

Nos. 18-6102 / 18-6165

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**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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RACHEL TUDOR,

*Plaintiff-Appellant/ Cross-Appellee,*

v.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
*and the* REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA,

*Defendants-Appellees/ Cross-Appellants.*

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On appeal from the United States District Court  
for the Western District of Oklahoma  
The Hon. Robin J. Cauthron  
No. 5:15-CV-00324-C

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**SUPPLEMENTAL APPENDIX *for* DEFENDANTS–APPELLEES/CROSS-APPELLANTS**

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**VOLUME 5**

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APPEAL,CASREF,CLOSED,PURCELL,STAYED

**U.S. District Court  
Western District of Oklahoma[LIVE] (Oklahoma City)  
CIVIL DOCKET FOR CASE #: 5:15-cv-00324-C**

United States of America v. Southeastern Oklahoma State  
University et al

Assigned to: Honorable Robin J. Cauthron

Case in other court: Tenth Circuit, 18-06102  
Tenth Circuit, 18-06165

Cause: 42:2000e Job Discrimination (Employment)

Date Filed: 03/30/2015

Date Terminated: 06/06/2018

Jury Demand: Plaintiff

Nature of Suit: 442 Civil Rights: Jobs

Jurisdiction: Federal Question

**Plaintiff**

**United States of America**

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Oklahoma**

represented by **Dixie L Coffey**  
(See above for address)

**Defs' App'x Vol.5 - 1140**

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**Mithun S Mansinghani**  
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**Timothy M Bunson**  
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**Zachary P West**  
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**Defendant**

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 Legal Defense & Education Fund**

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<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
03/30/2015	<a href="#"><u>1</u></a>	COMPLAINT against All Defendants filed by United States of America. (Attachments: # <a href="#"><u>1</u></a> Civil Cover Sheet)(cps) (Entered: 03/30/2015)
03/31/2015	<a href="#"><u>2</u></a>	ENTRY of Appearance by Allan K Townsend on behalf of United States of America (Townsend, Allan) (Entered: 03/31/2015)
04/02/2015	<a href="#"><u>3</u></a>	ENTRY of Appearance by Meredith L Burrell on behalf of United States of America (Burrell, Meredith) (Entered: 04/02/2015)
04/02/2015	<a href="#"><u>4</u></a>	ENTRY of Appearance by Delora L Kennebrew on behalf of United States of America (Kennebrew, Delora) (Entered: 04/02/2015)
04/03/2015	<a href="#"><u>5</u></a>	Summons Issued Electronically as to Regional University System of Oklahoma, Southeastern Oklahoma State University. (cla) (Entered: 04/03/2015)

04/09/2015	<a href="#">6</a>	ENTRY of Appearance by Brittany M Novotny on behalf of Rachel Tudor (Novotny, Brittany) (Entered: 04/09/2015)
04/09/2015	<a href="#">7</a>	MOTION to Intervene <i>as of Right and Join Claims as Plaintiff</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Complaint in Intervention, # <a href="#">2</a> Exhibit EEOC Complaint of Dr. Tudor)(Novotny, Brittany) (Entered: 04/09/2015)
04/09/2015	<a href="#">8</a>	MOTION for Leave to Appear Pro Hac Vice <i>of Jillian T. Weiss</i> by Rachel Tudor. (Novotny, Brittany) (Entered: 04/09/2015)
04/09/2015	<a href="#">9</a>	MOTION for Leave to Appear Pro Hac Vice <i>of Ezra I. Young</i> by Rachel Tudor. (Novotny, Brittany) (Entered: 04/09/2015)
04/10/2015	<a href="#">10</a>	Receipt for Money Received from Rachel Tudor in the amount of \$50.00, receipt number OKW500045918 regarding <a href="#">8</a> MOTION for Leave to Appear Pro Hac Vice <i>of Jillian T. Weiss</i> . (njr) (Entered: 04/10/2015)
04/10/2015	<a href="#">11</a>	Receipt for Money Received from Rachel Tudor in the amount of \$50.00, receipt number OKW500045920 regarding <a href="#">9</a> MOTION for Leave to Appear Pro Hac Vice <i>of Ezra I. Young</i> . (njr) (Entered: 04/10/2015)
04/13/2015	<a href="#">12</a>	ORDER granting <a href="#">9</a> Motion to Appear Pro Hac Vice - Ezra I. Young. Signed by Honorable Robin J. Cauthron on 4/13/15. (lg) (Entered: 04/13/2015)
04/13/2015	<a href="#">13</a>	ORDER granting <a href="#">8</a> Motion to Appear Pro Hac Vice - Jillian T. Weiss. Signed by Honorable Robin J. Cauthron on 4/13/15. (lg) (Entered: 04/13/2015)
04/15/2015	<a href="#">14</a>	SUMMONS Returned Executed by United States of America. Southeastern Oklahoma State University served on 4/6/2015. (Townsend, Allan) (Entered: 04/15/2015)
04/21/2015	<a href="#">15</a>	SUMMONS Returned Executed by United States of America. Regional University System of Oklahoma served on 4/7/2015. (Townsend, Allan) (Entered: 04/21/2015)
04/21/2015	<a href="#">16</a>	ENTRY of Appearance by Dixie L Coffey on behalf of All Defendants (Coffey, Dixie) (Entered: 04/21/2015)
04/21/2015	<a href="#">17</a>	ENTRY of Appearance by Kindanne C Jones on behalf of All Defendants (Jones, Kindanne) (Entered: 04/21/2015)
04/21/2015	<a href="#">18</a>	ENTRY of Appearance by Ezra I Young on behalf of Rachel Tudor (Young, Ezra) (Entered: 04/21/2015)
04/22/2015	<a href="#">19</a>	ENTRY of Appearance by Jeb E Joseph on behalf of All Defendants (Joseph, Jeb) (Entered: 04/22/2015)
04/22/2015	<a href="#">20</a>	ENTRY of Appearance by Jillian T Weiss on behalf of Rachel Tudor (Weiss, Jillian) (Entered: 04/22/2015)
04/27/2015	<a href="#">21</a>	ANSWER to Complaint by Southeastern Oklahoma State University .(Coffey, Dixie) (Entered: 04/27/2015)
04/28/2015	<a href="#">22</a>	ANSWER to Complaint by Regional University System of Oklahoma.(Coffey, Dixie) (Entered: 04/28/2015)

05/04/2015	<a href="#">23</a>	ORDER granting <a href="#">7</a> Motion and Brief of Dr. Rachel Tudor to Intervene as of Right and Join Claims as Plaintiff. Signed by Honorable Robin J. Cauthron on 5/4/15. (lg) (Entered: 05/04/2015)
05/05/2015	<a href="#">24</a>	FIRST INTERVENOR COMPLAINT filed by Rachel Tudor.(Young, Ezra) (Entered: 05/05/2015)
05/12/2015	<a href="#">25</a>	ENTRY of Appearance by Shayna M Bloom on behalf of United States of America (Bloom, Shayna) (Entered: 05/12/2015)
05/26/2015	<a href="#">26</a>	ENTRY of Appearance by Mithun S Mansinghani on behalf of All Defendants (Mansinghani, Mithun) (Entered: 05/26/2015)
05/26/2015	<a href="#">27</a>	MOTION to Dismiss by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 05/26/2015)
05/26/2015	<a href="#">28</a>	ANSWER to <a href="#">24</a> Intervenor Complaint by Southeastern Oklahoma State University.(Coffey, Dixie) (Entered: 05/26/2015)
05/26/2015	<a href="#">29</a>	ANSWER to <a href="#">24</a> Intervenor Complaint by Regional University System of Oklahoma.(Coffey, Dixie) (Entered: 05/26/2015)
05/26/2015	<a href="#">30</a>	AMENDED MOTION to Dismiss by All Defendants. (Attachments: # <a href="#">1</a> Exhibit DOE Correspondence)(Mansinghani, Mithun) (Entered: 05/26/2015)
06/16/2015	<a href="#">31</a>	RESPONSE in Opposition re <a href="#">30</a> AMENDED MOTION to Dismiss filed by Rachel Tudor. (Attachments: # <a href="#">1</a> Affidavit of Dr. Rachel Tudor in Opposition) (Young, Ezra) (Entered: 06/16/2015)
06/23/2015	<a href="#">32</a>	REPLY to Response to Motion re <a href="#">30</a> AMENDED MOTION to Dismiss filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 06/23/2015)
07/09/2015	<a href="#">33</a>	STATUS/SCHEDULING CONFERENCE DOCKET (lg) (Entered: 07/09/2015)
07/10/2015	<a href="#">34</a>	ORDER striking <a href="#">27</a> Defendants Southeastern Oklahoma State University and The Regional University System of Oklahomas Motion to Dismiss Plaintiff/Intervenors Complaint in Part ; denying <a href="#">30</a> Defendants Southeastern Oklahoma State University and The Regional University System of Oklahomas Amended Motion to Dismiss Plaintiff/Intervenors Complaint in Part. Signed by Honorable Robin J. Cauthron on 7/10/15. (lg) (Entered: 07/10/2015)
07/21/2015	<a href="#">35</a>	JOINT STATUS REPORT AND DISCOVERY PLAN by Intervenor Plaintiff Rachel Tudor. (Attachments: # <a href="#">1</a> Attachment Proposed Order)(Weiss, Jillian) (Entered: 07/21/2015)
07/24/2015	<a href="#">36</a>	CONSENT ORDER Regarding Inadvertent Disclosure of Privileged Documents. Signed by Honorable Robin J. Cauthron on 7/24/15. (lg) (Entered: 07/24/2015)
07/24/2015	<a href="#">37</a>	ANSWER to <a href="#">24</a> Intervenor Complaint <i>Count One</i> by Regional University System of Oklahoma.(Coffey, Dixie) (Entered: 07/24/2015)
07/24/2015	<a href="#">38</a>	

		ANSWER to <a href="#">24</a> Intervenor Complaint <i>Count One</i> by Southeastern Oklahoma State University.(Coffey, Dixie) (Entered: 07/24/2015)
07/28/2015	<a href="#">39</a>	SCHEDULING ORDER: Discovery due by 8/1/2016. Jury Trial set for 10/11/2016 09:00 AM before Honorable Robin J. Cauthron. Motions due by 8/1/2016.. Signed by Honorable Robin J. Cauthron on 7/28/15. (lg) (Entered: 07/28/2015)
11/12/2015	<a href="#">40</a>	CONSENT MOTION for Protective Order by United States of America. (Attachments: # <a href="#">1</a> Proposed Consent Confidentiality Order)(Townsend, Allan) (Entered: 11/12/2015)
11/17/2015	<a href="#">41</a>	PROTECTIVE ORDER, granting <a href="#">40</a> Consent Motion for Protective Order. Signed by Honorable Robin J. Cauthron on 11/17/15. (lg) (Entered: 11/17/2015)
02/05/2016	<a href="#">42</a>	FIRST MOTION for Protective Order <i>and Stay of Deposition</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F)(Weiss, Jillian) (Entered: 02/05/2016)
02/05/2016	<a href="#">43</a>	FIRST MOTION to Expedite <i>Motion for Protective Order and Stay of Deposition</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B) (Weiss, Jillian) (Entered: 02/05/2016)
02/08/2016	<a href="#">44</a>	ORDER granting <a href="#">43</a> Plaintiff/Intervenor Dr. Rachel Tudor Motion to Expedite her Motion for a Protective Order. Signed by Honorable Robin J. Cauthron on 2/8/16. (lg) (Entered: 02/08/2016)
02/09/2016	<a href="#">45</a>	NOTICE (other) by Rachel Tudor re <a href="#">42</a> FIRST MOTION for Protective Order <i>and Stay of Deposition Withdrawal of Motion</i> (Weiss, Jillian) (Entered: 02/09/2016)
02/10/2016	<a href="#">46</a>	ORDER stricken as moot <a href="#">42</a> Motion for Protective Order. Signed by Honorable Robin J. Cauthron on 2/10/16. (lg) (Entered: 02/10/2016)
03/01/2016	<a href="#">47</a>	NOTICE of Subpoena by Regional University System of Oklahoma, Southeastern Oklahoma State University (Joseph, Jeb) (Entered: 03/01/2016)
03/08/2016	<a href="#">48</a>	NOTICE of Subpoena by Regional University System of Oklahoma, Southeastern Oklahoma State University (Joseph, Jeb) (Entered: 03/08/2016)
03/30/2016	<a href="#">49</a>	JOINT MOTION for Extension of Time <i>for Expert Reports</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University, Rachel Tudor. (Coffey, Dixie) (Entered: 03/30/2016)
03/31/2016	<a href="#">50</a>	ORDER granting <a href="#">49</a> Joint Motion for Extension of Expert Report Deadline. Signed by Honorable Robin J. Cauthron on 3/31/16. (lg) (Entered: 03/31/2016)
04/01/2016	<a href="#">51</a>	NOTICE to Take Deposition of James Habas and Kathy Nusz by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 04/01/2016)
04/18/2016	<a href="#">52</a>	MOTION to Compel <i>Defendants' Production of Electronically Stored Information with Incorporated Brief</i> by United States of America. (Attachments: # <a href="#">1</a> Exhibit January 15, 2016 letter, # <a href="#">2</a> Exhibit February 17,

		2016 letter, # <a href="#">3</a> Exhibit February 25 and March 21, 2016, emails, # <a href="#">4</a> Exhibit April 8, 2016 letter)(Townsend, Allan) (Entered: 04/18/2016)
04/25/2016	<a href="#">53</a>	ENTRY of Appearance by Jennifer L Arendes on behalf of All Plaintiffs (Arendes, Jennifer) (Entered: 04/25/2016)
04/26/2016	<a href="#">54</a>	ENTRY of Appearance by Valerie L Meyer on behalf of United States of America (Meyer, Valerie) (Entered: 04/26/2016)
04/26/2016	<a href="#">55</a>	JOINT MOTION for Extension of Time to Complete Discovery <i>and Modify the Scheduling Order</i> by United States of America. (Attachments: # <a href="#">1</a> Proposed Scheduling Order)(Townsend, Allan) (Entered: 04/26/2016)
04/27/2016	<a href="#">56</a>	MOTION to Quash <i>Subpoenas and for Protective Order</i> by All Plaintiffs. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Exhibit 5, # <a href="#">6</a> Exhibit 6, # <a href="#">7</a> Exhibit 7, # <a href="#">8</a> Exhibit 8)(Arendes, Jennifer) (Entered: 04/27/2016)
04/27/2016	<a href="#">57</a>	ORDER granting <a href="#">55</a> JOINT MOTION to Modify the Scheduling Order filed by United States of America. Signed by Honorable Robin J. Cauthron on 4/27/16. (lg) (Entered: 04/27/2016)
04/28/2016	<a href="#">58</a>	ORDER denying <a href="#">56</a> EEOC's Motion to Quash Subpoenas and for Protective Order to Prohibit Depositions of James Habas and Former EEOC Investigator Kathy Nusz. Signed by Honorable Robin J. Cauthron on 4/28/16. (lg) (Entered: 04/28/2016)
05/09/2016	<a href="#">59</a>	RESPONSE to Motion re <a href="#">52</a> MOTION to Compel <i>Defendants' Production of Electronically Stored Information with Incorporated Brief</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - USA's 1st RFP to Defs)(Joseph, Jeb) (Entered: 05/09/2016)
05/12/2016	<a href="#">60</a>	NOTICE to Take Deposition of James Habas and Kathy Nusz by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 05/12/2016)
05/12/2016	<a href="#">61</a>	UNOPPOSED MOTION for Extension of Time to File Response/Reply as to <a href="#">59</a> Response to Motion, <a href="#">52</a> MOTION to Compel <i>Defendants' Production of Electronically Stored Information with Incorporated Brief</i> by United States of America. (Attachments: # <a href="#">1</a> Proposed Order)(Townsend, Allan) (Entered: 05/12/2016)
05/16/2016	<a href="#">62</a>	ORDER granting <a href="#">61</a> Unopposed Motion to Extend Deadline to File Reply Brief in Support of Motion to Compel. Signed by Honorable Robin J. Cauthron on 5/16/16. (lg) (Entered: 05/16/2016)
05/23/2016	<a href="#">63</a>	REPLY to Response to Motion re <a href="#">52</a> MOTION to Compel <i>Defendants' Production of Electronically Stored Information with Incorporated Brief</i> filed by United States of America. (Townsend, Allan) (Entered: 05/23/2016)
06/06/2016	<a href="#">64</a>	NOTICE to Take Deposition of Feleshia Porter, MS, LPC by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 06/06/2016)

06/07/2016	<a href="#">65</a>	ORDER granting <a href="#">52</a> Plaintiffs Motion to Compel Defendants Production of Electronically Stored Information. Signed by Honorable Robin J. Cauthron on 6/7/16. (lg) (Entered: 06/07/2016)
06/15/2016	<a href="#">66</a>	ORDER governing privilege with respect to defendant's anticipated production of electronically stored information. Signed by Honorable Robin J. Cauthron on 6/15/16. (Attachments: # <a href="#">1</a> Exhibit 1)(lg) (Entered: 06/15/2016)
06/23/2016	<a href="#">67</a>	MOTION to Compel by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - USA's Rsp to RUSO's 1st Disc Requ, # <a href="#">2</a> Exhibit 2 - DLC ltr to DOJ re insufficient disc rsps dated 1/5/16, # <a href="#">3</a> Exhibit 3 - Townsend ltr in rsp to DLC ltr of 1/5/16 dated 1/28/16, # <a href="#">4</a> Exhibit 4 - DLC ltr to DOJ re 2/2 discussion of insufficient disc rsps, # <a href="#">5</a> Exhibit 5 - USA's Supp Rsp to RUSO 1st ROGS, # <a href="#">6</a> Exhibit 6 - USA's ltr re Supp Rsp to ROGS, # <a href="#">7</a> Exhibit 7 - USA's Privilege Log - Rsp to RUSO's 1st Disc Requ, # <a href="#">8</a> Attachment EEOC v BCI, # <a href="#">9</a> Attachment EEOC v BNSF Ry. Co., # <a href="#">10</a> Attachment In re App of Michael Wilson and Partners, # <a href="#">11</a> Attachment LeFave v Symbios, # <a href="#">12</a> Attachment Millennium v Simonton, # <a href="#">13</a> Attachment Morris v City of Colo. Springs, # <a href="#">14</a> Attachment United Food v Chesapeake, # <a href="#">15</a> Attachment US Info Sys v Int's Broth of Elec Workers) (Coffey, Dixie) (Entered: 06/23/2016)
06/24/2016	<a href="#">68</a>	MOTION to Compel <i>Deposition Testimony of Charles Babb and for Sanctions with Incorporated Brief</i> by United States of America. (Attachments: # <a href="#">1</a> Exhibit A - E-mail from D. Coffey to A. Townsend dated Apr. 12, 2016, # <a href="#">2</a> Exhibit B - Letter from A. Townsend to D. Coffey and J. Joseph dated May 6, 2016, # <a href="#">3</a> Exhibit C - Babb transcript, # <a href="#">4</a> Exhibit D - Conway transcript excerpts, # <a href="#">5</a> Exhibit E - Pl. Ex. 26, # <a href="#">6</a> Exhibit F - Weiner transcript excerpts, # <a href="#">7</a> Exhibit G - Pl. Ex. 46, # <a href="#">8</a> Exhibit H - Pl. Ex. 47, # <a href="#">9</a> Exhibit I - Pl. Ex. 50, # <a href="#">10</a> Exhibit J - Clark transcript excerpts, # <a href="#">11</a> Exhibit K - Pl. Ex. 15, # <a href="#">12</a> Exhibit L - Pl. Ex. 74, # <a href="#">13</a> Exhibit M - Pl. Ex. 121)(Bloom, Shayna) (Entered: 06/24/2016)
07/06/2016	<a href="#">69</a>	JOINT MOTION for Extension of Time to File Response/Reply as to <a href="#">68</a> MOTION to Compel <i>Deposition Testimony of Charles Babb and for Sanctions with Incorporated Brief</i> , <a href="#">67</a> MOTION to Compel by United States of America. (Attachments: # <a href="#">1</a> Proposed Order)(Meyer, Valerie) (Entered: 07/06/2016)
07/07/2016	<a href="#">70</a>	ORDER granting <a href="#">69</a> Joint Motion to Extend Deadlines to File Response Briefs in Opposition to Parties' Motions to Compel. Signed by Honorable Robin J. Cauthron on 7/7/16. (lg) (Entered: 07/07/2016)
07/18/2016	<a href="#">71</a>	NOTICE OF RELATED OR COMPANION CASE by Rachel Tudor re <a href="#">64</a> Notice to Take Deposition of <i>Ms. Feleshia Porter</i> (Attachments: # <a href="#">1</a> Exhibit Motion to Quash, # <a href="#">2</a> Exhibit Exhibit A, # <a href="#">3</a> Exhibit Exhibit B, # <a href="#">4</a> Exhibit Exhibit C, # <a href="#">5</a> Exhibit Exhibit D, # <a href="#">6</a> Exhibit Exhibit E, # <a href="#">7</a> Exhibit Exhibit F, # <a href="#">8</a> Exhibit Exhibit G, # <a href="#">9</a> Exhibit Exhibit H, # <a href="#">10</a> Exhibit Exhibit I, # <a href="#">11</a> Exhibit Exhibit J, # <a href="#">12</a> Exhibit Exhibit K, # <a href="#">13</a> Exhibit Exhibit L, # <a href="#">14</a> Exhibit Exhibit M)(Young, Ezra) (Entered: 07/18/2016)
07/21/2016	<a href="#">72</a>	JOINT MOTION for Extension of Time to File Response/Reply as to <a href="#">68</a> MOTION to Compel <i>Deposition Testimony of Charles Babb and for Sanctions</i>

		<i>with Incorporated Brief</i> , <a href="#">67</a> MOTION to Compel , <a href="#">70</a> Order on Motion for Extension of Time to File Response/Reply by United States of America. (Attachments: # <a href="#">1</a> Proposed Order)(Townsend, Allan) (Entered: 07/21/2016)
07/21/2016	<a href="#">73</a>	ORDER granting <a href="#">72</a> Joint Motion to Extend Deadlines to File Response Briefs in Opposition to Parties' Motions to Compel. Signed by Honorable Robin J. Cauthron on 7/21/16. (lg) (Entered: 07/21/2016)
07/22/2016	<a href="#">74</a>	NOTICE (other) by Rachel Tudor re <a href="#">71</a> Notice of Related or Companion Case,, <i>Order of the Northern District of Texas</i> (Attachments: # <a href="#">1</a> Exhibit)(Young, Ezra) (Entered: 07/22/2016)
07/26/2016	<a href="#">75</a>	RESPONSE in Opposition re <a href="#">67</a> MOTION to Compel <i>Discovery Responses</i> filed by United States of America. (Attachments: # <a href="#">1</a> Exhibit First Amended Privilege Log, # <a href="#">2</a> Exhibit Feb. 16, 2016 email, # <a href="#">3</a> Exhibit July 16, 2015 email, # <a href="#">4</a> Exhibit Declaration of Vanita Gupta, # <a href="#">5</a> Exhibit Declaration of Jenny R. Yang, # <a href="#">6</a> Exhibit Plaintiff/Intervenor Dr. Rachel Tudor's Responses to Regional University System of Oklahoma's Third Set of Discovery Requests)(Townsend, Allan) (Entered: 07/26/2016)
07/27/2016	<a href="#">76</a>	RESPONSE to Motion re <a href="#">68</a> MOTION to Compel <i>Deposition Testimony of Charles Babb and for Sanctions with Incorporated Brief</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - Depo of Charlie Babb, # <a href="#">2</a> Exhibit 2 - Depo of Bryon Clark, # <a href="#">3</a> Exhibit 3 - Depo of Cathy Conway)(Coffey, Dixie) (Entered: 07/27/2016)
07/28/2016	<a href="#">77</a>	NOTICE to Take Deposition of (Amended) Dr. Felicia Porter by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 07/28/2016)
07/28/2016	<a href="#">78</a>	NOTICE to Take Deposition of Plaintiff USA pursuant to Fed. R. Civ. P. 30(b) (6) by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 07/28/2016)
07/28/2016	<a href="#">79</a>	NOTICE to Take Deposition of EEOC pursuant to Fed. R. Civ. P. 30(b)(6) by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 07/28/2016)
07/28/2016	<a href="#">80</a>	NOTICE (other) by Rachel Tudor re <a href="#">77</a> Notice to Take Deposition <i>Order Issued by the N.D. Texas &amp; Related Motion Practice</i> (Attachments: # <a href="#">1</a> Exhibit Exhibit 1, # <a href="#">2</a> Exhibit Exhibit 2, # <a href="#">3</a> Exhibit Exhibit 3, # <a href="#">4</a> Exhibit Exhibit 4, # <a href="#">5</a> Exhibit Exhibit 5, # <a href="#">6</a> Exhibit Exhibit 6, # <a href="#">7</a> Exhibit Exhibit 7)(Young, Ezra) (Entered: 07/28/2016)
08/02/2016	<a href="#">81</a>	NOTICE of Subpoena by Rachel Tudor <i>Notice to Take Deposition of Mr. Richard Ogden</i> (Young, Ezra) (Entered: 08/02/2016)
08/02/2016	<a href="#">82</a>	NOTICE OF RELATED OR COMPANION CASE by Rachel Tudor re <a href="#">77</a> Notice to Take Deposition (Attachments: # <a href="#">1</a> Exhibit Motion to Quash, # <a href="#">2</a> Exhibit Exhibit A, # <a href="#">3</a> Exhibit Exhibit B, # <a href="#">4</a> Exhibit Exhibit C, # <a href="#">5</a> Exhibit Exhibit D, # <a href="#">6</a> Exhibit Exhibit E, # <a href="#">7</a> Exhibit Exhibit F, # <a href="#">8</a> Exhibit Exhibit G, # <a href="#">9</a> Exhibit Exhibit H, # <a href="#">10</a> Exhibit Exhibit I, # <a href="#">11</a> Exhibit Exhibit J, # <a href="#">12</a>

		Exhibit Exhibit K, # <a href="#">13</a> Exhibit Exhibit L, # <a href="#">14</a> Exhibit Exhibit M, # <a href="#">15</a> Exhibit Exhibit N, # <a href="#">16</a> Exhibit Exhibit O, # <a href="#">17</a> Exhibit Exhibit P, # <a href="#">18</a> Exhibit Exhibit Q, # <a href="#">19</a> Exhibit Exhibit R, # <a href="#">20</a> Exhibit Exhibit S, # <a href="#">21</a> Exhibit Exhibit T, # <a href="#">22</a> Exhibit Exhibit U, # <a href="#">23</a> Exhibit Exhibit V, # <a href="#">24</a> Exhibit Exhibit W, # <a href="#">25</a> Exhibit Exhibit X, # <a href="#">26</a> Exhibit Exhibit Y, # <a href="#">27</a> Exhibit Exhibit Z)(Young, Ezra) (Entered: 08/02/2016)
08/02/2016	<a href="#">83</a>	REPLY to Response to Motion re <a href="#">67</a> MOTION to Compel filed by Regional University System of Oklahoma. (Joseph, Jeb) (Entered: 08/02/2016)
08/03/2016	<a href="#">84</a>	REPLY to Response to Motion re <a href="#">68</a> MOTION to Compel <i>Deposition Testimony of Charles Babb and for Sanctions with Incorporated Brief</i> filed by United States of America. (Attachments: # <a href="#">1</a> Exhibit 1 - Feb. 19, 2016 letter, # <a href="#">2</a> Exhibit 2 - Feb. 29, 2016 email, # <a href="#">3</a> Exhibit 3 - Apr. 8, 2016 letter, # <a href="#">4</a> Exhibit 4 - Plaintiffs Deposition Ex 30, # <a href="#">5</a> Exhibit 5 - Redaction ESI Production Log)(Meyer, Valerie) (Entered: 08/03/2016)
08/03/2016	<a href="#">85</a>	NOTICE of Subpoena by All Defendants (Coffey, Dixie) (Entered: 08/03/2016)
08/04/2016	<a href="#">86</a>	NOTICE of Change of Address by Allan K Townsend (Townsend, Allan) (Entered: 08/04/2016)
08/04/2016	<a href="#">87</a>	NOTICE (other) by Rachel Tudor re <a href="#">82</a> Notice of Related or Companion Case,,, <i>Order from Eastern District of Oklahoma, Transferring Subpoena Related Motions</i> (Attachments: # <a href="#">1</a> Exhibit ED Okla Order)(Young, Ezra) (Entered: 08/04/2016)
08/09/2016	<a href="#">88</a>	MOTION in Limine <i>Request for Expedited Briefing and Ruling</i> by All Defendants. (Attachments: # <a href="#">1</a> Exhibit 1 - Depo of Rachel Tudor, # <a href="#">2</a> Exhibit 2 - Excerpts of EEOC Interview of Cathy Conway, # <a href="#">3</a> Exhibit 3 - Depo of Cathy Conway, # <a href="#">4</a> Exhibit 4 - Excerpts of EEOC Interview of Jane McMillan, # <a href="#">5</a> Exhibit 5 - Excerpts of EEOC Interview of Doug McMillan)(Joseph, Jeb) (Entered: 08/09/2016)
08/10/2016	<a href="#">89</a>	MOTION to Quash <i>or, in the Alternative, for a Protective Order Regarding Defendants' Notice of Deposition Under Fed. R. Civ. 30(b)(6)</i> by United States of America. (Attachments: # <a href="#">1</a> Exhibit (Declaration of Vanita Gupta), # <a href="#">2</a> Exhibit (Proposed Order))(Bloom, Shayna) (Entered: 08/10/2016)
08/10/2016	<a href="#">90</a>	RESPONSE re <a href="#">88</a> MOTION in Limine <i>Request for Expedited Briefing and Ruling , Opposing Request for Expedited Briefing and Ruling</i> filed by United States of America. (Meyer, Valerie) (Entered: 08/10/2016)
08/10/2016	<a href="#">91</a>	ORDER denying <a href="#">88</a> Defendants' First Motion in Limine and Request for Expedited Briefing and Ruling. Signed by Honorable Robin J. Cauthron on 8/10/16. (lg) (Entered: 08/10/2016)
08/10/2016	<a href="#">92</a>	ORDER denying <a href="#">67</a> Defendant Regional University System of Oklahoma's Motion to Compel Discovery Responses. Signed by Honorable Robin J. Cauthron on 8/10/16. (lg) (Entered: 08/10/2016)
08/10/2016	<a href="#">93</a>	

		ORDER staying deposition of Feleshia Porter, re <a href="#">82</a> Dr. Rachel Tudor's Motion to Quash Subpoena filed by Rachel Tudor (filed in ED/OK 8/1/16). Signed by Honorable Robin J. Cauthron on 8/10/16. (lg) (Entered: 08/10/2016)
08/10/2016	<a href="#">94</a>	NOTICE to Take Deposition of USA 30(b)(6) Representative by All Defendants. (Coffey, Dixie) (Entered: 08/10/2016)
08/11/2016	<a href="#">95</a>	ORDER for Response, re <a href="#">89</a> MOTION to Quash <i>or, in the Alternative, for a Protective Order Regarding Defendants' Notice of Deposition Under Fed. R. Civ. 30(b)(6)</i> filed by United States of America. Signed by Honorable Robin J. Cauthron on 8/11/16. (lg) (Entered: 08/11/2016)
08/11/2016	<a href="#">96</a>	ORDER granting <a href="#">68</a> United States' Motion to Compel Deposition Testimony of Charles Babb and for Sanctions. Signed by Honorable Robin J. Cauthron on 8/11/16. (lg) (Entered: 08/11/2016)
08/11/2016	<a href="#">97</a>	MOTION for Extension of Time to <i>Categorize Electronically Stored Information</i> by All Defendants. (Joseph, Jeb) (Entered: 08/11/2016)
08/11/2016	<a href="#">98</a>	SECOND MOTION in Limine by All Defendants. (Attachments: # <a href="#">1</a> Exhibit 1 - Parker Expert Report, # <a href="#">2</a> Attachment Babbar v Ebadi (unpublished case)) (Mansinghani, Mithun) (Entered: 08/11/2016)
08/11/2016	<a href="#">99</a>	NOTICE (other) by United States of America re <a href="#">89</a> MOTION to Quash <i>or, in the Alternative, for a Protective Order Regarding Defendants' Notice of Deposition Under Fed. R. Civ. 30(b)(6)</i> (Bloom, Shayna) (Entered: 08/11/2016)
08/12/2016	<a href="#">100</a>	RESPONSE in Opposition re <a href="#">97</a> MOTION for Extension of Time to <i>Categorize Electronically Stored Information</i> filed by United States of America. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3)(Meyer, Valerie) (Entered: 08/12/2016)
08/15/2016	<a href="#">101</a>	MOTION for Leave to <i>File Expert Witness List</i> by United States of America. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit, # <a href="#">3</a> Proposed Order)(Townsend, Allan) (Entered: 08/15/2016)
08/15/2016	<a href="#">102</a>	RESPONSE in Opposition re <a href="#">89</a> MOTION to Quash <i>or, in the Alternative, for a Protective Order Regarding Defendants' Notice of Deposition Under Fed. R. Civ. 30(b)(6)</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 08/15/2016)
08/15/2016	<a href="#">103</a>	ORDER stricken as moot <a href="#">97</a> Motion for Extension of Deadline to Categorize Electronically Stored Information. Signed by Honorable Robin J. Cauthron on 8/15/16. (lg) (Entered: 08/15/2016)
08/15/2016	<a href="#">104</a>	ORDER granting <a href="#">101</a> United States' Motion for Leave to File its List of Expert Witnesses with Incorporated Brief. Signed by Honorable Robin J. Cauthron on 8/15/16. (lg) (Entered: 08/15/2016)
08/15/2016	<a href="#">105</a>	ORDER granting <a href="#">89</a> Plaintiff United States' Opening Motion to Quash <i>or, in the Alternative, for a Protective Order Regarding Defendants' Notice of Deposition Under Fed. R. Civ. P. 30(b)(6)</i> ; Defendants' Notice of Deposition <a href="#">78</a> and Amended Notice of Deposition <a href="#">94</a> are quashed without prejudice as set forth

		herein.. Signed by Honorable Robin J. Cauthron on 8/15/16. (lg) (Entered: 08/15/2016)
08/15/2016	<a href="#">106</a>	NOTICE to Take Deposition of Plaintiff/Intervenor Rachel Tudor by All Defendants. (Coffey, Dixie) (Entered: 08/15/2016)
08/16/2016	<a href="#">107</a>	Expert Witness List by Plaintiff United States of America. (Townsend, Allan) (Entered: 08/16/2016)
08/19/2016	<a href="#">108</a>	Witness List by Plaintiff United States of America. (Townsend, Allan) (Entered: 08/19/2016)
08/19/2016	<a href="#">109</a>	Exhibit List by Plaintiff United States of America. (Attachments: # <a href="#">1</a> ESI list) (Townsend, Allan) (Entered: 08/19/2016)
08/19/2016	<a href="#">110</a>	Exhibit List / Witness List by Intervenor Plaintiff Rachel Tudor. (Young, Ezra) (Entered: 08/19/2016)
08/22/2016	<a href="#">111</a>	RESPONSE re <a href="#">82</a> Notice of Related or Companion Case,,, <i>in Objection to Motion quash Subpoena Issued to Feleshia Porter</i> filed by All Defendants. (Attachments: # <a href="#">1</a> Exhibit 1 - Porter letter of 4/4/2007, # <a href="#">2</a> Exhibit 2 - Cathy Conway Depo Excerpts, # <a href="#">3</a> Exhibit 3 - Brown Expert Report)(Coffey, Dixie) (Entered: 08/22/2016)
08/25/2016	<a href="#">112</a>	UNOPPOSED MOTION for Extension of Time <i>to File Motion to Compel Related to Privilege Claims Over ESI</i> by United States of America. (Attachments: # <a href="#">1</a> Exhibit One, # <a href="#">2</a> Proposed Order)(Townsend, Allan) (Entered: 08/25/2016)
08/26/2016	<a href="#">113</a>	ORDER granting <a href="#">112</a> Unopposed Motion to Extend Deadline to File Motion to Compel Related to Privilege Claims Over ESI. Signed at direction of Honorable Robin J. Cauthron on 8/26/16. (lg) (Entered: 08/26/2016)
08/29/2016	<a href="#">114</a>	Exhibit List ( <i>Final</i> ) by Defendants Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 08/29/2016)
08/29/2016	<a href="#">115</a>	REPLY by Intervenor Plaintiff Rachel Tudor re <a href="#">111</a> Response, filed by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Exhibit C, # <a href="#">2</a> Exhibit Exhibit D)(Young, Ezra) (Entered: 08/29/2016)
08/30/2016	<a href="#">116</a>	SEALED EXHIBIT by Intervenor Plaintiff Rachel Tudor Re: <a href="#">115</a> Reply (Young, Ezra) (Entered: 08/30/2016)
08/31/2016	<a href="#">117</a>	UNOPPOSED MOTION to Stay Case by United States of America. (Attachments: # <a href="#">1</a> Exhibit One, # <a href="#">2</a> Proposed Order)(Townsend, Allan) (Entered: 08/31/2016)
08/31/2016	<a href="#">118</a>	NOTICE (other) by Rachel Tudor <i>Change of Law Firm of Mr. Young</i> (Young, Ezra) (Entered: 08/31/2016)
08/31/2016	<a href="#">119</a>	NOTICE (other) by Rachel Tudor <i>Change of Law Firm of Ms. Weiss</i> (Weiss, Jillian) (Entered: 08/31/2016)
08/31/2016	<a href="#">120</a>	FIRST MOTION for Extension of Time <i>to File Motion to Compel Redeposition of Judge Richard Ogden and for Sanctions</i> by Rachel Tudor.

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		(Attachments: # <a href="#">1</a> Exhibit Exhibit A, # <a href="#">2</a> Exhibit Proposed Order)(Young, Ezra) (Entered: 08/31/2016)
09/01/2016	<a href="#">121</a>	ORDER granted in part and denied in part [82-1] Motion to Quash of Plaintiff, originally filed in the ED/OK; quashed <a href="#">77</a> Defendants' Amended Notice to Take Deposition of Feleshia Porter. Signed by Honorable Robin J. Cauthron on 9/1/16. (lg) (Entered: 09/01/2016)
09/02/2016	<a href="#">122</a>	NOTICE (other) by Rachel Tudor re <a href="#">120</a> FIRST MOTION for Extension of Time to <i>File Motion to Compel Redeposition of Judge Richard Ogden and for Sanctions Delay of Receipt of Deposition Transcript</i> (Attachments: # <a href="#">1</a> Exhibit Exhibit A)(Young, Ezra) (Entered: 09/02/2016)
09/06/2016	<a href="#">123</a>	ORDER granting <a href="#">117</a> Unopposed Motion to Stay Deadlines and Discovery; moot <a href="#">120</a> Dr. Rachel Tudor's Motion to Extend Deadline to File a Motion to Compel Redeposition of Judge Richard Ogden and for Sanctions. Signed by Honorable Robin J. Cauthron on 9/6/16. (lg) (Entered: 09/06/2016)
09/13/2016	<a href="#">124</a>	NOTICE OF RELATED OR COMPANION CASE by Rachel Tudor <i>Notice of Dr. Tudor's Motion to Intervene in ND Texas Litigation</i> (Attachments: # <a href="#">1</a> Exhibit Motion to Intervene ND Tex, # <a href="#">2</a> Exhibit Putative Complaint in Intervention ND Tex)(Young, Ezra) (Entered: 09/13/2016)
10/25/2016	<a href="#">125</a>	MOTION to Lift Stay by United States of America. (Attachments: # <a href="#">1</a> Exhibit One, # <a href="#">2</a> Exhibit Two, # <a href="#">3</a> Exhibit Three, # <a href="#">4</a> Exhibit Four, # <a href="#">5</a> Exhibit Five, # <a href="#">6</a> Exhibit Six, # <a href="#">7</a> Exhibit Seven, # <a href="#">8</a> Proposed Order)(Townsend, Allan) (Entered: 10/25/2016)
10/31/2016	<a href="#">126</a>	ORDER for Response, re <a href="#">125</a> MOTION to Lift Stay filed by United States of America. Signed by Honorable Robin J. Cauthron on 10/31/16. (lg) (Entered: 10/31/2016)
11/04/2016	<a href="#">127</a>	RESPONSE to Motion re <a href="#">125</a> MOTION to Lift Stay filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 11/04/2016)
11/04/2016	<a href="#">128</a>	NOTICE OF RELATED OR COMPANION CASE by Rachel Tudor re <a href="#">124</a> Notice of Related or Companion Case, <i>Notice of Related Appeal</i> (Attachments: # <a href="#">1</a> Exhibit Exhibit 1, # <a href="#">2</a> Exhibit Exhibit 2, # <a href="#">3</a> Exhibit Exhibit 3, # <a href="#">4</a> Exhibit Exhibit 4)(Young, Ezra) (Entered: 11/04/2016)
11/14/2016	<a href="#">129</a>	REPLY to Response to Motion re <a href="#">125</a> MOTION to Lift Stay filed by United States of America. (Townsend, Allan) (Entered: 11/14/2016)
11/16/2016	<a href="#">130</a>	ORDER denying <a href="#">125</a> Plaintiff's Motion to Lift Stay. Signed by Honorable Robin J. Cauthron on 11/16/16. (lg) (Entered: 11/16/2016)
03/07/2017	<a href="#">131</a>	JOINT MOTION for Settlement <i>Conference</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 03/07/2017)
03/08/2017	<a href="#">132</a>	ORDER granting <a href="#">131</a> Joint Motion for Settlement Conference. Signed by Honorable Robin J. Cauthron on 3/8/17. (lg) (Entered: 03/08/2017)
03/27/2017	<a href="#">133</a>	

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		ORDER SETTING SETTLEMENT CONFERENCE Settlement Conference set for 5/5/2017 09:30 AM in Room 1305 before Magistrate Judge Charles B Goodwin. Signed by Magistrate Judge Charles B Goodwin on 03/27/2017. (jb) (Entered: 03/27/2017)
05/08/2017	<a href="#">134</a>	ENTER ORDER: A settlement conference was held on May 5, 2017, before Magistrate Judge Charles B. Goodwin. The case did not settle. Signed by Magistrate Judge Charles B Goodwin on 05/08/2017. (jb) (Entered: 05/08/2017)
05/12/2017	<a href="#">135</a>	UNOPPOSED MOTION for Extension of Time <i>to File Proposed Schedule</i> by United States of America. (Attachments: # <a href="#">1</a> Attachment Proposed Order) (Meyer, Valerie) (Entered: 05/12/2017)
05/16/2017	<a href="#">136</a>	ORDER granting <a href="#">135</a> Unopposed Motion to Extend Deadline for Parties to File Proposed Schedule. Signed by Honorable Robin J. Cauthron on 5/16/17. (lg) (Entered: 05/16/2017)
05/22/2017	<a href="#">137</a>	NOTICE (other) by Rachel Tudor <i>Change of Firm Affiliation</i> (Young, Ezra) (Entered: 05/22/2017)
05/23/2017	<a href="#">138</a>	FIRST MOTION to Withdraw as Attorney <i>by Jillian T. Weiss</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit 1: Email from Dr. Rachel Tudor, # <a href="#">2</a> Exhibit 2: Email from Mr. Ezra Young, # <a href="#">3</a> Exhibit 3: Email to Defendants' Counsel) (Weiss, Jillian) (Entered: 05/23/2017)
05/24/2017	<a href="#">139</a>	ORDER granting <a href="#">138</a> Motion to Withdraw as Attorney. Attorney Jillian T Weiss terminated. Signed by Honorable Robin J. Cauthron on 5/24/17. (lg) (Entered: 05/24/2017)
06/01/2017	<a href="#">140</a>	NOTICE (other) by Regional University System of Oklahoma, Southeastern Oklahoma State University re <a href="#">136</a> Order on Motion for Extension of Time to File <i>(Joint) Regarding Status of Settlement Negotiations</i> (Joseph, Jeb) (Entered: 06/01/2017)
06/08/2017	<a href="#">141</a>	NOTICE (other) by United States of America <i>of Proposed Schedule</i> (Attachments: # <a href="#">1</a> Exhibit Proposed Schedule)(Bloom, Shayna) (Entered: 06/08/2017)
06/13/2017	<a href="#">142</a>	SCHEDULING ORDER: Jury Trial set for 11/7/2017 09:00 AM in Courtroom 501 before Honorable Robin J. Cauthron.. Signed by Honorable Robin J. Cauthron on 6/13/17. (lg) (Entered: 06/13/2017)
06/26/2017	<a href="#">143</a>	ORDER SETTING SETTLEMENT CONFERENCE Settlement Conference set for 7/25/2017 10:00 AM in Room 1305 before Magistrate Judge Charles B Goodwin. Signed by Magistrate Judge Charles B Goodwin on 06/26/2017. (jb) (Entered: 06/26/2017)
07/27/2017	<a href="#">144</a>	ENTER ORDER. A second settlement conference with respect to the United States claims against Defendants was held on July 25, 2017, before Magistrate Judge Charles B. Goodwin. The United States' claims against Defendants did not settle. Signed by the direction of Magistrate Judge Charles B Goodwin on 07/27/2017. (jb) (Entered: 07/27/2017)

08/04/2017	<a href="#">145</a>	ENTRY of Appearance by Timothy M Bunson on behalf of Regional University System of Oklahoma, Southeastern Oklahoma State University (Bunson, Timothy) (Entered: 08/04/2017)
08/14/2017	<a href="#">146</a>	MOTION to Compel <i>Production of ESI Withheld on the Basis of Privilege</i> by United States of America. (Attachments: # <a href="#">1</a> Exhibit 1 (E-mails from August 2016), # <a href="#">2</a> Exhibit 2 (Townsend letter dated 8 17 2016), # <a href="#">3</a> Exhibit 3 (Bloom letter dated 8 19 2016), # <a href="#">4</a> Exhibit 4 (Joseph letter dated 8 14 2017), # <a href="#">5</a> Exhibit 5 (Dep. Ex. 111), # <a href="#">6</a> Exhibit 6 (List of disputed items))(Bloom, Shayna) (Entered: 08/14/2017)
08/14/2017	<a href="#">147</a>	RESPONSE in Opposition re <a href="#">98</a> SECOND MOTION in Limine <i>to Exclude the Testimony of Dr. Robert Parker</i> filed by United States of America. (Attachments: # <a href="#">1</a> Exhibit Stubblefield Dep., # <a href="#">2</a> Exhibit Dep. Ex. 111, # <a href="#">3</a> Exhibit Dep. Ex. 7, # <a href="#">4</a> Exhibit Snowden Dep., # <a href="#">5</a> Exhibit Parker CV, # <a href="#">6</a> Exhibit Mischo Dep., # <a href="#">7</a> Exhibit Dep. Ex. 129, # <a href="#">8</a> Exhibit McMillan Dep., # <a href="#">9</a> Exhibit Prus Dep., # <a href="#">10</a> Exhibit Scoufos Dep., # <a href="#">11</a> Exhibit Minks Dep.) (Bloom, Shayna) (Entered: 08/14/2017)
08/18/2017	<a href="#">148</a>	MOTION for Extension of Time <i>to File Reply</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 08/18/2017)
08/18/2017	<a href="#">149</a>	MOTION to Quash / <i>Partially Quash Plaintiff's Second Amended Notice of Oral Deposition Under Fed. R. Civ. P. 30(b)(6)</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - Plaintiff's 2nd Amended Notice of 30(b)(6) Depo, # <a href="#">2</a> Exhibit 2 - Objection Table, # <a href="#">3</a> Exhibit 3 - Stubblefield Depo, # <a href="#">4</a> Exhibit 4 - 2016-08-22 - KCJ email to DOJ-Tudor Counsel re 30(b)(6) Considerations, # <a href="#">5</a> Exhibit 5 - 2017-08-17 - VMeyer email to JEJ re Stipulations for 30(b)(6))(Bunson, Timothy) (Entered: 08/18/2017)
08/21/2017	<a href="#">150</a>	RESPONSE to Motion re <a href="#">148</a> MOTION for Extension of Time <i>to File Reply</i> filed by United States of America. (Townsend, Allan) (Entered: 08/21/2017)
08/22/2017	<a href="#">151</a>	ORDER granting <a href="#">148</a> Motion for Extension of Time to File. Signed by Honorable Robin J. Cauthron on 8/21/17. (lg) (Entered: 08/22/2017)
08/24/2017	<a href="#">152</a>	OBJECTIONS re <a href="#">110</a> Exhibit List / Witness List filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Jones, Kindanne) (Entered: 08/24/2017)
08/24/2017	<a href="#">153</a>	OBJECTIONS re <a href="#">109</a> Exhibit List filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Jones, Kindanne) (Entered: 08/24/2017)
08/24/2017	<a href="#">154</a>	Witness List ( <i>Final</i> ) by Defendants Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 08/24/2017)
08/28/2017	<a href="#">155</a>	REPLY to Response to Motion re <a href="#">98</a> SECOND MOTION in Limine filed by All Defendants. (Coffey, Dixie) (Entered: 08/28/2017)
08/30/2017	<a href="#">156</a>	

		MOTION for Protective Order by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 08/30/2017)
08/31/2017	<a href="#">157</a>	MOTION for Temporary Restraining Order <i>and Preliminary Injunction</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 08/31/2017)
08/31/2017	<a href="#">158</a>	TEMPORARY RESTRAINING ORDER, granting <a href="#">157</a> Defendants Southeastern Oklahoma State University and the Regional University System of Oklahoma's Motion for Temporary Restraining Order. Signed by Honorable Robin J. Cauthron on 8/31/17. (lg) (Entered: 08/31/2017)
09/01/2017	<a href="#">159</a>	UNOPPOSED MOTION for Extension of Time <i>to File Response Brief in Opposition to Plaintiff's Motion to Compel Production of ESI [Doc. 146]</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 09/01/2017)
09/05/2017	<a href="#">160</a>	ORDER granting <a href="#">159</a> Unopposed Motion to Extend Deadline to File Response Brief in Opposition to Plaintiff's Motion to Compel Production of Electronically Stored Information. Signed by Honorable Robin J. Cauthron on 9/5/17. (lg) (Entered: 09/05/2017)
09/05/2017	<a href="#">161</a>	FIRST MOTION for Reconsideration re <a href="#">158</a> Order on Motion for TRO by Rachel Tudor. (Young, Ezra) (Entered: 09/05/2017)
09/06/2017	<a href="#">162</a>	ORDER denying <a href="#">161</a> Plaintiff/Intervenor Dr. Rachel Tudor's Request for Clarification of the August 31, 2017 Temporary Restraining Order. Signed by Honorable Robin J. Cauthron on 9/6/17. (lg) (Entered: 09/06/2017)
09/06/2017	<a href="#">163</a>	ORDER denying <a href="#">98</a> Defendants' Second Motion in Limine. Signed by Honorable Robin J. Cauthron on 9/6/17. (lg) (Entered: 09/06/2017)
09/07/2017	<a href="#">164</a>	JOINT MOTION to Dismiss <i>United States' Complaint</i> by United States of America. (Meyer, Valerie) (Entered: 09/07/2017)
09/07/2017	<a href="#">165</a>	BRIEF IN SUPPORT re <a href="#">164</a> JOINT MOTION to Dismiss <i>United States' Complaint</i> by United States of America. (Meyer, Valerie) (Entered: 09/07/2017)
09/08/2017	<a href="#">166</a>	JOINT MOTION to Stay Case ( <i>Unopposed Motion to Stay Deadlines</i> ) by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 09/08/2017)
09/11/2017	<a href="#">167</a>	ORDER granting <a href="#">166</a> Unopposed Joint Motion to Stay Deadlines Pending the Court's Ruling on Plaintiff's and Defendants' Joint Motion to Dismiss. Signed by Honorable Robin J. Cauthron on 9/11/17. (lg) (Entered: 09/11/2017)
09/18/2017	<a href="#">168</a>	UNOPPOSED MOTION for Leave <i>to File Ex Parte and Under Seal</i> by United States of America. (Bloom, Shayna) (Entered: 09/18/2017)
09/18/2017	<a href="#">169</a>	UNOPPOSED MOTION for Leave <i>to File Ex Parte and Under Seal</i> by Rachel Tudor. (Young, Ezra) (Entered: 09/18/2017)
09/19/2017	<a href="#">170</a>	

		ORDER granting <a href="#">169</a> Dr. Rachel Tudor's Motion to File Ex Parte and Under Seal. Signed by Honorable Robin J. Cauthron on 9/19/17. (lg) (Entered: 09/19/2017)
09/19/2017	<a href="#">171</a>	ORDER granting <a href="#">168</a> Unopposed Motion for Leave to File Ex Parte and Under Seal. Signed by Honorable Robin J. Cauthron on 9/19/17. (lg) (Entered: 09/19/2017)
09/20/2017	<a href="#">172</a>	JOINT MOTION to Stay Case re <a href="#">142</a> Scheduling Order <i>Deadlines as they Relate to Litigation between Plaintiff and Defendants</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 09/20/2017)
09/20/2017	<a href="#">173</a>	EX PARTE DOCUMENT by United States of America (Attachments: # <a href="#">1</a> Exhibit 1 (Settlement Agreement))(Bloom, Shayna) (Entered: 09/20/2017)
09/20/2017	<a href="#">174</a>	EX PARTE DOCUMENT by Rachel Tudor (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2)(Young, Ezra) (Entered: 09/20/2017)
09/21/2017	<a href="#">175</a>	ORDER granting <a href="#">172</a> Joint Motion to Stay Deadlines Pending the Courts Ruling on Plaintiff's and Defendants' Joint Motion to Dismiss. Signed by Honorable Robin J. Cauthron on 9/21/17. (lg) (Entered: 09/21/2017)
09/22/2017	<a href="#">176</a>	OBJECTIONS re <a href="#">114</a> Exhibit List filed by Rachel Tudor. (Young, Ezra) (Entered: 09/22/2017)
09/22/2017	<a href="#">177</a>	MOTION for Summary Judgment by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - Intervenor Depo, # <a href="#">2</a> Exhibit 2 - Intervenor's Rsp to RUSO's ROG #2, # <a href="#">3</a> Exhibit 3 - Snowden Depo, # <a href="#">4</a> Exhibit 4 - Scoufus Depo, # <a href="#">5</a> Exhibit 5 - Prus Depo, # <a href="#">6</a> Exhibit 6 - McMillan Depo, # <a href="#">7</a> Exhibit 7 - Pl's Depo Ex 102 - 2010-04-30 McMillan Memo to Tudor, # <a href="#">8</a> Exhibit 8 - Sept. 2010 DOE Charge, # <a href="#">9</a> Exhibit 9 - Excerpts frm SEOSU Rsp to EEOC Requ for Info, # <a href="#">10</a> Exhibit 10 - Intervenor's Rsp to RUSO's ROG #11, # <a href="#">11</a> Exhibit 11 - Collin College Excerpts frm Tudor Personnel File, # <a href="#">12</a> Exhibit 12 - SEOSU Anti-Sexual Harrassment Policy w-grievance procedure, # <a href="#">13</a> Exhibit 13 - SEOSU Equal Opportunity and Anti-Discrimination Policy, # <a href="#">14</a> Exhibit 14 - Conway Depo, # <a href="#">15</a> Attachment 2017-07-26 - Amicus Curiae Brf of CLD&EF)(Coffey, Dixie) (Entered: 09/22/2017)
09/27/2017	<a href="#">178</a>	MOTION for Leave to File Reply Ex Parte and Under Seal by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Jones, Kindanne) (Entered: 09/27/2017)
09/28/2017	<a href="#">179</a>	ORDER granting <a href="#">178</a> Defendants' Motion for Leave to File Reply Ex parte and Under Seal. Signed by Honorable Robin J. Cauthron on 9/28/17. (lg) (Entered: 09/28/2017)
09/28/2017	<a href="#">180</a>	EX PARTE DOCUMENT by Regional University System of Oklahoma, Southeastern Oklahoma State University (Attachments: # <a href="#">1</a> Exhibit 1 - 8/31/2017 JEJ email to EYoung attach Stlmnt Agrmnt)(Bunson, Timothy) (Entered: 09/28/2017)
09/28/2017	<a href="#">181</a>	

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		RESPONSE to Motion re <a href="#">164</a> JOINT MOTION to Dismiss <i>United States' Complaint</i> filed by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Exhibit 1, # <a href="#">2</a> Exhibit Exhibit 2)(Young, Ezra) (Entered: 09/28/2017)
10/02/2017	<a href="#">182</a>	UNOPPOSED MOTION for Extension of Time to File Response/Reply as to <a href="#">181</a> Response to Motion to Dismiss by United States of America. (Townsend, Allan) (Entered: 10/02/2017)
10/03/2017	<a href="#">183</a>	MOTION for Extension of Time to File Reply Brief in Support of Joint Motion to Dismiss by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 10/03/2017)
10/03/2017	<a href="#">184</a>	ORDER granting <a href="#">182</a> Unopposed Motion to Extend Deadline to File Reply Brief in Support of Motion to Dismiss. Signed by Honorable Robin J. Cauthron on 10/3/17. (lg) (Entered: 10/03/2017)
10/03/2017	<a href="#">185</a>	ORDER granting <a href="#">183</a> Defendants' Unopposed Motion to Extend Deadline to File Reply Brief in Support of Joint Motion to Dismiss. Signed by Honorable Robin J. Cauthron on 10/3/17. (lg) (Entered: 10/03/2017)
10/08/2017	<a href="#">186</a>	MOTION for Leave to Appear Pro Hac Vice of <i>Marie Galindo</i> by Rachel Tudor. (Novotny, Brittany) (Entered: 10/08/2017)
10/10/2017	<a href="#">187</a>	Receipt for Money Received from Rachel Tudor in the amount of \$50.00, receipt number OKW500063360 regarding <a href="#">186</a> MOTION for Leave to Appear Pro Hac Vice of <i>Marie Galindo</i> (em) (Entered: 10/10/2017)
10/10/2017	<a href="#">188</a>	ORDER granting <a href="#">186</a> Motion to Appear Pro Hac Vice - Marie E. Galindo. Signed by Honorable Robin J. Cauthron on 10/10/17. (lg) (Entered: 10/10/2017)
10/10/2017	<a href="#">189</a>	MOTION in Limine to Exclude Tudor's Collin College Personnel File by Rachel Tudor. (Novotny, Brittany) (Entered: 10/10/2017)
10/10/2017	<a href="#">190</a>	MOTION in Limine to Exclude Defendants' Witness Holly Newell by Rachel Tudor. (Novotny, Brittany) (Entered: 10/10/2017)
10/10/2017	<a href="#">191</a>	MOTION in Limine to Exclude Defendants' Witness Dr. Don Weasenforth by Rachel Tudor. (Novotny, Brittany) (Entered: 10/10/2017)
10/10/2017	<a href="#">192</a>	TRIAL BRIEF by Intervenor Plaintiff Rachel Tudor. (Young, Ezra) (Entered: 10/10/2017)
10/10/2017	<a href="#">193</a>	Proposed Voir Dire by Intervenor Plaintiff Rachel Tudor. (Young, Ezra) (Entered: 10/10/2017)
10/10/2017	<a href="#">194</a>	ENTRY of Appearance by Marie E Galindo on behalf of Rachel Tudor (Galindo, Marie) (Entered: 10/10/2017)
10/10/2017	<a href="#">195</a>	MOTION in Limine and Brief in Support by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - Depo of Rachel Tudor, # <a href="#">2</a> Exhibit 2 - Transcript of EEOC Interview of Cathy Conway, # <a href="#">3</a> Exhibit 3 - Transcript of EEOC Interview of Jane McMillan, # <a href="#">4</a> Exhibit 4 - Transcript of EEOC Interview of Doug McMillan, # <a href="#">5</a> Exhibit 5 - Depo of Cathy Conway, # <a href="#">6</a> Exhibit 6 - Depo of Doug McMillan,

		# <a href="#">7</a> Exhibit 7 - Expert Report of George Brown)(Coffey, Dixie) (Entered: 10/10/2017)
10/10/2017	<a href="#">196</a>	Proposed Jury Instructions by Defendants Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/10/2017)
10/10/2017	<a href="#">197</a>	Proposed Voir Dire by Defendants Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/10/2017)
10/10/2017	<a href="#">198</a>	MOTION for Leave to Have Limited Attorney Conducted Voir Dire by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/10/2017)
10/10/2017	<a href="#">199</a>	Proposed Jury Instructions by Intervenor Plaintiff Rachel Tudor. (Galindo, Marie) (Entered: 10/10/2017)
10/10/2017	<a href="#">200</a>	MOTION for Leave to Have Limited Attorney Conducted Voir Dire by Rachel Tudor. (Galindo, Marie) (Entered: 10/10/2017)
10/12/2017	<a href="#">201</a>	ORDER granting <a href="#">198</a> Defendants' Motion for Attorney Conducted Voir Dire; granting <a href="#">200</a> Plaintiff/Intervenor's Motion for Attorney Conducted Voir Dire. Signed by Honorable Robin J. Cauthron on 10/12/17. (lg) (Entered: 10/12/2017)
10/12/2017	<a href="#">202</a>	TRIAL DOCKET: Docket Call set for 11/1/2017 09:30 AM in Courtroom 501 before Honorable Robin J. Cauthron. Jury Trial set for 11/8/2017 09:00 AM in Courtroom 501 before Honorable Robin J. Cauthron. (lg) (Entered: 10/12/2017)
10/12/2017	<a href="#">203</a>	REPLY to Response to Motion re <a href="#">164</a> JOINT MOTION to Dismiss <i>United States' Complaint</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 -US Atty Gen Memorandum dated 10/4/2017)(Jones, Kindanne) (Entered: 10/12/2017)
10/12/2017	<a href="#">204</a>	REPLY to Response to Motion re <a href="#">164</a> JOINT MOTION to Dismiss <i>United States' Complaint</i> filed by United States of America. (Bloom, Shayna) (Entered: 10/12/2017)
10/13/2017	<a href="#">205</a>	RESPONSE in Opposition re <a href="#">177</a> MOTION for Summary Judgment filed by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Exhibit 5, # <a href="#">6</a> Exhibit 6, # <a href="#">7</a> Exhibit 7, # <a href="#">8</a> Exhibit 8, # <a href="#">9</a> Exhibit 9, # <a href="#">10</a> Exhibit 10, # <a href="#">11</a> Exhibit 11, # <a href="#">12</a> Exhibit 12, # <a href="#">13</a> Exhibit 13-- placeholder under seal, # <a href="#">14</a> Exhibit 14, # <a href="#">15</a> Exhibit 15, # <a href="#">16</a> Exhibit 16, # <a href="#">17</a> Exhibit 17, # <a href="#">18</a> Exhibit 18, # <a href="#">19</a> Exhibit 19, # <a href="#">20</a> Exhibit 20, # <a href="#">21</a> Exhibit 21, # <a href="#">22</a> Exhibit 22, # <a href="#">23</a> Exhibit 23, # <a href="#">24</a> Exhibit 24, # <a href="#">25</a> Exhibit 25, # <a href="#">26</a> Exhibit 26, # <a href="#">27</a> Exhibit 27, # <a href="#">28</a> Exhibit 28, # <a href="#">29</a> Exhibit 29, # <a href="#">30</a> Exhibit 30, # <a href="#">31</a> Exhibit 31, # <a href="#">32</a> Exhibit 32, # <a href="#">33</a> Exhibit 33, # <a href="#">34</a> Exhibit 34, # <a href="#">35</a> Exhibit 35, # <a href="#">36</a> Exhibit 36, # <a href="#">37</a> Exhibit 37, # <a href="#">38</a> Exhibit 38, # <a href="#">39</a> Exhibit 39, # <a href="#">40</a> Exhibit 40, # <a href="#">41</a> Exhibit 41, # <a href="#">42</a> Exhibit 42, # <a href="#">43</a> Exhibit 43, # <a href="#">44</a> Exhibit 44, # <a href="#">45</a> Exhibit 45, # <a href="#">46</a> Exhibit 46, # <a href="#">47</a> Exhibit 47, # <a href="#">48</a> Exhibit 48, # <a href="#">49</a> Exhibit 49, # <a href="#">50</a> Exhibit 50, # <a href="#">51</a> Exhibit 51, # <a href="#">52</a> Exhibit 52, # <a href="#">53</a> Exhibit 53, # <a href="#">54</a> Exhibit

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		54, # <a href="#">55</a> Exhibit 55, # <a href="#">56</a> Exhibit 56, # <a href="#">57</a> Exhibit 57, # <a href="#">58</a> Exhibit 58, # <a href="#">59</a> Exhibit 59, # <a href="#">60</a> Exhibit 60, # <a href="#">61</a> Exhibit 61, # <a href="#">62</a> Exhibit 62, # <a href="#">63</a> Exhibit 63, # <a href="#">64</a> Exhibit 64, # <a href="#">65</a> Exhibit 65, # <a href="#">66</a> Exhibit 66, # <a href="#">67</a> Exhibit 67, # <a href="#">68</a> Exhibit 68)(Young, Ezra) (Main Document 205 replaced on 10/16/2017) (lg). (Entered: 10/13/2017)
10/17/2017	<a href="#">206</a>	ORDER stricken as moot <a href="#">146</a> United States' Motion to Compel Production of ESI Withheld on the Basis of Privilege ; stricken as moot <a href="#">149</a> Defendants Southeastern Oklahoma State University and the Regional University System of Oklahoma's Motion to Partially Quash Plaintiff's Second Amended Notice of Oral Deposition Under Fed. R. Civ. P. 30(b)(6) ; denying <a href="#">156</a> Defendants Southeastern Oklahoma State University and the Regional University System of Oklahomas Motion for Entry of Protective Order; granting in part <a href="#">164</a> Stipulation and Joint Motion for Dismissal of Plaintiff United States' Complaint with Prejudice. Signed by Honorable Robin J. Cauthron on 10/17/17. (lg) (Entered: 10/17/2017)
10/17/2017	<a href="#">207</a>	FINAL PRETRIAL REPORT. (Young, Ezra) (Entered: 10/17/2017)
10/18/2017	<a href="#">208</a>	MOTION for Leave to <i>File Daubert Motion Regarding Plaintiff/Intervenor's Expert, George R. Brown, M.D.</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/18/2017)
10/19/2017	<a href="#">209</a>	ORDER granting <a href="#">208</a> Defendants' Motion for Leave to File Daubert Motion Regarding Plaintiff-Intervenor's Expert, George R. Brown, M.D.. Signed by Honorable Robin J. Cauthron on 10/19/17. (lg) (Entered: 10/19/2017)
10/19/2017	<a href="#">210</a>	ORDER approving, re <a href="#">207</a> Final Pretrial Report. Signed by Honorable Robin J. Cauthron on 10/19/17. (lg) (Entered: 10/19/2017)
10/20/2017	<a href="#">211</a>	MOTION to Exclude ( <i>Daubert</i> ) Regarding <i>George R. Brown M.D.</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - Brown's Expert Report)(Coffey, Dixie) (Entered: 10/20/2017)
10/20/2017	<a href="#">212</a>	REPLY to Response to Motion re <a href="#">177</a> MOTION for Summary Judgment <i>and Brief in Support</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - Conway Depo, # <a href="#">2</a> Exhibit 2 - Tudor Depo)(Joseph, Jeb) (Entered: 10/20/2017)
10/23/2017	<a href="#">213</a>	RESPONSE in Opposition re <a href="#">190</a> MOTION in Limine to <i>Exclude Defendants' Witness Holly Newell</i> , <a href="#">191</a> MOTION in Limine to <i>Exclude Defendants' Witness Dr. Don Weasenforth</i> , <a href="#">189</a> MOTION in Limine to <i>Exclude Tudor's Collin College Personnel File</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - 8/22/2016 Email to Plaintiff and Intervenor, # <a href="#">2</a> Exhibit 2 - 8/29/2016 Ltr to USA and Intervenor transmitting CC Personnel File)(Bunson, Timothy) (Entered: 10/23/2017)
10/24/2017	<a href="#">214</a>	OBJECTIONS re <a href="#">193</a> Proposed Voir Dire filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/24/2017)

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10/24/2017	<a href="#">215</a>	OBJECTIONS re <a href="#">199</a> Proposed Jury Instructions filed by All Defendants. (Coffey, Dixie) (Entered: 10/24/2017)
10/24/2017	<a href="#">216</a>	OBJECTIONS re <a href="#">196</a> Proposed Jury Instructions filed by Rachel Tudor. (Young, Ezra) (Entered: 10/24/2017)
10/24/2017	<a href="#">217</a>	RESPONSE to Motion re <a href="#">195</a> MOTION in <i>Limine and Brief in Support</i> filed by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit 1 - McMillan Dep, # <a href="#">2</a> Exhibit 2 - Amd Stub Cmplt)(Novotny, Brittany) (Entered: 10/24/2017)
10/25/2017	<a href="#">218</a>	DESIGNATION OF DEPOSITION TESTIMONY by Rachel Tudor . (Young, Ezra) (Entered: 10/25/2017)
10/26/2017	<a href="#">219</a>	ORDER denying <a href="#">177</a> Defendants' Motion for Summary Judgment. Signed by Honorable Robin J. Cauthron on 10/26/17. (lg) (Entered: 10/26/2017)
10/26/2017	<a href="#">220</a>	MOTION to Unseal Document <a href="#">180</a> Ex Parte Document filed by Regional University System of Oklahoma, Southeastern Oklahoma State University, <a href="#">173</a> Ex Parte Document filed by United States of America, <a href="#">174</a> Ex Parte Document filed by Rachel Tudor, <a href="#">205</a> Response in Opposition to Motion,,,,, filed by Rachel Tudor by Rachel Tudor. (Young, Ezra) (Entered: 10/26/2017)
10/30/2017	<a href="#">221</a>	REPLY to Response to Motion re <a href="#">190</a> MOTION in <i>Limine to Exclude Defendants' Witness Holly Newell</i> , <a href="#">191</a> MOTION in <i>Limine to Exclude Defendants' Witness Dr. Don Weasenforth</i> , <a href="#">189</a> MOTION in <i>Limine to Exclude Tudor's Collin College Personnel File</i> filed by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit 1 - Decl of BMN)(Novotny, Brittany) (Entered: 10/30/2017)
10/31/2017	<a href="#">222</a>	MOTION to Strike <a href="#">218</a> Designation of Deposition Testimony by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 10/31/2017)
10/31/2017	<a href="#">223</a>	COUNTER DESIGNATION OF DEPOSITION TESTIMONY by Regional University System of Oklahoma, Southeastern Oklahoma State University . Related document: <a href="#">218</a> Designation of Deposition Testimony filed by Rachel Tudor.(Coffey, Dixie) (Entered: 10/31/2017)
11/02/2017	<a href="#">224</a>	ORDER denying <a href="#">189</a> Plaintiff's Motion in <i>Limine to Exclude Dr. Rachel Tudor's Personnel File from Collin College</i> ; denying <a href="#">190</a> Plaintiff's Motion in <i>Limine to Exclude Defendants' Witness Holly Newell</i> ; denying <a href="#">191</a> Plaintiff's Motion in <i>Limine to Exclude Defendants' Witness Dr. Don Weasenforth</i> ; granting in part and denying in part <a href="#">195</a> Defendants' Motion in <i>Limine</i> ; granting <a href="#">211</a> Defendants' Motion to Exclude Dr. George R. Brown ; granting in part <a href="#">220</a> Plaintiff's Motion to Unseal Documents ; granting <a href="#">222</a> Defendants' Motion to Strike Plaintiff's Deposition Designations. Signed by Honorable Robin J. Cauthron on 11/2/17. (lg) (Entered: 11/02/2017)
11/06/2017	<a href="#">225</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 1, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Docket Call Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript

		Restriction. After that date it may be obtained through PACER. Redaction Request due 11/27/2017. Redacted Transcript Deadline set for 12/7/2017. Release of Transcript Restriction set for 2/5/2018. (sg) (Entered: 11/06/2017)
11/06/2017	<a href="#">226</a>	NOTICE of Subpoena by Rachel Tudor <i>Charles Weiner</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">227</a>	NOTICE of Subpoena by Rachel Tudor <i>Dan Althoff</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">228</a>	NOTICE of Subpoena by Rachel Tudor <i>James Knapp</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">229</a>	NOTICE of Subpoena by Rachel Tudor <i>John Mischo</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">230</a>	NOTICE of Subpoena by Rachel Tudor <i>Mark Spencer</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">231</a>	NOTICE of Subpoena by Rachel Tudor <i>Meg Cotter-Lynch</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">232</a>	NOTICE of Subpoena by Rachel Tudor <i>Mindy House</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">233</a>	NOTICE of Subpoena by Rachel Tudor <i>Randy Prus</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">234</a>	NOTICE of Subpoena by Rachel Tudor <i>Richard Ogden</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">235</a>	NOTICE of Subpoena by Rachel Tudor <i>William Fridley</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">236</a>	NOTICE of Subpoena by Rachel Tudor re <a href="#">226</a> Notice of Subpoena <i>Amended Charles Weiner</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">237</a>	NOTICE of Subpoena by Rachel Tudor re <a href="#">227</a> Notice of Subpoena <i>Amended Dan Althoff</i> (Young, Ezra) (Entered: 11/06/2017)
11/06/2017	<a href="#">238</a>	NOTICE of Subpoena by Rachel Tudor re <a href="#">228</a> Notice of Subpoena <i>Amended James Knapp</i> (Young, Ezra) (Entered: 11/06/2017)
11/08/2017	<a href="#">239</a>	ORDER REFERRING CASE to Magistrate Judge Bernard M. Jones for Settlement Conference. Signed by Honorable Robin J. Cauthron on 11/8/17. (lg) (Entered: 11/08/2017)
11/08/2017	<a href="#">244</a>	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Selection held on 11/8/2017. (lg) (Entered: 11/13/2017)
11/09/2017	<a href="#">240</a>	ENTER ORDER ~ A settlement conference was held on Wednesday, November 8, 2017, before Magistrate Judge Bernard M. Jones. The settlement conference was continued, telephonically, on Thursday, November 9, 2017. Lead trial counsel Ezra Young and additional counsel Brittany Novotny and Marie Galindo appeared on behalf of Plaintiff. Lead trial counsel Dixie Coffee and Jeb Joseph and additional counsel Timothy Bunson appeared on behalf of

		Defendant. The case did not settle. Signed by Magistrate Judge Bernard M. Jones on 11/9/2017. (dwl) (Entered: 11/09/2017)
11/11/2017	<a href="#">241</a>	MOTION in Limine <i>and Related Motions to Strike Affirmative Defenses</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Exhibit 1)(Young, Ezra) (Entered: 11/11/2017)
11/11/2017	<a href="#">242</a>	DESIGNATION OF DEPOSITION TESTIMONY by Rachel Tudor <i>Admit Testimony of Cathy Conway Pursuant to Rule 32(a)(4)(D)</i> . (Young, Ezra) (Entered: 11/11/2017)
11/12/2017	<a href="#">243</a>	MOTION to Strike <i>Plaintiff's Trial Exhibits</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - 11/7/2017 email to EYoung re Pl's Trial Ex Notebooks, # <a href="#">2</a> Exhibit 2 - 11/9/2017 TMB-EYoung string re Pl's trial exhs)(Coffey, Dixie) (Entered: 11/12/2017)
11/13/2017	<a href="#">245</a>	MOTION to Quash <i>Plaintiff's Trial Subpoenas to Non-Party Witnesses</i> by William Fridley, Richard Ogden. (Coffey, Dixie) (Entered: 11/13/2017)
11/13/2017	<a href="#">246</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 13, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/4/2017. Redacted Transcript Deadline set for 12/14/2017. Release of Transcript Restriction set for 2/12/2018. (sg) (Entered: 11/13/2017)
11/13/2017	<a href="#">247</a>	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial begun on 11/13/2017. (lg) (Entered: 11/14/2017)
11/14/2017	<a href="#">248</a>	COUNTER DESIGNATION OF DEPOSITION TESTIMONY by All Defendants <i>and Objections</i> . Related document: <a href="#">242</a> Designation of Deposition Testimony filed by Rachel Tudor.(Coffey, Dixie) (Entered: 11/14/2017)
11/14/2017	<a href="#">249</a>	COUNTER DESIGNATION OF DEPOSITION TESTIMONY by Regional University System of Oklahoma, Southeastern Oklahoma State University ( <i>AMENDED</i> ). Related document: <a href="#">242</a> Designation of Deposition Testimony filed by Rachel Tudor.(Coffey, Dixie) (Entered: 11/14/2017)
11/14/2017	<a href="#">252</a>	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial held on 11/14/2017. (lg) (Entered: 11/15/2017)
11/15/2017	<a href="#">250</a>	NOTICE of Subpoena by Rachel Tudor (Galindo, Marie) (Entered: 11/15/2017)
11/15/2017	<a href="#">251</a>	DESIGNATION OF DEPOSITION TESTIMONY by Rachel Tudor <i>Honorable Judge Richard Ogden</i> . (Galindo, Marie) (Entered: 11/15/2017)
11/15/2017	<a href="#">253</a>	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial held on 11/15/2017. (lg) (Entered: 11/16/2017)
11/16/2017	<a href="#">254</a>	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial held on 11/16/2017. (lg) (Entered: 11/17/2017)

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11/17/2017	<a href="#">255</a>	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial held on 11/17/2017. (lg) (Entered: 11/20/2017)
11/20/2017	<a href="#">256</a>	Minute Entry for proceedings held before Honorable Robin J. Cauthron: Jury Trial completed on 11/20/2017. (lg) (Entered: 11/20/2017)
11/20/2017	<a href="#">257</a>	Jury Instructions. (lg) (Entered: 11/20/2017)
11/20/2017	<a href="#">258</a>	Jury Note No. 1. (lg) (Entered: 11/20/2017)
11/20/2017	<a href="#">259</a>	Jury Instruction No. 1. (lg) (Entered: 11/20/2017)
11/20/2017	<a href="#">260</a>	Jury Note No. 2. (lg) (Entered: 11/20/2017)
11/20/2017	<a href="#">261</a>	Jury Instruction No. 2. (lg) (Entered: 11/20/2017)
11/20/2017	<a href="#">262</a>	JURY VERDICT. (lg) (Entered: 11/20/2017)
11/28/2017	<a href="#">263</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 14, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Volume: 2 of 6 Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2017. Redacted Transcript Deadline set for 12/29/2017. Release of Transcript Restriction set for 2/26/2018. (sg) (Entered: 11/28/2017)
11/28/2017	<a href="#">264</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 15, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Volume: 3 of 6 Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2017. Redacted Transcript Deadline set for 12/29/2017. Release of Transcript Restriction set for 2/26/2018. (sg) (Entered: 11/28/2017)
11/28/2017	<a href="#">265</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 16, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Volume: 4 of 6 Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2017. Redacted Transcript Deadline set for 12/29/2017. Release of Transcript Restriction set for 2/26/2018. (sg) (Entered: 11/28/2017)
11/28/2017	<a href="#">266</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 17, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Volume: 5 of 6 Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of

		Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2017. Redacted Transcript Deadline set for 12/29/2017. Release of Transcript Restriction set for 2/26/2018. (sg) (Entered: 11/28/2017)
11/28/2017	<a href="#">267</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 20, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri S Grubbs, Telephone number 405.609.5203. Transcript of: Jury Trial Volume: 6 of 6 Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2017. Redacted Transcript Deadline set for 12/29/2017. Release of Transcript Restriction set for 2/26/2018. (sg) (Entered: 11/28/2017)
12/11/2017	<a href="#">268</a>	MOTION for Order <i>for Reinstatement</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Tudor Declaration, # <a href="#">2</a> Exhibit Cotter-Lynch Declaration, # <a href="#">3</a> Exhibit Compromise Agreement, # <a href="#">4</a> Exhibit Insurance Changes)(Young, Ezra) (Entered: 12/11/2017)
12/20/2017	<a href="#">269</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on November 8, 2017, before Judge Robin J. Cauthron. Court Reporter: Sherri Grubbs, Telephone number 405.609.5203. Transcript of: Voir Dire Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/10/2018. Redacted Transcript Deadline set for 1/22/2018. Release of Transcript Restriction set for 3/20/2018. (sg) (Entered: 12/20/2017)
12/20/2017	<a href="#">270</a>	RESPONSE in Opposition re <a href="#">268</a> MOTION for Order <i>for Reinstatement</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - Trial Transcript Vol 3, # <a href="#">2</a> Exhibit 2 - Trial Transcript Vol 1, # <a href="#">3</a> Exhibit 3 - Trial Transcript Vol 2, # <a href="#">4</a> Exhibit 4 - Trial Transcript Vol 4, # <a href="#">5</a> Exhibit 5 - Trial Transcript Vol 5, # <a href="#">6</a> Exhibit 6 - Excerpts from Tudor's Collin College Personnel File, # <a href="#">7</a> Exhibit 7 - CC Faculty Performance Appraisal 2014-15, # <a href="#">8</a> Exhibit 8 - Tudor's CC Complaint, # <a href="#">9</a> Exhibit 9 - CC Hearing Officer Findings, # <a href="#">10</a> Exhibit 10 - Tudor's CC Appeal, # <a href="#">11</a> Exhibit 11 - CC Review Panel Decision, # <a href="#">12</a> Exhibit 12 - CC Student Evaluations, # <a href="#">13</a> Exhibit 13 - Declaration of Holly Newell, # <a href="#">14</a> Exhibit 14 - Seminole State College Committee Ranking Sheet, # <a href="#">15</a> Exhibit 15 - Declaration of Dr. Randy Prus, # <a href="#">16</a> Exhibit 16 - 3/25/2016 Email frm Tudor to Mallett w/attachments)(Joseph, Jeb) (Entered: 12/20/2017)
12/29/2017	<a href="#">271</a>	REPLY to Response to Motion re <a href="#">268</a> MOTION for Order <i>for Reinstatement</i> filed by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Tudor Declaration, # <a href="#">2</a> Exhibit Tudor Dec Exhibits, # <a href="#">3</a> Exhibit Cotter-Lynch Declaration, # <a href="#">4</a> Exhibit Fridley Declaration, # <a href="#">5</a> Exhibit Weier Declaration, # <a href="#">6</a> Exhibit RateMyProfessors Evaluations, # <a href="#">7</a> Exhibit Classroom Observations, # <a href="#">8</a> Exhibit Southeastern Letters)(Young, Ezra) (Entered: 12/29/2017)
01/04/2018	<a href="#">272</a>	MOTION for Leave <i>to File Surreply</i> by All Defendants. (Coffey, Dixie) (Entered: 01/04/2018)

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01/08/2018	<a href="#">273</a>	ORDER granting <a href="#">272</a> Defendants' Motion for Leave to File Surreply to Plaintiff's Reply t Defendants' Opposition to Reinstatement. Signed by Honorable Robin J. Cauthron on 1/8/18. (lg) (Entered: 01/08/2018)
01/16/2018	<a href="#">274</a>	SURREPLY re <a href="#">271</a> Reply to Response to Motion, <a href="#">268</a> MOTION for Order <i>for Reinstatement</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 01/16/2018)
01/29/2018	<a href="#">275</a>	ORDER denying <a href="#">268</a> Plaintiff Dr. Rachel Tudor's Motion for Reinstatement. Signed by Honorable Robin J. Cauthron on 1/29/18. (lg) (Entered: 01/29/2018)
02/09/2018	<a href="#">276</a>	MOTION for Reconsideration re <a href="#">275</a> Order on Motion for Order by Rachel Tudor. (Young, Ezra) (Entered: 02/09/2018)
02/10/2018	<a href="#">277</a>	FIRST MOTION for Extension of Time <i>on Briefing Front Pay</i> by Rachel Tudor. (Young, Ezra) (Entered: 02/10/2018)
02/12/2018	<a href="#">278</a>	ORDER denying <a href="#">276</a> Plaintiff's Motion for Reconsideration ; granting in part <a href="#">277</a> Plaintiff's Motion to Extend Briefing Deadline. Signed by Honorable Robin J. Cauthron on 2/12/18. (lg) (Entered: 02/12/2018)
02/27/2018	<a href="#">279</a>	MOTION for Order <i>Reconsideration of Reinstatement or, Alternatively, Front Pay</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit AAUP Proposal, # <a href="#">2</a> Exhibit AAUP Program, # <a href="#">3</a> Exhibit Tudor Dec, # <a href="#">4</a> Exhibit Cotter-Lynch Dec, # <a href="#">5</a> Exhibit Tudor ROGS, # <a href="#">6</a> Exhibit BLS Report, # <a href="#">7</a> Exhibit Treasury Rates, # <a href="#">8</a> Exhibit Front Pay Worksheet, # <a href="#">9</a> Exhibit Trial Testimony, # <a href="#">10</a> Exhibit Tudor Teaching Evals, # <a href="#">11</a> Exhibit Scoufos Backdated Letter, # <a href="#">12</a> Exhibit Scoufos Worksheet, # <a href="#">13</a> Exhibit McMillan Worksheet, # <a href="#">14</a> Exhibit McMillan EEOC Transcript, # <a href="#">15</a> Exhibit Prus Dep, # <a href="#">16</a> Exhibit Ds Reps re After-Acquired Ev, # <a href="#">17</a> Exhibit Trial Testimony, # <a href="#">18</a> Exhibit Trial Testimony, # <a href="#">19</a> Exhibit Trial Testimony)(Young, Ezra) (Entered: 02/27/2018)
03/12/2018	<a href="#">280</a>	FIRST MOTION to Supplement <i>Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay (ECF No. 279)</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Tudor Dec, # <a href="#">2</a> Exhibit Photo--Tudor Presentation, # <a href="#">3</a> Exhibit Photo--Tudor at Conference)(Young, Ezra) (Entered: 03/12/2018)
03/19/2018	<a href="#">281</a>	SECOND MOTION to Supplement <i>Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay (ECF No. 279)</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Tudor Article, # <a href="#">2</a> Exhibit Tdor Certificate, # <a href="#">3</a> Exhibit SEOSU Job Post)(Young, Ezra) (Entered: 03/19/2018)
03/19/2018	<a href="#">282</a>	AMENDED MOTION to Supplement <i>SECOND MOTION to Supplement Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay (ECF No. 279)</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Tudor Article, # <a href="#">2</a> Exhibit Tudor Certificate, # <a href="#">3</a> Exhibit SEOSU Job Post)(Young, Ezra) (Entered: 03/19/2018)
03/20/2018	<a href="#">283</a>	RESPONSE in Opposition re <a href="#">279</a> MOTION for Order <i>Reconsideration of Reinstatement or, Alternatively, Front Pay</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - Affidavit of Bryon Clark, # <a href="#">2</a> Exhibit 2 - SEOSU Base Salary in 2011, # <a href="#">3</a> Exhibit 3 - OESC Docs, # <a href="#">4</a> Exhibit 4 - Responses from Colleges, # <a href="#">5</a>

		Exhibit 5 - List from Higherjobs, # <a href="#">6</a> Exhibit 6 - List from Higherjobs) (Joseph, Jeb) (Attachment 4 replaced on 3/22/2018) (lg). (Entered: 03/20/2018)
03/20/2018	<a href="#">284</a>	AMENDED RESPONSE in Opposition re <a href="#">279</a> MOTION for Order <i>Reconsideration of Reinstatement or, Alternatively, Front Pay (Amended)</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - Affidavit of Bryon Clark, # <a href="#">2</a> Exhibit 2 - SEOSU Base Salary in 2011, # <a href="#">3</a> Exhibit 3 - OESC Docs, # <a href="#">4</a> Exhibit 4 - Response of Colleges Subpoened, # <a href="#">5</a> Exhibit 5 - Cotter-Lynch Testimony, # <a href="#">6</a> Exhibit 6 - Higherjobs Listings, # <a href="#">7</a> Exhibit 7 - Higherjobs Listings) (Joseph, Jeb) (Attachment 4 replaced on 3/22/2018) (lg). (Entered: 03/20/2018)
03/27/2018	<a href="#">285</a>	REPLY to Response to Motion re <a href="#">279</a> MOTION for Order <i>Reconsideration of Reinstatement or, Alternatively, Front Pay</i> filed by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Book Chapter, # <a href="#">2</a> Exhibit Cotter-Lynch Award, # <a href="#">3</a> Exhibit Mitigation Trial Ruling, # <a href="#">4</a> Exhibit Tudor Dep, # <a href="#">5</a> Exhibit Tudor SEOSU Application, # <a href="#">6</a> Exhibit Untimely Production)(Young, Ezra) (Entered: 03/27/2018)
04/13/2018	<a href="#">286</a>	MEMORANDUM OPINION AND ORDER granting in part and denying in part <a href="#">279</a> PLAINTIFF'S MOTION for Order Reconsideration of Reinstatement or, Alternatively, Front Pay; and striking as moot Plaintiff's <a href="#">280</a> FIRST MOTION to Supplement Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay, <a href="#">281</a> SECOND MOTION to Supplement Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay, and <a href="#">282</a> AMENDED MOTION to Supplement SECOND MOTION to Supplement Motion for Reconsideration of Reinstatement or, in the Alternative, Front Pay. Signed by Honorable Robin J. Cauthron on 04/13/18. (wh) (Entered: 04/13/2018)
04/13/2018	<a href="#">287</a>	ORDER. Signed by Honorable Robin J. Cauthron on 04/13/18. (wh) (Entered: 04/13/2018)
05/02/2018	<a href="#">288</a>	FIRST MOTION for Reconsideration re <a href="#">286</a> Memorandum Opinion, Terminate Motions,,,, by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Mitigation post-discovery to present)(Young, Ezra) (Entered: 05/02/2018)
05/03/2018	<a href="#">289</a>	BRIEF IN SUPPORT re <a href="#">287</a> Order ( <i>Brief on the Measure of Damages Awarded by the Jury</i> ) by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 05/03/2018)
05/24/2018	<a href="#">290</a>	RESPONSE re <a href="#">289</a> Brief filed by Rachel Tudor. (Young, Ezra) (Entered: 05/24/2018)
05/31/2018	<a href="#">291</a>	REPLY by Defendants Regional University System of Oklahoma, Southeastern Oklahoma State University re <a href="#">289</a> Brief, <a href="#">290</a> Response filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Attachment McInerney v United Air Lines (unpublished case), # <a href="#">2</a> Attachment Nelson v Rehabilitation Enterprises (unpublished case))(Coffey, Dixie) (Entered: 05/31/2018)
06/06/2018	<a href="#">292</a>	

		MEMORANDUM OPINION AND ORDER. Signed by Honorable Robin J. Cauthron on 06/06/18. (wh) (Entered: 06/06/2018)
06/06/2018	<a href="#">293</a>	JUDGMENT in favor of Rachel Tudor against Regional University System of Oklahoma, Southeastern Oklahoma State University. Signed by Honorable Robin J. Cauthron on 06/06/18. (wh) (Entered: 06/06/2018)
06/06/2018	<a href="#">294</a>	NOTICE OF APPEAL by Rachel Tudor. Filing fee \$ 505, receipt number 1087-2715485. (Young, Ezra) (Entered: 06/06/2018)
06/07/2018	<a href="#">295</a>	PRELIMINARY RECORD LETTER - Electronic Transmission of Notice of Appeal with Preliminary Record sent to Tenth Circuit Court of Appeals re <a href="#">294</a> Notice of Appeal (em) (Entered: 06/07/2018)
06/07/2018	<a href="#">296</a>	Tenth Circuit USCA Case Number 18-6102 for <a href="#">294</a> Notice of Appeal filed by Rachel Tudor. (em) (Entered: 06/08/2018)
06/18/2018	<a href="#">297</a>	TRANSCRIPT Order Form by Rachel Tudor re <a href="#">294</a> Notice of Appeal that transcripts are necessary. See order form for dates and proceedings. (Young, Ezra) (Entered: 06/18/2018)
06/19/2018	<a href="#">298</a>	TRANSCRIPT LETTER advising transcripts are already on file re <a href="#">294</a> Notice of Appeal filed by Rachel Tudor. The record is ready for appeal purposes. (em) (Entered: 06/19/2018)
06/20/2018	<a href="#">299</a>	MOTION for Costs by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Addendum to BOC, # <a href="#">2</a> Exhibit EY Affidavit)(Young, Ezra) (Entered: 06/20/2018)
06/20/2018	<a href="#">300</a>	BRIEF IN SUPPORT re <a href="#">299</a> MOTION for Costs by Rachel Tudor. (Young, Ezra) (Entered: 06/20/2018)
06/20/2018	<a href="#">301</a>	FIRST MOTION for Attorney Fees <i>Law Office Jillian Weiss</i> by Rachel Tudor. (Weiss, Jillian) (Entered: 06/20/2018)
06/20/2018	<a href="#">302</a>	FIRST MOTION for Attorney Fees <i>DECLARATION IN SUPPORT OF LAW OFFICE JILLIAN WEISS</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D)(Weiss, Jillian) (Entered: 06/20/2018)
06/20/2018	<a href="#">303</a>	FIRST MOTION for Attorney Fees by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit EY Dec, # <a href="#">2</a> Exhibit BN Dec, # <a href="#">3</a> Exhibit MG Dec)(Young, Ezra) (Entered: 06/20/2018)
06/21/2018	<a href="#">304</a>	NOTICE OF BILL OF COSTS HEARING, Bill of Costs Hearing set for 8/16/2018 09:00 AM in Court Clerk's Office (em) (Entered: 06/21/2018)
06/21/2018	<a href="#">305</a>	ENTRY of Appearance by Charles J Watts on behalf of Transgender Legal Defense & Education Fund (Watts, Charles) (Entered: 06/21/2018)
06/21/2018	<a href="#">306</a>	MOTION for Attorney Fees by Transgender Legal Defense & Education Fund. (Attachments: # <a href="#">1</a> Exhibit Ex 1-Retainer Agreement, # <a href="#">2</a> Exhibit Ex 2-TGLDF notice of atty's lien, # <a href="#">3</a> Exhibit Ex 2A-TGLDF Proof of Svc-atty lien, # <a href="#">4</a> Exhibit Ex 2B-TGLDF Attorney's Lien, # <a href="#">5</a> Exhibit Ex 3-TGLDF 6.20.18 Demand to P's Counsel, # <a href="#">6</a> Exhibit Ex 4-Ezra Young's time 4.5.17-5.16.17, # <a href="#">7</a> Exhibit Ex 5-Ezra Young's Time 8.31.16 - 1.31.17, # <a href="#">8</a> Exhibit Ex 6-TLDEF

		Expense spreadsheet, # <a href="#">9</a> Exhibit Ex 7-Levinsohn Declaration)(Watts, Charles) (Entered: 06/21/2018)
06/22/2018	<a href="#">307</a>	ENTRY of Appearance by Zachary P West on behalf of Regional University System of Oklahoma, Southeastern Oklahoma State University (West, Zachary) (Entered: 06/22/2018)
06/28/2018	<a href="#">308</a>	MOTION for Extension of Time to File Response/Reply as to <a href="#">306</a> MOTION for Attorney Fees , <a href="#">301</a> FIRST MOTION for Attorney Fees <i>Law Office Jillian Weiss</i> , <a href="#">303</a> FIRST MOTION for Attorney Fees by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 06/28/2018)
06/28/2018	<a href="#">309</a>	AMENDED MOTION for Extension of Time to File Response/Reply as to <a href="#">306</a> MOTION for Attorney Fees , <a href="#">301</a> FIRST MOTION for Attorney Fees <i>Law Office Jillian Weiss</i> , <a href="#">303</a> FIRST MOTION for Attorney Fees by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 06/28/2018)
07/03/2018	<a href="#">310</a>	UNOPPOSED MOTION for Leave to File <i>Oversized Brief</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 07/03/2018)
07/03/2018	<a href="#">311</a>	MOTION to Alter Judgment to <i>Include Prejudgment and Post-Judgment Interest and Tax Offset</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit 1 - Prejudgment Interest, # <a href="#">2</a> Exhibit 2 - IRS Tax Tables)(Novotny, Brittany) (Entered: 07/03/2018)
07/05/2018	<a href="#">312</a>	ORDER granting <a href="#">309</a> Motion for Extension of Time to File Response. Response due by 10/3/2018. Signed by Honorable Robin J. Cauthron on 07/05/18. (wh) (Main Document 312 replaced on 7/5/2018) (wh). (Entered: 07/05/2018)
07/05/2018	<a href="#">313</a>	ORDER granting <a href="#">310</a> Motion for Leave to File Oversized Brief. Signed by Honorable Robin J. Cauthron on 07/05/18. (wh) (Entered: 07/05/2018)
07/05/2018	<a href="#">314</a>	FIRST MOTION to Amend/Correct <a href="#">311</a> MOTION to Alter Judgment to <i>Include Prejudgment and Post-Judgment Interest and Tax Offset</i> by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit IRS Notice 1036)(Young, Ezra) (Entered: 07/05/2018)
07/05/2018	<a href="#">315</a>	OBJECTIONS re <a href="#">299</a> MOTION for Costs filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 07/05/2018)
07/05/2018	<a href="#">316</a>	MOTION for Judgment NOV <i>and, in the Alternative</i> , MOTION for New Trial by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Attachments: # <a href="#">1</a> Exhibit 1 - Excerpt of Pl's Trial Ex. 4 - Rule 4.6.3)(Coffey, Dixie) (Entered: 07/05/2018)
07/12/2018	<a href="#">317</a>	MOTION for Extension of Time to File Response/Reply as to <a href="#">302</a> FIRST MOTION for Attorney Fees <i>DECLARATION IN SUPPORT OF LAW OFFICE JILLIAN WEISS</i> , <a href="#">306</a> MOTION for Attorney Fees , <a href="#">301</a> FIRST MOTION for

		Attorney Fees <i>Law Office Jillian Weiss</i> by Rachel Tudor. (Novotny, Brittany) (Entered: 07/12/2018)
07/18/2018	<a href="#">318</a>	FIRST MOTION to Strike <a href="#">316</a> MOTION for Judgment NOV <i>and, in the Alternative</i> MOTION for New Trial by Rachel Tudor. (Young, Ezra) (Entered: 07/18/2018)
07/18/2018	<a href="#">319</a>	ORDER of USCA as to <a href="#">294</a> Notice of Appeal filed by Rachel Tudor. Order filed by Clerk of the Court abating case. A review of the district court docket has revealed a pending motion to alter or amend the judgment filed by the appellant. The deadline for appellant to file the opening brief and appendix is vacated. Status report due 09/04/2018 by Rachel Tudor. If the district court rules on the motion before that time, appellant shall promptly notify this court in writing. The district court is directed to supplement the preliminary record with the order. See attached order for additional information. Served on 07/18/2018. (em) (Entered: 07/19/2018)
07/19/2018	<a href="#">320</a>	NOTICE (other) by Rachel Tudor re <a href="#">319</a> USCA Order,, <a href="#">318</a> FIRST MOTION to Strike <a href="#">316</a> MOTION for Judgment NOV <i>and, in the Alternative</i> MOTION for New Trial (Attachments: # <a href="#">1</a> Exhibit EX1-Tudor Motion, # <a href="#">2</a> Exhibit EX2-10th Cir Order)(Young, Ezra) (Entered: 07/19/2018)
07/20/2018	<a href="#">321</a>	OBJECTIONS re <a href="#">314</a> FIRST MOTION to Amend/Correct <a href="#">311</a> MOTION to Alter Judgment <i>to Include Prejudgment and Post-Judgment Interest and Tax Offset</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 07/20/2018)
07/23/2018	<a href="#">322</a>	FIRST MOTION for Extension of Time to File Response/Reply as to <a href="#">316</a> MOTION for Judgment NOV <i>and, in the Alternative</i> MOTION for New Trial , <a href="#">318</a> FIRST MOTION to Strike <a href="#">316</a> MOTION for Judgment NOV <i>and, in the Alternative</i> MOTION for New Trial by Rachel Tudor. (Young, Ezra) (Entered: 07/23/2018)
07/25/2018	<a href="#">323</a>	ORDER. Signed by Honorable Robin J. Cauthron on 07/25/18. (wh) (Entered: 07/25/2018)
07/26/2018	<a href="#">324</a>	RESPONSE in Opposition re <a href="#">316</a> MOTION for Judgment NOV <i>and, in the Alternative</i> MOTION for New Trial , <a href="#">322</a> FIRST MOTION for Extension of Time to File Response/Reply as to <a href="#">316</a> MOTION for Judgment NOV <i>and, in the Alternative</i> MOTION for New Trial , <a href="#">318</a> FIRST MOTION to Strike <a href="#">316</a> MOTION for Judgment NOV <i>and, in the Alternative</i> < filed by Rachel Tudor. (Attachments: # <a href="#">1</a> Exhibit Tudor Trial Exhibit 79, # <a href="#">2</a> Exhibit Tudor Trial Exhibit 35, # <a href="#">3</a> Exhibit Tudor Trial Exhibit 84)(Young, Ezra) (Entered: 07/26/2018)
08/01/2018	<a href="#">325</a>	RESPONSE in Opposition re <a href="#">322</a> FIRST MOTION for Extension of Time to File Response/Reply as to <a href="#">316</a> MOTION for Judgment NOV <i>and, in the Alternative</i> MOTION for New Trial , <a href="#">318</a> FIRST MOTION to Strike <a href="#">316</a> MOTION for Judgment NOV <i>and, in the Alternative</i> < filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Bunson, Timothy) (Entered: 08/01/2018)
08/01/2018	<a href="#">326</a>	

		REPLY by Intervenor Plaintiff Rachel Tudor re <a href="#">325</a> Response in Opposition to Motion, filed by Rachel Tudor. (Young, Ezra) (Entered: 08/01/2018)
08/02/2018	<a href="#">327</a>	REPLY to Response to Motion re <a href="#">316</a> MOTION for Judgment NOV <i>and, in the Alternative</i> MOTION for New Trial filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 08/02/2018)
08/03/2018	<a href="#">328</a>	NOTICE of Subpoena by Regional University System of Oklahoma, Southeastern Oklahoma State University (Attachments: # <a href="#">1</a> Attachment 1 - SDT - Jillian Weiss, # <a href="#">2</a> Attachment 2 - SDT - TLDF)(Coffey, Dixie) (Entered: 08/03/2018)
08/07/2018	<a href="#">329</a>	RESPONSE re <a href="#">304</a> Bill of Costs Hearing set filed by Rachel Tudor. (Young, Ezra) (Entered: 08/07/2018)
08/07/2018	<a href="#">330</a>	ORDER of USCA as to <a href="#">294</a> Notice of Appeal filed by Rachel Tudor. Appellants Motion to Vacate Abatement Order is denied. The abatement of this appeal shall continue. In accordance with the order of July 18, 2018, no later than September 4, 2018, Appellant shall file a written report regarding the status of all three post-judgment motions (Doc. Nos. 311, 314, 316). (em) (Entered: 08/08/2018)
08/08/2018	<a href="#">331</a>	RESPONSE in Opposition re <a href="#">318</a> FIRST MOTION to Strike <a href="#">316</a> MOTION for Judgment NOV <i>and, in the Alternative</i> MOTION for New Trial filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Joseph, Jeb) (Entered: 08/08/2018)
08/08/2018	<a href="#">332</a>	ORDER granting <a href="#">322</a> Motion for Extension of Time to File Response/Reply. Signed by Honorable Robin J. Cauthron on 08/08/18. (wh) (Entered: 08/08/2018)
08/15/2018	<a href="#">333</a>	REPLY by Intervenor Plaintiff Rachel Tudor re <a href="#">331</a> Response in Opposition to Motion, filed by Rachel Tudor. (Young, Ezra) (Entered: 08/15/2018)
08/17/2018	<a href="#">334</a>	MOTION for Protective Order <i>Regarding Defendants Post-Judgment Subpoenas Duces Tecum and Request for Production of Documents</i> by United States of America. (Attachments: # <a href="#">1</a> Exhibit A - OK OAG RFP to Tudor) (Bloom, Shayna) (Entered: 08/17/2018)
08/23/2018	<a href="#">335</a>	SUPPLEMENT re <a href="#">300</a> Brief, <a href="#">299</a> MOTION for Costs by Rachel Tudor. (Young, Ezra) (Entered: 08/23/2018)
08/30/2018	<a href="#">336</a>	RESPONSE re <a href="#">335</a> Supplement <i>Brief in Support of Bill of Costs</i> filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 08/30/2018)
09/06/2018		ORDER of USCA as to <a href="#">294</a> Notice of Appeal filed by Rachel Tudor. Order filed by Clerk of the Court on receipt of appellant's status report. The abatement of this appeal is continued. Appellant shall file another report advising this court as to the status of the postjudgment motions within 30 days. If the district court rules before that time, Appellant shall promptly notify this court in writing. When the dispositive order is entered by the district court, the clerk of the district court is directed to supplement the preliminary record.

		Served on 09/06/2018. Text only entry - no attachment. [18-6102] (em) (Entered: 09/10/2018)
09/18/2018	<a href="#">337</a>	ORDER denying <a href="#">316</a> Motion for Judgment as a Matter of Law; and granting <a href="#">318</a> Plaintiff's Motion to Strike. Signed by Honorable Robin J. Cauthron on 9/18/18. (wh) (Entered: 09/18/2018)
09/19/2018	<a href="#">338</a>	ORDER of USCA as to <a href="#">294</a> Notice of Appeal filed by Rachel Tudor. Order filed by Clerk of the Court. The abatement of this appeal shall continue. The district court has not addressed Appellant's two postjudgment motions, Doc. Nos. 311 and 314. Status report due 10/19/2018 by Rachel Tudor. Served on 09/19/2018. (em) (Entered: 09/21/2018)
09/21/2018	<a href="#">339</a>	Costs Taxed in amount of \$ \$11,117.94 against Defendants (em) (Entered: 09/21/2018)
09/25/2018	<a href="#">340</a>	ORDER striking <a href="#">311</a> Motion to Alter Judgment; denying <a href="#">314</a> Motion to Amend/Correct. Signed by Honorable Robin J. Cauthron on 9/25/18. (wh) (Entered: 09/25/2018)
09/25/2018	<a href="#">341</a>	ORDER granting <a href="#">334</a> Motion for Protective Order Regarding Defendants' Post-Judgment Subpoenas Duces Tecum and Request for Production of Documents. Signed by Honorable Robin J. Cauthron on 9/25/18. (wh) (Entered: 09/25/2018)
09/25/2018	<a href="#">342</a>	MOTION for Extension of Time <i>to Respond to Motions for Attorney Fees, Costs and Expenses</i> by Regional University System of Oklahoma, Southeastern Oklahoma State University. (Coffey, Dixie) (Entered: 09/25/2018)
09/28/2018	<a href="#">343</a>	NOTICE OF APPEAL as to <a href="#">293</a> Judgment, <a href="#">337</a> Order on Motion for Judgment NOV, Order on Motion for New Trial, Order on Motion to Strike by Regional University System of Oklahoma, Southeastern Oklahoma State University. Filing fee \$ 505, receipt number 1087-2782465. (West, Zachary) (Entered: 09/28/2018)
10/01/2018	<a href="#">344</a>	PRELIMINARY RECORD LETTER - Electronic Transmission of Notice of Appeal with Preliminary Record sent to Tenth Circuit Court of Appeals re <a href="#">343</a> Notice of Appeal. (em) (Entered: 10/01/2018)
10/01/2018	<a href="#">345</a>	ORDER. Signed by Honorable Robin J. Cauthron on 10/01/18. (wh) (Entered: 10/01/2018)
10/02/2018	<a href="#">346</a>	Tenth Circuit USCA Case Number 18-6165 for <a href="#">343</a> Notice of Appeal, filed by Regional University System of Oklahoma, Southeastern Oklahoma State University. (ml) (Entered: 10/02/2018)
10/10/2018	<a href="#">347</a>	TRANSCRIPT Order Form by Regional University System of Oklahoma, Southeastern Oklahoma State University re <a href="#">343</a> Notice of Appeal, that transcripts are necessary. See order form for dates and proceedings. (West, Zachary) (Entered: 10/10/2018)
10/10/2018	<a href="#">348</a>	TRANSCRIPT LETTER advising transcripts are already on file re <a href="#">343</a> Notice of Appeal, filed by Regional University System of Oklahoma, Southeastern

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	Oklahoma State University. The record is ready for appeal purposes. (em) (Entered: 10/10/2018)
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<b>PACER Service Center</b>			
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<b>PACER Login:</b>	oa0046:2609131:0	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	5:15-cv-00324-C Start date: 1/1/1970 End date: 1/11/2019
<b>Billable Pages:</b>	26	<b>Cost:</b>	2.60

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

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

**DEFENDANTS SOUTHEASTERN  
OKLAHOMA STATE UNIVERSITY AND THE REGIONAL  
UNIVERSITY SYSTEM OF OKLAHOMA’S REPLY TO  
PLAINTIFF/INTERVENOR’S RESPONSE TO DEFENDANTS’  
MOTION TO DISMISS PLAINTIFF/INTERVENOR’S COMPLAINT IN PART**

Defendants, Southeastern Oklahoma State University, ("SEOSU"), and The Regional University System of Oklahoma ("RUSO"), (collectively "University Defendants" or "the State"), and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and LCvR7.1(i), submit the following Reply brief to Intervenor’s Response to Defendants’ Motion asking this Court for an order dismissing Plaintiff/Intervenor’s Complaint [Doc. No. 24] in part. In further support of their Motion, Defendants offer the following:

## ARGUMENT AND AUTHORITY

### I. INTERVENOR'S COMPLAINT LACKS SUFFICIENT SUPPORTING FACTUAL AVERMENTS TO MAINTAIN THE TITLE VII HOSTILE WORK ENVIRONMENT CLAIM.

Despite Intervenor's prodigious use of lengthy, single-spaced footnotes in the 24-page Response brief, (as well as Intervenor's attachment of three exhibits thereto), the fact remains that Intervenor's actual Complaint itself offers little in the way of factual allegations tending to show a plausible claim for hostile work environment based on gender. Intervenor's Response completely ignores Defendants' citation to the United States Supreme Court's *Meritor Sav. Bank* decision and the six-part framework for making a hostile work environment case. Intervenor also wholly omits any refutation of Defendants' notation of the Tenth Circuit's *Etsitty* decision and the explicit statement regarding protected classes under Title VII. As to the restroom or wardrobe points, it is not even alleged that Intervenor was consistently told that certain restrooms should be used, or that a certain dress code should be followed. The Complaint's paucity of actual factual averments showing continual, severe, and pervasive hostility toward Intervenor in her workplace suggests that such a claim lacks the plausibility required by Rule 8, *Twombly*, and *Iqbal*.

Further, Intervenor's exhibits to the Response actually support this view as well. As an initial matter regarding Intervenor's exhibits, and as set forth in Defendants' Motion to Dismiss, fn. 1, the Court may take judicial notice of the EEOC materials without converting Defendants' motion into one for summary judgment. Intervenor's Response offers three (3) new exhibits, each of which in their own way indicate not only that the Complaint is deficient,

but that Intervenor will not plausibly uncover facts in Discovery tending to show a viable hostile work environment claim based on animus toward gender expression or transgender individuals. Dismissal under Rule 12(b)(6) is appropriate.

**a. Exhibit A**

This exhibit purports to be a four (4) page complaint or request for investigation made by Intervenor to the U.S. Department of Education. The document is dated August 31, 2010, three years after Intervenor alleges the transition from presentation as a male to a female, and three years after the University's health plan allegedly excluded transgender individuals. This exhibit makes no mention of transgender issues at all. The thrust of this document is that University officials expressed animosity and dismissiveness toward Native Americans (of which group Intervenor claims to be a member). The document offers nothing in the way of allegations of hostility in the workplace toward transgender individuals generally, or Intervenor in particular due to anything related to transgender status.

**b. Exhibit B**

This exhibit purports to be a seven (7) page complaint letter from Intervenor to the EEOC Office in Oklahoma City. The document is conspicuously undated, but references a charge number [564-2011-00849] suggesting at least that this document was written after the July 6, 2011 EEOC Charge of the same number (See discussion of Exhibit C, below), which is as much as four (4) years after the allegedly offensive treatment began. This is also after Intervenor's tenure application was denied. This document begins with a nearly identical recitation of the allegations in Exhibit A, then further suggests that discrimination against

Intervenor is based not only on animus toward Native Americans, but Intervenor's gender, too. The document's reference to two deserving female candidates awarded tenure in Intervenor's department is followed by Intervenor's contentions that the three candidates' records are "equivalent," and therefore tenure should have been awarded to all three of them. Essentially, the letter invites the EEOC or any reviewing court to sit as an academic super-review committee, second-guessing the academic determinations made by University Defendants' personnel. This exhibit lacks any factual allegation (as contrasted with conclusion-jumping statements) of events or actions demonstrating animus toward transgender individuals.

**c. Exhibit C**

This exhibit purports to be a two (2) page charge of discrimination submitted by Intervenor to the EEOC. The document is dated July 6, 2011, some three or four years after the hostile work environment allegedly began. The document states Intervenor alleges workplace discrimination based on gender, religion, and Intervenor's status as a Native American. This document cites to several alleged isolated slights over a four year period. Notably, nothing relating to Intervenor's transgender status (as opposed to Native American heritage, for example) is alleged to have occurred within a 300-day window prior to the July 6, 2011 charge itself (that is, post-September 9, 2010). Defendants submit that even if the facts alleged in this exhibit were taken as true, they do not even collectively state a claim for the type of severe and pervasive workplace animus toward transgender persons necessary to make a plausible claim for hostile work environment.

**II. INTERVENOR FAILED TO EXHAUST ADMINISTRATIVE REMEDIES AS TO ANY “HOSTILE WORK ENVIRONMENT” CLAIM, AND ANY SUCH CLAIM WOULD NOW BE UNTIMELY.**

**“Hostile work environment” not specified**

Intervenor never complained to the University Defendants about a hostile work environment. Intervenor also did not make that claim to the EEOC. As Exhibits A, B, and C to Intervenor’s Response brief make clear, the allegations presented to the Department of Education and EEOC were apparently based on sex, religion, Native American status, and retaliation. The Court may infer from Plaintiff’s Complaint [Doc. No. 1] filed herein that the United States also took the position that Intervenor had not pursued a claim of “hostile work environment,” since Plaintiff’s Complaint presents no such claim. Intervenor’s Response brief contends that the University Defendants mistakenly argue Intervenor should have complained about each and every incident constituting a hostile work environment. But what Intervenor fails to appreciate is that such a complaint was never made, and that is the issue with regard to exhaustion. One of the purposes of the policy requiring exhaustion of remedies is to give entities like the University a chance to identify and correct mistakes as they occur. Intervenor’s failure to complain about alleged wardrobe restrictions, restroom assignments, or verbal misgendering deprived the University of the chance to address and change problems along the way.

Further, failure to exhaust remedies is not a mere formality to bringing suit under Title VII; it is a jurisdictional bar. “Exhaustion of administrative remedies is a ‘jurisdictional prerequisite’ to suit under Title VII.” *Jones v. Runyon*, 91 F.3d 1398, 1399 (10th Cir.1996).

Intervenor cites *Anderson v. Clovis Mun. Schs.* for the proposition that the EEOC charge need not actually invoke the phrase “hostile work environment” in order to have administratively exhausted such a claim sufficiently to include it in the present lawsuit. However, the *Anderson* case is significantly factually divergent from the present case. In *Anderson*’s EEOC charge, the plaintiff therein apparently “stated that ‘[b]eginning in February 2005 and continuing on a continuous basis I have been subjected to adverse terms and conditions unlike my peers.’” *Anderson v. Clovis Mun. Sch.*, 265 F. App’x 699, 706 (10th Cir. 2008). In the present case, Intervenor’s EEOC charge makes no mention of a “continuing” or “continuous” environment of transgender discrimination. Further, going back 300 days prior to the charge, nothing before September 9, 2010 would be actionable. From the face of the charge, (Exhibit C to Intervenor’s Response), the factual assertions after that date appear to either deal squarely with academic determinations or alleged retaliation - not a “hostile work environment.”

Intervenor’s Response does not dispute that timely exhaustion is a jurisdictional prerequisite. But rather than pursuing the alleged claims of discrimination based on sex, religion, or Native American status, or the claim of retaliation, Intervenor now invites this Court to read something additional into the EEOC charge that even the EEOC and Department of Education’s Office of Civil Rights (DOE) apparently did not find. Tellingly, neither the Plaintiff’s Complaint (based explicitly on the EEOC charge and subsequent investigation) nor the DOE correspondence (attached as Exhibit 1 to Defendants’ Amended Motion to Dismiss) included any references to a claim for hostile work environment. Intervenor simply did not allege continuing or pervasive harassment, and certainly failed to timely exhaust administrative

remedies relative to a charge of hostile work environment. That failure deprives this and any other Court of jurisdiction to hear such a charge. Dismissal under Rule 12(b)(1) is appropriate.

**“Hostile work environment” charge not timely made**

Intervenor’s Response cites to the case of *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 117, 122 S.Ct. 2061, 153 L.Ed.2d 106 (2002) for the proposition that as long as any of the alleged bad acts took place within the limitations period then all of any alleged bad acts, no matter how temporally distant, may be considered or compensable under the rubric of “hostile work environment.” Intervenor’s Response then cites to the three attached exhibits for the proposition that the Complaint “plainly paint[s] a picture of a workplace permeated with hostility because of sex.” [Doc. No. 31, p. 15]. However, as discussed above, the exhibits do not show that at all. In fact, the allegations contained in those exhibits relate more to academic disagreements or allegations of animus directed at Native American culture and individuals. The exhibits do not offer facts supportive of a claim of hostile work environment toward transgender individuals. If anything, Intervenor’s exhibits demonstrate that there was not a continuing, severe, and pervasive atmosphere of discrimination toward transgender identification or persons.

According to the Tenth Circuit, the *Morgan* case does not offer the sort of blindly broad-brushed sweep suggested by Intervenor. While acknowledging the difficulty of isolating a series of discrete events relating directly to a hostile work environment situation, the Tenth Circuit said the following:

Even so, however, **an employee may not unreasonably delay the filing of a hostile work environment claim.** *Morgan* explains that when analyzing a hostile work environment claim spanning longer than 300 days “[a] court’s task is to determine whether the acts about which an employee complains are part of the same actionable hostile work environment practice, and if so, whether any act falls within the statutory time period.” *Id.* at 120, 122 S.Ct. 2061. *Morgan* emphasizes that **there must be a relationship between acts alleged after the beginning of the filing period and the acts alleged before the filing period:** “if an act on day 401 had no \*1309 relation to the acts between days 1–100, or for some other reason, such as certain intervening action by the employer, was no longer part of the same hostile environment claim, then the employee cannot recover for the previous acts, at least not by reference to the day 401 act.” *Id.* at 118, 122 S.Ct. 2061. *Morgan* holds that a series of alleged events comprises the same hostile environment where “the pre- and post-limitations period incidents involve[d] **the same type of employment actions, occurred relatively frequently, and were perpetrated by the same managers.**” *Id.* at 120, 122 S.Ct. 2061 (citation to court below omitted).

*Duncan v. Manager, Dep't of Safety, City & Cnty. of Denver*, 397 F.3d 1300, 1308-09 [Emphasis added]

Herein, the events alleged by Intervenor in the EEOC charge to have occurred after September 9, 2010 are not of the type relating to transgender issues or hostility. Not only did Intervenor unreasonably delay, but the academic and allegedly “retaliatory” events occurring within the limitations period bear no relationship in character to the arguably “transgender-related” events in the pre-limitations period. The series of events alleged to have happened before and after September 9, 2010 are not even the same types of employment actions. Intervenor’s Title VII hostile work environment claim is fatally flawed and should be dismissed under Rule 12(b)(1).

### III. DOCTRINE OF LACHES BARS INTERVENOR’S COMPLAINT

While Intervenor’s Response argues that the doctrine of laches “turns on intensive

factual inquiry” making it ill-suited for consideration in a motion to dismiss, the University Defendants have merely adopted the dates alleged by Intervenor’s own Complaint. Assuming those dates to be accurate as alleged, no further inquiry is needed, and the delay is self-evident. The question then becomes one of demonstrated harm.

If Intervenor felt subjected to a hostile work environment due to alleged directives about restroom use or dress codes in 2007, the delay in raising those concerns with the University Defendants prevented the University leadership from taking corrective action. Intervenor’s Complaint does not allege any objections (written or verbal) were made regarding restroom directives or dress codes. A complaint made at the outset, or even in 2008 or 2009, could have resulted in the University Defendants taking corrective measures, thereby not only eliminating an alleged situation repugnant to Intervenor, but could have also used the event as a moment of candid self-improvement. But no such complaint is alleged to have been made, by Intervenor or anyone else. Intervenor’s objection to an “old Supreme Court case” notwithstanding, the rationale in *Lane* remains clear, and undisturbed. Given the length of Intervenor’s delay in bringing the present defective hostile work environment claim, as in *Lane*, changes in the agency at issue necessarily make reinstatement impossible. Further, changes in personnel, and the fading of individual and collective memory, work a prejudice upon the University Defendants. Demonstrating precisely what was lost could prove challenging, because a large entity like a University system does not know “what it doesn’t know,” let alone “what it knew” as many as eight years ago. Intervenor’s delay should not be rewarded, and the hostile work environment claim should be dismissed.

## CONCLUSION

Count One of Intervenor's Complaint is fatally flawed, and should be dismissed with prejudice now. Intervenor failed to allege proper and timely compliance with Title VII's exhaustion requirements, fails to establish any court's jurisdiction as to the putative hostile work environment claim, and fails to allege sufficient factual averments in compliance with *Twombly* and *Iqbal*. For the reasons set forth previously, Defendants pray this Court will dismiss Count One with prejudice, and for all such other relief as this Court deems appropriate.

Respectfully submitted,

/s/Jeb E. Joseph

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/s/ Jeb E. Joseph  
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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	)	
v.	)	CASE NO. 5:15-cv-00324-C
	)	
SOUTHEASTERN OKLAHOMA	)	
STATE UNIVERSITY, and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA	)	
	)	
Defendants.	)	

**UNITED STATES' RESPONSE TO DEFENDANTS' MOTION TO EXCLUDE  
THE TESTIMONY OF DR. ROBERT PARKER**

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Plaintiff United States of America (“Plaintiff” or “United States”) hereby opposes Defendant Southeastern Oklahoma State University’s (“SEOSU”) and Defendant Regional University System of Oklahoma’s (“RUSO”) (collectively, “Defendants”) Motion to exclude the testimony of Dr. Robert Dale Parker (“Motion”).<sup>1</sup> Defendants would have the Court believe that the tenure process is immune to scrutiny from those outside of it, and that the reasons decisionmakers give for their tenure decisions must never be questioned. But Dr. Parker’s report and anticipated testimony fully satisfy the standards set forth by Federal Rule of Evidence 702 and cases interpreting that Rule, including those in this Circuit, and his testimony will greatly assist the jury in understanding the complex, highly specialized process involved in assessing an English professor’s tenure and promotion application.

Indeed, the Defendants’ own Affirmative Action Officer, Dr. Claire Stubblefield, has testified that it would be a “textbook perfect” approach to have a “qualified, objective, third party,” with experience “reviewing portfolios” of tenure candidates, compare Dr. Tudor’s portfolio to relevant comparators’ portfolios to assist in determining whether Dr. Tudor was discriminated against. (Ex. 1 [Stubblefield Dep.] 178:11-82:3 and Ex. 2 [Dep. Ex. 111].) Dr. Stubblefield did not follow this “textbook perfect” approach when she investigated Dr. Tudor’s internal complaint (Ex. 1 [Stubblefield Dep.]

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<sup>1</sup> The scheduling order in this case, ECF No. 57, dictates that *Daubert* motions were due September 1, 2016. Defendants filed their motion to exclude Dr. Parker’s testimony on August 11, 2016, and titled it a “Motion in Limine.” Because it is actually a *Daubert* motion, the United States accordingly is responding within the time set under Local Rule 7.1(g), rather than the time set for responses to motions in limine in ECF No. 57, as suspended by the intervening stay in this case. *See* ECF No. 123; ECF No. 142.

180:8-182:8; Ex. C [Dep. Ex. 17]; Ex. 2 [Dep. Ex. 111]) but, by obtaining the expert opinion of Dr. Parker, the United States has. *See also* Ex. 4 [Snowden Dep.] 41:5-42:8 (explaining that submitting portfolios for external peer review is “really the proper way to do it.”). For the reasons discussed below, the Court should deny Defendants’ Motion.

**I. Background**

The process governing applications for promotion and tenure is set forth in Southeastern’s “Procedure for Granting Promotion and Tenure.” (Compl. (ECF No. 1) ¶ 19; Answer (ECF No. 21) ¶ 19; Ex. 3 [Dep. Ex. 7] at EEOC000332-333.) That process starts with the applicant submitting a written application to her Department Chair, along with a portfolio that contains documentation pertinent to an assessment of her qualifications. *Id.* Second, the applicant is reviewed by a Promotion and Tenure Review Committee (“P&T Review Committee”) made up of tenured faculty in the applicant’s Department. *Id.* Next, the application is reviewed sequentially by the Department Chair (in this case, Dr. John Mischo), the Dean of the applicant’s school (here, Dr. Lucretia Scoufos), and the Vice President for Academic Affairs (here, Dr. Douglas McMillan), each of whom must consider whether to recommend the applicant to receive promotion and tenure and then forward his or her recommendation to the next reviewing official. *Id.* Following the Vice President for Academic Affairs’ review, Southeastern’s President decides whether to approve or deny the application for promotion and tenure and, if the President approves the application, he submits his recommendation to the RUSO Board of Regents for their approval. *Id.*

According to Southeastern’s Academic Policies and Procedures, to attain

tenure a professor must have: (1) five years of service at Southeastern in a tenure-track appointment as an Assistant Professor, Associate Professor, or Professor; (2) demonstrated effective classroom teaching, research/scholarship, service, and, in appropriate instances, successful performance of non-teaching or administrative duties; (3) demonstrated ability to work cooperatively to strengthen the academic quality of the institution; and (4) noteworthy achievement in classroom teaching and on at least one other criterion: research/scholarship, service, or, in appropriate instances, performance of non-teaching or administrative duties. (Compl. ¶ 21; Answer ¶ 21; Ex. 3 [Dep. Ex. 7] at EEOC000332-333.)

In October 2009, Dr. Tudor submitted her application for tenure and promotion to the position of Associate Professor to the Chair of the English Department, Dr. John Mischo. (Compl. ¶ 28; Answer ¶ 28.) Both the P&T Review Committee assigned to review Dr. Tudor's application and portfolio as well as Dr. Mischo recommended that she receive promotion and tenure. (Compl. ¶ 29; Answer ¶ 29.) On or about November 29, 2009, Dr. Mischo notified Dean Scoufos that he and the P&T Review Committee recommended that Dr. Tudor receive a promotion to the tenured position of Associate Professor. (Compl. ¶ 30; Answer ¶ 30.) Dean Scoufos recommended that Dr. Tudor be denied promotion and tenure. (Compl. ¶¶ 31 & 32; Answer ¶¶ 31 & 32.) Dr. Mischo has testified that this was the only instance he was aware of in which a professor in the EHL Department was recommended for tenure by the department chair and then the dean disagreed with that recommendation. (Ex. 6 [Mischo Dep.] 110:25-111:12.)

When Dr. Tudor attempted to re-apply for tenure and promotion during the 2010-2011 School Year, Vice President of Academic Affairs Doug McMillan denied her that opportunity, explaining that deficiencies in Dr. Tudor's application from the prior academic year could not be corrected that quickly. (Compl. ¶ 52; Ex. 7 [Dep. Ex. 129].)

The United States has timely designated an expert on tenure and promotion in the field of English to testify in this case. Dr. Robert Dale Parker, who is a professor of English at the University of Illinois at Urbana-Champaign, has prepared a report on his opinion and will testify at trial. In requesting Dr. Parker's opinion, the United States identified the faculty members who applied for promotion and tenure from the English, Humanities and Languages Department at Southeastern in the years leading up to (and one year following) Dr. Tudor's 2009-2010 application. The United States then provided Dr. Parker with the comparator portfolios that Defendants submitted to the EEOC during its investigation, and Dr. Tudor's reconstructed portfolio for 2009-2010 for 2010-2011, as well as an additional comparator's portfolio that had not been a part of the EEOC investigation.

Dr. Parker was asked to examine the portfolios and Southeastern policies and, using those materials as a basis to determine the qualifications necessary for promotion and tenure at Southeastern, to provide an opinion about where Dr. Tudor stood among her colleagues who had been granted tenure and promotion. Dr. Parker reviewed the materials he was provided, and he used them to prepare a detailed analysis of each candidate's scholarship, service and teaching based on the materials he had, his experience in reviewing tenure and promotion portfolios in the field of English, and his

knowledge of the criteria used to evaluate scholarship, service and teaching among English faculty nationwide.

## II. Argument

### A. Legal standard

As the proponent of expert testimony, the United States bears the burden of demonstrating that Dr. Parker's proposed testimony is admissible under Federal Rule of Evidence 702. *See United States v. Nacchio*, 555 F.3d 1234, 1241 (10th Cir. 2009) (en banc). As this Court has explained, "[t]o be admissible under Rule 702, the witness must be qualified as an expert and the testimony must be both relevant and reliable." *Wells v. Allergan, Inc.*, No. 12-cv-973, 2013 WL 7208330, at \*1 (W.D. Okla. Feb. 7, 2013); *see generally Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999); *Daubert v. Merrell Dow Pharma., Inc.*, 509 U.S. 579 (1993). Dr. Parker's proposed testimony meets all of these criteria. It is also important to note that at this stage, it is not the United States' burden to show that Dr. Parker's proposed testimony is not subject to criticism, as Defendants imply in their brief. Thus, while many of the concerns raised by Defendants are proper subjects for cross-examination, they do not provide bases for excluding Dr. Parker's testimony altogether.

### B. Tenure decisions are neither exempt from Title VII, nor insulated from expert scrutiny.

The suggestion that tenure decisions are effectively unreviewable under Title VII permeates Defendants' motion. This suggestion is contrary to law, rests on a misconception of the purpose of Dr. Parker's testimony, relies primarily on case law

that does not involve evaluation of expert testimony under Rule 702, and misconstrues both the standard applicable to evaluation of an expert's qualifications and the factual record in this case. As one judge put it, "[t]he notion that tenure decisions must be accorded special deference was put to rest in 1972, when Congress, expressing concern about widespread discrimination against women in academia, removed academia's exemption from Title VII scrutiny." *Namenwirth v. Bd. of Regents of Univ. of Wisconsin Sys.*, 769 F.2d 1235, 1244 (7th Cir. 1985) (Swygert, J., dissenting) (citing Pub.L. No. 92-261 § 3 (codified at 42 U.S.C. § 2000e-1 (1982)); H.Rep. No. 238, 92d Cong., 2d Sess.).

The Tenth Circuit -- in an opinion relied on by Defendants in their brief -- has made clear that tenure decisions in an academic setting "are not exempt under Title VII." *Carlile v. S. Routt Sch. Dist. RE-3J*, 739 F.2d 1496, 1500 (10th Cir. 1984). While the Tenth Circuit has noted that "tenure decisions in an academic setting involve a combination of factors which tend to set them apart from employment decisions in general[,]" it clearly explained that "[p]laintiffs seeking to show discriminatory purposes in tenure or reappointment decisions ought to have available the means of challenging such decisions." *Id.*

Defendants make a cursory argument about Dr. Parker's qualifications but primarily rest their Motion on an oversimplification or misunderstanding of his proposed testimony. Specifically, Defendants argue that Dr. Parker seeks to testify that Dr. Tudor "merited," "deserved" or "should have been granted" tenure. Defs.' Br. (ECF No. 98) at 1-2. Defendants are wrong. Dr. Parker's proposed testimony cannot be reduced to professing a subjective belief that Dr. Tudor should have been granted tenure. Rather,

Dr. Parker's charge was "to address whether, in [his] carefully considered professional judgment, Dr. Tudor met Southeastern's standards for promotion and tenure, based on a comparison between her qualifications and the qualifications of her colleagues." Parker Report, Defs.' Br. Ex. 1 (ECF No. 98-1) at 1 (emphasis added). Dr. Parker's proposed testimony about these comparisons will assist the trier of fact in evaluating: (1) whether Dr. Tudor was qualified for tenure; (2) the veracity of Defendants' reasons for rejecting her application; and (3) the veracity of Defendants' reasons for refusing to permit Dr. Tudor to reapply for tenure. Therefore, Dr. Parker's testimony is not subject to the same criticisms as would be an expert who is testifying about the ultimate question in the case, which is whether Defendants discriminated and retaliated against Dr. Tudor, or one who is substituting his subjective judgment for the actual tenure and promotion committee who reviewed the decision about Dr. Tudor's application. As discussed further below, Dr. Parker's expert opinion regarding Dr. Tudor's comparative qualification for promotion and tenure is relevant, reliable evidence here.

Without direct citations, Defendants argue that courts have consistently rejected similar "tenure experts." (ECF No. 98 at 6; *see also id.* at 7, 11, 16). In fact, only one case cited by Defendants in the entirety of their brief directly confronted, analyzed and excluded expert testimony regarding a tenure candidate's qualifications. *See Goswami v. DePaul Univ.*, 8 F. Supp. 3d 1019 (N.D. Ill. 2014).<sup>2</sup> And the holding in *Goswami* is far

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<sup>2</sup> Another case excluded deposition testimony from the plaintiff's former colleague, not an expert, since the testimony did not provide information relating to the motivations of the defendants. *See Gupta v. Bd. of Regents of Univ. of Wisc. Sys.*, 63 F. App'x 925 (7th Cir. 2003). Several cases in Defendants' brief actually permitted expert testimony on a

narrower than Defendants’ suggest – the court evaluated only Rule 702’s relevance criterion in an inapposite factual situation where a professor’s department colleagues unanimously deemed her unqualified for tenure. *See id.* and *see* discussion *infra* at Section II.E.

Contrary to Defendants’ blanket assertion about the propriety of expert testimony in a tenure denial case, a district court case recently admitted expert testimony regarding the tenure process and aspects of the candidates’ qualifications. In *Siring v. Oregon State Bd. of Higher Ed. ex rel. Eastern Oregon Univ.*, the district court admitted expert testimony that “there were significant deficiencies in the tenure review process with respect to [the plaintiff] and that there was ‘no scholarly reason for [the plaintiff]’s dismissal’ that was apparent from the materials reviewed” by the expert. 927 F. Supp. 2d 1069, 1073 (D. Or. 2013).

Defendants apparently also believe that a tenure decision should be insulated from judicial review under Title VII because there is no professional field that studies tenure practices specifically. This argument is a red herring and has no bearing on Dr. Parker’s qualification to serve as an expert in this case. Dr. Parker has years of experience in

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professor’s qualifications for tenure, but deemed the evidence irrelevant or unpersuasive without engaging in any Rule 702 analysis. *See Babbar v. Ebadi*, 36 F. Supp. 2d 1269, 1279 (D. Kan. 1998); *aff’d*, 216 F.3d 1086 (10th Cir. 2000); *El-Ghori v. Grimes*, 23 F. Supp. 2d 1259, 1268-69 (D. Kan. 1998); *Goodship v. Univ. of Richmond*, 860 F. Supp. 1110, 1112 (E.D. Va. 1994). And while the Tenth Circuit did affirm the district court’s ruling in *Babbar* on defendant’s motion for summary judgment, it did not specifically speak to the district court’s decision to exclude expert testimony; in any event, *Babbar* is distinguishable because Babbar’s colleagues had not voted in favor of his application, as Dr. Tudor’s voted in favor of hers.

evaluating tenure portfolios, and is a highly accomplished English professor at a major research university. *See* Dr. Parker Report (ECF No. 98-1) at 1-2. He is routinely called upon to advise on tenure and promotion decisions by many colleges and universities and by his own university, as his report makes clear. *Id.* at 2.<sup>3</sup> The fact that his career does not focus on tenure review as a standalone field of study in no way undermines his qualification as an expert witness in this case. Defendants also, in a highly conclusory manner, claim that Dr. Parker does not use a method “that has been generally accepted by the tenure-review community.” ECF No. 98 at 13. Actually, Dr. Parker is providing exactly the type of information that Defendants’ administrators have testified is the ideal of the academic (and thus, tenure-review) community: peer review by an expert outside the applicant’s own institution. (Ex. 4 [Snowden Dep.] 41:5-42:8; Ex. 1 [Stubblefield Dep.] 178:11-82:3 and Ex. 2 [Dep. Ex. 111].) Dr. Parker’s testimony is fully appropriate in this case.

**C. Dr. Parker is qualified under FRE 702 because of his extensive experience with tenure review of English faculty.**

Dr. Parker is qualified to review the academic qualifications of Dr. Tudor and her comparators based on his extensive experience reviewing tenure portfolios in the field of English. An expert may be qualified “by knowledge, skill, *experience*, training, or education to render an opinion.” Fed. R. Evid. 702 (emphasis added). “The Tenth

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<sup>3</sup> The United States will cite to the version of Dr. Parker’s report filed by Defendants as an exhibit to their Motion, but the United States notes that yellow highlighting in that version did not appear in the original version the United States provided to Defendants.

Circuit and other courts have held that this standard should be construed and applied liberally.” *Cook v. Rockwell Int’l Corp.*, 580 F. Supp. 2d 1071, 1084 (D. Colo. 2006).

In an attempt to minimize the effect of Dr. Parker’s conclusions, Defendants completely dismiss Dr. Parker’s extensive experience with academic tenure decisions in the field of English literature. To be clear, Dr. Parker has participated in deliberations for “over a hundred promotions” and has served on multiple appeals committees for promotions at the University of Illinois. Parker Report, Defs.’ Br. Ex. 1 (ECF No. 98-1) at 1. In addition, Defendants suggest that Dr. Parker must be a specialist or consultant in the same narrow subfields as Dr. Tudor and her colleagues, e.g., early medieval women’s writings, in order to offer a reliable opinion about the quality of their work. Defs.’ Br. (ECF No. 98) at 8. They make this argument at the same time they contend that Southeastern administrators, who do not even share the same general discipline of English, are qualified to opine about the quality of work in entirely different fields.<sup>4</sup> But, having reviewed the records of dozens of faculty under consideration for promotion at universities nationwide, Dr. Parker is perfectly suited to review the accomplishments of Dr. Tudor and her colleagues. (*See* ECF No. 98-1 at 1-2; *see also* Ex. 5 [Dr. Parker’s CV].)

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<sup>4</sup> Dr. Scoufos has a bachelor’s degree in education, a master’s degree in human relations, and a Ph.D. in communications. (Ex. 10 [Scoufos Dep.] 16:2-16:8.) Dr. McMillan has a bachelor’s degree in education and master’s and doctoral degrees in counseling psychology. (Ex. 8 [McMillan Dep.] 19:20-20:23.) Dr. Minks, the former Southeastern President who held that office when Dr. Tudor applied for promotion and tenure in 2009, holds bachelor’s and master’s degrees in business administration and a doctorate of education and business teaching (Ex. 11 [Minks Dep.] 13:21-15:2.)

**D. Dr. Parker's methodology is sound and reliable.**

Under FRE 702, expert testimony must be based on sufficient facts or data, and it must be the product of reliable principles and methods. Fed. R. Evid. 702. Further, the expert must have reliably applied the principles and methods to the facts of the case. *Id.* Dr. Parker's expert opinion has "a reliable basis in the knowledge and experience of his [or her] discipline." *See Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 592 (1993); *see also Bitler v. A.O. Smith Corp.*, 400 F.3d 1227, 1233 (10th Cir. 2005).

Recognizing that "there are many different kinds of experts, and many different kinds of expertise," the Supreme Court has stressed that the reliability determination is "flexible." *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 141, 150 (1999). According to the Tenth Circuit, "[r]egardless of the specific factors at issue, the purpose of the *Daubert* inquiry is always the same: '[t]o make certain that an expert whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.'" *Hollander v. Sandoz Pharma. Corp.*, 289 F.3d 1193, 1206 (10th Cir. 2002) (second alteration in original) (citation omitted). Here, Dr. Parker's rigorous, thorough analysis of the information provided to him more than satisfies these criteria. *See* Section I, *supra*.

An expert's reliability can be rooted in his or her experience. The Advisory Committee's Notes to Federal Rules of Evidence 702 states that, "[n]othing in this amendment is intended to suggest that experience alone—or experience in conjunction with other knowledge, skill, training, or education—may not provide a sufficient

foundation for expert testimony.” Fed. R. Evid. 702 advisory committee’s notes (2000 amendments). Indeed, “[i]n certain fields, experience is the predominant, if not sole, basis for a great deal of reliable expert testimony.” *Id.*

When an expert report is based on experience, the court’s reliability inquiry is necessarily different than when an expert report is based on scientific proof or clear professional standards. “If the witness is relying solely or primarily on experience, then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts.” Fed. R. Evid. 702 advisory committee’s note (2000 amendments).

Defendants argue that a decision whether to grant tenure is wholly subjective and, therefore, any expert report concerning tenure is also necessarily and impermissibly subjective in nature. Not so. Anticipated trial testimony will establish that there were clear expectations about the number and type of publications a successful tenure candidate needed and what types of service to the University were considered sufficient, among other things. (*See, e.g.*, Ex. 10 [Scoufos Dep.] 72:22-73:3 (there are objective criteria to determine if a Southeastern faculty member’s scholarship is excellent, and the objective criteria may vary department to department); Ex. 8 [McMillan Dep.] 80:23-81:17 (in determining whether scholarship was noteworthy, one could look at whether the scholarship was refereed; for grants, whether they were reviewed by a panel or board, and for a presentation or publication, whether it was local, regional, national or international)). Thus, there is no basis to conclude the Defendants’ tenure process was entirely subjective.

***1. Dr. Parker's testimony regarding a partially subjective decision is sufficiently objective and reliable.***

Defendants overstate the impact of subjectivity in an expert's opinion, but it is far from fatal to a finding of reliability. When evaluating an expert in fingerprint analysis, the Tenth Circuit recognized that "[c]ritical steps in the process depend on the subjective judgment of the analyst." *United States v. Baines*, 573 F.3d 979, 991 (10th Cir. 2009). The Tenth Circuit "hasten[ed] to add that subjectivity does not, in itself, preclude a finding of reliability." *Id.* The Tenth Circuit looked instead to the record for "evidence of standards that guide and limit the analyst in exercise of these subjective judgments." *Id.*

While Dr. Parker's expert report necessarily includes subjective elements, his opinion is reliable due to the existence of standards that guide and limit his analysis. Specifically, he reviewed Dr. Tudor and her colleagues within clear categories established by Defendants' own written policies, with specifically enumerated evidence such that he can be cross-examined about his conclusions at trial. In addition, Dr. Parker "review[ed] the standards for judging scholarship before looking at the scholarly records of the individual candidates," and provided "five different markers of scholarly accomplishment." Parker Report, Defs.' Br. Ex. 1 (ECF No. 98-1) at 10. For the criterion of peer-reviewed publications, Dr. Parker presented and evaluated the characteristics of publications by which experts in the field would determine prestige. *Id.*

**2. *Dr. Parker considered all relevant information and analogous comparators.***

Defendants also discount Dr. Parker's analysis by criticizing his decision to disregard scholarship that tenure candidates completed before their arrival at Southeastern. But witnesses, including the Dean and Department Chair that reviewed Dr. Tudor's promotion and tenure portfolio, will testify that at Southeastern, scholarship that preceded a candidate's arrival at Southeastern did not count towards promotion and tenure. (*See, e.g.*, Ex. 10 [Scoufos Dep.] 109:4-11 and Ex. 6 [Mischo Dep.] 82:10-83:6.) For that reason, there is no merit to Defendant's criticism.

The sample size Dr. Parker used was also completely appropriate given the facts of this case, contrary to Defendants' assertions. Dr. Parker examined the qualifications of all of Dr. Tudor's comparators: all of her fellow tenure and promotion applicants from the EHL Department two years before and one year after her own 2009-2010 application. (*See* Defs.' Resp. to United States' Interrog. 10.) Among the evidence amassed in this case are statements that the EHL Department employed department-specific criteria during at least some of the relevant time period here. (Ex. 9 [Prus Dep.] 57:2-58:21; Ex. 6 [Mischo Dep.] 75:13-76:10.) Thus, tenured EHL professors are the best sample available. If the United States had compared Dr. Tudor to, for example, a Chemistry or Theatre professor, surely Defendants would protest that the comparisons were inapt. Dr. Parker's examination of the EHL faculty members who received promotion and tenure in close temporal proximity to Dr. Tudor is entirely justified.

Defendants' criticism that Dr. Parker did not look at those who were denied tenure also falls flat. As Defendants well know, no other EHL professor, since at least the 2006-2007 school year, was recommended for tenure and promotion by the department and department chair only to be denied at subsequent levels of review. (Defs.' Response to United States' Interrog. 8.) Thus, Dr. Tudor was treated differently than every other comparator in her discipline. Even so, this criticism is something the factfinder may weigh in determining how persuasive they find Dr. Parker's opinion in light of the entire factual context of the case, and it is not a disqualifying fact under *Daubert* review.

**E. Dr. Parker's contemplated testimony is relevant.**

***1. The anticipated testimony bears directly on the prima facie case.***

Dr. Parker's report reveals that his testimony is demonstrably relevant. Relevant evidence "means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Bitler v. A.O. Smith Corp.*, 400 F.3d 1227, 1234 (10th Cir. 2004) (citing FRE 401). When analyzing the "fit" of a proposed expert's testimony, this Circuit has directed district courts to "look at the logical relationship between the evidence proffered and the material issue that evidence is supposed to support to determine if it advances the purpose of aiding the trier of fact." *Id.*

As explained above, Dr. Parker's comparative analysis of the qualifications of Dr. Tudor and successful tenure and promotion candidates is a reliable method of demonstrating Dr. Tudor's objective qualifications. This, in turn, is relevant to the *prima facie* case. See *Namenwirth v. Bd. of Regents of Univ. of Wis. Sys.*, 769 F.2d 1235, 1240

(7th Cir. 1985). By the same rationale, Dr. Parker's testimony provides undeniably relevant evidence for Dr. Tudor's *prima facie* case of discrimination.

Beyond the *prima facie* case, Dr. Parker's expert opinion is also directly relevant to determining whether Defendants' stated reasons for denying Dr. Tudor tenure were a pretext for discrimination. Specifically, Dr. Parker's report provides evidence that the stated reasons for denying Dr. Tudor tenure -- that her research and service were not only deficient, but the "poorest" seen in twenty years (Ex. 7 [Dep. Ex. 129, Memo from VP McMillan]) -- were not true. Dr. Parker's opinion that Dr. Tudor was as qualified as or more qualified than the candidates who received tenure and promotion is particularly probative of pretext due to Defendants' hyperbolic assertions about Dr. Tudor's alleged lack of qualifications. Dr. McMillan's statement that Dr. Tudor's portfolio was the "poorest" he had seen in twenty years is exposed as baseless, which in turn casts doubt on the veracity of Dr. McMillan's other statements, his overall rationale for recommending against tenure and promotion, and whether he and other decisionmakers actually believed Dr. Tudor was not qualified. Indeed, if Dr. McMillan lied about Dr. Tudor's portfolio being the poorest, a jury could reasonably infer that he lied about other things as well. And that, by Defendants' own admission, is the focus of a pretext inquiry. Defs.' Br. (ECF No. 98) at 12.

In claiming that Dr. Parker's testimony is not relevant, Defendants rely heavily on one district court case from another circuit that barred expert testimony regarding a candidate's qualifications for promotion and tenure where -- unlike Dr. Tudor -- the candidate had been rejected at every level in the tenure review process. *See Goswami*, 8

F. Supp. 3d at 1035. Most notably, the *Goswami* court distinguished its case from situations in which the expert's testimony is directly relevant to pretext, as Dr. Parker's testimony is here. *Id.* at 1030. But the *Goswami* court's conclusions are also easily differentiated from the case at bar because the majority of the tenured department faculty voted against Goswami, which would make it far more likely that an expert's testimony about Goswami's qualifications could encourage a factfinder to substitute its judgment for those of the academic professionals who originally reviewed the portfolio.

That sets *Goswami* very much apart from the facts presented here, where the reasoned judgment of the experts in the relevant field (i.e., Dr. Tudor's tenured departmental colleagues and Chair) was that tenure should have been granted. And the *Goswami* court actually carefully distinguished its holding from circumstances in which "the issue relates to deviations from university procedures," when expert testimony regarding the tenure process may be relevant. *See id.* at 1035. This distinction comes into play here, where the Plaintiffs allege that many university procedures were violated during Dr. Tudor's tenure review. On these facts, Dr. Parker's testimony as an actual independent reviewer is crucial in understanding what the outcome would have been had the proper procedures been followed.

The instant case is also factually different from the types of cases Defendants rely upon in arguing that Dr. Parker should be excluded. Defendants cite *Blasdel v. Northwestern Univ.*, 687 F.3d 813, 815-17 (7th Cir. 2012), at length for the proposition that tenure decisions made by departmental colleagues may be influenced by "friendships and enmities, envy and rivalry," or "disagreements on what are the most promising areas

of research.” Defs.’ Br. at 13. *Blasdel* also lists “hypersensitivity to criticism,” “office politics,” and “professional jealousy” as bad, but not illegal, reasons to deny tenure. *Id.* (citing *Blasdel* at 815-17). But this long list of legal reasons to deny tenure only highlights the fact that none of these factors could have been at play in Dr. Tudor’s case: Dr. Tudor was recommended for tenure and promotion by her own department’s tenure committee as well as her department chair. It was administrators, distanced from the day-to-day problems of an academic department, relying (allegedly) only on Dr. Tudor’s qualifications as set forth in her portfolio, who made the decision not to award her tenure and promotion. (Compl. (ECF No. 1) at ¶¶ 29, 31, 33 and 43; Answer of Defendant SEOSU (ECF No. 21) at ¶¶ 29, 31, 33 and 43.)

**2. *Dr. Parker’s testimony will unquestionably assist the jury.***

In the Tenth Circuit, the subject matter of expert testimony “must be closely related to a particular profession, business or science and not within the common knowledge of the average layman . . . .” *Graham by Graham v. Wyeth Labs., Div. of Am. Home Prod. Corp.*, 906 F.2d 1399, 1408 (10th Cir. 1990) (internal citations and quotation marks omitted). In an about-face from their position earlier in their Brief that Dr. Parker is unqualified to evaluate comparator portfolios because he does not, for example, specialize in early medieval women’s writings, Defendants conclude by arguing that Dr. Parker’s testimony will not assist the jury because a review of tenure portfolios is easily accomplished by anyone with a grade-school education. *Cf.* Defs.’ Br. (ECF No. 98) at 13 with Defs.’ Br. (ECF No. 98) at 14. Defendants cannot have it both ways. Nor do Defendants offer any support for their claim that Dr. Parker’s testimony will unduly

prejudice the jury (indeed, Defendants do not even list a single fact to support that assertion).<sup>5</sup> In reality, testimony from an individual with expertise in both the discipline of English and the tenure process will offer tremendous assistance to the average juror, who will likely be unfamiliar with both the details of academic career paths and academic qualifications in the field.

Defendants themselves acknowledge that the process can involve reviewing “sometimes arcane” scholarship. Defs.’ Br. (ECF No. 98) at 1 (parentheses omitted). In fact, Dr. Stubblefield, the University’s Affirmative Action Officer, herself a tenured professor who is familiar with academic tenure standards and has been trained to investigate discrimination complaints – felt she was not adequately equipped to determine whether Dr. Tudor was treated differently than her peers in the English Department. (Ex. 1 [Stubblefield Dep. 178:11-82:3] and Ex. 2 [Dep. Ex. 111].) If Dr. Stubblefield was not up to this task, Defendants cannot reasonably contend that a jury could properly accomplish it on its own. Further, Defendants cannot credibly argue that expert testimony would not help the factfinder when it is what the University Affirmative Action Officer thought was needed. Certainly to the extent Defendants might challenge the quality of Dr. Tudor’s scholarship, a jury would be assisted by an experienced academic whose credentials lie in the same area as Dr. Tudor and her EHL colleagues.

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<sup>5</sup> Further, the fact that an expert’s conclusions are helpful to the plaintiff and not to the defendant does not render the expert’s testimony unfairly prejudicial. *See Siring v. Oregon State Bd. of Higher Ed.*, 927 F. Supp. 2d, 1069, 1080 (D. Or. 2013).

When it suits their argument, Defendants take a reductionist approach to Dr. Parker's report: they say he is simply counting publications or awards, and that his work is merely repeating objective facts. Defs.' Br. (ECF No. 98) at 8. But they admit later in their brief that "it is obvious that tenure decisions are not primarily made by stacking up the publications of candidates and seeing which one is taller." *Id.* at 12. Defendants cannot convincingly argue that a layperson can easily understand the types of work a professor must have done to earn tenure. An accomplished English professor who has analyzed dozens of portfolios from universities throughout the nation is well positioned to assist the factfinder by providing the types of analyses in Dr. Parker's report.

Courts have consistently recognized that opinions on qualifications in the unique setting of academia require specialized knowledge beyond lay opinions. In this case, the prestige of relevant journals, the evaluations of course descriptions, and the reception of various articles in the academic community is an assessment that Dr. Parker is uniquely qualified to make and with which the trier of fact needs assistance.

Similarly, the district court which recently admitted the testimony of a "tenure expert" had no difficulty finding that the testimony would assist the trier of fact. *See Siring v. Oregon State Bd. of Higher Educ. ex rel. Eastern Oregon Univ.*, 927 F. Supp. 2d 1069, 1076 (D. Or. 2013). The court explained that "[p]rofessorial tenure is a unique system, and the Court finds that as an expert in the field of tenure-track evaluation, review, and promotion, Dr. Stockard's opinion addresses issues beyond the common knowledge of the average layperson and will aid a jury in making its determination." *Id.*

Here, with respect to evaluating comparators' relative qualifications, Dr. Parker's experience enables him to provide insight about quality of scholarship on subjects with which the average layperson is not acquainted. Indeed, in his report, Dr. Parker has—as his background and experience make him eminently qualified to do—evaluated the substance of articles published, and compared the merits of journals where they were published. He has carefully assessed the syllabi prepared by each candidate, a task a jury lacks the specialized knowledge to perform. Nor will a jury be well-positioned to distinguish peer-reviewed journals from others, to weigh the quality of one manuscript against another, or to evaluate the contribution of one article as compared to another. Dr. Parker is qualified to do more than merely count publications or awards; for example, he can look at the teaching syllabi and provide useful commentary on their substance and arrangement and the extent to which that is reflective of overall teaching abilities. Parker Report, Defs.' Br. Ex. 1 (ECF No. 98-1) at 5-10. With respect to service, as a member of academia he is uniquely situated to explain the finer points of service activities. *Id.* at 24-26. Thus, Dr. Parker's ability to elucidate these topics for the jury cannot be given short shrift, as Defendants have attempted to do.

### **III. Conclusion**

For the foregoing reasons, the Court should deny the Defendants' Motion and permit Dr. Parker's report to be used for all pre-trial purposes and during trial.

Date: August 14, 2017

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Deputy Assistant Attorney General  
Civil Rights Division

DELORA L. KENNEBREW  
Chief  
Employment Litigation Section

MEREDITH L. BURRELL (MD, no number issued)  
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/s/ Shayna Bloom

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Attorneys for Plaintiff United States

**CERTIFICATE OF SERVICE**

I certify that I served this document on all counsel of record through the Court's electronic filing system on the date below.

Date: August 14, 2017

/s/ Shayna Bloom

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

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REPORTED BY: LESLIE A. FOSTER, CSR

A P P E A R A N C E S

For the Plaintiff(s) United States of America:

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Meredith Burrell  
Attorneys at Law  
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For the Defendant(s) and the witness:

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Dixie L. Coffey  
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LITIGATION DIVISION  
313 Northeast 21st Street  
Oklahoma City, Oklahoma 73105

Also Present:

Charles Babb  
Rachel Tudor

**Claire Stubblefield**

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1           Is that, Plaintiff's Exhibit 110, an amended  
2 complaint that you received from Dr. Tudor?

3           A     Yes.

4           Q     And -- strike that.

5                     Showing you what I've marked as Plaintiff's  
6 Exhibit 111.

7           A     Uh-huh.

8                                     (Plaintiff's Exhibit 111 has been  
9                                     marked for identification purposes  
10                                    and made a part of the record.)

11          Q     (BY MR. TOWNSEND) Plaintiff's Exhibit 111 is an  
12 e-mail that's two pages Bates numbered EEOC 66 to EEOC  
13 67. Is this an e-mail from Jana Legako to you dated  
14 January 9, 2011?

15                     MR. JOSEPH: Object to the form.

16          Q     (BY MR. TOWNSEND) I'll strike the question.

17                     Does Plaintiff's Exhibit 111 contain an e-mail  
18 from Jana Legako to you dated January 9, 2011?

19          A     Yes.

20          Q     Do you recall receiving this e-mail?

21          A     (Witness nodding head.)

22          Q     Do you recall receiving the e-mail from  
23 Ms. Legako that's in Plaintiff's Exhibit 111?

24          A     Yes.

25          Q     The second paragraph from the bottom on page 1

**Claire Stubblefield**

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1 of Plaintiff's Exhibit 111 begins "Quote, your request to  
2 have a qualified, unbiased, and objective third party  
3 review the portfolios of all tenure applications was,  
4 'quote, textbook perfect, unquote.'"

5 Did I read that correctly?

6 A Yes.

7 Q Who was the qualified, unbiased, and objective  
8 third party that you had review the portfolios of all the  
9 tenure applicants?

10 A I don't recall without additional help.

11 Q Do you remember why you thought it was a good  
12 idea to have a qualified, unbiased, and objective third  
13 party review the portfolios --

14 MR. JOSEPH: Object to the form.

15 Q (BY MR. TOWNSEND) -- of all the tenure  
16 applicants?

17 A I don't recall.

18 Q Let's take a look at your investigation  
19 report --

20 A Okay.

21 Q -- see if that might refresh your memory.

22 That's Plaintiff's Exhibit 17. Is Plaintiff's  
23 Exhibit 17 your report?

24 A Yes.

25 Q And would you be able to tell by looking at

**Claire Stubblefield**

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1 your report who the qualified, unbiased, and objective  
2 third party was that you had review the portfolios of all  
3 the tenure applicants?

4 A Possibly. Would you like me to take the time  
5 to read it?

6 Q Sure.

7 A Finished.

8 Q All right. After reviewing Plaintiff's  
9 Exhibit 17, do you know who on Plaintiff's Exhibit 111  
10 Ms. Legako is referring to as the third party who  
11 reviewed tenure portfolios?

12 A No.

13 Q In the second to last paragraph of the first  
14 page of Plaintiff's Exhibit 111?

15 A No.

16 Q Ms. Legako said that your request to do that  
17 was, "Quote, textbook perfect." Do you have any  
18 difference of opinion with her on that?

19 A Of course not.

20 Q Why do you think it would have been a good idea  
21 to have a third party review the portfolios of tenure  
22 applicants?

23 A It needed to be someone who had those  
24 credentials -- or, I mean, had done extensive amounts of  
25 that.

**Claire Stubblefield**

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1 Q Of what?

2 A Of reviewing portfolios.

3 Q Do you think it would matter whether that  
4 person reviewing them worked at Southeastern?

5 A Just a general question. Ask it one more time,  
6 please.

7 Q Sure. The third party who would be reviewing  
8 portfolios, do you think it would have been important  
9 that that person worked at Southeastern or not?

10 A I don't know.

11 Q In looking at Plaintiff's Exhibit 17, your  
12 report, I was trying to figure out who Ms. Legako might  
13 be referring to. And on page 4 of Plaintiff's Exhibit  
14 17 --

15 A Just a minute.

16 Q -- the third full paragraph where it says  
17 "Dr. Randy Prus," do you see that?

18 A Yes.

19 Q I thought that might be who she was referring  
20 to. But do you not think so?

21 A Do I not think so?

22 MR. JOSEPH: Object to the form.

23 Q (BY MR. TOWNSEND) Well, let me state it a  
24 different way. Do you think Ms. Legako was referring to  
25 Dr. Prus when she made these statements in Plaintiff's

**Claire Stubblefield**

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1 Exhibit 111 about having a third party review the  
2 portfolios?

3 A I don't know.

4 Q Do you remember asking Ms. Legako what she  
5 meant by having a third party review the portfolios in  
6 her e-mail?

7 A I don't recall. Six years ago, I don't know.  
8 Sorry.

9 Q I don't expect your memory to be perfect. I  
10 just have to ask the questions. I'm showing you what's  
11 been marked Plaintiff's Exhibit 112.

12 (Plaintiff's Exhibit 112 has been  
13 marked for identification purposes  
14 and made a part of the record.)

15 Q (BY MR. TOWNSEND) Is Plaintiff's Exhibit 112 a  
16 document that you prepared?

17 A Yes.

18 Q And why did you prepare it?

19 A It -- it helps me stay more organized.

20 Q Did you prepare this during the time that you  
21 were investigating Dr. Tudor's complaints?

22 A Yes.

23 Q On the second page of Plaintiff's Exhibit 112  
24 in the entry 9/8/10 --

25 A Yes.



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

June 7, 2016

Leslie A. Foster, CRS  
DODSON COURT REPORTER & LEGAL VIDEO  
425 NW 7<sup>th</sup> St.  
Oklahoma City, OK 73102

Re: *United States of America v. Southeastern Oklahoma State University and the  
Regional University System of Oklahoma*  
Case No: 15-CV-324-C (Okla. Western District)

---

Dear Ms. Foster:

Enclosed please find the *Changes* and *Signature Pages* for Dr. Claire Stubblefield with regard to his deposition taken on May 17, 2016 in the above matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Lori Cornell

Lori Cornell  
Paralegal to Dixie Coffey and Jeb Joseph  
Assistant Attorneys General

/lcc  
Enclosures





**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. [REDACTED]

[REDACTED] 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 investigations 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.

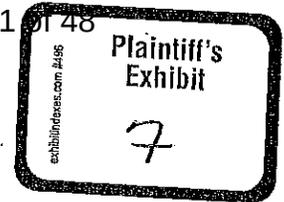
**From:** Claire Stubblefield [mailto:CStubblefield@se.edu]

**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.



## 4.0 FACULTY PERSONNEL POLICIES

Revised 08-1998

### 4.1 Employment

To indicate institutional compliance with the various laws and regulations that require a Nondiscrimination, Equal Opportunity and Affirmative Action Policy, the following statement is intended to reflect that Southeastern Oklahoma State University is, in all manner and respects, an Equal Opportunity Employer, and offers programs of Equal Educational Opportunity. This institution, in compliance with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and other federal laws and regulations, does not discriminate on the basis of race, color, national origin, sex, age, religion, handicap, 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.

Southeastern Oklahoma State University makes every effort to ensure that each applicant who is offered a position at the University is selected on the basis of qualification, merit, and professional capability.

It is further the policy of the University to be in voluntary compliance with any and all statutes, regulations, and executive orders which deal with equal opportunity and discrimination, regardless of whether such statutes, regulations, or executive orders are of federal or of state origin.

The University subscribes to the principle of the dignity of all persons and of all their labors. In order to ensure complete equal opportunity, the University actively recruits applicants from all segments of the population of our state and nation.

It is the policy of all universities under the jurisdiction of the Regional University System of Oklahoma Board of Regents to provide equal employment opportunity on the basis of merit without discrimination of race, sex, ethnicity, religion, or national origin. This applies to every aspect of the employment, promotion, retention, and retirement of the total work force of the University.

The University's Personnel Office is responsible for coordinating and monitoring the employment process. Vacancies to be filled are reported to the Personnel Office by the appropriate supervisor. In the context of University policy, the screening committee determines the type of screening, interviewing, and selecting process to be used.

#### 4.1.1 Appointment to Regular (Ranked) Faculty

The Regional University System of Oklahoma Board of Regents specifies the types and lengths of faculty appointments as follows:

##### 4.1.1.1 Types of Appointments

The regular faculty holds one of five types of appointments: (a) Tenured; (b) Tenure Track (non-tenured, on tenure track); (c) Non-Tenure Track (non-tenure earning); (d) Temporary (one academic year or less); (e) Administrative.

a. Tenured.

A tenured appointment is reserved for those regular faculty members who have been granted tenure by the Board. Tenured faculty members are on continuous appointment and, therefore, are not notified of their appointment status for the following year unless their appointment is being terminated. The procedures for non-reappointment of tenured faculty are covered in the Policy Manual of the Regional University System of Oklahoma Board of Regents.

b. Tenure Track.

Tenure track appointments are for one (1) year, renewable annually at the option of the University. A person will be given written notification of non-reappointment by March 1, prior to the termination of the current contract.

c. Non-Tenure Track.

A non-tenure track appointment is one in which the faculty member is appointed to the regular faculty but is not eligible to receive tenure and is classified as on a non-tenure track. All faculty with the rank of instructor will hold non-tenure track appointments. Faculty with this type of appointment will be given written notification of non-reappointment by March 1, prior to the termination of the current contract. A faculty member on non-tenure appointment may be continued for a period of seven (7) years. Thereafter, the appointment must be approved by the Board of Regents on an annual basis.

d. Temporary.

A temporary appointment is one in which the faculty member is appointed to the regular faculty for a period of one year or less. Upon termination of the current contract, the position will be reopened and re-advertised.

e. Administrative.

---

A tenured faculty member appointed to an administrative position retains the tenure and rank that were previously granted when he/she was a regular faculty member. An administrator may not hold tenure by virtue of an appointment to an administrative position but may hold tenure as a member of the regular faculty.

#### 4.1.1.2 Faculty Degree and Transcript Verification

Southeastern Oklahoma State University follows the recommended policies and procedures for verification of faculty credentials as set forth by The Higher Learning Commission (HLC): A Commission of the North Central Association of Colleges and Schools, and the Regional University System of Oklahoma Board of Regents and the Oklahoma State Regents for Higher Education.

The HLC policy has its roots in the General Institutional Requirements (GIR) that pertains to faculty. It states:

It employs faculty that has earned from accredited institutions the degrees appropriate to the level of instruction offered by the institution.

This General Institutional Requirement integrates with that part of Southeastern's Mission Statement that says:

Southeastern Oklahoma State University provides an environment of academic excellence that enables students to reach their highest potential.

In the Regional University System of Oklahoma Board of Regents Policy and Procedures Manual, Chapter 3 – Academic Affairs, page 3–5, the following guidelines are set forth:

### 3.2.2 Principal Academic Ranks of the University

The principal academic ranks of the University shall be Professor, Associate Professor, Assistant Professor, and Instructor. Educational qualifications for the rank of Professor and Associate Professor shall be an earned doctorate degree awarded by a regionally accredited or internationally recognized institution. For the rank of assistant professor it shall be an earned doctorate degree awarded by a regionally accredited or internationally recognized institution and/or individuals who have completed all requirements in a doctoral program except the dissertation from a regionally accredited or internationally recognized institution. An instructor must also have a degree from a regionally accredited or internationally recognized institution.

### 3.2.3 Education Requirements

The doctoral granting institution must meet the standards of the Carnegie Classification System. The earned degrees or graduate work should be in a field relevant to the individual's assignment.

### Verification Procedures

In conjunction with the HLC's GIR, the Institution's mission, and the guidelines from the Regional University System of Oklahoma Board of Regents, Southeastern uses the following criteria to verify academic credentials of full-time faculty, and temporary full-time faculty.

1. All faculty must have on file an official transcript, or transcripts that provide documentation as to degrees earned from a *regionally accredited or internationally recognized institution*.
2. Official transcripts are provided to the Office of Academic Affairs in sealed envelopes from the granting institution(s).

3. Transcripts are opened by the Director of Student Learning and Research and verified as to its authenticity.
4. If there are any questions as to the validity of the transcript(s), the Vice President of Academic Affairs is involved at this point.
5. A visual search is undertaken using the Higher Education Directory, or if necessary, the appropriate accrediting agency is contacted for verification of accreditation.

#### 4.1.1.3 Length of Appointments

Because of the budget balancing amendment of the Oklahoma Constitution, the Board cannot obligate funds in excess of the unencumbered balance of surplus cash on hand. Consequently, the Board may not obligate itself by binding contracts beyond a current fiscal year for salaries or compensation in any amount to its employees. The Board does, however, recognize the intent to reappoint tenured personnel to the faculties of the universities under its control within existing positions that are continued the next year when doing so is compatible with the annual budget for that year.

In most instances, the length of the regular faculty contracts are for a nine-month period with payment in 10 or 12 months. Some regular faculty contracts are for a twelve-month period.

#### 4.1.1.4 Initial Appointments to the Regular Faculty

Appointments to the regular faculty are made by the Board. Consideration for appointment by the Board is made after recommendation by the President and a letter of invitation has been signed by the appointee designate. Following approval by the Board, a letter of appointment for the specified period will be issued.

#### 4.1.2 Appointments to the Supplemental Faculty

At Southeastern, supplemental faculty consists of adjunct and volunteer faculty. An adjunct appointment to the supplemental faculty is made by the President. These appointments (except volunteer appointments) are limited to specific duties and a specific period of time. Supplemental faculty are not entitled to notification of non-reappointment.

#### 4.1.3 Appointments to the Summer Teaching Faculty

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An appointment to the summer faculty is limited to the specific summer for which the appointment is made. Summer faculty appointments from regular faculty are made by the President and reported to the Board quarterly.

#### 4.1.4 Full- and Part-Time Appointments

Full-Time Appointments:

Full-time faculty have instructional and non-instructional duties as assigned by the University. Instructional duties include but are not limited to the teaching of assigned classes, evaluating the students in the classes, and meeting with those students who require assistance in their classes. Non-instructional duties include but are not limited to conducting research and other scholarly activity, advising students, serving on committees, sponsoring organizations, and participating in professional organizations. A full-time teaching load is twelve (12) hours per semester.

#### Part-Time Appointments:

Part-time faculty are generally employed only for the purpose of teaching classes. The assigned responsibilities are to provide instruction, evaluate students pertaining to that instruction, and to meet with those students who require assistance in their classes. The load of a part-time faculty member who does not have additional duties will be fifteen (15) hours per semester.

#### 4.1.5 Hiring Procedures and Guidelines

The hiring procedure of the University for administrative, professional staff, and faculty is summarized as follows:

1. To initiate the process, a department chair/supervisor submits an employment request form, with current position description and job ad through appropriate channels.
2. Upon authorization, the Office for Academic Affairs initiates a search for applicants by the following means:
  - a. Internal announcement of vacancy — notices are posted on institutional bulletin boards.
  - b. External announcement of a vacancy — notices are published in area newspapers and appropriate specialized publications.
3. Applicants will be directed to submit information to the position screening committee c/o the dean.
4. A screening committee is appointed for each position. For faculty positions, the committee is appointed jointly by the dean and department chair; for other positions, by the appropriate vice president. It is recommended that a member from outside the school be appointed to the committee. All applications are screened based on job related qualifications as outlined in the position description. During the screening process the committee must record the reasons for not recommending unsuccessful applicants.
5. Finally, candidates are interviewed by members of the screening committee; members of related units/departments; the dean; the appropriate vice president, and, when possible, the president.
6. Following interviews, the screening committee will submit a recommendation for employment to the department chair/supervisor. The employment transaction form, complete transcripts, vita, and a statement of the department chair's recommendation, is attached and forwarded to the dean/supervisor for approval. Routing for the employment transaction form is designated on the form. The presidents or their designees are solely responsible for employment, discipline and termination of all faculty, administrators and staff and are required to report to the Board on the hiring, promotion, rank and salaries of faculty personnel, and as to matters pertaining to the operation of the institution.
7. It is the responsibility of the department chair/supervisor to notify the selected applicant as soon as the department chair/supervisor's copy of the recommendation form is returned. It is also the department chair/supervisor's responsibility to direct a new employee to the Human Resources

Office for payroll and benefit purposes. The salary card serves as the guide to salary for newly hired faculty (see Appendix B).

8. For each applicant not selected, the department chair/supervisor completes a de-selection form and forwards it, with the resume, to the Human Resources Office.
9. The Human Resources Office notifies each unsuccessful applicant.

Guidelines for the selection of screening committees, the screening procedure and appropriate forms are available from the academic dean. The President shall recommend employment of faculty to the Board of Regents before completion of the employment process.

Contact the Human Resources Office for a copy of the current hiring policy.

#### 4.1.6 Nepotism

Source: Policy Manual of the Regional University System of Oklahoma Board of Regents (General Policies, 5.12)

Except as prohibited by the laws of the State of Oklahoma, relationship by consanguinity or by affinity shall not, in itself, be a bar to appointment, employment or advancement in universities governed by the Regional University System of Oklahoma Board of Regents nor (in the case of faculty members) to eligibility for tenure of persons so related.

But no two persons who are related by affinity or consanguinity within the third degree shall be given positions in which either one is directly responsible for making recommendations regarding appointment, employment, promotion, salary or tenure for the other; nor shall either of two persons so related who hold positions in the same internal budgetary unit be appointed to an executive or administrative position for said internal unit. Waivers may be granted by the President, but performance evaluations and recommendations for compensation and promotion will be made by one not related to the individual being evaluated. The Regional University System of Oklahoma Board of Regents shall be notified of any such waivers at its next meeting.

Relatives that are within the third degree of relationship to an employee by blood or marriage are as follows:

Spouse; parent; grandparent; great-grandparent; parent, grandparent or great-grandparent of spouse; uncle or aunt; uncle or aunt of spouse; brother or sister; son or daughter; son-in-law or daughter-in-law; grandson or granddaughter or their spouse; and great-grandson or granddaughter or their spouse.

## 4.2 Endowed Chair Policy

### OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION POLICIES

House Bill No.1581 of the 1988 Oklahoma Legislature appropriated \$15 million to the Oklahoma State Regents of Higher Education for the purpose of establishing an endowment program to support the establishment of faculty chairs and professorships, and to carry out other related activities to improve the quality of instruction and research at colleges and universities of The Oklahoma State System of Higher

Education. Examples of instruction related projects eligible to participate in the endowment program upon approval of the State Regents are visiting professorships, artist in residence, lectureships and other such support activities.

In 70 OS. Supp. 1989, Sections 3951,3952, and 3954, the Oklahoma Legislature provides the statutory framework for the endowment program that includes the fiduciary responsibility of the trustees and permissible investments for the endowment.

#### Purpose of the Oklahoma State Regents' Endowment Program

Endowed chairs and distinguished professorships should be established in academic areas which will contribute to the enhancement of the overall cultural, business, scientific, and/or economic development of Oklahoma. Endowed chairs and professorships must be established in areas for which the institution has ongoing, approved academic programs.

#### Regents' Endowment Trust Fund

The Endowment Trust Fund shall be administered by the State Regents in their role as trustees. The Endowment Fund shall be a permanent fund and shall be used for the purposes of establishing and maintaining endowed chairs and professorships at institutions in The Oklahoma State System of Higher Education, and for any other related activities approved by the State Regents to improve the quality of higher education instruction at State System institutions.

Upon authorization of the State Regents, an endowment fund will be established in the State Regents' Agency Special Account or in a custodian bank or trust company to receive monies appropriated by the Legislature, as well as any monies or assets contributed from any source, public or private.

No earnings of the trust fund shall be used for the administrative expenses of the office of the State Regents for Higher Education; expenses incurred by the State Regents in the administration of the trust fund and of the endowment program shall be paid from monies appropriated for the general operating budget of the coordinating board.

#### Establishment and Operation of Endowment Accounts

- A. Principal. The principal held in the Regents' Endowment Fund shall be used for the establishment of and allocated to endowment accounts within the Regents' Endowment Fund for the benefit of public institutions of higher education within the State of Oklahoma.
- B. Investment Return. The investment return on the principal of the Regents' Endowment Fund shall be allocated for the benefit of individual institutions for which the accounts are respectively designated and shall be remitted to such institution for the support of endowed chairs and professorships approved by the State Regents, together with other activities approved by the State Regents to improve the quality of instruction and/or research at State System institutions. The investment income approved by the State Regents for distribution to an institution shall be deposited in the institution's operating revolving fund (Fund 290).

Any investment income not designated for remittance to an institution shall become part of the principal of the Endowment Fund.

- C. Account Levels. The levels indicated for each category are the amounts of private donations required to establish an account. The private donation will be matched dollar for dollar with public monies.

Endowed chair accounts may be established at the comprehensive universities with a minimum private donation of \$500,000; at other institutions, the minimum required is \$250,000. Thus, when fully funded with both private and public matching monies, chairs at comprehensive universities will be endowed with a minimum of \$1,000,000 and chairs at other institutions will be endowed with a minimum of \$500,000.

At the comprehensive universities, professorship accounts may be established with a minimum private donation of \$250,000. At other institutions, professorships may be established with a minimum private donation of \$125,000. Thus, when fully funded with both private and public matching monies, professorships at comprehensive universities will be endowed with a minimum of \$500,000 and professorships at other institutions will be endowed with a minimum of \$250,000.

Lectureships, artist in residence, and similar accounts may be established with a minimum private donation of \$25,000 only at regional and special purpose universities and two year colleges. Thus, when fully funded with both private and public matching monies, said accounts will be endowed with a minimum of \$50,000.

To be initially eligible for an endowment account within the Regents' Endowment Fund an institution must request an account and must have on deposit as provided in Section F of this policy and amount equal to at least one half (50%) of the requested account with a written commitment that the balance will be contributed within a thirty six (36) month period.

- D. Time Limitations. The total matching requirements shall be equal to the amount of the requested endowment account in each instance and shall be deposited within a period of thirty six (36) months from the date of approval of the account by the State Regents. Provided, and institution may deposit in an endowment account matching funds in an amount which exceeds the required matching amount. Any endowment account for which the institution fails to provide the full matching amount within the time established shall be available to be awarded to another public institution of higher education. ~~No investment return shall be remitted to any institution from an endowment account before the institution has deposited the total required match for the endowment account as provided in Section F of this policy.~~

- E. Private Sources of Matching Monies. Funds which an institution provides for matching purposes must originate from monies contributed to the institution after July 1, 1988, from private sources specifically designated by the donor to be used for purposes specified in this program. Monies provided for matching purposes may not be drawn from regularly allocated funds from the Oklahoma State Regents for Higher Education, proceeds of fees or charges authorized by the

State Regents of Higher Education, or from federal grants or reimbursements. In instances where the qualifications of all or a portion of the amount of matching monies are questionable, the institution shall request express approval of the State Regents to apply that amount toward the matching requirement. Monies for matching purposes may be contributed to and retained by a foundation for which the sole beneficiary is the respective institution. The foundation must demonstrate that the funds are being held on behalf of the institution as outlined in Section F of this policy: provided, monies contributed by a foundation whose sole beneficiary is an institution may qualify as private matching monies only if the monies are transferred from the foundation to the State Regents for deposit in the State Regents' Endowment Fund. Private matching monies contributed by the foundation may not be retained in that foundation, but must be deposited in the State Regents' Endowment Fund.

- F. Deposit of Private Matching Monies. Any institution which provides matching monies shall deposit the matching funds to one of the following:
1. The State Regents' Endowment Fund
  2. The institution's endowment matching fund
  3. A fund of a foundation whose sole beneficiary is that institution. If such matching monies are not deposited in the Regents' Endowment Fund the net investment return on matching monies shall be retained in the fund.
- G. Ownership of Private Matching Monies. Ownership of private matching monies transferred by an institution to the State Regents' Endowment Fund for investment shall remain with the institution. Upon request, the monies may be returned to the institution for deposit in Item F.2 above.

#### Report on Activities Supported by the State Regents' Endowment

Each participating institution shall submit an annual report to the State Regents in which the investments of the matching funds earned interest income (including capital gains and losses) and the costs of managing the investments are presented in detail. The report shall also include a full accounting of the expenditures of earnings of both the public monies and the private matching monies. Diminution of the original private matching amount may, at the discretion of the State Regents, constitute a forfeiture of the Regents' Endowment Funds which the institutional monies were to match.

#### Application Procedures

All institutions in The Oklahoma State System of Higher Education are eligible to apply for an endowed chair, professorship, or other related projects under the Regents' Endowment Fund Program. State System institutions desiring to participate in the Regents' Endowment Fund Program shall make application to the State Regents upon meeting requirements for establishing an endowment account as set forth in this policy.

The application shall include certification of deposited private matching monies by the president of the institution, including the date of receipt, the repository, and the name of the donor (s). Names of donors will be held in confidence by the State Regents, upon request.

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY POLICIES

- A. Donor's intent will be honored in accordance with applicable law, policies and procedures of the University.
- B. Endowed chairs are intended to recognize the distinction of the chair holder. An individual selected to occupy an endowed chair may be a current member of the faculty or a new appointee.
- C. Candidates nominated to fill endowed chairs may hold the same tenured status as previously held except in those instances where the endowment allows visiting appointments. The position held by the endowed chair should be one allocated to the relevant department through the regular budgetary process. The policy will not be used to replace tenured or tenure track faculty in good standing.
- D. An endowed chair may be filled by one individual for an indefinite period or successively by a series of individuals appointed for prescribed periods, unless otherwise provided in the terms of the gift.

The terms of the endowment also may support visiting chairs or designate that temporary chairs may be named pending completion of a search for a permanent chair.

- E. Income from the endowment supporting the chair will be expended in conformance with University and Board policies at the request of the chair holder.
- F. In addition to salary supplement, allowable uses of endowment income by the chair holder include, but are not limited to, the following:
  - 1. Summer research stipends.
  - 2. Research salary support. Research proposals involving release from teaching during the regular academic term require the approval of the department chair, the dean, and vice president of academic affairs.
  - 3. Research assistantships.
  - 4. Expenses of computation and data collection.
  - 5. Secretarial salaries and/or expenses.
  - 6. Travel expenses.
  - 7. Research equipment and expense of professional materials.
  - 8. Financial aid for graduate students working with the chair holder.
  - 9. Expenses of special seminars and conferences.
  - 10. Support for visiting professorships and lectureships in the fields of the chair holder, subject to regular appointment procedures.
  - 11. Donor intents.
- G. Income available to the endowed chair in any given year will not exceed the amount available from the endowment. This does not exclude the chair from attaining monies through the normal budget process.
- H. The endowed chair and the income from its endowment will be used for the designated area of study for as long as that area is part of SOSU's academic program. The terms of acceptance of a gift will state:

"Should the designated area of study no longer be a part of SOSU's academic program. The income from the endowment will be used to support an endowed chair in an area related as closely as possible to the original."

The above policies are subject to the provisions of The Regents' Policy on Endowed Chairs.

## PROCEDURES

University procedures concerning academic appointments, as well as all other relevant regulations and procedures (such as those governing purchasing and accounting) shall be observed. The procedures for the Endowed Chairs are listed below:

- A. The President shall be contacted whenever there is a prospective donor to endow a chair.
- B. All contacts and discussions with prospective donors shall be coordinated with the President's office.
- C. Each recommendation to establish, name, fill an endowed chair must involve the appropriate Department Chair, Dean, the Vice President of Academic Affairs, and the President; the President (or designee) shall seek advice concerning the proposal from the Executive Committee of the Faculty Senate.
- D. A search committee, normally with multi-department representation, will be appointed by the President after consultation with the appropriate Department Chair (s), Dean, Vice President of Academic Affairs, and Faculty Senate.

The search committee shall recommend a slate of candidates to the President; the President, following consultation with the appropriate Department Chair, Dean, and Vice President of Academic Affairs, will make the final decision. No appointment of an endowed chair can be made prior to Regent's approval to establish an endowed chair.

The search committee shall provide sufficient information about the candidates to allow the President to make a decision.

- E. An endowed chair performance will be reviewed by the tenured members of the Department, Department Chair, appropriate Dean and Vice President of Academic Affairs. This review will be done every five years unless the tenured members of the Department and the Department Chair request that it be done sooner. The outcome of the review will be sent to the President with a recommendation for reappointment or removal from the chair.

## ADMINISTRATIVE GUIDELINES FOR CAMPUS IMPLEMENTATION OF THE REGIONAL POLICY ON ENDOWED CHAIRS

The written procedures of each endowed chair shall be consistent with the policy of The Regents and with the following guidelines.

### 1. Minimum Corpus

A minimum corpus shall be established and maintained, which may vary by academic field, but in no case shall be less than the minimum specified in the Regent's policy.

### 2. Appointment to the Chair

An endowed chair may be filled by one individual for an indefinite period or successively by a series of individuals appointed for prescribed periods, unless otherwise provided in the terms of the gift. A person who is a tenured faculty member of the department to which the chair is

assigned may be appointed by the President on the advice of the Faculty Senate. If a person outside that unit is to be appointed, appointment policies and procedures shall be in accordance with University policies and regulations for regular tenured appointments or for visiting appointments, as appropriate. In carrying out the search for candidates, attention shall be paid to the campus' affirmative action goals, and candidates from outside the University should be considered as well as those from within the University.

3. Use of the Endowment Income

In addition to salary income made available to holders of endowed chairs may be used to support their teaching and research activities, in accordance with University regulations and according to a budget recommended annually by the chair holder to the department Chair and approved by the appropriate Dean and/or Vice President in the normal budgetary process.

4. Annual Reporting

Each chair holder shall annually submit a brief narrative to the Department Chair along with a budget request. These narratives should be retained by the Chair or Dean for use in preparing special reports on endowed chairs that may be needed from time to time.

### 4.3 Academic Freedom and Responsibility

Source: Policy Manual of the Regional University System of Oklahoma Board of Regents (Academic Affairs, 3.3.1 and 3.3.2)

The faculty member is entitled to freedom regarding research and in the publication of the results, subject to the adequate performance of instructional and non-instructional duties. Patent and copyright ownership will vest consistent with Regional University System of Oklahoma Board of Regents policy.

The faculty member is entitled to freedom in the classroom in discussing their subject, but s/he shall be objective in teaching of a controversial matter which has relation to that subject and of controversial topics introduced by students. The faculty member should not introduce controversial matters which have little or no relation to the subject of instruction.

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University faculty members are individuals, members of a learned profession, and representatives of a University. When faculty members speak or write as individuals, they should be free from institutional censorship or discipline, but faculty position in the community imposes special obligations. As persons of learning and education representatives, the faculty members should remember that the public may judge the profession and the University by extramural utterances. Hence, each faculty member should at all times, be accurate, should exercise appropriate restraint, should show respect for the opinions of others and should make every effort to indicate the faculty do not speak on behalf of the University.

Academic Freedom should be distinguished clearly from constitutional freedom, which citizens enjoy equally under the law. Academic Freedom is an additional assurance to those who teach and pursue



knowledge and, thus, pertains to rights of expression regarding teaching and research within specific areas of recognized professional competencies.

The concept of Academic Freedom must be accompanied by an equally-demanding concept of academic responsibility. The concern of the University and its members for Academic Freedom safeguards must extend equally to requiring responsible service, consistent with the objectives of the University.

Faculty member has responsibilities to their discipline and to the advancement of knowledge generally. Their primary obligation in this respect is to seek and to state the truth as they see it. To this end, they shall devote their energies to developing and improving their scholarly competence. They shall exercise critical self-discipline and judgment in using, extending, and transmitting knowledge and they shall practice intellectual honesty.

Faculty members have responsibilities to their students. They shall encourage in students the free pursuit of learning and independence of mind, while holding before them the highest scholarly and professional standards. Faculty members shall show respect for the student as an individual and adhere to their proper role as intellectual guides and counselors. They shall endeavor to define the objectives of their courses and to devote their teaching to the realization of those objectives. A proper academic climate can be maintained only when the faculty member meets their fundamental responsibilities regularly, such as preparing for and meeting their assignments, conferring with and advising students, evaluating fairly and participating in group deliberations which contribute to the growth and development of students and the University. All faculty members also have the responsibility to accept those reasonable duties assigned to them within their field of competency, whether curricular, co-curricular, or extracurricular. Faculty members make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflects their true merit. They do not exploit students for private advantage and acknowledge significant assistance from them. They protect students' academic freedom.

Faculty members have responsibilities to their colleagues, deriving from common membership in a community of scholars. They shall respect and defend the free inquiry of their associates. In the exchange of criticism and ideas, They should show due respect for the opinions of others. They shall acknowledge their academic debts and strive to be objective in the professional judgment of their colleagues. Faculty members accept a reasonable share of faculty responsibilities for the governance of the University.

Institutions of higher education are committed to open and rational discussion as a principal means for the clarification of issues and the solution of problems. In the solution of certain difficult problems, all members of the academic community must take note of their responsibility to society, to the institution, and to each other, and must recognize that at times the interests of each may vary and will have to be reconciled. The use of physical force, harassment of any kind, or other disruptive acts which interfere with ordinary institutional activities, with freedom of movement from place to place on the campus, or with freedom of all members of the academic community to pursue their rightful goals, are the antithesis of academic freedom and responsibility. So, also, are acts which, in effect, deny freedom to speak, to be heard, to study, to teach, to administer, and to pursue research. It is incumbent upon each member of the academic community to be acquainted with his/her individual responsibilities, as delineated by appropriate institutional statements found in the institution's policy manuals.

Faculty members have responsibilities to the educational institution in which they work. While maintaining their right to criticize and to seek revisions, they shall observe the stated regulations of the institution. Faculty members shall determine the amount and character of the work done they do outside their institution with due regard to the paramount responsibilities within it. When considering the interruption or termination of his or her service, the faculty member recognizes the effect of such a decision upon the program of the institution and gives due notice of the decision.

Faculty members have responsibilities to the community. As a person engaged in a profession that depends upon freedom for its health and integrity, the faculty members have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Administrators must protect, defend, and promote Academic Freedom.

## 4.4 Faculty Development and Evaluation Policies

### 4.4.1 Introduction

Teaching, research, and service are the triad of professional responsibilities at the University. While this is primarily a teaching University, it is a basic principle of higher education that scholarly research informs effective teaching. At the same time, the University faculty contributes richness to the culture of the community at large through their unique skills and talents. Evaluation of faculty performance considers these three areas and provides a critical process for continuous improvement of the University and faculty.

Both the importance and the imperfection of a faculty development and evaluation system are duly considered in the Southeastern Oklahoma State University scheme. It is designed within the following guidelines:

- The Faculty Development and Evaluation System is designed to improve faculty performance.
- The Faculty Development and Evaluation System will provide important information for promotion and tenure decisions.
- The System utilizes several sources of data, and these sources are clearly communicated.
- Evaluation procedures are individualized and flexible.
- Individualization considers the institution's nature, directions, and priorities, the administrative unit's needs, and the individual's interests.

An annual academic performance review (Faculty Development and Evaluation Summary) is submitted for each full-time faculty member. A formal evaluation is conducted for each non-tenured faculty member each year and for each tenured faculty member at least each third year.

### 4.4.2 Faculty Evaluation System

The Regional University System of Oklahoma Board of Regents has specified five basic categories upon which academic rank and promotion in rank are based: (1) education and experience, (2) effective classroom teaching, (3) research/scholarship, (4) contributions to the institution and profession, and (5) performance of non-teaching or administrative duties.

The Faculty Development and Evaluation System of Southeastern Oklahoma State University is designed to promote faculty development and to assess faculty performance on those prescribed criteria. Instrumentation of the system consists of four documents:

- Faculty Development and Evaluation Criteria (see Appendix D)
- Catalog of Faculty Development and Evaluation Criteria (Appendix E)
- Faculty Development Agreement (Appendix F)
- Faculty Development and Evaluation Summary (Appendix G - includes G1 and G2)

The document entitled "Faculty Development and Evaluation Criteria" lists criteria for evaluating faculty performance in the four categories. The document "Catalog of Faculty Development and Evaluation Criteria" presents exemplars for each criterion. The exemplars are not all-inclusive, but do provide examples and extend the definitions of the criteria.

The document "Faculty Development Agreement" is an agreement for areas of emphasis for the forthcoming year. It is not an implicit evaluation of criteria not listed, however. Refer to Point 1 in the section entitled "Procedural Principles and Guidelines."

"The Faculty Development and Evaluation Summary" provides for listing the education and experience of the faculty and then a rating of 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. It also provides for a rating of overall performance. Provision is made for commentary and signatures on the back.

Category 4, performance of non-teaching/administrative duties/assignments, is interpreted to include those duties or assignments which result in a reduced teaching load such as serving as department chair, project director, coach, and band director.

#### 4.4.2.1 Procedures

The "Catalog of Faculty Development and Evaluation Criteria" is utilized for establishing individual faculty development plans and for guiding individual faculty evaluations. Performance in each category is weighted by negotiation between the faculty member and the department chair within limits set by the institution and the administrative unit.

Institutional emphases define the weights of each category as follows:

- 
- Category 1 (Teaching) +
  - Category 4 (Non-Teaching)
  - 50-70% of Overall Performance
  - Category 2 (Scholarship)
  - 15-25% of Overall Performance
  - Category 3 (Service)
  - 15-25% of Overall Performance

All faculty are rated on Categories 1, 2, and 3. All also are rated on all criteria in Category 1 and on negotiated criteria in Categories 2 and 3. Only those with duties or assignments which result in a

reduced teaching load are rated in Category 4. Weighting in Category 4 is calculated on an individual basis and combined with the weight of Category 1 so that the combined total is within the 50–70% range.

The rating on overall performance is a composite of the ratings in the categories.

Administrative units may also set limits for each category within the institutional parameters.

Completion of the “Faculty Development and Evaluation Summary” is based upon a conference of the department chair and the individual faculty member during which the relevant criteria for each category are rated. Not all criteria for each category apply to every faculty member. Relevancy of individual criteria is negotiated by the department chair and the individual faculty member.

Commentary is provided on the backside of the “Faculty Development and Evaluation Summary” instrument as indicated. The “Faculty Development and Evaluation Summary” is signed by both the department chair and the individual faculty member. The faculty member’s signature denotes that the evaluation has been conducted according to approved procedures. It does not necessarily mean agreement with the ratings.

A completed “Faculty Development and Evaluation Summary” for each full-time faculty member is submitted by the department chair to the respective dean of the school for review.

The dean of the school reviews the evaluation, provides comments, and signs the instrument. The dean of the school keeps a copy in the dean’s office and sends a copy to the department chair and a copy to the faculty member.

#### 4.4.3 Procedural Principles and Guidelines

The Faculty Development and Evaluation System of Southeastern Oklahoma State University will be administered within the following procedural principles and guidelines.

1. Each faculty member will be evaluated on all Category 1 criteria and on criteria from other categories as determined in negotiation with the department chair. However, the development plan to be composed at the beginning of the development–evaluation cycle will specify only areas the faculty and chair identify for development. These areas may be ones from Category 1 in which the faculty needs improvement as well as special tasks in other categories. It is assumed that performance on required criteria not listed in the development plan will remain stable over the evaluation cycle. Cycle–end evaluation will address both the areas listed in the development plan and the other required criteria.
2. The department chair assumes that the faculty member is functioning at a level of “proficient” unless there is evidence to the contrary. For a rating lower than proficient, the chair has the responsibility of presenting evidence; and for a rating higher than proficient, the faculty member has the responsibility of presenting evidence.
3. Faculty development and evaluation criteria are generally stated in minimum terms. Ratings on criteria vary according to the fruitfulness of efforts.
4. The ratings on the evaluation scale are as follows:

#### Outstanding

Performance is among the best of colleagues in similar appointments in similar institutions in the respective field nationwide. On applicable criteria faculty member has recognition beyond the state.

#### Commendable

Performance is among the best of colleagues in similar appointments in similar institutions in the respective field statewide. On applicable criteria faculty member has statewide recognition.

#### Proficient

Performance is productive, effective, and consistent with the achievement of the emphases, objectives, and interests of the institution, the administrative unit, and/or the individual.

#### Needs Improvement

Performance is less than adequate for achieving the emphases, objectives, and interests of the institution, the administrative unit, and/or the individual.

#### Critical

Performance fails to contribute to the achievement of the emphases, objectives, and interests of the institution, the administrative unit, and/or the individual.

5. The "Faculty Development and Evaluation Summary" covers a year of performance except in certain instances; i.e., new faculty, faculty on leave, etc.
6. Only activities, contributions, and involvements directly related to the University or to the faculty member's educational field are considered in the evaluation.
7. While formal evaluations of tenured faculty are required at least each third year, formal evaluations may occur more frequently at the request of either the faculty member or the department chair. In years when a complete evaluation is not done, a continuation form will be submitted (Appendix G-Part II).

#### 4.4.4 Faculty Development and Evaluation Process

The faculty development and evaluation process for the year includes the following three steps:

1. By September 15, the faculty revises and updates the previous year's "Faculty Development Plan" as outlined in the following section entitled "Faculty Evaluation Guide." It should list any activities completed the preceding year and not previously included in the "Faculty Development Plan". The faculty forwards the revised plan to the department chair.
2. By October 1, the faculty and the department chair meet for a year-end evaluation. The chair should send the completed "Faculty Evaluation Form," "Faculty Development Plan," and documentation (if applicable) to the dean of the school.

3. By November 1, the faculty and the chair complete the current year's "Faculty Development Plan."

#### 4.4.5 Faculty Evaluation Guide

1. The following documents should be used: Faculty Development and Evaluation System (see department chair)

Faculty Development Plan

Faculty Evaluation Form (see department chair)

2. The evaluation for the preceding year should be made during September of the current year on the basis of the "Faculty Development Plan" completed in the fall of the preceding year and revised in August/September of the current year.
  - a. Before the conference with the department chair, the faculty should conduct a year end self-evaluation and succinctly describe progress for each exemplar listed in the preceding year's "Professional Development Plan." A brief statement indicating whether the exemplar was fully accomplished, partially accomplished, or not addressed is appropriate.
  - b. As the faculty formulates an overall self-rating in the area of teaching, s/he should analyze progress on several exemplars and accurately combine these to give an overall rating. Overall self-evaluation with only one exemplar is not acceptable. Citing marks from a student evaluation, for example, is not adequate evidence for a rating in the area of teaching. The results from the student evaluations represent only one dimension of teaching effectiveness. Multiple methods need to be used to formulate an overall self-rating. For example, results from peer-evaluations, student evaluations, ETC Major Field Achievement Tests, and other exemplars should be combined to support the rating for teaching effectiveness.
  - c. In the areas of research/scholarship and service, again evidence from several exemplars needs to be combined to formulate the rating in each area.
  - d. The faculty should write a summary paragraph that combines various activities to give an overall rating for performance. If the standard evaluation form is used, the faculty should mark it to show her/his self-evaluation.
3. Both the faculty member and the chair should have copies of each of the basic documents.
4. When the self-evaluation is complete, the chair and the faculty member should schedule a conference.
5. In the conference, the chair should review the faculty member's self-evaluation and make his/her own evaluation of the faculty member and mark it on the evaluation form. Documentation is required for ratings above or below proficient and should be attached to the evaluation forwarded to the dean.
6. By October 1, the chair should send a copy of the completed "Faculty Evaluation Form," the "Faculty Development Plan," and documentation (if any) to the dean of the school.
7. By October 31, the dean should write comments about the evaluation and return the copy to the chair.

#### 4.4.6 Faculty Grievance Policy

The University recognizes the right of faculty to express their grievances and seek a resolution concerning work-related disagreements that might arise between University and its faculty. The purpose of the faculty grievance policy is to provide an avenue for the resolution of informal and formal grievances without fear of coercion, discrimination, or reprisal because of exercising rights under University policy.

##### a. Informal Grievances

Faculty members having complaints are encouraged to seek informal resolution. The University maintains an open-door-policy and administrators encourage faculty to communicate issues of concern to their department chair, academic dean, or administrative supervisor.

If the grievance cannot be resolved informally, the formal procedure is available. It provides for a prompt and impartial review of all factors involved in the grievance.

##### b. Formal Grievances

A formal grievance may be made when informal processes have not resolved a work-related issue and when a faculty member believes that he or she has been discriminated against on the basis of race, national origin, age, sex, disability or status as a veteran or that a violation of policy has occurred concerning working conditions, employment practices, individual rights, academic freedom, or due process (in matters not related to promotions and tenure). Complaints regarding promotions and tenure are addressed in the Faculty Personnel Policies section of this manual. Issues relating to salary increases, fringe benefits, and non-renewals of non-tenured track appointments are excluded from the formal grievance definition.

The Faculty Appellate Committee (FAC) is elected by the Faculty Senate and is a standing body that responds to grievances unresolved through administrative or informal procedures. The FAC on the Southeastern campus is described in detail in The Right of Appeal of Tenured Faculty, within the Tenure section of this manual.

#### PROCEDURES

##### Filing of Grievance:

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Complaints unresolved administratively solely involving harassment based on race, ethnicity, sex, or discrimination because of race, national origin, sex, color, age, religion, disability or status as a veteran must be filed with the Affirmative Action Officer (AAO). (See University Policies, subsections Sexual Harassment and Racial and Ethnic Policy.) All other grievances must be filed with the Vice President of Academic Affairs or President's designee in the event that the Vice President is the grievant or respondent, who will then notify the Faculty Appellate Committee (FAC).

The grievance must be filed with the FAC Chair (through the Vice President of Academic Affairs' office or President's designee in the event that the Vice President is the grievant or respondent) or AAO as

soon as possible, but not more than one year from the date on which the faculty member knew or reasonably should have known of the violation giving rise to the grievance.

1. The grievant shall state fully in writing the facts upon which the complaint is based.

A written complaint must contain the following:

- a. a. A clear and detailed, signed statement of the grievance,
  - b. b. The specific remedial action or relief sought,
  - c. A summary outlining with whom the points of dissatisfaction were discussed and with what results, and
  - d. A summary of any evidence upon which the charges or complaints are based.
2. Where more than one type of complaint is present (i.e., sexual harassment and violation of due process), a copy of the harassment or discrimination complaint must be sent to the AAO for investigation. A grievance with multiple grounds is heard by one hearing committee. The FAC Chair and AAO will discuss and determine the appropriate appeals process under which such a grievance will be heard.
  3. The Chair of the Faculty Appellate Committee immediately will notify the respondent(s) of the grievance. The respondent will have 15 calendar days from receipt of the complaint to respond in writing to the FAC Chair or AAO.

#### Confidentiality of Proceedings and Records:

Members of the FAC and other University officials are charged individually to preserve confidentiality to the extent appropriate with respect to any matter investigated or heard. A breach of the duty to preserve confidentiality is considered a serious offense and will subject the offender to appropriate disciplinary action. Parties and witnesses also are admonished to maintain confidentiality with regard to these proceedings.

All records of grievance investigation will be held by the Vice President for Academic Affairs or President's designee in the event that the Vice President is the grievant or respondent as confidential records.

#### Selection of the Hearing Committee:

1. The FAC Chair will schedule a meeting within 5 classroom days to select three members to serve on the Hearing Committee.
2. Any Hearing Committee member who cannot provide a fair and impartial hearing or consideration shall not serve.

#### Formal Hearing Process: All hearings shall follow these procedures:

1. Within 30 calendar days after reviewing the respondent's written response, the Committee shall set a hearing date.
2. The Hearing Committee will evaluate all available evidence provided by the parties and base its recommendation upon the evidence in the record.
3. The hearing shall be closed.

4. Length of hearing sessions may be established in advance, and reasonable rest periods may be allowed for all participants throughout the duration of the hearing.
5. The Committee shall proceed by considering the statement of grounds for grievances already formulated and the response written before the time of the hearing. If any facts are in dispute, the testimony of witnesses and other evidence concerning the matter shall be received.
6. Only evidence relevant to the grievance may be introduced into the hearing. Questions of relevance shall be decided by the committee chair.
7. A confidential recording of the hearing will be made. The recording and transcription, if any, will be arranged by the Hearing Committee Chair. The tape or transcript will be accessible to the faculty members involved, to members of the committee, and to the Vice President for Academic Affairs (or President's designee in the event the Vice President is the grievant or the respondent). The AAO will keep the original recorded tape. The grievant or respondent may request a copy of the tape provided that he or she supplies a blank tape to the AAO.
8. Either faculty member may request that the Hearing Committee Chair provide a written transcript of the testimony. The cost to prepare the transcript shall be paid by the faculty member making the request.

#### Disposition of Charges:

The Hearing Committee normally will communicate its findings, conclusions, and recommendations in writing to the grievant and respondent and the Vice President for Academic Affairs (or President's designee in the event the Vice President is the grievant or the respondent) within 15 workdays of the conclusion of the hearing. 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.

#### Appeal:

Either faculty member has the right to appeal this determination. The appeal is made by a written request to the President of the University for review of the decision and must be made within 10 workdays of the date of the final decision. If no appeal is delivered to the President within the 10 workday period, the case is considered closed. The decision of the President shall be delivered to the appellant within 10 workdays and the President's decision shall be considered final and binding.

#### Disposition of Records:

At the conclusion of the hearing, and after the final report of the Hearing Committee is submitted (and appeal completed), the tapes, and all other relevant material will be maintained by the Office of Human Resources.





## 4.5 Rank and Promotion

### 4.5.1 Academic Rank

The academic community recognizes educational achievements, experience, and meritorious contributions to higher education by awarding academic rank to faculty who perform with distinction in these areas. Academic rank is granted by the Regional University System of Oklahoma Board of Regents to teaching faculty on the basis of Regents' and the institution's faculty personnel policies.

The academic ranks of the University are professor, associate professor, assistant professor, and instructor. The senior ranks of professor and associate professor are granted as a result of exemplary teaching, scholarship, leadership, and service achievements. Faculty holding the senior ranks provide academic and scholarly leadership to developing faculty and provide advice and counsel to the department chairs, deans, and administration. For these reasons, serious attention is given to the scholarly, intellectual, and ethical stature of individuals selected for the senior ranks. The ranks of assistant professor and instructor are for faculty in the developmental stages of their teaching careers.

### 4.5.2 Promotion in Rank

The Regional University System of Oklahoma Board of Regents have specified five basic categories upon which academic rank and promotion in rank are based:

1. Education and experience,
2. Effective classroom teaching,
3. Research/scholarship,
4. Contributions to the institution and profession, and
5. Performance of non-teaching or administrative duties.

Education and experience alone are not adequate for granting promotion in rank. The following general guidelines shall be applied in the appointment and promotion of faculty to rank.

#### 4.5.2.1 General Guidelines (Rev. 9/03)

For academic ranks of Instructor an earned master's degree or sixty (60) graduate hours in a relevant teaching field awarded by a regionally accredited or internationally recognized institution.

Assistant Professor one of the following (Option A, B, or C):

##### Option A.

An earned doctorate relevant to the teaching field awarded by a regionally accredited or internationally recognized institution.

Academic credentials which indicate the potential for effective classroom teaching, research/scholarship, contributions to the institution and profession, and, in appropriate instances, successful performance of non-teaching or administrative duties.

##### Option B.

Completed all requirements in a doctoral program relevant to the teaching field, with the exception of the dissertation. (NOTE: Faculty who wish to begin a doctoral program must have written approval of the program from the Department Chair, Dean, and Vice President for Academic Affairs, in order to qualify for promotion in rank or salary increases resulting from completion of the degree program.

Academic credentials which document effective classroom teaching and indicate the potential for research/scholarship, contributions to the institution and the profession, and, in appropriate instances, successful performance of non-teaching or administrative duties.

Option C.

Sixty (60) graduate hours relevant to the teaching field awarded by a regionally accredited or internationally recognized institution of higher education. (NOTE: Graduate hours taken while on the faculty at Southeastern must be approved in advance by the Department Chair, Dean, and Vice President for Academic Affairs in order to qualify for promotion in rank or salary increase.)

Four (4) years of successful higher education teaching experience in full-time appointment(s).

Academic credentials which document effective classroom teaching and indicate the potential for research/scholarship, contributions to the institution and the profession, and, in appropriate instances, successful performance of non-teaching or administrative duties.

Associate Professor.

- An earned doctorate relevant to the teaching field awarded by a regionally accredited or internationally recognized institution of higher education.
- Five (5) years of successful higher education teaching experience in full-time appointment(s).
- Five (5) years of experience at the assistant professor rank.
- Demonstrated effective classroom teaching, research/scholarship, contributions to the institution and profession, and, in appropriate instances, successful performance of non-teaching or administrative duties.
- Noteworthy achievement in classroom teaching, research/scholarship, and contributions to the institution and profession, or, in appropriate instances, performance of non-teaching or administrative duties.

Professor.

- An earned doctorate relevant to the teaching field awarded by a regionally accredited or internationally recognized institution of higher education.
- Ten (10) years of higher education teaching experience in full-time appointment(s).
- ~~Five (5) years of experience at the associate professor rank.~~
- Demonstrated record of effective classroom teaching, extensive research/ scholarship, extensive contributions to the institution and profession, and, in appropriate instances, exemplary performance of non-teaching or administrative duties.
- Commendable or outstanding achievement on all of the categories: effective classroom teaching, research/scholarship, contributions to the institution and profession, and, in selected instances, performance of non-teaching or administrative duties.

4.5.2.2 Effective Classroom Teaching

Effective classroom teaching is demonstrated through mastery of a current knowledge base in subject matter taught at an appropriate student level. Such teaching stimulates achievement and practical personal applications by students. A continual review of current literature, research, and strategies for classroom application is necessary to effective teaching. An effective teacher evidences mastery in the classroom by thoroughly integrating skills and knowledge, sensitivity, and perception with the presentation of subject matter.

Effective classroom teaching is characterized by (1) subject matter mastery, (2) curriculum development, (3) course design, (4) delivery of instruction, (5) assessment of instruction, (6) availability to students, and (7) fulfillment of instructional administrative responsibilities.

Effectiveness will be documented by student evaluation of instruction; peer, department chair and/or dean evaluations; performance evaluation of program graduates by employers; and other applicable available information, including standardized assessment of majors.

#### 4.5.2.3 Research/Scholarship

Scholarship is a state of mind that is demonstrated by the active involvement of a faculty member in the pursuit of new knowledge in his/her academic field or discipline. While the scope and nature of faculty scholarship will vary among departments, University faculty shall be involved in scholarly activities, individually or collaboratively, which advance the knowledge base and performance levels of their respective fields. Both the pursuit of new knowledge or techniques and the application of knowledge or techniques in creative ways are valued. Both the quality and the quantity of productivity are considered in assessing the contributions and performances.

Examples of research/scholarship are adaptations of knowledge to the learning environment, development of marketable instructional materials, creative artistic works evaluated by juries or panels, invitation for professional presentations or performances, articles in refereed or editor-evaluated publications, successful grantsmanship, selected unpublished research, books, monographs, inventions, patented or copyrighted products, etc.

#### 4.5.2.4 Contributions to the Institution and Profession

Contributions occur when a faculty member applies his/her professional expertise beyond the classroom and research/scholarship responsibilities to advance the institution and profession. These contributions should be correlated with the educational needs of the student body and the objectives of the University.

Institutional contributions may consist of, but are not limited to academic advisement of students, sponsorship of student organizations, membership on ad hoc and standing committees, consultation to other areas of the University, participation in institutional or program self-study activities, and special assignments or responsible participation in activities which advance the academic programs of the University.

Professional contributions include involvement in various professional organizations in a manner that accrues favorable notice to the individual and the University. Evidence of such contributions may consist of, but are not limited to, memberships in professional organizations appropriate to a faculty

member's teaching field or area of responsibility, attendance at meetings, holding of offices, and serving on committees at local, state, regional, and national levels of said professional organizations.

#### 4.5.2.5 Performance of Non-Teaching or Administrative Duties

These duties include, but are not limited to student advisement; departmental management; public relations; classroom, studio, office or other physical facility management; personnel management; equipment and supplies management; fiscal management; and time management.

The performance of such duties is carried out in a timely manner with efficiency and dispatch in a spirit of cooperation and sensitivity to the needs of students, staff, peers, and supervisors. These duties are carried out in full awareness of both legal and personal responsibilities and limitations concomitant to a state-supported educational institution.

Documentation of performance of non-teaching or administrative duties might include formal and informal observations and evaluations from students, peers, supervisors, and the public.

#### 4.5.3 Promotion Process (Rev.9/03)

It is the responsibility of the individual faculty member to initiate the request for a promotion in rank and to prepare the portfolio of materials. The department chair will advise the faculty member in preparation of this request. The following steps outline the procedures in the promotion process. A Portfolio Transmittal Form (see Forms) to certify the receipt dates and transmittal dates at each step of the promotion process must accompany the request and is available from the department chair. Failure to forward the portfolio and recommendation by the specified date will constitute de facto approval at that step.

It is the responsibility of the individual faculty member to monitor the flow of materials through the process. At any step in the process, the faculty member may withdraw a request for promotion in rank.

#### 4.5.4 Concepts and Understandings Regarding Rank and Promotion Policies

1. The highest interests of the University will best be served through a spirit of cooperation and a sense of mutual confidence among the faculty, the chairs, the academic deans, the chief academic officers, and the president of the University. The procedure for recommending promotion in rank is designed to systematize as well as to encourage such cooperation and mutual confidence.
2. The determination of professional training and/or experience to meet the criteria for assignment of rank will be the responsibility of the appropriate academic officer (or officers) on campus. They will consult with peers or supervisors of those who are being considered for changes in rank.
3. No person presently employed shall suffer reduction in rank as a result of the operation of these policies.
4. Instructional personnel who are not subject to assignment of rank may be classified by titles such as special instructors, lecturers, graduate assistants, adjunct teachers, and part-time teachers.

5. An instructor, upon making official notification to the administration of the completion of a doctoral program, may receive immediate promotion to the rank of assistant professor with approval of the Regional University System of Oklahoma Board of Regents.
6. The application for promotion may be submitted during the year which completed the requirements for the rank as outlined in Section 4.5.2.1, with a successful application causing promotion effective the following academic year.
7. A faculty member must complete at least two years of employment at Southeastern before applying for promotion to the rank of Associate Professor or Professor.
8. Any exception to the policy on promotion in rank is the domain of the president of the University.

## 4.6 Tenure

Source: See Policy Manual of the Regional University System of Oklahoma Board of Regents (Academic Affairs, 3.3)

### 4.6.1 Academic Tenure

Tenure is a privilege and a distinctive honor. Tenure is defined as continuous reappointment which may be granted to a faculty member in a tenure-track position, subject to the terms and conditions of appointment. The tenure decision shall be based on a thorough evaluation of the candidate's total contribution to the mission of the University. While specific responsibilities of faculty members may vary because of special assignments or because of the particular mission of an academic unit, 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. Each University may formulate standards for this review and determine the appropriate weight to be accorded each criteria consistent with the mission of the academic unit.

Tenure is granted by the Regional University System of Oklahoma Board of Regents upon recommendation of the University president. Determination of merit and recommendation for granting tenure shall comport with the minimum criteria and policies and procedures contained in this chapter.

The terms and conditions of every appointment or reappointment shall be stated in writing and copies in the possession of both the institution and faculty member before the appointment is approved. Tenure shall be granted only by written notification after approval by the Board. Only full-time faculty members holding academic rank of assistant professor, associate professor, or professor may be granted tenure. Qualified professional librarians shall be considered faculty members if they are given academic rank.

Tenure does not apply to administrative positions, but a tenured faculty member appointed to an administrative position retains tenured status as a member of the faculty.

The Board intends to reappoint tenured personnel to the faculties of the institutions under its control within existing positions that are continued the next year. The Board reserves the right to terminate tenured faculty at the end of any fiscal year if the Legislature fails to allocate sufficient funds to meet obligations for salaries or compensation.

#### 4.6.2 Periods of Appointment and Tenure

Faculty members holding academic rank above the level of instructor (assistant professor, associate professor, professor) may receive tenure at any time. Normally, faculty members shall be on probation for five (5) years after date of first being employed by the University in a tenure-track position. (Years of experience in a non-tenure-track position may be used for probation only if approved by the University). Seven (7) years shall be the maximum probationary period for the eligible faculty member to be granted tenure. If, at the end of seven (7) years any faculty member has not attained tenure, there will be no renewal of appointment for the faculty member unless a specific recommendation for waiver of policy from the President to the contrary is approved by the Regional University System of Oklahoma Board of Regents. This procedure applies every year thereafter.

For the purpose of determining probationary employment of faculty members for tenure consideration, sabbatical leave counts as a part of the period of probationary employment, but a leave of absence is not included as part of the probationary period.

#### 4.6.3 Procedure for Granting Promotion and Tenure (replaces 4.5.3. Promotion Process) Rev. 9/03

The normal procedure for granting tenure is initiated by the faculty member during the fifth, sixth, or seventh year of service to the University in a tenure-track position. The normal procedure for granting promotion is initiated by the eligible faculty member. The following steps outline the normal process:

Step 1-

By October 15, the faculty member files a written request for promotion and/or tenure with the department chair. The request must be accompanied by a portfolio exhibiting documentation of effective teaching, research/scholarship, contributions to the institution and profession, and performance of non-teaching or administrative duties, if appropriate.

Step 2-

By November 15: A Promotion and Tenure Review Committee shall be formed. If there are at least five (5) tenured faculty members within the department, all serve as the Promotion and Tenure Review Committee. In Promotion cases, only tenured faculty at or above the rank sought shall serve on the committee. In the event that the number of faculty at the appropriate rank or tenured faculty members in the department is fewer than five (5), the tenured faculty within the department plus additional tenured faculty members appointed by the dean of the school and the chair of the department to form a group of at least five (5) tenured faculty members will serve as the Promotion and Tenure Review Committee. Since department chairs will independently review Promotion and Tenure Review Committee recommendations, and make an independent recommendation to the dean, they should not be members of Promotion and Tenure Review committees.

The chair/dean shall call a meeting of the Promotion and Tenure Review Committee to initiate discussion of the request. After each member of the Promotion and Tenure Review Committee critiques the portfolio and each performance criterion, the faculty member's performance shall be reviewed, discussed, and evaluated by the Promotion and Tenure Review Committee. This review shall be conducted in a manner that allows for input from non-tenured colleagues, students, alumni, and administrative information from the department chair. After completion of

the review, a poll by secret ballot of the Promotion and Tenure Review Committee will be taken to determine whether a recommendation for the granting of tenure will be made. A simple majority rule shall prevail. The Promotion and Tenure Review Committee shall then send the portfolio, the committee's vote, and their recommendation to grant or to deny to the department chair. All ballots are to be retained by the chair of the Promotion and Tenure Review Committee until a final decision is reached concerning the request. The ballots shall then be destroyed.

Step 3--

By December 1: The department chair shall review the Promotion and Tenure Review Committee's vote, critique the portfolio, evaluate each performance criterion, and decide whether to recommend the granting of tenure. The department chair will then forward a recommendation concerning the request and all documentation to the dean of the school. The chair will also provide in writing a statement of his/her action to the Promotion and Tenure Review Committee and faculty member.

Step 4--

By January 15: The dean of the school shall review the department chair's recommendation, the Promotion and Tenure Review Committee's vote, critique the portfolio, evaluate each performance criterion, and decide whether to recommend the granting of tenure. The dean will then forward a recommendation concerning the request and all documentation to the Vice President for Academic Affairs. The dean will also provide in writing a statement of his/her action to the department chair, Promotion and Tenure Review Committee, and faculty member.

Step 5--

By February 15: The Vice President for Academic Affairs shall review the dean's recommendation, the Promotion and Tenure Review Committee's vote, critique the portfolio, evaluate each performance criterion, and decide whether to recommend the granting of tenure. The Vice President for Academic Affairs will then forward a recommendation concerning the request and all documentation to the President. He will also provide in writing a statement of his/her action to the dean, department chair, Promotion and Tenure Review Committee, and faculty member. If the Vice President for Academic Affairs recommends that promotion or tenure be denied and the faculty member believes that the request has not been accorded "due process," s/he may request of the Faculty Appellate Committee a hearing pertaining solely to due process. Such an appeal must be filed by March 1. Pertinent testimony from all parties involved may be heard. If the Faculty Appellate Committee rules that due process was violated, the committee may then recommend that the procedure be renewed at the point where violation occurred. The Vice President for Academic Affairs shall be responsible for monitoring the subsequent procedures to assure that due process is accorded. The Faculty Appellate Committee must complete action on an appeal by March 20.

Step 6--

By May 1: Upon receiving a recommendation from the Vice President for Academic Affairs, the President decides either to approve or disapprove the request for tenure. If the President approves the request for tenure, s/he submits it to the Regional University System of Oklahoma Board of Regents, normally at the April meeting. The President then reports the Regents' action to the Vice President for Academic Affairs, the dean of the school, the department chair, and the faculty member.

If the President disapproves the request for tenure, s/he notifies the Vice President for Academic Affairs, the department chair, the Promotion and Tenure Review Committee, and the faculty member.

#### 4.6.4 Concepts Regarding Tenure

The highest interests of the University will be served through a spirit of cooperation and a sense of mutual confidence among the faculty, the chairs, the academic deans, the Vice President for Academic Affairs, and the President of the University. The procedure for recommending tenure is designed to encourage such cooperation and confidence.

The Regional University System of Oklahoma Board of Regents recommends that not more than sixty-five percent (65%) of the full-time faculty at a University receive tenure. Once the sixty-five percent limit is reached, there will be no additions to the tenured faculty at Southeastern. However, the tenure process on campus will continue. Faculty members recommended for tenure will be placed in a priority-hold status by year pending tenure vacancies.

Under exceptional circumstances, a new faculty member may be recommended for tenure by a department chair, an academic dean, the Vice President for Academic Affairs, or the President without going through the normal process.

In the event that one of the deadlines in the tenure process falls on a weekend or holiday, the deadline becomes the next working day at the University.

After the process is completed, the following action should be taken:

- a. The results of all balloting and recommendations from the dean, department chair, and Vice President for Academic Affairs will be placed in the personnel file of the candidate.
- b. The portfolio and a copy of all recommendations will be returned to the candidate.
- c. Other confidential, relevant records leading to tenure shall then be destroyed.

Once the tenure process has been initiated, it must be completed.

Any exception to the policy on tenure is the domain of the president of the University in conjunction with the Regional University System of Oklahoma Board of Regents.

#### 4.6.5 Guidelines for Achieving Tenure

The following guidelines apply in decisions regarding the awarding of tenure:

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Five (5) years of service at Southeastern Oklahoma State University in a tenure-track appointment as an assistant professor, associate professor, and/or professor.

Demonstrated effective classroom teaching, research/scholarship, contributions to the institution and profession, and, in appropriate instances, successful performance of non-teaching or administrative duties.

Demonstrated ability to work cooperatively to strengthen the academic quality of the institution.

Noteworthy achievement in classroom teaching and on at least one other criterion: research/scholarship, contributions to the institution and profession, or, in appropriate instances, performance of non-teaching or administrative duties.

#### 4.6.6 Evaluation of Tenured Faculty

The academic and professional performance of each tenured faculty member may be reviewed annually and must be reviewed at least every third year.

The results of the review will be placed in the personnel record of the tenured faculty member. The tenured faculty member should be given a copy of the review and an opportunity to respond before it is placed in the personnel folder. An unsatisfactory review will require another review within one year. An unsatisfactory review at that time will be grounds for dismissal as listed under Sections 4.6.7 and 4.6.8 below.

#### 4.6.7 Causes for Dismissal or Suspension of Tenured Faculty (rev. 02/05 by BOROC)

No tenured member of the faculty shall have his or her appointment terminated in violation of the principles of tenure adopted by the Regional University System of Oklahoma Board of Regents except for one or more causes which may include, but are not limited to, the following.

- a. Committing a felony or other serious violation of law that is admitted or proved before a competent court, preventing the faculty member from satisfactory fulfillment of professional duties or responsibilities, or violation of a court order which relates to the faculty member's proper performance of professional responsibilities.
- b. Moral turpitude.
- c. Insubordination.
- d. Professional incompetence or dishonesty.
- e. Substantial or repeated failure to fulfill professional duties or responsibilities or substantial or repeated failure to adhere to Board or University policies.
- f. Personal behavior preventing the faculty member from satisfactory fulfillment of professional duties or responsibilities.
- g. An act or acts which demonstrate unfitness to be a member of the faculty.
- h. Falsification of academic credentials.
- i. Two consecutive unsatisfactory post-tenure performance evaluations.
- j. Bona fide lack of need for one's services in the University.
- k. Bona fide necessity for financial retrenchment.

The President shall have the authority to suspend any faculty member formally accused of a, b, c, d, e, f, g, h, or i (listed above). The President shall immediately notify the Board of Regents of the terms and conditions of any such suspension. A faculty member should be suspended only if harm to the faculty or students is possible or disruption of proper conditions for teaching and learning are threatened by the faculty member's continuance. During the suspension period, compensation for the suspended person should be continued. If during the suspension period the faculty member is convicted of or admits to the commission of a felony or a crime involving moral turpitude or other serious violation of law referenced above, the institution shall not continue compensation.

#### **4.6.8 Dismissal of Tenured Faculty for Program Discontinuance or Financial retrenchment**

A faculty member with tenure whose position is terminated based on genuine financial retrenchment, bona fide discontinuance of a program, or a lack of need for one's services will be given five (5) months' written notice unless an emergency arises.

Before terminating an appointment because of discontinuance of a program or department, or because of other lack of need of services, the institution will make reasonable efforts to place affected members in other suitable positions.

If an appointment is terminated because of financial retrenchment or because of discontinuance of a program, the released faculty member's position will not be filled by a replacement within a period of two years, unless the released faculty member has been offered reappointment at the previous status.

#### **4.6.9 Dismissal of Tenured Faculty Member for Cause**

Dismissal proceedings shall begin with a conference between the faculty member and the appropriate dean/department chair. The conference may result in agreement that the dismissal proceedings should be discontinued or that the best interest of the tenured faculty member and the institution would be served by the faculty member's resignation. If so, the faculty member shall submit a resignation in writing, effective on a mutually agreed upon date. If this conference does not result in mutual agreement, the dean/department chair will submit a recommendation in writing with rationale to the faculty member and to the Vice President for Academic Affairs. Within fourteen (14) days, the Vice President for Academic Affairs should have a conference with the faculty member.

The conference with the Vice President for Academic Affairs may result in agreement that the dismissal proceedings should be dropped. On the other hand, the conference may result in mutual agreement that the best interest of the tenured faculty member and the institution would be served by the faculty member's resignation. If so, the faculty member shall submit a resignation in writing, effective on a mutually agreed upon date. If this conference does not result in mutual agreement, the Vice President for Academic Affairs will submit his/her decision in writing with rationale to the faculty member and forward his/her decision to the President. If the President concurs in the recommendations for dismissal, the President shall send a written statement to the faculty member within ten (10) school days of his/her receipt of the Vice President for Academic Affairs' recommendation. Copies of this written statement should be sent to the Vice President for Academic Affairs, the appropriate dean, and department chair. When the President notifies a tenured faculty member of the intention to recommend dismissal for cause, the tenured faculty member must be informed in writing in detail of the specific charges against him/her and be informed of the procedural rights that will be accorded to him/her. Every reasonable effort must be made by the President to ensure that the communication of this action is received by such faculty members without delay. Such notification must be made by registered or certified mail with return receipt requested.

#### **4.6.10 Suspension of a Tenured Faculty Member (rev. 2/05 by BOROC)**

The President shall have the authority to suspend any faculty member formally accused of a, b, c, d, e, f, g, h, or I (listed above). The President shall immediately notify the Board of Regents of the terms and conditions of any such suspension. A faculty member should be suspended only if harm to the faculty or students is possible or disruption of proper conditions for teaching and learning are threatened by the faculty member's continuance. During the suspension period, compensation for the suspended person should be continued. If during the suspension period the faculty member is convicted of or admits to the commission of a felony or a crime involving moral turpitude or other serious violation of law referenced above, the institution shall not continue compensation.

#### 4.6.11 Disciplinary Action Other Than Dismissal or Suspension

Disciplinary action affecting the terms of employment taken by the University against a tenured faculty member must be based upon causes stated in this chapter, or any other adequate cause which related directly and substantially to the fitness of the tenured faculty member to perform professional duties. Disciplinary action shall begin with a conference between the tenured faculty member and the appropriate department chair. If, as a result of the conference, the department chair finds that disciplinary action is warranted, a written recommendation for action and rationale for the recommendation for action should be forwarded to the appropriate dean. If, after review, the dean decides not to proceed with further disciplinary action, both parties should be notified in writing. If the dean determines that additional action is warranted, then s/he should arrange a conference with the tenured faculty member. The dean may determine that no further action is necessary. If, however, the dean believes additional action is warranted, s/he shall notify in writing the faculty member and forward his/her recommendation for action to the Vice President for Academic Affairs within fourteen (14) days. The Vice President for Academic Affairs should arrange a conference with the faculty member. The Vice President for Academic Affairs may determine no additional action is necessary. However, the Vice President for Academic Affairs may determine a plan of disciplinary action, in which case s/he should notify the faculty member in writing and place a copy of the disciplinary action in the faculty member's personnel file.

#### 4.6.12 The Right of Appeal of Tenured Faculty

Each of the six state universities under the jurisdiction of the Regional University System of Oklahoma Board of Regents shall institute an Appellate Committee on Dismissal of Tenured Faculty Members. The committee shall not exceed nine (9) tenured faculty members, eight (8) of whom shall be elected by the faculty governing body of the University and one member appointed by the President of the University. A quorum shall be five (5) members or a majority of qualified members of the committee. Initially, one-half of the elected members shall be elected for twelve (12) months and one-half for twenty-four (24) months; thereafter, one-half shall be elected each year. No member may serve more than two consecutive terms. One or more alternate members of the committee shall be elected to serve in the event a regular member is unable to serve. If any member of the committee is an interested party in a case which comes before the Appellate Committee on Dismissal of Tenured Faculty Members, said committee member shall not serve on that case.

The incumbent committee shall serve until the completion of any case pending at the time their term of service expires.

The decision of the committee will be based on majority vote. The committee will elect its own chair, who will have the right to vote.

If a faculty member receives notice of a pending dismissal and so desires, he may request and shall be accorded a hearing before the Appellate Committee on Dismissal of Tenured Faculty Members. Failure to make a request in writing to the President within fourteen (14) days after receipt of notification shall constitute a waiver by such faculty member of his/her right to a hearing before the Appellate Committee on Dismissal of Tenured Faculty Members.

At Southeastern, this committee has been designated to serve as the grievance committee in the promotion process (see Section 4.5.3, Step 4).

#### 4.6.13 Appeal Procedures for Tenured Faculty

- a. After a faculty member has requested a hearing before the Appellate Committee on Dismissal of Tenured Faculty Members, service of notice of hearing with specific charges in writing will be made at least twenty (20) days prior to the hearing. The faculty member may respond by waiving the hearing and filing a written brief or the matter may proceed to a hearing. If the faculty member waives a hearing, but denies the charge or asserts that the charges do not support a finding of adequate cause, the Appellate Committee on Dismissal of Tenured Faculty Members will evaluate all available evidence, including testimony and documentary evidence presented by the University, and make its recommendation upon the evidence in the record.
- b. If the faculty member requests a hearing, the Appellate Committee on Dismissal of Tenured Faculty Members shall, with due diligence, and in keeping with the Administrative Procedures Act, considering the interests of both the University and the faculty member affected, hold a hearing and report its findings and recommendations to the President and to the involved faculty member.
- c. At hearings before the Appellate Committee on Dismissal of Tenured Faculty Members, faculty members and the University shall be permitted academic advisors and/or counsel. A court reporter will be retained by the University to record the proceedings. Each party will pay the entire cost of his or her copy of the transcript. The committee will determine whether the hearing should be public or private.
- d. The faculty member will be afforded an opportunity to obtain necessary witnesses and documentary or other evidence, and the administration of the University will attempt to secure the cooperation of such witnesses and will make available necessary documents and other evidence within its control. No employee of the institution, regardless of position, should be excluded or excused from appearing before the committee, if available.
- e. The faculty member and the University will have the right to cross examine all witnesses present. Depositions are admissible whenever a witness cannot appear.
- f. The committee may conclude: (a) that adequate cause for dismissal has been established by the evidence; (b) that adequate cause for dismissal has not been established by the evidence; or (c) that adequate cause for dismissal has been established, but an academic penalty less than dismissal, including removal of tenure, would be more appropriate. The committee may make any other recommendations it determines are appropriate. The committee's findings and recommendations shall be made to the President of the University. The committee shall send a copy of its findings and recommendations to the affected faculty member.

- g. The President shall notify the affected faculty member of his recommendation to the Board of Regents. The faculty member shall have the right to request the Board of Regents to review adverse findings and recommendations of the President. The request must be in writing and filed within fifteen (15) days after final notification by the President at the office of the Regional University System of Oklahoma Board of Regents. If the affected faculty member does not timely request that the Board of Regents review the President's findings and recommendations, the President's determinations become final and binding.
- h. In the event the faculty member submits a timely request to the Board of Regents to review adverse findings and recommendations of the President, the faculty member must indicate whether s/he desires a hearing of all of the evidence of the case; otherwise, the review will be a review of the record of the case. The Board of Regents has the discretion to determine whether the review will be a de novo hearing or a review of the record.
- i. Public statements and publicity about the case by the University will be avoided until the proceedings, including consideration by the Regents, have been concluded.

#### **4.6.14 Non-tenured Faculty**

Non-tenured faculty shall be afforded the same rights of academic freedom as tenured faculty.

##### **4.6.14.1 Annual Evaluation**

Following institutional guidelines, the performance of non-tenured faculty members shall be evaluated annually by March 1 by the appropriate department chair and/or dean, and the results of the evaluation placed in the personnel record of the non-tenured faculty member. The non-tenured faculty member shall be given a copy of the evaluation.

##### **4.6.14.2 Non-Reappointment**

The Board of Regents delegates to the President or the President's designee the authority to reappoint or not to reappoint non-tenured faculty members. A non-tenured faculty member whose appointment is not renewed will be given written notice from the University by March 1, prior to termination of the current appointment. Failure to reappoint may be without specific causes. Reappointment or non-reappointment by the University is subject to ratification by the Board of Regents.

##### **4.6.14.3 Termination for Cause or Suspension**

The termination of employment for cause or suspension of a non-tenured faculty member within an existing contract period shall follow the same procedures and be limited to the same reasons as provided for tenured faculty members who are terminated for cause or suspended. A failure to reappoint may be without specific or stated cause.

#### **4.6.15 Procedures for Amending These Regulations**

The Regional University System of Oklahoma Board of Regents may amend these regulations at any time, or a requested amendment to these regulations may be initiated by the Appellate Committee on

Dismissal of Tenured Faculty Members or the administration of any of the institutions governed by the Board.

## **4.7 Faculty Load**

University faculty have responsibilities in four areas: (1) instruction, (2) research/ scholarship, (3) service to the institution, profession, and public, and (4) various non-teaching or administrative duties. While instruction and research/scholarship are expected of all faculty, the scope and variety of service and non-teaching or administrative assignments will depend upon the needs of the departments, schools, and University at large.

Faculty load assignments will be monitored each semester by the department chair, reviewed by the dean of the school, and approved by the Vice President for Academic Affairs.

### **4.7.1 Teaching**

Instructional assignments are based upon the expertise of the faculty member and needs of the academic department. They are made by the department chair in collaboration with the faculty member.

In the fall and spring semesters a full-time teaching load is twelve (12) semester hour units per semester.

In the summer term a full-time teaching load is eight (8) semester hour units per term.

### **4.7.2 Research/Scholarship**

Individual faculty research and scholarly activities are defined by the professional interests of the faculty member. While the scope and nature of faculty scholarship will vary among departments, University faculty shall be involved in scholarly activities, individually or collaboratively, which advance the state of knowledge or performance levels of their respective fields. Both the pursuit of new knowledge or techniques and the application of knowledge in creative ways are valued.

### **4.7.3 Service to the Institution, Profession, and Public**

#### **4.7.3.1 Student Advisement**

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Academic advisement is a very important service responsibility for faculty. Advisors are expected to assist students with enrollment, to counsel them about career options, to provide them information about deadlines and checkpoints, and to monitor their progress through programs. The department chair selects faculty to serve as advisors. A recommended maximum advisement load is thirty (30) students.

#### **4.7.3.2 Committees and Advisory Service**

Institutional service activities include sponsorship of student organizations, membership on ad-hoc and standing committees, consultation to other areas of the University, and participation in activities which advance the academic programs of the University.

#### 4.7.3.3 Professional Activities

Membership in selected professional organizations appropriate to a faculty member's assignment is a basic responsibility. Involvement in professional organizations at local, state, regional, and national levels consists of attendance of meetings, holding offices, and serving on committees.

#### 4.7.3.4 Public

Service to the community at large occurs when a faculty member contributes professional expertise to the activities of governmental, public schools, or other public and service agencies. The contribution may be in, but is not limited to the following roles: consultant, program participant, member of a board or task force, or advisor.

#### 4.7.4 Non-teaching or Administrative Duties

These assignments are based upon the needs of the department, school, and University. Such assignments will be developed cooperatively between the faculty member and department chair or appropriate administrative officer.

#### 4.7.5 Revised Interim and Summer School Policies

Effective Spring, 2005

1. Summer Teaching Loads and Salary Formula. Regular faculty who teach one course (3 or 4 credit hours) will receive 1/9 of their base (9 month) salary. Faculty who teach two courses will receive 2/9 of their base salary. Two 3 or 4 cr. courses constitute a full summer load, and represent the maximum teaching load normally allowed. For example, a faculty member with a base salary of \$45,000 would receive  $\$45,000/9 = \$5,000$ , for teaching one 3 or 4 cr. course, or \$10,000 for teaching a full summer load of two 3 or 4 cr. courses). Because adjunct faculty do not have a base salary, they will continue to be paid at the prevailing adjunct rates for summer teaching.
2. Interim Classes. Courses taught during the May interim will be considered summer classes, and will count towards the summer teaching load. August interim classes will normally count as part of the fall teaching load. Exceptions to this must be justified, and approved by the department chair, dean and vice president for academic affairs. The January interim period will be utilized only for Continuing Education classes.

3. Exceptions to the Summer and Interim Policies.

- o Continuing Education classes. Continuing Education classes are contracted separately by the Office of Continuing Education, and are not counted as a part of regular teaching loads. Salary for Continuing Education classes is also contracted directly with the Office of Continuing Education.
- o Grant-funded salary. Summer salary that is paid by a grant is not counted as part of the summer load. Faculty who teach a full summer load (2/9 of base salary) may receive an additional 1/9 of base salary from grant funds. Faculty who do not teach in the summer are eligible to receive up to 3/9 of their base salary from grant funds. Summer salaries received from grant funds are also subject to the approval of the granting agency.
- o Emergency overloads. Emergency overloads must be justified and specifically approved by the department chair, dean, and vice president for academic affairs.

## 4.8 Department Chair Load

The department chair has the dual role of faculty member and chief administrator of the department. It is important that a proper balance be achieved between the chair's faculty assignment (teaching, research/scholarship, and service) and administrative duties (instructional program management, personnel management, department development, financial and facilities administration, and academic leadership).

### 4.8.1 Teaching

The teaching load for department chairs is defined by the scope of their duties which varies among the departments. Factors which must be considered in assigning the chair's teaching load include: (1) the number of students majoring in the programs offered by the department, (2) instructional functions of the department (size of service offerings relative to size of major programs), (3) size and nature of the departmental facilities (classrooms, laboratories, etc.), (4) inventory of instructional equipment and instrumentation, (5) size and nature of the instructional faculty (tenured relative to adjunct), (6) state and federal regulations that impact on the department and its operations, (7) ancillary activities associated with the department, (8) support staff available in the department, (9) number and size of externally supported programs initiated and managed within the department, (10) number of programs offered by the department, and (11) nature of programs offered by the department.

After careful review and documentation of the above factors, the teaching load of each chair will be negotiated on an individual basis. The department chair assignments will be reviewed each semester by the dean of the school and be approved by the Vice President for Academic Affairs.

### 4.8.2 Research/Scholarship

The individual chair's research and scholarly activities are defined by his/her professional interests. While the scope and nature of faculty scholarship will vary among departments, University chairs shall be involved in scholarly activities, individually or collaboratively, which advance the state of knowledge or performance levels of their respective fields. Both the pursuit of new knowledge or techniques and the application of knowledge in creative ways are valued.

### **4.8.3 Service to the Institution, Profession, and Public**

#### **4.8.3.1 Student Advisement**

Academic advisement is a very important service responsibility for faculty and chairs. Advisors are expected to assist students with enrollment, to counsel them about career options, to provide them information about deadlines and checkpoints, and to monitor their progress through programs. The department chair coordinates advisement in the department and selects faculty as needed to serve as advisors. A recommended maximum advisement load is thirty (30) students.

#### **4.8.3.2 Committees and Advisory Service**

Some institutional service activities are sponsorship of student organizations, membership on the Academic Council and other ad-hoc or standing committees, consultation to other areas of the University, and participation in activities which advance the academic programs of the University.

#### **4.8.3.3 Professional Activities**

Membership in selected professional organizations appropriate to a chair's assignment is a basic responsibility. Involvement in professional organizations at local, state, regional, and national levels consists of attendance of meetings, holding offices, and serving on committees.

#### **4.8.3.4 Public**

Service to the community at large occurs when a department chair contributes professional expertise to the activities of governmental, public schools, or other public and service agencies. The contribution may be in, but is not limited to the following roles: consultant, program participant, member of a board or task force, or advisor.

### **4.8.4 Administrative Duties**

The department chair is directly responsible to the dean of the respective school and has the charge of providing collegial leadership to the faculty of the academic department. This leadership is in five primary areas.

#### **4.8.4.1 Instructional Program Management**

Plans departmental course offerings to serve the department majors and to provide appropriate service to other clientele (general education, other majors, higher education centers, and continuing education).

Prepares the departmental course schedule each semester and each summer term; identifies and recommends qualified instructors.

Coordinates the preparation and revision of syllabi and instructional objectives of the course of study.

Provides appropriate coordination of student teachers, entry-year teachers, and/or interns.

Coordinates requests to the library and media center for the purchase of books, periodicals, and media materials that support the instructional and research/scholarship needs of the department.

Coordinates advisement of students in the department, including assigning advisors, distributing materials for the placement of graduates from the department programs, and assisting graduates in finding appropriate placement and in obtaining letters of recommendation.

Evaluates learning in the department through student evaluations of instruction, program review, and assessment of students.

Solves problems and resolves conflicts between students and instructors.

Solves problems related to closed classes during enrollment and manages enrollment in courses offered by the department.

Approves substitutes to cover classes when faculty have to be absent during emergencies.

Coordinates orders with the bookstore for textbooks and required student supplies.

#### **4.8.4.2 Personnel Management**

Coordinates the recruitment and selection of new faculty to maintain a balanced and diversified pool of instructional faculty.

Coordinates the annual faculty evaluation procedures for tenure and promotion and assists faculty in preparing the portfolio of materials requesting promotion.

Assigns faculty responsibilities in the areas of instruction, advisement, and department service (facilities and equipment management, recruitment, etc.)

Fosters faculty development by providing appropriate feedback and assistance in obtaining professional developmental activities.

Acts as a communication link between the faculty and administration.

Maintains good morale in the department through a positive outlook and positive relations among the members of the department.

Advocates appropriate rewards and recognition of faculty in the department.

Supervises and evaluates support staff.

Recruits and supervises student workers and processes time sheets.

**4.8.4.3 Financial and Facilities Management** Prepares and submits an annual department budget.

Manages and controls the department budget by allocating funds as needed, prepares requisitions, and verifies purchase receipts.

Supervises the use of department space and requests maintenance of space.

Supervises the equipment and instrumentation facilities of the department and maintains the equipment in working order.

Conducts an annual inventory of the equipment and instrumentation assigned to the department.

Coordinates resources used jointly with other departments.

#### **4.8.4.4 Department and Program Development**

Coordinates the establishment of faculty and departmental goals.

Coordinates department planning for developing quality instruction, research/scholarship, facilities, equipment, personnel, and general progress.

Develops and recommends curricula for majors and minors in disciplines represented in the department.

Fosters good teaching by providing feedback from instructional evaluations.

Recruits students by collaborating with High School Relations, by corresponding with prospective students, by hosting visiting students, and by preparing recruitment materials.

Coordinates regular program review and assessment activities in the department.

Supervises periodic follow-up studies of students.

#### **4.8.4.5 Academic Leadership**

Stimulates research/scholarship activities among the faculty.

Encourages requests for appropriate external funding for the department.

Establishes and monitors standards of achievement in the department.

Communicates departmental needs within the University.

Engages in positive public relations by communicating information that improves the department's image and reputation on campus, in southeastern Oklahoma, and at community colleges from which transfer students come.

### **4.9 Regulations Affecting Faculty and Chair Load**

#### 4.9.1 Calculation of Teaching Load

##### Lecture

Undergraduate—1 Carnegie clock hour per week = 1 semester hour unit

Graduate—1 Carnegie clock hour per week = 1.333 semester hour units

##### Laboratory

2 Carnegie clock hours per week = 1 semester hour unit

##### Applied Lessons

1.5 clock hours per week = 1 semester hour unit

Teacher Education Practicum

(Education 2000, 3000, 4000)

20 students = 1 semester hour unit

##### Special Assignments

Negotiated with appropriate administrators.

##### Arranged Classes

These will not contribute to semester load unless adequate enrollment is obtained to be counted as a regular class (normally, 15 for undergraduate, 12 for graduate).

The load status of classes listed as directed readings, research, independent studies or departmentally specific courses will be evaluated by the department chair and the dean. Such courses will be judged by the same enrollment considerations applied to other courses.

#### 4.9.2 Office Hours (update)

A full-time faculty member is required to schedule ten office hours per week and it is recommended at least one (1) office hour be scheduled each day Monday through Friday. In addition, a faculty member is expected to be available additional hours by appointment. Faculty members teaching online or blended classes may negotiate with the department chair to substitute up to five online office hours for five physical office hours.

#### 4.9.3 Absences from Duty

Revised 07-01-2006

When a faculty member is to be absent from an assigned responsibility, he/she must file a Faculty Absence Notification Form (see Forms). In the case of sick leave, this form is filed with Department Chair only. In the case of personal leave or leave due to Professional/University business, the form is filed with both the Department Chair and the Dean.

#### 4.9.4 Outside Employment

As a general rule, full-time faculty are not to be engaged in regular remuneration-producing activities (operating a private business or working as an employee for others) from 8 a.m. through 5 p.m. Monday through Friday. Exceptions must be approved by appropriate administrative personnel.

#### 4.10 Selection and Retention of Department Chairs

The procedure for selecting chairs of academic departments takes into consideration the roles of the academic departments and the responsibilities of the chairs.

#### 4.10.1 The Role of Academic Departments

Southeastern Oklahoma State University recognizes the importance of vigorous, independent academic departments for two reasons:

1. Departments provide an effective framework for instructing students, communicating with students, and making professional decisions about curriculum, class schedules, and teaching loads. An independent departmental structure provides stability for these functions even when changes in academic organization occur. Strong academic departments provide institutional integrity and accountability.
2. Since most faculty members think of themselves as instructors of a particular discipline, departments are their chief bases of group identity and loyalty.

#### 4.10.2 The Qualifications and Role of Department Chairs

Ordinarily, the minimum educational requirement of a chair is an earned doctorate or a terminal degree in one of the disciplines represented in the academic department. In addition, leadership and management abilities are required.

A department chair is responsible to the dean of the school and is charged with providing leadership to the faculty of the academic department. This leadership is in five primary areas: (1) instructional program management, (2) personnel management, (3) financial and facilities administration, (4) department and program development, and (5) academic leadership. (See Section 4.8.4)

#### 4.10.3 Departmental Chairs' Selection Process

Both departmental faculty and academic administration are involved in the process of selecting chairs. A department chair may be appointed from within the University and from the result of a search and interview process. The steps for appointment within the University are as follows:

1. The faculty and dean will develop a written description of the qualifications necessary for a chair of that department.
2. The dean will ask the faculty to submit nominations of candidates.
3. The dean will interview the nominees to ascertain their willingness to serve and their leadership philosophies.
4. The faculty will nominate a candidate for its chair by a process established as departmental policy. The decision will be reported in writing to the dean.
5. The dean will submit a recommendation for chair to the Vice President for Academic Affairs.
6. Within two weeks of receipt of the dean's recommendation, the Vice President for Academic Affairs will submit a recommendation to the President.

7. Within three weeks after receipt of the Vice President's recommendation, the President will notify the dean and the Vice President for Academic Affairs of his/her decision.
8. If the recommendation is not approved, the process will be repeated, beginning with Step 4.
9. Any situation not covered in this selection procedure will be handled cooperatively by the departmental faculty and the dean.

#### 4.10.4 Evaluation of Chairs

1. Department chairs will be evaluated annually, and a comprehensive evaluation will be completed every fourth year. Results of each evaluation will be communicated to the chair orally and in writing by the dean.
2. The incumbent chair will declare his/her intention by September 1 of the fourth year to request consideration for reappointment. Departmental faculty, the dean, the Vice President for Academic Affairs, and the President will participate in this evaluation. The dean, the Vice President, and the President, with advice from faculty, will decide whether to retain or to replace the current chair. If the decision is to replace the chair, the departmental chairs' selection process will be initiated.
3. The criteria and instruments for evaluation of chairs will be approved by the faculty, chairs, deans, Vice President for Academic Affairs, and President.

#### 4.10.5 Replacement of Chairs for Cause

If the dean, the Vice President for Academic Affairs, or the President believes that a chair should be removed at some time other than during the comprehensive evaluation year, the evaluation process may be initiated without delay. If the departmental faculty believe a chair should be replaced, a request containing the signatures of fifty percent of the full-time faculty may be submitted to the dean. After consultation with departmental faculty, the dean will determine whether or not the request is in the best interest of the department. If the dean disagrees, the decision and justification will be submitted in writing to the faculty, the Vice President for Academic Affairs, and the President. If the dean agrees, he/she will, with the written approval of the Vice President for Academic Affairs and the President, initiate the evaluation process immediately.

### 4.11 Personnel Files

This policy is intended to provide guidelines for access to employee records, while maintaining the security necessary to protect the privacy of University employees and the interests of the University. An employee has access to his/her permanent personnel file, which is maintained in the Human Resources Office. In addition, a faculty member has access to his/her personnel file relative to academic progress and qualifications, which is maintained in the Office of Academic Affairs. Access to all appropriate records shall be in accordance with the provision of this policy and the Oklahoma Open Records Act.

#### 4.11.1 Contents

The Human Resources Office, as custodian of personnel files, shall determine information to be placed in the files. Only such information as is germane to the person's employment with the University shall be retained in these files. Examples of this type of information are:

- a. Information pertaining to bona fide occupational qualifications.
- b. Behavior and discipline matters.
- c. Personnel actions, such as appointment and change of status.

Individuals may ask that material relevant to their employment be included in their personnel file by written request to the Human Resources Officer. An individual may not remove or add any records to his/her personnel file at the time of inspection.

Files related to academic progress and qualifications for faculty are maintained in the Office of Academic Affairs.

#### 4.11.2 Open Records Act

The following personnel records shall be deemed confidential and may be withheld from public access:

Those that relate to internal personnel investigations including, without limitation, examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation.

Those where disclosure would constitute a clearly unwarranted invasion of personal privacy such as, but not limited to, employee evaluations, payroll deductions, and employment applications submitted by persons not hired by the University.

Those which are specifically required by law or University policy to be kept confidential.

All personnel records not specifically falling within the exceptions provided above shall be available for public inspection.

#### 4.11.3 Correction of Records

An employee may dispute the accuracy of any material included in his/her personnel file. Such questions should be directed to the custodian of the file in writing. If the questions are not resolved by mutual agreement, the employee may initiate a complaint.

#### Academic Policies and Procedures



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 )

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ORAL DEPOSITION OF  
DR. JESSE SNOWDEN  
MAY 3, 2016  
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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.

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A P P E A R A N C E S

FOR THE PLAINTIFF THE UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF JUSTICE  
EMPLOYMENT LITIGATION SECTION  
CIVIL RIGHTS DIVISION  
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By: Ms. Valerie Meyer, Attorney at Law

- And -

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By: Mr. Jeb Joseph,  
Assistant Attorney General

1 Q. And why was that?

2 A. Well, that's a very basic thing that a president  
3 does. A university is only as good as the quality within  
4 it.

5 Q. Before when we were discussing how you would  
6 determine whether a particular publication was one of  
7 quality with respect to the tenure review process, you  
8 mentioned that you would consult with people in the  
9 particular field; is that right?

10 A. Yes.

11 Q. Were you referring to people in the field within  
12 Southeastern?

13 A. Not always.

14 Q. Who else would you be referring to?

15 A. This was not at Southeastern, but it's common  
16 practice in universities -- and I was getting Southeastern  
17 towards this; it was a big jump -- to actually submit  
18 portfolios external to the university for peer review.  
19 That's something that we did at University of New Orleans,  
20 and we did it at University of Arkansas as well to get an  
21 unbiased view or people who were really working in that  
22 field who could critically review what the candidate had  
23 done.

24 We had not reached that level at Southeastern,  
25 but that's really the proper way to do it because within a

1 department, there are friendships and that sort of thing  
2 that get in the way of a critical review.

3 Q. Did you suggest to anybody while you were at  
4 Southeastern that tenure portfolios should be reviewed  
5 outside of Southeastern?

6 A. Yes, we discussed it.

7 Q. Who did you discuss it with?

8 A. Discussed it with the deans.

9 Q. Which deans do you remember discussing it with?

10 A. Dean Mangrum, Dean Gaster in the School of  
11 Business, and the dean -- had several education deans.  
12 But I discussed it with Dean Licata primarily.

13 Q. Could you spell Licata?

14 A. L-I-C-A-T-A.

15 Q. Did you make the suggestion while you were  
16 vice-president for academic affairs or interim president?

17 A. Vice-president for academic affairs.

18 Q. At the time that you were vice-president for  
19 academic affairs, what position did Douglas McMillan hold?

20 A. He was the associate vice-president for academic  
21 affairs.

22 Q. Did you discuss with Dr. McMillan -- strike  
23 that.

24 Does Douglas McMillan have a Ph.D., to your  
25 knowledge?

## CURRICULUM VITAE

Robert Dale Parker  
Department of English  
608 S. Wright St.  
University of Illinois  
Urbana, IL 61801  
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rparker1@illinois.edu  
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(217) 333-1606 office  
(217) 333-2391 department  
(217) 333-4321 department fax  
www.robertdaleparker.com

## EDUCATION

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Yale University, Ph.D., English, 1980  
Dissertation director: R.W.B. Lewis  
Yale University, M.Phil., English, 1979  
Yale University, M.A., English, 1978  
Brown University, A.B., English and History, 1976

## PUBLICATIONS

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### Books

*How to Interpret Literature: Critical Theory for Literary and Cultural Studies.* 3rd edition. New York: Oxford University Press, 2015.

Chinese translation. Trans. Yang Xiaoqiang. Wuhan: Wuhan University Press, forthcoming 2017.

*Critical Theory: A Reader for Literary and Cultural Studies.* New York: Oxford University Press, 2012. Seventy selections with introduction and headnotes.

*How to Interpret Literature: Critical Theory for Literary and Cultural Studies.* 2nd edition. New York: Oxford University Press, 2011. Six printings.

*Changing Is Not Vanishing: A Collection of American Indian Poetry to 1930.* Philadelphia: University of Pennsylvania Press, 2011. Paperback edition, 2012. Based on archival research, this book gathers a large body of poetry previously unknown to critics and historians, with extensive annotation and an extended introduction.

## BOOKS, continued

*How to Interpret Literature: Critical Theory for Literary and Cultural Studies.* New York: Oxford University Press, 2008. Six printings.

*The Sound the Stars Make Rushing Through the Sky: The Writings of Jane Johnston Schoolcraft.* Philadelphia: University of Pennsylvania Press, 2007. Paperback edition, 2008. Based on archival research uncovering the first-known American Indian literary writer (1800-1842), this book includes a heavily annotated edition and a cultural and literary history and biography.

*The Invention of Native American Literature.* Ithaca: Cornell University Press, 2003.

*"Absalom, Absalom!": The Questioning of Fictions.* Boston: Twayne, 1991.

*The Unbeliever: The Poetry of Elizabeth Bishop.* Urbana: University of Illinois Press, 1988.

*Faulkner and the Novelistic Imagination.* Urbana: University of Illinois Press, 1985.

**Articles**

"Braided Relations: Toward a History of Nineteenth-Century American Indian Women's Poetry." *Cambridge History of Nineteenth-Century American Women's Poetry.* Ed. Jennifer Putzi and Alexandra Socarides. Cambridge: Cambridge University Press, forthcoming 2016.

"American Indian Poetry at the Dawn of Modernism." *The Oxford Handbook of Modern and Contemporary American Poetry.* Ed. Cary Nelson. New York: Oxford University Press, 2012. 71-95.

"Jane Johnston Schoolcraft." *Oxford Bibliographies.* Online. Oxford University Press. 2012.

"American Indian Poetry in the Nineteenth Century." *Cambridge Companion to Nineteenth-Century American Poetry.* Ed. Kerry Larson. Cambridge: Cambridge University Press, 2011. 36-53.

"American Indian Literary Criticism and Theory." *Blackwell Encyclopedia of Literary and Cultural Theory.* Ed. Michael Ryan. Oxford: Blackwell, 2011.

"Contemporary Anticolonialist Reading and the Collaborative Writing of Jane Johnston Schoolcraft." *Before Yesterday: The Long History of Native American Writing.* Ed. Simone Pellerin. Pessac, France: Presses Universitaires de Bordeaux, Collection "Lettres d'Amérique(s)," 2009. 47-52.

## ARTICLES, continued

- “Jane Johnston Schoolcraft (Ojibwe) 1800-1842.” *The Heath Anthology of American Literature*, 6th ed. Vol. B, Early Nineteenth Century: 1800-1865. Ed. Paul Lauter et al. Boston: Houghton Mifflin Harcourt, 2009. 1537-62. (Headnote, edited text, annotations. Plus additional materials for teachers’ guide.) Again in the 7th ed., Boston: Wadsworth Cengage, 2014. 3175-3198.
- “Schoolcraft, Jane Johnston.” *American National Biography*. New York: Oxford University Press, online 2008 and forthcoming in the next print edition. This is the premier reference source for United States biography.
- “The Hum of Routine: Issues for the Study of Early American Indian Print Culture, a Response to Phillip H. Round.” *American Literary History* 19.2 (Summer 2007), pp. 290-96.
- “Introducing Jane Johnston Schoolcraft.” *Ninth Letter* (an award-winning literary magazine) 3.2 (Fall/Winter 2006-07), pp. 15-19. Introduction to a selection of poems reprinted from *The Sound the Stars Make Rushing Through the Sky*, with new poems by Ojibwe writers Louise Erdrich and Heid Erdrich.
- “The Archive.” *Studies in American Indian Literature* 17.2 (Summer 2005), pp. 98-99.
- “Red Slippers and Cottonmouth Moccasins: White Anxieties in Faulkner’s Indian Stories.” *The Faulkner Journal* 18.1-2 (Spring 2003), pp. 81-99. [Revised version of 2000 article listed below, the first article ever reprinted in *The Faulkner Journal*.]
- “Perloff’s Universe, or The Demagoguery of Naturalized Aesthetic Taste.” *symploke* 9.1-2 (2002), pp. 181-82. Because of an editorial error the full text of this article did not appear in print, but it is available on *symploke*’s Project Muse web site at [http://muse.jhu.edu/journals/symploke/v009/9.1parker\\_r.html](http://muse.jhu.edu/journals/symploke/v009/9.1parker_r.html).
- “Red Slippers and Cottonmouth Moccasins: White Anxieties in Faulkner’s Indian Stories.” *Etudes Faulknériennes II, Centenaire: Naissances de Faulkner*. Rennes, France: Presses Universitaires de Rennes, 2000, pp. 71-82.
- “‘Where you want to go now’: Recharting the Scene Shifts in the First Section of *The Sound and the Fury*.” *The Faulkner Journal* 14.2 (Spring 1999), pp. 3-20.
- “Who Shot the Sheriff: Storytelling, Indian Identity, and the Marketplace of Masculinity in D’Arcy McNickle’s *The Surrounded*.” *Modern Fiction Studies* 43.4 (Winter 1997), pp. 898-932.
- “Text, Lines, and Videotape: The Ideology of Genre and the Transcription of Traditional Native American Oral Narrative as Poetry.” *Arizona Quarterly: A Journal of American Literature, Culture, and Theory* 53 (1997): 141-69.

## ARTICLES, continued

- “Sanctuary and Bad Taste.” *Etudes Faulknériennes I, Sanctuary*. Rennes, France: Presses Universitaires de Rennes, 1996, pp. 63-69. <https://netfiles.uiuc.edu/rparker1/www/Sanctuary%20and%20Bad%20Taste,%20Parker.pdf>
- “Sex and Gender, Feminine and Masculine: Faulkner and the Polymorphous Exchange of Cultural Binaries.” *Faulkner and Gender: Faulkner and Yoknapatawpha, 1994*. Ed. Ann J. Abadie and Donald M. Kartiganer. Jackson: University Press of Mississippi, 1996, pp. 73-96.
- “The Other Coldfields: Gender, Commerce, and the Exchange of Bodies in *Absalom, Absalom!*” *Critical Essays on William Faulkner: The Sutpen Family*. Ed. Arthur F. Kinney. New York: G. K. Hall, 1996, pp. 239-48.
- “‘Through the fence, between the curling flower spaces’: Teaching the First Section of *The Sound and the Fury*.” *Approaches to Teaching Faulkner’s “The Sound and the Fury.”* Ed. Stephen Hahn and Arthur F. Kinney. New York: Modern Language Association, 1996, pp. 27-37.
- “To Be There, No Authority to Anything: Ontological Desire and Cultural and Poetic Authority in the Poetry of Ray A. Young Bear.” *Arizona Quarterly: A Journal of American Literature, Culture, and Theory* 50 (1994): 89-115.
- “Material Choices: American Fictions, the Classroom, and the Post-Canon.” *American Literary History* 5 (1993): 89-110.
- “Poetry and Pedagogy: A Memory of Michael Harper Teaching.” *Callaloo: A Journal of African-American and African Arts and Letters* 13 (1990): 810-12.
- “The Chronology and Genealogy of *Absalom, Absalom!*: The Authority of Fiction and the Fiction of Authority.” *Studies in American Fiction* 14 (1986): 191-98.

**Reprints**

- “The Reinvention of Restless Young Men: Storytelling and Poetry in Leslie Marmon Silko’s *Ceremony* and Thomas King’s *Medicine River*.” Chapter 6 of *The Invention of Native American Literature*. In *Native American Writing*. Ed. A. Robert Lee. London: Routledge, 2011.
- Edited works from *The Sound the Stars Make Rushing Through the Sky: The Writings of Jane Johnston Schoolcraft*. In *The Norton Anthology of American Literature*. 7th ed. Vol. B, 1820-1865. Ed. Nina Baym et al. New York: Norton, 2007. 1058-68.

REPRINTS, continued

“The Reinvention of Restless Young Men: Storytelling and Poetry in Leslie Marmon Silko’s *Ceremony* and Thomas King’s *Medicine River*.” Chapter 6 of *The Invention of Native American Literature*. In *Native American Writing: Critical Assessments*. Ed. A. Robert Lee. East Sussex, U.K.: Hastings Helm, 2007.

“Tradition, Invention, and Aesthetics in Native American Literature and Literary Criticism.” Chapter 1 of *The Invention of Native American Literature*. In *Literary Theory: An Anthology*. 2nd ed. Ed. Julie Rivkin and Michael Ryan. Oxford: Blackwell, 2004, pp. 1051-67. This widely used anthology sets out to be the “definitive collection of classic statements in criticism and new theoretical work from the past few decades.”

“Robert Dale Parker on the Poem’s Structure.” On “At the Fishhouses,” excerpt from *The Unbeliever: The Poetry of Elizabeth Bishop*. In *Elizabeth Bishop: Comprehensive Research and Study Guide*. Ed. Harold Bloom. Broomall, PA: Chelsea House, 2002, pp. 53-54.

“Robert Dale Parker on the History Behind *Absalom, Absalom!*” Excerpt from *Absalom, Absalom!: The Questioning of Fictions*. In *William Faulkner: Comprehensive Research and Study Guide*. Ed. Harold Bloom. Philadelphia: Chelsea House, 2000, pp. 70-71.

“To Be There, No Authority to Anything: Ontological Desire and Cultural and Poetic Authority in the Poetry of Ray A. Young Bear.” Reprinted without permission or endnotes in *Native-American Writers*. Ed. Harold Bloom. Philadelphia: Chelsea House, 1998, pp. 175-94.

“The Chronology and Genealogy of *Absalom, Absalom!*: The Authority of Fiction and the Fiction of Authority.” In *Critical Essays on William Faulkner: The Sutpen Family*. Ed. Arthur F. Kinney. New York: G. K. Hall, 1996, pp. 252-58.

Excerpt on “Crusoe in England” from *The Unbeliever: The Poetry of Elizabeth Bishop*. In *Robinson Crusoe*. Ed. Harold Bloom. New York: Chelsea House, 1995, pp. 65-68.

“Watching Something Happening Told: *Sanctuary*.” Chapter 3 of *Faulkner and the Novelistic Imagination*. In *Douze lectures de “Sanctuaire” [Twelve Readings of “Sanctuary”]*. Ed. André Bleikasten and Nicole Moulinoux. Rennes, France: Presses Universitaires de Rennes, 1995, pp. 125-47.

### **Review Essays and Reviews**

“Another Indian Looking Back: A Review Essay on Recent American Indian Poetry.” *Studies in American Indian Literature* 22.2 (Summer 2010). 75-85.

## REVIEWS AND REVIEW ESSAYS, continued

*The People and the Word: Reading Native Nonfiction*, by Robert Warrior. Review essay. *Wicazo Sa Review: A Journal of Native American Studies* 22.1 (Spring 2007), pp. 118-23.

*Thinking of Home: William Faulkner's Letters to His Mother and Father, 1918-1925*, ed. James G. Watson. *Studies in American Fiction*, 22 (1994), pp. 119-20.

*Faulkner's Rhetoric of Loss: A Study in Perception and Meaning*, by Gail L. Mortimer; *William Faulkner*, by Alan Warren Friedman; *Aviation Lore in Faulkner*, by Robert Harrison. *The Modern Language Review*, 84 (1989), pp. 148-49.

**Photographs**

Three photos of possible sites of William Faulkner's wedding near Oxford, Mississippi, illustrating an article about Faulkner's marriage by Arthur F. Kinney. *The Faulkner Newsletter & Yoknapatawpha Review* 15.1 (January-March 1995): 3.

**PROFESSIONAL HISTORY**

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2009- , James M. Benson Professor in English, University of Illinois  
 1992- , Professor of English, University of Illinois  
 1988-92, Associate Professor of English, University of Illinois  
 1984-88, Assistant Professor of English, University of Illinois  
 1982-84, Visiting Assistant Professor of English, University of Michigan at Ann Arbor  
 1980-82, Lecturer in English, Yale University  
 1978-79, graduate Teaching Fellow, Yale University

Affiliated faculty member, University of Illinois:  
 American Indian Studies Program (co-founder)  
 Center for Writing Studies  
 Unit for Criticism and Interpretive Theory

**TALKS AND PANELS**

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"How to Make a Queer: The Erotics of Begging, or, Down and Out in the Great Depression." American Literature Association. San Francisco, May 2016.

## TALKS AND PANELS, continued

“Critical Anticolonialism and the Collaborative Manuscripts of Jane Johnston Schoolcraft.” C19: The Society of Nineteenth-Century Americanists Conference. Pennsylvania State University, March 2016.

“Author vs. Form vs. Concept: The Clash of Paradigms in the Study of Twentieth-Century Literature.” Modern Language Association Convention. Chicago, January 2014. Roundtable proposer, co-organizer, and co-chair with Ramón Saldivar. Co-sponsored by the Division on Twentieth-Century American Literature and the Division on Comparative Studies in Twentieth-Century Literature.

Roundtable presentation for “Teaching Native American Literature: Form, Politics, History.” Invited. Modern Language Association Convention. Invited. Chicago, January 2014. Sponsored by the Division on American Indian Literatures.

“How to Read Now.” Moderator. Modern Language Association Convention. Chicago, January 2014. Sponsored by the Division on Twentieth-Century American Literature.

“Cross-Racial Representations in American Literature between the World Wars.” Panel proposer and chair. American Literature Association. Boston, May 2013.

“Modern Poetry.” Panel chair. American Literature Association. Boston, May 2013.

“Theories of Close Reading in Socially Motivated Criticism.” Panel proposer and chair, Modern Language Association Convention. Boston, January 2013. Sponsored by the Division on Twentieth-Century American Literature.

“Theses on the Recovery of American Women’s Writing.” Invited. Modern Language Association Convention. Boston, January 2013.

“Twentieth-Century American Literature and the New Formalism.” Panel proposer and chair, Modern Language Association Convention. Seattle, January 2012. Sponsored by the Division on Twentieth-Century American Literature.

“How the Recovery of Early American Indian Poetry Changes the History of American Poetry.” Special session proposer and chair. Modern Language Association Convention. Seattle, January 2012.

Participated in the Nineteenth-Century American Women Writers Study Group gathering to discuss Jane Johnston Schoolcraft. American Antiquarian Society. Worcester, Massachusetts, October 2011.

“Recovering a Lost Archive: American Indian Poetry from the Seventeenth Century to 1930.” American Literature Association. Boston, May 2011.

## TALKS AND PANELS, continued

“New Formalism and the Formal Ethic of *Absalom, Absalom!*” “Faulkner’s *Absalom, Absalom!* at 75: Reflections and Reassessments.” Invited. William Faulkner Society. American Literature Association. Boston, May 2011.

“Transformations and Reversals: The Native Presence in 19th-Century American Writing.” Invited panel chair. American Literature Association. Boston, May 2011.

“Changing Is Not Vanishing: Early American Indian Poetry.” Invited. Sequoyah Research Center Symposium. University of Arkansas at Little Rock, April 2011.

Plenary panel on *Changing Is Not Vanishing: A Collection of American Indian Poetry to 1930*. Native American Literature Symposium. Isleta Pueblo, New Mexico, March 2011.

“Early American Indian Women’s Poetry, 1815-1930.” Invited. Society for the Study of American Women Writers Conference, Philadelphia, October 2009.

“Colonialist and Anticolonialist Mimicry in American Indian Poetry before 1930.” Native American and Indigenous Studies Association. University of Minnesota, May 2009.

“Identity after Identity: Historicizing Identity in Contemporary Criticism.” Invited Keynote Speaker, Midwest Conference on Literature, Language, and Media. Northern Illinois University, March 2009.

Michigan State University Law School, Indigenous Law and Policy Center. Invited talk as part of a panel devoted to *The Sound the Stars Make Rushing Through the Sky*, January 2009.

“Anticolonialist Reading and the Collaborative Writing of Jane Johnston Schoolcraft.” Invited. “La longue histoire de la littérature amérindienne / Before Yesterday: The Long History of Native American Writing.” Université Paul Valéry-Montpellier III, Montpellier, France, May 2008.

“Debates and Changes in the Study of American Indian Literature.” Invited panel, organizer and moderator. “Native American and Indigenous Studies: Who Are We? Where Are We Going?” University of Georgia, April 2008.

“American Indian Poetry from the Seventeenth Century to 1930.” “Native American and Indigenous Studies: Who Are We? Where Are We Going?” University of Georgia, April 2008.

## TALKS AND PANELS, continued

- “Debates and Changes in the Study of American Indian Literature.” Panel organizer and moderator. Modern Language Association Convention, Chicago, December 2007.
- “Jane Johnston Schoolcraft.” Invited. University of Michigan at Ann Arbor, March 20, 2007.
- “Introducing Jane Johnston Schoolcraft.” Invited. Eastern Michigan University, March 19, 2007.
- “What We Expect from Jane Johnston Schoolcraft: ‘Love’s Mazes,’ Anti-colonialism, and the Contrast between Contrasts.” Sixth Annual Native American Literature Symposium, March 10, 2007, Saginaw Chippewa Tribal Nation.
- “The Writings of Jane Johnston Schoolcraft (1800-1842).” Panel chair. Sixth Annual Native American Literature Symposium, March 10, 2007, Saginaw Chippewa Tribal Nation.
- “Language, Literature, and Identity.” Invited moderator. Seventh Annual CIC American Indian Studies Consortium Conference, Indiana University, April 2006.
- “From the Pine Tree to the Proud Republic: Intransitive Place and Cultural Change at the Dawn of American Indian Poetry.” Invited. The American Indian Workshop: Place in Native American History, Literature and Culture at the University of Wales, Swansea, UK., March 2006.
- “Place and the Literature of Louise Erdrich and Diane Glancy.” Invited panel chair for the American Indian Workshop: Place in Native American History, Literature and Culture at the University of Wales, Swansea, UK., March 2006.
- “Ojibwe, British, Métis, American: Conflicting Citizenships in Early American Indian Poetry,” in a session on “Citizenship and the Study of U.S. Poetry.” Invited. Sponsored by the American Literature Section of the Modern Language Association. Modern Language Association Convention, Washington, DC, December 2005.
- “Cultural and Aesthetic Controversies in the History of American Indian Literary Studies.” Invited lecture for International Symposium on Discourse and Communication at Wuhan University New Vision Forum, Wuhan, China, May 2004.
- “Contemporary American Literary Studies.” Invited lecture for the English Department of Wuhan University, Wuhan, China, May 2004.

## TALKS AND PANELS, continued

“Contemporary Critical and Literary Theory.” Invited lecture for the English Department of Wuhan University, Wuhan, China, May 2004.

“Native American Literature.” Invited moderator. Fourth Annual CIC American Indian Studies Consortium Conference, Newberry Library, Chicago, April 2003.

“Colonialism: Production and Destruction” and “Race and Nation.” Invited moderator. First Annual CIC American Indian Studies Consortium Conference, University of Iowa, April 2000.

“Red Slippers and Cottonmouth Moccasins: White Anxieties in Faulkner’s Indian Stories.” Invited. “Faulkner’s Birth and Rebirth(s), the William Faulkner Centenary, Rennes and Paris.” Fondation William Faulkner, L’Université Rennes 2, Haute Bretagne, France, September 1997.

“*Sanctuary* and Bad Taste.” Invited. “Journées d’étude on Faulkner’s *Sanctuary*.” Fondation William Faulkner, L’Université Rennes 2, Haute Bretagne, France, December 1995.

“Sex and Gender, Feminine and Masculine: Faulkner and the Polymorphous Exchange of Cultural Binaries.” Invited. “Faulkner and Gender: Faulkner and Yoknapatawpha Conference,” University of Mississippi, August 1994.

“The Epistemology of Perspectiveless Explanation in *Absalom, Absalom!*” Invited. Midwest Modern Language Association, Minneapolis, November 1989.

“The Rapist and the Spinster: Misogyny and Parody, *Light in August* and the Politics of Sexual Rhetoric.” Invited. Mills College, Oakland, California, February 1984.

**Public, non-academic talks on Jane Johnston Schoolcraft and *The Sound the Stars Make Rushing Through the Sky: The Writings of Jane Johnston Schoolcraft*:**

Presentation on Jane Johnston Schoolcraft following “Waasawekameg: A Faraway Place,” a performance piece based on Schoolcraft’s poetry by Shannon Epplett. Figure One Gallery, University of Illinois School of Art + Design, downtown Champaign. March 19, 2014.

Native American House, University of Illinois. Invited. November 1, 2013

Mitchell Museum of the American Indian. Invited. Evanston, Illinois, January 10, 2010

Schoolcraft College. Invited. Livonia, Michigan, November 14, 2008

TALKS AND PANELS, continued

Kerrytown Bookfest. Invited. Ann Arbor, Michigan, September 7, 2008

Michigan Notable Books Tour. Invited and sponsored by the state of Michigan:

Kalkaska County Library. Kalkaska, Michigan, May 28, 2008

Otsego County Library. Gaylord, Michigan, May 27, 2008

Cheboygan Area Public Library. Cheboygan, Michigan, May 26, 2008

Chippewa County Historical Society. Invited. Sault Ste. Marie, Michigan, August 12, 2007

Bay Mills Community College Library. Invited. Bay Mills Indian Community, Michigan. August 11, 2007

WIAA Interlochen Public Radio. Invited. February 8, 2008

WILL Public Radio, February 28, 2007

Illini Union Bookstore, University of Illinois, February 15, 2007

Many assorted talks and panels on literary, professional, and theoretical topics at the University of Illinois for, among others, the Department of English; the Unit for Criticism and Interpretive Theory; the American Indian Studies Network; the Illinois Program for Research in the Humanities; the Trowbridge Office of American Literature, Culture, and Society; the British Modernities Group; the Center for Writing Studies; the Campus Faculty Association; the Freeman Fellows (visiting scholars from China); the Program in Cultural Values and Ethics; the American Studies Group; the University of Illinois Press; the English Graduate Student Association; the English Graduate Student American Studies Group; English graduate student orientation; the undergraduate English Club/English Student Council; and Teachers and Students for a Democratic Culture.

## TEACHING

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American literature, critical theory, and Modern literature. Particular interests in fiction and poetry from 1900 to the present, recent critical theory, and Native American literatures.

## TEACHING, continued

Served on 66 completed or current dissertation committees. Completed: 16 as director, 41 as committee member in English, 4 as committee member in other departments, 1 as reader for an overseas university. In progress: 4 as director.

Director for 31 undergraduate Honors Theses, reader for 39.

Director for one masters thesis (in African studies).

## TEACHING HONORS

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Through 2014, appeared on the University of Illinois's "List of Teachers Ranked as Excellent by Their Students" 64 times for 23 different courses.

Graduate College Award for Outstanding Mentoring of Graduate Students, 1999.

Robert Schneider Award for outstanding teaching and service in the Department of English, 1999 [primarily an award for service]

Harriet and Charles Luckman Undergraduate Distinguished Teaching Award [the University of Illinois at Urbana-Champaign's highest teaching award], 1996.

William F. Prokasy Award for Excellence in Undergraduate Teaching in the College of Liberal Arts and Sciences [the College's highest teaching award], 1996.

Course Development Award, Program for the Study of Cultural Values and Ethics, University of Illinois, 1990, to develop a course in American Indian literature.

## COURSES TAUGHT

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*At the University of Illinois, 1984- :*

English 101 Introduction to Poetry  
 English 215 Introduction to Contemporary Literary and Critical Theory  
 English 249 The American Novel  
 English 255 Survey of American Literature, I  
 English 256 Survey of American Literature, II  
 English 300 Writing about Literature: Selected American Novels

## COURSES TAUGHT, continued

- English 300 Writing about Literature: American Fiction in the 1920s and 1930s  
 English 300 Writing about Literature: American Indian Literature  
 English 300 Writing about Literature: After Multiculturalism: Cultural Identities and Contemporary Literary Studies  
 English 300 Writing about Literature: American Literature Since 1945  
 English 301 Critical Approaches to Literature  
 English 397 Defining and Redefining the Canon of the American Novel (honors seminar)  
 English 397 American Indian Literature (honors seminar)  
 English 398 Faulkner (honors seminar)  
 English 449 The American Renaissance  
 English 451 American Literature from the First World War to the Present  
 English 451 American Literature, 1914-1945  
 English 452 American Literature, 1945 to the Present  
 English 455 Frost  
 English 461 American Indian Literature  
 English 483/Comparative Literature 405 Contemporary Literary and Critical Theory  
 English 500 Introduction to Graduate Study in English: Contemporary Literary and Critical Theory  
 English 553 Faulkner  
 English 553 American Fiction in the 1920s and 1930s  
 English 553 American Indian Literature  
 English 564 Defining and Redefining the Canon of the American Novel  
 English 581 Contemporary Critical Theory

400-level classes are mixed graduate and undergraduate. 500-level classes are graduate seminars. Renumbered courses are listed according to their current numbers.

*At the University of Michigan, 1982-84:*

- English 240 Introduction to Poetry  
 English 270 Introduction to American Literature  
 English 280 Introduction to Twentieth-Century Literature  
 English 357 "Core III" (Victorian and Modern Literature)  
 English 432 The American Novel  
 English 472 Twentieth-Century American Literature

*At Yale University, 1978-82:*

- English 110 Principles of Composition  
 English 111 Problems in Composition  
 English 114 Reading and Writing Prose

## COURSES TAUGHT, continued

English 120 Modern Prose: Advanced Writing  
 English 129 The European Literary Tradition: Epic from Homer to Joyce

As a Teaching Fellow (responsible for section of a lecture course):

English 270 The Victorian Novel  
 English 280 American Literature from the Puritans to the Civil War

### ACADEMIC HONORS

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*Changing Is Not Vanishing: A Collection of American Indian Poetry to 1930* chosen by the membership of the Native American and Indigenous Studies Association as one of six finalists for Best Subsequent Book [second or later book] Published in 2011.

*Changing Is Not Vanishing: A Collection of American Indian Poetry to 1930* listed in *Choice* as one of the “Significant University Press Titles for Undergraduates, 2010-2011.”

*The Sound the Stars Make Rushing Through the Sky: The Writings of Jane Johnston Schoolcraft* named one of the “The best Michigan-related books of the ’00s.” *City Pulse* newspaper (Lansing), December 30, 2009.

*The Sound the Stars Make Rushing Through the Sky: The Writings of Jane Johnston Schoolcraft* selected by the Library of Michigan as a Michigan Notable Book for 2008. Including a reception with the governor and lectures at Michigan libraries.

*The Sound the Stars Make Rushing Through the Sky: The Writings of Jane Johnston Schoolcraft* listed in *Choice* as one of the “Significant University Press Titles for Undergraduates, 2006-2007.”

Arnold O. Beckman Research Award, University of Illinois at Urbana-Champaign Research Board, for an in-progress research project of “special distinction,” 2004-2005

University Scholar, an award to recognize “the very best of faculty scholarship and research” at the University of Illinois, including \$18,000 in research funds, 1990-1993

Fellowship, University of Illinois Center for Advanced Study, Spring 1987

## ACADEMIC HONORS, continued

University Fellowships, Yale University, 1976-80

Magna Cum Laude, Brown University, 1976 [Brown's highest level of honors]

Honors in English, Brown University, 1976

Phi Beta Kappa, Brown University, 1976

Awards for best male English student in junior class, 1975; and in senior class, 1976

## ACADEMIC SERVICE

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### National and International

Executive Committee (elected), Division on Twentieth-Century American Literature,  
Modern Language Association, 2009-2014; Chair, 2012-13

Editorial Advisory Board, *Modern Fiction Studies*, 2010-

Contributing Editor, *American Literary History*, Oxford University Press, 2004-

Advisory Editor, *Studies in American Fiction*, 2004-2010

Advisory Board, *MAPS* [Modern American Poetry Site] <http://www.english.illinois.edu/maps/index.htm>. Cary Nelson, editor. A wide-ranging resource and web journal on Modern American poetry, 2001-

“Uncovering Early American Indian Literary History.” Instructor (invited). Newberry Consortium in American Indian Studies Graduate Student Workshop, March 10-12, 2011.

Newberry Library, Long-Term Fellowship Selection Committee, 2010

Executive Committee (elected), Division on American Indian Literatures, Modern  
Language Association, 2000-2004; Chair, 2001; Secretary, 2002; Chair, 2003

Nominating Committee, American Literature Section, Modern Language Association,  
2001

Advisory Board, *Anthology of Modern American Poetry*, Oxford University Press, ed.  
Cary Nelson, 2000; 2nd edition 2015

CIC (Committee on Institutional Cooperation—the Big Ten universities and the  
University of Chicago) American Indian Studies Consortium, 1999-2009

Editorial Consultant, *Etudes Faulknières*, 1996-

Advisory Board, *Journal x: A Journal in Culture and Criticism*, 1995-2005

ACADEMIC SERVICE, continued

**Department of English**

Advisory Committee (highest departmental committee), 1988-90, 1992-94, 1998-2000, 2001-2003, 2007-2009, 2014-2016 (elected)  
 Adjunct Advisory Committee (for junior faculty), 1985-86 (elected)  
 Committee on Computer Assistance, 2001-2002  
 Course Chair, English 301, Critical Approaches to Literature (critical theory survey required for majors), 2007-2008, 2008-2009  
 Curriculum Committee, 1985-86, 1987-88, 1991-92, 1998-1999, 2003-2004, 2005-2006, 2006-2007, 2009-2010, 2013 fall  
 Director of the English Honors Program, 1991-2000, 2006-2007  
 Director of Undergraduate Studies, 2006-2007  
 Faculty Grievance Committee, 1987-88; alternate, 1991-92 (elected)  
 Faculty Hiring Committees, American literature 1986-87; American literature 1987-88; American literature, eighteenth-century British literature, feminist theory, Victorian literature, writing theory 1988-89; American literature 1993-94; modern poetry 1996-97; African literature 1996-97; Asian American literature, Chair, 1997-98; Latina/Latino literature and feminist or gender studies, Chair, 1998-99; American literature before 1900, Chair, 1999-2000; African American literature, Chair, 2000-2001; twentieth-century American literature, 2000-2001; African American literature, Co-chair, 2001-2002; Asian American literature, Chair, 2001-2002; Modern American literature (to consider a specific candidate), Chair 2004; American Indian literature (to consider a specific candidate), Chair 2004; American literature before 1865, Chair 2004-2005; Writing Studies (to consider a specific candidate) 2004-2005; Early American literature (to consider a specific candidate) 2005; Postcolonial and American Indian studies (to consider a specific candidate), Chair 2006; African American literature (to consider a specific candidate), Chair 2006; Benson Professorship Screening Committee (to screen potential candidates for a named appointment in American literature), Chair 2007; Postcolonial/  
 Global Anglophone literature, Chair, 2008-2009 [search eventually cancelled for budgetary reasons]; African American literature 2011-12; Queer studies (to consider a specific candidate), Chair 2014-15  
 Grade Review Committee, 1985-86, 1987-88, 1989-90, 1991-92, 1993-94, 2001-2002, 2010-11 Chair (elected)  
 Graduate Admissions Committee, 1993-94, 1995-96  
 Graduate Student Mentoring Award Selection Committee, 2001  
 Graduate Placement Director, 1999-2003  
 Graduate Student Grievance Committee, 1987-88 (elected)  
 Graduate Studies Committee, 1989-90, 1996-97, 1997 fall, 1998-99, 1999-2000, 2000 fall, 2001-2002, 2002-2003, 2003-2004, 2004 fall, 2005-2006  
 Grievance Committee, 2013-14 (elected)  
 Lecture Committee, 1987-88, Chair  
 Head of Department of English, declined, 1997

## ACADEMIC SERVICE, continued

Honors Advising Committee, 1985-86; 1986-87; 1988-89; Chair, 1991-2000, 2006-2007  
 Judge, Wallace Stevens Memorial Prize, for best critical essay on modern American or  
 British poetry, 2015

Liberal Arts and Sciences Committee to review the Head of the English Department,  
 1991 (elected)

Liberal Arts and Sciences national Search Committee for new Head of the Department of  
 English, 1997-98

Masters Area (previously Masters Comprehensive) Exam Committee, 1986-87, 1987-88,  
 1991-92, 1992-93 (exam and committee now discontinued)

Selection committee, Robert Schneider Award for outstanding teaching and service,  
 2000, 2002, 2003, 2004, 2006, 2014

Sigma Tau Delta, international English honor society, University of Illinois at Urbana-  
 Champaign chapter, faculty sponsor, 2013-

Supervisor, department web site, spring 2000-spring 2002

Undergraduate Scholarships and Awards Committee, 1990; 1995; Chair, 2007, 2010,  
 2014, 2015

Undergraduate Teaching Awards Committee, 1996, 1997, 2005

*Ad Hoc Committees, Department of English:*

Committee on Graduate Study in Literature, 2010

Committee to update English 103, Introduction to Fiction, 2000

Committee to consider possible Target of Opportunity appointments, 1999-2000

Department Home Page Committee, 1995

Cultural Diversity Committee, 1991

Committee to reorganize English 101, Introduction to Poetry, 1990

Committee to advise on Chancellor's Minority Fellowship applications in English, Chair,  
 1990

Committee to consider a possible Target of Opportunity appointment, 1989

Long-Range Planning Committee, 1988-89

**American Indian Studies Program** (and predecessor programs under various names)

[Most AIS activities are not listed here, as committees have come and gone as the  
 program has grown and because AIS often works as a committee of the whole.]

Honored as an "Outstanding Community Member" by the Native American House and  
 the Program in American Indian Studies, May 11, 2015

Faculty Search Committee, Chair, 2010-2011

CIC American Indian Studies Consortium Graduate Student Conference Organizing  
 Committee, 2008-2009

Mentor to assistant professor, 2008-12

Mentor to assistant professor, 2008-10

General Council, 2007-2008

Affirmative Action Officer, 2007-2008

## ACADEMIC SERVICE, continued

Communications and Budget Committee, 2007-2008  
 Grade Review Committee, 2007-2008  
 Postdoctoral Fellowship Committee, 2004; 2006-2007, Chair  
 Curriculum Committee, 2004-2005, Chair; 2005-2006  
 Mentor to assistant professor, 2004-2008  
 Advisory Committee, fall 2004-2005  
 Bylaws Committee (to write bylaws), fall 2004-2005, Chair  
 Academic Programs Committee, 2003-2004  
 Director and Faculty Search Committee, 2003-2004  
 Library Committee, Chair, 2003-2004  
 Committee on Native American Programs: founding and organizing committee for the  
     Native American House (which began in 2002) and the American Indian Studies  
     Program (which began in 2004), 2002-2004 (the duration of the committee)  
 Committee to develop an American Indian Studies Program, 2000-2002  
 Faculty Advisor, American Indian Studies Network, 1998-2000

**Campus-wide and College of Liberal Arts and Sciences**

Search Committee for the Director of the Illinois Program for Research in the  
     Humanities, Chair, 2015  
 Whiting Public Engagement Fellowship Selection Committee, 2015  
 Nominating Committee, University of Illinois chapter of the American Association of  
     University Professors, 2015, 2016  
 “Authorized Agent” (1 of 5) for University of Illinois chapter of the American  
     Association of University Professor as a campus Registered Organization, 2014-  
 Interdisciplinary Working Group for the Humanities, appointed by the Provost and the  
     Vice Chancellor for Research, fall 2013-spring 2015  
 Liberal Arts and Sciences ad hoc Grievance Committee to review a grievance in another  
     department, 2014-2015  
 Campus ad hoc committee to review an appeal of a decision regarding promotion to  
     professor, 2014  
 Liberal Arts and Sciences ad hoc committee to review nominations for named faculty  
     appointments, 2014  
 Initiated and organized a proposal for faculty cluster hiring in disability studies, 2014  
 Liberal Arts and Sciences Committee to review the Director of the Program in Jewish  
     Culture and Society, 2013-2014, outside Chair (elected)  
 Organizing Committee for programs to celebrate, publicize, and organize events around  
     the Gwendolyn Brooks Papers, Rare Books and Manuscripts Library, 2013-2016  
 Liberal Arts and Sciences Committee to review the Director of American Indian Studies,  
     2012-2013 (elected)  
 Policy Committee, American Association of University Professors, 2012-

## ACADEMIC SERVICE, continued

Liberal Arts and Sciences Committee to review nominations for Conrad Professorial Scholars, 2013  
 Liberal Arts and Sciences Committee to review *American Literary History* and the Trowbridge Office on American Literature, Culture, and Society 2012-13  
 Liberal Arts and Sciences Committee to review nominations for named faculty appointments and Conrad Professorial Scholars, 2010, 2012  
 Illinois Program for Research in the Humanities, Advisory Committee, 2010-2012  
 Liberal Arts and Sciences Ad Hoc committee to review an appeal of a decision regarding promotion to associate professor, 2011  
 Faculty partner for Freeman Fellow (visiting Chinese scholar), 2008-2009  
 Liberal Arts and Sciences Faculty Appeals Committee, 2005-2007 (elected), Acting Chair 2006; Chair 2007  
 Liberal Arts and Sciences Humanities Scholarships and Honors Committee, 2004-2005  
 Board of Directors, University of Illinois Press, August 2003-2006  
 Steering Committee for the Mellon Foundation Humanities Initiative, a \$1,250,000 grant for advancing the humanities at the University of Illinois, 2003-2005  
 Ad Hoc Personnel Review Committee for the Department of Slavic Languages and Literature, Chair, 2003-2004  
 Committee on Committees, Liberal Arts and Sciences (unfortunate name for the appointments committee), 2002-2004  
 Graduate College Career Services Office Career Advisory Subcommittee, 2003  
 Computers Advisory Committee, Liberal Arts and Sciences, 2001-2002  
 Teaching Mentor for new faculty, Liberal Arts and Sciences, 2001-2002  
 Graduate College Humanities and Creative Arts Area Subcommittee, 1998-2000  
 Graduate College Outstanding Mentor Award Selection Committee, 2000  
 Fellowship selection committee, Program for the Study of Cultural Values and Ethics, 1997  
 Committee to reconsider the Program in Comparative Literature, 1995-96  
 Search Committee for an Associate Chancellor with special concern for minority issues, 1994-95  
 Cultural Diversity Conference Planning Committee, Program for the Study of Cultural Values and Ethics, 1991-92  
 Chancellor's Minority Fellowship Advisory Committee, 1990  
 Admissions Committee, Liberal Arts and Sciences, Spring 1990  
 National Endowment for the Humanities Summer Stipend Committee, 1989

Last updated March 2016

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.



10:37:02 1 Q. Did anyone from the administration provide any  
10:37:07 2 response to the request from the Faculty Senate for  
10:37:11 3 guidance?

10:37:12 4 A. I can't remember that it was ever addressed.

10:37:26 5 Q. Did anybody from the Faculty Senate reach out  
10:37:30 6 to Mr. Babb for guidance on these sections, 4.6.1 and  
10:37:38 7 4.6.5 of Plaintiff's Exhibit 7?

10:37:44 8 A. I don't remember -- or I don't know.

10:37:45 9 Q. You would agree that part of the problem with  
10:37:51 10 determining what "noteworthy" and "excellence" mean is  
10:37:56 11 that they are subjective standards, right?

10:37:58 12 A. Yes.

10:38:16 13 Q. Could you please turn to Plaintiff's Exhibit 5  
10:38:37 14 in the binder in front of you. Are you familiar with  
10:38:49 15 this document?

10:38:50 16 A. Yes.

10:38:51 17 Q. What is it?

10:38:53 18 A. This was a set of guidelines we set out -- we  
10:39:00 19 set up as a department to make the tenure and promotion  
10:39:08 20 procedure more specific to the -- to the department  
10:39:14 21 itself.

10:39:16 22 Q. Who wrote it?

10:39:17 23 A. The department as a whole.

10:39:21 24 Q. Was this while you were department chair that  
10:39:23 25 it was written?

10:39:27 1 A. I think so, but I'm not sure of the date on  
10:39:30 2 it.

10:39:34 3 Q. If you refer to the last page of the exhibit,  
10:39:38 4 it says, "Revised May 2, 2005." Does that refresh your  
10:39:42 5 memory?

10:39:42 6 A. Yes, I would have been chair.

10:39:47 7 Q. Were these guidelines consistent with  
10:39:51 8 Southeastern's promotion and tenure policies?

10:40:03 9 A. They were supposed to be. Whether they are or  
10:40:06 10 not, I don't know.

10:40:07 11 Q. Did you, as department chair, make efforts to  
10:40:12 12 ensure that Exhibit 5 was consistent with Southeastern's  
10:40:19 13 promotion and tenure policies?

10:40:26 14 A. I don't remember.

10:40:27 15 Q. Is there anything that you remember learning  
10:40:35 16 that would indicate that Exhibit -- Plaintiff's  
10:40:39 17 Exhibit 5 might not be consistent with Southeastern's  
10:40:43 18 promotion and tenure policies?

10:40:45 19 A. I'm sorry, do I remember learning what?

10:40:49 20 Q. Do you ever remember learning anything that  
10:40:54 21 would indicate that Plaintiff's Exhibit 5 might be  
10:40:59 22 inconsistent with Southeastern's promotion and tenure  
10:41:04 23 policies?

10:41:04 24 A. No.

10:41:06 25 Q. No one ever told you that they thought

10:53:30 1

A. No.

10:53:32 2

Q. (BY MR. TOWNSEND) Do you have any

10:53:33 3

understanding of whether Dean Scoufos shared your view

10:53:39 4

about the one-and-a-half publications?

10:53:44 5

A. No.

10:53:48 6

Q. Did you -- strike that.

10:54:00 7

I've seen a term called "refereed

10:54:03 8

publication." Is that the same thing as peer-reviewed?

10:54:07 9

A. I would say yes.

10:54:13 10

Q. Does scholarly work that a professor does

10:54:20 11

before coming to Southeastern count any less, when

10:54:26 12

considering their application for tenure, than

10:54:30 13

publications or scholarly work done since coming to

10:54:36 14

Southeastern?

10:54:36 15

A. What would count for application of tenure and

10:54:42 16

promotion is what -- what occurred during the time the

10:54:48 17

candidate was at Southeastern.

10:54:51 18

Q. Why is that?

10:55:00 19

A. Otherwise -- Well, one reason I would say

10:55:02 20

otherwise, someone could use the same scholarship to

10:55:08 21

become an associate and full professor and so forth. So

10:55:11 22

it's something which is used for that. What is produced

10:55:18 23

during that time period is where they're being -- being

10:55:21 24

judged.

10:55:23 25

Q. Do you know whether anyone else at

10:55:25 1 Southeastern shares that view?

10:55:31 2 A. I've always assumed that that was the  
10:55:36 3 procedure, that what counts is what's done during the  
10:55:40 4 period, whether it's the five-year period or five- to  
10:55:45 5 seven-year period for tenure/promotion or during the  
10:55:48 6 period of applying to full from associate.

10:55:54 7 Q. Have you ever discussed that view with anyone  
10:55:57 8 else at Southeastern?

10:56:03 9 A. Yes.

10:56:06 10 Q. Do you ever discuss that view with anyone in  
10:56:10 11 the administration at Southeastern?

10:56:13 12 A. No.

10:56:17 13 Q. Who did you discuss that view with?

10:56:20 14 A. I don't recall specifically, but certainly  
10:56:23 15 colleagues in the English Department.

10:56:27 16 Q. Do you have any understanding of whether Dean  
10:56:33 17 Scoufos shared the view that scholarship that preceded a  
10:56:40 18 professor's hire at Southeastern did not count towards  
10:56:45 19 tenure?

10:56:46 20 MS. COFFEY: Object to form.

10:56:48 21 A. I'm not sure what she thought about that. I  
10:56:51 22 don't know.

10:56:58 23 Q. (BY MR. TOWNSEND) And then the same question  
10:56:59 24 for Dr. McMillan: Do you have any sense of whether he  
10:57:03 25 thought that scholarly work that predated a tenure

11:58:09 1 promotion and tenure process, right?

11:58:11 2 A. Yes.

11:58:13 3 Q. And there's multiple levels to that process,  
11:58:16 4 right?

11:58:17 5 A. Right.

11:58:18 6 Q. The level that came after the department chair  
11:58:20 7 level was the dean level, right?

11:58:22 8 A. Right.

11:58:23 9 Q. So if the dean recommended against granting  
11:58:29 10 tenure to a candidate, in your experience at  
11:58:34 11 Southeastern, did that dean ever provide any explanation  
11:58:42 12 to the candidate about why they were not recommending  
11:58:46 13 the candidate for tenure?

11:58:49 14 MS. COFFEY: Object to form.

11:58:50 15 A. My experience is that with a  
11:58:54 16 non-recommendation, that there was not an explanation.

11:59:01 17 Q. (BY MR. TOWNSEND) Was there ever an instance  
11:59:03 18 where -- Strike that.

11:59:09 19 Are you aware of any instances where a  
11:59:17 20 tenure candidate from the EHL Department was recommended  
11:59:24 21 for tenure by the department chair, and the dean  
11:59:31 22 disagreed with that recommendation?

11:59:33 23 MS. COFFEY: Object to form.

11:59:35 24 A. Recommended by the department?

11:59:38 25 Q. (BY MR. TOWNSEND) Right. Are you aware of any

11:59:39 1 instances where a professor in the EHL Department was  
11:59:46 2 recommended for tenure by the department chair and then  
11:59:50 3 the dean disagreed with that recommendation?

12:00:03 4 MS. COFFEY: Objection, form.

12:00:03 5 A. Yes.

12:00:03 6 Q. (BY MR. TOWNSEND) Who was that?

12:00:04 7 A. I believe Dr. Tudor.

12:00:07 8 Q. Anyone else?

12:00:11 9 A. Where the chair recommended and the dean  
12:00:14 10 denied?

12:00:16 11 Q. Correct.

12:00:19 12 A. No.

12:00:26 13 Q. Do you have any knowledge of situations in  
12:00:31 14 other departments at Southeastern where a department  
12:00:35 15 chair recommended that a candidate receive tenure and  
12:00:41 16 the dean overseeing that department disagreed with that  
12:00:44 17 recommendation?

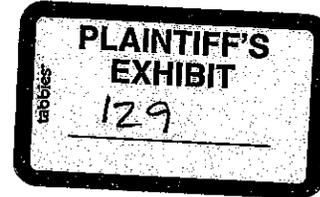
12:00:45 18 MS. COFFEY: Object to form.

12:00:46 19 A. I don't recall anything.

12:00:50 20 Q. (BY MR. TOWNSEND) So the only experience you  
12:00:53 21 have with a dean disagreeing with a department chair's  
12:01:07 22 recommendation that a candidate receive tenure is in  
12:01:10 23 Dr. Tudor's case, right?

12:01:12 24 MS. COFFEY: Object to form.

12:01:14 25 A. Yes.



Office of Academic Affairs  
Southeastern Oklahoma State University  
1405 N. Fourth Ave., PMB 4137  
Durant, OK 74701-0609

MEMORANDUM

TO: Charla Hall, Chair of the Faculty Appellate Committee  
Bryon Clark, Administrative Liaison to the FAC

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

RE: Response to Grievance submitted by Dr. Rachel Tudor

DATE: October 19, 2010

---

This memo is in response to Dr. Rachel Tudor's grievance dated October 11, 2010 regarding my decision not to allow her second application for tenure and promotion to be submitted during academic year 2010-2011. I am named as the respondent in this grievance. The facts are relatively straight forward in this case. I have enumerated them for you below and am happy to meet with the Faculty Appeals Committee to discuss the case further.

1. Dr. Tudor applied for tenure and promotion in academic year 2009-2010 and submitted, in my opinion, the poorest portfolio I have ever reviewed in the 20 years I have been at Southeastern. The portfolio among other things was completely devoid of faculty letters of support; it included unverifiable or substandard scholarship, and reflected limited service to the university, which did not begin in a substantial way until 2009.

2. During the spring, 2010 semester, an offer was extended to Dr. Tudor, which would have given her two years to strengthen her portfolio by developing additional evidence of appropriate scholarly activity and service (beyond routine departmental assignments). She would then be allowed to reapply for tenure and promotion during the 2011-2012 academic year. Dr. Tudor declined this offer and was subsequently denied tenure and promotion on April 21, 2010. Given the status of Dr. Tudor's portfolio, which was submitted during the 2009-2010 academic year, there is very little chance that Dr. Tudor could accomplish multiple years of service and enough examples of acceptable scholarly activity to achieve tenure and promotion during the five months since she was informed of the President's decision.

3. The Academic Policy and Procedures Manual does not specifically address the question of second tenure and promotion applications. Where policy is silent it is the responsibility of the administration to determine what is in the best interest of the university. Allowing Dr. Tudor to reapply for tenure and promotion so soon after her most recent denial sets a precedent which is not in the best interests of the

university. In order to correct major deficiencies in a portfolio a faculty member must have enough time to address these deficiencies. At very minimum Dr. Tudor would have needed at least two more years of service, which are deemed "noteworthy and exceptional" to correct the service deficiencies in her portfolio. A review of the letters supplied by Dr. Tudor in support of her grievance do not suggest substantial improvements in her scholarly activity or service in the five months since she was notified by the President of his decision to deny her application for tenure and promotion. In fact, many of the activities cited in the letters were present in her 2009-2010 portfolio.

4. Dr. Tudor's account of the offer made to her is confused and full of misperceptions. I have visited with Dean Scoufos and she has clearly indicated that the offer made to Dr. Tudor applied to both tenure and promotion. In addition, I had the approval from President Minks before I authorized Dr. Scoufos to make the offer. The RUSO Board typically approves these types of presidential recommendations. Dr. Minks was prepared to seek RUSO Board approval upon acceptance of the offer by Dr. Tudor. We would have gladly made the offer in writing to Dr. Tudor, but she declined the verbal offer and thus terminated the discussion on the issue.

5. Dr. Tudor has alleged that I have retaliated against her for filing a grievance or complaint. I did not make the decision to stop Dr. Tudor's submission of her portfolio in retaliation. I believe that it is unprofessional and wrong to make an employment decision on any basis other than the work related performance of the employee. In the tenure and promotion process, we judge faculty performance on the basis of the portfolio that is submitted. Dr. Tudor's portfolio was extremely poor quality. That is the basis upon which I made the decision that I made and categorically deny that the decision was retaliatory on any basis.

The retaliation allegation is particularly difficult to comprehend given that I was the administrator who recommended she be given the additional two years to improve her portfolio. The decision I made reflected a reality that Dr. Tudor has failed to grasp. She submitted a very poor portfolio which required substantial improvements to reach the University and Board standards for promotion and tenure. She declined the offer which would have given her the opportunity to address the issues with her portfolio. Allowing the resubmission her portfolio five months after the last one was judged to be of such poor quality would be a mockery of our tenure and promotion system and if allowed creates a dangerous precedent.

Thank you for giving me the opportunity to respond to the allegations made against me and please feel free to contact me should you have further questions.

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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

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REPORTED BY: ROSIE STANDRIDGE, CSR

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A P P E A R A N C E S

For the Plaintiff:

Mr. Allan K. Townsend  
Ms. Valerie L. Meyer  
U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION  
950 Pennsylvania Avenue, NW  
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202.305.3302

For the Plaintiff Intervenor:

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P.O. Box 642  
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949.291.3185

For the Defendants and the witness:

Mr. Jeb E. Joseph  
OKLAHOMA ATTORNEY GENERAL'S OFFICE  
LITIGATION DIVISION  
313 Northeast 21st Street  
Oklahoma City, Oklahoma 73105  
405.521.3921

Also present:

Ms. Rachel Tudor

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T A B L E O F C O N T E N T S

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E X H I B I T I N D E X

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(Exhibits 1 - 157 marked in previous depositions)

**Douglas McMillan**

19

08:42 1 Q. Where else have you lived other than the  
08:42 2 places you've identified?

08:42 3 A. Lived in Fort Stockton, Texas.

08:42 4 Q. When was that?

08:42 5 A. That was from fall of 1983 to fall of 1985.

08:42 6 Q. And where else have you lived?

08:42 7 A. Lived in Wichita, Kansas, from summer of '87  
08:42 8 through summer of '88.

08:42 9 Q. And where else have you lived?

08:42 10 A. Sherman, Texas.

08:43 11 Q. When did you live there?

08:43 12 A. I moved there August of 1988.

08:43 13 Q. How long did you live there?

08:43 14 A. Up until about ten years ago, I lived in  
08:43 15 Sherman. So '06, '07, somewhere in there.

08:43 16 Q. Did you move to Denison from there?

08:43 17 A. Yes.

08:43 18 Q. And you've lived in Denison since then?

08:43 19 A. Yes.

08:43 20 Q. What was your undergraduate degree in?

08:43 21 A. It was -- it's a bachelor of science in  
08:43 22 education. And I had two teaching fields. It wasn't  
08:43 23 a major, per se -- a major or minor, but two -- two  
08:43 24 different teaching fields. They're sort of like a  
08:43 25 major. One was in psychology, and the other was in

**Douglas McMillan**

20

08:43 1 English.

08:44 2 Q. So you didn't have a major in undergrad?

08:44 3 A. It's --

08:44 4 MR. JOSEPH: Object to the form.

08:44 5 A. That degree is -- you have a first and  
08:44 6 second teaching field. They don't identify them as  
08:44 7 majors or majors or minors.

08:44 8 Q. (By Mr. Townsend) What was the first  
08:44 9 teaching field?

08:44 10 A. Psychology.

08:44 11 Q. And the second teaching field, that was  
08:44 12 English?

08:44 13 A. English.

08:44 14 Q. What are your graduate degrees in?

08:44 15 A. Counseling psychology -- a master of science  
08:44 16 in counseling psychology and a Ph.D. in counseling  
08:44 17 psychology.

08:44 18 Q. You have a master's in anything other than  
08:44 19 counseling psychology?

08:44 20 A. No.

08:44 21 Q. You have a Ph.D. in anything other than  
08:44 22 counseling psychology?

08:45 23 A. No.

08:45 24 Q. I'm going to shift gears a little bit. Are  
08:45 25 you familiar with term "transgender"?

**Douglas McMillan**

80

10:25 1 A. Yes.

10:25 2 Q. All right. What you just said about each  
10:25 3 discipline had different criteria, what were those for  
10:25 4 the EHL department?

10:25 5 A. I -- I wasn't singling in on the EHL  
10:25 6 department. I was talking about groups of disciplines  
10:25 7 have recognized or expected performance indicators, I  
10:25 8 guess, for want of a better term.

10:25 9 For example, most of the liberal arts,  
10:26 10 behavioral science, education have a kind of a similar  
10:26 11 expectation to show scholarship, for example, and they  
10:26 12 share that. And then it's actually pretty similar  
10:26 13 across discipline, but it's a little different from,  
10:26 14 say, a more applied discipline.

10:26 15 Q. When you were exercising professional  
10:26 16 judgment to determine whether a faculty member had  
10:26 17 noteworthy achievement in either teaching,  
10:26 18 scholarship, or service, did you have to use your own  
10:26 19 personal beliefs about what noteworthy achievement was  
10:26 20 to make that determination?

10:26 21 MR. JOSEPH: Object to the form.

10:26 22 A. No.

10:27 23 Q. (By Mr. Townsend) How did you determine  
10:27 24 whether a faculty member had noteworthy achievement in  
10:27 25 the area of scholarship from the EHL department?

**Douglas McMillan**

81

10:27 1 A. Okay. It, again, falls within a group of  
10:27 2 disciplines that share a similar standard or a similar  
10:27 3 expectation. The -- it's based on whether the  
10:27 4 scholarship was -- had an element of external review  
10:27 5 in, for example, journals and presentations, whether  
10:27 6 it's been refereed or not. And grants, whether it's  
10:27 7 been -- whether it's been reviewed by a panel or a  
10:27 8 board.

10:27 9 The -- also the -- the level of the  
10:27 10 presentation or publication, whether it's local, say.  
10:28 11 For example, a presentation at a public school would  
10:28 12 be a very low level of scholarly presentation versus a  
10:28 13 national or international.

10:28 14 So as it moves up that -- that scale in  
10:28 15 terms of regional, national, international, it's  
10:28 16 considered to be a higher -- an indicator of  
10:28 17 excellence, indicator of noteworthy.

10:28 18 Q. You used the term "refereed." What does  
10:28 19 that mean?

10:28 20 A. It means someone -- if it's a -- someone  
10:28 21 that's with the organization that's either publishing  
10:28 22 the article or in charge of the presentation has  
10:28 23 basically judged the article to be of sufficient  
10:28 24 quality to merit acceptance of the paper as either an  
10:29 25 article or as a presentation.

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.

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7 -and-

8 MS. SHAYNA BLOOM  
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24 313 NE 21st Street  
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25 405.521.3921

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-and-

MR. JEB JOSEPH

STATE OF OKLAHOMA, OFFICE OF THE ATTORNEY GENERAL

313 NE 21st Street

Oklahoma City, Oklahoma 73105

405.521.3921

jeb.joseph@oag.ok.gov

ALSO PRESENT:

Ms. Rachel Tudor

Mr. Charles K. Babb

1 A. Early 2000s.

2 Q. And what was the -- I'm -- let me strike that.

3 So you're saying in the early 2000s, it became a  
4 requirement that you have a peer-reviewed article to get  
5 tenured?

6 MR. JOSEPH: Object to the form.

7 A. In the department.

8 Q. (By Mr. Townsend) What do you mean by in the  
9 department?

10 A. The department had in writing criteria for  
11 tenure and promotion.

12 Q. And how long did it remain the case that those  
13 criteria required a professor to have a peer-reviewed  
14 article to get tenure?

15 A. Sometime shortly after Dr. Minks became  
16 president, which would have been -- when did he become  
17 president? It's hard to say because he was  
18 vice-president and then he was interim president and  
19 then he became president sometime -- sometime around  
20 2008 or '9.

21 Q. So when Ms. -- when Dr. Minks became president  
22 of Southeastern, is that when things changed and  
23 professors in the English, humanities and languages  
24 department no longer needed a peer-reviewed article to  
25 get tenure?

1           A. No. I think -- I don't -- no. That's -- I  
2 guess rephrase that question, please.

3           Q. Sure. I'm trying to figure out when it stopped  
4 being the case that a professor needed a peer-reviewed  
5 article to get tenure. Do you remember when that was?

6           A. It never stopped being the case. We just --  
7 the administration didn't consider the criteria we had  
8 in writing.

9           Q. Who's the we in that sentence that you just  
10 said?

11          A. The department.

12          Q. The Department of English, Humanities &  
13 Languages?

14          A. Yeah.

15          Q. So once the Department of English, Humanities &  
16 Languages stopped using those written criteria you just  
17 referred to, it was no longer a firm rule that a  
18 professor had to have a peer-reviewed article to get  
19 tenure, is that fair to say?

20                   MR. JOSEPH: Object to the form.

21          A. No.

22                   MR. JOSEPH: Allan, while you're pausing, I  
23 don't mean to interrupt, but we've been going about  
24 100 minutes. To the extent anybody needs to take a  
25 break, I just wanted to point that out if it was a good

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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 LUCRETIA SCOUFOS

TAKEN ON BEHALF OF THE PLAINTIFF

IN OKLAHOMA CITY, OKLAHOMA

ON AUGUST 9, 2016

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REPORTED BY: ROSIE STANDRIDGE, CSR

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A P P E A R A N C E S

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Oklahoma City, Oklahoma 73105  
405.521.3921

Also present:

Ms. Rachel Tudor

**Lucretia Scoufos**

16

08:52 1 immediately. I went to OU.

08:52 2 Q. When you graduated from undergraduate, what  
08:52 3 was your degree in?

08:52 4 A. Education with an emphasis in English.

08:52 5 Q. And then what degree did you obtain from  
08:52 6 Oklahoma University?

08:52 7 A. I have a master's degree in human relations  
08:52 8 and a Ph.D. in communication.

08:53 9 Q. Did you get your Ph.D. from Oklahoma  
08:53 10 University as well?

08:53 11 A. Yes.

08:53 12 Q. When did you get your Ph.D.?

08:53 13 A. In 1997.

08:53 14 Q. You've met Dr. Tudor before, correct?

08:53 15 A. Yes.

08:53 16 Q. All right. Is it your understanding that  
08:53 17 Dr. Tudor is a transgender person?

08:53 18 A. Yes.

08:53 19 Q. Do you believe that Dr. Tudor is male?

08:53 20 A. No.

08:53 21 Q. Do you believe she's female?

08:53 22 A. Yes.

08:53 23 Q. What's your understanding of what the term  
08:54 24 "transgender" means?

08:54 25 A. That a person is born to one gender and at

**Lucretia Scoufos**

72

10:44 1 excellence is subjective?

10:44 2 MS. COFFEY: Object to form.

10:44 3 Q. (By Mr. Townsend) Let me ask it a different  
10:44 4 way because of the form objection.

10:44 5 Would you agree that one person's impression  
10:44 6 of something that's excellent could differ from  
10:44 7 another person's based on their own subjective  
10:44 8 judgment?

10:44 9 MS. COFFEY: Object to form.

10:44 10 A. In some situations. Not this one. When it  
10:44 11 comes to things of this nature, we have guidelines.

10:44 12 Q. (By Mr. Townsend) When you say "this one,"  
10:44 13 what are you talking about?

10:44 14 A. Well, if I say somebody's taste in clothes  
10:45 15 is excellent, you may say I think that -- that they  
10:45 16 aren't. That's subjective.

10:45 17 Q. Right. Speaking -- let's take a faculty  
10:45 18 member's scholarship. In determining whether a  
10:45 19 faculty member's scholarship is excellent, would you  
10:45 20 agree that that requires some subjective judgment?

10:45 21 A. No.

10:45 22 Q. Are there objective criteria that were  
10:45 23 applied at Southeastern to determine whether a faculty  
10:45 24 member's scholarship was excellent?

10:45 25 A. There were criteria.

**Lucretia Scoufos**

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10:46 1 Q. And were those criteria objective?

10:46 2 A. The criteria are objective, but they vary  
10:46 3 from department to department.

10:46 4 Q. Where were those objective criteria stated?

10:46 5 A. Some departments had their individual  
10:46 6 criteria, but -- for example, universities have  
10:46 7 different criteria. Hence, Harvard's criteria is  
10:46 8 certainly different from OU's. And OU's is certainly  
10:46 9 different from Southeastern's. But, for example, a  
10:46 10 refereed journal or a jury journal is universal. So  
10:46 11 that's objective.

10:47 12 Q. The term you just used, "referee," what does  
10:47 13 that mean?

10:47 14 A. That means that you have -- and refereed is  
10:47 15 usually used in the arts. That means that you have a  
10:47 16 panel to determine if a piece of work is -- is of the  
10:47 17 quality to go in that journal because there are some  
10:47 18 journals who would only accept perhaps 10 percent, 20  
10:47 19 percent of all the applications that they get to be  
10:47 20 published. That's an objective criteria. And some  
10:47 21 journals, anybody can be put in a journal. And those  
10:47 22 do not reach the standard.

10:47 23 Q. They don't reach the standard of refereed?

10:47 24 A. They don't reach the standard if anybody can  
10:47 25 get -- be published in them. They don't reach the

**Lucretia Scoufos**

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12:05 1 Q. Okay.

12:05 2 A. This has to be based upon Dr. Tudor's  
12:05 3 performance during that time.

12:05 4 Q. All right. So you -- you were just  
12:05 5 clarifying that when you were assessing Dr. Tudor's  
12:05 6 qualifications, you were not considering anything that  
12:05 7 Dr. Tudor had done before coming to Southeastern; is  
12:06 8 that right?

12:06 9 A. That's right.

12:06 10 Q. And then you also --

12:06 11 A. And that -- that is policy.

12:06 12 Q. And then you also said that the letter from  
12:06 13 Kim McGeehee was not in Dr. Tudor's portfolio,  
12:06 14 correct?

12:06 15 A. Correct.

12:06 16 Q. And that's the letter that's in Plaintiff's  
12:06 17 Exhibit 3 on page PI 1329?

12:06 18 A. Yes.

12:06 19 Q. And then you said something about a letter  
12:07 20 of recommendation from a secretary, correct?

12:07 21 A. Teresa Anderson is a departmental secretary.  
12:07 22 She may have since then become an office assistant;  
12:07 23 but at that time, she wasn't.

12:07 24 Q. And was one of the reasons that you  
12:07 25 recommended that Dr. Tudor not receive tenure the fact

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

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Also Present:

Charles Babb  
Rachel Tudor

**Lawrence Minks, PhD**

13

1 the EEOC investigator?

2 A Could you rephrase the question, please?

3 Q When you were interviewed by the EEOC  
4 investigator, did you tell the truth?

5 A Yes.

6 Q How long have you lived in Oklahoma?

7 A Since 1976.

8 Q And where did you live before moving to  
9 Oklahoma in 1976?

10 A Just prior?

11 Q Yes.

12 A Elkhart, Indiana.

13 Q And why did you move from Indiana to Oklahoma?

14 A To take a teaching position at Southeastern.

15 Q Where did you go to college for your  
16 undergraduate work?

17 A Eastern New Mexico University.

18 Q Did you graduate from Eastern New Mexico  
19 University?

20 A Yes.

21 Q What was your degree?

22 A Bachelor of business administration.

23 Q Was your major, in undergraduate school,  
24 business?

25 A Yes.

**Lawrence Minks, PhD**

14

1 Q Did you go to graduate school?

2 A Yes.

3 Q Where did you go to graduate school?

4 A Eastern New Mexico University.

5 Q And I think I forgot to ask. What year did you  
6 get your bachelor's in business administration?

7 A 1969.

8 Q What was your course of study in graduate  
9 school at Eastern New Mexico University?

10 A Master of business administration.

11 Q Did you get your master's degree?

12 A Yes.

13 Q What year?

14 A 1970.

15 Q And that was a master's in business  
16 administration?

17 A Yes.

18 Q Do you have -- strike that.

19 Did you undergo any other graduate study?

20 A Yes.

21 Q Where?

22 A The University of Northern Colorado.

23 Q Did you get a degree from the University of  
24 Northern Colorado?

25 A Yes.

**Lawrence Minks, PhD**

15

1 Q What was that degree?

2 A Doctor of education and business teaching.

3 Q What year did you get the doctor of education  
4 and business teaching?

5 A 1980.

6 Q Do you know what the term transgender means?

7 A Yes.

8 Q What do you think it means?

9 A I don't recall.

10 Q What does the word transgender mean?

11 MS. COFFEY: Objection. Just answered.

12 Q (BY MR. TOWNSEND) I asked you if you knew what  
13 the word transgender meant and you said yes, so now I'm  
14 asking what does it mean.

15 MS. COFFEY: And he said he doesn't recall.

16 Q (BY MR. TOWNSEND) Would you agree that a  
17 transgender person is somebody who was assigned one  
18 gender at birth and then subsequently began to live as a  
19 different gender?

20 MS. COFFEY: Object to form.

21 You can answer.

22 A Yes.

23 Q (BY MR. TOWNSEND) All right. Based on that  
24 definition of transgender, do you know any transgender  
25 people?



<http://www.dodsonreporting.net>

June 30, 2016

Allan Townsend  
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Civil Rights Division-DC  
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Washington, DC 20530

RE: United States of America vs. Southeastern Oklahoma State University  
Transcript of Lawrence Minks, PhD, 05/19/16

Dear Mr. Townsend:

Enclosed you will find a copy of the jurat page for the transcript of **Lawrence Minks, PhD**. Please attach to your copy of the transcript. **THE CORRECTION SHEET WAS NOT RETURNED TO OUR OFFICE.**

Also enclosed please find the sealed original transcript which includes the original jurat page. If we can be of further assistance, please advise.

Sincerely,

Christine Woods  
Production Manager

Enclosures

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405.235.1828 ~ 405.235.1266 (Fax) ~ 877.681.2119

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**Defs' App'x Vol.5 - 1325**



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

June 27, 2016

Christine Woods  
OFFICE MANAGER  
DODSON COURT REPORTER & LEGAL VIDEO  
425 NW 7<sup>th</sup> St.  
Oklahoma City, OK 73102

Re: *United States of America v. Southeastern Oklahoma State University and the  
Regional University System of Oklahoma*  
Case No: 15-CV-324-C (Okla. Western District)

---

Dear Ms. Woods:

Enclosed please find the *Jurat Page* for Lawrence Minks, Ph.D. with regard to his deposition taken on May 19, 2016 in the above matter. Please note Dr. Minks had no corrections to his transcript. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Lori Cornell

Lori Cornell  
Paralegal to Dixie Coffey and Jeb Joseph  
Assistant Attorneys General

/lcc  
Enclosure

RECEIVED BY  
JUN 30 2016  
DODSON COURT REPORTING

J U R A T

STATE OF Oklahoma )  
COUNTY OF Carter )

SS:

**ORIGINAL**

I, LAWRENCE MINKS, PhD, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcription of my testimony so given at said time and place, except for the corrections noted.

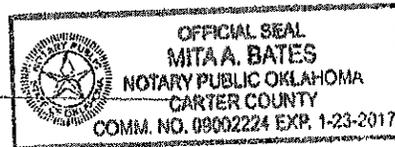
Lawrence C. Minks  
LAWRENCE MINKS, PhD

Subscribed and sworn to before me, a Notary Public in and for the State of Oklahoma by said witness, Beth Jones, on this, the 27<sup>th</sup> day of June, 2016

Mita A. Bates  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

My Commission Number: \_\_\_\_\_



DODSON COURT REPORTING & LEGAL VIDEO  
425 NORTHWEST SEVENTH STREET  
OKLAHOMA CITY, OKLAHOMA 73102  
(405) 235-1828

RECEIVED BY  
JUN 30 2016  
DODSON COURT REPORTING

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

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

**Case No. 15-cv-324-C**

SOUTHEASTERN OKLAHOMA STATE  
UNIVERSITY, and

THE REGIONAL UNIVERSITY  
SYSTEM OF OKLAHOMA,

Defendants.

**DEFENDANTS' REPLY TO UNITED STATES'  
RESPONSE TO DEFENDANTS' SECOND MOTION IN LIMINE**

Southeastern Oklahoma State University ("SEOSU") and The Regional System of Oklahoma ("RUSO") (collectively "Defendants") submit their Reply to Plaintiff United States of America's Response [Doc. 147] to Defendants Second Motion in Limine concerning the proposed expert testimony of Dr. Parker ("Parker") [Doc. 98]. In further support of their Motion, Defendants submit the following reply.

**1. The United States of America has failed to show Parker's testimony is relevant.**

As the proponent of the proposed expert testimony, Plaintiff, the United States of America (hereinafter "U.S.A."), has the burden of demonstrating the admissibility of Parker's expert testimony. The U.S.A. has not, and cannot meet its burden. Courts have routinely rejected U.S.A.'s argument that whether a candidate "deserved"

tenure is relevant to the pivotal question of whether the candidate was discriminated against. It is undisputed that Parker's proposed testimony will not help the jury in determining whether one or more members involved in the tenure review process lied about their rationale for denying tenure to Dr. Tudor, or whether the tenure decision was discriminatory. This is the question to be determined, and is a question inappropriate for expert testimony under Fed. R. Evid. 702.

By their very nature, tenure decisions are subjective. The U.S.A. does not dispute the well-reasoned, comprehensive analysis set forth in *Goswami v. DePaul University*, 8 F.Supp. 3d 1019 (N.D. Ill. 2014), cited and discussed in Defendants' Second Motion in Limine, [Doc. 98]. Noting "the uniform line of authority explicitly holding that evaluations of scholarship are inherently subjective" and "the absence of fixed, objective criteria for tenure decisions," the *Goswami* court held the proffered experts' testimony failed to provide evidence that the Universities' decision was objectively wrong, much less discriminatory. Thus, the testimony was inadmissible because it did not meet the standards of Rule 702. *Id.* at 1033-35.

Where the expert testimony sought to be introduced addresses the quality of the plaintiff's abilities and qualifications for tenure, the testimony is irrelevant. "Absent evidence of discrimination or substantial departure from academic norms, a university' assessment of a candidate's scholarly excellence is a matter within the professional judgment of a university." *Figal v. Vanderbilt University*, 2013 WL 5459021 (Tenn. Ct.App.2013), denying the use of expert opinion regarding tenure.

Here, despite the U.S.A.'s attempts to argue otherwise, the U.S.A.'s entire justification for Parker's testimony is to convince a jury that Dr. Tudor deserved tenure. The case law makes it clear that this type of testimony is so fundamentally subjective that it is irrelevant, and therefore inadmissible. Dr. Parker's subjective opinions do not meet the reliability standards of 702.

**2. The U.S.A. fails to show that Parker's testimony is reliable.**

Even if this Court were to recognize an expert in the field of tenure, which the Tenth Circuit has not done, Parker's testimony would still be unreliable. The U.S.A. has not provided any caselaw in its Response so as to support its assertion that Parker's testimony would be reliable. Plaintiff improperly relies on *Siring v. Oregon State Bd. of Higher Educ. ex rel. Eastern Oregon University*, 927 F.Supp. 2d. 1069 (D. Or. 2013) for its contention that Parker's testimony would be reliable. However, that case is readily distinguishable from the case at hand. In *Siring*, the case dealt with termination of a tenure-track professor in the Oregon higher education system. The proposed expert had worked at the University of Oregon for nearly forty years, and possessed "substantial experience in the Oregon University System as a faculty member and member of personnel committees, many professional appointments relating to educational policy and management, and extensive scholarly activities and publications in relevant research areas [which] qualif[ied] [the proposed expert] to opine about tenure-track faculty and evaluation and review policies and procedures in general and the specific evaluation and review of [the plaintiff]." *Id.* at 1074. In addition, all of the universities in Oregon were required to follow the OARS, and their

tenure polices were required to comply with the OARS. The court found that the proposed expert had “significant knowledge and experience in the Oregon University System and in implementing the OARS in the context of tenure reviews, evaluations, appeals, and grievances.” *Id.* at 1075.

Here, Parker has zero experience in the Oklahoma higher education system, the RUSO universities, or even other comparable universities. In contrast to the expert in *Siring*, Parker lacks the personal knowledge and experience needed to make his testimony anything but highly subjective and unreliable. In *Siring*, the expert’s significant personal knowledge and experience in the Oregon University System, including the implementation of its tenure processes, were pivotal to the court’s determination of reliability. Parker has no experience in Oklahoma at all. In addition, Parker lacks the personal experience such as drafting and reviewing tenure policies and advising on tenure policies the expert in *Siring* possessed. The U.S.A. is simply asking this Court to improperly supplant SEOSU’s professional, academic assessment of all the tenure applicants (including Dr. Tudor) with that of Parker’s determination.

Parker’s report is filled with self-serving determinations about whether Tudor should have been granted tenure by subjectively comparing the portfolios of five individuals with the portfolio of Dr. Tudor. The *Siring* Court determined such subjective determinations to be inappropriate, holding an expert may not opine about the unexpressed reasons for the decision makers’ decisions, or the decision makers’ states of mind. *Id.* at 1078.

Here, unlike in *Siring*, Parker is comparing portfolios of professors in a system with which he has zero experience or operational familiarity. Parker has neither been a faculty member or administrator in the Oklahoma higher education system generally, nor in the RUSO or SEOSU systems specifically. The U.S.A. is sponsoring him here to opine without particularized expertise or acceptable reliability that Tudor met SEOSU's standards for tenure, and "should" have been granted tenure based on her comparisons with others. Such speculative testimony is unreliable and would only serve to confuse and unduly prejudice the jury. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 590 (1993).

### CONCLUSION

The proposed testimony of U.S.A.'s expert, Parker, is unreliable, irrelevant, and unfairly prejudicial. Therefore, it fails to meet the rigorous admissibility standards of Fed. R. Evid. 702. Defendants SEOSU and RUSO respectfully request that this Honorable Court completely bar the use, introduction, admission, and reliance upon the reports, testimony, and opinions of U.S.A.'s proffered tenure expert, Dr. Parker, and grant any further relief this Court deems just and proper.

Respectfully submitted,

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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.<sup>1</sup>

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.

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<sup>1</sup> 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.<sup>2</sup>

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

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<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

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<sup>3</sup> 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).

<sup>4</sup> **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.<sup>5</sup>

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.<sup>6</sup> In Fall 2016,

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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).

<sup>5</sup> *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).

<sup>6</sup> *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.<sup>7</sup>

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

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<sup>7</sup> *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,<sup>8</sup> scholarship<sup>9</sup>, *and* service<sup>10</sup>.

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

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

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<sup>8</sup> 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").

<sup>9</sup> 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).

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

<sup>11</sup> **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.<sup>12</sup>

12. As to Tudor's 2010-11 application: She was qualified as to teaching<sup>13</sup>, scholarship (even stronger than in the 2009-10 cycle)<sup>14</sup>, and service<sup>15</sup>.

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.<sup>16</sup>

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<sup>12</sup> **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.")

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

<sup>14</sup> 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").

<sup>15</sup> **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").

<sup>16</sup> 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.<sup>17</sup>

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

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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).

<sup>17</sup> 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**).<sup>18</sup> 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

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<sup>18</sup> 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,<sup>19</sup> which is law of the case.<sup>20</sup>

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<sup>19</sup> 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.

<sup>20</sup> “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)<sup>21</sup> 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

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*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.”).

<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> *See* ECF No. 34 at 5. Peppered throughout this same period, Tudor was also subjected to discrete hostilities

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<sup>22</sup> 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.

<sup>23</sup> 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 hostilities<sup>24</sup> (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.

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<sup>24</sup> “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 Claim<sup>25</sup>)

*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.<sup>26</sup> As to the fourth factor, Tudor need not necessarily show another

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<sup>25</sup> 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.

<sup>26</sup> *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,

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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.<sup>1</sup>

## 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

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<sup>1</sup> 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.

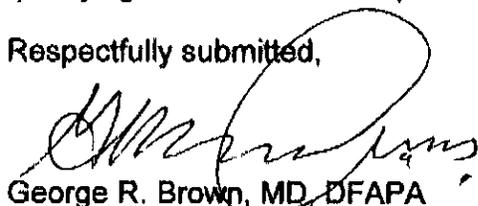
The medical treatment of a person diagnosed with GID/GD is based upon an individualized plan involving one or more of three major components: (1) hormonal

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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Date: 5/27/16

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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 palates 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**

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**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](mailto: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 1964<sup>1</sup> (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972<sup>2</sup> (Title IX), which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973<sup>3</sup> (Section 504); and Title II of the Americans with Disabilities Act of 1990<sup>4</sup> (Title II). Section 504 and Title II prohibit discrimination on the basis of disability.<sup>5</sup> 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.<sup>6</sup> 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

<sup>1</sup> 42 U.S.C. § 2000d *et seq.*

<sup>2</sup> 20 U.S.C. § 1681 *et seq.*

<sup>3</sup> 29 U.S.C. § 794.

<sup>4</sup> 42 U.S.C. § 12131 *et seq.*

<sup>5</sup> 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.

<sup>6</sup> 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.*



## 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.<sup>7</sup> 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.<sup>8</sup>

A school is responsible for addressing harassment incidents about which it knows or reasonably should have known.<sup>9</sup> 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.<sup>10</sup>

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

<sup>7</sup> 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).

<sup>8</sup> 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>.

<sup>9</sup> 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.

<sup>10</sup> 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.

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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.<sup>11</sup>

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

<sup>11</sup> 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.<sup>12</sup> 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

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<sup>12</sup> 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.<sup>13</sup>

- *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,<sup>14</sup> 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.<sup>15</sup>

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

<sup>13</sup> 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>.

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

<sup>15</sup> 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.<sup>16</sup>

#### **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

<sup>16</sup> 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.<sup>17</sup>

#### **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*

<sup>17</sup> 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.<sup>18</sup>

I encourage you to reevaluate the policies and practices your school uses to address bullying<sup>19</sup> 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>

<sup>18</sup> 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/disabharassltr.html>.

<sup>19</sup> 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  
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Mark Spencer	SEOSU Professor	Unknown	SEOSU & RUSO	c/o SEOSU 1405 N 4 <sup>th</sup> 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

### CERTIFICATE OF COMPLIANCE

This document was scanned for viruses using Symantec Endpoint Protection version 14.2. Any required paper copies to be submitted to the court are exact copies of the version submitted electronically. Additionally, all required privacy redactions have been made in accordance with Fed. R. App. P. 25(a)(5) and 10th Cir. 25.5.

*/s/ Zach West*

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### CERTIFICATE OF SERVICE

I certify that on March 4, 2019, I filed the foregoing with this Court and served a copy on all parties via the Court's CM/ECF filing system. A single hard copy of the foregoing, which is an exact copy of the document filed electronically, will be dispatched via commercial carrier to the Clerk of the Court for receipt within 2 business days.

*/s/ Zach West*

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