

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

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

**PLAINTIFF’S MOTION TO ADMIT TESTIMONY OF CATHY CONWAY
BY DEPOSITION PURSUANT TO FRCP RULE 32(a)(4)(C) DUE TO
ILLNESS**

NOW COMES Plaintiff, Rachel Tudor (Tudor), by and through undersigned counsel, and moves this Court to introduce the deposition of Cathy Conway at the trial of this matter and shows as follows:

- 1) The oral deposition of Cathy Conway was taken on March 10, 2016.
- 2) The testimony of Cathy Conway contained in the deposition is relevant and admissible since it bears on several issues in this cause, including, but not limited to, Defendants’ decisions concerning treatment of Tudor after she underwent a transition from male to female at Southeastern Oklahoma State University (SEOSU) and how such policies were implemented toward Plaintiff.

3) FRCP Rule 32(a)(4)(C) provides that a “party may use for any purpose the deposition of a witness...if the court finds...that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment...”

4) At the November 1, 2017 docket call Defendants’ counsel provided information to this Court regarding Cathy Conway’s health, indicating she is in such condition that she cannot be physically present for testimony at the Federal Courthouse for the Western District of Oklahoma in this cause.

5) Defendants’ requested that Cathy Conway be given the opportunity to testify by video conferencing through use of facilities at SEOSU.

6) SEOSU claims an enrollment of 4,000 students. (See <http://www.se.edu/about/general-information/>).

7) Plaintiff is concerned that if Ms. Conway is unable to be around large numbers of people due to possible exposure to illnesses, SEOSU campus may not be the best place to require her to testify, due to the likelihood of exposure to thousands of students and faculty—possibly even more people than will be at the Federal Courthouse at that time.

8) Plaintiff tenders that if Ms. Conway is in such condition that she cannot be physically present to testify, her deposition testimony can be admitted instead to protect her from exposure to illnesses she may encounter to appear for live testimony either at the busy courthouse or crowded campus.

9) Additionally, there is a likelihood that Ms. Conway may need to be impeached which could prove difficult in this case via closed caption video conference where there are such a large number of exhibits.

10) Should this Court maintain its position that Ms. Conway be required to testify by video conference, Plaintiff requests voir dire of Ms. Conway outside the presence of the jury to verify her competency to testify in this cause at this time.

11) Should Ms. Conway not be found competent, Plaintiff renews her request that Ms. Conway's deposition be submitted as her testimony in this cause.

12) The specific designations of deposition testimony sought for admission is as follows:

Conway, Cathy	40:1-23	
	61:19-25 and 62:2-25 and 63:1-25	
	70:13-23	
	90:17-25 and 91:1-25 and 92:1-25 and 93:1-17	
	94:2-13	
	127:3-15	
	175:7-11	
	179:11-16	
	190:2-8	
	209:6-20	

Dated: November 11, 2017

/s/ Ezra Young
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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 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

/s/ Brittany M. Novotny