication of paper in conference proceedings selected noncompetitively
- Excluded from Category 1 are newspaper reviews, features, letters to the editor, in-house (including SOSU) university publications as well as any other form of publication not considered scholarly or not considered relevant to the mission of the EHL Department. Also excluded are self-published or "vanity press" publications.

Category 2 Scholarly Presentations

High Merit Achievement

- 1 national or international conference presentations
- 2 invited presentations at an academic conference or institution (not same as having conference paper accepted)

Commendable Achievement

- 1 regional conference presentations
- 2 state or local conference presentations
- 3 in-house (including SOSU) unofficial university presentations

Excluded from Category 2 are graduate student conferences.

Expectations Regarding Teaching in Tenure & Promotion

Candidates will be expected to excel in these five areas.

- 1 Align course objectives to program objectives
- 2 Employ a variety of instructional approaches
- 3 Integrate technology where/when possible
- 4 Maintain accessibility to students
- 5 Relate scholarship to course content and/or pedagogy

Evidence & Documentation of Excellence in Teaching

- 1 Course portfolios (syllabi, student evaluations, essay assignments, exams, etc.)
- 2 Peer evaluation letters
- 3 Student evaluations (department form)
- 4 SUMMA or other university evaluations
- 5 Documentation relating course objectives to NCATE standards
- 6 Gen Ed assessment results (where possible)

Category 3 Service to Department and University

- 1 Be accessible and accurate in advisement
- 2 Assume leading role on various department committees, especially the Assessment, Planning, and Development Committee
- 3 Assume significant role in program assessment, preferably contributing to the writing of various assessment reports or chairing Assessment, Planning, and Development Committee
- 4 Provide significant input in general education assessment
- 5 Assume significant role in departmental Program Review
- 6 Volunteer for extra-curricular service (e.g., driving to airport for candidates, manning booths for recruitment, Sigma Tau Delta or Sigma Delta Pi advisor, working with Honors Program, Green Eggs & Hamlet advisor, etc.)
- 7 Represent department on university committees
Mentor new faculty (for promotion for tenured faculty only)

Evidence of Service to Department and University

- 1 Regular advisement activity
- 2 Activity on Assessment, Planning & Development committee
- 3 Activity on Composition or Humanities committee
- 4 Activity on other department committees (e.g., hiring) where assigned
- 5 Activity on university committees as evidenced by committee request sheet
- 6 Activity as teacher education liaison (supersedes numbers 2-5)

Revised May 2, 2005

Exhibit C



As the chief planning officer of an institution, the president has a special obligation to innovate and initiate. The degree to which a president can envision new horizons for the institution, and can persuade others to see them and to work toward them, will often constitute the chief measure of the president's administration.

The president must at times [take appropriate action to] infuse new life into a department; belatedly, the president may at times be required, working within the concept of tenure, to solve problems of obsolescence. The president will necessarily utilize the judgments of the faculty but may also, in the interest of academic standards, seek outside evaluations by scholars of acknowledged competence.

It is the duty of the president to see to it that the standards and procedures in operational use within the college or University conform to the policy established by the governing board and to the standards of sound academic practice. It is also incumbent on the president to ensure that faculty views, including [significant] dissenting views, are presented to the board in those areas and on those issues where responsibilities are shared. Similarly, the faculty should be informed of the views of the board and the administration on like issues.

The president is largely responsible for the maintenance of existing institutional resources and the creation of new resources; has ultimate managerial responsibility for a large area of nonacademic activities; is responsible for public understanding; and, by the nature of the office, is the chief person who speaks for the institution. In these and other areas the president's work is to plan, to organize, to direct, and to represent. The presidential function should receive the general support of board and faculty.

3.7.4 Role of the Faculty

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

Faculty status and related matters are primarily faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers

with the concurrence of the board. The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The faculty should actively participate in the determination of policies and procedures governing salary increases.

The chair or head of a department, who serves as chief representative of the department within an institution, should be selected either by departmental election or by appointment following consultation with members of the department and of related departments; appointments should normally be in conformity with department members' judgment. The chair or department head should not have tenure in office; tenure as a faculty member is a matter of separate right. The chair or head should serve for a stated term but without prejudice to reelection or to reappointment by procedures which involve appropriate faculty consultation. Board, administration, and faculty should all bear in mind that the department chair or head has a special obligation to build a department strong in scholarship and teaching capacity.

3.7.5 Faculty Participation

Agencies (committees, teams, etc.) for faculty participation in the government of the college or University should be established at each level where faculty responsibility is present. An agency should exist for the presentation of the views of the whole faculty. The structure and procedures for faculty participation should be designed, approved, and established by joint action of the components of the institution. Faculty representatives should be selected by the faculty according to procedures determined by the faculty.

The agencies may consist of meetings of all faculty members of a department, school, college, division, or University system, or may take the form of faculty-elected executive committees in departments and schools and a faculty-elected senate or council for larger divisions or the institution as a whole.

Among the means of communication among the faculty, administration, and governing board now in use are: (1) circulation of memoranda and reports by board committees, (2) joint ad hoc committees, (3) standing committees, and (4) membership of faculty members on administrative bodies. Whatever the channels of communication, they should be clearly understood and observed.

3.8 Relationship of Faculty Senate to the President

Revised 01-10-1998

The Executive Committee of the Faculty Senate meets with the president periodically to discuss Senate-related issues. Upon request, the president meets with the Faculty Senate to brief the senators about pending University issues.

Figure B. Flow of Shared Governance

Exhibit D

Department of English, Humanities,
and Languages
Southeastern Oklahoma State University
November 17, 2010

Faculty Appellate Committee
Southeastern Oklahoma State University

Dear Dr. Hall and Committee Members,

I write to you in support of Dr. Rachel Tudor's appeal of Dr. Douglas McMillan's decision to deny her the opportunity to apply for tenure and promotion. Dr. Tudor is an exemplary teacher, scholar, and colleague, and the allegations from Dr. McMillan are without merit.

According to any objective evaluation, Dr. Tudor's qualifications clearly exceed the expectations for tenure and promotion according to three separate standards: as stated in the Academic Policies and Procedures manual, as established by the Department of English, Humanities, and Languages, and as practiced by precedent. Dr. Tudor's teaching is exemplary, as exhibited by her teaching evaluations, observations of her teaching by colleagues, and her repeated nomination for the Faculty Senate teaching award. This aspect of her work is not cited as problematic by Dr. McMillan; I will therefore refrain from further elaboration, although I will be happy to provide further testimony on this aspect of Dr. Tudor's work upon request. I simply remind the committee that we are, at our heart, a teaching institution; the best interests of our students require that we attract and retain the highest quality classroom teachers, of which Dr. Tudor is a clear example.

In respect to service, an area cited as deficient in Dr. McMillan's decision, Dr. Tudor's work on campus in the past 6 years has been exemplary, and clearly exceeds the activity of many faculty, both tenured and untenured. Since her arrival on campus, Dr. Tudor has been active in organizing the biannual Native American Symposium, one of our campus's major events, which brings regional, national, and international recognition to Southeastern. Dr. Tudor was instrumental in bringing an OSLEP course to our campus in 2007, the only time in recent memory our campus has hosted one of these prestigious courses. Dr. Tudor organized the participation of Dr. Rennard Strickland, Distinguished Professor Emeritus at the University of Oregon Law School, and served as the supervising professor for this course. In addition, Dr. Tudor served as the chair of our department's Assessment, Planning, and Development committee from 2007-2010. As chair of this committee, Dr. Tudor collected and collated all assessment data for our three English programs, and prepared the yearly POAR reports. This, in itself, is an enormous job for a pre-tenure professor to take on. Finally, Dr. Tudor has served as a member of Faculty Senate for the past two years. All of this has been done in addition to standard university and departmental service expectations, including serving on hiring and

review committees, volunteering for Honors Day, and working with student groups. In short, Dr. Tudor not only amply fulfills service expectations for faculty members, but is exemplary in the range, depth, and dedication she has shown in service to our university.

The area of scholarship is often seen as difficult to objectively evaluate, as it ordinarily requires a careful consideration of both quality and quantity of scholarly activity. In Dr. Tudor's case, however, the evaluation is simple and evident, as her scholarly production exceeds standards for both quality and quantity. She currently has five peer-reviewed articles already published; four more accepted articles in press; and several more in the pipeline, including three which have been tentatively accepted pending revisions. Some of these are in the leading journals of her field; others clearly articulate the relevance of her work to a wider non-specialist audience. This shows that she is a respected scholar within Native American Studies, while simultaneously successfully promoting the importance of Native American literature within a wider context. She co-edited two volumes of the conference proceedings of the Native American Symposium, and has published two chapbooks of poetry since her arrival at Southeastern. To be blunt, Dr. Tudor has published more research than any other member of the department, tenured or untenured. Any question regarding her scholarly production must of necessity be based upon either ignorance or misunderstanding of the evidence, since there is really no question that Dr. Tudor has far exceeded any stated or unstated standard for scholarly production at this university.

In short, Dr. Tudor is an outstanding candidate for tenure and promotion. Dr. McMillan's statement that her service and research are insufficient is clearly unfounded and inaccurate. He was clearly mistaken in his opinion that consideration of Dr. Tudor's tenure file would be a waste of time; in addition, he has clearly tried to contradict the established policies for tenure and promotion, by presuming to truncate the process based upon personal opinion and insufficient data. I therefore ask that the Faculty Appellate Committee find in Dr. Tudor's favor, and recommend that she be allowed to pursue the established processes for achieving tenure and promotion.

Sincerely,

Dr. Margaret Cotter-Lynch
Associate Professor of English

Exhibit E

From: Sheridan McCaffree smccaffree@ruso.edu
Subject: FW: letter in support of Rachel Tudor
Date: April 27, 2011 at 4:15 PM
To: "Richard Ogden" rco@lawokc.com

fyi

Sheridan McCaffree
Executive Director
Regional University System of Oklahoma
3555 NW 58th St., Suite 320
Oklahoma City, Oklahoma 73112

-----Original Message-----

From: Margaret W. Cotter-Lynch [mailto:mcotter@se.edu]
Sent: Wednesday, April 27, 2011 9:42 AM
To: smccaffree@ruso.edu
Subject: FW: letter in support of Rachel Tudor

Dear Ms. McCaffree and Regents of the Regional University System of Oklahoma,

I sent the letter below to OSRHE over the weekend, and was just informed that this matter is more appropriately brought to your attention. I trust that you will investigate this matter and remedy the violations of established university policy.

RUSOEMAIL425

Thank you for your attention to this matter,

Dr. Meg Cotter-Lynch

Associate Professor of English

Southeastern Oklahoma State University

From: Margaret W. Cotter-Lynch

Sent: Monday, April 25, 2011 10:11 PM

To: communicationsdepartment@osrhe.edu

Subject: letter in support of Rachel Tudor

Dear Chancellor Johnson and Oklahoma State Regents,

I am deeply concerned about the recent tenure denial and imminent dismissal of Dr. Rachel Tudor, Assistant Professor of English at Southeastern Oklahoma State University. Dr. Tudor and I went up for tenure at the same time, from the same department, in the fall of 2009; I was granted tenure and promotion while she was denied. I was personally shocked by this outcome; any objective comparison of her qualifications and mine is striking. She is universally regarded as a stellar teacher; she has a solid service record, and she has FIVE times as many peer reviewed articles published as I do (she has 10 to my 2). In addition, the tenure process was conducted very differently in her case and mine; I was forwarded copies of detailed letters at periodic increments throughout the process, and kept informed of what was going on. She was left

RUSOEMAIL425

entirely in the dark.

Later investigations, by the Faculty Appellate Committee and the Faculty Senate, have shown that established procedures were repeatedly ignored in Dr. Tudor's tenure process. In the end, she was denied without being given a reason, in direct contradiction to our Academic Policies and Procedures manual. Furthermore, Dr. Tudor was denied the opportunity to reapply for tenure the following year, in spite clear precedent for this, and Dr. McMillan, our Vice President for Academic Affairs, stating in a letter that policy did not prohibit Dr. Tudor from reapplying.

Dr. Tudor has clearly been treated unfairly, in direct violation of established tenure policies and procedures at our university. I sincerely believe that this treatment has been motivated by bigotry on the part of some members of our upper administration, and I find that deeply, deeply distressing. Dr. Tudor has exhausted all recourse at the university level, as President Minks has repeatedly refused to heed the requests of the Faculty Appellate Committee and the Faculty Senate. As a result, I ask that you intervene in this matter to see that Dr. Tudor is reinstated, and her tenure case be given a fair, impartial hearing in the 2011-2012 academic year.

Thank you very much for your attention to this matter.

Sincerely,

RUSOEMAIL425

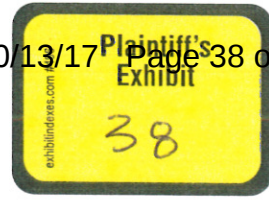
Dr. Meg Cotter-Lynch

Associate Professor of English

Southeastern Oklahoma State University

RUSOEMAIL425

Exhibit F



REINSTATE DR. RACHEL TUDOR

PETITIONS

[START A PETITION](#)

[BROWSE](#)

[log in / Join](#)

PETITION CLOSED

This petition is now closed. You can still make a difference in the Care2 community by signing other petitions today..

[BROWSE PETITIONS](#)

Reinstate Dr. Rachel Tudor

4,080 SUPPORTERS

BY [concerned citizens and colleagues](#)

TARGET: Shendan McCaffree and Regents of the Regional University System of...

4,080

5,000

we've got 4,080 supporters, help us get to 5,000 by October 22, 2011

overview

Dr. Rachel Tudor has been denied tenure at Southeastern Oklahoma State University and informed that her employment will be terminated effective May 31, 2011. It appears that this denial and dismissal are connected to discrimination against her for being transgender.

For nearly two years, the administration at Southeastern has repeatedly and egregiously violated established policies and procedures in the review of Dr. Tudor's application for tenure and promotion. The Faculty Appeals Committee has found in favor of Dr. Tudor twice, and the Faculty Senate has passed a resolution in support of her. Meanwhile, the administration arbitrarily re-wrote the Academic Policies and Procedures manual in the midst of the process, in order to facilitate Dr. Tudor's dismissal.

Given the egregious administrative misconduct and implication that Dr. Tudor is being dismissed due to her gender rather than her excellent professional qualifications, we hereby request that the State Regents reinstate Rachel Tudor and ensure that her tenure case is fairly evaluated on the quality of her work as a teacher and scholar.

you have the power to create change.

START SHARING AND WATCH YOUR IMPACT GROW

686	79	Email	embed
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other urgent petitions need your help

TAKE ACTION NOW



Tell Ellen DeGeneres to Remove Leather From Her Clothing Line!

88,033 SUPPORTERS

[sign petition](#)



URGENT Signatures Needed to Stop OC Animal Control From Killing Karma The Husky

280,812 SUPPORTERS

[sign petition](#)



End Commercial Aerial Hunting of Wild Hogs

77,749 SUPPORTERS

[sign petition](#)

MAKE A DIFFERENCE

[start a new petition](#)

the #1 petition site in the world

[site feedback](#)

Exhibit G

From: dmcmillanr@aol.com dmcmillanr@aol.com
Subject: Fwd: THOUGHT YOU MIGHT WANT TO READ THIS
Date: April 25, 2011 at 10:29 AM
To: cbabb@ruso.edu

-----Original Message-----

From: Bridgette Hamill <bridgette_hamill@yahoo.com > >
To: dmcmillanr <dmcmillanr@aol.com > >
Sent: Sat, Apr 23, 2011 3:58 pm
Subject: THOUGHT YOU MIGHT WANT TO READ THIS

Matt brought this to my attention yesterday. I logged on today to see what he was talking about and thought you might want to read it. This was posted on facebook yesterday -- I guess.

Fight discrimination and help Rachel Tudor

by Meg Cotter-Lynch on Friday, April 22, 2011 at 6:18pm

My friend and colleague, Rachel Tudor, has been denied tenure at our university and informed that her employment will be terminated effective May 31, 2011. Evidence suggests that this denial and dismissal are due to discrimination against her for being transgender. In a mess that has gone on for nearly two years, the administration at our university has repeatedly and egregiously violated established policies and procedures. The Faculty Appeals Committee has found in favor of Rachel twice, and the Faculty Senate has passed a resolution in support of her. Meanwhile, the VP for Academic Affairs and the President arbitrarily re-wrote the Academic Policies and Procedures manual in the midst of the process, in order to allow the VP for Business Affairs (!) to overrule the decision of the Faculty Appeals Committee.

I also encourage you all to visit her blog to learn more about her and her situation: <http://rachel-s-friends.blogspot.com/2011/04/southeastern-oklahoma-state-university.html>. There you will find contact information for the Oklahoma Board of Regents; please write and request that Rachel be reinstated.

Statement of Facts

Dr. Rachel Tudor has been employed as an assistant professor of English, humanities, and languages for the past seven years at Southeastern Oklahoma State University ("SOSU"). She currently serves on the Faculty Senate, Faculty Personnel Policies Committee, and enjoys consistent enrollment (and in many instances re-enrollment) in

RUSOEMAIL601

the courses which she offers. Dr. Tudor has published at least 10 academic articles and is well regarded by her students and colleagues.

Dr. Tudor is a transgendered female who formally transitioned in 2007. After transitioning, Dr. Tudor was instructed by SOSU's human resource department to only use a single-stall handicap bathroom on a different floor than where her office is located. She presumes the direction came from Dr. Douglas McMillan, the vice president of academic affairs, who reportedly had also inquired whether Dr. Tudor could be terminated because her lifestyle "offends his Baptist beliefs." Human resources denied his request to terminate her but did direct Dr. Tudor to use the separate bathroom facility.

Assistant professors at SOSU are given seven years in which to obtain tenure, with the initial probationary period ending after five years. It is not uncommon at SOSU for applicants to pursue more than one application before being granted tenure. Dr. Tudor knows of two examples of active professors at SOSU who pursued multiple applications before obtaining tenure including the current chair of the Faculty Senate's Personnel Policy Committee.

Applications for tenure are considered and voted on by a faculty committee. When Dr. Tudor applied for tenure in 2009 she was recommended by the Tenure Review Committee by a vote of 4-1, subsequently her department chair also recommended her for tenure and promotion. However, the dean and the vice president of academic affairs disregarded the committee's recommendation and denied tenure, but refused to provide any explanation for the denial. The dean regularly refers to Dr. Tudor by the incorrect pronoun (i.e. "him") although the dean is well aware that Dr. Tudor is female. Dr. Tudor filed an appeal with the Faculty Appellate Committee claiming that the dean's and Dr. McMillan's office did not provide her due process in explaining why tenure was denied. The Faculty Appellate Committee found in favor of Dr. Tudor, and directed the administration to provide Dr. Tudor with the reason(s) for its denial of tenure. SOSU's administration determined that the appellate committee's ruling was merely a recommendation and was not required to comply.







Dr. Tudor planned to re-apply for tenure in the 2010. However, before the application period began she received a memo from Dr. Doug McMillan stating that she would not be permitted to apply for tenure, alleging that Dr. Tudor's application would "inflammate the relationship between the administration and the faculty." However, the timing of the memo immediately after SOSU was informed that Dr. Tudor had filed a discrimination complaint with the US Dept of Education suggests retaliation was the true cause of the administration's action. Dr. Tudor is not aware of any other case in which an otherwise eligible professor has been forbidden to reapply for tenure. Dr. Tudor filed another grievance with the Faculty Appellate Committee, which again found in her favor. The decision was presented to the president's designee, Mr. Ross Walkup. The president's designee did not concur with the Faculty Appellate Committee's decision, and Dr. Tudor appealed to the president of the university, Dr. Larry Minks. At the time of the filing of Dr. Tudor's grievance the policy of SOSU provided that the Faculty Appellate Committee's recommendation be given to the president's designee who would in turn relay the recommendation directly to the president. However, the president's designee, Ross Walkup, an employee in the university's business office, refused to affirm the

RUSOEMAIL601

recommendation of the Faculty Appellate Committee. The administration amended the grievance policies to permit the president's designee to issue his own separate recommendation to the president. Meanwhile, the Faculty Senate passed a resolution, without a single opposing vote, calling on the president to allow Dr. Tudor to apply for tenure. Eventually, the president issued a letter to Dr. Tudor denying her appeal citing, *inter alia*, a supposed lack of precedence for professors reapplying for tenure after denial (a fact readily regarded as untrue).

Dr. Tudor has exhausted her remedies at the university level. There is no other appellate process or avenue to pursue her grievance. Complaints are pending with the US Equal Employment Opportunity Commission and the Oklahoma Human Rights Commission.

Dr. Tudor's contract with SOSU, and therefore her employment, is scheduled to expire on May 31, 2011.

- -  [Beatriz Eugenia Ramírez Betances](#) Meg, I will make sure all of my contacts are aware of Dr. Tudor's situation. Do you have a Spanish translation of this note? If you don't, I can translate it within the weekend so we can get international support as well.
23 hours ago
 -  [Meg Cotter-Lynch](#) FANTASTIC! No, I don't have a Spanish translation. If you can do it, great; if not, let me know, and I can ask one of our Spanish profs to do it. THANK YOU!
23 hours ago
 -  [Beatriz Eugenia Ramírez Betances](#) Your welcome! Yes, I can do it. As soon as I have it I'll give it to you and will distribute it to some of the LGBT activist I know in South America and here in Puerto Rico
23 hours ago
 -  [Beatriz Eugenia Ramírez Betances](#) Is there a petition page? It will be helpful to gather signatures of support.
23 hours ago
 -  [Meg Cotter-Lynch](#) I just revised to add a link to Rachel's blog, which has info about how to write to the regents. I'll work on starting a petition site, as well.
23 hours ago
 -  [Beatriz Eugenia Ramírez Betances](#) Excellent!
23 hours ago











-  [Beatriz Eugenia Ramirez Betances](#) Also, make sure this note is public, so anyone can read it, even if they are not your facebook friends. You don't have to change all of your settings, just the one for this page.
23 hours ago
-  [Katy Ann Glover](#) This is an outrage. Can we organize some sort of protest?
23 hours ago
-  [Meg Cotter-Lynch](#) @ Bea: already done. Anyone can see it. @ Katy Ann: you can write to the Regents and sign the petition, once I get it organized. You can also talk to Rachel to ask how you can help!
23 hours ago
-  [Katy Ann Glover](#) Oh I will! I was just wanting all of us to storm the president's office! Let's make signs and march around the loop!
23 hours ago
-  [Twahna Kemp](#) I wonder if someone could write a letter I. The Durant Daily???
19 hours ago
-  [Jonah Johnson](#) meg, is the OK ACLU involved in this?
19 hours ago
-  [Meg Cotter-Lynch](#) @ jonah: I know she has contacted the ACLU (and the AAUP, and the MLA, and and and...); don't know what they have said back, but I'll check with her. This is all new, so we're channeling our outrage in many directions at once!
18 hours ago
-  [Twahna Kemp](#) I say we all get T-shirts made saying "Reinstated Dr. Rachel Tudor" or something more clever...
16 hours ago · 1 person Loading...
-  [Venus Opal Reese](#) Has Lamda Legel been contacted? What of the Human Rights Campain?
5 hours ago
-  [Meg Cotter-Lynch](#) @ Venus: Lambda Legal turned the case down (they only do "impact litigation," and in the end this case hinges on tenure policy). HRC has been contacted at least once, but I haven't yet heard what their response is.
2 hours ago

Exhibit 19

Claire Stubblefield

From: Legako, Jana K. <jlegako@rose.edu>
Sent: Sunday, January 09, 2011 1:48 AM
To: Claire Stubblefield
Subject: FW: Tudor-Discrimination Case
Attachments: Tudor(timeline).docx; TudorConfidential (2).docx; Discrimination oomplaint-Tudor.docx; Tudor129.docx

Claire,

Please accept my apology for the delay in getting to you my conclusions. My mother who had total knee replacement on October 8, 2010, broke her hip. It has been a very hectic and stressful December and January.

The documents provided above have been reviewed. In addition, the policies and procedure relevant to this issue have been studied.

The policies and procedures support that a written statement of the action taken be submitted to the previous decision makers and faculty member by each decision maker (i.e. department chair, dean, vice president and president) after the Promotion and Tenure Review Committee's secret ballot. The policy is silent as to the content of the statement and one could reasonably assume a general statement such as "I do not concur with the decision of the Promotion and Tenure Review Committee and Department Chair" would suffice.

The policy only requires the President to state in detail the reasons he/she does not concur with the Promotion and Tenure Review Committee's decision. And, provide this written explanation to the Vice President for AA, the department chair, the Promotion and Tenure Review Committee, and the faculty member.

From our conversation, it is my understanding the Professor was provided this written notification by the President or his designee. In addition, since the Professor did request a hearing before the Faculty Appellate Committee, it is assumed the Professor received written notification from the Vice President for Academic Affairs. You may want to substantiate that the Dean and Department Chair forwarded their statements to the listed parties -- if they omitted this step in the policy, confirm that they omitted this step for all tenure applicants. This consistent omission will show that at this step in the process all were treated the same.

Normally with a race discrimination claim I run this query. In addition, with a little tweaking, this query will work with sex discrimination claims.

- (1) Does the claimant belong to the racial minority; (2) She/he applied for tenure and was qualified for tenure; (3) Despite qualifications she was rejected; and, (4) Similar qualifications got tenure.

Your request to have a qualified, unbiased, and objective third party review the portfolios of all tenure applicants was "textbook perfect." The third party's comments as to how the Professor's portfolio lacked in the required areas as outlined in the President's letter should assist in showing how the Professor does not meet #2 and #4 of her prima facie case. Focus on the legitimate nondiscriminatory reason for the Professor's rejection listed in the President's letter and bolstered the reasons by the third party review of the portfolios.

In addition, **being transgender is not a protected status.** However, harassment due to a person's sexual orientation would be a violation of the sexual harassment policy. You may want to take into consideration drafting a paragraph that states, "The University takes all claims of alleged sexually harassing behaviors as serious. And, after a thorough investigation you found the Professor's description of the alleged comments regarding transgender individuals to be substantiated. Therefore, the sexual harassment policy has not been violated."



Please remember that in most sexual harassment claims and race/sex discrimination claims the claimant may have additional internal processes to request if he/she does not agree with your findings. For example, at the College that I am employed, the claimant may request a hearing in front of a panel of her peers. I always include this right in the letter that is mailed to them of my findings.

Furthermore, you may want to address that retaliation from any of the parties involved will not be tolerated.

Please do not hesitate to call. It was a pleasure reviewing your documents and discussing this case with you.

Best regards,

Jana Legako, J.D., PHR

Office: (405) 733-7933

Fax: (405) 733-7443

NOTICE: The information contained in this transmission is or may be protected by the attorney-client privilege and is confidential. It is intended only for the use of the individual or entity identified above. If the reader of this message is not the intended recipient you are hereby notified that any dissemination or distribution of the accompanying communication is prohibited. No applicable privilege is waived by the party sending this communication. If you have received this communication in error, please notify us immediately by reply and delete the original message from your system. Thank you and we apologize for the inconvenience.

From: Claire Stubblefield [mailto:CStubblefield@se.edu]

Sent: Wednesday, December 15, 2010 11:25 AM

To: Legako, Jana K.

Subject: Tudor-Discrimination Case

Thank you so much for agreeing to lend a legal eye to a very interesting case. My mobile number is 580-504-0050. I will take the case and documentation home for the holiday. Please give me a call at your earliest convenience. Thanks again.

Exhibit 20

From: Claire Stubblefield AHARMAN@se.edu
Subject: Interesting Article
Date: March 02, 2011 at 9:50 AM
To: Cathy Conway /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=CCONWAY

Thanks Cathy. I want us to be a current as possible. Once you are feeling better, we will schedule a meeting to discuss.

From: Cathy Conway
Sent: Wednesday, March 02, 2011 7:35 AM
To: Claire Stubblefield
Cc: Larry Minks
Subject: Re: Interesting Article

Claire and President Minks,

It is my understanding that genetics is now a protected category by federal law and therefore we will need to add it to our EEO statement. How much to add about it is a question I sent to Charlie after his recent announcement to the HR directors about the new law. Claire, we may also need to update our sexual harassment policy as well. The SH policy may be where we could and should go into detail describing it. Charlie and I have not yet discussed this, he had wanted to talk about it by phone. Last week was a busy week with other matters and the board meeting, and I've been out sick this week.

Dr. Weigel's bullying laws SOLD presentation was very enlightening about the group most often bullied, the LGBTs. Still no federal law protecting this group, no state law yet either, per Dr. Weigel; however, school districts are beginning to add policies that address bullying in an effort to provide a safe learning environment for all of their students. I briefed Bryon and Claire about this presentation. Perhaps Charlie could shed more light on TCC's policy decision and if any other OK higher ed schools have done the same recently.

Cathy

Sent from my iPhone

On Mar 1, 2011, at 4:43 PM, " Claire Stubblefield " < CStubblefield@se.edu > > wrote:

From: SGA President
Sent: Tuesday, March 01, 2011 4:41 PM
To: Claire Stubblefield
Subject: Interesting Article

Hi Dr. Stubblefield,

Saw this article today. Thought you might be interested.

SEOSU1659

TCC's new sexual orientation protections

Tulsa World's Editorial Writers

2/21/2011

Tulsa Community College has joined the growing number of private and public employers to extend equal opportunity protections to students and employees regardless of their sexual orientation.

The school's regents approved the human resources policy change on Thursday.

Under the policy - similar to one passed by the city of Tulsa last year - the school will not discriminate in admissions, employment, financial aid or educational programs, activities or services based on whether an employee or student is gay, lesbian, heterosexual or bisexual.

Sexual orientation joins a long list of protected classes in school policy. Other protected classes include race, color, national origin, sex, age, religion, disability, status as a veteran, genetic information and any other class protected by applicable discrimination law.

It's important to emphasize that this doesn't represent any new rights given to people on basis of their sexual orientation. It simply assures all TCC students and employees that they will enjoy the same rights regardless of their orientation.

Many other major employers and other colleges have taken similar steps over the years and have found that it isn't just the right thing to do - although that is certainly true - but that it helps the institution grow and prosper.

Experience shows that equal opportunity protections such as TCC's won't just protect students and the employees, but will also make the institution stronger and more vibrant.

One of the college's official " core values " says, " Diversity is our common bond. Sincere appreciation for and cultivation of differences enriches our lives, the community, and the education we offer. It is a source of our pride and integral to our success. "

That's a wonderful statement and the new policy is obviously well-suited to the principle.

The new policy for TCC is a step forward for the institution and one the students, faculty, staff and administration can look to with pride.

Original Print Headline: Diversity

Matthew Heggy

President,

Student Government Association

580.745.2192

405.922.3403

Fax: 580.745.7466

< image001.jpg > >

Exhibit 21



From: Lucretia Scoufos
Sent: Friday, May 08, 2015 12:10 PM
To: Charles Matthews; Dell McLain; Ed Mauzey; George Jacox; Glenn Melancon; Kitty Campbell; Larry Prather; Randy Prus; Stacy Weger; Stan Alluisi; Stevenson G. Smith; Teresa Golden; Tim Smith; Vicki Hudson; Vivian Guarnera; Wayne Jones; Alistair S. Maeer; Brooks Flippen; Chunmei Yoe; Corie Delashaw; Karen Prus; Carrie M. Schuh; Dana Clure; Kay D. Collins; Penny Bridwell; Chris Bradshaw; Deanna Moody; Halet Poovey; Nick Nichols; Richard T. Braley; Jacob E. Wallace; Jana L. Shackleton; Jeremy B. Blackwood; Jeri Walker; Marc White; Mary Ann Craige; Robert McFadden; Steven Emge; Tristan A. Eggener; Amy K. Anderson; Brett Elliott; Buddy Pierce; Christopher Moretti; Karl H. Frinkle; Layne Heitz; Linda Kallam; Patrick Reardon; C.W. VonBergen; Debra Haley; Lawrence S. Silver; Martin S. Bressler; Robert E. Stevens; Robert Howard; Rodney K. Leird; Bo Atterberry; Chad Speer; Courtne L. St Clair; Darin Grover; Jennifer Corkum; Kay Daigle; Kelly Green; Michael Reed; Mike Metheny; Ray D. Richards; Ron Faubion; Ryan M. Quinn; Sami Jo Cotton-Black; Scott C. Highsmith; Scott Willman; Steve P. Fanara; Caryn Witten; Daniel Althoff; Janet L. Barker; John Mischo; Lisa Coleman; Margaret W. Cotter-Lynch; Mark Spencer; Paula Smith Allen; Teresa Anderson; Virginia Parrish; Wilma Shires; Barbara McClanahan; Cathy L. Lightsey; Charles Weiner; Jerry C. Stout; Mary E. Nottingham; Nancy Hill; Robert Stewart Mayers; Susan Morrison; Toni Stiefer; William Fridley; Jackie L. Bearden; James Britton; Lie Qian; Loide Wasmund; Margaret Avard; Mike Morris; Ming-Shan Su; Mohamed Chehbouni; Nancy Paiva; Rhonda Richards; Steve McKim; Brad Ludrick; Diane Dixon; Doug Wood; Erica Corbett; Joni Aldridge; Josie Mendenall; Judy Williams; Stanley Rice; Sunny Dixon; Tim Patton; Blythe Duell; Charla Hall; Daniel Weigel; Dennis R. Brewster; Hallie Stephens; James Knapp; Jane Elder; Jennifer Hicks; Jon Reid; Kimberly Donovan; Reba J. Criswell; John G. Van Bebber; Kyle Thomas; Susan L. Dilbeck; Hansheng S. Chen; Kalana Malimage; Larry Prather; Theresa Hrcir
Cc: Claire Stubblefield; Doug McMillan; Mindy House; Teena D. Harlin
Subject: FW: Discrimination and Title IX Statements for Syllabi
Attachments: Equal Opportunity Syllabus Statement2015.docx
Follow Up Flag: Follow up
Flag Status: Completed

Department Chairs & All Faculty, please follow the directive from Dr. Stubblefield in her email below. Also, Department Chairs, along with full time faculty, will you please make sure that all adjuncts are informed that this addition is to be included in ALL 2015-16 syllabi beginning with the Summer 2015 syllabi.

Thank you,
Lucretia

Lucretia Scoufos, Ph.D.
Executive Dean for Academic Affairs
Professor of Communication
Southeastern Oklahoma State University
1405 N. 4th Avenue, PMB 4107
Durant, OK 74701
Toll-free 1-800-435-1327 ext. 2278
P: 580.745.2278
F: 580.745.7476



From: Claire Stubblefield
Sent: Friday, May 08, 2015 10:51 AM
To: Judy Boone
Cc: Lucretia Scoufos; Doug McMillan; Diane Dean
Subject: Discrimination and Title IX Statements for Syllabi

President Burrage added **two new categories of protected status to the SE discrimination policy**, I ask that the attached combined policy statements be added to publications and '15-'16 syllabi until further notice. Thank you. If discussion is needed, do not hesitate to call.

Dr. Claire Stubblefield
Southeastern Oklahoma State University
Office of Equity, Compliance and Diversity
1405 N. 4th Ave.; PMB 2750
Durant, Oklahoma 74701
580-745-3090 FAX 580-745-7448
cstubblefield@se.edu



Equal Opportunity Statement

In Compliance with Title VI of the Civil Rights Act of 1964, Executive Order 11246 as amended, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, and other Federal Laws and Regulations, Southeastern Oklahoma State University does not discriminate on the basis of race, color, national origin, sex, **sexual identity, sexual orientation**, age, religion, handicap, disability, or status as a veteran in any of its policies, practices or procedures, this includes but is not limited to admissions, employment, financial aid, and educational services.

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) states: No person in the United States, shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance..."

Southeastern Oklahoma State University does not discriminate on the basis of sex in its education programs or activities, in compliance with Title IX and the U.S. Department of Education's regulations at 34 C.F.R. §§ 86.1 et seq. Individuals who believe they have been discriminated against on the basis of sex may contact S.E.'s Title IX Coordinator at 580-745-3090, titleix@se.edu, or PMB 2750.

Exhibit 22



Civil Rights & Title IX Policy for Faculty, Students and Staff

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RECORD COPY 5/9/2017

INTRODUCTION

Southeastern Oklahoma State University affirms its commitment to an educational and working environment free from discrimination and harassment on the basis of race, color, national origin, religion, sex, sexual orientation, gender, age, disability, veteran status, and other protected characteristics. Discrimination of any kind, including harassment and retaliation, will not be tolerated. This policy specifically covers all civil rights and Title IX matters for all faculty, students, staff, student and employee applicants, contractors and visitors when the University becomes aware of discrimination, harassment or retaliation through a complaint or by other means. Southeastern is committed to promptly ending any instances of discrimination, harassment, or retaliation and taking appropriate measures to effectively prevent the repetition of such conduct. The University will impose appropriate sanctions to reasonably ensure that such actions are not repeated, and steps will promptly be taken to remedy the effects of the misconduct.

The University is committed to preventative programming and outreach to the campus community in order to improve campus attitudes and understanding about discrimination, harassment, sexual misconduct, effective consent, bystander intervention, and other important behavioral wellness topics.

POLICY STATEMENT

Southeastern Oklahoma State University, in compliance with applicable federal and state law and regulations, does not discriminate and prohibits discrimination on the basis of race, color, religion, national origin, sex, age, disability, sexual orientation, gender identity, or status as a veteran in any of its policies, practices, procedures, or programs. This includes, but is not limited to: admissions, employment, financial aid, and educational services.

PRIMARY AUTHORITY

The application of other University policies not related to discriminatory misconduct may trigger this policy if any report or complaint that arises under those processes contains elements of discriminatory misconduct, and will therefore be addressed in accordance with this policy prior to the resolution of other claims.

Examples: A student grade appeal typically routed through the Academic Appeals Committee, but which contains allegations of racial discrimination must first be evaluated in accordance with the policies and procedures contained herein, before continuing through that committee.

An employee appeal from suspension, demotion, or discharge which contains allegations of gender based discrimination must first be evaluated in accordance with the policies and procedures contained herein, before continuing through that committee.

PRIOR POLICIES ARE REPLACED BY THIS POLICY

Note: This policy has been developed to simplify and consolidate all equity-based processes and procedures under one umbrella policy. This policy replaces the following University policies, or specific portions listed, that were in place prior to adoption:

- 1) Academic Policies and Procedures Manual, § 1.8 Nondiscrimination, Equal Opportunity, and Affirmative Action Policy.
- 2) Academic Policies and Procedures Manual, § 4.4.6 Faculty Grievance Policy (insofar as discrimination complaints are concerned).
- 3) Academic Policies and Procedures Manual, § 7.4 Sexual Harassment, Sexual Relationship, and Sexual Assault Policy.
- 4) Academic Policies and Procedures Manual, § 7.5 Racial and Ethnic Policy.
- 5) Academic Policies and Procedures Manual, § 7.14 Americans with Disabilities Act Policy.
- 6) Administrative, Professional, and Support Staff Employee Handbook, § vi Nondiscrimination, Equal Opportunity, and Affirmative Action Policy.
- 7) Administrative, Professional, and Support Staff Employee Handbook, § 6 Americans with Disabilities Act Policy.
- 8) Administrative, Professional, and Support Staff Employee Handbook, § 8.9 Sexual Harassment, Sexual Relationship, and Sexual Assault Policy.
- 9) Administrative, Professional, and Support Staff Employee Handbook, § 8.13 Racial and Ethnic Harassment Policy.
- 10) Administrative, Professional, and Support Staff Employee Handbook, § 13 Employee Complaint Policy.
- 11) Student Handbook, § D Gender Based and Sexual Misconduct Policy and related definitions of gender-based discrimination, harassment, and retaliation in § B of the Student Handbook.
- 12) Sexual Harassment and Violence, Discrimination, Retaliation and Domestic Violence Policy.
- 13) The Grievance Procedure for Faculty, Staff, and Students with Disabilities.
- 14) Policy on Services for Students with Disabilities.
- 15) Policy for Special Housing Requests for Students with Disabilities.
- 16) Service and Assistance Animal Policy
- 17) Policy for Addressing Requests for Academic Modifications Under the Americans with Disabilities Act
- 18) Criteria for Accepting Documentation of Disabilities

The Civil Rights & Title IX Policy is the official University policy outlining discrimination grievance procedures. Residual copies of the policies listed above are outdated may not be relied upon in any manner upon adoption of this policy.

POLICY APPROVAL

Southeastern Oklahoma State University – Director of Compliance and Safety:	March 1, 2017
Regional University System of Oklahoma General Counsel’s Office:	April 17, 2017
President of Southeastern Oklahoma State University:	May 10, 2017

PRIMARY CONTACT FOR INQUIRES ABOUT THIS POLICY

Michael Davis, J.D.
Director of Compliance and Safety
Title IX Coordinator
Administration Building, Room 311
425 West University Blvd. Durant, OK
Phone: 580-745-3090
Email: mdavis@se.edu

PART SIX TRANSGENDER INCLUSION

Southeastern is committed to ensuring an inclusive campus community for all students, faculty, staff, and visitors. This includes freedom from discrimination and harassment based on gender identity or transgender status. The University will not exclude, separate, or deny benefits to, or otherwise treat differently on the basis of sex, any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.

Gender Identity: An individual's internal sense of gender. A person's gender identity may be different from or the same as a person's sex assigned at birth.

Transgender: Describes those individuals whose gender identity is different from the sex they were assigned at birth.

Gender Transition: The process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

When the University is notified that a student or employee will begin to assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with that student's gender identity. There is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.

Third Party Harassment:

Southeastern will not tolerate harassment that targets an individual based on gender identity or transgender status. If such sex-based harassment creates a hostile environment, the University will take action to end the harassment, prevent its recurrence, and remedy its effects.

Identification and records:

All students, employees, and contractors of Southeastern are expected to treat individuals consistent with their gender identity even if their education or employment records indicate a different sex. This includes an expectation to use the appropriately gendered pronouns, prefixes, or abbreviations when referring to an individual either directly or indirectly.

Southeastern will entertain requests to amend educational records to make them consistent with the student or employee's gender identity. Unless an individual's name and/or gender are changed by law, not all documents may be able to be amended.

Facilities, including Housing:

Gender-segregated facilities, including restrooms, locker rooms, housing, and hotel room assignments on University sponsored trips must permit access consistent with an individual's gender identity.

Fraternities and Sororities:

Title IX, and the requirements of this University policy, do not apply to the membership practices of social fraternities and sororities. Such organizations are exempt, and may have their own policies in regard to sex and gender identity.

Athletics:

Southeastern enforces equal opportunity for transgender student athletes. To the extent any of this policy conflicts with current NCAA Division II rules, the official NCAA Division II rules will be the controlling policy as applied to student athletes at Southeastern.

A transgender student athlete should be allowed to participate in any sports activity so long as that athlete's use of hormone therapy, if any, is consistent with the National College Athletic Association (NCAA) existing policies on banned medications. Specifically, a transgender student athlete should be allowed to participate in sex-separated sports activities under the following conditions:

Transgender student athletes who are undergoing hormone treatment

1. A male-to-female (MTF) transgender student athlete who is taking medically prescribed hormone treatment related to gender transition may participate on a men's team at any time, but must complete one year of hormone treatment related to gender transition before competing on a women's team.
2. A female-to-male (FTM) transgender student athlete who is taking medically prescribed testosterone related to gender transition may not participate on a women's team after beginning hormone treatment.
3. A female-to-male (FTM) transgender student athlete who is taking medically prescribed testosterone for the purposes of gender transition may compete on a men's team with an NCAA approved medical exception.
4. In any case where a student athlete is taking hormone treatment related to gender transition, the use of an anabolic agent or peptide hormone must be approved by the NCAA before the student-athlete is allowed to participate in competition while taking these medications. The NCAA recognizes that some banned substances are used for legitimate medical purposes. Accordingly, the NCAA allows exception to be made for those student-athletes with a documented medical history demonstrating the need for regular use of such a drug. The institution, through its director of athletics, may request (to the NCAA) an exception for use of an anabolic agent or peptide hormone by submitting to the NCAA medical documentation from the prescribing physician supporting the diagnosis and treatment.

Transgender student athletes who are NOT undergoing hormone treatment

1. Any transgender student athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.
2. A female-to-male transgender student athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.
3. A male-to-female transgender student athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.

Participation in Mixed Gender Sport Activities

A mixed team has both female and male participants and may be restricted in championship play according to specific national governing body rules.

Transgender student athletes who are undergoing hormone treatment

1. For purposes of mixed gender team classification, a male-to-female (MTF) transgender student athlete who is taking medically prescribed hormone treatment related to gender transition shall be counted as a male participant until the athlete has completed one year of hormone treatment at which time the athlete shall be counted as a female participant.
2. For purposes of mixed gender team classification, a female-to-male (FTM) transgender student athlete who is taking medically prescribed testosterone related to gender transition shall be counted as a male participant and must request a medical exception from the NCAA prior to competing because testosterone is a banned substance.

Transgender student athletes who are NOT undergoing hormone treatment

1. For purposes of mixed gender team classification, a female-to-male (FTM) transgender student athlete who is not taking testosterone related to gender transition may be counted as either a male or female.
2. For purposes of mixed gender team classification, a female-to-male (FTM) transgender student athlete who is not taking testosterone related to gender transition participating on a women's team shall not make that team a mixed gender team.
3. For purposes of mixed gender team classification, a male-to-female (MTF) transgender student athlete who is not taking hormone treatment related to gender transition shall count as a male.

The student's responsibility

1. In order to avoid challenges to a transgender student's participation during a sport season, a student athlete who has completed, plans to initiate, or is in the process of taking hormones as part of a gender transition shall submit the request to participate on a sports team in writing to the athletic director upon matriculation or when the decision to undergo hormonal treatment is made.*

2. The student shall submit her or his request to the athletic director. The request shall include a letter from the student's physician documenting the student athlete's intention to transition or the student's transition status if the process has already been initiated. This letter shall identify the prescribed hormonal treatment for the student's gender transition and documentation of the student's testosterone levels, if relevant.

* The student is encouraged to meet with someone who can offer support and advice through the process, if desired. Should the student want help in finding such a person, a list of people who might serve in that role is available from the Athletic Director, the Title IX Coordinator, and the Office of the Dean of Students.

Disputation

If at any point the athletics section of this Transgender Inclusion Policy is disputed, the Athletics Compliance Officer shall notify the Director of Compliance and Safety. The Civil Rights and Title IX Policy and Procedure will govern the dispute. For parts of this policy that relate to athletics, no part of this policy is intended to conflict with NCAA policies and/or rules for member institutions, and to the extent any such conflict exists, the University will defer to NCAA regulations and interpretations of such regulations.

Policies for Intramural Sports

People participating in any intramural sports or other athletic programs, such as physical education courses, may participate in accordance with their gender identity, should that be relevant, regardless of any medical treatment.

Locker Rooms.

Anyone using sports facilities on campus—whether SE athletes, visiting athletes, or other participants and attendants—shall have access to the changing, shower, and toilet facilities that accord with their gender identity. Private facilities will be made available if asked for but transgender people will not be required to use them.

Accommodations for travel.

When possible, athletes traveling to other schools should be assigned accommodations based on their gender identity, with more privacy provided, if possible, when requested.

Names and Pronouns.

Teammates, coaches, and other participants in sports shall refer to people by their preferred names and pronouns.

Dress Codes and Uniforms

Dress codes should enable all athletes and other sports participants to dress in accord with their gender identity. For example, instead of requiring gendered forms of “dressy,” such as a skirt or dress, dress codes should require students to dress with appropriate formality in ways that suit their gender identity. Since both transgender and cisgender athletes may have preferred gender expressions that do not conform to traditional norms of dress—for instance, not all women feel comfortable in a skirt—this policy should be understood to apply to all athletes. Uniforms, too, ideally, should not conflict with an athlete’s gender identity.

Education

Athletes, coaches, trainers, and other people involved in SE Athletics should be educated about trans identities and the principles of transgender inclusion. They should be knowledgeable about how, in their particular roles, to support trans people, and prepared to put this knowledge to use.

At schools or venues where or against which SE athletes compete. Without naming or violating the privacy of transgender athletes or personnel in question, relevant authorities and personnel at those venues should be informed about expectations for the treatment of transgender athletes—including accommodation, pronoun, and name use—during and outside of play

RECORD COPY

This policy takes full effect on May 10th, 2017 and shall be distributed online and as an appendix in all Student, Employee, and Faculty handbooks.

Sean Burrage, President
Southeastern Oklahoma State University

Date

Michael J. Davis, Director of Compliance & Safety
Southeastern Oklahoma State University

Date

Exhibit 23

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

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

DEPOSITION OF WHITNEY POPCHOKE

TAKEN ON BEHALF OF THE PLAINTIFF INTERVENOR

IN OKLAHOMA CITY, OKLAHOMA

ON AUGUST 11, 2016

REPORTED BY: ROSIE STANDRIDGE, CSR

Whitney Popchoke

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1 don't need to go through the binder. But there are
2 benefit booklets in this binder from 2007, 2008, 2009,
3 2010, and '11?

4 A. Yes.

5 Q. To your knowledge, did the benefit booklets
6 all have the same exclusion?

7 A. Yes.

8 Q. And that exclusion is an exclusion that's in
9 quotation marks in defendants' responses to paragraph
10 67?

11 A. I do not know that it's verbatim.

12 Q. Is it defendants' understanding that the
13 exclusion, even if not verbatim in each of those
14 years, 2007, 2008, 2009, 2010, and 2011, more or less
15 has the same effect?

16 A. Yes.

17 Q. I want you to have Plaintiff's Exhibit 163
18 and 164 side by side, just to make it a little bit
19 easier for you to answer a few questions. In both of
20 those exhibits, you can turn to the page that includes
21 the paragraph marked 67.

22 So I'm going to read to you paragraph 67
23 from Plaintiff's Exhibit 164. It reads as follows:
24 SEOSU admits the health insurance plan offered to all
25 of its employees contain numerous exclusions,

Whitney Popchoke

1 listed in Plaintiff's Exhibit 165 was in effect?

2 A. Yes.

3 Q. And what years were those?

4 A. 2010 through current.

5 Q. Did the health plans in effect for the
6 calendar years between 2005 and 2009 include a similar
7 exclusion?

8 A. Yes.

9 Q. To your knowledge, did defendants make any
10 efforts to remove -- strike that.

11 Is it okay with you if I just refer to the
12 exclusion that's in Plaintiff's Exhibit 165 that
13 you've said generally existed in more or less the same
14 form as the transsexual exclusion?

15 A. Yes.

16 Q. Thank you.

17 Did defendants take any efforts to remove
18 the transsexual exclusion in 2005?

19 A. No.

20 Q. Why not?

21 MS. COFFEY: Object to form.

22 A. That is when we were with OSEEGIB, and we
23 had no negotiation power when we were under OSEEGIB.

24 Q. (By Mr. Young) In 2005 did defendants have
25 the ability to seek insurance outside of the OSEEGIB

Whitney Popchoke

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1 ability to seek the removal of the transsexual
2 exclusion in 2010?

3 A. Yes.

4 Q. In 2011 did defendants take any steps to
5 remove the transsexual exclusion?

6 A. No.

7 Q. Why not?

8 A. Same.

9 Q. Same being --

10 A. As I just mentioned, I -- I don't know.

11 Q. And in 2011 did defendants have the ability
12 to request the removal of the transsexual exclusion?

13 A. Yes.

14 Q. In 2012 did defendants take any steps to
15 remove the transsexual exclusion?

16 MS. COFFEY: You can probably fast-forward
17 and cover all the years and ask her. Her answers will
18 be the same.

19 MR. YOUNG: Okay. Happy to do so.

20 Q. (By Mr. Young) So I think the years that we
21 have remaining are 2012, 2013, 2014, 2015, and 2016.
22 For those years as a group, did defendants take any
23 steps to remove the transsexual exclusion?

24 A. No.

25 Q. Why not?

Whitney Popchoke

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1 A. I do not know.

2 Q. For that same grouping of years, 2012 to
3 2016, did defendants have the ability to request the
4 removal of the transsexual exclusion?

5 A. Yes.

6 Q. And just to clarify, for 2011 to 2016, why
7 do you believe that the defendants did have the
8 ability to request the removal of the exclusion?

9 MS. COFFEY: Object to form.

10 A. Because with a fully insured insurance plan,
11 you can always ask to change the policy that you're
12 given. But it is standard procedure to get -- to take
13 what the vendor gives you as the insurance. And that
14 way, you ensure that what they give you is compliant,
15 because, once again, we rely on them for their
16 compliance.

17 Q. (By Mr. Young) When you were -- you just
18 used the word "vendor," correct?

19 A. Vendor, carrier. Yes.

20 Q. The vendor for the 2011 and 2016 period,
21 does that mean BlueCross BlueShield?

22 A. Yes.

23 Q. Okay. To your knowledge, would it be costly
24 to remove the transsexual exclusion?

25 A. I do not know.

Whitney Popchoke

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1 person between 2005 and present has made an inquiry
2 about whether the health benefits plan covered
3 transgender services?

4 MS. COFFEY: Same objection as prior
5 questions.

6 A. Not to my knowledge.

7 Q. (By Mr. Young) Do you know who might have
8 information regarding inquiries made about whether the
9 health benefits plan between 2005 and present cover
10 transgender services?

11 A. I do not.

12 Q. Do you know on what date defendants became
13 aware that their health benefits plan had a
14 transsexual exclusion?

15 MS. COFFEY: Object to form.

16 A. I do not.

17 Q. (By Mr. Young) Do you have any reason to
18 believe that defendants were unaware of the existence
19 of the transsexual exclusion between 2005 and present?

20 MS. COFFEY: Object to form.

21 A. I don't -- I don't know that we specifically
22 knew one way or the other.

23 Q. (By Mr. Young) You said one way or the
24 other. Can you explain what you meant by that?

25 A. Yes. Whether it was or wasn't covered, the

Whitney Popchoke

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1 transgender exclusion. We didn't know whether it was
2 an exclusion or it wasn't an exclusion.

3 Q. Did defendants have access to the health
4 benefits booklets between 2005 and present?

5 A. Yes.

6 Q. So I guess I'm trying to understand why --
7 strike that.

8 Did you previously testify that defendants
9 were aware that a transgender exclusion existed in the
10 health benefits booklets?

11 A. Yes.

12 Q. Okay. Was there a time at which defendants
13 were not aware that exclusion existed in the health
14 benefits booklets?

15 A. Just that it -- it wasn't a specific
16 exclusion as to be put in there, is what I meant by
17 that.

18 Q. So I'm just asking a clarifying question
19 here. Are you making a distinction between something
20 the defendants requested to be put in a plan as
21 opposed to something that defendants later found
22 within the plan?

23 MS. COFFEY: Object to form. Misstates her
24 testimony.

25 THE WITNESS: Will you repeat the question?

Whitney Popchoke

1 (Record was read)

2 MS. COFFEY: Object to form.

3 A. Yes.

4 Q. (By Mr. Young) Is it your understanding
5 that between 2005 and present, that defendants had
6 access to the plan documents?

7 A. Yes.

8 Q. Is there anything that would have precluded
9 the defendants from reviewing those plan documents?

10 A. No.

11 THE REPORTER: Did you answer?

12 A. No. Sorry. Yeah.

13 Q. (By Mr. Young) Is there a certain point at
14 which defendants became aware that the exclusion
15 existed?

16 MS. COFFEY: Object to form. Asked and
17 answered. She's already testified that the defendants
18 were familiar with the terms that were contained in
19 the plan. But she clarified previously regarding that
20 they may made no specific effort to include that as an
21 exclusion.

22 Q. (By Mr. Young) You can answer.

23 A. They knew -- I mean, they knew it was in
24 there, but I don't know -- I don't know the date that
25 they became aware of it being included.

Whitney Popchoke

1 Q. To your knowledge, at any point between 2005
2 and present, has a person on the health plan ever
3 complained to defendants about the transsexual
4 exclusion?

5 MS. COFFEY: Object to form.

6 A. Not to my knowledge.

7 Q. (By Mr. Young) Do you know if there's
8 anyone else at the defendants' who would have more
9 knowledge about such complaints?

10 A. I do not.

11 Q. Between 2005 and present, have defendants
12 maintained any policy or mechanism through which
13 persons on the health plan can complain to defendants
14 directly about plan exclusions?

15 MS. COFFEY: Object to form. Asked and
16 answered.

17 A. No.

18 Q. (By Mr. Young) So is there any way that
19 someone on the health plan could complain to
20 defendants about a health plan exclusion directly?

21 MS. COFFEY: Object to form. Asked and
22 answered.

23 A. Yes.

24 Q. (By Mr. Young) And how would that complaint
25 be processed?

Whitney Popchoke

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1 MR. YOUNG: Benefits coordinator with that
2 grievance. Sorry.

3 A. If they -- you asked if they wanted to file
4 a complaint with the school, who would they go to, and
5 that would be the individual they would go to.

6 Q. (By Mr. Young) Is there any policy or other
7 document that explains that the benefits coordinator
8 at the school is the appropriate person to bring a
9 complaint about health benefits plan exclusion to?

10 MS. COFFEY: Object to form.

11 A. Again, no.

12 Q. (By Mr. Young) So how do you know that that
13 would be the appropriate person to bring such a
14 complaint to?

15 MS. COFFEY: Object to form.

16 A. Because that's the person in charge of
17 benefits.

18 Q. (By Mr. Young) I assume that you know that
19 that is the person in charge of benefits, in part
20 because of the training you went through for your
21 current job; is that correct?

22 A. No.

23 MS. COFFEY: Object to form.

24 Q. (By Mr. Young) So what are you basing your
25 knowledge upon, then?

Whitney Popchoke

1 A. Their title as benefits coordinator.

2 Q. To your knowledge, at any point between 2005
3 and present, has any person on one of defendants'
4 health plans brought a complaint about a health plan
5 exclusion to someone with the title benefits
6 coordinator?

7 MS. COFFEY: Object to form.

8 A. I don't know.

9 Q. (By Mr. Young) Who would know?

10 A. I don't know.

11 Q. Did you take any steps to ascertain who
12 would know?

13 A. No.

14 Q. Within the RUSO system, between 2005 and
15 present -- strike that.

16 Do all of the schools within the RUSO system
17 have someone at the school with the title similar to
18 benefits coordinator?

19 A. Yes.

20 Q. And persons with such titles have existed at
21 the schools between the time period 2005 and present?

22 A. Yes.

23 Q. So I'm just going to ask you general
24 questions about benefits coordinators for the schools,
25 which includes Southeastern. Is that okay?

Whitney Popchoke

1 A. Yes.

2 Q. So if a person on one of the health plans
3 brought a complaint about a health exclusion to the
4 benefits coordinator, what would be the health
5 coordinator's role in resolving that complaint?

6 A. They would take them to -- or they would
7 show them how to get in touch with BlueCross
8 BlueShield.

9 Q. Would they do anything else?

10 A. If asked.

11 Q. Did -- would a health benefits coordinator
12 during this time period have the ability to request
13 that BlueCross BlueShield drop the exclusion?

14 A. No.

15 Q. So what would be the purpose of speaking
16 with a benefits coordinator?

17 MS. COFFEY: Object to form.

18 A. To assist in the appeal process.

19 Q. (By Mr. Young) Between 2010 and present,
20 when defendants were with BlueCross BlueShield -- make
21 this a little bit easier -- do you have any knowledge
22 as to whether someone on the health plan could use the
23 BlueCross BlueShield appeal process as a way to remove
24 a benefits exclusion?

25 A. Yes.

Whitney Popchoke

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1 I mean job title -- that someone on defendants' health
2 plan could go to for assistance in challenging the
3 transsexual exclusion?

4 A. The HR director.

5 Q. Okay. And what would the HR director's role
6 be?

7 A. The same as the benefits coordinator.

8 Q. Would there be any other persons -- and,
9 again, I mean job titles -- that someone on the health
10 plan could go to for assistance in challenging the
11 transsexual exclusion?

12 A. Not to my knowledge.

13 Q. Is there any document or policy that
14 memorializes that someone on the defendants' health
15 benefits plan could go to the HR director for
16 assistance in challenging a categorical exclusion?

17 MS. COFFEY: Object to form.

18 A. No.

19 Q. (By Mr. Young) So what are you basing your
20 answer upon, then, if there's no document that says
21 that that's the appropriate person to go to?

22 MS. COFFEY: Object to form.

23 A. If you have a question with benefits or
24 something having to do with HR, HR is typically the
25 place you would go to resolve those questions.

Whitney Popchoke

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1 Q. (By Mr. Young) But you have no specific
2 documentation or no information received from an
3 interview that you conducted in preparation for
4 today's deposition that informs your answer?

5 MS. COFFEY: Object to form.

6 A. No.

7 Q. (By Mr. Young) To your knowledge, between
8 2005 and present, has any person on defendants' health
9 plan gone to an HR director to challenge the
10 transsexual exclusion?

11 A. I do --

12 MS. COFFEY: Object to form.

13 A. I do not know.

14 Q. (By Mr. Young) Do you know who would have
15 such knowledge?

16 A. I do not.

17 Q. Do you know whether, between 2005 and
18 present, anyone on defendants' health plan has gone to
19 a person with the title HR director to challenge any
20 exclusion on the health plan?

21 MS. COFFEY: Object to form.

22 A. I do not know.

23 Q. (By Mr. Young) Do you know who would know?

24 A. I do not.

25 Q. Did you take any steps in preparation for

Whitney Popchoke

1 today's deposition to ascertain who would know?

2 A. I did not.

3 Q. Okay. Other than going to someone with the
4 title benefits coordinator or someone with the title
5 HR director, is there any other person -- which I mean
6 title -- that someone on the health benefits plan
7 could go to to challenge an exclusion?

8 MS. COFFEY: Object to form. Asked and
9 answered.

10 A. No.

11 Q. (By Mr. Young) Between 2005 and present,
12 could someone on the health benefits plan file a
13 complaint of discrimination to challenge an exclusion
14 on the health plan?

15 MS. COFFEY: Object to form.

16 A. I don't know.

17 Q. (By Mr. Young) Do you know who would know?

18 A. No.

19 Q. Did you take any steps in preparation for
20 today's deposition to ascertain who would know?

21 A. No.

22 MS. COFFEY: Object to form.

23 Q. (By Mr. Young) Do you have any reason to
24 believe that someone on defendants' health plan,
25 between 2005 and present, could not file a complaint

Whitney Popchoke

1 of discrimination with defendants to challenge an
2 exclusion on the health plan?

3 MS. COFFEY: Object to form.

4 A. I do not.

5 Q. (By Mr. Young) Do you have any knowledge as
6 to whether anyone, between 2005 and present, has filed
7 a discrimination complaint with defendants to
8 challenge an exclusion on the health plan?

9 MS. COFFEY: Object to form.

10 A. Including current?

11 Q. (By Mr. Young) 2005 to present, so that
12 brings us up to 2016.

13 A. So yes.

14 Q. Okay. How many complaints are you aware of?

15 A. One.

16 Q. What year did that complaint occur in?

17 A. 2016.

18 Q. You're looking at a document. What -- what
19 are you looking at?

20 A. This current case.

21 Q. Okay. So -- thank you.

22 So outside of Dr. Tudor, has anyone else
23 ever filed a complaint?

24 A. No.

25 MS. COFFEY: Object to form.

Whitney Popchoke

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1 to defendants, rather than the vendor, about an issue
2 with the health plan, that they could go to someone
3 with the title benefits coordinator or possibly
4 someone with the title human resources. Am I
5 understanding your testimony correctly?

6 A. Yes.

7 Q. If there was a situation where someone on
8 the health plan could not get help from the benefits
9 coordinator or someone with the title HR, is there
10 anyone else they could go to?

11 MS. COFFEY: Object to form. Asked and
12 answered.

13 A. No.

14 Q. (By Mr. Young) To clarify, someone with the
15 title of benefits coordinator or HR, that would be
16 someone who worked at one of the RUSO schools, right?

17 A. Correct.

18 Q. Was there anyone at RUSO who someone could
19 go to if they had concerns about their health plan?

20 A. RUSO as in the board office or -- RUSO means
21 a group of six schools.

22 Q. Uh-huh.

23 A. So I'm not sure.

24 Q. Okay. Is there anyone in the RUSO
25 administrative offices that someone on the health plan

Whitney Popchoke

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1 scanning in documents or something of that nature, I
2 could assist with that process.

3 Q. So is it correct to say, then, that your
4 assistance is limited to facilitating this person
5 making complaints to BlueCross BlueShield or sending
6 information to BlueCross BlueShield?

7 MS. COFFEY: Object to form.

8 A. Correct.

9 Q. (By Mr. Young) And if I'm remembering your
10 prior testimony correctly, you're not aware of any
11 internal policies or procedures through which someone
12 on the health plan could complain within defendants'
13 ambit?

14 A. Correct.

15 MS. COFFEY: Object to form. Misstates her
16 prior testimony.

17 Q. (By Mr. Young) You can answer.

18 A. Correct.

19 Q. I'm going to switch gears a little bit.
20 I believe you previously testified that defendants
21 relied upon the vendors to ensure that the health
22 benefits plan complied with applicable federal laws;
23 is that correct?

24 A. Correct.

25 Q. Other than relying upon the vendors to

Whitney Popchoke

1 comply with federal laws, did defendants take any
2 independent steps to ensure that the plans complied
3 with federal laws?

4 MS. COFFEY: Objection. Asked and answered.

5 A. Not to my knowledge.

6 Q. (By Mr. Young) Do you know who at
7 defendants' would have knowledge of that?

8 A. Charlie Babb.

9 Q. Do defendants have any written policies or
10 procedures for reviewing the health benefits plan on a
11 yearly basis to ensure compliance with the law?

12 A. We do not.

13 Q. Do you have any knowledge as to why there
14 are no such procedures to check the health benefits
15 plan for compliance with federal law?

16 MS. COFFEY: Object to form. Calls for
17 speculation.

18 A. I do not.

19 Q. (By Mr. Young) Between 2005 and 2009, was
20 there anyone affiliated with the defendants whose
21 responsibility it was to read through the whole health
22 plan?

23 MS. COFFEY: Object to form. Asked and
24 answered.

25 A. I don't know.

Whitney Popchoke

1 Q. Did you take any steps in preparation for
2 today's deposition to ascertain that?

3 A. I did not.

4 Q. Between 2005 and present -- assume the whole
5 set of questions for this time period. During that
6 period, have defendants requested any changes to their
7 health plans?

8 A. Not to my knowledge.

9 Q. Do you know who would have knowledge of
10 that?

11 A. BlueCross BlueShield.

12 Q. What about the time period where BlueCross
13 BlueShield was not the vendor?

14 A. OSEEGIB.

15 Q. Do you have any knowledge as to whether,
16 when the Affordable Care Act went into effect,
17 defendants took any steps to ensure that the health
18 plans complied with the Affordable Care Act?

19 A. Outside of relying on BlueCross BlueShield
20 and the amendments that were then put in place,
21 nothing.

22 Q. Is it your understanding that the health
23 plans did undergo some sort of change as initiated by
24 BlueCross BlueShield to bring it in compliance with
25 the Affordable Care Act?

Whitney Popchoke

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1 Southeastern's answer, at paragraph 67 both of those
2 documents have the following language: Admits the
3 health insurance plan offered to all of its employees
4 contain numerous exclusions, including the following
5 exclusion: For transsexual surgery or any treatment
6 leading to or in connection with transsexual surgery.

7 Is that correct?

8 A. Correct.

9 Q. What is defendants' understanding of the
10 effect of the exclusion I just quoted for you?

11 A. By not having that exclusion in -- or by
12 having that exclusion in the benefit, then any
13 transsexual surgery that was performed would be
14 cost -- the cost would be out of pocket.

15 Q. How do defendants define transsexual
16 surgery?

17 MS. COFFEY: Object to form.

18 A. We don't.

19 Q. (By Mr. Young) Do defendants have any
20 understanding of what specifically is deemed a
21 transsexual surgery for the purposes of the health
22 benefits plan?

23 MS. COFFEY: Object to form.

24 A. Yes.

25 Q. (By Mr. Young) And what is that

Whitney Popchoke

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1 understanding?

2 A. It would be any gender reassignment surgery
3 and any procedures that would be included in that.

4 Q. Would you agree with me that that means any
5 surgery sought as treatment for a condition called
6 gender dysphoria?

7 MS. COFFEY: Object to form.

8 A. Yes.

9 Q. (By Mr. Young) Other than the transsexual
10 exclusion that we just discussed not covering
11 surgeries, does it have any other effects?

12 MS. COFFEY: Object to form. RUSO's already
13 answered that it's not within their determination as
14 to what is and isn't covered.

15 MR. YOUNG: Understood. Let me rephrase
16 that.

17 Q. (By Mr. Young) I'm asking you about
18 defendants' understanding of the effect of the
19 exclusion. To defendants' understanding, does the
20 exclusion -- the transsexual exclusion exclude
21 anything other than surgeries?

22 MS. COFFEY: Object to form. Asked and
23 answered.

24 A. It would be anything that goes along with
25 it, the medication, I believe the hormone treatments,

Whitney Popchoke

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1 and I don't know what else.

2 Q. (By Mr. Young) Do defendants also
3 understand the transsexual exclusion to have the
4 effect of excluding coverage for psychological
5 counseling?

6 MS. COFFEY: Object to form.

7 A. I don't know about that. We do cover
8 counseling.

9 Q. (By Mr. Young) Cover counseling generally?

10 A. Yeah.

11 MS. COFFEY: Object to form.

12 Q. (By Mr. Young) But you don't know if
13 counseling sought by a transgender person to treat
14 gender dysphoria would be covered?

15 A. I do not know that.

16 Q. Do you know who would know?

17 A. BlueCross BlueShield.

18 Q. And that would be BlueCross BlueShield for
19 the 2010 to present period?

20 A. Correct. And OSEEGIB prior.

21 Q. Do defendants have any knowledge as to
22 whether the surgeries and medications that are
23 excluded under the transsexual exclusion in the health
24 plan are otherwise provided to other persons enrolled
25 in the plan?

Whitney Popchoke

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1 defendants. Is there a different entity I should be
2 asking that question to?

3 A. Yes.

4 Q. And what entity is that?

5 A. BlueCross BlueShield.

6 Q. Do defendants have the ability to pose that
7 question to BlueCross BlueShield?

8 MS. COFFEY: Object to form.

9 A. Potentially.

10 Q. (By Mr. Young) Why are you saying
11 potentially?

12 A. It could be classified information. I'm not
13 sure if they would have that information for us or
14 not.

15 Q. Sticking with hormones, do you have any
16 knowledge as to whether defendants' health plan
17 provides estrogen hormones to people on the health
18 plan?

19 MS. COFFEY: Object to form.

20 A. I believe we do.

21 Q. (By Mr. Young) And what makes you believe
22 that you do?

23 A. It doesn't say -- our plan documents don't
24 say that we don't cover them.

25 Q. Is it defendants' understanding that

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1 estrogen sought by someone with gender dysphoria to
2 treat gender dysphoria would be excluded under the
3 plan?

4 MS. COFFEY: Object to form.

5 A. I do not know.

6 Q. (By Mr. Young) Do you know who at
7 defendants' would know?

8 A. No.

9 MS. COFFEY: Object to form.

10 Q. (By Mr. Young) Is this a question that you
11 believe could be answered by BlueCross BlueShield?

12 A. Yes.

13 Q. And I believe I know your answer to this,
14 but I have to ask it anyways. Do defendants have the
15 ability to pose that same question to BlueCross and
16 BlueShield?

17 MS. COFFEY: Object to form.

18 A. Potentially.

19 Q. (By Mr. Young) And your caveat,
20 potentially, here is only because you're uncertain as
21 to whether that information is classified?

22 A. Correct.

23 Q. Between 2005 and present, are you aware of
24 any other exclusions in defendants' health plan that
25 specifies specific kinds of surgeries that were

Whitney Popchoke

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1 excluded?

2 A. Yes.

3 Q. And what are those?

4 A. Cosmetic surgeries.

5 Q. Any others?

6 A. Bariatric surgeries. Oh, gosh. You're
7 testing me.

8 Q. I don't mean to test you. But you're
9 aware --

10 A. There are a lot, yes. There are others,
11 yes.

12 Q. Other surgeries?

13 A. Yes.

14 Q. Okay. Do you have any understanding as to
15 why certain surgeries, other than the transsexual
16 surgery and the transsexual exclusion, are excluded?

17 MS. COFFEY: Object to form.

18 A. I do not know.

19 Q. (By Mr. Young) Do you know of anyone at
20 defendants' who would have such knowledge?

21 A. No one.

22 Q. Is this a question again that should be
23 posed to one of the vendors?

24 A. Yes, sir.

25 Q. And, once again, is this a question that

Whitney Popchoke

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1 defendants could pose directly to the vendors?

2 A. Yes.

3 MS. COFFEY: Object to form.

4 Q. (By Mr. Young) At any point in time, have
5 defendants taken steps to solicit a health plan that
6 did not include a transsexual exclusion?

7 A. I do not know.

8 Q. Who would know?

9 A. I -- I don't know.

10 Q. Are you aware of any reason why defendants
11 could not put out a solicitation seeking a health plan
12 without a transsexual exclusion?

13 A. No.

14 Q. When does open enrollment start for the 2017
15 calendar year?

16 A. It varies by school.

17 Q. Is there like a general time period or is it
18 all over the place?

19 A. Generally, in the month of October.

20 Q. So are RUSO and the RUSO schools currently
21 preparing for open enrollment?

22 A. Yes.

23 Q. Do defendants currently have a copy of
24 whatever health plans are going to be offered during
25 open enrollment in October 2016?

Whitney Popchoke

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1 A. An idea. Yes.

2 Q. What do you mean by an idea?

3 A. Yes, we do.

4 Q. Do any of those health plans that are going
5 to be offered in October 2016 have transsexual
6 exclusions in them?

7 A. I do not know.

8 Q. Are you aware of whether defendants took any
9 steps to find health plans to offer in October 2016
10 which do not include a transsexual exclusion?

11 A. We did not.

12 Q. Were there ever any discussions about
13 seeking out such policies?

14 MS. COFFEY: Object to form.

15 A. I don't know.

16 Q. (By Mr. Young) Do you know who would know?

17 A. Possibly Charlie Babb. Sorry.

18 Q. Why do you believe it might -- that Charlie
19 Babb might know?

20 A. He's a member of the OKHEEI board. He fills
21 in for Sheridan McCaffrey. They switch off as members
22 of the OKHEEI board.

23 Q. Okay. So just for clarification's sake, you
24 were pointing to Charlie Babb possibly, not because
25 he's legal counsel to RUSO, but because of his role on

Whitney Popchoke

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1 plans that they choose cannot provide breast
2 reconstruction surgery for any other medical
3 condition?

4 MS. COFFEY: Object to the form. Misstates
5 her testimony.

6 A. No.

7 Q. (By Mr. Young) I'm trying to understand
8 defendants' understanding of what the 1998 Women's
9 Cancer Rights Act -- what effect that law has on their
10 ability to cover under the health benefits plan breast
11 reconstruction, just to give you a grounding here.

12 So why did you cite the 1998 Women's Cancer
13 Rights Act to answer the question?

14 MS. COFFEY: Objection. Asked and answered.

15 A. That is the reason breast reconstruction is
16 covered, and that is the reason that it is cited in
17 our book as being covered as the result of a
18 mastectomy. As a direct result of mastectomy, breast
19 construction is covered.

20 Q. (By Mr. Young) When you say "we decided,"
21 do you mean defendants decided?

22 A. BlueCross BlueShield.

23 Q. For the 2005-2009 --

24 A. And OSEEGIB. I think it's a federally
25 mandated act as well.

Whitney Popchoke

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1 Q. I think earlier you testified that one of
2 the reasons why defendants switched from OSEEGIB to
3 BlueCross BlueShield was to save money; is that
4 correct?

5 MS. COFFEY: Object to form.

6 A. Correct.

7 Q. (By Mr. Young) Have defendants made any
8 other changes to their health benefits plans to save
9 money --

10 MS. COFFEY: Object to form.

11 Q. (By Mr. Young) -- between 2005 and present?

12 MS. COFFEY: Object to form.

13 A. No.

14 Q. (By Mr. Young) Have defendants, between
15 2005 and present, ever decided to not comply with the
16 federal law in order to save money?

17 MS. COFFEY: Object to form.

18 A. No.

19 Q. (By Mr. Young) Is it defendants'
20 understanding that the transsexual exclusion that
21 we've been talking about all day is permissible under
22 federal law?

23 MS. COFFEY: Object to form.

24 A. Yes.

25 Q. (By Mr. Young) What informs that answer?

Whitney Popchoke

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1 A. Because we are reliant on the vendors to
2 comply with the federal law and they have it as an
3 exclusion.

4 Q. Is there anything else that informs your
5 answer?

6 A. No.

7 Q. Have defendants taken any steps to ascertain
8 whether BlueCross BlueShield has been sued for failing
9 to comply with federal law by maintaining similar
10 transsexual exclusions?

11 A. No.

12 Q. Why not?

13 MS. COFFEY: Object to form.

14 A. I don't know.

15 Q. (By Mr. Young) Do you know who would know?

16 A. Probably Charlie Babb.

17 Q. And is that -- are you identifying Mr. Babb
18 because he's RUSO's legal counsel or because of his
19 role in the OSEE -- what's the abbreviation?

20 A. OKHEEI.

21 Q. Can you explain to me why you're pointing to
22 Mr. Babb?

23 A. Legal.

24 Q. Legal counsel.

25 MS. COFFEY: Is this a good place -- good

Whitney Popchoke

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1 time for a break?

2 MR. YOUNG: We can take a break, yes. Off
3 the record.

4 (Recess 12:31 p.m. to 12:46 p.m.)

5 Q. (By Mr. Young) Welcome back from the break.
6 I'm just going to finish up my last questions for the
7 day, and then we can let you go.

8 A. Perfect.

9 Q. Okay. So in the time period 2005 to 2009,
10 are you aware of whether anyone on defendants' health
11 plan requested coverage of medically necessary care to
12 treat gender dysphoria?

13 MS. COFFEY: Object to form.

14 A. Not to my knowledge.

15 Q. (By Mr. Young) Did you take any steps to
16 ascertain that?

17 A. I did not.

18 Q. Why not?

19 A. Confidentiality.

20 Q. Any other reasons?

21 A. No.

22 Q. Based upon defendants' understanding of the
23 transsexual exclusion that was in effect in the 2005
24 to 2009 time period, do you believe such services
25 would have been covered?

Whitney Popchoke

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1 A. No.

2 Q. And why is that?

3 A. The plan documents -- if you refer to the
4 plan documents, they specifically state that -- I
5 think the wording is sex transformation surgeries are
6 not included -- included. Sorry.

7 Q. Okay. So your understanding, based upon the
8 exclusion that you were just paraphrasing --

9 A. Yes.

10 Q. -- is that it would have been impossible to
11 get such services covered in the 2005-2009 time
12 period?

13 A. Without an appeal.

14 Q. What makes you believe an appeal would have
15 facilitated coverage?

16 A. That's what appeals are there for. The
17 appeals are there to go against any of the exclusions
18 or a denial of claims, to potentially get exclusions
19 turned around. So it could have -- if you appealed
20 the exclusion, you could potentially get it covered at
21 that point.

22 Q. I believe you previously testified that
23 where a health plan is self-insured, the entity that
24 contracted with the vendor to get that health plan has
25 some sort of flexibility in determining, like, what is

Exhibit 24

Oklahoma Higher Education Employees Insurance Group
a/k/a OKHEEI Group

Minutes of Regular Meeting

655 Research Parkway
Oklahoma City, Oklahoma

Video Conferencing Sites:

East Central University

Science Hall, Room 309
1100 E 14th St
Ada, OK 74820
(580) 559-5539

Attendees: Dawn Thurber, Lynn Lofton

Thursday, October 6, 2016
10:00 a.m.

1. Announcement of Filing Meeting Notice and Posting of the Agenda in Accordance with the Open Meeting Act.

The OKHEEI Group Board of Trustees met in regular session at 10:00 a.m., October 6, 2016, at State Regents, 655 Research Parkway, Oklahoma City, Oklahoma. Notice of the meeting had been properly filed with the Secretary of State by December 15, 2015 and a copy of the Agenda posted by 10:00 a.m., in compliance with the Open Meeting Act.

a. Call meeting to order

Chair Dennis Westman (MSC) called the meeting to order at 11:04 a.m.

b. Attendance

The following OKHEEI Board of Trustees were present:

Designee T. Lynn Lofton, East Central University – via iTV
Dennis Westman, Murray State College
Designee Christy Landsaw, Northeastern Oklahoma State University
Anita Simpson, Northern Oklahoma College
David Pecha, Northwestern Oklahoma State University
Designee Kim Andrade, Redlands Community College
Kent Lashley, Rose State College
Sheridan McCaffree, RUSO Administrative Office
Braden Brown, Seminole State College
Dennis Westman, Southeastern Oklahoma State University
Brenda Burgess, Southwestern Oklahoma State University
Patti Neuhold, University of Central Oklahoma
Tricia Latham, Western Oklahoma State College

The following Trustees were absent:

None

Designee T. Lynn Lofton, East Central University – via iTV
Dennis Westman, Murray State College
Designee Christy Landsaw, Northeastern Oklahoma State University
Anita Simpson, Northern Oklahoma College
David Pecha, Northwestern Oklahoma State University
Designee Kim Andrade, Redlands Community College
Kent Lashley, Rose State College
Sheridan McCaffree, RUSO Administrative Office
Braden Brown, Seminole State College
Dennis Westman, Southeastern Oklahoma State University
Brenda Burgess, Southwestern Oklahoma State University
Patti Neuhold, University of Central Oklahoma
Tricia Latham, Western Oklahoma State College

Voting against the motion: None

Abstaining: None

Patti Neuhold (UCO) made the motion, seconded by Anita Simpson (NOC) to cover gender assignment according to Option B of the proposal, which does not cover surgical procedures.

Voting for the motion:

Dennis Westman, Murray State College
Designee Christy Landsaw, Northeastern Oklahoma State University
Anita Simpson, Northern Oklahoma College
David Pecha, Northwestern Oklahoma State University
Designee Kim Andrade, Redlands Community College
Kent Lashley, Rose State College
Sheridan McCaffree, RUSO Administrative Office
Braden Brown, Seminole State College
Dennis Westman, Southeastern Oklahoma State University
Brenda Burgess, Southwestern Oklahoma State University
Patti Neuhold, University of Central Oklahoma
Tricia Latham, Western Oklahoma State College

Voting against the motion:

Designee T. Lynn Lofton, East Central University – via iTV

Abstaining: None

Motion passes by a vote of 12 to 1.

10. Whitney Popchoke, RUSO/OKHEEI, discussed the option for an RFP and/or “piggybacking” on an existing state contract.

Oklahoma Higher Education Employees Insurance Group
a/k/a OKHEEI Group

Minutes of Regular Meeting

State Regents
655 Research Parkway
Oklahoma City, Oklahoma

Video Conferencing Sites:

East Central University

Science Hall, Room 309
1100 E 14th St
Ada, OK 74820
(580) 559-5539

Western Oklahoma State College

Main Building, Room HLC116
2801 N Main St
Altus, OK 73521
(580) 471-6994

Attendees: Jessica Kilby, Dawn Thurber, Lynn Lofton, Rhonda Kinder, Rob Thompson

Attendees: April Nelson, Tricia Latham

Thursday, November 10, 2016

10:00 a.m.

1. Announcement of Filing Meeting Notice and Posting of the Agenda in Accordance with the Open Meeting Act.

The OKHEEI Group Board of Trustees met in special session at 10:00 a.m., November 10, 2016, at State Regents, 655 Research Parkway, Oklahoma City, Oklahoma. Notice of the meeting had been properly filed with the Secretary of State by December 15, 2015 and a copy of the Agenda posted by 10:00 a.m., in compliance with the Open Meeting Act.

a. Call meeting to order

Chair Dennis Westman (MSC) called the meeting to order at 10:01 a.m.

b. Attendance

The following OKHEEI Board of Trustees were present:

Jessica Kilby, East Central University – via iTV
Dennis Westman, Murray State College
Designee Christy Landsaw, Northeastern State University
Anita Simpson, Northern Oklahoma College
David Pecha, Northwestern Oklahoma State University
Jena Marr, Redlands Community College
Krista Norton, Rose State College
Sheridan McCaffree, RUSO Administrative Office
Designee Courtney Jones, Seminole State College
Dennis Westman, Southeastern Oklahoma State University
Brenda Burgess, Southwestern Oklahoma State University
Patti Neuhold, University of Central Oklahoma
Tricia Latham, Western Oklahoma State College – via iTV

Sheridan McCaffree (RUSO) made the motion, seconded by Jena Marr (RCC), to approve the minutes of the October 27, 2016 Special Meeting.

Voting for the motion:

Jessica Kilby, East Central University – via iTV
Dennis Westman, Murray State College
Designee Christy Landsaw, Northeastern State University
Anita Simpson, Northern Oklahoma College
David Pecha, Northwestern Oklahoma State University
Jena Marr, Redlands Community College
Krista Norton, Rose State College
Sheridan McCaffree, RUSO Administrative Office
Designee Courtney Jones, Seminole State College
Dennis Westman, Southeastern Oklahoma State University
Brenda Burgess, Southwestern Oklahoma State University
Patti Neuhold, University of Central Oklahoma
Tricia Latham, Western Oklahoma State College – via iTV

Voting against the motion: None

Abstaining: None

2. Nancy Gerrity, RUSO, discussed the need to modify the October 6th vote for changes in gender assignment coverage since it was decided by the RUSO General Counsel that OKHEEI does have to abide by Section 1557 of the IRS Code.

Sheridan McCaffree (RUSO) made the motion, seconded by David Pecha (NWOSU) to cover all medically necessary gender assignment surgery as required.

Voting for the motion:

Jessica Kilby, East Central University – via iTV
Dennis Westman, Murray State College
Designee Christy Landsaw, Northeastern State University
Anita Simpson, Northern Oklahoma College
David Pecha, Northwestern Oklahoma State University
Jena Marr, Redlands Community College
Krista Norton, Rose State College
Sheridan McCaffree, RUSO Administrative Office
Designee Courtney Jones, Seminole State College
Dennis Westman, Southeastern Oklahoma State University
Brenda Burgess, Southwestern Oklahoma State University
Patti Neuhold, University of Central Oklahoma
Tricia Latham, Western Oklahoma State College – via iTV

Voting against the motion: None

Abstaining: None

Exhibit 25

DECLARATION OF MARK SPENCER

1. I am a Full Professor with tenure at Southeastern Oklahoma State University ("Southeastern").
2. I started working for Southeastern in August 2001 as an Assistant Professor. The entire time that I have worked for Southeastern I have worked in the Department of English, Humanities, and Languages.
3. I received tenure and the position of Associate Professor during the 2006-07 academic year.
4. When I applied for tenure and promotion to Associate Professor during the 2006-07 academic year, in accordance with Southeastern's Procedure for Granting Promotion and Tenure, I submitted a portfolio of my work in support of my application.
5. The faculty Promotion and Tenure Committee ("P&T Committee") that reviewed my portfolio recommended that I receive tenure but not promotion.
6. Dr. John Mischo, who was Chair of the Department of English, Humanities, and Languages at the time, concurred with the P&T Committee that I should receive tenure but not promotion.
7. After Dr. Mischo recommended that I receive tenure but not promotion, the Dean of Southeastern's School of Arts and Sciences, Dr. C.W. Mangrum, recommended that I receive tenure and promotion to the position of Associate Professor.

8. After Dr. Mangrum recommended that I receive tenure and promotion to Associate Professor, Southeastern's Vice President for Academic Affairs, Dr. Douglas McMillan, reviewed my portfolio.
9. I was informed that Dr. McMillan decided to recommend that I should not receive tenure or promotion to Associate Professor.
10. After I learned that Dr. McMillan had decided to recommend that I should not receive tenure or promotion, I spoke to Drs. Mischo, Mangrum, McMillan, and the President of Southeastern, Jesse Snowden about my application for promotion and tenure.
11. These conversations all occurred during the 2006-07 academic year before President Snowden made a final decision on whether to recommend that I receive promotion and tenure.
12. When I spoke to Dr. McMillan, he told me that he thought I needed to improve my record in the area of scholarship in order to qualify for promotion and tenure. He recommended that I attend more conferences and send more articles out for publication.
13. I understood Dr. McMillan to be giving me advice on how I could improve my portfolio so that I would have a better chance of obtaining promotion and tenure the following academic year.
14. During this meeting, I asked Dr. McMillan if he would have any concerns with me speaking with President Snowden about my application and he said that he did not mind if I spoke to President Snowden.

15. After I spoke to Dr. McMillan, I spoke to President Snowden and asked whether I could supplement my portfolio if I sent out some articles for publication.

16. President Snowden told me he had checked with Dr. McMillan and they both agreed that if I sent out some articles for publication, I could supplement my portfolio at that point in time.

17. In the Spring of 2007, after President Snowden told me that it would be fine for me to supplement my portfolio, I sent out four articles for publication and supplemented my portfolio with that information.

18. The four articles that I submitted for publication were all ultimately published.

They are as follows:

- a) Spencer, M. (2009). "Writing Medieval Women (and Men): Sigrud Undset's *Kristin Lavransdatter*," *Studies in Medievalism XVII: Defining Medievalisms*, ed. Karl Fugelso. Woodbridge, Suffolk and Rochester, NY: Boydell & Brewer, 121-140.
- b) Spencer, M. (2008) "Patriarchal Attitudes: Eva Figes' *The Tree of Knowledge* and Deborah Milton," *Lamar Journal of the Humanities* 33(1), 13-24.
- c) Spencer, M. (2008). "The Dark Side of the Renaissance: Pär Lagerkvist's *The Dwarf*," *South Carolina Review* 41(1), 134-41.
- d) Spencer, M. (2007). "Recreating the Early Modern in the Postmodern: George Garrett's *Death of the Fox*." *Lamar Journal of the Humanities* 32 (1), 5-19.

19. President Snowden then, based on my supplemented portfolio, recommended that I receive tenure and promotion to Associate Professor.

20. The letter I received from President Snowden is dated April 18, 2007 and a true and correct copy of it is attached to this declaration. It bears the page number "OAG/DLC/USA v. SOSU - CIV-15-324/007503" in the lower righthand corner.

21. The Regional University System of Oklahoma Board of Regents subsequently approved President Snowden's recommendation and, as a result, I received tenure and promotion to Associate Professor.
22. Of the four articles that I submitted for publication in the Spring of 2007, only "Recreating the Early Modern in the Postmodern: George Garrett's *Death of the Fox*" was accepted for publication before President Snowden made his decision to recommend that I receive tenure and promotion to Associate Professor. However, I am not sure whether I informed President Snowden that this article had been accepted for publication before he made his decision to recommend that I receive tenure and promotion to Associate Professor.
23. As indicated above, the article "Patriarchal Attitudes: Eva Figes' *The Tree of Knowledge* and Deborah Milton" was ultimately published in the Lamar Journal of the Humanities. However, at the time that I supplemented my portfolio in the Spring of 2007, I had submitted this article to the Dalhousie Review.
24. It was not until sometime after President Snowden recommended that I receive tenure and promotion to Associate Professor that I submitted this article to the Lamar Journal of the Humanities.

I state under penalty of perjury that the foregoing is true and correct.

Executed on (date) 5-2-16 in (location) DURANT, OK



Mark Spencer, Ph.D.



Jesse O. Snowden, Ph.D.
President

April 18, 2007

Dr. Mark Spencer
Department of English, Humanities and Languages
PMB 4121
Southeastern Oklahoma State University
Durant, OK 74701-0609

Dear Dr. Spencer:

Based upon the recommendation of Dr. Doug McMillan, Interim Vice President for Academic Affairs, I have approved the recommendation that you be promoted in academic rank from Assistant Professor to Associate Professor and be granted tenure in the Department of Accounting and Finance at Southeastern Oklahoma State University effective with the 2007-2008 academic year.

Congratulations on your most recent academic achievement and best wishes for your continued success.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jesse O. Snowden', written over a large, stylized circular flourish.

Jesse O. Snowden
President

cc: Dr. Doug McMillan
Dr. C.W. Mangrum
Dr. John Mischo
Ms. Cathy Conway

Exhibit 26

To be filed under seal.

Exhibit 27




OFFICE OF THE DEAN

SCHOOL OF ARTS AND SCIENCES
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4107
DURANT, OK 74701-0609

580-745-2634
FAX 580-745-7476
WWW.SE.EDU

To: Douglas McMillan
Interim Vice President for Academic Affairs

From: Lucretia C. Scoufos 
Dean, School of Arts and Sciences

Date: January 12, 2010

Subject: Recommendation to deny tenure and to give Rachel J. Tudor, Ph.D., a one-year terminal appointment at the rank of Assistant Professor in the Department of English, Humanities and Languages for the 2010-2011 Academic Year

Although there is evidence that Dr. Tudor is a generally effective classroom teacher, her record of scholarship, in my view, falls well short of the noteworthy achievement required for promotion to Associate Professor with tenure. Since coming to Southeastern, there appears to be only one peer-reviewed paper submitted for publication, which has been accepted, but not yet published.

Likewise, there is little documentation of service activity in Dr. Tudor's portfolio, other than routine departmental assignments. She was elected to the Faculty Senate in 2009, and has served one semester.

Dr. Tudor's portfolio appears to be incomplete. In addition to lack of documentation of service activity, there are no letters of recommendation from tenured faculty members in her department. The single sentence recommendations for promotion and tenure from the departmental committee and the chair fail to give any justification for the recommendation for promotion and tenure.

Therefore, based on the available documentation, I am unable to recommend Dr. Rachel J. Tudor for promotion to Associate Professor or for tenure. My recommendation is that she be given a one-year, terminal appointment for the 2010-2011 academic year.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

DOJ000150

Exhibit 28

To be filed *ex parte* and under seal.

Exhibit 29

Department of English, Humanities,
and Languages
Southeastern Oklahoma State University
November 17, 2010

Faculty Appellate Committee
Southeastern Oklahoma State University

Dear Dr. Hall and Committee Members,

I write to you in support of Dr. Rachel Tudor's appeal of Dr. Douglas McMillan's decision to deny her the opportunity to apply for tenure and promotion. Dr. Tudor is an exemplary teacher, scholar, and colleague, and the allegations from Dr. McMillan are without merit.

According to any objective evaluation, Dr. Tudor's qualifications clearly exceed the expectations for tenure and promotion according to three separate standards: as stated in the Academic Policies and Procedures manual, as established by the Department of English, Humanities, and Languages, and as practiced by precedent. Dr. Tudor's teaching is exemplary, as exhibited by her teaching evaluations, observations of her teaching by colleagues, and her repeated nomination for the Faculty Senate teaching award. This aspect of her work is not cited as problematic by Dr. McMillan; I will therefore refrain from further elaboration, although I will be happy to provide further testimony on this aspect of Dr. Tudor's work upon request. I simply remind the committee that we are, at our heart, a teaching institution; the best interests of our students require that we attract and retain the highest quality classroom teachers, of which Dr. Tudor is a clear example.

In respect to service, an area cited as deficient in Dr. McMillan's decision, Dr. Tudor's work on campus in the past 6 years has been exemplary, and clearly exceeds the activity of many faculty, both tenured and untenured. Since her arrival on campus, Dr. Tudor has been active in organizing the biannual Native American Symposium, one of our campus's major events, which brings regional, national, and international recognition to Southeastern. Dr. Tudor was instrumental in bringing an OSLEP course to our campus in 2007, the only time in recent memory our campus has hosted one of these prestigious courses. Dr. Tudor organized the participation of Dr. Rennard Strickland, Distinguished Professor Emeritus at the University of Oregon Law School, and served as the supervising professor for this course. In addition, Dr. Tudor served as the chair of our department's Assessment, Planning, and Development committee from 2007-2010. As chair of this committee, Dr. Tudor collected and collated all assessment data for our three English programs, and prepared the yearly POAR reports. This, in itself, is an enormous job for a pre-tenure professor to take on. Finally, Dr. Tudor has served as a member of Faculty Senate for the past two years. All of this has been done in addition to standard university and departmental service expectations, including serving on hiring and

review committees, volunteering for Honors Day, and working with student groups. In short, Dr. Tudor not only amply fulfills service expectations for faculty members, but is exemplary in the range, depth, and dedication she has shown in service to our university.

The area of scholarship is often seen as difficult to objectively evaluate, as it ordinarily requires a careful consideration of both quality and quantity of scholarly activity. In Dr. Tudor's case, however, the evaluation is simple and evident, as her scholarly production exceeds standards for both quality and quantity. She currently has five peer-reviewed articles already published; four more accepted articles in press; and several more in the pipeline, including three which have been tentatively accepted pending revisions. Some of these are in the leading journals of her field; others clearly articulate the relevance of her work to a wider non-specialist audience. This shows that she is a respected scholar within Native American Studies, while simultaneously successfully promoting the importance of Native American literature within a wider context. She co-edited two volumes of the conference proceedings of the Native American Symposium, and has published two chapbooks of poetry since her arrival at Southeastern. To be blunt, Dr. Tudor has published more research than any other member of the department, tenured or untenured. Any question regarding her scholarly production must of necessity be based upon either ignorance or misunderstanding of the evidence, since there is really no question that Dr. Tudor has far exceeded any stated or unstated standard for scholarly production at this university.

In short, Dr. Tudor is an outstanding candidate for tenure and promotion. Dr. McMillan's statement that her service and research are insufficient is clearly unfounded and inaccurate. He was clearly mistaken in his opinion that consideration of Dr. Tudor's tenure file would be a waste of time; in addition, he has clearly tried to contradict the established policies for tenure and promotion, by presuming to truncate the process based upon personal opinion and insufficient data. I therefore ask that the Faculty Appellate Committee find in Dr. Tudor's favor, and recommend that she be allowed to pursue the established processes for achieving tenure and promotion.

Sincerely,

Dr. Margaret Cotter-Lynch
Associate Professor of English

Exhibit 30

From: Claire Stubblefield /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=CSTUBBLEFIELD
Subject: TudorConclusion Letter
To: Microsoft Exchange

Now Now. It ' s HER personnel file J

From: Cathy Conway
Sent: Thursday, November 18, 2010 3:49 PM
To: Claire Stubblefield
Subject: RE: TudorConclusion Letter
Sensitivity: Confidential

Claire,

Lucretia ' s name is spelled Scoufos. Also, under Findings, Complaint 3, Southeastern needs to be capitalized.

It will be interesting to see Charlie ' s comments. You did a very good job of writing your report. Did Bridgette have any helpful information for you? If Dr. Tudor requests to see T & P info in his personnel file, I will need to send him to Bridgette. . .

Thanks,
Cathy

Cathy A. Conway
Director, Human Resources
Southeastern Oklahoma State University
1405 N. 4th Avenue
Durant, OK 74701-0609
Pho: 580.745.2162
FAX: 580.745.7484
Email: cconway@se.edu



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From: Claire Stubblefield

Sent: Thursday, November 18, 2010 1:20 PM

To: Cathy Conway

Subject: TudorConclusion Letter

NEED FEEDBACK. Can you help?

Exhibit 31

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
et al.)	
)	
Plaintiff,)	
)	
VS.	)	Civil Action No.
	)	5:15-CV-00324-C
)	
SOUTHEASTERN OKLAHOMA STATE)	
UNIVERSITY, et al.)	
)	
Defendant.)	

ORAL DEPOSITION OF
CATHY CONWAY
MARCH 10, 2016

ORAL DEPOSITION OF CATHY CONWAY, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and -numbered cause on the 10th day of March, 2016, from 8:58 a.m. to 4:52 p.m., before Chrissa K. Mansfield-Hollingsworth, CSR in and for the State of Texas, reported by machine shorthand, at the offices of U.S. Attorney's Office, located at 600 East Taylor Street, Suite 2000, Sherman, Texas, pursuant to the Federal Rules of Civil Procedure.

1 A. Well, he told me to send the documents to him.
2 I told him what documents I had received. And it was a
3 new -- a new experience and I needed some guidance, if
4 he had any for me.

5 Q. What else was discussed during that
6 conversation with Mr. Babb?

7 A. Well, I don't recall if it was that
8 conversation or if Charlie reviewed the materials and
9 then we talked.

10 Q. What else did you talk about at that point?

11 A. We talked about review of policies, any
12 applicable policies or possibly applicable policies. He
13 explained to me about the period of time an individual
14 goes through prior to the sex reassignment surgery
15 that's typically a year to give the person an
16 opportunity to make their decision before surgery. We
17 talked about -- or he advised me about something that
18 was being discussed, he thought, at the time. He wasn't
19 sure if it had been approved yet in the Tenth Circuit
20 about the use of bathroom facilities during this time;
21 that in another circuit or circuits, a person during
22 the -- during the year of transition pre-op had to use a
23 bathroom of the same biological sex.

24 Q. Anything else you remember about that
25 discussion with Mr. Babb?

1 Should I give this to you to give to Bridgette, question
2 mark. Had you talked to Dr. McMillan about Dr. Tudor's
3 name change before you sent this e-mail?

4 A. I may have. I don't recall.

5 Q. Is there anything that would refresh your
6 memory?

7 A. Only if Dr. McMillan recalls if I called him to
8 tell him Dr. Tudor was changing her name.

9 Q. If you had -- strike that. Then the last
10 sentence of your June 4th, 2007 e-mail to Dr. McMillan
11 says, If you are planning to discuss Dr. Tudor with the
12 department chair and dean, would you like me to be there
13 and advise them about the two university policies I
14 discussed with Dr. Tudor about last week, question mark.
15 Do you remember talking to Dr. McMillan about those
16 university policies that you referenced in that sentence
17 prior to sending him this e-mail?

18 A. No.

19 Q. The fourth page of Exhibit 26 appears to be
20 some handwritten notes. Do you recognize those notes?

21 A. Yes.

22 MS. COFFEY: For the record, will you
23 indicate the Bates number?

24 MR. TOWNSEND: Sure. The Bates number of
25 the page is DOJ 12.

1 MS. COFFEY: Thanks.

2 Q. (By Mr. Townsend) Are those your handwritten
3 notes?

4 A. Yes.

5 Q. It appears to say Call Charlie in the middle of
6 the notes. Is that -- am I reading that correctly?

7 A. Yes.

8 Q. Do these notes reflect a call that you had with
9 Mr. Babb?

10 A. Yes.

11 Q. All right. There is a -- there is a portion of
12 the notes that is circled. Do you see that right to the
13 left of where it says Call Charlie?

14 A. Yes.

15 Q. Can you read what's in that circle?

16 A. Yes.

17 Q. Please do so.

18 A. Employer came up with a policy that people to
19 use bathroom according to current biological status.

20 Q. Then directly below that circle in handwriting
21 that is vertical as opposed to horizontal across the
22 page there's some handwriting that appears to start by
23 saying, Tenth Circuit. Is that correct?

24 A. Yes.

25 Q. Could you read what it says.

1 A. Tenth Circuit -- yes.

2 Q. Please do so.

3 A. Tenth Circuit, case pending, hasn't ruled yet,
4 but some, I can't make out that exactly, circuits
5 protected by Title VII for transition year. And then
6 there's two lines drawn to the circled part.

7 Q. And then there's a word with two lines
8 underneath it that looks like available. Is that what
9 it says?

10 A. Yes.

11 Q. So in the center of this note, does it say
12 Call -- it says Call Charlie, right?

13 A. Yes.

14 Q. And then what does it say right below Charlie?

15 A. RE, colon.

16 Q. And then what does it say right below RE colon?

17 A. Handicapped, unisex bathroom.

18 Q. And then bathroom is underlined twice, right?

19 A. Yes, as is available.

20 Q. And then what does this other text on the note
21 say that you haven't read yet?

22 A. This is all new to us too, but we think that
23 the best option, and then there's a line, is for this --
24 is for -- this is some of my shorthand, for you to use
25 this restroom, your choice.

1 second sentence under that says, Advise what his gender
2 presentation will be at SOSU. The his in that sentence
3 is Dr. Tudor, correct?

4 A. Yes.

5 Q. At this point, are you still getting used to
6 the name change?

7 MS. COFFEY: Object to form.

8 A. Yes.

9 Q. (By Mr. Townsend) And that's the only reason
10 you used his in these notes?

11 MS. COFFEY: Object to form.

12 A. No.

13 Q. (By Mr. Townsend) Why else did you use the
14 pronoun his in these notes to refer to Dr. Tudor?

15 A. Because I am telling them that Dr. Tudor is to
16 advise them as to which gender presentation Dr. Tudor
17 will use at Southeastern. We don't know yet for sure.

18 Q. And are those the same reasons you used the
19 pronoun his to refer to Dr. Tudor further down the page
20 under the heading advice/opinion about which gender
21 presentation to use?

22 MS. COFFEY: Object to form.

23 A. Yes.

24 Q. (By Mr. Townsend) All right. And then at the
25 bottom of these notes, there's a heading that says,

1 A. At some point I was.

2 Q. If I told you that this was part of
3 Southeastern's response to Dr. Tudor's EEOC charge,
4 would that refresh your recollection as to whether
5 you've seen this before?

6 A. I would have to read further.

7 Q. Take your time.

8 A. (Witness perusing document) Yes.

9 Q. Did you have a role in formulating any of the
10 responses to the allegations in this document?

11 A. I reviewed a portion of it.

12 Q. Which portion?

13 A. Page 3.

14 Q. So Page 3 is a response to the allegation that
15 is stated at the bottom of Page 2, correct?

16 A. Yes.

17 Q. All right. In the first paragraph on Page 3,
18 fifth line down, there's a sentence that states, Since
19 Dr. Tudor was a preoperative male to female, they also
20 had a conversation about the use of restroom facilities
21 as this may be one of the major issues that could arise
22 in the employment setting, especially when, such as
23 here, the bathroom facilities are public in nature and
24 can accommodate several people at one time. Did I read
25 that correctly?

1 A. Yes.

2 Q. Why was the fact that Dr. Tudor was
3 preoperative relevant to the conversation about restroom
4 facilities?

5 MS. COFFEY: Object to form.

6 A. This was new to all of us.

7 Q. (By Mr. Townsend) Is that the only reason?

8 A. Dr. Tudor had changed her name and presented
9 herself as a female.

10 Q. The term preoperative used in that sentence
11 that I read, what operation is that referring to?

12 MS. COFFEY: Object to form.

13 A. Well, as stated, male to female.

14 Q. (By Mr. Townsend) So is that referring to sex
15 reassignment surgery?

16 A. Yes.

17 MS. COFFEY: Object to form.

18 Q. (By Mr. Townsend) So why was the fact that
19 Dr. Tudor had not had sex reassignment surgery relevant
20 to the conversation about the use of restroom
21 facilities?

22 MS. COFFEY: Object to form. Asked and
23 answered.

24 A. She was beginning her year of transition. She
25 changed her name.

1 Q. (By Mr. Townsend) What difference did it make
2 that she had not had the surgery, the sex
3 reassignment --

4 MS. COFFEY: Objection, form. Asked and
5 answered.

6 Q. (By Mr. Townsend) Let me rephrase the
7 question. What difference did it make in the
8 conversation about the use of restrooms that she had not
9 had sex reassignment surgery?

10 MS. COFFEY: Objection, form. Asked and
11 answered.

12 A. She was in her transition year. I don't -- I
13 think I've already answered the question.

14 Q. (By Mr. Townsend) All right. In the next
15 paragraph of this response on Page 3, second sentence,
16 There was some concern that female students and female
17 employees who knew Dr. Tudor as male may be
18 uncomfortable with and threatened by a male preoperative
19 Dr. Tudor in the female restroom while presenting as a
20 female. Did I read that correctly?

21 A. Yes.

22 Q. Who was concerned about female students and
23 female employees possibly being uncomfortable with and
24 threatened by a male preoperative Dr. Tudor in the
25 female restroom?

1 A. Uncomfortable? I was.

2 Q. Why?

3 A. Because it was new. Students who knew
4 Dr. Tudor as Dr. T.R. Tudor may see her for the first
5 time as Dr. Rachel Tudor.

6 Q. Do you think that they would have been any more
7 or less uncomfortable if she had had sex reassignment
8 surgery?

9 MS. COFFEY: Object to form.

10 A. I don't think they would know.

11 Q. (By Mr. Townsend) Right. So I guess back to
12 my question: Why did it make any difference whether she
13 had had sex reassignment surgery?

14 MS. COFFEY: Object to form.

15 A. She changed her name. She was presenting as a
16 female. I don't know when she was going to have the
17 surgery for sure, if she even had it.

18 Q. (By Mr. Townsend) Did you -- do you know who
19 wrote this response to the allegation that's on Page 3?

20 A. No, not for certain.

21 Q. Did you write any part of it?

22 A. No.

23 Q. Did you make any suggested edits to it?

24 A. I don't recall.

25 Q. Did you review it for accuracy?

1 A. Yes.

2 Q. Was there anyone else other than you, that you
3 know of, who was concerned that female students and
4 female employees who knew Dr. Tudor as a male may be
5 uncomfortable with or threatened by male preoperative
6 Dr. Tudor in the female restroom while presenting as
7 female?

8 MS. COFFEY: Object to form.

9 A. I've explained before. Threatened was not a
10 concern I had.

11 Q. (By Mr. Townsend) Did anyone else have that
12 concern?

13 A. I don't know.

14 Q. In the first sentence -- oh, no. Strike that.
15 In the third paragraph, last sentence on -- the third
16 paragraph on Page 3 of this exhibit, Exhibit 30, it
17 says, It was recommended that Cathy Conway, HR director,
18 contact Dr. Tudor and suggest that he may want to use
19 this private restroom during the transition period of
20 time. In that -- did I read that sentence correctly?

21 A. Yes.

22 Q. In that sentence, Dr. Tudor's referred to by
23 the pronoun he, correct?

24 A. Yes.

25 Q. Do you have an understanding as to why

1 you understand it.

2 A. Could you repeat it, please?

3 Q. Yes. Is one of the purposes of sex
4 reassignment surgery to ensure that transgender people
5 can use the restroom that matches their gender identity?

6 MS. COFFEY: Same objection.

7 A. No, unless law requires it.

8 Q. (By Ms. Weiss) Unless law requires what?

9 A. If there was a law that required a surgery.

10 Q. Do you mean if there's a law that requires a
11 surgery in order to use a bathroom?

12 A. No. Anyone can use a bathroom.

13 Q. Let me rephrase that. Laws that would dictate
14 which sex uses which restrooms?

15 A. Yes.

16 Q. And are you aware of any such laws that govern
17 Southeastern University?

18 A. No, not --

19 Q. Okay. What steps did you take to learn more
20 about transgender people after Dr. Tudor came out as a
21 transgender woman?

22 MS. COFFEY: Object to form.

23 A. I just sought advice from my general counsel.

24 Q. (By Ms. Weiss) Okay. Did you read any books
25 on transgender issues?

1 policy terms?

2 A. Yes.

3 Q. And did you review those on a yearly basis?

4 A. Just as there was a bid or a change in law that
5 we were advised was making some revision to a policy or
6 coverage.

7 Q. Do you think it would -- do you believe that it
8 would violate EEO policy to exclude benefits for sex
9 reassignment surgery?

10 MS. COFFEY: Object to form.

11 A. I don't know.

12 Q. (By Ms. Weiss) Did you discuss that with
13 Mr. Babb?

14 A. No.

15 MS. COFFEY: Object to form.

16 Q. (By Ms. Weiss) Why did you not discuss that
17 with Mr. Babb?

18 MS. COFFEY: Object to form.

19 A. This was never brought to my attention, if it
20 was an issue.

21 Q. (By Ms. Weiss) Wasn't sex reassignment
22 important?

23 MS. COFFEY: Object to form. Important to
24 what?

25 Q. (By Ms. Weiss) Was it -- was sex reassignment

1 annual review? It was something that you would
2 continually look at the policies to address?

3 A. Yes, as anything -- any changes came up in
4 regulations. We had up to four meetings a year with
5 RUSO legal counsel on anything that had come up that we
6 needed to know about, any suggestions to the policy
7 changes or requirements.

8 Q. Did you ever review the Southeastern faculty
9 health benefits plan for compliance with EEO laws?

10 A. There was no faculty health insurance plan.

11 Q. Did you ever review the Southeastern health
12 benefits plans for compliance with EEO laws?

13 A. Yes. But if you're talking about detailed
14 policy coverages for detailed specific procedures, for
15 instance, only if there was a change in regulation or if
16 someone recognized there could be a problem or an issue.

17 Q. Okay. Why is it an issue that Dr. Tudor had
18 not had sex reassignment surgery at the time that she
19 transitioned to living as a female?

20 MS. COFFEY: Object to form. You're
21 mischaracterizing the testimony. She never said it was
22 an issue. That was your word.

23 Q. (By Ms. Weiss) Was there a problem caused by
24 the fact that Dr. Tudor had not had sex reassignment
25 surgery at the time that she began living as a female?

1 protected.

2 Q. (By Ms. Weiss) Okay. But there was nothing in
3 the policy -- Southeastern policy that specifically
4 protected transgender people?

5 MS. COFFEY: Object to form. Asked and
6 answered.

7 A. There's nothing in written policy. There was
8 nothing in written policy.

9 Q. (By Ms. Weiss) Okay. I'll direct your
10 attention to Plaintiff's Exhibit 26. Okay. On the
11 first page marked DOJ 9, it says that you discussed or
12 you advised Dr. Tudor of SOSU Policies 1.8 and 7.4. Did
13 I read that correctly?

14 A. Yes.

15 Q. Why did you advise Dr. Tudor of those policies
16 if they did not protect her in 2007?

17 MS. COFFEY: Object to form.
18 Mischaracterizes her testimony.

19 Q. (By Ms. Weiss) Okay. Strike that. Why
20 discuss 1.8 and 7.4 with Dr. Tudor in 2007?

21 A. Because she's an employee and she's afforded
22 nondiscrimination, equal opportunity and affirmative
23 action. She's afforded information about the sexual
24 harassment policy and how to turn in a complaint if she
25 felt that she was being sexually harassed.

1 accustomed?

2 MS. COFFEY: Object to form.

3 A. Well, I didn't talk about Dr. Tudor every day,
4 so I don't know. Maybe the second or third time she was
5 discussed, perhaps. I don't know for sure.

6 Q. (By Ms. Weiss) So if someone were to use male
7 pronouns now with regard to Rachel Tudor, would that be
8 appropriate or inappropriate?

9 MS. COFFEY: Object to form.

10 A. Female would be appropriate if they know
11 Dr. Tudor to be female.

12 Q. (By Ms. Weiss) And do you know Dr. Tudor to be
13 female?

14 A. She appears to be female. I don't know for
15 sure. She appears to be. All this documentation is
16 about her being transgender.

17 Q. So would it be inappropriate to use male
18 pronouns now in regard to Dr. Tudor?

19 MS. COFFEY: Object to form.

20 A. No.

21 Q. (By Ms. Weiss) And why not?

22 A. It seems it would be more appropriate to refer
23 to Dr. Rachel Tudor with female.

24 Q. So if someone referred to Dr. Rachel Tudor now
25 with male pronouns, would that be inappropriate?

Exhibit 32



I've just found another company w/ a policy of people I can trust. I'm going to try and get some more info on this. I'll call you later.

Call
Charlie
1cc
Brenden
Batherson

is for some...
 you...

just all
 news no
 for...
 (last...
 offer)

www.expresspersonnel.com

2702 Line Avenue
 Shreveport, LA 71104
 (318) 226-8777 Fax (318) 227-8811 (903) 893-1122 Fax (903) 893-9131

1914 N. Grand
 Sherman, TX 75090

6/1/17
3:45

Dr. Judon 580-931-9743



2.8. North American & 2019
to 4. 2019
Dress w/ class & dear

Your garden
presentation
@ SOSU

Handwritten note in margin: "I have no more information"

- advice/opinion
sent from your
counselor or
psychologist
(Mrs. Porter)

hardly any...
This is all new to me, too,
but we are best
www.expresspersonnel.com

2702 Line Avenue Shreveport, LA 71104
(318) 226-8777 Fax (318) 227-8811
1914 N. Grand Sherman, TX 75090
(903) 892-1122 Fax (903) 893-9131

Handwritten notes on lined paper:
psychologist or
psychiatrist
living with family
for a year
with you
garden
presentation
founder

RACHEL TROON
931-9743

Exhibit 33

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff(s),)	
)	
RACHEL TUDOR,)	
)	
Plaintiff Intervenor,)	
)	
-vs-	)	No. 5:15-CV-00324-C
)	
SOUTHEASTERN OKLAHOMA STATE)	
UNIVERSITY, and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendant(s).)	

DEPOSITION OF LAWRENCE MINKS, PhD

TAKEN ON BEHALF OF THE PLAINTIFF(S)

IN ARDMORE, OKLAHOMA

ON MAY 19, 2016

REPORTED BY: LESLIE A. FOSTER, CSR

Lawrence Minks, PhD

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1 Q (BY MR. TOWNSEND) Do you have any reason to
2 question Dr. Weiner's honesty?

3 MS. COFFEY: Object to form.

4 A I don't know.

5 Q (BY MR. TOWNSEND) Is there anything that would
6 refresh your recollection -- well, strike that.

7 When you say, "I don't know," are you
8 indicating that you don't remember anything that would
9 lead you to question his honesty?

10 MS. COFFEY: Object to form.

11 Q (BY MR. TOWNSEND) Let me ask a different way.
12 You said that you do not have any reason to question
13 Weiner's honesty. Is that right?

14 MS. COFFEY: Object. Misstates the testimony.

15 Q (BY MR. TOWNSEND) All right. I just want to
16 make sure I understand your testimony. So are saying you
17 don't know of any reason to question Dr. Weiner's
18 honesty?

19 MS. COFFEY: Object to form.

20 A I -- no, I don't know.

21 Q (BY MR. TOWNSEND) Do you have any reason to
22 believe that Dr. Weiner is a dishonest person?

23 MS. COFFEY: Object to form.

24 A I don't know.

25 Q (BY MR. TOWNSEND) When did you learn that

Lawrence Minks, PhD

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1 Dr. Tudor was a transgender woman?

2 A My -- my first year.

3 Q Your first year as what?

4 A President.

5 Q And how did you learn that she was a

6 transgender woman?

7 A I don't recall specifically.

8 Q Did you know Dr. Tudor was a transgender woman

9 when you were reviewing her promotion and tenure

10 application?

11 MS. COFFEY: Object to form.

12 A Yes.

13 Q (BY MR. TOWNSEND) Do you believe Dr. Tudor is

14 male?

15 MS. COFFEY: Object to form.

16 A I -- I don't know.

17 Q (BY MR. TOWNSEND) What information would you

18 need to know whether Dr. Tudor is male?

19 MS. COFFEY: Object to form.

20 A I don't understand the question.

21 Q (BY MR. TOWNSEND) You don't know if Dr. Tudor

22 is male, is what you said. Correct?

23 A Yes.

24 Q And I'm trying to get at why you don't know if

25 Dr. Tudor is male.

Lawrence Minks, PhD

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1 MS. COFFEY: He told you he doesn't know.

2 Q (BY MR. TOWNSEND) Okay. What information would
3 you need for you to be able to know whether Dr. Tudor is
4 male?

5 MS. COFFEY: Asked and answered. Object to
6 form.

7 A I don't know.

8 Q (BY MR. TOWNSEND) Do you believe Dr. Tudor is
9 female?

10 MS. COFFEY: Object to form.

11 A I don't know.

12 Q (BY MR. TOWNSEND) What information would you
13 need to determine whether Dr. Tudor is female?

14 MS. COFFEY: Object to form.

15 A I don't know.

16 Q (BY MR. TOWNSEND) Do you believe Ms. Coffey's
17 female?

18 MS. COFFEY: Object to form.

19 You know what? That question's inappropriate,
20 Allan. If you want to ask this witness about questions
21 regarding this case, that's fine. But don't start
22 bringing anything personal about people that are not
23 witnesses in this case.

24 Why don't you -- if you want to ask him a
25 question, ask him about yourself.

Lawrence Minks, PhD

33

1 MR. TOWNSEND: Are you instructing him not to
2 answer?

3 MS. COFFEY: No. I'm telling you that you're
4 out of line and inappropriate, and I suggest you get your
5 questions back in line.

6 Q (BY MR. TOWNSEND) Do you need the question
7 repeated back to you? Did you -- do you remember what my
8 question was before Ms. Coffey spoke?

9 A No.

10 MS. COFFEY: His question was whether or not
11 I'm female.

12 MR. TOWNSEND: No. Please -- please --

13 THE WITNESS: Oh.

14 MS. COFFEY: Why bother?

15 MR. TOWNSEND: You're not deposing the witness.

16 MS. COFFEY: No, I'm not. I just told him what
17 the question was.

18 MR. TOWNSEND: Please read back the question.

19 MS. COFFEY: Because I said it incorrectly? Is
20 that it?

21 THE COURT REPORTER: "Question: Do you believe
22 Ms. Coffey's female?"

23 THE WITNESS: Yes.

24 Q (BY MR. TOWNSEND) Do you believe that I am
25 male?

Lawrence Minks, PhD

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1 A Yes.

2 Q Do you believe Ms. Meyer is female?

3 A I don't know.

4 Q Do you believe Mr. Young is male?

5 A I don't know.

6 Q Do you know of any other transgender people
7 that have worked at Southeastern other than Dr. Tudor?

8 MS. COFFEY: Object to form.

9 A I don't -- I don't recall.

10 Q (BY MR. TOWNSEND) Did you and Dr. Weiner ever
11 speak about Dr. Tudor?

12 MS. COFFEY: Object to form.

13 A I don't recall.

14 Q (BY MR. TOWNSEND) Did you and Dr. Weiner ever
15 speak about Dr. Tudor's gender transition?

16 MS. COFFEY: Object to form.

17 A No.

18 Q (BY MR. TOWNSEND) Did you ever speak to
19 Dr. Tudor about her gender transition?


20 MS. COFFEY: Object to form.

21 A No.

22 Q (BY MR. TOWNSEND) Do you know anyone who's
23 worked at Southeastern who had any moral or religious
24 beliefs about transgender people?

25 MS. COFFEY: Object to form.

Exhibit 34

From: Rachel Tudor racheltudor3731@gmail.com 
Subject: Re: Recollection of Dress and Gender Comportment of Persons Attending Minks Deposition on 5/19/16
Date: May 24, 2016 at 6:23 PM
To: Ezra Young eyoung@jtweisslaw.com

RT

1. Rachel Tudor: absence of facial hair, long length head hair in traditionally female style, women's fashion hat, black skirt, black hose, women's blouse, women's watch, rings, women's casual shoes, women's grey sweater, make-up, feminine voice, female pronouns.

2. Ezra Young: presence of facial hair, short length head hair in traditional men's style, tie, men's business suit, men's dress shoes, fitbit, wedding ring, no make-up, masculine voice, male pronouns.

3. Allan Townsend: presence of facial hair, short length head hair in traditional men's style, tie, men's business suit, men's dress shoes, wedding ring, no make-up, masculine voice, male pronouns.

4. Valerie Meyer: absence of facial hair, mid-length head hair in feminine bun style, women's navy business suit with skirt, women's blouse, women's shoes, wedding ring, women's watch, dangling earrings, subtle makeup, feminine voice, female pronouns.

5. Dixie Coffey: absence of facial hair, short hair in unisex style, black women's slacks, black and grey women's blouse in a snake-skin pattern, watch, bold make-up, feminine voice except when she was angry, female pronouns.

Is this what you want?

On Tue, May 24, 2016 at 11:42 AM, Ezra Young <eyoung@jtweisslaw.com> wrote:
Rachel,

We need you to memorialize (via email) a short, and accurate (to your recollection) account of the gender presentation of a few people who attended the Minks deposition on 5/19/16 (this is the deposition we attended in Ardmore, Oklahoma).

Specifically, can you please describe the following persons gender appearance—including presence/absence of facial hair, lengths of head hair (and whether it was groomed in traditionally female or male style), attire (e.g., men's business suit, women's business suit, men's dress shoes, heels), jewelry (watch, earrings, wedding rings, etc.), wearing make-up/ not wearing-make-up, etc, deep voice/high pitched voice, etc. Please also indicate (if you recall) what if any pronouns/ titles were used by persons during the deposition to describe these people. For instance, for myself, do you recall people using male pronouns/titles to refer to me or something else?

It's okay if you don't recall details for each person, just do your best to succinctly describe what they were wearing.

These are the persons I need you to describe:

1. Rachel Tudor
2. Ezra Young
3. Allan Townsend
4. Valerie Meyer
5. Dixie Coffey

Please complete this as soon as possible—we want to make sure that we get your recollection recorded while your memory is still fresh. If you have any questions or concerns please reach out to me.

Best,

Ezra Young, Esq.
Law Office of Jillian T. Weiss, P.C.
P.O. Box 642
Tuxedo Park, NY 10987
Tel: [\(949\) 291-3185](tel:(949)291-3185)
Fax: [\(917\) 398-1849](tel:(917)398-1849)
Email: eyoung@jtweisslaw.com
Web: jtweisslaw.com

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Ezra Young is admitted to practice law in New York only, and any statements in reference to laws or legal requirements outside of those states are not intended as legal advice unless and until representation by this firm is accepted by a court or government agency operating in your state. Consult an attorney admitted to practice in your state for qualified legal advice. Statements herein are not intended as legal advice or to create an attorney-client relationship unless and until you and this firm have signed a written retainer agreement.

--

There will be justice when those who are not injured are as outraged as those who are. Thucydides

Exhibit 35

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

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

DEPOSITION OF DOUGLAS MCMILLAN

TAKEN ON BEHALF OF THE PLAINTIFF

IN OKLAHOMA CITY, OKLAHOMA

ON AUGUST 10, 2016

REPORTED BY: ROSIE STANDRIDGE, CSR

Douglas McMillan

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10:30 1 for.

10:30 2 The -- the thing I looked for among those is
10:30 3 do we have a record of where there's some sort of a
10:30 4 continuous quality to it. And you may have to ask me
10:30 5 some more specific questions to be able to help you
10:30 6 understand that. But there -- it -- it can't be one,
10:31 7 say, in 1984 and another one in 2000. There needs to
10:31 8 be a more continuous element of it.

10:31 9 Q. So I think what you said was that for EHL
10:31 10 faculty, you wanted to see some refereed scholarship
10:31 11 in order to determine that there was noteworthy
10:31 12 achievement in scholarship?

10:31 13 A. I need to see, for all of those disciplines
10:31 14 that share that same standard, EHL, psychology,
10:31 15 education, all of them, an investment of the
10:31 16 individual faculty member in their scholarship that
10:31 17 reflects an ongoing, continuous element of it.

10:31 18 Q. Right. I'm going to ask you about the
10:31 19 continuous issue.

10:31 20 A. Okay.

10:31 21 Q. But I wanted to focus now on the refereed
10:31 22 aspect of --

10:31 23 A. Okay.

10:31 24 Q. -- the scholarship.

10:31 25 A. Could you ask me that again, then?

Douglas McMillan

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10:39 1 A. That they have done some service that's --
10:39 2 meets certain -- certain requirements.

10:39 3 Q. Service to what?

10:39 4 A. Can be a variety of things. Can be to the
10:39 5 university. It can be to their professional
10:39 6 organization, a national -- like for example, some
10:39 7 faculty at Southeastern have served as officers in a
10:39 8 national organization.

10:39 9 It could be, for those areas where it's
10:39 10 possible to do this, service even to a local entity.
10:39 11 Like some of the business faculty help small business.
10:40 12 You know, could be -- those could all be elements of
10:40 13 it.

10:40 14 But the most critical piece to it is that
10:40 15 it -- that, again, there's a -- a continuousness to
10:40 16 it, that it's not I did something for a couple of
10:40 17 months and then I didn't do anything again for six
10:40 18 months and then -- or the next year.

10:40 19 There's a -- there's an element of
10:40 20 demonstrating that the bestowing of tenure is going to
10:40 21 be something you've demonstrated that you're going to
10:40 22 continue to do these things past the point of tenure
10:40 23 being given.

10:40 24 Q. Why is that important, they're going to
10:40 25 continue to do service after getting tenure?

Douglas McMillan

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11:13 1 international journal, where did they fall on that
11:13 2 quality indicator. And if I had questions about that,
11:13 3 I would ask the department chair or the dean to find
11:13 4 out.

11:13 5 Q. When you were reviewing Dr. Tudor's
11:13 6 portfolio, did you ask Dean Scoufos any questions
11:13 7 about it?

11:13 8 A. Yes.

11:13 9 Q. What did you ask her?

11:13 10 A. I asked her what an open mic chapbook was.

11:13 11 Q. Anything else?

11:13 12 A. I asked also for her to find out about the
11:13 13 quality of the journal, some of the journal. I don't
11:13 14 remember which one.

11:13 15 Q. Did you ask Dr. Mischo any questions about
11:13 16 Dr. Tudor's portfolio?

11:14 17 A. Directly?

11:14 18 Q. Yes.

11:14 19 A. No.

11:14 20 Q. Did you ask Dean Scoufos to ask Dr. Mischo
11:14 21 anything?

11:14 22 A. I don't remember who -- I don't remember, to
11:14 23 tell you the truth.

11:14 24 Q. You said "directly" before. Did you
11:14 25 indirectly ask Dr. Mischo for any information about

Douglas McMillan

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16:17 1 A. Me --

16:17 2 MR. JOSEPH: Object to the --

16:17 3 A. -- personally?

16:17 4 MR. JOSEPH: -- form.

16:17 5 Q. (By Mr. Townsend) Yes, you personally.

16:17 6 A. Okay. Yes, for that and a variety of other.

16:17 7 I don't -- I don't struggle with that issue.

16:17 8 Q. Now, you just said a little bit ago there
16:17 9 were two antithetical teachings about transgender
16:17 10 people. What were those two teachings?

16:17 11 A. One was that it was -- that God created male
16:17 12 and female and those -- with the implication that
16:17 13 gender is based on biological -- what we're born as in
16:17 14 terms of gender.

16:17 15 The other one said in an interesting
16:17 16 contradiction that it's a biological thing that a
16:17 17 person would feel, say, for example, a woman trapped
16:18 18 in a man's body, that -- and that it is not a -- it's
16:18 19 not a -- a sin necessarily.

16:18 20 So I've heard two very opposite teachings
16:18 21 about it which I think reflected people don't know --
16:18 22 don't know what the -- what the reality of that is or
16:18 23 that Christians haven't closed the book on that issue
16:18 24 yet.

16:18 25 Q. So where do you come down on those two

Douglas McMillan

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16:18 1 antithetical views?

16:18 2 A. Still considering, still reflective about
16:18 3 it.

16:18 4 Q. Have you ever thought that transgender
16:18 5 people were immoral?

16:18 6 A. Immoral?

16:18 7 MR. JOSEPH: Object to the form.

16:18 8 Q. (By Mr. Townsend) Well, let me strike that.
16:18 9 Have you ever had any religious beliefs
16:18 10 about transgender people being immoral?

16:18 11 MR. JOSEPH: Object to the form. Are you
16:18 12 asking, are transgenders engaged in immoral activity?
16:19 13 Or are you asking their nature is immoral?

16:19 14 MR. TOWNSEND: All right. I'll clarify.

16:19 15 Q. (By Mr. Townsend) Have you ever had any
16:19 16 religious beliefs about transgender people by their
16:19 17 nature being immoral?

16:19 18 A. We're all -- from a biblical perspective, we
16:19 19 all are in that same situation.

16:19 20 Q. Have you ever had any religious beliefs
16:19 21 about transgender people being immoral because they
16:19 22 are presenting themselves as a gender that's different
16:19 23 than the gender they were assigned at birth?

16:19 24 A. I don't -- I don't have that question closed
16:19 25 in my thinking.

Douglas McMillan

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16:19 1 Q. And has your --

16:19 2 A. I don't have a definitive answer for you.

16:19 3 Q. Has your thinking on that been the same as
16:19 4 long as you can remember?

16:19 5 A. In terms of not knowing the answer to it?

16:19 6 Q. Yes.

16:19 7 A. Yes.

16:19 8 Q. So going back to when you first learned that
16:19 9 Dr. Tudor was a transgender person, you've had the
16:20 10 same views about the morality of transgender people
16:20 11 presenting themselves as a gender different from the
16:20 12 gender they were assigned with?

16:20 13 A. I lost you.

16:20 14 MR. JOSEPH: Object to the form.

16:20 15 Q. (By Mr. Townsend) All right. Is there any
16:20 16 difference in your views about transgender people
16:20 17 today compared to your views about transgender people
16:20 18 back when you learned that Dr. Tudor was a transgender
16:20 19 person?

16:20 20 A. No, I'm still reflective and not sure what
16:20 21 the answer is to it.

16:20 22 Q. In that segment of the EEOC interview,
16:20 23 you -- you used the term "biblical lifestyle." What
16:20 24 does that mean to you?

16:21 25 A. Someone who's trying to pattern their lives

Douglas McMillan

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16:45 1 Q. Did you ever have any opportunity to discuss
16:45 2 those conflicting teachings with anyone who was a
16:45 3 member of the Red River Cowboy Church?

16:45 4 A. Not that I recall.

16:45 5 Q. Switching gears a bit. Warning again.

16:45 6 A. Okay.

16:45 7 Q. I believe earlier today, you testified that
16:45 8 you were personally still thinking through whether
16:45 9 transgender people should be permitted to use rest
16:45 10 rooms that match their gender identity; is that
16:45 11 correct?

16:45 12 A. Still listening.

16:45 13 Q. Still listening.

16:45 14 Do you think it's important that people
16:45 15 should be able to use the rest room that matches their
16:45 16 gender identity?

16:46 17 A. I haven't come to a conclusion one way or
16:46 18 the other.

16:46 19 Q. Are you concerned at all that nontransgender
16:46 20 people might be uncomfortable using a rest room with a
16:46 21 transgender person?

16:46 22 A. I don't think that, no. I don't think
16:46 23 that's my thing that I'm thinking about with it.

16:46 24 Q. Can you explain to me a little bit about
16:46 25 what the thing is that you're thinking about?

Douglas McMillan

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16:46 1 A. Just it's a new concept, I think -- new for
16:46 2 me. It may not be new for someone who's transgender,
16:46 3 but it's a new concept. And as -- you know, as our
16:46 4 society seems to struggle with it a little bit, I'm
16:46 5 listening to -- to both sides trying to determine
16:46 6 what's a compassionate response to a person in that
16:46 7 situation, what's a Christ-like response to that.

16:46 8 Q. Do you think it would be a compassionate
16:47 9 response to prohibit transgender people from using the
16:47 10 rest room that matches their gender identity?

16:47 11 A. I haven't settled the issue, so I couldn't
16:47 12 go forward to give you a one way or the other.

16:47 13 Q. Do you personally believe it's possible for
16:47 14 someone to change their sex?

16:47 15 MR. JOSEPH: Object to the form.

16:47 16 A. Their -- I don't know. I would say no, but
16:47 17 I don't know.

16:47 18 Q. (By Mr. Young) What -- what makes you want
16:47 19 to say no?

16:47 20 A. The -- I just don't understand how you can
16:47 21 change at a cellular level the biological
16:47 22 manifestation of male or female. Now, I understand
16:47 23 that a -- I'm beginning to understand that a person
16:47 24 can feel differently than that, has a different gender
16:48 25 identity. That's the concept I'm -- I'm trying to

Douglas McMillan

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16:48 1 reflect on, wrestle with.

16:48 2 Q. Does the fact that you are uncertain whether
16:48 3 someone can change their sex in any way inform your
16:48 4 uncertainty about which rest rooms transgender people
16:48 5 should use?

16:48 6 A. No.

16:48 7 Q. So --

16:48 8 A. I mean, I don't -- I don't have an ax to
16:48 9 grind when it comes to any of those issues. I'm just
16:48 10 simply reflecting and trying to determine for myself
16:48 11 what my views are on it.

16:48 12 Q. Do you think it's important that people
16:49 13 generally have access to rest rooms that they're
16:49 14 comfortable with?

16:49 15 MR. JOSEPH: Object to the form.

16:49 16 A. I still haven't settled that issue, so I
16:49 17 don't know how I can comment on it.

16:49 18 Q. (By Mr. Young) You have no personal
16:49 19 opinions regarding rest room access generally?

16:49 20 A. I'm uncomplete -- incomplete, not finished.

16:49 21 Q. Do you have any personal concerns about
16:49 22 black people using the same rest rooms as white
16:49 23 people?

16:49 24 A. No.

16:49 25 Q. Why do you not have concerns in that

Douglas McMillan

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16:49 1 situation?

16:49 2 A. Because that -- I'm -- I'm not struggling
16:49 3 with that issue.

16:49 4 Q. Do you believe that that presents a
16:49 5 different sort of problem?

16:49 6 A. I don't know.

16:49 7 MR. JOSEPH: Object to the form.

16:49 8 Q. (By Mr. Young) At any point in your life,
16:49 9 have you struggled with the issue of whether black
16:49 10 people should use the same rest room as white people?

16:50 11 A. No.

16:50 12 Q. I believe earlier today, you testified that
16:50 13 at some point in time -- you weren't exactly sure of
16:50 14 the exact date -- you had a conversation with
16:50 15 Ms. Conway at Southeastern about Dr. Tudor and rest
16:50 16 room use. Is that correct?

16:50 17 A. Yeah, yes.

16:50 18 Q. During your conversation with Ms. Conway,
16:50 19 did you tell Ms. Conway that you were personally
16:50 20 undecided about which rest room transgender people
16:50 21 should use?

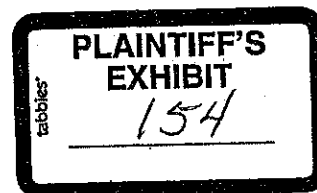
16:50 22 A. I didn't know it was an issue at that point.
16:50 23 I thought I was being asked on a need -- based on a
16:50 24 need for privacy.

16:50 25 Q. Do you recall whether you asked Ms. Conway

Exhibit 36

Lucretia Scoufos

From: Randy Prus
Sent: Friday, April 30, 2010 11:54 AM
To: Lucretia Scoufos
Subject: RE: RE:



Lucretia,

I don't know of an "Open Mic" publisher. I take the term to mean "unpublished" or "self-collected." Poetry generally circulates in communities of mostly small journals and presses. Often the journals/presses are ephemeral, but the important aspects of poetry are the communities in which they circulate. "Open Mic" is somewhat dubious, to me.

Randy Prus
English, Humanities and Languages
Southeastern Oklahoma State University
580-745-2582

From: Lucretia Scoufos
Sent: Friday, April 30, 2010 11:49 AM
To: Randy Prus
Subject: Fwd: RE:

Because you you are the expert, could you tell me if these are usually published, unpublished, refereed? Please educate me, Randy.

Lucretia

Sent from my iPhone

Begin forwarded message:

From: Lisa Coleman <LColeman@se.edu>
Date: April 30, 2010 11:25:09 AM CDT
To: Lucretia Scoufos <LScoufos@se.edu>, John Mischo <JMischo@se.edu>, Randy Prus <RPrus@se.edu>
Subject: RE: .

These terms relate to poetry presentations. Randy is the expert on this.

Lisa

-----Original Message-----

From: Lucretia Scoufos
Sent: Friday, April 30, 2010 11:24 AM
To: John Mischo; Randy Prus; Lisa Coleman
Subject:

What is an "open mic chapbook"? I am not familiar with this and believe it to be in the English discipline.

Lucretia

Sent from my iPhone

FILE COPY

From: Sheridan McCaffree smccaffree@ruso.edu
Subject: RE: The Discrimination...
Date: April 27, 2011 at 4:01 PM
To: "Richard Ogden" rco@lawokc.com

We are working on this and will get back to you.

Sheridan McCaffree
Executive Director
Regional University System of Oklahoma
3555 NW 58th St., Suite 320
Oklahoma City, Oklahoma 73112

From: Richard Ogden [mailto:rco@lawokc.com]
Sent: Wednesday, April 27, 2011 10:10 AM
To: smccaffree@ruso.edu; cbabb@ruso.edu
Subject: RE: The Discrimination...

Sheridan and Charlie,

Please ask Southeastern to get me their policies dealing with application for tenure and the process of review of the tenure application, specifically the policy dealing with the vote of the Faculty Tenure Committee and the recommendation process to the Dean, Provost and President. More particularly I am interested in know what the vote was from the committee and what “ Compelling Reasons or Exceptional Case ” were found by the administration to disregard the recommendation of the committee.

Frankly, from reading the memo Charlie sent me on Monday, I did not see anything that seemed exceptional or compelling. The administration seemed to have a different opinion from the faculty committee, but that does not seem to rise to the standard set forth in the policy (if that is what the policy says) in order to override the recommendation of the Faculty Tenure Committee.

I would also like to know how many times in the past three years the administration, and in particular Dean McMillan, overruled the recommendation of the Faculty Tenure Committee.

There are several things reported, which if true even in part, give me great concern. It does not impress me that Dean McMillan asked Professor Tudor to (as a favor to her) withdraw here application for tenure so as to improve her academic portfolio. This seems not to be consistent with the recommendation of the faculty committee for tenure.

I have read quite a bit of material and none of it has thus far answered these questions:

1. What Compelling Reasons were there to overrule the Faculty Tenure Committee?
2. How many times in the past three years has this occurred?
3. What are the policies in place now dealing with the process for tenure involving the Faculty Tenure Committee, now and at the time Dr. Tudor made her application?
4. Where other Professors recommended for tenure with similar academic portfolios?
5. If this was such a clear case for not recommending tenure to the regents, then how is it that the faculty voted unanimously in support of Dr. Tudor for tenure and for her to be allowed to reapply for tenure?
6. Who was the chair of the Faculty Tenure and Promotion Committee at the time of Professor Tudor 's application in 2010? Who was the chair of the Grievance Committee? And who was

the chair of the Faculty Senate at the time of the unanimous vote asking the administration to allow Professor Tudor to reapply for tenure?

I appreciate Charlie getting the opinion of other attorneys, as it must have seemed that this was a potential problem. I doubt that opinions from other attorneys are solicited routinely. That being said, I feel somewhat frustrated that I found out about this on Monday. Yesterday, I received a call from the ACLU and they advised that they had been made aware of this a week ago. So this problem has been in the public sphere for over a week and in our private realm for over a year.

At this point in time, we need to deal with the issues. I doubt the press is at all going to be satisfied with an answer to the effect that "we did everything right". If the policy dealing with recommendations from the Faculty Tenure Committee required "Compelling Reasons or an Exceptional Case" to overrule their recommendations, I have yet to see the "Compelling Reasons" or this to be an "Exceptional Case". I asked President Meeks to give me the reasons for Professor Tudor's denial of tenure and her termination, he told me that there were very good reasons and that I could be assured of that. I frankly thought there was some other problem that I would see from the paperwork other than a disagreement with the Faculty Tenure and Promotions Committee as to whether or not Professor Tudor's academic portfolio meet the standards for tenure.

Please see if you can get me the answers to the questions above. I appreciate your work. I intend to stay engaged in this matter. Thank you for your assistance.

Richard

From: smccaffree@ruso.edu [mailto:smccaffree@ruso.edu]
Sent: Wednesday, April 27, 2011 9:03 AM
To: rco@lawokc.com
Cc: Charlie Babb
Subject: FW: The Discrimination...

Regent Ogden:

FYI --The message below is from the same person I talked to on the phone last night.

Sheridan McCaffree
Executive Director
Regional University System of Oklahoma
3555 NW 58th St., Suite 320
Oklahoma City, Oklahoma 73112

From: Niloc Namgewes [mailto:jfalconcrest@gmail.com]
Sent: Tuesday, April 26, 2011 4:55 PM
To: smccaffree@ruso.edu
Subject: The Discrimination...

By your staff does not go unnoticed. Healthy piece of advice for the New World (You know, the one where EVERYONE can see what you're up to): Dr. Douglas McMillan's actions, choosing to let his personal beliefs encroach upon and harm his working environment, are being aired, quite publicly, and this will come back around to bite your educational institution. No longer can this type of thing go on behind the scenes. Your actions will be brought to light, and exposed. I will personally do my part to

RUSOEMAIL2566

ensure this. Understand that people from all walks of life will stand in solidarity against this type of behavior. Discrimination against one hurts us all. Give Dr. Tudor her tenure back sirs. It is the right thing to do.

-Johnathan F.

No virus found in this message.

Checked by AVG - www.avg.com

Version: 10.0.1209 / Virus Database: 1500/3600 - Release Date: 04/27/11

RUSOEMAIL2566

Exhibit 38

Oklahoma State Senate

SENATOR ANDREW RICE
District 46
PHONE: (405) 521-5610
E-Mail: rice@oksenate.gov



522 STATE CAPITOL
2300 N. LINCOLN
OKLAHOMA CITY, OK
73105-4808

April 28, 2011

Sheridan McCaffree
Executive Directions
Regional University System of Oklahoma
3555 NW 58th, Suite 320
Oklahoma City, OK 73112

Dear Sheridan:

I am troubled to learn about Professor Rachel Tudor's denial of tenure for what appears to be discriminatory motives. The administration of Southeaster may have violated established policies and procedures in the review of Dr. Tudor's application for tenure and promotion.

As a legislative leader, I expect the RUSO regents to take this matter of a possible civil rights violation seriously.

I look forward to seeing a more transparent account of why the administration at Southeastern surprisingly overrule the will of the faculty in this instance.

Sincerely,

A handwritten signature in cursive script that reads "Andrew Rice".

SENATOR ANDREW RICE
Democratic Leader
522 State Capitol Building
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105-4808
405-521-5610

CC: Dr. Rachel Tudor
President Larry Minks

PI001273

From: Sheridan McCaffree smccaffree@ruso.edu
Subject: FW: Tenure and Promotion
Date: April 27, 2011 at 4:14 PM
To: "Richard Ogden" rco@lawokc.com

fyi

Sheridan McCaffree
Executive Director
Regional University System of Oklahoma
3555 NW 58th St., Suite 320
Oklahoma City, Oklahoma 73112

From: Frank Akehurst [mailto:akehurstfrp@hotmail.com]
Sent: Wednesday, April 27, 2011 11:51 AM
To: smccaffree@ruso.edu
Subject: Tenure and Promotion

Ladies and Gentlemen of the Regents of the Regional University System of Oklahoma:

It has come to my attention that a probationary faculty member at Southeastern Oklahoma State University has been denied tenure and even instructed not to reapply for tenure. This is Professor Rachel Tudor. Her record sounds like one that would be sufficient for promotion and tenure at my university, the University of Minnesota. I have heard about this matter only from Professor Tudor's side, but what she says is alarming and if true it reflects badly on the university and its president.

For many years, at the University of Minnesota, I was a member of the Senate Judicial Committee, which heard grievances, including those from faculty members denied tenure. As a chair of grievance hearing panels, and a member of such, I had to ensure that standards and procedures were followed, and that grievants were afforded a fair hearing. It appears that this was not the case when the recommendation on this matter, as passed by the local University grievance committee and even by the faculty Senate, was overturned by the president without credible reasons.

I hope that the Regents can make a fair inquiry into this matter, and do what is right. You have to deal with the president on a regular basis, and no doubt want to keep that relation cordial; if the president's action was justified and unbiased, you can discover that. If not, and especially if the president's decision can be traced to impermissible prejudice, then you need to rectify Professor Tudor's situation, and ensure that any further consideration of her tenure is conducted in a manner that is above reproach, which probably means that the president must recuse himself from further participation in the decision making.

With best wishes for the future of your Oklahoma State Universities in these difficult times,

RUSOEMAIL465

Respectfully, F. R. P. Akehurst

F. R. P. (Ron) Akehurst, Eden Prairie, Minnesota, USA
Emeritus Professor of French
University of Minnesota

tel home (952) 934 2027
cell. (612) 987 5511

RUSOEMAIL465

From: Sheridan McCaffree smccaffree@ruso.edu
Subject: FW: unjust termination
Date: April 29, 2011 at 10:23 AM
To: "Richard Ogden" rco@lawokc.com

fyi

Sheridan McCaffree
Executive Director
Regional University System of Oklahoma
3555 NW 58th St., Suite 320
Oklahoma City, Oklahoma 73112

From: Carolyn J Eichner [mailto:eichner@uwm.edu]
Sent: Thursday, April 28, 2011 2:01 PM
To: smccaffree@ruso.edu
Subject: unjust termination

Dear Sheridan McCaffree,

I am writing to express my outrage at your university's recent decision to deny tenure to a highly qualified and clearly tenurable professor, Rachel Tudor. Denying a scholar tenure based on a rejection of her "lifestyle" is shameful. Not only are you a university, and thus assumed to be an arena for inquiry and ideas, but you are at state university - and thus should be held to an even higher standard than a private institution. But rather than creating an environment that encourages openness, you have created one that fosters narrowness and prejudice. If I were employed at Southeastern Oklahoma State, I would be mortified at such a horrifically biased tenure denial. What sort of standards do you uphold at your institution?

Sincerely,

Carolyn J. Eichner
Associate Professor
Department of History and Center for Women's Studies
University of Wisconsin-Milwaukee
Milwaukee, WI 53201
eichner@uwm.edu

RUSOEMAIL494

From: Sheridan McCaffree smccaffree@ruso.edu
Subject: FW: Discrimination against Prof. Rachel Tudor
Date: May 10, 2011 at 3:10 PM
To: "Lauren Eichinger" leichinger@ruso.edu

Sheridan McCaffree
Executive Director
Regional University System of Oklahoma
3555 NW 58th St., Suite 320
Oklahoma City, Oklahoma 73112

From: jeremyrshiple@gmail.com [mailto:jeremyrshiple@gmail.com] **On Behalf Of** Jeremy Shipley
Sent: Sunday, May 01, 2011 12:59 PM
To: smccaffree@ruso.edu
Subject: Discrimination against Prof. Rachel Tudor

Dear Sir,

I am writing concerning the outrageous case of discrimination in the tenure review process for Prof. Tudor. As I am sure you are well aware of the details of the case I will not review them here. I believe firmly that the scholarly opinion of the Faculty Tenure and Promotion Committee should be adhered to. The personal religious beliefs of the VP of academic affairs, Dr. Douglas McMillan should have no bearing on the tenure review process. I urge you to begin an investigation into the undo influencing of that process by Dr. McMillan and to take appropriate action, up to and including firing, of individuals that have let their personal beliefs interfere with their professional conduct as university administrators.

Sincerely,
Jeremy Shipley

--
Jeremy Shipley
Ballard and Seashore Doctoral Research Fellow
Department of Philosophy
The University of Iowa

<http://uiowa.academia.edu/JeremyShipley/About>
jeremy-shiple@uiowa.edu
jeremyrshiple@gmail.com
847-732-4513

RUSOEMAIL1933

From: Sheridan McCaffree smccaffree@ruso.edu
Subject: FW: Discrimination against Prof. Rachel Tudor
Date: May 02, 2011 at 10:41 AM
To: "Richard Ogden" rco@lawokc.com
Cc: cbabb@ruso.edu

fyi

Sheridan McCaffree
Executive Director
Regional University System of Oklahoma
3555 NW 58th St., Suite 320
Oklahoma City, Oklahoma 73112

From: jeremyrshiple@gmail.com [mailto:jeremyrshiple@gmail.com] **On Behalf Of** Jeremy Shipley
Sent: Sunday, May 01, 2011 12:59 PM
To: smccaffree@ruso.edu
Subject: Discrimination against Prof. Rachel Tudor

Dear Sir,

I am writing concerning the outrageous case of discrimination in the tenure review process for Prof. Tudor. As I am sure you are well aware of the details of the case I will not review them here. I believe firmly that the scholarly opinion of the Faculty Tenure and Promotion Committee should be adhered to. The personal religious beliefs of the VP of academic affairs, Dr. Douglas McMillan should have no bearing on the tenure review process. I urge you to begin an investigation into the undo influencing of that process by Dr. McMillan and to take appropriate action, up to and including firing, of individuals that have let their personal beliefs interfere with their professional conduct as university administrators.

Sincerely,
Jeremy Shipley

--
Jeremy Shipley
Ballard and Seashore Doctoral Research Fellow
Department of Philosophy
The University of Iowa

<http://uiowa.academia.edu/JeremyShipley/About>
jeremy-shipley@uiowa.edu
jeremyrshiple@gmail.com
847-732-4513

RUSO EMAIL353

From: Sheridan McCaffree smccaffree@ruso.edu
Subject: FW: Disgraceful Behavior at Southeastern Oklahoma State University
Date: May 06, 2011 at 12:05 PM
To: "Richard Ogden" rco@lawokc.com

Sheridan McCaffree
Executive Director
Regional University System of Oklahoma
3555 NW 58th St., Suite 320
Oklahoma City, Oklahoma 73112

From: Clayton Alsup [mailto:mystdni@gmail.com]
Sent: Tuesday, May 03, 2011 3:09 PM
To: smccaffree@ruso.edu
Subject: Disgraceful Behavior at Southeastern Oklahoma State University

Dear Ms. McCaffree,

The treatment of Rachel Tudor is abominable, however legal it might be. As a graduate student who plans to stay in academia for a career, I will have many occasions in the future to express my opinions to students about places where they might continue their education. While I would have said nothing against Oklahoma's public universities in the past, I can assure you that, for the rest of my career until such behavior is rectified, I will inform students, colleagues, and anyone else who might listen that Oklahoma would appear to be a bastion of ignorance, bigotry, and immorality and that I could not in good conscience recommend anyone attend or work for its schools. Perhaps those in your state might feel differently today, but I assure you attitudes will change, and this will be a permanent blotch on your memory. Act quickly to remedy this situation and perhaps you can come out of this on the moral high ground. Otherwise, I hope you are content to be defined by your prejudice.

Sincerely,
Clayton Alsup

RUSOEMAIL354

From: Sheridan McCaffree smccaffree@ruso.edu
Subject: FW: Request for fair treatment
Date: May 06, 2011 at 5:24 PM
To: "Connie Reilly" bcreilly@sbcglobal.net

fyi

Sheridan McCaffree
Executive Director
Regional University System of Oklahoma
3555 NW 58th St., Suite 320
Oklahoma City, Oklahoma 73112

-----Original Message-----

From: Therese Quinn [mailto:tquinn@saic.edu]
Sent: Friday, May 06, 2011 3:33 PM
To: smccaffree@ruso.edu
Subject: Request for fair treatment

Dear colleague: I have just heard the shocking news that a hard-working and awarded professor has been denied tenure and a contract because of her gender identity. This is a terrible breach of human rights. I am writing to request that the Governing Board of the Regional System of Oklahoma direct Larry Minks to respect the decision of the Faculty Appellate Committee, and honor the resolution passed by the Faculty Senate to renew Dr. Rachel Tudor's contract.

RUSOEMAIL452

Sincerely,

Therese Quinn

SAIC AAUP: Academic Freedom for a Free Society

Facebook group: [http://www.facebook.com/?ref=logo#!/group.php?](http://www.facebook.com/?ref=logo#!/group.php?gid=55468351323)

[gid=55468351323](http://www.facebook.com/?ref=logo#!/group.php?gid=55468351323)

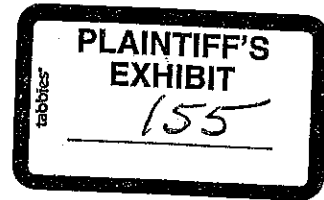
Wiki: <http://saicaaup.wikispaces.com>

RUSOEMAIL452

Exhibit 39

Lucretia Scoufos

From: Randy Prus
Sent: Friday, October 01, 2010 10:36 AM
To: Lucretia Scoufos
Subject: Tenure & Promotion Committees
Attachments: Tenure Promotion Committees F 2010.docx



Dean Scoufos,

Attached is the roster for the Tenure & Promotion Committees for Dr. Barker and Dr. Tudor.

Dr. Randy Prus
Professor & Chair
English, Humanities, & Languages
Morrison Hall 326
1405 N. Fourth Ave, PMB 4050
Durant, Oklahoma 74701-0609

Phone: (580) 745-2582
Fax: (580) 745-7406

FILE COPY

Exhibit 40



OFFICE OF THE PRESIDENT

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4236
DURANT, OK 74701-0609

580-745-2500
FAX 580-745-2515
WWW.SE.EDU

MEMORANDUM

TO: Rachel Tudor
FROM: President Larry Minks *Larry Minks*
RE: Application for Tenure and Promotion to Associate Professor
Date: April 21, 2010

This memo is to inform you that I have decided to deny your application for tenure and promotion to associate professor. As suggested by The Academic Policy and Procedures Manual 3.7.4 Role of the Faculty, I have delegated the responsibility to Dr. McMillan for providing you with the reasons for my denial. He will be in contact with you as soon as possible to delineate these reasons.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

PI001194

Exhibit 41



7 April 2010

President Larry Minks:

I would appreciate the opportunity to meet with you to discuss my application for tenure and promotion. We have not had an opportunity to visit during my years of service here, therefore I would like to invite you to meet with me in person and ask any relevant questions you may have about my service to Southeastern and how I may contribute to the success of the university in the future. I look forward to hearing from you soon.

Sincerely,

A handwritten signature in blue ink that reads 'Rachel Tudor'. The signature is fluid and cursive.

Dr. Rachel Tudor

DEPARTMENT OF ENGLISH, HUMANITIES & LANGUAGES
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4127 • DURANT, OK 74701-0609 • 580-745-2066 • FAX 580-745-7406 • WWW.SE.EDU

PI001192

Exhibit 42

Lucretia Scoufos

From: Lucretia Scoufos
Sent: Monday, January 03, 2011 2:11 PM
To: Ross Walkup
Attachments: Scoufos.pdf

Ross, here is Dr. Mischo's recommendation for Dr. Tudor. He did not write a letter, but included only this form that is required by President Minks and suffices for a letter of recommendation.

Also included are my letter and evaluation summary regarding Dr. Tudor's 2009-10 request for promotion and tenure.

If I can be of further help, please advise me accordingly.

Lucretia

*Lucretia Scoufos, Ph.D.
Dean, The School of Arts & Sciences
Professor of Communication
1405 N. 4th Avenue, EMB 4107
Durant, OK, 74701
Toll-free 1-800-435-1327 ext. 2278
580.745.2278
F: 580.745.7476*



SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
 FACULTY PROMOTION AND TENURE EVALUATION SUMMARY
 CONFIDENTIAL ANALYSIS WORKSHEET

NAME Dr. Rachel Tudor
 DEPARTMENT English, Humanities, & Languages
 CURRENT RANK AND LAST PROMOTION DATE Assistant Professor
 HIGHEST DEGREE HELD PhD
 YEARS OF SERVICE AT SOSU THROUGH CURRENT YEAR 6
 YEARS OF UNIVERSITY EXPERIENCE PRIOR TO SOSU 4
 OTHER RELEVANT EXPERIENCE NA

❖ PLEASE STATE IN COMMENTS SECTION FACTUAL EVIDENCE ONLY

PERFORMANCE EVALUATION

<u>CATEGORY</u>	<u>CRITICAL</u>	<u>NEEDS IMPROVEMENT</u>	<u>PROFICIENT</u>	<u>COMMENDABLE</u>	<u>OUTSTANDING</u>
-----------------	-----------------	--------------------------	-------------------	--------------------	--------------------

<u>1. EFFECTIVE CLASSROOM TEACHING</u>				<u>X</u>	
--	--	--	--	----------	--

COMMENTS:

OSLEP course on SE campus
 Commendable student evaluations of teaching

<u>2. SCHOLARSHIP</u>				<u>X</u>	
-----------------------	--	--	--	----------	--

COMMENTS:

One article recently accepted for publication in peer-reviewed journal
 Numerous creative works

FILE COPY

<u>CATEGORY</u>	<u>CRITICAL</u>	<u>NEEDS IMPROVEMENT</u>	<u>PROFICIENT</u>	<u>COMMENDABLE</u>	<u>OUTSTANDING</u>
-----------------	-----------------	------------------------------	-------------------	--------------------	--------------------

3. <u>SERVICE TO INSTITUTION, PROFESSION AND PUBLIC</u>				X	
---	--	--	--	---	--

COMMENTS:

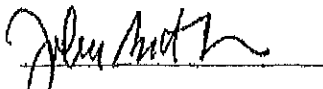
Native American Symposium Committee
Chair, Department POAR Committee

4. <u>PERFORMANCE OF NON-TEACHING/ ADMINISTRATIVE DUTIES/ ASSIGNMENTS</u>					
---	--	--	--	--	--

COMMENTS:

RECOMMENDATION:

Recommend for tenure and promotion to Associate Professor



Dr. John Brett Mischo, Chair

11/29/09

Date

FILE COPY




Notif

OFFICE OF THE DEAN

SCHOOL OF ARTS AND SCIENCES
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4107
DURANT, OK 74701-0609

580-745-2634
FAX 580-745-7476
WWW.SO.EDU

To: Douglas McMillan
Interim Vice President for Academic Affairs

From: Lucretia C. Scoufos 
Dean, School of Arts and Sciences

Date: January 12, 2010

Subject: Recommendation to deny tenure and to give Rachel J. Tudor, Ph.D., a one-year terminal appointment at the rank of Assistant Professor in the Department of English, Humanities and Languages for the 2010-2011 Academic Year

Although there is evidence that Dr. Tudor is a generally effective classroom teacher, her record of scholarship, in my view, falls well short of the noteworthy achievement required for promotion to Associate Professor with tenure. Since coming to Southeastern, there appears to be only one peer-reviewed paper submitted for publication, which has been accepted, but not yet published.

Likewise, there is little documentation of service activity in Dr. Tudor's portfolio, other than routine departmental assignments. She was elected to the Faculty Senate in 2009, and has served one semester.

Dr. Tudor's portfolio appears to be incomplete. In addition to lack of documentation of service activity, there are no letters of recommendation from tenured faculty members in her department. The single sentence recommendations for promotion and tenure from the departmental committee and the chair fail to give any justification for the recommendation for promotion and tenure.

Therefore, based on the available documentation, I am unable to recommend Dr. Rachel J. Tudor for promotion to Associate Professor or for tenure. My recommendation is that she be given a one-year, terminal appointment for the 2010-2011 academic year.

FILE COPY

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

Exhibit 43

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

UNITED STATES OF AMERICA)
et al.)
 Plaintiff)
)
vs.) CASE NO. 5:15-CV-00324-C
)
SOUTHEASTERN OKLAHOMA)
STATE UNIVERSITY et al.)
 Defendant)

ORAL DEPOSITION
DR. CHARLES WEINER
March 11, 2016

ORAL DEPOSITION OF DR. CHARLES WEINER, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 11th day of March, 2016, from 8:38 a.m. to 2:27 p.m., before Cheryl Duncan, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of U.S. Attorney's Office, 600 E. Taylor Street, Suite 2000, Sherman, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

1 A. Verbally.

2 Q. Do you remember by who?

3 A. Bridgette Hamill.

4 Q. Do you think that was in about the year
5 2007?

6 A. Probably. Yes.

7 Q. Did you have any conversations with anybody
8 about Dr. Tudor's gender transition?

9 A. Yes.

10 Q. Who did you talk to about it?

11 A. Dean Scoufos.

12 Q. Anyone else?

13 A. No.

14 Q. When was this conversation with Dean
15 Scoufos?

16 A. Around the time that she applied for
17 tenure.

18 Q. "She" being Dr. Tudor?

19 A. Dr. Tudor.

20 Q. And where were you when you spoke to
21 Dr. Scoufos about Dr. Tudor's gender transition?

22 A. Either in my office or her office, I don't
23 remember which one.

24 Q. Was there anyone else there?

25 A. No.

1 Q. What was discussed during that conversation
2 about Dr. Tudor's gender transition?

3 A. Just that she didn't know, she was not
4 aware of the transgender issue.

5 Q. Dr. Scoufos?

6 A. Yes.

7 Q. What did you say, if anything, about
8 Dr. Tudor's gender transition during that
9 conversation?

10 A. Just that she had -- you know, just that it
11 had been brought to my attention.

12 Q. Was there anything else that you remember
13 being discussed about Dr. Tudor during that
14 conversation?

15 A. No. Nothing egregious.

16 Q. Well, anything at all?

17 A. I -- you know, just, just whatever
18 discussion ensued, you know as to, you know -- ensued
19 as to -- you know, of the happenings and stuff. But
20 nothing, nothing that would lend itself to me coming
21 to a conclusion about anything, so...

22 Q. What do you mean "the happenings"?

23 A. Of her, of her having -- you know, being a
24 transgender.

25 Q. Do you remember anything more about the

1 discussion of those happenings?

2 A. No.

3 Q. Did you talk at all about Dr. Tudor's
4 application for tenure during that conversation?

5 A. No.

6 Q. Do you remember anyone having a negative
7 reaction to Dr. Tudor's transition, gender
8 transition?

9 A. No.

10 MR. JOSEPH: Object to the form.

11 Q. Did you -- do you have any information
12 about the reaction of anybody to Dr. Tudor's gender
13 transition?

14 A. No.

15 Q. Did you know anyone at Southeastern who had
16 any moral objection to transgender people?

17 MR. JOSEPH: Object to the form.

18 A. No.

19 Q. Did you know anyone at Southeastern who had
20 any religious objection to transgender people?

21 MR. JOSEPH: Object to the form.

22 A. Can you rephrase the question?

23 Q. Did you know anyone at Southeastern who had
24 religious beliefs that made it difficult for them to
25 be accepting of transgender people?

1 A. No.

2 Q. Did you ever speak with anybody about the
3 issue of what restroom Dr. Tudor would use after her
4 gender transition?

5 A. Yes.

6 Q. Who is that?

7 A. I, I cannot recall.

8 Q. What was discussed?

9 A. That there were people -- there were female
10 professors who were concerned about her using the
11 female bathroom on the third floor.

12 Q. And when did you hear those -- about those
13 concerns?

14 A. I don't remember.

15 Q. Do you remember who raised those concerns?

16 A. No.

17 Q. Did these female professors work in the
18 same building as Dr. Tudor?

19 A. Yes.

20 Q. Do you remember what department they worked
21 in?

22 A. The department she was in.

23 Q. Do you remember if they were tenured
24 professors?

25 A. I don't remember.

1 (Brief interruption)

2 Q. Do you remember what these female
3 professors were concerned about with respect to
4 Dr. Tudor using the women's restroom?

5 A. They didn't -- they did not believe at the
6 time that she had made the conversion.

7 Q. By "conversion," do you mean sex
8 reassignment surgery?

9 A. Yes.

10 Q. And did you have an understanding of why
11 that was important to them?

12 A. Yes.

13 Q. Why was it?

14 A. Because they were concerned.

15 Q. Right. But do you have any understanding
16 of why they were concerned about using a restroom
17 with Dr. Tudor before she had had sex reassignment
18 surgery?

19 A. They thought she was still a man.

20 Q. Was anything done to address those
21 professors' concerns?

22 A. Yes.

23 Q. What was that?

24 A. To ask Dr. Tudor to use the bathroom on the
25 second floor, unisex bathroom on the second floor.

1 Q. Do you know who asked her to do that?

2 A. I think Cathy Conway asked her to do it.

3 Q. How did you hear that Cathy Conway had
4 asked Dr. Tudor to use the -- unisex restroom, I
5 think you said?

6 A. Yes.

7 MR. JOSEPH: Object to the form.

8 Q. Let me state the question over, since
9 there's an objection.

10 How did you learn that Cathy Conway
11 had asked Dr. Tudor to use the unisex bathroom?

12 MR. JOSEPH: Object to the form.

13 A. I read it in her complaint.

14 Q. Did you -- strike that.

15 The complaint you're talking about is
16 the complaint Dr. Tudor filed?

17 A. Correct.

18 Q. And you believe the information in her
19 complaint about Cathy Conway asking her to use the
20 unisex bathroom to be correct?

21 A. Yes.

22 Q. Why do you believe it's correct?

23 A. Because up until I read that, I thought I
24 was the one that asked her to do it.

25 Q. Why did you think you had asked her to do

1 it?

2 A. I don't know.

3 Q. Were you involved in a discussion with
4 somebody about asking Dr. Tudor to use the unisex
5 restroom?

6 A. I'm sure I was.

7 Q. Do you remember who that conversation was
8 with?

9 A. It had to be with Cathy Conway, but I can't
10 remember specifically.

11 Q. Would that have been around the same time
12 that you learned about Dr. Tudor's name change?

13 A. A little bit later.

14 Q. Which was later, the conversation about the
15 restroom or the information about the name change?

16 MR. JOSEPH: Object to the form.

17 A. The conversation about the restroom.

18 Q. Was anybody else around when Cathy Conway
19 was talking to you about Dr. Tudor using the unisex
20 restroom?

21 A. No.

22 Q. Do you remember anything else about what
23 Cathy Conway told you regarding Dr. Tudor using the
24 unisex restroom?

25 A. Other than what's already -- what I already

1 said, no.

2 Q. Did you think Dr. Tudor should not have
3 used the women's restroom before having sex
4 reassignment surgery?

5 MR. JOSEPH: Object to the form.

6 A. Yes.

7 Q. Why is that?

8 A. Well, if she was still a man, she needed to
9 use the appropriate restroom.

10 Q. So in your view, Dr. Tudor was still a man
11 until such time that she had sex reassignment
12 surgery?

13 A. I really didn't know if she was still a man
14 or not.

15 Q. What information would you have needed to
16 determine whether she was still a man or not?

17 A. I guess I should have asked her.

18 Q. Did anyone ever express reaction to the way
19 Dr. Tudor dressed after her gender transition?

20 MR. JOSEPH: Object to the form.

21 A. No.

22 Q. Do you remember anyone ever expressing any
23 concern about how she might dress after she began
24 presenting as a woman at work?

25 A. No.

1 Q. Did anyone say anything about the type of
2 makeup Dr. Tudor wore after her gender transition?

3 MR. JOSEPH: Object to the form.

4 A. No.

5 Q. Do you remember anyone ever expressing any
6 concerns about what type of makeup she would wear
7 when she became -- let me strike that.

8 Do you remember any conversations
9 about what type of makeup Dr. Tudor would wear once
10 she started presenting as a woman at work?

11 MR. JOSEPH: Object to the form.

12 A. No.

13 Q. Do you remember any conversations about
14 whether Dr. Tudor had had sex reassignment surgery?

15 A. No.

16 Q. You had an understanding, though, that she
17 had not had sex reassignment surgery, though,
18 correct?

19 MR. JOSEPH: Object to the form.

20 A. I, I didn't know.

21 Q. Did you assume that she had not had sex
22 reassignment surgery?

23 A. No.

24 Q. Earlier you had said that you were, you
25 were concerned about her using the women's restroom

1 because she had not had sex reassignment surgery,
2 right?

3 MR. JOSEPH: Object to the form.

4 A. Correct.

5 Q. That's why I was asking if you just assumed
6 that she hadn't had sex reassignment surgery.

7 A. I actually, I actually assumed that she
8 had. I just assumed it. I didn't know.

9 Q. But even if she, even if she had had sex
10 reassignment surgery, you would still have been
11 concerned about her using the women's restroom?

12 A. Correct.

13 Q. And why is that?

14 A. Because women in her department had a
15 concern.

16 Q. And those are the female professors that
17 you were referencing earlier?

18 A. Yes.

19 Q. You don't remember any of their names
20 still, though?

21 A. Well, I remember the names of the women in
22 the department.

23 Q. I mean, you don't remember the names of the
24 women who were concerned about Dr. Tudor using the
25 women's restroom?

1 A. I was never given any specific names.

2 Q. How did you learn that there were women in
3 Dr. Tudor's department who were concerned about her
4 use the women's restroom?

5 A. I'm going to guess, and this is just a
6 guess, that it had to be Cathy Conway.

7 Q. And thank you for qualifying that, that
8 it's a guess. I normally don't want you to guess
9 unless you say it's a guess, okay?

10 A. (Nods head)

11 Q. All right. I'm going to switch gears here
12 a little and talk about some policies.

13 I'm going to show you what was
14 previously marked as Plaintiff's Exhibit 6. Exhibit
15 6 is a two-page document, Bates numbered EEOC 300 to
16 EEOC 301. I wanted to call your attention
17 particularly to policy 3.7.4, which starts halfway
18 down the first page and goes on to the second page of
19 the exhibit. Are you familiar with this policy?

20 A. Yes.

21 Q. Was this the policy that was in effect when
22 Dr. Tudor worked for Southeastern?

23 A. Yes.

24 Q. I wanted to call your attention to a
25 particular portion of policy 3.7.4 in Exhibit 6. The

1 MR. JOSEPH: Object to the form.

2 A. Yes.

3 Q. So -- I'm going to move on to a different
4 policy now, so we're done with Exhibit 6 for now.

5 At Southeastern, at the time that
6 Dr. Tudor worked there, when could an assistant
7 professor apply for promotion and tenure?

8 A. During their fifth year.

9 Q. Could they apply at any other time?

10 A. Three-year window. So fifth, sixth or
11 seventh year.

12 Q. Could they apply three times?

13 A. Yes.

14 Q. Would it matter whether the president
15 denied their application as to whether they could
16 apply three times?

17 MR. JOSEPH: Object to the form.

18 A. No.

19 Q. So if -- under the policy as it existed at
20 the time that Dr. Tudor worked at Southeastern, if an
21 assistant professor applied for tenure in her fifth
22 year, president denied it, she could go back and
23 apply in the sixth year because of the three-year
24 window?

25 A. That's my understanding.

1 Q. Did you ever provide that interpretation of
2 policy to anybody at Southeastern?

3 A. No.

4 Q. So if an assistant professor applied for
5 tenure in the fifth year, got denied by the
6 president, applied again in the sixth year, got
7 denied by the president, she could still apply in the
8 seventh year, as well?

9 MR. JOSEPH: Object to the form.

10 A. That's my understanding.

11 Q. And what do you base your understanding on?

12 A. I never knew any differently.

13 Q. Did you believe that's what the policy
14 stated?

15 A. I never saw a policy that stated any
16 differently.

17 Q. Did you ever come to learn that Dr. Tudor
18 had attempted to apply for promotion and tenure after
19 President Minks had denied her application?

20 MR. JOSEPH: Object to the form.

21 A. Yes.

22 Q. Did you learn that -- well, strike that.

23 Did you believe that was a violation
24 of policy?

25 A. No.

1 Q. Why not?

2 A. Once again, I never saw anything that
3 stipulated that if the president denied, that the
4 process stopped. My, my belief was always that it --
5 that you had a three-year window.

6 Q. Right. So let me rephrase my question,
7 because I think we're talking past each other here.

8 When Dr. Tudor attempted to apply for
9 promotion and tenure after being denied by the
10 president, was it a violation of policy for
11 Southeastern not to let her apply?

12 MR. JOSEPH: Object to the form.

13 A. No.

14 Q. Why not?

15 A. Because I never saw -- I never saw any
16 document, I never saw anything written, I never saw
17 anything that said she could not apply for tenure
18 again.

19 Q. So you just -- okay, that was -- I think
20 that was why I was confused because I thought you
21 said earlier that you came to understand that she was
22 not allowed to apply. But you're not sure of that?

23 MR. JOSEPH: Object to the form.

24 A. My understanding of the policy is that she
25 could apply again.

1 process would the administration communicate its
2 reasons for making decisions on the application to
3 the candidate?

4 MR. JOSEPH: Object to the form.

5 A. Whenever it was, whenever it was --
6 whenever what had previously been stated was
7 overturned.

8 Q. So the normal practice was if the faculty
9 promotion and tenure committee and the chair of the
10 department recommended that the candidate receive
11 promotion and tenure and then somebody in the
12 administration disagreed, that person in the
13 administration would communicate those reasons at
14 that time to the candidate?

15 A. Yes.

16 MR. JOSEPH: Object to the form.

17 Q. Why do you think that that was important
18 for maintaining a spirit of cooperation and a sense
19 of mutual confidence between the faculty and the
20 administration?

21 A. Because you knew why you were being denied.
22 You knew the reasons. They, they would have reasons.
23 They just would not look at you and say, I'm denying
24 your application. They wouldn't do that. They would
25 always call that person in and tell them the reasons

1 why.

2 Q. You're saying "always." Did it ever not
3 occur?

4 A. Not to my knowledge.

5 Q. Do you recall any instances where
6 Dr. McMillan as vice-president of academic affairs
7 disagreed with a recommendation to grant tenure that
8 was made by faculty promotion and tenure committee
9 and department chair?

10 A. When you ask these questions, are you
11 talking about previously to Dr. Tudor, or are you
12 asking if it includes Dr. Tudor?

13 Q. Including Dr. Tudor, before Dr. Tudor and
14 after Dr. Tudor.

15 A. So ask your question again.

16 Q. Sure.

17 Are you aware of any instances where
18 Dr. McMillan disagreed with a recommendation from a
19 department chair and a faculty promotion and tenure
20 committee to grant tenure to a candidate?

21 MR. JOSEPH: Object to the form.

22 A. The only one that I am familiar with is
23 Dr. Tudor.

24 Q. Do you know whether Dr. McMillan spoke to
25 Dr. Tudor about his reasons for disagreeing with the

1 recommendation of the department chair and faculty
2 promotion and tenure committee?

3 A. He did not -- well, at the time he did not.

4 Q. Was that -- so that was different than the
5 normal process; is that right?

6 MR. JOSEPH: Object to the form.

7 A. To my knowledge, it was different than the
8 normal process.

9 Q. Did you have any discussions with
10 Dr. McMillan -- well, strike that.

11 Do you know whether Dr. Tudor asked to
12 meet with Dr. McMillan to discuss his reasons for
13 disagreeing with the department chair and faculty
14 promotion and tenure committee?

15 MR. JOSEPH: Object to the form.

16 A. I'm not aware of how she did it. But I'm
17 assuming that she requested -- well, I know she
18 requested the information.

19 Q. Did you talk to Dr. McMillan about why he
20 would not provide her with her reasons when she asked
21 for them?

22 MR. JOSEPH: Object to the form.

23 A. Yes.

24 Q. When did you talk to him about that?

25 A. Right after when he wouldn't let me give

1 her the letter from the, from the faculty appellate
2 committee.

3 Q. And I think you're referring to a letter
4 that was -- strike that.

5 MR. JOSEPH: Allan, we've been going
6 91 minutes. Is this a good time to take a break or
7 not?

8 MR. TOWNSEND: Let's go off the
9 record.

10 (Brief interruption)

11 (Exhibit 45 marked)

12 Q. I'm showing you what is I've marked as
13 Plaintiff's Exhibit 45. Plaintiff's Exhibit 45 is a
14 letter dated April 29th, 2010. It's Bates number --
15 first page is EEOC 183. Does this letter look
16 familiar to you?

17 A. Yes.

18 Q. Is this the letter that you were
19 referencing when you said that you talked to
20 Dr. McMillan at a time when he told you not to send
21 this letter?

22 MR. JOSEPH: Object to the form.

23 A. Yes.

24 Q. So would the time period that you spoke to
25 Dr. McMillan that you were -- strike that.

1 Would the conversation that you had
2 with Dr. McMillan about his reasons for not
3 explaining his reasons to Dr. Tudor for not
4 supporting her tenure application prior to April
5 29th, 2010?

6 MR. JOSEPH: Object to the form.

7 A. Say that again.

8 Q. Sure. Sorry. It was a bad question.

9 So the conversation that we were just
10 talking about that you had with Dr. McMillan
11 concerned his reasons for not telling Dr. Tudor why
12 he had not recommended her for tenure, correct?

13 A. No. It was why I could not present the
14 letter to her.

15 Q. Right. You had a discussion about why you
16 could not present the letter, which is Exhibit 45,
17 right?

18 A. Yes.

19 Q. And I thought you said that during that
20 same conversation he explained why he did not want to
21 tell Dr. Tudor at that time his reasons for --

22 A. No, you never -- you haven't asked that
23 question.

24 Q. Oh, okay.

25 Did -- well, first of all, let's

1 establish this exhibit. Exhibit 45 is a letter
2 that's signed by you, correct?

3 A. That is my signature.

4 Q. All right. And on the last page it
5 indicates that Dr. Tudor received this letter on
6 April 29th, 2010?

7 A. Correct.

8 Q. And do you remember that she actually did
9 receive it at that time?

10 A. Yes.

11 Q. Okay. So did you have a conversation with
12 Dr. McMillan where he explained why he would not tell
13 Dr. Tudor his reasons for not agreeing with the
14 recommendation of the promotion and tenure committee
15 and the department chair with respect to her tenure
16 application?

17 MR. JOSEPH: Object to the form.

18 A. No, it's, it's the letter. Not, not the
19 tenure and promotion committee. It was why I could
20 not present the letter to her.

21 Q. Okay.

22 MR. TOWNSEND: Let's take a break --
23 wait, hold on. Just one more question before we go
24 past the letter.

25 Q. Why did Dr. McMillan not want you to

1 present this letter, Exhibit 45, to Dr. Tudor?

2 MR. JOSEPH: Object to the form.

3 A. His, his words to me were that the
4 president -- that nothing would be done until the
5 president of the university rendered his decision.

6 Q. His decision about what?

7 A. About whether to deny or approve
8 Dr. Tudor's application for tenure and promotion.

9 Q. Did he -- did Dr. McMillan say why
10 President Minks had made that decision?

11 A. In any conversation that I had with
12 Dr. McMillan, that was his answer every time. It
13 never deviated.

14 Q. Was that unusual?

15 A. Yes.

16 Q. How so?

17 A. I had never, I had never gone through
18 anything like that. Never been a part of anything
19 like that, never gone through anything like that.
20 Anytime I was -- anytime -- since I oversaw the
21 faculty appellate committee as a part of my
22 responsibilities, anytime a decision was rendered, I
23 wrote the letter, and I would show it to the
24 vice-president, they would sign off on it, and I
25 would, and I would present it within the time frame

1 as laid out in the policies and procedures manual.

2 Q. So in this case, you didn't present it
3 within the time frame in the policies and procedures
4 manual, correct?

5 A. No.

6 MR. JOSEPH: Object to the form.

7 Q. Wait. I think there was a double negative
8 in that question.

9 A. The answer is still no.

10 Q. So are you saying that, no, you did not
11 present this letter within the time frame that policy
12 required?

13 A. Correct.

14 Q. And why were you -- strike that.

15 Normally in a grievance, would it have
16 been Dr. McMillan's role as vice-president for
17 academic affairs to prepare a letter like this?

18 A. I prepared the letter.

19 Q. Why did you prepare it in this instance?

20 A. It was my responsibility.

21 Q. Did it have anything to do with the fact
22 that Dr. McMillan was one of the subjects of
23 Dr. Tudor's grievance that you were working on this?

24 A. No. I -- it was my responsibility. I
25 always wrote these letters.

1 Q. Okay. Did you have any sense of why
2 President Minks wanted this delay in sending the
3 letter?

4 A. I was not privy to any of those
5 conversations.

6 Q. Did you ask why he wanted the delay?

7 A. No.

8 Q. Is there a reason why you didn't ask?

9 A. He probably wouldn't have saw me anyways.

10 Q. Well, did you, did you think to ask
11 Dr. McMillan why President Minks wanted to wait?

12 A. It's a very specific question. I'm -- I do
13 not believe that I looked at Dr. McMillan and said,
14 you know, is this your decision or is this Dr. Minks'
15 decision. I don't recall asking that question. I
16 think everything that I asked pertained to why we
17 were not giving her the letter.

18 Q. And is the only thing that Dr. McMillan
19 said, was, that's what President Minks told me?

20 MR. JOSEPH: Object to the form.

21 A. He didn't even -- President Minks didn't
22 say that. That's not what Dr. McMillan said. He
23 said that, he said that the process had run its
24 course. And only when President Minks decided, and
25 then, and then President Minks would make the

1 decision what to do. But he never, he never said,
2 President Minks told me not to do this, or anything
3 like that. I never got that impression. The only
4 impression I got was we were going to wait until the
5 president saw the -- you know, until he fulfilled his
6 timeline according to the policies and procedures in
7 this document that you gave me here.

8 Q. So you, you still don't know whether it was
9 Dr. McMillan or Dr. Minks or both who had decided
10 that you should wait to send Exhibit 45 until after
11 the president decided Dr. Tudor's tenure application?

12 MR. JOSEPH: Object to the form.

13 Q. Let me ask it differently. Do you know, do
14 you know whether it was Dr. McMillan who decided that
15 you should wait to send Exhibit 45 to Dr. Tudor until
16 after President Minks had made his decision about her
17 tenure application?

18 A. I don't know.

19 Q. Do you know whether President Minks was the
20 one who decided to wait?

21 A. I don't know. I don't know.

22 Q. Okay.

23 MR. TOWNSEND: We can take the break
24 now. Off the record.

25 (Recess from 10:20 to 10:37)

Exhibit 44



Complainant: Dr. Rachel Tudor

Respondent: Dr. Doug McMillan

October 11, 2010

RECEIVED

OCT 11 2010

President's Office

Grievance

Complaint

On October 7th Dean Scoufos informed me that Dr. Doug McMillan has decided to refuse to allow me to apply for tenure and promotion. Dr. McMillan's unprecedented action is not supported by policy, procedure, or practice. In fact, his act is so far removed from the normalcy of practice that it represents an alarming expansion of the power of the office of Interim Vice President of Academic Affairs and an unparalleled diminishing of the rights and responsibilities of tenure-track and tenured faculty at Southeastern.

Dr. McMillan's order is in violation of RUSO policy. RUSO specifically prohibits retaliation for filing a grievance or complaint (RUSO 5.6; 5.7).

Evidence

Dr. McMillan claims in his letter delivered to me October 7, 2010 (Exhibit A) that his unprecedented decision is based of his BELIEF that (1) alleged deficiencies in scholarship and service in my 2009-2010 application have not been remedied, (2) allowing my application to proceed would be a waste of the time of faculty and administration, and (3) that there would be an "inflammation" of relations between the administration and faculty.

However, he offers no evidence except his unwarranted opinion to support his belief.

In reference to the claim of alleged deficiencies in scholarship and service, I offer the following evidence. In Dr. McMillan's letter dated April 30, 2010 (Exhibit B), Dr. McMillan claims that the administration was unable to verify that I was a co-editor of two editions of the Native American Symposium *Proceedings*. My 2010-2011 application provides unequivocal testimony from the other editor, Dr. Mark Spencer, that I did indeed co-edit two editions of the *Proceedings*. In fact, I presently have eight articles accepted by peer-reviewed scholarly journals, three conference papers, edited two editions of the Native American Symposium *Proceedings*, and one chapter in an anthology of postcolonial literature to my credit. It is an empirical and uncontestable fact that my scholarly record significantly exceeds the scholarly record of other candidates who were granted tenure and promotion. In reference to service, of course I have another year of service to the university since my 2009-2010 application, but more importantly I have letters of reference from the Tenure and Promotion Committee (Exhibits C, D, E, and F) that recommended me for tenure and promotion in 2009-2010 specifying in detail my service and value to the university. In addition, I revised my 2010-2011 application to specifically detail my service. My additional service and the revision of my application should address any perceived or alleged deficiencies in regard to service. I call upon the Committee's knowledge of the tenure and promotion process to be cognizant of the fact that an alleged deficiency in service may simply be a matter of presentation.

In reference to Dr. McMillan's second rationale for prohibiting my 2010-2011 application moving forward, (2) allowing my application would be a waste of the time of faculty and administration. My initial reaction is that this is an example of an *argumentum ad ignorantiam*. One simply may not make a claim about something without looking at the evidence or consulting someone who is familiar with the evidence. Dr. McMillan has not viewed my 2010-2011 application or talked with anyone who has. This brings up another important

point. In our department the Chair reviews applications and advises candidates on whether or not, in their reasoned judgment, the application merits submitting to the Tenure and Promotion Committee. Our Chair, Dr. Prus, has already reviewed my 2010-2011 application and granted permission to proceed. Dr. Prus was as surprised as I was to discover Dr. McMillan's halting of the process, especially in view of the fact that Dr. McMillan made the decision without consulting him. As a matter of fact, a significant amount of time has already been invested in my 2010-2011 application by the faculty—as evidenced by the letters of recommendation for tenure and promotion by Drs. Allen, Cole, Parrish, and Spencer, as well as the review of my portfolio by the Chair of my department, Dr. Prus. Furthermore, reviewing applications for tenure and promotion is one of the responsibilities of the faculty and administration. Policy and procedure does not allow administrators to shun duties and responsibilities simply because they BELIEVE it may be a waste of time. I assure the Committee that my colleagues do not feel reviewing my application would be a waste of their time. Indeed, my respect for my colleagues is such that if they were to express an opinion that it would be a waste of their time to review my application—I would voluntarily halt the process myself.

In reference to the third point in Dr. McMillan's letter, (3) that allowing my application to proceed would result in an "inflammation" of relations between the administration and faculty. This claim contradicts Dr. McMillan's second (2) claim inasmuch as he assumes that the faculty Tenure and Promotion Committee will recommend me for tenure and promotion again and that the administration will reject their recommendation again. Dr. McMillan's assertion is troubling on many levels. For example, it demonstrates a conscious disingenuousness in reference to claims (1) and (2). The fact is, the tension between authoritarianism and participatory democracy (aka "shared governance") will be exacerbated, "inflamed," by the unprecedented act of arbitrarily and unilaterally suspending the right of tenure-track faculty to

address any alleged deficiencies in an application in a subsequent application for tenure and promotion within the time limits provided by RUSO 3.3.4. In addition, Dr. McMillan's newfound assertion of the power of the office of Interim Vice President of Academic Affairs to refuse to allow candidates to address alleged deficiencies effectively removes the purpose of the explanatory letter from the president, required by policy (*Policy and Procedures Manual 3.7.4*). Dr. McMillan's exercise of a new power by the office of Interim Vice President of Academic Affairs not only renders the president's explanatory letter meaningless, but arguably makes it an act of cruelty if it contains easily remedied technical deficiencies; such as letters from the Tenure and Promotion Committee justifying their decision to recommend a candidate for tenure and promotion, or readily obtainable documentation of accomplishments, while the same candidate is prohibited from offering a subsequent application that addresses the president's concerns. Furthermore, it is unjustifiably punitive to begin forbidding ensuing applications for tenure and promotion because the process has recently become adversarial instead of cooperative.

Finally, since the alleged rationales for deciding to halt my application are demonstrably spurious, one must wonder whether or not Dr. McMillan's decision is simply an act of retaliation for exercising rights afforded to the faculty and citizens. This semester I have exercised my rights as provided by the policy and law to file a grievance and complaint against Dr. McMillan. RUSO (5.6; 5.7) specifically prohibits retaliation for exercising my clearly delineated rights. It is important for the Committee to consider whether or not Dr. McMillan's unprecedented act will have a chilling effect on other faculty exercising their rights under policy and law. As a matter of fact, I consider this issue important enough by itself to warrant the Committee recommending Dr. McMillan rescind his decision.

Unfortunately, Dr. McMillan introduces a claim that is extraneous to the purpose of his letter--which is to prohibit the advancement of my application and provide the rationale for his action. I am referring to his assertion that an offer was made to me in April 2010 to renew my contract for the 2010-2011 year and to allow me to reapply for tenure and promotion in 2011-2012. I am uncertain why he would introduce this extraneous assertion into his letter except as an attempt to misrepresent me as being uncooperative and to present himself in a favorable light. However, there are significant factual errors in respect to his account of the purported offer. The offer he is referring to was proffered by Dean Scoufos under most peculiar circumstances. Dr. Mischo, who was the Chair of our department in 2009-2010, and I were called to Dean Scoufos' office in April 2010. Dean Scoufos said I may be allowed to reapply for tenure only (not promotion) in the 2010-2011 academic year if I withdrew my 2009-2010 application. She demanded an immediate decision. I asked for the offer in writing, and she refused. I asked what would be the requirements for the administration to approve a tenure only application, and she refused to discuss the specific requirements with me. When I asked for more time to consider the offer, she threatened to not renew my contract "for cause" for the 2010-2011 academic year (the date set by policy for non-renewal without cause had already passed). The offer, as described in the letter delivered to me October 7, 2010, purports to be one in which I am not allowed to apply for either tenure or promotion in the 2010-2011 academic year, but may apply for tenure and promotion in 2011-2012. This is patently false. (I welcome you to contact Dr. John Mischo in reference to the offer and the circumstances surrounding the offer to verify which account is accurate.) The offer, as described by Dr. McMillan, could not have been legitimately made because only the Board of Regents may approve the renewal of a tenure-track faculty member after seven years (RUSO 3.3.4; *Policy and Procedures Manual* 4.6.4). The 2011-2012 academic year would be my eighth year. Unless Dr.

McMillan had consulted and received approval from the Board of Regents, he did not have the authority to make such an offer. I simply could not accept as legitimate or bona fide an offer that Dr. McMillan refused to put in writing, especially under the unpleasant and threatening conditions in which it was made. Again, my apologies to the Committee for having to think about a matter that is entirely extraneous to issue at hand. Please do not allow it to distract you.

Relief

Civil society is dependent on a shared set of common expectations and values. One of the most important shared common values in a democratic society is that everyone is treated equally and given the same opportunities as other members of the community.

I am only asking that the Committee recommend that I be afforded the same opportunity as other members of our community. Preserving due process is the express commission of the Faculty Appellate Committee. As an institution of higher education, whose mission and responsibility is to promote a more equitable and just society, Southeastern has a duty to exemplify not only the letter of the law, but the spirit as well.

THEREFORE, I ask the committee to RECOMMEND that Dr. McMillan rescind his decision and allow my application for tenure and promotion to move forward.

Respectfully submitted,



Dr. Rachel Tudor

1 A "right" in a democratic society may be defined as a practice which is routine and expected. Indeed civil society depends upon members of society interacting with one another in predictable and equitable ways.

Exhibit A



OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 413
DURANT, OK 74701-060

MEMORANDUM

580-745-222
FAX 580-745-747
www.SE.ED

TO: Rachel Tudor
FROM: Douglas N. McMillan, *DNM*
Interim Vice President for Academic Affairs
RE: Application for Tenure and Promotion during the 2010-2011 Academic Year
DATE: October 5, 2010

I have been informed by the Dean of the School of Arts and Sciences that you plan to submit a portfolio for tenure and promotion again for this academic year of 2010-2011. You will recall that during the review of your 2009-2010 academic year application you were extended an offer which would have allowed you an additional year to strengthen your portfolio and hopefully obtain tenure and promotion. Pursuant to policy, academic year 2010-2011 is your seventh year of tenure probation and therefore your terminal year at Southeastern. In my letter of April 30, 2010 I outlined certain deficiencies in scholarly activity and service which needed correcting in your portfolio. You were offered the opportunity to teach at Southeastern during the 2010-2011 and 2011-2012 academic years and then reapply for tenure and promotion during the 2011-2012 academic year if you would withdraw your 2009-2010 application. This offer, in effect, would have given you two years to correct the deficiencies in scholarly activity and service, which were outlined in my letter to you on April 30, 2010. To my astonishment, you declined this offer. At the time the offer was made it was my opinion that one year was insufficient for correcting the deficiencies in your portfolio. This is still my opinion.

After reviewing the Academic Policy and Procedure Manual, I find no policy that allows for an application for tenure in a subsequent year after being denied tenure and promotion in the previous year. The policy states that an application for tenure may occur in the fifth, sixth or seventh year. I recognize that the policy does not proscribe a subsequent application, however, since there is no specific policy, which addresses this issue, I believe the administration is charged with the responsibility of making a decision which is in the best interests of the university. I believe that allowing you to reapply for tenure and promotion so soon after your most recent denial is not in the best interests of the university. This is especially true given the nature and extent of needed improvement and the short amount of time which has passed since the portfolio deficiencies were enumerated. It is my opinion that allowing you to reapply will be disruptive to the School of Arts and Sciences, create unnecessary work for both your department and the administration, and will potentially inflame the relationship between faculty and administration. It is my decision as acting chief academic officer that your application/request and portfolio will not be accepted for review for the 2010-2011 academic year.

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Exhibit B



OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 413
DURANT, OK 74701-0601

580-745-2221
FAX 580-745-7477
WWW.SE.ED

MEMORANDUM

TO: Dr. Rachel Tudor
FROM: Douglas N. McMillan, Ph.D. *[Signature]*
Interim Vice President of Academic Affairs
RE: Denial of Application for Tenure and Promotion
DATE: April 30, 2010

It is my understanding that you have been informed by President Minks of his decision to deny your request for tenure and promotion to associate professor. This authority to communicate the reasons for denial of tenure and promotion rests with the president as suggested in the Academic Policy and Procedures Manual Section 3.7.4. However, the President may delegate this authority under the RUSO Board Policy if he so desires. Dr. Minks has delegated the authority to me, as acting chief academic officer, to communicate the reasons for the denial of your application for tenure and promotion.

After careful review of your portfolio, it was determined that you do not currently meet the policy requirements for tenure and promotion in the areas of research/scholarship and contributions to the institution and/or profession. The Academic Policy and Procedures Manual stipulates that in order to be granted tenure and promotion your body of work in these areas should be both excellent and noteworthy.

An examination of the research/scholarship portion of your portfolio listed eight activities during your employment at Southeastern. These eight activities include two publications, one presentation at a regional symposium, one presentation at a local symposium, two editorships of the proceedings papers at a local symposium, and two "open-mic Chapbooks". The first three activities (the two publications and the presentation at the regional symposium) do appear to be examples of work which meet the excellent and noteworthy standard. However, the remaining activities fail to meet these standards. For example, the two Open-mic Chapbooks appear to be self-collected unpublished works which certainly do not reach the noteworthy and excellent standard. Additionally, in trying to verify your contribution as editor to the proceedings of the 2006 and the 2008 Native American Symposium, some confusing information was found. In fact, the link you provided to the 2006 symposium did not identify you as an editor and the link you provided for the 2008 symposium did not lead to any proceedings. Just as an aside, editing the proceedings at a local symposium does not meet an excellent and noteworthy accomplishment for a university faculty member. In summary, your efforts in scholarship and research

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appear to have yielded some appropriate work; however, the body of your work, since being employed at Southeastern, is either unverifiable or falls below the policy requirement for tenure and promotion.

The Academic Policy and Procedures Manual also requires that your service reach the noteworthy and excellent standard. A review of your university service reveals that since your employment at Southeastern began, until 2009 your service has primarily been limited to serving on internal departmental committees, such as, a program review committee, an assessment committee and a hiring committee, that clearly do not reach the policy requirement for tenure or promotion. In fact, out of eight activities you listed on your vita, four were internal departmental committees. Two of the remaining examples of service were not begun until 2009. This does not establish a record of service that is either noteworthy or excellent.

Subsequently, the reasons delineated in this memorandum formed the basis for the denial of your application for tenure and promotion.

Exhibit C

20 September 2010

Dear Tenure and Promotion Committee:

I am writing in support of Rachel Tudor's application for tenure and promotion to Associate Professor in the Department of English, Humanities, and Languages. I have known Dr. Tudor since 2004, and she has been an asset to the department of English, Humanities, and Languages, to our students, and to the greater Southeastern Oklahoma State University community. Dr. Tudor is sincerely and deeply interested in the success of our students, and she conscientiously makes every effort to determine how she can best serve the students while drawing their attention to the values and the conflicts that inform Western culture in general and American culture, in particular. As a specialist in Native American literature and culture within the context of American history and literature, and as a Native American herself, she is highly cognizant of the fraught situation that arises when Native American literature is taught as separate and distinct from American literature. She performs her culture's ethos by insightfully pointing to the disparities that exist between Native American and American culture; but she accomplishes this pointing in such a way that one is gently led both to understand the disparities and the idea that since these cultural differences are not necessary but chosen, different choices could be made.

Dr. Tudor's teaching is exemplary. She has been nominated in the past two consecutive years for the Faculty Senate Excellence in Teaching Award for the School of Arts and Sciences. The most recent departmental evaluation of Dr. Tudor's teaching supports those nominations and points, in particular, to the mindful way in which the class is taught and the emphasis that is placed on student success and how to achieve it in the given assignment--constructing PowerPoint slides for ancient humanities. In his assessment letter, a faculty observer positively notes the camaraderie between Dr. Tudor and her students and commends her for the careful way she places the day's work in the context of the course. Her teaching reflects the numerous courses she has taken in the Curriculum Instruction and Development in Technology at Southeastern to hone her skills in creating hybrid courses that draw upon online and in-class activities. She has also participated in numerous leadership development courses and assisted in student crisis interventions.

In terms of curriculum, Dr. Tudor has constructed several new courses for the department including one on Great Books, which she suggested in response to a student survey of desired departmental changes. She also devised the course on Native American literature and worked in tandem with the renowned Native American scholar, Rennard Strickland, who taught a course on our campus at the invitation of OSLEP, or the Oklahoma Scholar-Leadership and Enrichment Program, after Dr. Tudor suggested to me that he would be a

good speaker for OSLEP to consider. As the OSLEP representative on our campus at the time, I took her suggestion to OSLEP and they immediately tendered the invitation to Dr. Strickland to be the OSLEP guest lecturer at Southeastern in 2007, the first OSLEP speaker at Southeastern since the 1990's.

The OSLEP program requires that there be a campus coordinator to work with the visiting scholar to help devise the course and assess student involvement. Dr. Tudor took on this task and executed it successfully. Dr. Strickland then became the keynote speaker at Southeastern's biennial Native American Symposium for 2007, a conference that Dr. Tudor helped to coordinate as a member of the Native American Symposium Committee.

As the narrative of Dr. Tudor's experience with the OSLEP program suggests, her service has been an asset to a community far wider than that of Southeastern alone. By serving on the Native American Symposium committee since 2004 and by making suggestions in terms of theme and speaker more than once, Dr. Tudor has served the greater Southeastern community as well. In 2005 she suggested that the topic be "Native Women in the Arts, Education, and Leadership" and was a key player in seeing to it that Native American radio host Jacqueline Battiste attended the 2005 symposium.

Since 2009, Dr. Tudor has also served as a Faculty Senator, elected by the faculty at large. She has served as Chair of the Assessment, Planning, and Development Committee, the most innovative committee of the English, Humanities, and Languages Department. She has also served on hiring committees and on the Five-Year Program Review Committee that I chaired, in which she made a very valuable written contribution that thoughtfully articulated the teaching mission of the department.

It is perhaps in the area of scholarship in which Dr. Tudor has made a great breakthrough in the year 2010. While she has co-edited the Native American Conference proceedings on two occasions and has had articles accepted for publication before this year, 2010 has been a banner year for numerous publications in a broad array of venues that range from regional publications, to Native American collections, to philosophy journals, all indicative of Dr. Tudor's interest in Native American studies, American literature, humanities, and philosophy. In addition to her teaching, service, and scholarship in the world of academia, Dr. Tudor is also an accomplished artist and poet.

Dr. Tudor's passion for teaching and her commitment to her students' success are matched by the high expectations she has for her own scholarship and university service. She will be a thoughtful contributor to any department that is fortunate enough to hire her. If you have any questions or concerns, I would be happy to visit by phone or email.

Sincerely,

Lisa L. Coleman, Ph.D.
Honors Program Director
Professor of English

Exhibit D



DEPARTMENT OF ENGLISH, HUMANITIES, & LANGUAGES

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4127
DURANT, OK 74701-0605

580-745-2060
FAX 580-745-7400
WWW.SE.EDU

September 10, 2010

To Whom It May Concern:

Dr. Rachel Tudor has asked me to write a recommendation letter in support of her application for tenure and promotion, which I am very pleased to do. I have known and worked with Rachel for the past six years since she joined our department here at Southeastern, and I have always considered her an exceptionally valuable asset. Indeed, I was on the committee that originally selected her application from among the many we received and voted to hire her.

Although she made a bit of a slow start, Rachel has recently become one of our most active scholars, with six articles either published or accepted for publication in peer-reviewed journals over the last two years. Her primary emphasis has been on the Native American novel, to which she brings a thoroughly informed and nuanced theoretical perspective, situating it firmly within wider international contexts, such as Latin American magic realism and Euro-American postmodernism. Her achievement in this area is truly impressive and outstanding.

As a teacher, my impression of Rachel is equally laudatory. I know she is always exhaustively prepared for her classes, and projects a demeanor of quiet authority and assured professionalism. Above all, she is interested in challenging the students, many of whom come from a very narrow and limited rural background, with alternative and diverse perspectives on a host of contemporary issues. Several have expressed to me how she convinced them to view matters quite differently than they did before taking her class, and always in the direction of greater tolerance and understanding for those unlike ourselves. On this front alone she makes a major contribution to our department.

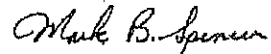
Finally, Rachel has also established an solid service record. She is in her second year as a member of the Southeastern Faculty Senate, and before that she served for three years as chair of our Assessment, Planning, and Development Committee, compiling and writing the annual assessment report. This is by far the most important departmental committee, as it oversees all aspects of curriculum development and assessment, potentially charting the course for years to come. In addition, Rachel has been one of the key members of the Native American Symposium Committee, which I chair, helping to

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

plan and stage the event every other year. For the 2005 and 2007 symposia, Rachel further served as co-editor with me of the published proceedings, reading and commenting on all the papers submitted, and joining in the selection of those to include.

In short, I can recommend Rachel most highly in all three dimensions of academic performance: scholarship, teaching, and service. I firmly believe she is more than deserving of tenure and promotion at this time.

Sincerely,

A handwritten signature in cursive script that reads "Mark B. Spencer".

Mark B. Spencer
Associate Professor of English and Humanities

Exhibit E

SOUTHEASTERN
A CENTURY OF BUILDING FUTURES

September 17, 2010

To whom it may concern:

I am writing to recommend Dr. Rachel Tudor for Tenure and Promotion to Associate Professor within the Department of English, Humanities, and Languages.

I have known Dr. Tudor since her interview and hire. I came to realize her intense interest in teaching, her impressive knowledge in the several fields of English studies, including Native American studies, and her conscientious endeavors (and resulting successes) in teaching those subjects. One of Dr. Tudor's peer teaching observation letters notes that her classroom planning and practices reflect that, as an instructor, she is "knowledgeable, respectful, humorous, helpful, thoroughly prepared, and technologically proficient." Dr. Tudor spends considerable time in the design and implementation of the courses she teaches and maintains high standards for her students in academic achievement.

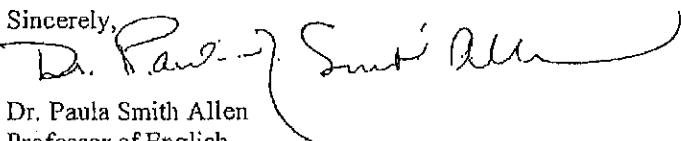
Dr. Tudor's academic/scholarly record is impressive as well. Beside the academic record that she carried when she came to Southeastern, she has recently presented at least one conference and has had a paper accepted at another. She likewise has had several articles accepted for publication recently by journals well respected in our field. Dr. Tudor also is a creative writer, collecting her poetry and other personal writing in several chapbooks.

As a colleague, Dr. Tudor endeavors to carry (at least) her share of the workload within the department. I recall that, while still a relative newcomer within the EHL Department, Dr. Tudor led an assessment effort by the department with alacrity and foresight over a several-year period. She participates on committees and participates actively in planning and assessment. She works effectively with both faculty and staff members, and her demeanor is always professional regardless of the circumstances.

I have the advantage of having the office next to Dr. Tudor's, which I believe gives me some insight into the efforts she makes toward these different duties and endeavors. Though Dr. Tudor has a very quiet demeanor, she is generally hard at work in her office when I come in every morning, no matter how early I arrive. She is often still working in the late afternoon and evening.

I find Dr. Tudor to be a likeable, responsible, and a professional colleague in all respects pertinent to professional life within the University community, and I hope that the University will recognize and acknowledge Dr. Tudor's efforts and worthiness through the Tenure and Promotion process.

Sincerely,


Dr. Paula Smith Allen
Professor of English

DEPARTMENT OF ENGLISH, HUMANITIES & LANGUAGES
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4127 • DURANT, OK 74701-0609 • 580-745-2066 • FAX 580-745-7406 • WWW.SE.EDU

Exhibit F



DEPARTMENT OF ENGLISH, HUMANITIES, & LANGUAGES

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4127
DURANT, OK 74701-0609

September 27, 2010

580-745-2066
FAX 580-745-7406
www.SE.EDU

Dear Tenure and Promotion Committee,

I am writing this letter to recommend Dr. Rachel Tudor for tenure and for promotion to Associate Professor. Since August 2004, Dr. Tudor has been a valuable asset to Southeastern Oklahoma State University, to the English, Humanities, and Languages Department (EHL), and to the students.

Dr. Tudor's scholarship interests are rich and varied with seven articles accepted for publication in prestigious journals for the year 2010 as well as publications from previous years of research, including the year 2009. In addition, Dr. Tudor has been invited to present her work at a variety of conferences and symposiums.

In regards to service, Dr. Tudor has been instrumental in the preparation of assessment documents and has participated in work on other committees for the EHL Department. She is a vital member of the department through her service, astute thinking, contributions, and collegiality. However, Dr. Tudor's service extends beyond the department as she currently serves on the Faculty Senate, has served and participated in the Oklahoma Scholar Leadership Enrichment Program (OSLEP), and has been a tireless supporter, worker, and committee member for the Native American Symposium.

Dr. Tudor's teaching is quite effective with solid student evaluations and with two nominations (2008 and 2009) for the SOSU Faculty Senate Teaching Award. In addition, and quite significantly, students benefit from Dr. Tudor's interests, scholarship, and expertise via the variety of courses she teaches for the EHL Department.

As a Native American and as a specialist in Native American culture, history, and literature, Dr. Tudor brings the richness of diversity through her heritage and through her scholarship to Southeastern Oklahoma State University; to the English, Humanities, and Languages Department; to the courses she currently teaches of composition, humanities, literature, and philosophy; and, most importantly, to the students.

As a fellow faculty member and co-worker, I appreciate the opportunity to work with such a fine scholar and educator. Thank you for the opportunity to recommend Dr. Rachel Tudor for tenure and for promotion to Associate Professor.

Sincerely,

Virginia A. Parrish, Ph.D.
Associate Professor
English, Humanities, & Languages Department
PMB 4234
Southeastern Oklahoma State University
Durant, Oklahoma 74710
Office phone: 580.745.2594
E-mail: vparrish@se.edu

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

Exhibit 45



Notice of Appeal

To: President Larry Minks

From: Dr. Rachel Tudor

Re: Promotion and Tenure

Date: February 26, 2010



FILE COPY

Dear President Minks:

I request a hearing before the Faculty Appellate Committee to review my application for promotion and tenure. In accord with SE's goal of promoting faculty development and retention and in agreement with SE's principles of shared governance, I believe Dr. Scoufos and Dr. McMillan should provide their rationales for not supporting the recommendation of EHL's Promotion and Tenure Review Committee for my tenure and promotion. This information is important in order for faculty to understand their criteria and in what ways their criteria differs from our own. I would like to call the Faculty Appellate Committee's attention specifically to the following section of the Academic Policies and Procedures manual:

3.7.4 Role of the Faculty

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely

DEPARTMENT OF ENGLISH, HUMANITIES & LANGUAGES
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only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

Faculty status and related matters are primarily faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues: in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The Faculty Appellate Committee's commission authorizes them to investigate and recommend action in reference to "due process". Due process is not merely a technical concept assuring that every "i" is dotted and every "t" is crossed, but a promise that insures policy is practiced in good faith. Due process is practice that promotes confidence among faculty in administration and provides vital and timely feedback to promotion and tenure committees, department chairs, and candidates in order that all parties may actively participate and be partners in a process vital to the health and well-being of the university. In this instance, Dr. Scoufos and Dr. McMillan did not provide an explanation of their

respective rationales for finding my case a "rare instance" or identify any "compelling reasons" for disagreeing with the conscientious, deliberative decision of senior, experienced faculty in the English, Humanities, and Languages department.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rachel Tudor", with a long horizontal flourish extending to the right.

Dr. Rachel Tudor

Department of English, Humanities & Languages
PMB 4036
rtudor@se.edu
580-745-2588

cc: Dr. Douglas McMillan

Exhibit 46



TO: Dr. Weiner

FROM: Dr. James Knapp (chair of committee), Dr. Larry Prather, Dr. Jon Reid

DATE: March 25, 2010

RE: Appeal of Dr. Rachel Tudor

On February 26, 2010, Dr. Rachel Tudor issued a formal request to President Larry Minks for a hearing before the Faculty Appellate Committee (FAC). The basis of Dr. Tudor's appeal is that due process has not been followed in regard to her application for promotion and tenure. Specifically, Dr. Tudor is asserting that Dr. Scoufos (Dean of the School of Arts and Sciences) and Dr. McMillan (Interim Vice-President for Academic Affairs) have declined her request for promotion and tenure without providing a detailed explanation of their rationale despite the fact that the English, Humanities, and Languages Promotion and Tenure Review Committee voted to approve her application.

Three members of the FAC (Dr. James Knapp, Dr. Larry Prather, and Dr. Jon Reid) met on Monday, March 22, 2010 to consider the appeal of Dr. Tudor. The FAC supports Dr. Tudor's position that due process has not been followed based on section 3.7.4 of the Policies and Procedures manual of Southeastern Oklahoma State University. In particular, the FAC has referred to the following portion of section 3.7.4:

"The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which **should be stated in detail**" (emphasis added by Dr. Knapp).

It is the recommendation of the FAC that both Dr. Scoufos and Dr. McMillan provide a detailed, written explanation that clearly delineates the factors that have led to their decision to decline Dr. Tudor's application for promotion and tenure.

Exhibit 47



Complaint

To: Dr. Claire Stubblefield, Special Assistant to the President/Director of Institutional Diversity & Affirmative Action Officer

From: Dr. Rachel Tudor, Department of English Languages & Humanities

Re: Discrimination in Promotion and Tenure

Cc: Dr. Randy Prus, Chair, Dept of English, Humanities & Languages

Date: 30 August 2010

According to the Regional University System of Oklahoma (RUSO) 5.2 (a) all persons should be given "equal opportunity for employment and advancement in employment regardless of race, religion, disability, color, ethnicity, national origin, sex, age, political affiliation, or status as a veteran." It is the responsibility of the Affirmative Action Officer of each university to ensure compliance with the policy and to ensure that each institution meets its (b) "responsibilities under the Civil Rights Act of 1964; commitments as a federal contractor under Executive Order 11246 and Executive Order 11375; and Oklahoma State Regents for Higher Education policies." It is my duty to inform you, as Southeastern's Affirmative Action Officer, of egregious breaches of policy and law in reference to discrimination in promotion and tenure. Following is a brief synopsis of the pertinent dates, events, and personnel involved in violating my rights under policy and law:

I was recommended for tenure and promotion by my department's Faculty Tenure and Promotion Committee in the Fall of 2009. Subsequently, Dean Scoufos and Interim Vice President for Academic Affairs McMillan denied my application for tenure and promotion. Dean Scoufos steadfastly refused to disclose her reasons for not supporting the recommendation of EHL's Tenure and Promotion Committee (Exhibit A). Dr. McMillan not only refused to disclose his reasons, he also refused to even meet with me

(Exhibit B). I appealed to the Faculty Appellate Committee to review their behavior as inconsistent with Southeastern's policy and practice (Exhibit C). The Faculty Appellate Committee supported my point of view and issued a recommendation that Dean Scoufos and Dr. McMillan explain the rationales for their decisions. However, instead of respecting the common sense approach recommended by the Faculty Appellate Committee and honoring their wisdom, they contacted legal counsel and requested a legalistic legerdemain to avoid extending to me the same spirit of cooperation and collegiality that was recently freely extended to a white male candidate for tenure and promotion in my department (Exhibit D, para 3). At this point, I need to call your attention to Dr. Charles Weiner's (Assistant Vice President for Academic Affairs) role in events. The Faculty Appellate Committee met and rendered a judgment in my favor on March 22nd, however Dr. Weiner did not inform me of the Committee's decision until April 29th (Exhibit D, see date). Policy states unequivocally that I have the right to be informed of the Committee's decision within ten days of the rendering of a verdict. It is not only inexcusable that Dr. Weiner waited five weeks to inform me of the Committee's decision, but his deliberate delay in violation of policy is evidence of collaboration between parties in the administration to delay and hinder my rights to due process and equal treatment. As a matter of fact, before I was informed of the Committee's decision the most egregious breach of my right to due process and equal opportunity for advancement in employment occurred. On April 6th I was summoned to Dean Scoufos' office. Dean Scoufos demanded that I immediately withdraw my application for tenure and promotion. When I asked for some time to think about it, she said that if I did not immediately withdraw my application, I would not be allowed to reapply in academic year 2010-2011. I mentioned that policy states tenure-track faculty have six years to apply for tenure, and I was only in my fifth year. She responded that the policy simply says tenure-track faculty "may" apply, it does not say that tenure-track faculty "must" be allowed to apply. When I did not immediately fold, she said, "You may think you are safe because the date for non-renewal of your contract without cause has passed, but you may still be non-renewed with cause if you don't withdraw

your application," I asked her if she was speaking on her own authority or on behalf of Dr. McMillan. Dean Scoufos said that she was speaking on behalf of Dr. McMillan and President Minks. She said that they had met and decided to demand that I withdraw my application and to inform me of the consequences of refusing to comply with their demand. Although I was taken aback by the threats, I placed my faith in my colleagues' judgment, both the Faculty Tenure and Promotion Committee and the Faculty Appellate Committee, and refused to withdraw my application. To me, withdrawing my application would indicate that I was rejecting the good judgment of my colleagues in my department and did not have faith in the sound judgment of my colleagues in the Faculty Senate as well as surrendering to odious bullying. These events seem incredible, but Dr. John Milscho (Chair of English, Humanities, & Languages) was a witness to the meeting with Dean Scoufos and her attempts to coerce me into withdrawing my application. On April 21st President Minks denied my application for tenure and promotion. On April 29th Dr. Weiner informed me of the Faculty Appellate Committee's recommendation and of the administration's decision not to respect its judgment (Exhibit D). On April 30th Dr. McMillan composed a letter (in response to the Faculty Appellate Committee's recommendation) stating President Minks' reasons for denying my application (Exhibit E). And, here is where another egregious violation of my rights to due process and equal rights occurs, Dr. McMillan fails to mail the letter to me until June 9th (Exhibit F), almost six weeks later. Taken individually, any one of these events evidence a hostile attitude arising from discrimination; taken collectively, they demonstrate a pattern of calculated adversarial behavior intended to thwart my equal opportunity to advancement in employment—an opportunity protected by policy and law. As a matter of fact, the actions documented are in contradistinction to RUSO Affirmative Action policy 5.2 (c) "to reach out to all persons, including women and racial minority members, in recruitment, placement, development and advancement." Instead of reaching out to me, I was stonewalled, threatened, and denied timely access to vital information at every step of the process. Finally, note should be made of the purported reasons

for President Minks denying my application (Exhibit E). President Minks' letter does not indicate any "compelling reason or exceptional case" for overruling the Faculty Tenure and Promotion Committee's judgment as required by policy. Policy states explicitly that faculty are the best judges of what constitutes substantive and meritorious contributions in their area of expertise—policy specifically eschews the type of second guessing and micromanaging described in the letter (*Policy and Procedures* 3.7.4 Role of the Faculty). As indicated by the minutes cited in his letter, President Minks clearly usurped the rights and responsibilities of the Faculty Tenure and Promotion Committee as well as undermined the principles of shared governance defined in the *Policy and Procedures Manual*. Omitted from mention in his letter are many significant contributions I have made to the university, such as designing and co-teaching a course on Native American history, literature, and law under the auspices of OSLEP (Oklahoma Scholar Leadership Enrichment Program). Most telling is his attitude toward any activities and contributions with respect to Native Americans. For example, President Minks minimizes not only my contributions to the Native American Symposium but demeans the Symposium itself. In his letter, he slights contributions that are culturally specific and valuable to Native Americans, such as preserving the oral tradition of Native American poetry. It must be noted that the Faculty Tenure and Review Committee was able to evaluate the chapbooks containing my poetry—assessment of the quality of literature is an area of expertise President Minks and Dr. McMillan lack the background and education to perform—nevertheless, President Minks and Dr. McMillan dismiss the texts and the expert judgment of the English faculty without even reading the texts or consulting the faculty as to the merits of the work. Likewise, President Minks summarily dismisses my presentation at the Native American Symposium, without so much as reading the text of my presentation in order to assess its merits, as being neither "noteworthy nor excellent" simply because it was presented at the Symposium instead of another, presumably more respectable, venue. In addition, President Minks likewise dismisses the *Proceedings* of the Native American Symposium. Astonishingly, President Minks apparently has never so

much as viewed a copy of the *Proceedings* since he repeatedly affirms in his letter that he was unable to verify that I was an editor of two editions of the Journal. If he had glanced at the cover of the *Proceedings*, he would have seen my name prominently displayed in bold print on the cover, along with Dr. Spencer, as an editor (Exhibit G). Copies of the *Proceedings* are readily available in Southeastern's Native American reading room. Of course, if President Minks (or any of the administrators who were unable to verify that I was an editor of two editions of the *Proceedings*) truly valued the Native American Symposium, then surely copies of the *Proceedings* of the Symposium would be readily accessible in his personal library. It was distressing to discover in President Minks' letter how little regard the administration has for the dedicated effort and sacrifice of all those at Southeastern who make the Native American Symposium possible as well as the low regard the administration has for the contributions of the participants—many of whom travel great distances at their own expense simply because they consider the Native American Symposium a "noteworthy and excellent" event. In re-reading President Minks' letter, I continue to be startled by the callousness with which he dismisses all things Native American. The lack of cultural appreciation is made more troubling by the fact that the letter was composed by another administrator, Dr. McMillan, who is clearly as dismissive of the value of Native American contributions to Southeastern as President Minks.

In conclusion, please note how different the experience of applying for tenure was for a white man in my department, Dr. Mark Spencer. The university president (who was Dr. Jesse Snowden) and interim Vice President for Academic Affairs Doug McMillan repeatedly met with Dr. Spencer, went over his tenure portfolio, instructed him how to revise it, invited him to provide supplemental material which included articles that he had submitted or planned to submit for publication, and allowed him to fully explain and discuss his contributions to the university as well as providing him ample opportunity to proffer any "verification" required. Dr. Spencer received not only cooperation but a welcoming hand, guidance, and support to shepherd him through, what in the best of times is, a path wrought with

anxiety. I do not resent Dr. Spencer's treatment, but affirm his experience as exemplary of the type of cooperation and collegiality between administration and faculty that characterizes a healthy university. With Dr. Spencer's experience as an exemplar, the question must be asked: why did the administration cooperate with and facilitate the tenure and promotion of a white man while adopting an adversarial and hostile demeanor toward a Native American woman? I deserve an answer to that question; but, more importantly, law and justice demands it.

Signed,

Dr. Rachel Tudor

Dept of English, Humanities & Languages
1405 N 4th Ave, PMB 4036
Durant, OK 74701
580.745.2588
rtudor@se.edu

EXHIBIT A

Dr. Lucretia Scoufos:

In accord with SE's goal of promoting faculty development and in agreement with SE's principles of shared governance, would you explain your rationale for not supporting the recommendation of EHL's Tenure and Review Committee for my tenure and promotion. This information is important in order for faculty to understand your criteria and in what ways your criteria differs from our own. I would like to call your attention specifically to the following section of the Academic Policies and Procedures manual:

3.7.4 Role of the Faculty

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

Faculty status and related matters are primarily faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissals. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or faculty have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments.

Likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

Your cooperation and assistance will be appreciated.

Sincerely,

Dr. Rachel Tudor

EXHIBIT B

Dr. Douglas McMillan:

In accord with SE's goal of promoting faculty development and retention and in agreement with SE's principles of shared governance, please explain your rationale for not supporting the recommendation of EHL's Tenure and Review Committee for my tenure and promotion. This information is important in order for faculty to understand your criteria and in what ways your criteria differs from our own. I would like to call your attention specifically to the following section of the Academic Policies and Procedures manual:

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competence. It is implicit that responsibility exists for both adverse and favorable judgments. Likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

Your cooperation and assistance are appreciated.

Sincerely,

Dr. Rachel Tudor

EXHIBIT C



Notice of Appeal

To: President Larry Minks

From: Dr. Rachel Tudor

Re: Promotion and Tenure

Date: February 26, 2010

Dear President Minks:

I request a hearing before the Faculty Appellate Committee to review my application for promotion and tenure. In accord with SE's goal of promoting faculty development and retention and in agreement with SE's principles of shared governance, I believe Dr. Scoufos and Dr. McMillan should provide their rationales for not supporting the recommendation of EHL's Promotion and Tenure Review Committee for my tenure and promotion. This information is important in order for faculty to understand their criteria and in what ways their criteria differs from our own. I would like to call the Faculty Appellate Committee's attention specifically to the following section of the Academic Policies and Procedures manual:

3.7.4 Role of the Faculty

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DEPARTMENT OF ENGLISH, HUMANITIES & LANGUAGES
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

Faculty status and related matters are primarily faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues: in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The Faculty Appellate Committee's commission authorizes them to investigate and recommend action in reference to "due process". Due process is not merely a technical concept assuring that every "i" is dotted and every "t" is crossed, but a promise that insures policy is practiced in good faith. Due process is practice that promotes confidence among faculty in administration and provides vital and timely feedback to promotion and tenure committees, department chairs, and candidates in order that all parties may actively participate and be partners in a process vital to the health and well-being of the university. In this instance, Dr. Scoufos and Dr. McMillan did not provide an explanation of their

respective rationales for finding my case a "rare instance" or identify any "compelling reasons" for disagreeing with the conscientious, deliberative decision of senior, experienced faculty in the English, Humanities, and Languages department.

Sincerely,



Dr. Rachel Tudor

Department of English, Humanities & Languages
PMB 4036
rtudor@se.edu
580-745-2588

cc: Dr. Douglas McMillan

EXHIBIT D

OFFICE OF ACADEMIC AFFAIR



SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 413
DURANT, OK 74701-066

580-745-222
FAX 580-745-745
WWW.SE.EDU

April 29, 2010

Dr. Rachel Tudor
Assistant Professor of English
Department of English, Humanities
and Languages

Dr. Tudor:

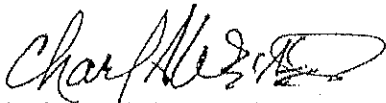
You recently received from President Minks a letter informing you that your request for tenure and promotion was denied. In President Minks' letter he formally instructs Dr. McMillan to provide you with the reason(s) as to why tenure and promotion were denied.

As my email of March 31, 2010, indicated, the Faculty Appellate Committee did meet and rendered a decision in regard to your appeal. Upon examination of the facts as presented the Faculty Appellate Committee recommended that your request for a detailed written explanation that clearly delineates the factors that led to Dr. Scoufos and Dr. McMillan decision to deny tenure and promotion be provided; however, it needs to be pointed out that there is no policy that stipulates that the Vice President and/or the Dean is compelled to provide reasons as to why tenure and promotion were denied. The President's authority, as delegated to him from the RUSO Board of Regents, is clearly spelled out in section 3.7.3 in the Policies and Procedures Manual. This section, and I quote, states that it is: "the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice."

I also took the additional step of consulting with the University's legal counsel in regard to this issue. He reviewed all the pertinent facts and also noted that in section 3.7.4 there is no requirement for anyone, including the President, to state their reasons if their recommendation is different than the recommendation of the Department Tenure and Promotion Committee. The policy only suggests that after the President makes his decision, if different than the recommendation of the Committee, he should state the reasons. Despite not being required to state his reasons, in this case the President has instructed Dr. McMillan to provide you with the information you requested. Dr. Minks' decision, in my view, moots your appeal and has brought this process to an end.

In accordance with section 4.4.6 in the Academic Policies and Procedures Manual you do have the right to appeal this decision to the President of the University. You will have 10 workdays from April 29, 2010, in which to do so. If no appeal is delivered to the President within the 10 workday period, the case is considered closed.

Respectfully,



Charles S. Weiner, Ed.D.
Assistant Vice President for Academic Affairs

pc: President Larry Minks
Interim Vice President Douglas McMillan
Dean Lucretia Scoufos



EXHIBIT E
OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4
DURANT, OK 74701-C

580-745-2
FAX 580-745-7
www.SE

MEMORANDUM

TO: Dr. Rachel Tudor
FROM: Douglas N. McMillan, Ph.D. *DM*
Interim Vice President of Academic Affairs
RE: Denial of Application for Tenure and Promotion
DATE: April 30, 2010

It is my understanding that you have been informed by President Minks of his decision to deny your request for tenure and promotion to associate professor. This authority to communicate the reasons for denial of tenure and promotion rests with the president as suggested in the Academic Policy and Procedures Manual Section 3.7.4. However, the President may delegate this authority under the RUSO Board Policy if he so desires. Dr. Minks has delegated the authority to me, as acting chief academic officer, to communicate the reasons for the denial of your application for tenure and promotion.

After careful review of your portfolio, it was determined that you do not currently meet the policy requirements for tenure and promotion in the areas of research/scholarship and contributions to the institution and/or profession. The Academic Policy and Procedures Manual stipulates that in order to be granted tenure and promotion your body of work in these areas should be both excellent and noteworthy.

An examination of the research/scholarship portion of your portfolio listed eight activities during your employment at Southeastern. These eight activities include two publications, one presentation at a regional symposium, one presentation at a local symposium, two editorships of the proceedings papers at a local symposium, and two "open-mic Chapbooks". The first three activities (the two publications and the presentation at the regional symposium) do appear to be examples of work which meet the excellent and noteworthy standard. However, the remaining activities fail to meet these standards. For example, the two Open-mic Chapbooks appear to be self-collected unpublished works which certainly do not reach the noteworthy and excellent standard. Additionally, in trying to verify your contribution as editor to the proceedings of the 2006 and the 2008 Native American Symposium, some confusing information was found. In fact, the link you provided to the 2006 symposium did not identify you as an editor and the link you provided for the 2008 symposium did not lead to any proceedings. Just as an aside, editing the proceedings at a local symposium does not meet an excellent and noteworthy accomplishment for a university faculty member. In summary, your efforts in scholarship and research

appear to have yielded some appropriate work; however, the body of your work, since being employed at Southeastern, is either unverifiable or falls below the policy requirement for tenure and promotion.

The Academic Policy and Procedures Manual also requires that your service reach the noteworthy and excellent standard. A review of your university service reveals that since your employment at Southeastern began, until 2009 your service has primarily been limited to serving on internal departmental committees, such as, a program review committee, an assessment committee and a hiring committee, that clearly do not reach the policy requirement for tenure or promotion. In fact, out of eight activities you listed on your vita, four were internal departmental committees. Two of the remaining examples of service were not begun until 2009. This does not establish a record of service that is either noteworthy or excellent.

Subsequently, the reasons delineated in this memorandum formed the basis for the denial of your application for tenure and promotion.

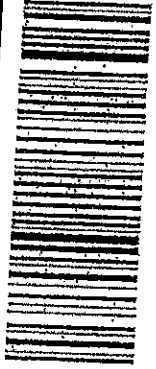
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OFFICE OF ACADEMIC AFFAIRS
1405 N. FOURTH AVE., PMB 4157
DURANT, OK 74701-0689

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OF THE ADDRESS. FOLD AT DOTTED LINE.
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PRINTED ABOVE
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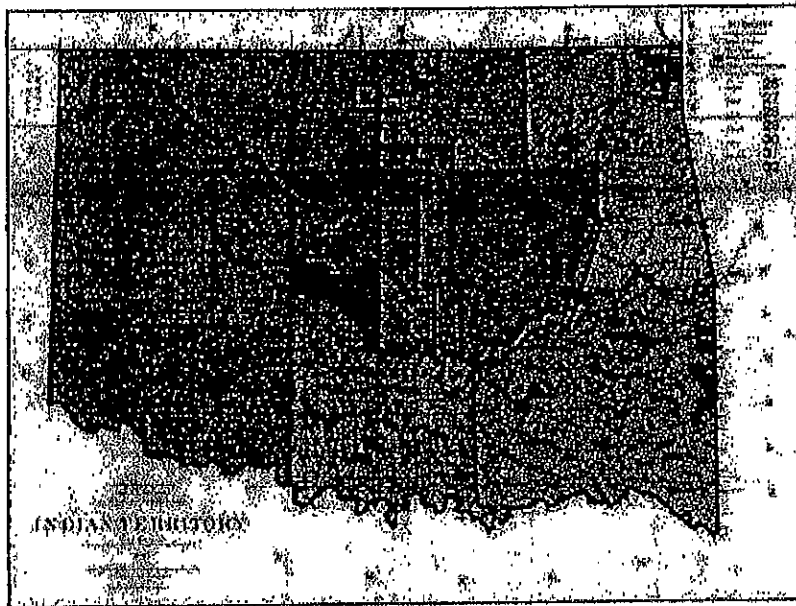
7007 2560 0002 0341 0265

Dr. Rachel Tudor
1124 N. 10th
Durant, OK 74701

OAG/DLC/USA v. SOSU - CIV-15-324/005187

EXHIBIT 9

Sixty-Seven Nations and Counting



NA
305.897
N2.I.N
7th Symp.

Proceedings of the Seventh Native American Symposium Southeastern Oklahoma State University

Edited by Mark B. Spencer and Rachel Tudor

Exhibit 48



COPY

RECEIVED

SEP 21 2010

CONFIDENTIAL

Dean's Office
School of Arts & Sciences Grievance

RECEIVED

AUG 30 2010

President's Office

To: President Larry Minks

From: Dr. Rachel Tudor, Department of English Languages & Humanities

Re: Improprieties and Due Process Policy Violations by Administrators in Tenure and Promotion Process

Cc: Dr. Randy Prus, Chair, Dept of English, Humanities & Languages

Date: 30 August 2010

I request a hearing before the Faculty Appellate Committee to review egregious improprieties and substantive violations of due process by the administration during its review of my application for tenure and promotion in 2009-2010. I also request that you appoint a designee to notify the Faculty Appellate Committee of my grievance since the Vice President of Academic Affairs, Dr. McMillan, is one of the administrators cited in my grievance. In support of my grievance, I offer the following evidence:

I was recommended for tenure and promotion by my department's Faculty Tenure and Promotion Committee in the Fall of 2009. Subsequently, Dean Scoufos and Interim Vice President for Academic Affairs McMillan denied my application for tenure and promotion. Dean Scoufos steadfastly refused to disclose her reasons for not supporting the recommendation of BHL's Tenure and Promotion Committee (Exhibit A). Dr. McMillan not only refused to disclose his reasons, he also refused to even meet with me (Exhibit B). I appealed to the Faculty Appellate Committee to review their behavior as inconsistent with Southeastern's policy and practice (Exhibit C). The Faculty Appellate Committee supported my point of view and issued a recommendation that Dean Scoufos and Dr. McMillan explain the rationales for their decisions. However, instead of respecting the common sense approach recommended by the Faculty Appellate Committee and honoring their wisdom, they contacted legal counsel and requested a legalistic legerdemain to avoid extending to me the same spirit of cooperation and collegiality that was recently freely extended to another candidate for tenure and promotion in my department (Exhibit D, para 3). At

this point, I need to call your attention to Dr. Charles Weiner's (Assistant Vice President for Academic Affairs) role in events. The Faculty Appellate Committee met and rendered a judgment in my favor on March 22nd, however Dr. Weiner did not inform me of the Committee's decision until April 29th (Exhibit D, see date). Policy states unequivocally that I have the right to be informed of the Committee's decision within ten days of the rendering of a verdict. It is not only inexcusable that Dr. Weiner waited five weeks to inform me of the Committee's decision, but his deliberate delay in violation of policy is evidence of collaboration between parties in the administration to delay and hinder my rights to due process and equal treatment. As a matter of fact, before I was informed of the Committee's decision the most egregious breach of my right to due process and equal opportunity for advancement in employment occurred. On April 6th I was summoned to Dean Scoufos' office. Dean Scoufos demanded that I immediately withdraw my application for tenure and promotion. When I asked for some time to think about it, she said that if I did not immediately withdraw my application, I would not be allowed to reapply in academic year 2010-2011. I mentioned that policy states tenure-track faculty have six years to apply for tenure, and I was only in my fifth year. She responded that the policy simply says tenure-track faculty "may" apply, it does not say that tenure-track faculty "must" be allowed to apply. When I did not immediately fold, she said, "You may think you are safe because the date for non-renewal of your contract without cause has passed, but you may still be non-renewed with cause if you don't withdraw your application." I asked her if she was speaking on her own authority or on behalf of Dr. McMillan. Dean Scoufos said that she was speaking on behalf of Dr. McMillan and President Minks. She said that they had met and decided to demand that I withdraw my application and to inform me of the consequences of refusing to comply with their demand. Although I was taken aback by the threats, I placed my faith in my colleagues' judgment, both the Faculty Tenure and Promotion Committee and the Faculty Appellate Committee, and refused to withdraw my application. To me, withdrawing my application would indicate that I was rejecting the good judgment of my colleagues in my department and did not have faith in the sound judgment of my colleagues in the Faculty Senate as well as surrendering to odious bullying. These events seem incredible, but Dr. John Mischo (Chair of English, Humanities, & Languages) was a witness to the meeting with Dean Scoufos

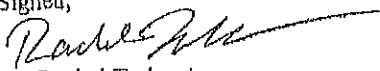
and her attempts to coerce me into withdrawing my application. On April 21st President Minks denied my application for tenure and promotion. On April 29th Dr. Weiner informed me of the Faculty Appellate Committee's recommendation and of the administration's decision not to respect its judgment (Exhibit D). On April 30th Dr. McMillan composed a letter (in response to the Faculty Appellate Committee's recommendation) stating President Minks' reasons, and only his reasons, for denying my application (Exhibit E). And, here is where another egregious violation of my rights to due process and equal rights occurs, Dr. McMillan fails to mail the letter to me until June 9th (Exhibit F), almost six weeks later. Taken individually, any one of these events evidence a hostile attitude arising from discrimination; taken collectively, they demonstrate a pattern of calculated adversarial behavior intended to thwart my equal opportunity to advancement in employment—an opportunity protected by policy and law. As a matter of fact, the actions documented are in contradistinction to RUSO Affirmative Action policy 5.2 (c) "to reach out to all persons, including women and racial minority members, in recruitment, placement, development and advancement." Instead of reaching out to me, I was stonewalled, threatened, and denied timely access to vital information at every step of the process. Finally, note should be made of the purported reasons for President Minks denying my application (Exhibit E). President Minks' letter does not indicate any "compelling reason or exceptional case" for overruling the Faculty Tenure and Promotion Committee's judgment as required by policy. Policy states explicitly that faculty are the best judges of what constitutes substantive and meritorious contributions in their area of expertise—policy specifically eschews the type of second guessing and micromanaging described in the letter (*Policy and Procedures 3.7.4 Role of the Faculty*). As indicated by the minutia cited in his letter, President Minks clearly usurped the rights and responsibilities of the Faculty Tenure and Promotion Committee as well as undermined the principles of shared governance defined in the *Policy and Procedures Manual*. Omitted from mention in his letter are many significant contributions I have made to the university, such as designing and co-teaching a course on Native American history, literature, and law under the auspices of OSLEP (Oklahoma Scholar Leadership Enrichment Program). Most telling is his attitude toward any activities and contributions with respect to Native Americans. For example, President Minks minimizes not only my contributions to the

Native American Symposium but demeans the Symposium itself. In his letter, he slights contributions that are culturally specific and valuable to Native Americans, such as preserving the oral tradition of Native American poetry. It must be noted that the Faculty Tenure and Review Committee was able to evaluate the chapbooks containing my poetry—assessment of the quality of literature is an area of expertise President Minks and Dr. McMillan lack the background and education to perform—nevertheless, President Minks and Dr. McMillan dismiss the texts and the expert judgment of the English faculty without even reading the texts or consulting the faculty as to the merits of the work. Likewise, President Minks summarily dismisses my presentation at the Native American Symposium, without so much as reading the text of my presentation in order to assess its merits, as being neither “noteworthy nor excellent” simply because it was presented at the Symposium instead of another, presumably more respectable, venue. In addition, President Minks likewise dismisses the *Proceedings* of the Native American Symposium. Astonishingly, President Minks apparently has never so much as viewed a copy of the *Proceedings* since he repeatedly affirms in his letter that he was unable to verify that I was an editor of two editions of the journal. If he had glanced at the cover of the *Proceedings*, he would have seen my name prominently displayed in bold print on the cover, along with Dr. Spencer, as an editor (Exhibit G). Copies of the *Proceedings* are readily available in Southeastern’s Native American reading room. Of course, if President Minks (or any of the administrators who were unable to verify that I was an editor of two editions of the *Proceedings*) truly valued the Native American Symposium, then surely copies of the *Proceedings* of the Symposium would be readily accessible in his personal library. It was distressing to discover in President Minks’ letter how little regard the administration has for the dedicated effort and sacrifice of all those at Southeastern who make the Native American Symposium possible as well as the low regard the administration has for the contributions of the participants. In re-reading President Minks’ letter, I continue to be startled by the callousness with which he dismisses all things Native American. The lack of cultural appreciation is made more troubling by the fact that the letter was composed by another administrator, Dr. McMillan, who is clearly as dismissive of the value of Native American contributions to Southeastern as President Minks.

In conclusion, please note how different the experience of applying for tenure was for a white man in my department, Dr. Mark Spencer. The university president (who was Dr. Jesse Snowden) and Dr. Doug McMillan repeatedly met with Dr. Spencer, went over his tenure portfolio, instructed him how to revise it, invited him to provide supplemental material which included articles that he had submitted or planned to submit for publication, and allowed him to fully explain and discuss his contributions to the university as well as providing him ample opportunity to proffer any "verification" required. Dr. Spencer received not only cooperation but a welcoming hand, guidance, and support to shepherd him through what in the best of times is a path wrought with anxiety. I do not resent Dr. Spencer's treatment, but affirm his experience as exemplary of the type of cooperation and collegiality between administration and faculty that characterizes a healthy university. With Dr. Spencer's experience as an exemplar, the question must be asked: why did the administration cooperate with and facilitate the tenure and promotion of a white man while adopting an adversarial and hostile demeanor toward a Native American woman? I deserve an answer to that question; but, more importantly, justice demands it.

I rely on the wisdom and discretion of the Faculty Appellate Committee to make appropriate and specific recommendations and remedies to ensure that the egregious violations of due process that occurred in my 2009-2010 application for tenure and promotion are not repeated in mine and other candidates' applications for tenure and promotion.

Signed,


Dr. Rachel Tudor

Dept of English, Humanities & Languages
1405 N 4th Ave, PMB 4036
Durant, OK 74701
580.745.2588
rtudor@se.edu

EXHIBIT A

Dr. Lucretia Scoufos:

In accord with SE's goal of promoting faculty development and in agreement with SE's principles of shared governance, would you explain your rationale for not supporting the recommendation of EHL's Tenure and Review Committee for my tenure and promotion. This information is important in order for faculty to understand your criteria and in what ways your criteria differs from our own. I would like to call your attention specifically to the following section of the Academic Policies and Procedures manual:

3.7.4 Role of the Faculty

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

~~Faculty status and related matters are primarily a faculty responsibility and include appointment, reappointment, promotion, non-reappointment, non-promotion, the granting of tenure and the award of emeritus status. The primary responsibility of the faculty in such matters is to set standards and to recommend general policies to the governing board. The faculty is also responsible for recommending to the governing board the granting of degrees and the award of honors and awards.~~

~~The review of the student's academic performance of experienced faculty personnel shall be
have been conducted by a determination of the student's academic performance by faculty action
The review shall be conducted by the appropriate academic officer, with the concurrence
of the board. The board shall be responsible for the determination of faculty status as in
the appropriate case. The review shall be conducted in accordance with the faculty judgment
except in the instances and for the reasons which shall be stated in detail.~~

Your cooperation and assistance will be appreciated.

Sincerely,

Dr. Rachel Tudor

EXHIBIT B

Dr. Douglas McMillan:

In accord with SE's goal of promoting faculty development and retention and in agreement with SE's principles of shared governance, please explain your rationale for not supporting the recommendation of EHL's Tenure and Review Committee for my tenure and promotion. This information is important in order for faculty to understand your criteria and in what ways your criteria differs from our own. I would like to call your attention specifically to the following section of the Academic Policies and Procedures manual:

3.7.4 Role of the Faculty

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

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[REDACTED]

Your cooperation and assistance are appreciated.

Sincerely,

Dr. Rachel Tudor

EXHIBIT C



Notice of Appeal

To: President Larry Minks
From: Dr. Rachel Tudor
Re: Promotion and Tenure
Date: February 26, 2010

Dear President Minks:

I request a hearing before the Faculty Appellate Committee to review my application for promotion and tenure. In accord with SE's goal of promoting faculty development and retention and in agreement with SE's principles of shared governance, I believe Dr. Scoufos and Dr. McMillan should provide their rationales for not supporting the recommendation of EHL's Promotion and Tenure Review Committee for my tenure and promotion. This information is important in order for faculty to understand their criteria and in what ways their criteria differs from our own. I would like to call the Faculty Appellate Committee's attention specifically to the following section of the Academic Policies and Procedures manual:

3.7.4 Role of the Faculty

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review of final decision lodged in the governing board or delegated by it to the president should be exercised adversely

DEPARTMENT OF ENGLISH, HUMANITIES & LANGUAGES
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

Faculty status and related matters are primarily faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The Faculty Appellate Committee's commission authorizes them to investigate and recommend action in reference to "due process". Due process is not merely a technical concept assuring that every "i" is dotted and every "t" is crossed, but a promise that insures policy is practiced in good faith. Due process is practice that promotes confidence among faculty in administration and provides vital and timely feedback to promotion and tenure committees, department chairs, and candidates in order that all parties may actively participate and be partners in a process vital to the health and well-being of the university. In this instance, Dr. Scoufos and Dr. McMillan did not provide an explanation of their

respective rationales for finding my case a "rare instance" or identify any "compelling reasons" for disagreeing with the conscientious, deliberative decision of senior, experienced faculty in the English, Humanities, and Languages department.

Sincerely,



Dr. Rachel Tudor

Department of English, Humanities & Languages
PMB 4036
rtudor@se.edu
580-745-2588

cc: Dr. Douglas McMillan



EXHIBIT D

OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 413
DURANT, OK 74701-0605

580-745-2221
FAX 580-745-7477
WWW.SE.EDU

April 29, 2010

Dr. Rachel Tudor
Assistant Professor of English
Department of English, Humanities
and Languages

Dr. Tudor:

You recently received from President Minks a letter informing you that your request for tenure and promotion was denied. In President Minks' letter he formally instructs Dr. McMillan to provide you with the reason(s) as to why tenure and promotion were denied.

As my email of March 31, 2010, indicated, the Faculty Appellate Committee did meet and rendered a decision in regard to your appeal. Upon examination of the facts as presented the Faculty Appellate Committee recommended that your request for a detailed written explanation that clearly delineates the factors that led to Dr. Scoufos and Dr. McMillan decision to deny tenure and promotion be provided; however, it needs to pointed out that there is no policy that stipulates that the Vice President and/or the Dean is compelled to provide reasons as to why tenure and promotion were denied. The President's authority, as delegated to him from the RUSO Board of Regents, is clearly spelled out in section 3.7.3 in the Policies and Procedures Manual. This section, and I quote, states that it is: "the duty of the president to see to it that the standards and procedures in operational use within the college or university conform to the policy established by the governing board and to the standards of sound academic practice."

I also took the additional step of consulting with the University's legal counsel in regard to this issue. He reviewed all the pertinent facts and also noted that in section 3.7.4 there is no requirement for anyone, including the President, to state their reasons if their recommendation is different than the recommendation of the Department Tenure and Promotion Committee. The policy only suggests that after the President makes his decision, if different than the recommendation of the Committee, he should state the reasons. Despite not being required to state his reasons, in this case the President has instructed Dr. McMillan to provide you with the information you requested. Dr. Minks' decision, in my view, moots your appeal and has brought this process to an end.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

In accordance with section 4.4.6 in the Academic Policies and Procedures Manual you do have the right to appeal this decision to the President of the University. You will have 10 workdays from April 29, 2010, in which to do so. If no appeal is delivered to the President within the 10 workday period, the case is considered closed.

Respectfully,



Charles S. Weiner, Ed.D.
Assistant Vice President for Academic Affairs

pc: President Larry Minks
Interim Vice President Douglas McMillan
Dean Lucretia Scoufos



EXHIBIT E
OFFICE OF ACADEMIC AFFAIR

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 41
DURANT, OK 74701-06

580-745-22
FAX 580-745-74
www.SE.U

MEMORANDUM

TO: Dr. Rachel Tudor
FROM: Douglas N. McMillan, Ph.D. *DM*
Interim Vice President of Academic Affairs
RE: Denial of Application for Tenure and Promotion
DATE: April 30, 2010

It is my understanding that you have been informed by President Minks of his decision to deny your request for tenure and promotion to associate professor. This authority to communicate the reasons for denial of tenure and promotion rests with the president as suggested in the Academic Policy and Procedures Manual Section 3.7.4. However, the President may delegate this authority under the RUSO Board Policy if he so desires. Dr. Minks has delegated the authority to me, as acting chief academic officer, to communicate the reasons for the denial of your application for tenure and promotion.

After careful review of your portfolio, it was determined that you do not currently meet the policy requirements for tenure and promotion in the areas of research/scholarship and contributions to the institution and/or profession. The Academic Policy and Procedures Manual stipulates that in order to be granted tenure and promotion your body of work in these areas should be both excellent and noteworthy.

An examination of the research/scholarship portion of your portfolio listed eight activities during your employment at Southeastern. These eight activities include two publications, one presentation at a regional symposium, one presentation at a local symposium, two editorships of the proceedings papers at a local symposium, and two "open-mic Chapbooks". The first three activities (the two publications and the presentation at the regional symposium) do appear to be examples of work which meet the excellent and noteworthy standard. However, the remaining activities fall to meet these standards. For example, the two Open-mic Chapbooks appear to be self-collected unpublished works which certainly do not reach the noteworthy and excellent standard. Additionally, in trying to verify your contribution as editor to the proceedings of the 2006 and the 2008 Native American Symposium, some confusing information was found. In fact, the link you provided to the 2006 symposium did not identify you as an editor and the link you provided for the 2008 symposium did not lead to any proceedings. Just as an aside, editing the proceedings at a local symposium does not meet an excellent and noteworthy accomplishment for a university faculty member. In summary, your efforts in scholarship and research

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

appear to have yielded some appropriate work; however, the body of your work, since being employed at Southeastern, is either unverifiable or falls below the policy requirement for tenure and promotion.

The Academic Policy and Procedures Manual also requires that your service reach the noteworthy and excellent standard. A review of your university service reveals that since your employment at Southeastern began, until 2009 your service has primarily been limited to serving on internal departmental committees, such as, a program review committee, an assessment committee and a hiring committee, that clearly do not reach the policy requirement for tenure or promotion. In fact, out of eight activities you listed on your vita, four were internal departmental committees. Two of the remaining examples of service were not begun until 2009. This does not establish a record of service that is either noteworthy or excellent.

Subsequently, the reasons delineated in this memorandum formed the basis for the denial of your application for tenure and promotion.

EXHIBIT F

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 OFFICE OF ACADEMIC AFFAIRS
 1402 N. BOURNIE AVE., PMB. 4137
 DURANT, OK 74701-0609

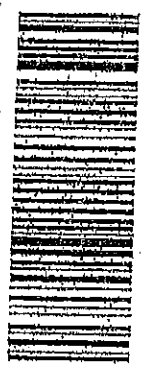
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1402 N. BOURNIE AVE., PMB. 4137
DURANT, OK 74701-0609

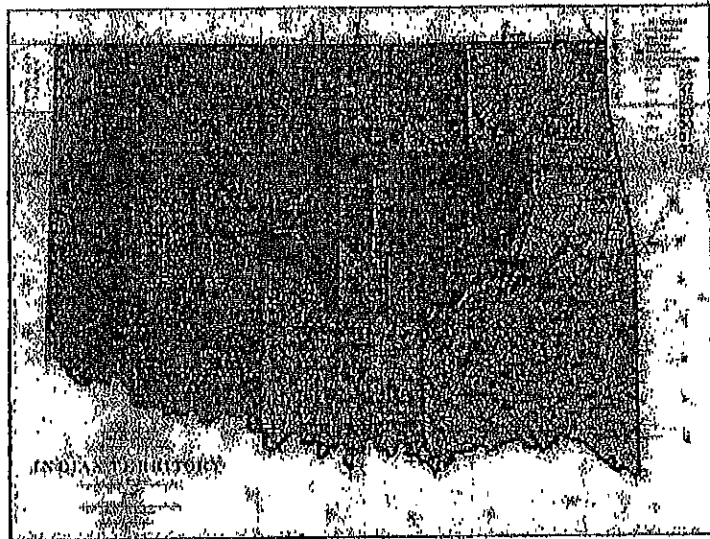


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Dr. Rachel Tudor
1124 N. 10th
Durant, OK 74701

EXHIBIT G

Sixty-Seven Nations and Counting



SEVENTH NATIVE AMERICAN SYMPOSIUM
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY LIBRARY

NA
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N21N
7th. Symp.

Proceedings of the Seventh Native American Symposium

Southeastern Oklahoma State University

Edited by Mark B. Spencer and Rachel Tudor

Exhibit 49

Bryon Clark

From: Bryon Clark
Sent: Monday, January 31, 2011 2:37 PM
To: Rachel Tudor; Doug McMillan
Cc: Ross Walkup; Charla Hall; James Knapp; Larry Prather
Subject: Tudor Grievance dated 11 October 2010
Attachments: Grievance Policy Section 4.4.6 APPM.docx; Addition to Grievance Policy 24 Jan 2011.docx

Dr. Tudor and Vice President McMillan:

As both of you already have been informed, the President's Designee and the Hearing Committee have met but could not reach a final/joint decision regarding the grievance dated 11 October 2010. Because the Grievance Policy (Section 4.4.6) of the Academic Policies and Procedures Manual does not address this contingency (see attachment titled "Grievance Policy"), the attached procedures/protocols were drafted to allow the grievance to proceed (see attachment titled "Addition to Grievance Policy"). These procedures/protocols were reviewed and approved by legal counsel for RUSO.

I wish to provide both of you time to review these new procedures/protocols before starting the timeline. Therefore, please peruse the procedures/protocols and contact me by no later than **5:00 p.m. on Wednesday, 2 February 2011** if you have questions.

If I do not receive any questions by the deadline listed above, both of you will have **15 working days** to prepare and submit a written appeal to respond to any statements in the written decisions rendered by the Hearing Committee and/or the President's Designee—I must receive your written appeal by **23 February 2011**. The grievance process will proceed regardless of whether or not you submit an appeal.

I will then submit the following written materials to the President within 5 working days of receiving both appeals or at the conclusion of the 15 workday period (2 March 2011): (1) grievance, (2) letter from respondent, (3) recommendation by the Hearing Committee, (4) decision by the President's Designee, (5) appeal by grievant [if one is submitted], and (6) appeal by respondent [if one is submitted]. The President of the University has 10 working days from receipt of these documents to review and render the final decision regarding the grievance. Please note that this step represents your opportunity to appeal the decision rendered by the Hearing Committee and/or the President's Designee. The President's decision shall be considered final and binding; the case shall then be closed and the President's decision shall be put into effect.

Please contact me if you have any questions.

Cordially,

Bryon

PS—Please note that the attachment "Addition to Grievance Policy" is written for inclusion in the APPM; there is only a single respondent (and letter) in the grievance being addressed.



The Faculty Grievance Policy (4.4.6) of the Academic Policies and Procedures Manual does not address the following situation:

- Vice President for Academic Affairs (or President's designee) does not concur with the Hearing Committee.
- The VPAA (or President's designee) meets with the Hearing Committee to reach a final/joint decision.
- The VPAA (or President's designee) and the Hearing Committee cannot reach a final/joint decision.

Therefore, given the scenario above, the protocols and procedures by which the final decision regarding a grievance will be as listed below. Once the pending grievance has been resolved, the following (except italicized red text) also will be submitted for consideration for addition to Section 4.4.6 of the Academic Policies and Procedures Manual after the paragraph starting with "If the Vice President for Academic Affairs (or President's designee) does not concur in the recommendation..."

- The VPAA (President's designee) will notify in writing the Administrative Liaison for the grievance that a final/joint decision could not be reached within 5 working days of the last meeting of the VPAA (President's designee) and Hearing Committee.
- The Administrative Liaison for the grievance will inform the grievant and respondent(s) in writing within 5 working days of this notification that the VPAA (President's designee) and Hearing Committee did not reach a final/joint decision. *(Please note that for the Dr. Rachel Tudor grievance dated 11 October 2010, this 5-working day timeline does not apply. The protocols and procedures listed below had to be drafted and edited, and then the final version reviewed/approved by legal counsel. Once the Administrative Liaison has notified the grievant and respondent, the timeline listed below shall be in effect.)*
- The grievant and respondent(s) will then have 15 working days from this notification to submit in writing to the Administrative Liaison for the grievance an appeal to respond to any statements in the written decisions rendered by the Hearing Committee and/or VPAA (or President's designee). The responses submitted by the grievant and respondent(s) will serve as the appeal stage for this aspect of the grievance.
- The Administrative Liaison for the grievance will submit the following written materials to the President within 5 working days after receiving both appeals or at the conclusion of the 15 workday period listed above: (1) grievance; (2) letter(s) from respondent(s); (3) recommendation by Hearing Committee; (4) decision by VPAA (or President's designee) regarding recommendation(s) by Hearing Committee; (5) appeal by grievant; and (6) appeal(s) by respondent(s).
- The President of the University has 10 working days from receipt of the documents listed above to review and render the final decision regarding the grievance. The decision of the President shall be delivered in writing to the grievant, respondent(s), Hearing Committee, VPAA (or President's designee), and Administrative Liaison for the grievance within the 10 workday period. The President may request additional information from any party involved in the grievance process. Because the grievant and respondent(s) were provided an opportunity to appeal the decision of the Hearing Committee and/or VPAA (or President's designee) to the President, the decision rendered by the President shall be considered final and binding; the case will then be closed and the President's decision shall be put into effect.



Exhibit 50

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

Durant, Oklahoma



A Self-Study Report for Continued Accreditation

submitted to

The Higher Learning Commission

A Commission of the North Central Association

January 7, 2014



DOJ000331

Preface

Dear HLC Team Member,

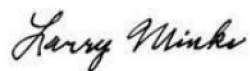
It is my pleasure to welcome you to Southeastern Oklahoma State University. I want to take this opportunity to thank you for your service to our institution. We believe that participation in the HLC self-study process is one of the most important self-examination processes we can engage in as an institution of higher learning. The self-study report is the result of the work of our entire campus community, allowing all stakeholders an opportunity to understand the University better.

I believe you will find two guiding principles that characterize our self-study process. First, we have attempted to illustrate that we are a mature institution. In our opinion, a mature institution is one that is able to recognize what it does well, what it needs to do to improve, and implements initiatives to address identified challenges. Throughout this self-study report, we have shared our progress as well as our plans for addressing these clearly defined challenges.

Second, we have attempted to design a self-study process that is more useful to our institution than a primarily compliance-based process. Our philosophy has been that the best self-study processes are those that achieve a greater institutional purpose, rather than compliance alone. With this in mind, we have designed the self-study process with a goal of using the information we gain as one of the pivotal information sources for our next three to five-year institutional planning cycle. It will serve as a catalyst in furthering our transformational efforts through involvement, self-reflection, planning, and continual improvement.

It is my sincere hope that you will find our self-study process successful in providing a comprehensive self-examination of Southeastern and identifying those things that we currently do well, those things we do adequately, and challenges we must face in the future. Again, I want to thank you for your commitment to help us become a more effective institution.

Sincerely,



Dr. Larry Minks
President

SELF-STUDY STEERING COMMITTEE AND CHAPTER SUB-COMMITTEES

Self-Study Coordinator
Ex-officio

Bryon Clark, AVPAA – Student Learning & Accreditation
Doug McMillan, Vice President for Academic Affairs

The self-study process engaged the entire campus community; however, members of the Self-Study Steering Committee and the sub-committees for each criterion deserve special acknowledgement for their hard work, dedication, and perseverance during the completion of the self-study.

Introduction and Review of Previous Accreditation Visits

Theresa Hrcir (co-chair), Professor of Accounting/Former Department Chair
Dan Moore (co-chair)*, Executive Director, Chief Information Officer
Keith Baxter, Director of Intercollegiate Athletics
Bruce Johnson, Assistant Professor of Political Science/Department Chair (retired)
Jamie Knapp, Professor of Sociology
Robert McFadden, Professor of Music
Margaret Cotter-Lynch, Associate Professor of English
April Zimmerman (student)

Criterion 1—Mission

Jerry Polson (co-chair)*, AVPAA—Academic Outreach & Research/Dean of Graduate Studies
Rhonda Richards (co-chair), Assistant Professor of Accounting
Liz McCraw, Dean of Enrollment Management
Penny Bridwell, Office Assistant for Teacher Education Services
Michael Stout, immediate past President of the Staff Association/Help Desk Director
Kathy Hendrick, Director of the Center for Regional Economic Development
Alan Burton, Director of University Communications
Ben Wright (previously Randy Daley)—student

Criterion 2—Ethical and Responsible Conduct

Diane Dixon (co-chair)—immediate past chair of Faculty Senate/Professor of Biol. Sciences
Camille Phelps (co-chair), Dean of Students
Kitty Campbell, Professor of Management/Department Chair
Bruce King, Dean of McCurtain County Campus
Cathy Conway, Director/Affirmative Action Officer (retired)
Kay Lynn Roberts, Director/Controller of Office of Finance
Charla Hall, Professor of Psychology
Morgan Pierce (previously Kasidy Kinkade & Joseph Baden)—student

Criterion 3—Teaching and Learning—Quality, Resources, and Support

Lucretia Scoufos (co-chair), Dean of Instruction
Randy Prus (co-chair), Professor of English/Department Chair
Kathryn Plunkett, Digital Information Literacy Librarian (no longer at SE)
Ellen Hendrix, Instructional Technology & Design Specialist
Lisa Coleman, Professor of English/Director of Honors Program
Riley Coker, Assistant Professor of Theatre/Oklahoma Shakespearean Festival
Tim Patton, Associate Professor of Biological Sciences
Joseph Baden (previously Matt Sitton & Demetra Wilkerson)—President of SGA

Criterion 4—Teaching and Learning—Evaluation and Improvement

Margaret Avard (co-chair), Professor of Earth & Environmental Science
Tim Boatmun (co-chair), Associate Dean of Academic Services
David Conway, Professor/Director/Department Chair of Aviation Sciences Institute
Aaron Adair, Assistant Dean of Adult & Online Education/Assessment
Sharon Morrison, Director/Associate Professor of Henry G. Bennett Memorial Library
Kay Daigle, Associate Professor of Health, Physical Education & Recreation

Native American Symposium

- The Native American Symposium (<http://homepages.se.edu/nas/>), which takes place on a biennial basis, is a regional conference that brings in international participants to Southeastern's campus. Numerous students, faculty, and staff attend and contribute to this film and lecture series.

Residence Life

The mission of the Department of Residence Life is to create a living environment that supports student learning, fosters personal growth and development, and encourages the development of personal integrity and civic responsibility. We effectively manage well-maintained and reasonably priced residential facilities. We value the individuality of each student and the diversity reflected within our community (<http://homepages.se.edu/residence-life/>).

From 2007 until 2010-11, the Residence Life community followed a "Program" model centered on "events" whose purpose would serve the following criteria: spiritual, social, citizenship/life planning, educational/intellectual, physical, cultural, political, and sexual. Records of attendance at events were kept as were the numbers in attendance and types of programs offered. Resident Opinion Surveys were also provided. Surveys of satisfaction with activities and with the RA's that led the activities were largely in the mid-range in the years 2007-2012.

Beginning in 2010 and continuing in 2011, RA's and Director of Residence Life developed a new model of student contact. This move was made because students often came to events for food and left before the actual event. During the academic year of 2010-11, the Director and RA's focused on "*Mission Centered Conversations*" in which frequent contact was initiated between RA's and the students that they are responsible for. This model also promoted higher levels of communication through intentional discussion of relevant topics. Weekly contact was initiated between RA's and their students (50-60 per RA) and RA's submitted documentation of this weekly contact. This programming model was adopted for fall 2011.

Each RA team (4-5 teams each semester) was also responsible for planning and implementing at least one large program (event) and one service project each semester. The focus of the program was frequent contact to develop mission-centered conversations instead of a focus on the actual event. The following represents some observations made after the implementation of this new model:

- Contact was defined as an "exchange," preferably fact-to-face. Unanswered calls or text messages did not count.
- Procedures were outlined for an unresponsive resident.
- Examples of contact logs were provided.
- Frequency of log submissions was determined.
- Examples of ways to contact residents (Facebook, for example) were provided.

Exhibit 51



COPY

OFFICE OF THE PRESIDENT

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4236
DURANT, OK 74701-0609

580-745-2500
FAX 580-745-2515
WWW.SE.EDU

March 25, 2011

Dr. Rachel Tudor
1124 North 10th
Durant, Oklahoma 74701

RE: Appeal Review regarding the rejection of Dr. Tudor's tenure and promotion application

Dear Dr. Tudor:

After careful review of the material submitted in the above, my conclusions are as follows:

1. That Southeastern's Academic Policies and Procedures 4.6.3. Procedure for Granting Promotion and Tenure was followed;
2. That both the above policy and **University precedent** are consistent regarding faculty members ability to make application for tenure only *one time* following the fifth, sixth or seventh year of service to the University;
3. That a compromise was offered to you to withdraw your application for tenure and allow further time to work on your portfolio, which you rejected;
4. That 4.4.6 of Southeastern's Faculty Grievance Policy was followed;
5. That the faculty hearing committee makes **recommendations** to the Vice President for Academic Affairs (or President's designee) pursuant to 4.4.6 of the Grievance Policy;
6. That pursuant to the Grievance Policy the hearing committee and the Vice President for Academic Affairs (or President's designee) must meet to reach a final decision, which occurred, however no consensus was reached;
7. That either party may appeal the decision to the President for final review and binding decision, which occurred.

Therefore, due to the findings above, your application for tenure and promotion shall not be accepted for review.

Sincerely,

Larry Minks,
President

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

Exhibit 52

From: Dr. Rachel Tudor
To: Dr. Claire Stubblefield
Re: Additional Information
October 13, 2010



Dear Dr. Stubblefield,

I am putting the information I discovered and shared with you last Friday into writing. After filing my initial complaint, I discovered that two candidates (Dr. Virginia Parrish and Dr. Margaret Cotter-Lynch), in addition to Dr. Spencer, were also awarded tenure and promotion by the administration even though their applications were not significantly different from mine. First, I want to state that Dr. Parrish and Dr. Cotter-Lynch are both deserving of tenure and promotion, and I have the utmost respect for them. The fact that an objective evaluation of their records demonstrates that my scholarship and service record is equivalent to theirs in no way demeans their accomplishments or value. Because our records are equivalent, it is entirely disingenuous for the administration to allege deficiencies in scholarship and service in denying my application last year. And, it is particularly onerous for Dr. Doug McMillan to presently deny me the opportunity to reapply for tenure this year because of alleged deficiencies in my scholarship when it is an indisputable fact that I presently have more articles accepted for publication in peer-reviewed scholarly journals than the **combined** record of the last **three** candidates at the time that he recommended them for tenure and promotion. Dr. McMillan's decision to not allow my application for tenure and promotion to proceed is clearly not based on facts, but on his own prejudices. A candid analysis of his memorandum (see Grievance) halting my tenure and promotion application demonstrates that the memorandum lacks knowledge, thought, and reasons—vital safeguards against bigotry.

It is most important to note that the awarding of tenure and promotion to two cis¹ women in my department does not in any way diminish the fact that the administration has discriminated against me as a trans woman. As a matter of fact, the disparate treatment of cis women and a trans woman demonstrates a profound disregard for fair and equal treatment by the administration. For example, if an employer discriminated against women who have children by denying them promotion while promoting women without children; then discrimination has occurred. There are many categories of women and it is not necessary that a party discriminate against all categories of women to be guilty of discriminating against women. It is also pertinent to bear in mind that Southeastern Oklahoma State University, and the other universities in Oklahoma, allowed some minorities to enroll and graduate while specifically discriminating against Ada Sipuel (*Sipuel v. Board of Regents of Oklahoma*) and later placed unequal obstacles in the way of the education of George McLaurin (*McLaurin v. Oklahoma State Regents*). It is simply beyond doubt that different policies, practices, and standards are being applied to me than to other candidates, white men (Dr. Mark Spencer) and white cis women (Drs. Cotter-Lynch and Parrish), for tenure and promotion.

Finally, I would like to call your attention to Dr. Doug McMillan in particular. Dr. Doug McMillan's own sister, Dr. Jane McMillan, disclosed to me that Dr. Doug McMillan considers transgender people a grave offense to his "Baptist sensibilities." Dr. Doug MacMillan's "Baptist sensibilities," as he expressed them to his sister, Dr. Jane McMillan, prevents him from tolerating, much less accepting or welcoming, transgender people to Southeastern. Quite simply, my presence at Southeastern is intolerable to him. The evidence demonstrates, quite unequivocally, that Dr. Doug McMillan has abused the power of his office to deprive me of my rights; rights protected by policy and the law.

I would also like to document the fact that Dr. Scoufos repeatedly uses inappropriate pronouns when speaking to and about me. Although Dr. Scoufos' use of inappropriate pronouns is intermittent, it has occurred too often to be attributable to mere carelessness.

Finally, please do not misconstrue the focus of this letter to diminish in any way my conviction that racial discrimination is also a factor in the disparate treatment accorded me in reference to tenure and promotion. Indeed, intolerant people often hold multiple and overlapping prejudices.

¹ *Cisgender* can be used in place of less accurate terms such as *biological* or *genetic* male or female since transgender people are also "biologically" (and not made from some non-biological material), while the "genetically"-argument falls when one considers the genetic variations present in ~~intersex~~ people. *Born* male or female is equally inaccurate, since transgender and transsexual people feel that they are born with a male or female gender identity irrespective of their physiological sex. The use of the term *real* male or female is both inaccurate, because each and every point that is usually attributed to "real" (=cisgender) women either does not apply to all cisgender women either, or to transwomen and/or many intersex women as well, or to transmen as well, who are usually not counted as "real women". (The same of course applies to "real men".) When used comparatively these expressions are often seen as disrespectful to and by transgender and transsexual people. (From *WordIQ.com*)

Exhibit 53



2

Amended Complaint

To: Dr. Claire Stubblefield, Special Assistant to the President/Director of Institutional Diversity & Affirmative Action Officer

From: Dr. Rachel Tudor, Department of English Languages & Humanities

Re: Discrimination in Promotion and Tenure & Retaliation

Date: 28 October 2010

According to the Regional University System of Oklahoma (RUSO) 5.2 (a) all persons should be given "equal opportunity for employment and advancement in employment regardless of race, religion, disability, color, ethnicity, national origin, sex, age, political affiliation, or status as a veteran." It is the responsibility of the Affirmative Action Officer of each university to ensure compliance with the policy and to ensure that each institution meets its (b) "responsibilities under the Civil Rights Act of 1964; commitments as a federal contractor under Executive Order 11246 and Executive Order 11375; and Oklahoma State Regents for Higher Education policies." It is my duty to inform you, as Southeastern's Affirmative Action Officer, of egregious breaches of policy and law in reference to discrimination in promotion and tenure. Following is a brief synopsis of the pertinent dates, events, and personnel involved in violating my rights under policy and law:

I was recommended for tenure and promotion by my department's Faculty Tenure and Promotion Committee in the Fall of 2009. Subsequently, Dean Scoufos and Interim Vice President for Academic Affairs McMillan denied my application for tenure and promotion. Dean Scoufos steadfastly refused to disclose her reasons for not supporting the recommendation of EHL's Tenure and Promotion Committee (Exhibit A). Dr. McMillan not only refused to disclose his reasons, he also refused to even meet with me (Exhibit B). I appealed to the Faculty Appellate Committee to review their behavior as inconsistent with Southeastern's policy and practice (Exhibit C). The Faculty Appellate Committee supported my point of view and issued a recommendation that Dean Scoufos and Dr. McMillan explain the rationales for their decisions. However, instead of respecting the common sense approach recommended by the Faculty Appellate Committee and honoring their wisdom, they contacted legal counsel and requested a legalistic legerdemain to avoid extending to me the same spirit of cooperation and collegiality that was recently freely extended to a white male candidate for tenure and promotion in my department (Exhibit D, para 3). At this point, I need to call your attention to Dr. Charles Weiner's (Assistant Vice President for Academic Affairs) role in events. The Faculty Appellate Committee met and rendered a judgment in my favor on March 22nd, however Dr. Weiner did not inform me of the Committee's decision until April 29th (Exhibit D, see date). Policy states unequivocally that I have the right to be informed of the Committee's decision within ten days of the rendering of a verdict. It is not only inexcusable that Dr. Weiner waited five weeks to inform me of the Committee's decision, but his deliberate delay in violation of policy is evidence of collaboration between parties in the administration to delay and hinder my rights to due process and equal treatment. As a matter of fact, before I was informed of the Committee's decision the most egregious breach of my right to due process and equal opportunity for advancement in employment occurred. On April 6th I was summoned to Dean Scoufos' office. Dean Scoufos demanded that I immediately withdraw my application for tenure and promotion. When I asked for some time to think about it, she said that if I did not immediately withdraw my application, I would not be allowed to reapply in academic year 2010-2011. I mentioned that policy states tenure-track faculty have six years to apply for tenure, and I was only in my fifth year. She responded that the policy simply says tenure-track

faculty "may" apply, it does not say that tenure-track faculty "must" be allowed to apply. When I did not immediately fold, she said, "You may think you are safe because the date for non-renewal of your contract without cause has passed, but you may still be non-renewed with cause if you don't withdraw your application." I asked her if she was speaking on her own authority or on behalf of Dr. McMillan. Dean Scoufos said that she was speaking on behalf of Dr. McMillan and President Minks. She said that they had met and decided to demand that I withdraw my application and to inform me of the consequences of refusing to comply with their demand. Although I was taken aback by the threats, I placed my faith in my colleagues' judgment, both the Faculty Tenure and Promotion Committee and the Faculty Appellate Committee, and refused to withdraw my application. To me, withdrawing my application would indicate that I was rejecting the good judgment of my colleagues in my department and did not have faith in the sound judgment of my colleagues in the Faculty Senate as well as surrendering to odious bullying. These events seem incredible, but Dr. John Mischo (Chair of English, Humanities, & Languages) was a witness to the meeting with Dean Scoufos and her attempts to coerce me into withdrawing my application. On April 21st President Minks denied my application for tenure and promotion. On April 29th Dr. Weiner informed me of the Faculty Appellate Committee's recommendation and of the administration's decision not to respect its judgment (Exhibit D). On April 30th Dr. McMillan composed a letter (in response to the Faculty Appellate Committee's recommendation) stating President Minks' reasons for denying my application (Exhibit E). And, here is where another egregious violation of my rights to due process and equal rights occurs, Dr. McMillan fails to mail the letter to me until June 9th (Exhibit F), almost six weeks later. Taken individually, any one of these events evidence a hostile attitude arising from discrimination; taken collectively, they demonstrate a pattern of calculated adversarial behavior intended to thwart my equal opportunity to advancement in employment—an opportunity protected by policy and law. As a matter of fact, the actions documented are in contradistinction to RUSO Affirmative Action policy 5.2 (c) "to reach out to all persons, including women and racial minority members, in recruitment, placement, development and advancement." Instead of reaching out to me, I was stonewalled, threatened, and denied timely access to vital information at every step of the process. Finally, note should be made of the purported reasons for President Minks denying my application (Exhibit E). President Minks' letter does not indicate any "compelling reason or exceptional case" for overruling the Faculty Tenure and Promotion Committee's judgment as required by policy. Policy states explicitly that faculty are the best judges of what constitutes substantive and meritorious contributions in their area of expertise—policy specifically eschews the type of second guessing and micromanaging described in the letter (*Policy and Procedures* 3.7.4 Role of the Faculty). As indicated by the minutia cited in his letter, President Minks clearly usurped the rights and responsibilities of the Faculty Tenure and Promotion Committee as well as undermined the principles of shared governance defined in the *Policy and Procedures Manual*. Omitted from mention in his letter are many significant contributions I have made to the university, such as designing and co-teaching a course on Native American history, literature, and law under the auspices of OSLEP (Oklahoma Scholar Leadership Enrichment Program). Most telling is his attitude toward any activities and contributions with respect to Native Americans. For example, President Minks minimizes not only my contributions to the Native American Symposium but demeans the Symposium itself. In his letter, he slights contributions that are culturally specific and valuable to Native Americans, such as preserving the oral tradition of Native American poetry. It must be noted that the Faculty Tenure and Review Committee was able to evaluate the chapbooks containing my poetry—assessment of the quality of literature is an area of expertise President Minks and Dr. McMillan lack the background and education to perform—nevertheless, President Minks and Dr. McMillan dismiss the texts and the expert judgment of the English faculty without even reading the texts or consulting the faculty as to the merits of the work. Likewise, President Minks summarily dismisses my presentation at the Native American Symposium, without so much as reading the text of my presentation in order to assess its merits, as

being neither "noteworthy nor excellent" simply because it was presented at the Symposium instead of another, presumably more respectable, venue. In addition, President Minks likewise dismisses the *Proceedings* of the Native American Symposium. Astonishingly, President Minks apparently has never so much as viewed a copy of the *Proceedings* since he repeatedly affirms in his letter that he was unable to verify that I was an editor of two editions of the Journal. If he had glanced at the cover of the *Proceedings*, he would have seen my name prominently displayed in bold print on the cover, along with Dr. Spencer, as an editor (Exhibit G). Copies of the *Proceedings* are readily available in Southeastern's Native American reading room. Of course, if President Minks (or any of the administrators who were unable to verify that I was an editor of two editions of the *Proceedings*) truly valued the Native American Symposium, then surely copies of the *Proceedings* of the Symposium would be readily accessible in his personal library. It was distressing to discover in President Minks' letter how little regard the administration has for the dedicated effort and sacrifice of all those at Southeastern who make the Native American Symposium possible as well as the low regard the administration has for the contributions of the participants—many of whom travel great distances at their own expense simply because they consider the Native American Symposium a "noteworthy and excellent" event. In re-reading President Minks' letter, I continue to be startled by the callousness with which he dismisses all things Native American. The lack of cultural appreciation is made more troubling by the fact that the letter was composed by another administrator, Dr. McMillan, who is clearly as dismissive of the value of Native American contributions to Southeastern as President Minks.

In conclusion, please note how different the experience of applying for tenure was for a white man in my department, Dr. Mark Spencer. The university president (who was Dr. Jesse Snowden) and Interim Vice President for Academic Affairs Doug McMillan repeatedly met with Dr. Spencer, went over his tenure portfolio, instructed him how to revise it, invited him to provide supplemental material which included articles that he had submitted or planned to submit for publication, and allowed him to fully explain and discuss his contributions to the university as well as providing him ample opportunity to proffer any "verification" required. Dr. Spencer received not only cooperation but a welcoming hand, guidance, and support to shepherd him through, what in the best of times is, a path wrought with anxiety. I do not resent Dr. Spencer's treatment, but affirm his experience as exemplary of the type of cooperation and collegiality between administration and faculty that characterizes a healthy university. With Dr. Spencer's experience as an exemplar, the question must be asked: why did the administration cooperate with and facilitate the tenure and promotion of a white man while adopting an adversarial and hostile demeanor toward a Native American woman? I deserve an answer to that question; but, more importantly, law and justice demands it.

Additional Information

After filing my initial complaint, I discovered that two candidates (Dr. Virginia Parrish and Dr. Margaret Cotter-Lynch), in addition to Dr. Spencer, were also awarded tenure and promotion by the administration even though their applications were not significantly different from mine. First, I want to state that Dr. Parrish and Dr. Cotter-Lynch are both deserving of tenure and promotion, and I have the utmost respect for them. The fact that an objective evaluation of their records demonstrates that my scholarship and service record is equivalent to theirs in no way demeans their accomplishments or value. Because our records are equivalent, it is entirely disingenuous for the administration to allege deficiencies in scholarship and service in denying my application last year. And, it is particularly onerous for Dr. Doug McMillan to presently deny me the opportunity to reapply for tenure this year because of alleged deficiencies in my scholarship when it is an indisputable fact that I presently have more articles accepted for publication in peer-reviewed scholarly journals than the combined record of the last three candidates at the time that he recommended them for tenure and promotion. Dr. McMillan's decision

to not allow my application for tenure and promotion to proceed, ~~is clearly not based on facts, but on his own prejudices.~~ A candid analysis of his memorandum halting my tenure and promotion application demonstrates that the memorandum lacks knowledge, thought, and reasons—vital safeguards against bigotry.

It is most important to note that the awarding of tenure and promotion to two cis¹ women in my department does not in any way diminish the fact that the administration has discriminated against me as a trans woman. As a matter of fact, the disparate treatment of cis women and a trans woman demonstrates a profound disregard for fair and equal treatment by the administration as required by policy and law. For example, if an employer discriminated against women who have children by denying them promotion while promoting women without children; then discrimination has occurred. There are many categories of women and it is not necessary that a party discriminate against all categories of women to be guilty of discriminating against women. It is also pertinent to bear in mind that Southeastern Oklahoma State University, and the other universities in Oklahoma, allowed some minorities to enroll and graduate while specifically discriminating against Ada Sipuel (*Sipuel v. Board of Regents of Oklahoma*) and later placed unequal obstacles in the way of the education of George McLaurin (*McLaurin v. Oklahoma State Regents*). It is simply beyond doubt that different policies, practices, and standards are being applied to me than to other candidates, white men (Dr. Mark Spencer) and white cis women (Drs. Cotter-Lynch and Parrish), for tenure and promotion.

Finally, I would like to call your attention to Dr. Doug McMillan in particular. Dr. Doug McMillan's own sister, Dr. Jane McMillan, disclosed to me that Dr. Doug McMillan considers transgender people a grave offense to his "Baptist sensibilities." Dr. Doug MacMillan's "Baptist sensibilities," as he expressed them to his sister, Dr. Jane McMillan, prevents him from tolerating, much less accepting or welcoming, transgender people to Southeastern. Quite simply, my presence at Southeastern is intolerable to him. The evidence demonstrates, quite unequivocally, that Dr. Doug McMillan has abused the power of his office to deprive me of my rights; rights protected by policy and the law.

I would also like to document the fact that Dr. Scoufos repeatedly uses inappropriate pronouns when speaking to and about me. Although Dr. Scoufos' use of inappropriate pronouns is intermittent, it has occurred too often to be attributable to mere carelessness.

Finally, please do not misconstrue the focus of this additional information to diminish in any way my conviction that racial discrimination is also a factor in the disparate treatment accorded me in reference to tenure and promotion. Indeed, intolerant people often hold multiple and overlapping prejudices.

Retaliation Complaint

On October 7th Dean Scoufos informed me that Dr. Doug McMillan has decided to refuse to allow me to apply for tenure and promotion. Dr. McMillan's unprecedented action is not supported by policy, procedure, or practice. Dr. McMillan's order is in violation of RUSO policy. RUSO specifically prohibits retaliation for filing a grievance or complaint. (RUSO 5.6; 5.7).

Dr. McMillan claims in his letter delivered to me October 7, 2010 that his unprecedented decision is based on his BELIEF that (1) alleged deficiencies in scholarship and service in my 2009-2010 application have not been remedied, (2) allowing my application to proceed would be a waste of the time of faculty and administration, and (3) that there would be an "inflammation" of relations between the administration and faculty. However, he offers no evidence except his unwarranted opinion to support his belief.

In reference to the claim of alleged deficiencies in scholarship and service, I offer the following evidence. In Dr. McMillan's letter dated April 30, 2010, Dr. McMillan claims that the administration was unable to verify that I was a co-editor of two editions of the Native American Symposium *Proceedings*. My 2010-2011 application provides unequivocal testimony from the other editor, Dr. Mark Spencer, that I did indeed co-edit two editions of the *Proceedings*. In fact, I presently have eight articles accepted by peer-reviewed scholarly journals, three conference papers, edited two editions of the Native American Symposium *Proceedings*, and one chapter in an anthology of postcolonial literature to my credit. It is an empirical and uncontestable fact that my scholarly record significantly exceeds the scholarly record of other candidates who were granted tenure and promotion. In reference to service, of course I have another year of service to the university since my 2009-2010 application, but more importantly I have letters of reference from the Tenure and Promotion Committee that recommended me for tenure and promotion in 2009-2010 specifying in detail my service and value to the university. In addition, I revised my 2010-2011 application to specifically detail my service. My additional service and the revision of my application should address any perceived or alleged deficiencies in regard to service.

In reference to Dr. McMillan's second rationale for prohibiting my 2010-2011 application moving forward, (2) allowing my application would be a waste of the time of faculty and administration. My initial reaction is that this is an example of an *argumentum ad ignorantiam*. One simply may not make a claim about something without looking at the evidence or consulting someone who is familiar with the evidence. Dr. McMillan has not viewed my 2010-2011 application or talked with anyone who has. This brings up another important point. In our department the Chair reviews applications and advises candidates on whether or not, in their reasoned judgment, the application merits submitting to the Tenure and Promotion Committee. Our Chair, Dr. Prus, has already reviewed my 2010-2011 application and granted permission to proceed. Dr. Prus was as surprised as I was to discover Dr. McMillan's halting of the process, especially in view of the fact that Dr. McMillan made the decision without consulting him. As a matter of fact, a significant amount of time has already been invested in my 2010-2011 application by the faculty—as evidenced by the letters of recommendation for tenure and promotion by Drs. Allen, Coleman, Parrish, and Spencer, as well as the review of my portfolio by the Chair of my department, Dr. Prus. Furthermore, reviewing applications for tenure and promotion is one of the responsibilities of the faculty and administration. Policy and procedure does not allow administrators to shun duties and responsibilities simply because they BELIEVE it may be a waste of time.

In reference to the third point in Dr. McMillan's letter, (3) that allowing my application to proceed would result in an "inflammation" of relations between the administration and faculty. This claim contradicts Dr. McMillan's second (2) claim inasmuch as he assumes that the faculty Tenure and Promotion Committee will recommend me for tenure and promotion on my merits and that the administration will reject their recommendation. Dr. McMillan's assertion is troubling on many levels. For example, it demonstrates a conscious disingenuousness in reference to claims (1) and (2). The fact is, relations will be "inflamed" by Dr. McMillan's unprecedented act of arbitrarily and unilaterally suspending the right^d of tenure-track faculty to address any alleged deficiencies in an application in a subsequent application for tenure and promotion within the time limits provided by RUSO 3.3.4. In addition, Dr. McMillan's newfound assertion of the power of the office of Interim Vice President of Academic Affairs to refuse to allow candidates to address alleged deficiencies effectively removes the purpose of the explanatory letter from the president, required by policy (*Policy and Procedures Manual* 3.7.4). Dr. McMillan's exercise of a new power by the office of Interim Vice President of Academic Affairs not only renders the president's explanatory letter meaningless, but arguably makes it an act of cruelty if it contains easily remedied technical deficiencies; such as letters from the Tenure and

Promotion Committee justifying their decision to recommend a candidate for tenure and promotion, or readily obtainable documentation of accomplishments, while the same candidate is prohibited from offering a subsequent application that addresses the president's concerns. Furthermore, it is unjustifiably punitive to begin forbidding ensuing applications for tenure and promotion because the process has recently become adversarial instead of cooperative.

Finally, since the alleged rationales for deciding to halt my application are demonstrably spurious, it is unassailable that Dr. McMillan's decision is simply an act of retaliation for my exercising rights afforded to faculty and citizens. This semester I have exercised my rights as provided by the policy and law to file a grievance and complaint against Dr. McMillan. RUSSO (5.6; 5.7) specifically prohibits retaliation for exercising my clearly delineated rights under policy and law.

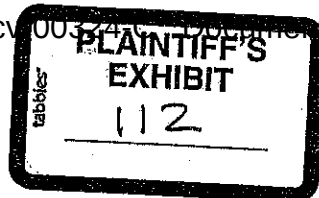
Unfortunately, Dr. McMillan also introduces a claim that is extraneous to the purpose of his letter—which is to prohibit the advancement of my application and provide the rationale for his action. I am referring to his assertion that an offer was made to me in April 2010 to renew my contract for the 2010-2011 year and to allow me to reapply for tenure and promotion in 2011-2012. I am uncertain why he would introduce this extraneous assertion into his letter except as an attempt to misrepresent me as being uncooperative and to present himself in a favorable light. However, there are significant factual errors in respect to his account of the purported offer. The offer he is referring to was proffered by Dean Scoufos under most peculiar circumstances. Dr. Mischo, who was the Chair of our department in 2009-2010, and I were called to Dean Scoufos' office in April 2010. Dean Scoufos said I may be allowed to reapply for tenure only (not promotion) in the 2010-2011 academic year if I withdrew my 2009-2010 application. She demanded an immediate decision. I asked for the offer in writing, and she refused. I asked what would be the requirements for the administration to approve a tenure only application, and she refused to discuss the specific requirements with me. When I asked for more time to consider the offer, she threatened to not renew my contract "for cause" for the 2010-2011 academic year (the date set by policy for non-renewal without cause had already passed). The offer, as described in the letter delivered to me October 7, 2010, purports to be one in which I am not allowed to apply for either tenure or promotion in the 2010-2011 academic year, but may apply for tenure and promotion in 2011-2012. This is patently false. (I welcome you to contact Dr. John Mischo in reference to the offer and the circumstances surrounding the offer to verify which account is accurate.) The offer, as described by Dr. McMillan, could not have been legitimately made because only the Board of Regents may approve the renewal of a tenure-track faculty member after seven years (RUSSO 3.3.4; *Policy and Procedures Manual* 4.6.4). The 2011-2012 academic year would be my eighth year. Dr. McMillan did not have the authority to make such an offer. Dr. McMillan's introduction of this spurious and extraneous claim is simply further incontrovertible evidence of his impassioned and unreasonable hostility toward me because of my membership in groups that have suffered egregious violations of our civil and human rights.

¹ *Cisgender* can be used in place of less accurate terms such as *biological* or *genetic* male or female since transgender people are also "biologically" (and not made from some non-biological material), while the "genetically"-argument falls when one considers the genetic variations present in *intersex* people. *Born* male or female is equally inaccurate, since transgender and transsexual people feel that they are born with a male or female gender identity irrespective of their physiological sex. The use of the term *real* male or female is both inaccurate, because each and every point that is usually attributed to "real" (=cisgender) women either does not apply to all cisgender women either, or to transwomen and/or many intersex women as well, or to transmen as well, who are usually not counted as "real women". (The same of

course applies to "real men"). When used comparatively these expressions are often seen as disrespectful to and by transgender and transsexual people. (From *WordIQ.com*)

" A "right" in a democratic society may be defined as a practice which is routine and expected. Indeed civil society depends upon members of society interacting with one another in predictable and equitable ways.

Exhibit 54



Attachment K

Dr. Rachel Tudor**Timeline**

2/12/10	Letter from Dr. Scoufos to Dr. McMillan recommending the denial of tenure and to give Dr. Tudor a one-year terminal appointment for the 2010-2011 academic year. The letter states, "Dr. Tudor's portfolio appears to be incomplete. In addition to lack of documentation of service activity, there are no letters of recommendation from tenured faculty members in her department. The single sentence recommendations for promotion and tenure from the department committee and the chair fail to give any justification for the recommendation for promotion and tenure."
2/23/10	Letter from Dr. McMillan to President Minks in response to Faculty Senate letter dated 1/25/10. The letter clarifies a possible disconnect between what is considered a discipline specific definition for tenure and promotion and the RUSO Board Policy and our Academic Policy and Procedure Manual requirements.
2/26/10	Letter from Dr. Rachel Tudor to President Minks. Dr. Tudor requested hearing before the Faculty Appellate Committee to review her application for promotion and tenure.
3/21/10	Email from James Knapp to Larry Prather and Jon Reid regarding a formal statement of the Faculty Appellate Committee conclusion on Dr. Tudor. The conclusion stated, "Dr. Tudor's appeal is valid in that Section 3.7.4 of the SE Policy and Procedures Manual indicates, "The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail."
3/25/10	Official meeting with Dr. Knapp, Dr Prather, Dr. Reid, and Dr. Weiner to concur with the letter submitted in the record.
3/25/10	Letter from Dr. Knapp, Dr, Prather, Dr. Reid to Dr. Weiner. See copy.
4/21/10	Letter from RUSO attorney Charlie Babb to Dr. McMillan indicating, "The Regents of RUSO have delegated to the respective presidents or their designees all (emphases added) Personnel decisions regarding the hiring, promotion, rank and salaries of faculty but have not delegated the granting of tenure. Only the Regents grant tenure and then if the president determines to recommend the granting of tenure to the Regents. See, RUSO policy 1.25.1 and 3.3.5 The letter concludes stating, "I do not find anything in the RUSO policy which suggests that anyone should provide a rationale for not following the recommendation of a department committee. I do not find anything in the Southeastern policy which suggests that anyone other than the President or the Board should provide rationale for not following a department recommendation. I also note that the Southeastern policy is merely suggestive as to whether the president states a rationale for his decision. Finally, it should be obvious that the RUSO policy would control over the Southeastern policy and that the

Southeastern policy cannot direct the Regents to perform a particular act."

- | | |
|----------------|--|
| 4/29/10 | Letter signed by Rachel Tudor acknowledge receipt of the decision of the Faculty Appellate Committee. |
| 4/29/10 | Letter from Dr. Weiner to Dr. Tudor. See letter. |
| 4/30/10 | Letter from Dr. McMillan to Dr. Rachel Tudor indicating he has been delegated to communicate the reason for denial of her application for tenure and promotion. Paragraph 3, states, "An examination of the research/scholarship portion of your portfolio listed eight activities...The first three activities (two publications and one presentation at a regional symposium) do the remaining activities fail to meet these standards." "In summary, your efforts in scholarship and research appear to have yielded some appropriate work; however, the body of work, since being employed at Southeastern, is either unverifiable or falls below the policy requirements for tenure and promotions." |
| 8/30/10 | Letter from Dr. Tudor to Dr. Stubblefield Cc: Dr. Prus regarding a change of discrimination in promotion and tenure. |
| 8/31/10 | Email from Rachel Tudor to Dr. Stubblefield correcting an error of fact. Dr. Tudor indicated Dr. Snowden was president during the tenure and promotion of Dr. Mark Spencer not Dr. Minks. |
| 9/6/10 | Dr. Stubblefield conferred with legal counsel regarding the discrimination charges. |
| 9/8/10 | Letter from Emeritus Interim President and retired VPAA Jesse Snowden to Dr. McMillan providing a recollection of the events surrounding the tenure and promotion of Dr. Mark Spencer. The letter is as follows: <ul style="list-style-type: none"> <li data-bbox="526 1203 1390 1297">• When I reviewed Dr. Spencer's portfolio in December, it was my opinion that his record in scholarship was borderline, but not sufficient to meet the minimum standard for promotion and tenure. <li data-bbox="526 1297 1349 1329">• I also recall that his record in both teaching and service was very good. <li data-bbox="526 1329 1386 1381">• I met with Dr. Spencer, probably in January, to discuss my reasons for not recommending his promotion and tenure. <li data-bbox="526 1381 1409 1476">• Dr. Spencer indicated that he had submitted a paper for publication since his portfolio was submitted and that he had one or two additional manuscripts completed and ready to submit for publication. <li data-bbox="526 1476 1393 1591">• In view of this, and since it was still relatively early in the process, I agreed to give Dr. Spencer some additional time, I believe two months, to get the additional manuscripts submitted and to learn of the fate of the one he had submitted. <li data-bbox="526 1591 1403 1707">• Dr. Spencer followed through, and submitted the additional manuscripts, and received word that at least one of them (it could have been more) was accepted for peer-reviewed publication. This would have been around March 1st. <li data-bbox="526 1707 1398 1780">• This additional work, in my view, brought Dr. Spencer's record of scholarship up to the minimum standard required for promotion and tenure. <li data-bbox="526 1780 1386 1833">• By this time I was Interim President, and I met with Interim Vice President McMillan to let him know what had transpired in Dr. Spencer's case. My |

9/13/10

Met with Dr. Mark Spencer to discuss the accusation from Dr. Tudor that he was treated differently in t & P process. Dr. Spencer explains his tenure process as a split decision. Receives tenure but was denied promotion. The department chair and Dean concurred with the decision. Collegiality was a cited as the issue. Dr. Spencer says an offer of additional time was requested to include a notification of acceptance to a refereed journal article. Dr. Spencer said Dr. Snowden indicated that due to holidays and a heavy workload, he probably would not start the portfolios for several months. Snowden indicated he would speak with Dr. McMillan about the situation. After speaking with Dr. McMillan, Snowden made a proposal to Spencer to send to him particulars of the articles and to agree to hurry. A two month period was extended to him. Dr. Spencer was emphatic when he said Dr. Snowden did not "promise" me anything but he said he thought it was implied. Dr. Spencer said he submitted three articles and all were accepted. He also said, "you can have too little but never too much research and scholarship."

AAO asked Dr. Spencer if he thought the process was typical or atypical. He responded that he wasn't really sure but he thought it was. He knew he had completed the articles since the submission of the portfolio and knew if he was borderline in scholarship (stream of thought from Dr. Spencer-"he wasn't sure what was really considered exemplary and noteworthy. Number of refereed journal articles, or national vs. state/regional presentation).

AAO stated the RUSO policy 1.25.1 and 3.3.5 that only the Regents can grant tenure. Charlie Babb, general counsel, on April 21, 2010 states, "I do not find anything in the RUSO policy which suggests that anyone should provide a rationale for not following a department recommendation." AAO then asked Dr. Spencer if he believed Dr. Tudor, was treated unjustly or in a discriminatory manner? AAO indicated that a legal interpretation or stance was not requested, merely the impression from a colleague and associate. Dr. Spencer states, "Now that I understand the process better, maybe I would not have advised Dr. Tudor that my request for time was atypical but maybe a gift." "I guess, I'll have to recant my prior recommendations to her." Meeting ended at 2:15

Amended complaint received from Dr. Tudor indicating disparate treatment exist between T and P. She states Drs. Cotter-Lynch, Parrish and Spencer received T & P. having similar portfolios.

9/17/10

10:30-Meeting with Dean Scoufos. She indicated that she did not say anything of an intimidating nature to Dr. Tudor. In fact, Dr. Scoufos was aware that she (Dr. Tudor) was running out of time to extend her options for T & P. In Dr. Scoufos' characteristic, low, slow southern dialect, imparted what she felt was a possible solution to address the deficiencies.

1:00-Meeting with former department chair, Dr. John Mischo regarding meeting between Drs. Scoufos, Tudor. Dr. Mischo indicates he was present at the meeting discussed earlier with Dr. Tudor. AAO specifically asked if he would describe the meeting as "intimidating, coercive and demanding?" He responded, "It did not appear to be a serious discussion but matter of fact and not personal." "I cannot determine how someone feels but I would not use any of those terms to describe the meeting."

2:45-Discussion with Native American Symposium webmaster, Dennis Miles. Miles pulled up the website for the 7th symposium dated May, 2008. Discrepancy regarding cover and index. Cover listed Dr. Tudor but table of contents lists only Mark Spencer as editor. After searching history of communications with webmaster for proceeding, Mr. Miles found request from Mark Spencer to add the name of Rachel Tudor. This change was made. Mr. Miles indicated that a period of time existed where Dr.

Tudor's names was not on the website.

Exhibit 55



SOUTHEASTERN OKLAHOMA STATE UNIVERSITY



To: Dr. Rachel Tudor, Department of English, Languages & Humanities
Dr. Douglas McMillan, Interim Vice President for Academic Affairs
Mr. Ross Walkup, Vice President for Business Affairs (President's Designee)

From: Dr. Charla Hall, Chair, Faculty Appellate Committee, Hearing Committee
Dr. James Knapp, Member, Faculty Appellate Committee, Hearing Committee
Dr. Larry Prather, Member, Faculty Appellate Committee, Hearing Committee

Handwritten signatures in black ink, including one that appears to be 'C. Hall' and another that is less legible.

RE: Grievance dated 10-11-10

Date: 12-3-10

After multiple meetings, members of the Faculty Appellate Committee's Hearing Committee, unanimously agree that Dr. Rachel Tudor should be allowed to apply for tenure and promotion during the 2010-11 academic year. The committee based their decision solely on the written documentation submitted and did not deem it necessary to call witnesses. Consequently, no recording was made.

If deadlines have been missed due to the grievance process, the committee recommends that appropriate adjustments to the timeline be made.

Please note that this recommendation is from the Faculty Appellate Committee's Hearing Committee. Since the Interim Vice President for Academic Affairs is the respondent in this case, Mr. Ross Walkup has been identified as the President's designee. According to Southeastern Oklahoma State University's Academic Policies and Procedures Manual, 4.4.6, "If the Vice President for Academic Affairs (or President's designee) concurs in the recommendation of the Hearing Committee, that recommendation shall be put into effect. The Vice President for Academic Affairs (or President's designee) must report to the grievant, respondent, and the Hearing Committee his/her decision within 10 workdays of receipt of the Hearing Committee's recommendation. If the Vice President for Academic Affairs (or President's designee) does not concur in the recommendation, he/she must meet with the committee to reach a final decision. The work of the Hearing Committee is finished when the Vice President for Academic Affairs (or President's designee) communicates this joint decision in writing to the grievant and respondent, the Hearing Committee, and necessary University officials."

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

PI000411

Exhibit 56



RECEIVED

JAN 28 2011

President's Office

To: President Minks

From: Dr. Rachel Tudor

Date: 28 January 2011

Re: Appeal of Dr. Stubblefield's "Findings and Conclusions on Gender Discrimination Complaint"

On January 19, 2011, I received Dr. Stubblefield's "Findings and Conclusions on Gender Discrimination Complaint." I would like to note to be taken of the following significant omissions and distortions in her report that create a misleading portrayal of events and lead to a reader making erroneous conclusions. The significant omissions and distortions are detailed in reference to the number assigned to each complaint.

1. There is no refutation of the context in which the demand that I withdraw my FY 2009-2010 application for tenure was made, i.e. The threat to non-renew my 2010-2011 contract and to not allow me to apply for tenure in FY 2010-2011. Nor is there refutation of the fact that an answer was demanded immediately. In addition, Dr. Stubblefield's quotes of Dr. Mischo are misleading. In point of fact, in response to my inquiry, Dr. Mischo made the following reply: "I agreed to discuss the facts behind the case but not to speculate or engage in any kind of subjective interpretation. I certainly, though, never said it was "not" any of those things [i.e. intimidating, coercive, demanding], but that I was not going to speak in such terms. Rather, I wanted to keep to facts, such as the fact that you were indeed expected to respond in the way that you refer to . . ." In fact, Dr. Stubblefield portrays the incident as a "gift"—even stating that I was given reasons for the administration's demand that I withdraw my application. When, in fact, it is very clear from the record that the administration not only refused to inform me of any problems with my application, but sought legal counsel in reference to their decision not to honor the Faculty Appellate Committee's recommendation that they inform me of any problems with my application. For example, it is to be noted that Dr. McMillan claims he was unable to verify whether or not I was an editor of the Proceedings of the Native American Symposium in his belated, after the President's denial of the application, letter of explanation required by policy. Thus, it is simply not credible to suggest, as Dr. Stubblefield does, that a candid discussion of the administration's concerns with my application occurred at the time.
2. It is misleading to suggest that the idiosyncratic particulars of the disparate treatment was the primary issue of my complaint when, even by the narrative in Dr. Stubblefield's letter, it is the process and policy of openness in terms of specific feedback, a genuine spirit of cooperation in amending any perceived deficiencies, and, most importantly, the active facilitation of the process in its entirety that is in issue. Dr. Stubblefield fails to provide any concrete examples of

her claims that the portfolios of Dr. Parrish and Dr. Cotter-Lynch far exceeded mine in all areas of consideration. How so? The sole source for her assertions is a quote from Dr. Prus that "In his opinion a comparison of your portfolio with that of the tenured faculty members resulted in your portfolio falling short. This was the reason for the non recommendation." In reality, Dr. Prus unequivocally denies stating as a matter of fact "this was the reason for the non recommendation." He explained to me that he was discussing the portfolios with Dr. Stubblefield and was hypothesizing about possibilities—not stating why the administration did not honor the decision of the Faculty Tenure and Promotion Committee as well as the recommendation of the Chair of the department, Dr. John Mischo. If Dr. Stubblefield is citing Dr. Prus because he is the present Chair of our department, I submit that Dr. Mischo is a much more qualified authority to cite in reference to my merits for tenure and promotion because he was the Chair since my employment until the fall of 2010. In addition, Dr. Mischo regularly reviewed my student evaluations and yearly faculty development agreements. Also, omitted from Dr. Stubblefield's letter are interviews and opinions of the tenured faculty members as well as the Chair of the Faculty Tenure and Promotion Committee who recommended me for tenure and promotion (Dr. Coleman). Dr. Parrish and Dr. Cotter-Lynch have been very vocal in their support for my application as well as their opinion that I am as deserving as they of tenure and promotion. I submitted copies of letters to Dr. Stubblefield from every member of last year's tenure and promotion committee (with the exception of Dr. Prus) recommending me for tenure and promotion as well as their examples of concrete reasons for why I merit tenure and promotion. It is disingenuous to cite as the sole authority as to my merits the one person who is not documented as supporting me—not only citing him, but, most egregiously, claiming he said something that he did not, in fact, say. The preponderance of evidence, which is the only reason I can surmise for its omission, as well as the overwhelming preponderance of testimony, substantiates my complaint.

3. Dr. Stubblefield does not deny that policy was violated in reference to the requirement that I be informed of the judgment of the Faculty Appellate Committee in a timely manner. However, she dismisses this gross violation of policy by asserting that I was not "harmed by the delay" and asserting that the violation of policy was not based on gender or race. This certainly begs the question, what was the violation based on? Dr. Stubblefield proffers no explanation as to why I was not informed, she simply asserts, *ex cathedra* if you will, that it was not based on gender or race. Surely, anyone who is injured by such a gross violation of policy is entitled to an explanation. It is part of the record that I repeatedly requested the withheld information, and my requests were not honored. Thus, the violation occurred willfully and deliberately. If the intent was not to harm, what was it? How does Dr. Stubblefield define "harm"?
4. Dr. Stubblefield disingenuously suggests that my complaint of retaliation is based solely on a conversation that Dr. Jane McMillan had with me in which she discussed the Dr. Doug

McMillan's religious biases. When, in fact, it is based on the circumstances of the case. Dr. Stubblefield fails to even acknowledge the circumstances of the case, instead she cites Jane McMillan's statement that she regrets if she had misled me in reference to her conversation with her brother as grounds for dismissing the complaint in its entirety. Dr. Stubblefield does not mention the fact that in December of 2010 the Faculty Appellate Committee unanimously recommended that I be allowed to apply for tenure and promotion in contravention to Dr. McMillan's order. Obviously, the Faculty Appellate Committee found something untoward in Dr. McMillan's action.

The sheer magnitude of significant omissions and distortions demonstrate that Dr. Stubblefield's "Findings and Conclusions on Gender Discrimination Complaint" is in error. This list is not intended to be an exhaustive or conclusive repudiation of Dr. Stubblefield's findings, it is simply a compendium of some of the most compelling reasons and facts I have been able to assemble in the brief time (10 days) allowed to respond under present policy. Please keep in mind that Dr. Stubblefield took six months and had the assistance of Southeastern's legal counsel in the preparation of her document.

A handwritten signature in black ink, appearing to read "Paul D. ...", with a long horizontal flourish extending to the right.

Exhibit 57



COPY

OFFICE OF THE PRESIDENT

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4236
DURANT, OK 74701-0605

580-745-2500
FAX 580-745-2515
WWW.SOSU.EDU



February 21, 2011

Dr. Rachel Tudor
1124 North 10th
Durant, Oklahoma 74701

RE: Appeal of the Findings and Conclusions on Gender Discrimination Complaint

Dear Dr. Tudor:

I am in receipt of the documents filed by you regarding alleged gender discrimination as well as Dr. Stubblefield's January 19, 2011 document. After a thorough review, I concur with Dr. Stubblefield's findings and conclusions that neither discrimination nor retaliation has been shown in this matter.

Sincerely,

Larry Minks
Larry Minks,
President

cc: Dr. Claire Stubblefield

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

Exhibit 58

From: Claire Stubblefield /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=CSTUBBLEFIELD
Subject: info
To: Microsoft Exchange
Cc: Babb,Charlie , LarryMinks

The saga continues!

From: Rachel Tudor
Sent: Thursday, October 14, 2010 1:43 PM
To: Claire Stubblefield
Subject: info

Dear Dr. Stubblefield,

I have put the information we discussed earlier into a letter and attached it to this email. I have a class at 5:00, but would be happy to visit with you before then or tomorrow (classes at 9 & 11).

Sincerely,

Rachel Tudor, PhD
Dept of English, Humanities & Languages
Southeastern Oklahoma State University
1405 North 4th Ave.
Durant, OK 74701
580.745.2588
rtudor@se.edu

SEOSUEMAIL2297

Exhibit 59

From: Claire Stubblefield /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=CSTUBBLEFIELD
Subject: TUDOR
Date: November 18, 2010 at 4:59 PM
To: Doug McMillan /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=CSTUBBLEFIELD

Wanted to see draft before I send to Babb on Monday. I simplified from 8-4 pages. No recommendations. Feel free to make any comments or corrections as needed.

SEOSU EMAIL 3553

Exhibit 69

To: Charla Hall[CHall@se.edu]
From: Bryon Clark
Sent: Thur 9/30/2010 10:37:03 PM
Importance: Normal
Subject: RE: grievance
Received: Thur 9/30/2010 10:37:00 PM

Charla:

I probably would e-mail the letter as an attachment (or embedded in the text of the e-mail) to Dr. Tudor as well as everyone cc'd in the letter today or no later than tomorrow (1 October 2010). I also would indicate in the e-mail that Dr. Tudor will be provided a hard copy of the letter with original signatures of FAC members as soon as it is signed and those cc'd also will be provided copies of the signed letter.

Questions, e-mail or call me (cell phone: 903-815-0626).

Thank you!

Bryon

From: Charla Hall
Sent: Thursday, September 30, 2010 3:26 PM
To: Bryon Clark
Subject: Re: grievance

No need to e-mail or fax. **Ends up that Charlie has the document and has approved our response.** He suggested that the other two committee members also sign the document. I haven't heard back from them about a convenient time to get their signatures. I don't think Dr. Knapp is back on campus until next week.

So, is your recommendation that I go ahead and e-mail the document to Dr. Tudor today? Would I also cc(in the e-mail) the same people who are to be cc'd in the memo?

Charla R. Hall, Ph.D.
Professor
Southeastern Oklahoma State University
1405 N. 4th
Durant, OK. 74701
580-745-2378
On Sep 30, 2010, at 3:18 PM, "Bryon Clark" <BKClark@se.edu> wrote:

Charla:

Yes, I will scan and e-mail a copy of the grievance and the e-mail naming the respondents to him this afternoon.

It would be best if the letter could be e-mailed to Dr. Tudor and the hard copy hand-delivered tomorrow; 1 October 2010 is 15 days after the respondents were identified.

Thanks.

Bryon



From: Charla Hall
Sent: Thursday, September 30, 2010 1:51 PM
To: Bryon Clark
Cc: Charla Hall
Subject: grievance

Charlie Babb has asked for a copy of the grievance filed by Dr. Tudor. Do you have a clean copy that you can fax or e-mail to him? Mine is written all over.

Thanks!

Charla R. Hall, Ph.D.
Professor
Department of Behavioral Sciences
Southeastern Oklahoma State University
1405 N. 4th

PMB 4102

Durant, OK 74701-0609
580-745-2378
580-745-7421 (fax)

Exhibit 61

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff(s),)	
)	
RACHEL TUDOR,)	
)	
Plaintiff Intervenor,)	
)	
-vs-	)	No. 5:15-CV-00324-C
)	
SOUTHEASTERN OKLAHOMA STATE)	
UNIVERSITY, and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendant(s).)	

DEPOSITION OF CLAIRE STUBBLEFIELD, PhD

TAKEN ON BEHALF OF THE PLAINTIFF(S)

IN OKLAHOMA CITY, OKLAHOMA

ON MAY 17, 2016

REPORTED BY: LESLIE A. FOSTER, CSR

Claire Stubblefield

24

1 Q Did somebody communicate to you that you had
2 the option to withdraw your application?

3 A Yes.

4 Q Who was that?

5 A Doug McMillan.

6 Q And why was he the one communicating to you
7 that you had the option to withdraw your application?

8 MR. JOSEPH: Object to the form.

9 A A friend, a confidant.

10 Q (BY MR. TOWNSEND) Did he work in the academic
11 affairs office at the time?

12 A Yes.

13 Q You -- strike that.

14 Do you still consider Dr. McMillan to be --
15 strike that again.

16 Do you still -- do you still consider Doug
17 McMillan to be a friend?

18 A Friendly, yes.

19 Q And I think you said at that time that Doug
20 McMillan informed you of the option to withdraw your
21 application, that he was a friend and confidant. Right?

22 A Yes.

23 Q Did he continue to be your friend and confidant
24 after that point in time?

25 A Friendly, yes.

Claire Stubblefield

25

1 Q Was there ever a point in time where he stopped
2 being your friend and confidant?

3 A I don't believe so.

4 Q When Doug McMillan told you about your option
5 to withdraw your application for tenure, did he identify
6 the deficiencies in your portfolio?

7 A The way that's posed is difficult for me to
8 answer because my meeting with him was not an official
9 meeting. I basically bursted in his office. I went in
10 and said, "I hear that I'm not going to make it through
11 the first -- this time." That's all. He did not call
12 for me. I did not make an appointment. There was
13 nothing -- nothing official about that. And I actually
14 was out of line.

15 Q What did he say when you burst into his office
16 and asked him that question?

17 A "What's -- what's wrong?" You know, and I told
18 him that I'd heard that I was -- there was some things
19 deficient and had -- and had he received it.

20 He said they had just come over, so, no.
21 Really, no. And so just disappointment in that. There's
22 some disappointment in -- in not getting it.

23 And I -- so I just looked at it and he said,
24 you know, that's kind of what it was. That was how it
25 happened. And I had to inject that it was not an

Claire Stubblefield

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1 about where in the process her indication that Jane
2 McMillan had -- I'm not sure which of the amendments and
3 iterations that one came out.

4 Q Did he say, though, that he did not have any
5 religious beliefs related to transgender people?

6 A If we're understanding at -- make sure we're --
7 I want to make sure we're communicating. At what point?
8 Which -- you want the second conversation or when did he
9 say or when did I ask him? I'm not sure what you're
10 asking.

11 Q Sure. Well, let me just make it clear, then.
12 Doug McMillan's religious beliefs didn't come up as a
13 topic when you spoke to him the first time about
14 Dr. Tudor's --

15 A No.

16 Q -- portfolio. Right?

17 A That's correct.

18 Q Okay. So during this second conversation where
19 you're speaking to him about discrimination, did you ask
20 him what his religious beliefs were with respect to
21 transgender people?

22 A I don't remember. I don't think it was asked
23 that way.

24 Q Did you ask him whether he had ever said
25 anything to anyone about his religious beliefs about

Claire Stubblefield

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1 pertain to transgender people?

2 A Not stated that way.

3 Q What do you mean when you say, "Not stated that
4 way"?

5 A Not stated that way.

6 Q Meaning, you didn't ask in the exact words I
7 just stated?

8 A That is correct.

9 Q All right. Let me ask the question again.

10 A Please.

11 Q At any point during your investigation of
12 Dr. Tudor's discrimination complaint, did you collect any
13 evidence or any information about Dr. McMillan's
14 religious beliefs?

15 A No.

16 Q Did you ask Dr. McMillan how he felt about
17 transgender people?

18 A Yes.

19 Q What did he say?

20 A He says it doesn't matter.

21 Q What did you take that to mean?

22 A I think of everything that you're going to ask
23 me, this is the most problematic for me because I'm
24 talking about someone who I've talked to about
25 discrimination from the time I got to Southeastern. He

Claire Stubblefield

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1 has never, never mentioned he disliked anybody. He was
2 my confidant as far as discrimination, what people talk
3 about, what hurts people, and humanity.

4 And for you to ask me that and continue to ask
5 me if he was prejudiced when I know what he's done for
6 me, I take offense to that. Now, every time it comes up,
7 I will probably be equally as pissed about this. But
8 that's the one person who I have never heard say
9 anything, anything, about people of color.

10 He -- he always said do the right thing for the
11 right reasons. We constantly said that to each other
12 because I've been upset about things, he's been upset
13 about things, and we say the same thing. Do the right
14 thing for the right reasons. So his Baptist background
15 or any other background does not preclude his stand on
16 humanity. And I stand by that. I want a break.

17 MR. TOWNSEND: Certainly.

18 (Off the record at 12:18 P.M.)

19 (On the record at 1:23 P.M.)

20 Q (BY MR. TOWNSEND) All right, Dr. Stubblefield.
21 We just returned from a lunch break. Is there any reason
22 that you could not continue to give truthful testimony
23 today?

24 A No.

25 Q Before our lunch break, we were talking some

Claire Stubblefield

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1 A Indirectly, yes.

2 Q Did you file any complaints about the racial
3 slur?

4 A No. It was a one-time occurrence.

5 Q So when you learned that Dr. Tudor was
6 complaining about Doug McMillan discriminating against
7 her --

8 A Sorry.

9 Q -- did you have the same reaction in your mind
10 about that complaint that you had just before we stopped
11 for lunch in response to my question?

12 A Say -- please repeat that.

13 MR. TOWNSEND: Can you read the question back?

14 THE COURT REPORTER: "Question: Did you have
15 the same reaction in your mind about that complaint that
16 you had just before we stopped for lunch in response to
17 my questions?"

18 MR. JOSEPH: Object to the form.

19 Q (BY MR. TOWNSEND) All right. I'll ask it
20 again.

21 A Okay.

22 Q All right. I'll ask it a different way.

23 So when Dr. Tudor told you that she had a
24 complaint about Dr. McMillan discriminating against her,
25 in your mind, what did you think about her making that

Claire Stubblefield

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1 complaint, given what you knew about Doug McMillan?

2 A It was something I was -- I needed to find out.

3 Because that would have surprised me.

4 MR. TOWNSEND: Let's go off the record for a
5 second.

6 (Off the record at 1:27 P.M.)

7 (On the record at 1:28 P.M.)

8 Q (BY MR. TOWNSEND) Was there a process for you
9 to recuse yourself from doing an investigation as
10 affirmative action officer if you were in a situation
11 where you didn't think you could be impartial?

12 A I would be able to say I don't want to do that,
13 yes.

14 Q What was the -- what would have been the
15 process for doing that?

16 A I don't know because I've never had to do that.
17 But I would feel empowered to do that.

18 Q Why would you have felt empowered to do that?

19 A Because there's not -- because I feel that I
20 could do that. I just -- I don't want to do this for
21 some reason.

22 Q Was there some sort of written procedure or
23 policy on what you would need to do to recuse yourself in
24 that way?

25 A Not that I'm aware of.

Claire Stubblefield

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1 made by Dr. McMillan or by Jane McMillan, whether Jane
2 McMillan had any knowledge of Doug McMillan's religious
3 beliefs as they pertained to transgender people?

4 A Repeat that.

5 Q Sure. So irrespective of whether Jane McMillan
6 made a comment about Doug McMillan's religious beliefs to
7 Dr. Tudor, did you ask Jane McMillan if she knew what
8 Doug McMillan's religious beliefs were about transgender
9 people?

10 MR. JOSEPH: Object to the form.

11 A I don't know.

12 Q (BY MR. TOWNSEND) When you say "I don't know,"
13 are you meaning you don't remember if you asked her, or
14 is it -- or are you saying you don't know because there's
15 something with my question you're unclear on?

16 A Yes.

17 Q All right. Do you remember asking Jane
18 McMillan whether she had any knowledge about Doug
19 McMillan's religious beliefs as they pertained to
20 transgender people?

21 A No.

22 Q Did you take notes when you spoke to Jane
23 McMillan in connection with your investigation of
24 Dr. Tudor's discrimination complaint?

25 A Yes.

Claire Stubblefield

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1 A I don't recall.

2 Q Did you investigate the reasons why the
3 administration had decided not to allow Dr. Tudor to
4 apply for tenure?

5 A Yes.

6 MR. JOSEPH: Object to the form.

7 Q (BY MR. TOWNSEND) What did you do to
8 investigate that complaint?

9 A I don't recall.

10 Q Do you remember if you spoke to any witnesses
11 in connection with your investigation of Dr. Tudor's
12 discrimination complaint about Dr. Tudor not being
13 allowed to apply for tenure?

14 MR. JOSEPH: Object to the form.

15 A I don't recall.

16 (Plaintiff's Exhibit 106 has been
17 marked for identification purposes
18 and made a part of the record.)

19 Q (BY MR. TOWNSEND) Handing you what I've marked
20 Plaintiff's Exhibit 106.

21 (Plaintiff's Exhibit 107 has been
22 marked for identification purposes
23 and made a part of the record.)

24 Q (BY MR. TOWNSEND) And what I've marked
25 Plaintiff's Exhibit 107. Is Plaintiff's Exhibit 106 an

Claire Stubblefield

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1 Q You don't understand the word accused? I can
2 use a different word if that's the confusion.

3 A The semantics is what I'm having a problem
4 with.

5 Q All right. Would it be inappropriate for an
6 affirmative action officer, in connection with an
7 investigation of a discrimination complaint, to ask the
8 person who the complainant believes discriminated against
9 him or her what the affirmative action officer should put
10 in the investigation report?

11 A Believes to -- believe, suspects, to me that's
12 a difference in a criminal and one who even is arrested.
13 You don't know at that point. You don't know. I don't
14 know if he's a respondent or not. She's accusing.

15 Q Uh-huh.

16 A She's accusing.

17 Q Uh-huh. So --

18 A I have no -- that's all -- that's all I can say
19 about that.

20 Q All right. So if a -- let me strike that.

21 As affirmative action officer, when you
22 investigate a discrimination complaint, you're looking at
23 whether a particular person discriminated against the
24 complainant. Right?

25 A Yes. We can agree.

Claire Stubblefield

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1 Q So as affirmative action officer, would it be
2 appropriate to ask the person that you're
3 investigating -- whether they discriminated -- what you
4 should put in your investigation report?

5 A To make sure I'm understanding, you're asking
6 me if I would ask someone who was being investigated if I
7 should do something or should not do something?

8 Q Right.

9 A That would be inappropriate.

10 Q Okay.

11 (Plaintiff's Exhibit 109 has been
12 marked for identification purposes
13 and made a part of the record.)

14 Q (BY MR. TOWNSEND) Showing you what's been
15 marked Plaintiff's Exhibit 109. Plaintiff's Exhibit 109
16 is an e-mail Bates numbered EEOC 44.

17 A Uh-huh.

18 Q Is Plaintiff's Exhibit 109 an e-mail that you
19 sent to Doug McMillan and his reply dated October 14,
20 2010?

21 A Yes.

22 Q In your e-mail you ask Doug McMillan "Have you
23 had the opportunity" -- strike that.

24 You ask him "Have you had opportunity to
25 discuss case with C. Babb, question mark?"

Claire Stubblefield

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1 A Did you indicate that there was a summary?
2 That -- restate your -- your question to me.

3 MR. TOWNSEND: Could you read my question?

4 THE COURT REPORTER: "Question: Could you
5 please point to me where under the heading "Grievance" in
6 Plaintiff's Exhibit 17 you described Dr. Tudor's
7 complaint about not being allowed to apply for promotion
8 and tenure?"

9 A The one prior to that was this is a summary and
10 that was the summary. And the summary, in my opinion, is
11 not specific illumination on every single point.

12 Q (BY MR. TOWNSEND) Did you summarize under the
13 heading "Grievance" in Plaintiff's Exhibit 17 Dr. Tudor's
14 complaint that she was not permitted to apply for
15 promotion and tenure?

16 A I still don't understand what you're asking me.

17 Q Is there a summary of Dr. Tudor's complaint
18 that she was not permitted to apply for promotion and
19 tenure under the heading of "Grievance" of Plaintiff's
20 Exhibit 17?

21 A I'm not clear what you're asking.

22 MR. TOWNSEND: Would you read back the
23 question?

24 THE COURT REPORTER: "Question: Is there a
25 summary of Dr. Tudor's complaint that she was not

Claire Stubblefield

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1 under any harassment. It's not a -- it's not acceptable.

2 Q Any harassment including harassment because
3 someone is transgender?

4 A That's correct.

5 Q I'm going to direct you to Plaintiff's
6 Exhibit 110. It's also going to be a looseleaf thing.
7 It's Dr. Tudor's amended complaint --

8 A Uh-huh.

9 Q -- dated October 28, 2010.

10 A 108?

11 Q 110.

12 A Yes.

13 Q Okay. So on page 2 of Plaintiff's Exhibit 110
14 about mid way through the page, there's a sentence that
15 starts with "Taken individually, any one of these events
16 evidence a hostile attitude arising from discrimination.
17 Taken collectively, they demonstrate a pattern of
18 calculated adversarial behavior intended to thwart my
19 equal opportunity to advance in employment, an
20 opportunity protected by policy and law."

21 Did I read that correctly?

22 A I -- I found it late, but yes.

23 Q Okay. In this phrase "hostile attitude," what
24 was your understanding of what Dr. Tudor was referring to
25 with that phrase?

Claire Stubblefield

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1 A I'm not sure what Dr. Tudor was asking -- what
2 she was -- she's a very good writer. Very strong writer
3 and very prolific writer, so I don't know.

4 Q Did you ever ask Dr. Tudor what she meant by
5 "hostile attitude"?

6 A She told me. She --

7 Q What's your recollection of what Doctor told
8 you about what she meant by "hostile attitude"?

9 A She believed that -- my recollection is that
10 she believed that because she didn't get what she wanted,
11 it was hostile. And the reasons were discriminatory.

12 Q And when you just said "didn't get what she
13 wanted to get," do you mean the application for promotion
14 and tenure? Is that what --

15 A That's my assumption.

16 Q Okay. Do you happen to recall if Dr. Tudor
17 complained to you about any other hostilities in the
18 workplace that were unrelated to the tenure and promotion
19 application?

20 A I don't recall. If you can refresh my memory.

21 Q If Dr. Tudor would have complained to you about
22 other hostilities unrelated to the tenure and promotion
23 application, would you have investigated those?

24 A Give me an example --

25 MR. JOSEPH: Object to the form.

Claire Stubblefield

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1 A That's what's here.

2 Q Did you ask Dr. Tudor about this allegation
3 that Dr. Scoufos used inappropriate pronouns with her?

4 A Yes.

5 Q What do you recall Dr. Tudor telling you about
6 that?

7 A I recall asking her what was intermittent, and
8 I asked what was inappropriate pronouns.

9 Q And what's your recollection of what Doctor
10 told you is intermittent?

11 A She just said it's not -- I remember her saying
12 "Not often." I'm not sure how often she saw Dr. Scoufos,
13 either.

14 Q All right.

15 A I don't know if they saw each other once a
16 month, once every five months. I don't know.

17 Q And what was your recollection of what Doctor
18 told you was inappropriate pronouns?

19 A Using he rather than she.

20 Q Anything else?

21 A No.

22 Q Did you investigate this allegation that
23 Dr. Scoufos repeatedly used inappropriate pronouns to
24 talk to --

25 A I talked to Dr. Scoufos about it.

Claire Stubblefield

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1 Q To your knowledge, did including the additional
2 statuses of sexual identity and sexual orientation change
3 the rights of any students at Southeastern with regards
4 to filing claims of discrimination on the count of sexual
5 identity?

6 A Change rights, no.

7 MR. JOSEPH: Object to the form.

8 Q (BY MR. YOUNG) So if there was no change in
9 rights, why was it important to amend the policy?

10 MR. JOSEPH: Object to the form.

11 A Other institutions had done it and it was -- it
12 was -- our president believed that that would be
13 something to do -- would be a good thing to do.

14 Q (BY MR. YOUNG) Dr. Stubblefield, who currently
15 evaluates your performance? Every year?

16 A I'm direct report to the president.

17 Q And who's the current president at
18 Southeastern?

19 A Sean Burrage.

20 Q And do you happen to recall who evaluated your
21 performance in the 2010-2011 school year?

22 A Whoever the current president was at that time.

23 Q Do you happen to recall if you had a favorable
24 evaluation in 2010?

25 A They've all been favorable. Yes.

Exhibit 62

Bryon Clark

From: Rachel Tudor
Sent: Monday, February 07, 2011 9:53 AM
To: Bryon Clark
Subject: response to policy change
Attachments: Amended Faculty Grievance Policy.docx

Dr. Clark,

Today is the first day the university has been open since I received your email. Please note the attached response in reference to the policy changes noted in your letter.

Sincerely,

Rachel Tudor, PhD
Dept of English, Humanities & Languages
Southeastern Oklahoma State University
1405 North 4th Ave.
Durant, OK 74701
580.745.2588
rtudor@se.edu

Please note the following issues I consider relevant to the amended Faculty Grievance Policy:

1. The current policy invites administration to share its perspective once the Faculty Appellate Committee has made its decision—but deliberately makes no provision for the President’s Designee to usurp the decision of the Faculty Appellate Committee because current policy states that in matters related to faculty:

The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail. (3.7.4 Role of the Faculty)

2. The current policy recognizes that if such exceptional circumstances or compelling reasons exists—the faculty are intelligent and responsible enough to give them due weight in their deliberations with the President’s Designee.
3. Amending the Faculty Grievance Policy without the advice or consultation of the Faculty Senate violates the principles of shared governance and due process.
4. Amending the Faculty Grievance Policy without the advice or consultation of the Faculty Personnel Policies Committee usurps the specific commission of the Committee as well as violates the principles of shared governance and due process.
5. The administration’s consultation with legal counsel for review and approval, while deliberately omitting the faculty from the process demonstrates an egregious usurping of faculty rights.
6. The amended policy should reflect established written policy of privileging faculty in affairs related to faculty. i.e. “the administration should defer to the faculty except in exceptional circumstances and for compelling reasons.” As amended, the policy assigns equal weight to the singular opinion of the President’s Designee as it does to the considered judgment of Faculty Appellate Committee.
7. The amended policy should clearly place the burden on the President’s Designee when the Designee disagrees with the recommendation(s) of the Faculty Appellate Committee.
8. In the interest of shared governance and due process as well as our democratic values, the opinion of one person (the President’s Designee) should not be given the same weight as that of the decision three faculty members reached after conducting a thorough investigation and consulting with one another.

In light of the seriousness of the above mentioned issues, I recommend that the amended policy be rejected and that a new policy should be composed in collaboration with the faculty.

Exhibit 63

Bryon Clark

From: Bryon Clark
Sent: Friday, February 11, 2011 1:06 PM
To: Rachel Tudor
Cc: Doug McMillan; Ross Walkup; Charla Hall; James Knapp; Larry Prather
Subject: Response to 7 Feb 2011 e-mail
Attachments: Addition to Grievance Policy 24 Jan 2011.docx; Grievance Policy-Section 4.4.6 APPM.docx; Tudor Grievance dated 11 October 2010; response to policy change

Dr. Tudor:

I have reviewed your e-mail dated 7 February 2011 to the "Addition to Grievance Policy" e-mailed on 31 January 2011 which asked the grievant and respondent to contact me with questions about the protocols/procedures developed that would allow the grievance to proceed in the absence of policy for the situation that occurred (i.e., inability of President's Designee and Hearing Committee to develop a final/joint determination). The points raised in your response to the e-mail are more related to the elements of your grievance and not the protocols/procedures developed. After thoroughly considering the points in your e-mail, I believe that the protocols/procedures developed are fair, do not place unreasonable expectations on any party involved, and consistent with existing policy. In fact, these protocols/procedures are identical to the steps taken in the existing policy when the President's Designee and Hearing Committee are able to reach a final/joint determination; the grievant and/or respondent may appeal this final/joint determination to the President who will then make the final and binding decision.

Therefore, the attached protocols/procedures and the following timeline will be applied. The deadline for submitting an appeal is different than the one listed in the original e-mail dated 31 January 2011 because of the inclement weather and campus being closed as well as the time needed to consider your e-mail dated 7 February 2011. **You must submit your appeal in writing to me (Administrative Liaison) by the deadline of 4 March 2011 for it to be considered;** the respondent also will be provided this new deadline regarding this grievance. If you choose to submit an appeal, what is included is completely your decision. However, please consider the appeal a chance to address specific statements in the written decisions rendered by the Hearing Committee and/or President's Designee that you disagree with or to clarify information that you previously provided. You also may wish to include points raised in your e-mail dated 7 February 2011.

Please note that even if no appeal is submitted, the process will continue and the President will render a final and binding decision for the grievance because a final/joint determination could not be reached by the President's Designee and Hearing Committee. The Administrative Liaison has five working days from whichever is sooner, receipt of both appeals or deadline to submit an appeal, to provide all materials to the President. The President then has 10 working days to review and render the final and binding decision regarding the grievance.

Cordially,

Bryon

Attachments:

- Addition to Grievance Policy 24 Jan 2011
- Grievance Policy Section 4.4.6 AAPM
- 31 Jan 2011 e-mail from Clark to Tudor and McMillan—Subject: Tudor Grievance dated 11 October 2010
- 7 Feb 2011 e-mail from Tudor to Clark—Subject: response to policy change

Exhibit 64

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff(s),)	
)	
RACHEL TUDOR,)	
)	
Plaintiff Intervenor,)	
)	
-vs-	)	No. 5:15-CV-00324-C
)	
SOUTHEASTERN OKLAHOMA STATE)	
UNIVERSITY, and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendant(s).)	

DEPOSITION OF CHARLES BABB

TAKEN ON BEHALF OF THE PLAINTIFF(S)

IN OKLAHOMA CITY, OKLAHOMA

ON MAY 18, 2016

REPORTED BY: LESLIE A. FOSTER, CSR

Charles Babb

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1 McMillan during the October 2010 timeframe?

2 A Dr. Tudor had filed her -- one of her
3 grievances in October of 2010, so I'm sure that I would
4 have talked to him around -- during that month during
5 that time period.

6 Q Is that the same reason why you believe you
7 talked to Dr. Stubblefield during that October 2010 time
8 period?

9 A One of them, yes.

10 Q What's the other one?

11 A I don't know.

12 Q During this timeframe in October 2010, did RUSO
13 policy say anything about whether Dr. Stubblefield would
14 need to put her findings on Dr. Tudor's retaliation claim
15 in writing?

16 A No.

17 Q Did Southeastern's policy around this
18 October 2010 timeframe indicate whether Dr. Stubblefield
19 would need to put her findings on Dr. Tudor's retaliation
20 complaint in writing?

21 A I don't recall.

22 Q Could you please take a look at Plaintiff's
23 Exhibit 17.

24 A Okay.

25 Q This is Dr. Stubblefield's report beginning

Charles Babb

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1 Scoufos, dean of arts and sciences; and Charles Weiner,
2 assistant vice president for student learning and
3 institutional research."

4 Did I read that correctly?

5 A Yes, sir.

6 Q So then if you go to the second-to-the-last
7 page of Plaintiff's Exhibit 17, it has the defendants
8 Bates number ending in 1800.

9 A Okay.

10 Q Under conclusion, Dr. Stubblefield indicated
11 here that Dr. Tudor had the right to appeal her
12 determination. Correct?

13 A That's what it says, yes.

14 Q And the appeal was to be made to the president
15 of Southeastern. Correct?

16 A Yes.

17 Q If Dr. Stubblefield had determined that
18 President Minks had discriminated against Dr. Tudor,
19 would there have been a different process required for an
20 appeal of that determination than to the president?

21 A I don't know.

22 Q So it's possible that the policy at
23 Southeastern could have permitted President Minks to
24 appeal to himself a determination that he discriminated
25 against Dr. Tudor?

Charles Babb

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1 MS. COFFEY: Object to the form.

2 A I don't know.

3 Q (BY MR. TOWNSEND) Would it conflict with RUSO
4 policy if Dr. Stubblefield had found that Dr. Minks had
5 discriminated against Dr. Tudor and the appeal of that
6 determination could be made by Dr. Minks to himself?

7 MS. COFFEY: Object to form.

8 A Conflict with RUSO policy? Is that --

9 Q (BY MR. TOWNSEND) Yes.

10 A Not that I know of.

11 Q Could you please take a look at Plaintiff's
12 Exhibit 20.

13 A Okay.

14 Q Do you remember receiving a copy of the memo
15 that's Plaintiff's Exhibit 20 in connection with
16 Dr. Tudor's charge of discrimination?

17 A There's some documents here in this --

18 Q I don't think those are part of the exhibit.

19 A Well --

20 MR. TOWNSEND: Let's go off the record for a
21 second.

22 (Off the record at 2:15 P.M.)

23 (On the record at 2:15 P.M.)

24 Q (BY MR. TOWNSEND) All right. Plaintiff's
25 Exhibit 20 is two-page document. It's Bates numbered

Charles Babb

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1 A I -- I don't know of any. There may be, but --

2 Q Okay. That's fine. Let's --

3 A I'm not aware of any documents that would
4 refresh my recollection on that.

5 Q Okay.

6 Let's switch gears and go to a different topic.
7 You previously testified that a faculty member at
8 Southeastern can file a grievance against the president
9 of Southeastern for wrongful discrimination directly to
10 the RUSO board. Is that correct?

11 MS. COFFEY: Object to form.

12 A I believe that's right.

13 Q (BY MR. YOUNG) Was it possible for a faculty
14 member to file such a grievance against the president of
15 Southeastern for wrongful discrimination directly to the
16 RUSO board in 2010?

17 MS. COFFEY: Object to form.

18 A Yes.

19 Q (BY MR. YOUNG) Is there a RUSO policy that
20 spells out the process for filing such a grievance?

21 A No.

22 Q How were faculty members at Southeastern made
23 aware that they could file a grievance against the
24 president directly with the RUSO board in 2010?

25 MS. COFFEY: Object to form.

Charles Babb

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1 A I don't know.

2 Q (BY MR. YOUNG) I'll have you look again at
3 Plaintiff's Exhibit 78. Apologize.

4 A Okay. I'm there.

5 Q I'm going to have you look at the page that's
6 Bates marked DOJ 345.

7 A Okay.

8 Q There's a heading in the middle of the page
9 that is bolded that reads "Southeastern Follow-up:
10 Comprehensive System for Documenting Complaints and
11 Resolutions in the area of Opportunity and Affirmative
12 Action, in parentheses, Assurance."

13 Did I read that correctly?

14 A Yes.

15 Q Okay. Can you read the paragraph that falls
16 under that heading and let me know when you're done
17 reading it.

18 A Okay.

19 Q Are you familiar with the Internet-based
20 recording system referenced here as EthicsPoint?

21 A Yes.

22 Q What is EthicsPoint?

23 A It's a online service that is separate from
24 RUSO, so -- and it -- it's pretty well explained here, I
25 think. It provides an ability for people to go online or

Charles Babb

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1 to call toll-free to register a complaint about any of
2 the schools.

3 Q Does that complete your answer?

4 A That's a very short thumbnail of it, of what
5 EthicsPoint is.

6 Q Do you have any knowledge as to why RUSO
7 adopted that EthicsPoint system in 2011?

8 MS. COFFEY: Object to form.

9 A Yes.

10 Q (BY MR. YOUNG) Can you please tell me why RUSO
11 adopted the EthicsPoint system in 2011?

12 MS. COFFEY: Instruct you not to answer to the
13 extent you have to reveal attorney-client privilege.
14 Otherwise you may answer.

15 A There had been a presentation by the Oklahoma
16 State University business officer about detecting fraud
17 at their university and the success that they had had.
18 They advised that they had used EthicsPoint. And the
19 RUSO audit and finance committee liked the idea, so we
20 reached out to EthicsPoint and eventually the board
21 approved contracting with EthicsPoint.

22 Q (BY MR. YOUNG) Does RUSO still utilize the
23 EthicsPoint system?

24 A Does RUSO what?

25 Q Currently utilize the EthicsPoint system --

Charles Babb

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1 A Yes.

2 Q -- to process complaints?

3 A Yes.

4 Q Can a faculty member at a university -- RUSO

5 university file a discrimination complaint using

6 EthicsPoint?

7 A Yes.

8 Q Who would investigate a discrimination
9 complaint filed by a faculty member via EthicsPoint?

10 A It would depend on the situation.

11 Q Can you give me an example of a situation and
12 explain who would investigate --

13 MS. COFFEY: Object to form.

14 Q (BY MR. YOUNG) -- such a complaint?

15 MS. COFFEY: Object to form.

16 A Whenever someone files a complaint with
17 EthicsPoint, they can do so anonymously. And then it's
18 my understanding that it goes through the EthicsPoint
19 server and then is sent to me.

20 I then have a point of contact with each
21 university. We discuss who would investigate. It's
22 pre-trained investigators for each school. Unless it's a
23 complaint about the president, then it doesn't go to
24 that -- then -- we don't talk to the school until we've
25 talked to the president about who's going to investigate.

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1 And then that process would involve getting the board,
2 executive members involved in deciding who would
3 investigate, if it were the president that were being --
4 the accusations against the president.

5 Q (BY MR. YOUNG) Prior to RUSO's adoption of
6 EthicsPoint, was there any set process for handling
7 complaints made against a university president in the
8 RUSO system?

9 MS. COFFEY: Object to form. Asked and
10 answered.

11 A Was there a set policy? Is that your question?
12 I'm sorry.

13 Q (BY MR. YOUNG) Let me rephrase my question.
14 Was there an established process for handling complaints
15 filed against a RUSO system president prior to the
16 adoption of EthicsPoint?

17 MS. COFFEY: Object to form.

18 A It was ad hoc.

19 Q (BY MR. YOUNG) And the ad hoc process -- as
20 you understand it, were you typically, as general counsel
21 of RUSO, involved in determining who would investigate a
22 complaint against the president at a RUSO university
23 school?

24 MS. COFFEY: Object to form.

25 A Your word "typically" throws me off. I may or

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1 A Sorry. You said 2010, 2008.

2 Q Sorry.

3 A That threw me off right then.

4 Q I apologize.

5 A I didn't listen to the rest of it.

6 Q No problem. Let's -- one more time.

7 A Okay.

8 Q To your knowledge, Mr. Babb, in 2010 and

9 2011 --

10 A Okay.

11 Q -- was there an established process for faculty
12 members at RUSO universities to file grievances against a
13 university president directly with RUSO?

14 A And I believe I testified there was no written
15 policy to that effect.

16 Q Are you aware of any faculty member at a RUSO
17 institution filing a grievance against a university
18 president directly with RUSO?

19 MS. COFFEY: Did you say university president
20 or precedent?

21 MR. YOUNG: President.

22 MS. COFFEY: Okay.

23 A I know we've had them come in. But I couldn't
24 tell you when or who or what school.

25 Q (BY MR. YOUNG) Okay. Let's switch topics.

Exhibit 65



OFFICE OF THE DEAN

SCHOOL OF ARTS AND SCIENCES
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 4107
DURANT, OK 74701-0609

580-745-2634
FAX 580-745-7476
WWW.SE.EDU

To: Rachel J. Tudor, Assistant Professor
Department of English, Humanities and Languages

From: Lucretia C. Scoufos
Dean, School of Arts and Sciences

Date: January 12, 2010

Subject: Recommendation to deny tenure and to give Rachel J. Tudor, Ph.D., a one-year terminal appointment at the rank of Assistant Professor in the Department of English, Humanities and Languages for the 2010-2011 Academic Year



Based on the available documentation, I am unable to recommend Dr. Rachel J. Tudor for promotion to Associate Professor or for tenure. My recommendation is that she be given a one-year, terminal appointment for the 2010-2011 academic year.

Cc: Dr. John Mischo

Exhibit 66

Rachel Tudor

From: John Mischo
Sent: Wednesday, September 15, 2010 10:30 AM
To: Rachel Tudor
Subject: RE: Scoufos letter

Rachel,

Any apparent backdating of letters is a serious concern. Randy would be the one to consult about that.

What also concerns me here is the issue of expecting faculty "recommendations" in a portfolio. (Certainly, peer-evaluation teaching visits are appropriate, but I believe something different is at issue here.) And I've raised this general concern with Randy. To me it makes no sense to have members of the T/P committees writing letters of recommendation for tenure/promotion for the portfolio—if that is indeed what is being referred to as lacking in your portfolio. How can faculty recommend tenure/promotion *before* having seen the portfolio? If faculty write letters of recommendation *before* the portfolio is submitted, why even have a committee? It makes no sense.

John

Dr. John Brett Mischo
Professor
English, Humanities, & Languages
Morrison Hall 316
1405 N. Fourth Ave, PMB 4060
Durant, Oklahoma 74701-0609

Phone (580) 745-2590
Fax (580)745-7406



From: Rachel Tudor
Sent: Tuesday, September 14, 2010 3:12 PM
To: John Mischo
Subject: Scoufos letter

John,

I was going through my portfolio and found that Scoufos placed a new letter in the place of the one she mailed to you and me. The letter is dated January 12, 2010, the date of the letter we received that failed to indicate any reason for her action. As you know, her refusal to let us know the reason for her decision led to the Faculty Senate Appellate Committee "recommending" that she do so and the administration's refusal to follow their recommendation. If you note the third paragraph, highlighted, it appears she is placing the responsibility on the faculty. She claims the file was "incomplete" because of lack of justification from the committee and lack of letters of recommendation from the tenured members of the department. It appears the administration has decided to throw you and the committee under the bus. I just thought you should know what's coming.

Best,

Rachel Tudor, PhD
Dept of English, Humanities & Languages
Southeastern Oklahoma State University

Exhibit 67



OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY
1405 N. FOURTH AVE., PMB 400
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MEMORANDUM

TO: Dr. Rachel Tudor
FROM: Dr. Douglas N. McMillan *Douglas N. McMillan*
Interim Executive Vice President for Academic Affairs
RE: NOTIFICATION OF PROMOTION STATUS
DATE: February 15, 2010

This is to provide notification of my recommendation to the President that you not be granted promotion to Associate Professor with tenure.

cc: Dr. Lucretia Scoufos, Dean, School of Arts & Sciences
Dr. John Mischo, Department Chair, English, Humanities & Languages
Dr. Lisa Coleman, Chair, Promotion Review Committee

dm

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

Exhibit 68

Claire Stubblefield

From: Rachel Tudor
Sent: Tuesday, September 14, 2010 10:22 AM
To: Claire Stubblefield
Subject: scoufos letter
Attachments: scoufos letter.tif

Dear Dr. Stubblefield,

I need to call your attention to a Dean Scoufos' letter dated January 12, 2010 (attachment). This is NOT the letter that was originally sent to Dr. Mischo (Chair of the Dept), Dr. Lisa Coleman (Chair of the Tenure and Promotion Committee), nor to myself. This letter is a falsification of an official state record. The letter is misleading and appears to be an attempt to shift responsibility, and accountability, from the administration to the faculty. Dr. Scoufos' original letter gave no indication of why she was recommending denying tenure. If you will note paragraph three of the letter, for instance, Dean Scoufos claims my application is "incomplete" because the department chair and committee "fail to give any justification for the recommendation for promotion and tenure". I talked to Dr Prus this morning, and he said that the administration specifically directed the chair and committee to simply report their decision without elaboration. The paragraph also states that my application was "incomplete" because there were no "letters of recommendation from tenured faculty members in her department". Dr. Prus, the current chair of the department, and Dr. Mischo, the former chair of the department, concur that it would be inappropriate for members of the department evaluating a candidate for tenure and promotion to write letters of recommendation for tenure and promotion. Finally, it is also very important to point out that if this information had been provided to me, or Dr. Mischo, or Dr. Coleman, in a timely manner—it could have been easily remedied without delaying the process. If you recall, one of the criterions we discussed at our last meeting was the issue of "pretext"—the inserting of a letter purporting to be the original recommendation denying my application and belatedly inserting reasons that shift responsibility to the faculty from the administration, is certainly evidence of "pretext" as well as of other serious breaches of policy and procedure.

I look forward to hearing from you on this new development.

Sincerely,

Rachel Tudor, PhD
Dept of English, Humanities & Languages
Southeastern Oklahoma State University
1405 North 4th Ave.
Durant, OK 74701
580.745.2588
rtudor@se.edu