

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 6**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**RESPONSE:**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Exhibit 4

UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF OKLAHOMA

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

\*\*\*\*\*

ORAL DEPOSITION OF  
DR. RANDY PRUS  
MARCH 9, 2016

\*\*\*\*\*

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

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

6 A. No.

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

13 A. Correct.

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

19 MR. JOSEPH: Object to the form.

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

24 A. Yes.

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

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

3 A. Correct.

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

6 A. Correct.

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

11 MR. JOSEPH: Object to the form.

12 A. No.

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

16 MR. JOSEPH: Object to the form.

17 A. Yes, changing the portfolio.

18 Q. (By Mr. Townsend) Okay.

19 (Exhibit Number 8 marked)

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

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

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

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

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

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

20 A. I don't recall.

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

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



# Exhibit 5

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

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

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

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

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

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

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

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

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

09:25:52 15 A. Yes.

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

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

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

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

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

09:26:29 24 A. No.

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

09:26:34 1 meeting?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

09:28:44 13 A. Yes.

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

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

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

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

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

09:29:17 23 A. Yes.

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

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

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

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

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

09:30:13 11 A. No.

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

09:30:35 14 A. No.

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

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

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

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

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

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

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

14:00:13 1 portfolio as well?

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

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

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

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

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

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

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

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

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

16:14:12 8 A. Yes.

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

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

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

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

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

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

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



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

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

16:16:49 6 A. Okay.

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

16:18:03 10 A. Right.

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

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

16:18:56 15 Q. Sure.

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

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

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

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

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

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

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

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

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

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

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

16:25:40 19 A. Right.

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

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

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

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

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

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

16:27:14 7 A. No.

16:27:15 8 Q. Why not?

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

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

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

16:28:44 19 Q. Did --

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

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

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

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

# Exhibit 6

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

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

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

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

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

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

The meeting adjourned at 12:30pm.

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

September 23, 2010

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

---

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

dm

---

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

Doug:

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

Thanks.

Bryon

---

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

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

Doug

---

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

Doug:

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

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

Please advise.

Thanks.

Bryon

SEOSUEMAIL631

# Exhibit 8



OFFICE OF ACADEMIC AFFAIR

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

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



April 29, 2010

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

Dr. Tudor:

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

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

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

---

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY



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

Respectfully,



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

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



OFFICE OF ACADEMIC AFFAIRS

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 413  
DURANT, OK 74701-0600

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

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

Rachel Tudor

Rachel Tudor

4/29/10

Date

# Exhibit 9




## OFFICE OF ACADEMIC AFFAIRS

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

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

## MEMORANDUM

TO: Dr. Rachel Tudor

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

RE: Denial of Application for Tenure and Promotion

DATE: April 30, 2010

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

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

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

---

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

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

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

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



OFFICE OF ACADEMIC AFFAIRS

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

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE  
**CERTIFIED MAIL™**



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249677 JUN 09 2010  
ED FROM ZIP CODE 74701

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

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PI001202

# Exhibit 10

**Lucretia Scoufos**

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

**Importance:** High  
**Sensitivity:** Confidential



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

Chip

*Charles "Chip" Weiner, Ed.D.*

Assistant Vice President for Academic Affairs  
 Director of Student Learning and Institutional Research  
 Coordinator, HLC/NCA Accreditation  
 Southeastern Oklahoma State University  
 1405 N. 4th Ave., PMB 4145  
 Durant, Oklahoma 74701-0609  
 580.745.2202  
 580.435.1327 x2202  
 580.745.7504 (fax)  
[cweiner@se.edu](mailto:cweiner@se.edu)

*Southeastern Oklahoma State University*

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

Good Morning All:

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

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





## 4.6.3 – Procedure for Granting Promotion and Tenure

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

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

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

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

Chip

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

# Exhibit 11

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

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

DEPOSITION OF CHARLES BABB

VOLUME II

TAKEN ON BEHALF OF THE PLAINTIFF

IN OKLAHOMA CITY, OKLAHOMA

ON AUGUST 24, 2017

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

Charles Babb, Volume II

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1 A. I don't recall.

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

5 MS. COFFEY: Object to form.

6 A. I don't recall.

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

10 MS. COFFEY: Object to form.

11 A. No.

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

14 A. Okay.

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

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

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

20 A. Yes.

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

Charles Babb, Volume II

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1 A. Yes.

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

5 A. Okay.

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

11 MS. COFFEY: Object to form.

12 A. I don't recall.

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

15 A. I do not.

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

22 A. Yes.

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

25 A. Okay.

Charles Babb, Volume II

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

4 MS. COFFEY: Object to form.

5 A. No.

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

9 A. Okay.

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

13 A. Right.

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

20 A. Yes.

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

23 MS. COFFEY: Object to form.

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

Charles Babb, Volume II

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1 MS. COFFEY: Object to form.

2 A. Yes.

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

8 MS. COFFEY: Object to form.

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

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

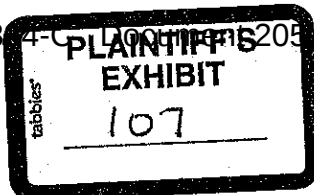
20 MS. COFFEY: Object to form.

21 A. Yes.

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

# Exhibit 12





## OFFICE OF ACADEMIC AFFAIRS

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

## MEMORANDUM

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

TO: Rachel Tudor

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

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

DATE: October 5, 2010

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

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

**FILE COPY**

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

OAG/DLC/USA v. SOSU - CIV-15-324/005188

Defs' App'x Vol.6 - 1483

# Exhibit 13

To be filed under seal.

# Exhibit 14

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

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

-----

ORAL DEPOSITION OF  
DR. JESSE SNOWDEN  
MAY 3, 2016

-----

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

1 A. Yes. 1972.

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

3 Do you recall what year you applied?

4 A. I didn't apply.

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

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

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

12 A. No.

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

15 A. Yes.

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

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

22 A. No, I don't.

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

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

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

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

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

11 MS. MEYER: Yes, I am.

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

15 A. Okay.

16 Q. Have you seen this document before?

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

18 Q. Do you know what this document is?

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

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

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

1 A. Only later.

2 Q. How much later?

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

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

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

12 Q. And which building are you referring to?

13 A. Morrison.

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

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

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

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

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

1 A. Yes.

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

5 A. No.

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

7 A. No.

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

11 A. No, I'm not.

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

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

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

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

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

21 MR. JOSEPH: Object to the form.

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

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



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

3 MR. JOSEPH: Object to the form.

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

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

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

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

21 A. Correct.

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

1           **A.    Correct.**

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

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

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

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

1 portfolio?

2 A. Sure.

3 Q. What are those biases?

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

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

17 MR. JOSEPH: Object to the form.

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

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

1 MR. JOSEPH: Object to the form.

2 A. Could be. Depends on the person.

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

5 MR. JOSEPH: Object to the form.

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

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

21 MR. JOSEPH: Object to the form.

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

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

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

5 A. Yes.

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

9 A. That would be my understanding.

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

12 A. Right.

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

15 MR. JOSEPH: Same objection.

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

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

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

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

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

5 A. The president.

6 Q. And if they suspected the president?

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

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

12 MR. JOSEPH: Object to the form.

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

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

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

17 THE WITNESS: Was that in effect in 2007?

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

19 A. Okay. That's right.

20 Q. To your recollection?

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

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

1 promotion process?

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

5 Q. Can you please describe the appeal process?

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

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

19 MR. JOSEPH: Object to the form.

20 A. No.

21 MR. YOUNG: Off the record.

22 (Discussion off the record.)

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

1 decisions.

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

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

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

11 MR. JOSEPH: Object to the form.

12 A. Yes.

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

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

17 Q. What thing are you referring to?

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

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

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

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



1 year ago?

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

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

7 MR. JOSEPH: Object to the form.

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

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

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

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

22 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

1 MR. JOSEPH: Object to the form.

2 A. Yes.

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

5 MR. JOSEPH: Object to the form.

6 A. Yes.

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

9 MR. JOSEPH: Object to the form.

10 A. Yes.

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

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

17 A. No.

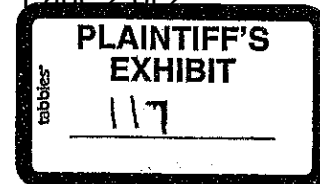
18 Q. Do you think that that would have been an  
19 inappropriate request from Dr. Tudor?

20 A. No. No.

21 Q. Why not?

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

# Exhibit 15



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

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

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

East Central University  
None

Northeastern State University  
None

Northwestern Oklahoma State University  
None

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

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

University of Central Oklahoma  
None

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

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

# Exhibit 16

**Expert Report of Robert Dale Parker, Ph.D.**

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

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

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

**Credentials of the Reviewer**

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

the Provost (who oversees the entire university's faculty) have asked me to serve on special appeals committees to advise them regarding rejected cases for promotion. Colleges and universities across the United States routinely ask me to review the records and publications of faculty under consideration for promotion. I have also been elected to five-year terms on the Executive Committee of the Division on Twentieth-Century American Literature and the Division on American Indian Literatures of the Modern Language Association, and have served as chair of each of those committees. I have served as well on the faculty board of the University of Illinois Press, the scholarly book publisher housed at my university, and on the editorial or advisory boards of 5 different scholarly journals, including such distinguished journals as *American Literary History*, *Modern Fiction Studies*, and *Studies in American Fiction*. Editors working for scholarly book publishers and for scholarly journals routinely ask me to review the work of scholars whose manuscripts they are considering for possible publication. I therefore have a wide acquaintance with the expectations for college and university faculty in departments of English, with the protocols for faculty promotions, and with the evaluation of scholarship in English. (For more information about my experience and background, please see the copy of my curriculum vitae attached to this report as Exhibit 1.<sup>1</sup>)

### **Faculty Ranks, Tenure, and the Criteria for Faculty Promotions**

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

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

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



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

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

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

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

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

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

### **Comparing the Portfolios: An Overview**

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

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

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

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

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

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

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

## Teaching

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

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

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

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

### Cotter-Lynch

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

### Tudor

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

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

### Spencer

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

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

### Parrish

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

### Barker

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

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

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

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

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

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

## **Scholarship**

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

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

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

### 1) Number and length of publications and presentations.

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



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

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

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

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

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

Cotter-Lynch

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

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

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

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

#### Barker

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

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

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

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

### Spencer

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

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

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

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

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

As I will indicate in the next paragraph, Spencer had a third article accepted while he was under consideration for promotion and tenure, an article about George Garrett’s novel *Death of the Fox*. In this article, Spencer draws on wide knowledge and research but has nothing new to say about his topic. Most of the article summarizes the novel’s plot. We teach our students not to summarize plot, because if people want plot, they can just read the novel. The task of the critic is not to describe the novel, but to interpret it. When Spencer is not describing plot, he mostly just describes the novel’s approach to its topic or focuses on recounting what Garrett himself or others have said about the novel, sometimes noting whether he agrees, but not providing any fresh or extended interpretation. Spencer shows a vast knowledge of materials and issues in and around *Death of the Fox* and a vast knowledge of other novels to compare it to. While this article shows more knowledge than Spencer’s other articles, it is nevertheless weaker work.

According to a May 18, 2016 letter from the Department of Justice to the writer of this report, “In the Spring of 2007, Dr. Spencer sent out four articles for publication and supplemented his portfolio with that information.” These 4 article manuscripts “were all ultimately published.” After Spencer submitted the article manuscripts, Southeastern President “Snowden, based on Dr. Spencer’s supplemented portfolio, recommended that Dr. Spencer receive tenure and promotion.” Only one of the 4 articles was accepted before Snowden’s decision, the article on *Death of a Fox*, though Spencer “is not sure whether he informed President Snowden” of that acceptance before Snowden’s decision. One of the articles was published by a journal that Spencer submitted to after Snowden’s decision.

After this precedent was set, providing decisive credit to Spencer’s submission of 4 article manuscripts, Tudor’s 2009 portfolio listed 11 submitted article manuscripts. It looks extremely peculiar that Spencer would be given so much credit for 4 submitted manuscripts, reported late in the process, that the mere report of submitting those manuscripts would reverse a recommendation against promotion and turn it into a recommendation for promotion, and yet Tudor was not given the same credit for nearly 3 times as many submitted manuscripts, reported 4-6 months earlier in the promotion-and-tenure-review process.

One could understand if Tudor were not credited for submitting article manuscripts, so long as the same standard had applied to Spencer. But it appears that Spencer was given a great deal of credit for a category of scholarly production when Tudor was not given the same credit for a great deal more production in the same category. That glaring contradiction stands out even when we consider only Tudor’s 2009 portfolio, without even taking into account her far more extensive 2010 portfolio.

### Parrish

During her time as an assistant professor at Southeastern, Professor Parrish produced nothing that can count for a record of scholarly publication within Southeastern’s definition of “Scholarship/Research” (4.5.2.3). Like many of her colleagues, she published a number of items before she arrived at Southeastern, but after she began working at Southeastern she did not publish work that would count as scholarship. She did write 2 government reports, together totaling 4 pages. They are not peer reviewed, and they are not items I would consider scholarship or publications. They are work done on the side, not as part of her job as a professor. She also reviewed a textbook manuscript and a textbook proposal for commercial publishers. Being asked to do those reviews is not a sign of scholarly distinction. Textbook publishers do not ordinarily ask professors to review such things based on the distinction of the professors. Rather, they look for people who teach courses that might assign the published textbooks, trying to find professors at all different types of schools in different regions of the country. They hope to get useful suggestions for the manuscripts from a variety of different markets, but they also hope that the manuscript reviewers will themselves assign the books if they are published. In that context, Parrish’s completion of those manuscript reviews may indicate good citizenship, but it does not count as scholarship. Parrish lists 10 presentations at conferences or other events before she arrived at Southeastern, but only one since arriving at Southeastern, and that one is a local presentation at Southeastern itself, which usually disqualifies a presentation from counting as

scholarship in a promotion portfolio. A presentation of that kind counts as service, not as scholarship.

Parrish's sole publication from her time at Southeastern that comes even close to being scholarship consists of one three-page, non-peer-reviewed book review that merely summarizes the book. As noted earlier, in line with standard procedures, a book review that simply reports on a book does not count as scholarship. That standard procedure for judging book reviews matches Southeastern's written definition of scholarship, which describes scholarship as "the pursuit of new knowledge," and which provides a list of the different kinds of faculty scholarship, a list that does not include book reviews. It does include "articles in refereed [meaning peer-reviewed] or editor-evaluated publications" (section 4.5.2.3 Research/Scholarship). But book reviews are not articles, are not refereed or peer-reviewed, and are rarely editor-evaluated. Parrish's book review, which simply describes the book she reviews without providing any notable research or thinking of her own, does not advance the pursuit of new knowledge. Because Parrish's record shows no scholarship produced during her time at Southeastern, I see no reasonable cause for rating her record of scholarship above the record of scholarship for Professor Tudor, whose record as a scholar is far stronger both in quantity and in quality.

As noted earlier, I am not suggesting that Parrish did not deserve to receive promotion to associate professor with tenure. I have described her record of scholarship here merely so that I could compare her record to the record of Tudor and the other professors whose portfolios I have reviewed.

### Tudor

In comparing Professor Tudor's record of scholarship to the scholarly records of her colleagues, I will first consider her 2009 portfolio and then her 2010 portfolio. In her 2009 portfolio, Tudor reports one presentation at a regional conference and one at Southeastern. The presentation at Southeastern would count toward service rather than scholarship. She also reports one article accepted for publication by *The Texas Review*, "Romantic Voyeurism and the Idea of the Savage." *The Texas Review* is not well-known outside its region, but it is a peer-reviewed journal. It is also a selective journal, meaning that it accepts a low percentage of submissions. I was not provided a copy of that article for the 2009 portfolio. (I was provided a copy for the 2010 portfolio, which I will address below.) As noted above, she also lists an unusually large number of articles submitted but not yet accepted. I was provided a copy of one of those articles, "Historical and Experiential Postmodernism: Native American and Euro-American," published in a peer-reviewed journal, the *Journal of Contemporary Thought* in 2009 (and added to Tudor's 2009 portfolio in February, 2010, according to emails from Southeastern provided by the Department of Justice). Just as a matter of counting, let us put these two peer-reviewed articles from the 2009 portfolio into comparative perspective. Aside from Tudor, only Barker had a published, peer-reviewed article. Cotter-Lynch had one accepted and published article, not peer-reviewed. Spencer had 2 accepted and not yet published articles (or 3, if we count the supplementary information that, as noted above, Spencer cannot recall whether he provided), each of them peer-reviewed, one of them extremely short, and none of them in highly selective journals. Spencer also had a book review. Parrish, with only a book review that merely

summarizes the book under review, had no publications that count as scholarly publication within Southeastern's definition of "Scholarship/Research" (4.5.2.3).

In that context, it is hard to see any good reason why the worksheets from the Dean of the School of Arts and Sciences, Lucretia Scoufos, and the Interim Executive Vice President for Academic Affairs, Douglas N. McMillan, assign Tudor's scholarship the possibly fatal rating of "needs improvement" (3 on a scale of 1 to 5). Granted, Scoufos dated her worksheet on January 14, 2010, before the news of Tudor's second accepted article in February, 2010. Scoufos writes in her January 12, 2010 letter that "there appears to be only one peer-reviewed paper . . . accepted, but not yet published." (In an English department, it could sound demeaning to refer to an article as a "paper," as if it were only a conference paper, but that is not the case in all fields, and I do not know Scoufos's field.) As noted above, Cotter-Lynch had no peer-reviewed articles. Barker had only one. And Spencer, at the same point in the process, had two accepted but not yet published peer-reviewed articles, short enough so that together they total less production than Tudor's one article, even without taking into account Tudor's report of many submitted articles. Less than a year earlier, on February 12, 2009, Scoufos recommended Parrish for promotion and tenure, even though Parrish had no articles. In those comparative contexts, I find Scoufos's evaluation of Tudor puzzling.

McMillan's evaluation of Tudor stands out as even more puzzling. McMillan signed the transmittal form for Tudor's 2009 portfolio on February 10, 2010. The next day, February 11, an email from Scoufos indicates that McMillan approved the decision to add to Tudor's portfolio the new information that she had a second accepted article. Indeed, McMillan's April 30, 2010 letter purporting to explain the reasons for the decision to deny Tudor's application for promotion and tenure acknowledges that Tudor has "two publications" that "do appear to be examples of work which meet[s] the excellent and noteworthy standard" required for promotion and tenure. As noted above, McMillan's worksheet, which is undated, assigns Tudor's scholarship the same possibly fatal rating assigned by Scoufos. Either McMillan completed the worksheet before learning of Tudor's additional publication, in which case the comparatively low rating on the worksheet should not have been relevant to McMillan's decision reached after learning the new information, or he completed the worksheet later and yet gave Tudor's scholarship the same rating that Scoufos gave it even though by that point Tudor had doubled her production of accepted, peer-reviewed articles. Either way, the rating and the decision are strikingly inconsistent with the decisions reached about the other candidates.

I have also seen one worksheet for Barker (undated and unsigned, so that I cannot tell whose ratings it records). Barker published less than Tudor, but this worksheet gives Barker an "outstanding" for scholarship (5 on a scale of 1 to 5). I have not seen worksheets for the other candidates, and reasonable people could debate the comparison between Tudor's 2009 and Barker's, and possibly Spencer's, records of published scholarship or scholarship accepted for publication. But even though different evaluators could reasonably rank Barker's, Spencer's, and Tudor's 2009 records of scholarship in different sequences, they could not reasonably put them in entirely different categories. And by no reasonable measure can Tudor's scholarship in 2009 rate lower than Parrish's scholarship, let alone so much lower that it lands in an entirely different category. And all that applies only if we simply *count* the publications.



If we take the more responsible path of actually reading Tudor's publications, then her scholarship stands out still more for its serious substance. The article about "Historical and Experiential Postmodernism" does not break major new ground, and it was published in a journal published in India that does not appear to be very selective and is not widely distributed in the United States. But it provides a sophisticated and well-informed synthesis, very valuable for teachers, and a more convincing sign of Tudor's own preparation for teaching than the usual pattern of articles that say something more original but not very meaningful. I appreciate the way that this article provides a genuinely critical yet still sympathetic distance on what other scholars and critics of Native American writing have said before Tudor. It has a substance equaled in these portfolios only in the article by Barker and in Cotter-Lynch's excellent work in progress, which at the time of her portfolio was not yet completed or accepted for publication. It is exactly the kind of scholarship that best serves a faculty member at a teaching-centered university.

While Tudor's 2009 portfolio already places her scholarly record second (roughly tied with Barker) among the 5 candidates' portfolios, her 2010 portfolio shows an even much stronger scholarly profile, stronger than Cotter-Lynch's in terms of actual accomplished publication, and far stronger than Parrish's and Spencer's portfolios, if still not as strong as Cotter-Lynch's, in terms of my own judgment of the actual written work. In addition to the 2 articles mentioned above, the 2010 portfolio includes another 6 articles published or accepted for publication, making a total of 8 articles. (It also includes a ninth article that editors asked her to revise for additional consideration, a standard practice that most accepted article manuscripts go through before they are accepted for publication.) Nothing in the pool of portfolios compares to this burst of publication from Tudor. The articles are relatively rather than completely up-to-date with current scholarship. Nevertheless, she did the work and had the skill and talent to do it well, both according to my own judgment and according to the judgment of objective peer reviewers. The journals (and in one case, edited book of essays) where these articles were slated to appear vary, and none of them is a top-flight journal. It is difficult for a scholar with the limited scholarly resources of a teaching-centered university like Southeastern to publish with a top-flight publisher or journal. The only publisher or journal in the entire set of portfolios that is even in the realm of a distinguished place to publish would be Palgrave-Macmillan, where Cotter-Lynch has a contract for her not yet peer-reviewed co-edited book manuscript. At the same time, 7 of the 8 places where Tudor has published articles or had articles accepted for publication rely on peer review (*ASEBL Journal*, *The Atrium*, *Diesis*, *Journal of Contemporary Thought*, *Research and Criticism*, *Teaching American Literature*, and *The Texas Review*). The remaining article was published in a book called *Diasporic Consciousness*, published by a German publisher, VDM Verlag, which does not use peer review, though the editor of the book would still have done her own review before deciding whether to accept the article. The peer review that Tudor's publications went through provides an objective standard of outside judgment unparalleled across the pool of portfolios under consideration. And it provides that objective standard of outside judgment for a total of 7 different publications. Perhaps someone could get lucky once or maybe even twice and slip an unworthy manuscript through the process of peer review. But that could not happen repeatedly. It could not happen 7 times.

I am extremely familiar with the process of peer review. I regularly peer review scholarly manuscripts for distinguished academic journals and book publishers. My own scholarly writing has gone through peer review numerous times, and I have coached and advised numerous less

experienced colleagues and former graduate students through the process. But I do not ask you merely to rely on my professional judgment. Instead, to illustrate the process of peer review in objective terms that do not rely on my own professional judgment, I have consulted the Modern Language Association Directory of Periodicals, the largest and most authoritative database of information about scholarly journals of literature and language. The Modern Language Association is the premier professional organization for the study of languages and literatures, and I have access to their database through EBSCO (a collection of electronic databases) at our library at the University of Illinois. EBSCO is also available at Southeastern, as I know because Tudor's syllabi indicate that she requires her students to use it through the Southeastern Library. Of Tudor's 8 articles, one appears in a book collection, which would not be listed in a directory of periodicals. The other 7 articles were published or accepted for publication in journals. Five of those journals appear in the directory. Of the remaining 2 articles, one appears in *Research and Criticism*, which is not listed in the directory, but which says on its website (<http://www.pencraftinternational.com/bookclub.htm>) that it conducts blind peer review (meaning that the reviewers do not see the names of the scholars whose work they review, the most objective form of peer review). The other appears in *Diesis*, which says on its website that it conducts blind peer review (<http://www.diesisjournal.org/submissions>). The Modern Language Association Directory of Periodicals also includes the 3 journals where Spencer had work accepted for publication and the one journal where Barker published.

The charts below show the directory's information about peer review for the 5 listed journals where Tudor has published, followed by the journals where Spencer and Barker have published. As neither Cotter-Lynch nor Parrish published in any journals between the time they arrived at Southeastern and the time they submitted their applications for promotion and tenure, the charts below are complete. I have calculated the acceptance rate based on the number of articles published per year divided by the number of article manuscripts submitted per year. Attached to this report, you will find copies of the printouts from the directory, the source of the information in the charts below, as well as copies of the websites listed above for *Research and Criticism* and *Diesis*.

| Journals for Tudor's published articles | Article manuscripts submitted per year | Articles published per year | Acceptance rate | Number of peer readers |
|---|--|-----------------------------|-----------------|------------------------|
| ASEBL Journal                           | 13                                     | 3                           | 23%             | 2                      |
| The Atrium                              | 100                                    | 24                          | 24%             | 4                      |
| Journal of Contemporary Thought         | 30-40                                  | 25                          | 63-83%          | 2                      |
| Teaching American Literature            | 100                                    | 20-25                       | 20-25%          | 2                      |
| The Texas Review                        | 250                                    | 6                           | 2%              | 5                      |

| Journals for Spencer's published articles | Article manuscripts submitted per year | Articles published per year | Acceptance rate | Number of peer readers |
|---|--|-----------------------------|-----------------|------------------------|
| Eureka Studies in Teaching Short Fiction  | 50                                     | 30                          | 60%             | 3 minimum              |
| Explicator                                | 300                                    | 100                         | 33%             | 2-3                    |
| Lamar Journal of the Humanities*          | 50                                     | 10                          | 20%             | 4                      |

\*As described earlier, Spencer had an article accepted in *Lamar Journal of the Humanities* late in the process of his consideration for promotion and tenure, and he does not remember whether he notified administrators of the acceptance. Therefore, it is not clear whether this journal is relevant for the chart above, but it is included, nevertheless, in the interest of considering the full range of possibly relevant data.

| Journal for Barker's published article | Article manuscripts submitted per year | Articles published per year | Acceptance rate  | Number of peer readers |
|--|--|-----------------------------|--|------------------------|
| Children's Literature in Education     | "Varies"                               | 20                          | Not calculable without information about the number of manuscripts submitted per year. | 2                      |

The information in these charts is far more reliable as an objective measure of Tudor's scholarship than the hunch of an administrator at Southeastern, who may not know the field and who may bring non-objective considerations into the decision-making process.

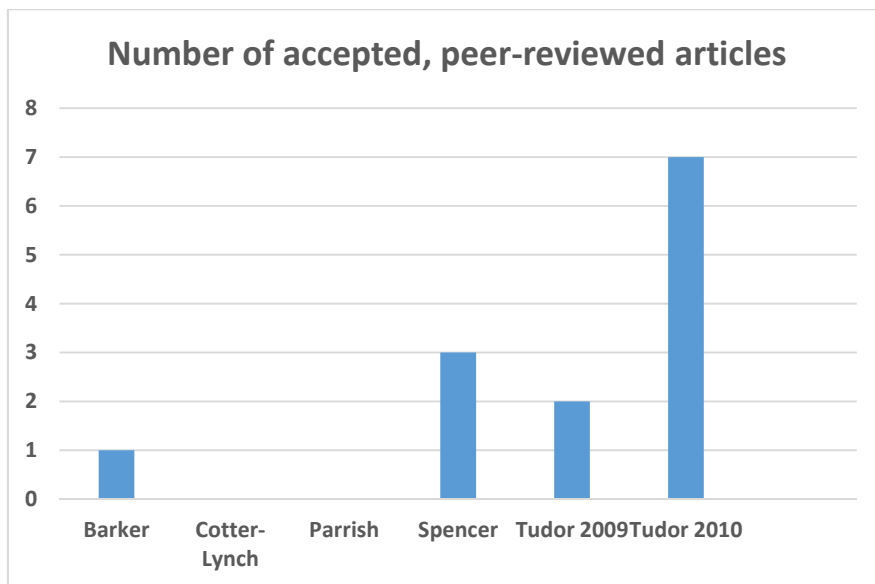
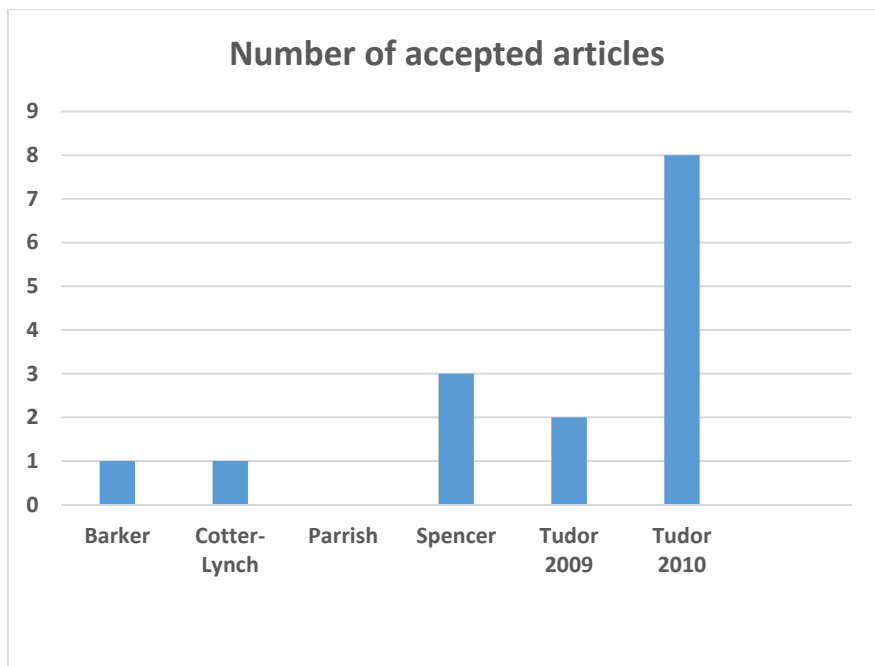
As an experienced scholar in the field, I will also provide brief evaluations of the 5 additional publications included in Tudor's 2010 portfolio and not in her 2009 portfolio, as well as brief evaluations of her other 2 new articles listed in the 2010 portfolio but not provided in that portfolio.)

- "Latin American Magical Realism and the Native American Novel." This article is knowledgeable, intelligent, and wise. It has a narrow focus, zeroing in on a critique of one particular scholarly book that may not need such a careful consideration, but the consideration is very well done.
- "*Pearl*: A Study in Memoir and First Person Narrative Poetry." This is an intelligent and proficient article, well researched through 2000. Some individual comments in the article could use revision to point them better at a scholarly audience, but the work overall shows genuine promise for a young scholar.
- "Romantic Voyeurism and the Modern Idea of the Savage." This article is intelligent, knowledgeable, and wide-ranging, more useful for teachers than we might find in the tight focus of a typical scholarly article. A few individual points could use revision, but again, the wisdom and ability stand out.
- In "The Ethics and Ethos of Eighteenth-Century British Literature" Tudor compares two eighteenth-century novels, *Pamela* and *Evelina*, to a postcolonial twentieth-century novel, *Wide Sargasso Sea*, which itself revises the nineteenth-century novel *Jane Eyre*. Tudor discusses how differences in social power shape these novels, focusing on gender, class, and race, a fairly predictable approach in contemporary criticism. The distinctiveness of the article comes in the comparison across centuries, including the argument that ideas made explicit in the later novel also play a large role in the earlier novels, even though the earlier novels show less awareness of those ideas.

- “A Reading of Jonathan Swift’s ‘A Modest Proposal’ Using Roman Jakobson’s Poetic Function” offers a skillful, intelligent, and sophisticated reading of Swift’s rhetoric and style. The grafting of Jakobson’s famous essay with Swift’s most famous essay comes across like a teaching exercise by a smart and ambitious beginner, though in that sense it helpfully addresses strategies for teaching Swift to undergraduates. I would like to see the impressively detailed reading of Swift’s language complemented by more dialogue with what other critics have said about it, but this is smart and imaginative work.
- “The Memoir as Quest: Sara Suleri’s *Meatless Days*.” A very solid article that can prove useful to people who teach or write about Suleri’s popular memoir. While this article is published in a South Asian journal that few readers in the United States will find, it makes sense to publish there about Suleri’s memoir of growing up in South Asia.
- “*The Ancient Child and House Made of Dawn: A New Interpretation*.” This article about N. Scott Momaday, a Pulitzer-Prize-winning, widely taught Native American novelist, is Tudor’s best work. It provides a strong interpretation deeply engaged with other critical responses. With updating, a more specific title, and perhaps an occasional cut of more personal reflections, this article definitely has the potential to appear in a distinguished journal of literary criticism.

Overall, Tudor’s articles move across a wide range of materials, with a focus on Native American studies and fiction. They also address related topics such as colonial and postcolonial writers, including Suleri and the Irish writer Jonathan Swift, in line with the common tendency of scholars to interpret Native American writing together with other postcolonial writing.

The charts below illustrate the number of accepted articles and the number of accepted, peer-reviewed articles for each candidate. (These charts include Spencer’s third article even though the administrators at Southeastern may not have known of its acceptance when they decided to recommend him for promotion and tenure.)



## Service

Based on the portfolios available for consideration, it is difficult to draw meaningful distinctions among the service records of the 5 different candidates for promotion. The only meaningful differences I can readily identify come from Cotter-Lynch's nomination for an award for excellent service, and her service beyond Southeastern in organizing conference panels and leading a seminar of other scholars. I do not know how difficult it is to receive a nomination for excellent service, but the other candidates have not listed such a nomination or provided leadership in national settings beyond campus. Much of Barker's service seems to follow from

her classroom role as a teacher of future teachers of English, but I do not have enough information to judge how much such work goes routinely with the courses she taught or indicates an extra contribution on her own initiative, except to say that she also volunteered at the community elementary schools. Apart from those considerations, all the candidates seem to have similar records of service. Except for Barker, they all played roles on their department's Assessment, Planning, and Development Committee, which both Spencer and Tudor have chaired. Barker and Tudor also served on the Five-Year program Review committee, while Spencer and Tudor played key roles in organizing Southeastern's biannual Native American Symposium. Tudor's 2010 portfolio also indicates that she began working to organize a Gay Straight Alliance on campus and to provide other support and resources for LGBT students at Southeastern. Tudor and Cotter-Lynch both served on committees that hire new faculty, a crucial and extremely time-consuming task. All the candidates pitched in to help with the Honors program or other more or less routine tasks here and there. Spencer served as faculty advisor for the local chapter of Sigma Tau Delta, the international English Honor Society. Parrish and Tudor each served on the Faculty Senate, elected by their colleagues from across the University.

Given the difficulty of making meaningful distinctions among the service records of the various candidates, it seems perplexing that all the candidates except Tudor were considered by the administrators beyond their department to have served the University with distinction. Probably no one was better qualified to judge Tudor's service than those colleagues who worked with her most closely. Here is what they say.

- Professor Paula Smith Allen's 2010 letter says that "As a colleague, Dr. Tudor endeavors to carry (at least) her share of the workload within the department. I recall that, while still a relative newcomer . . . , Dr. Tudor led an assessment effort by the department with alacrity and foresight over a several-year period. She participates on committees and participates actively in planning and assessment. She works effectively with both faculty and staff members, and her demeanor is always professional regardless of the circumstances."
- Professor Lisa L. Coleman's 2010 letter praises Tudor's contribution to designing new courses, working on the Native American Symposium, serving the community, serving as a Faculty Senator, and working on department committees.
- Parrish's 2010 letter says that "Dr. Tudor has been instrumental in the preparation of assessment documents," praises her work on department committees, and says that "She is a vital member of the department through her service, astute thinking, contributions, and collegiality." She also praises Tudor for service "beyond the department as she currently serves on the Faculty Senate, has served and participated in the Oklahoma Scholar Leadership Enrichment Program . . . , and has been a tireless supporter, worker, and committee member for the Native American Symposium."
- Spencer's letter joins the chorus of praise for Tudor's service. "She is in her second year," he writes, "as a member of the Southeastern Faculty Senate, and before that she served for three years as chair of our Assessment, Planning, and

Development Committee, compiling and writing the annual assessment report. This is by far the most important departmental committee, as it oversees all aspects of curriculum development and assessment, potentially charting the course for years to come.” Spencer calls Tudor “one of the key members of the Native American Symposium Committee,” which he chairs. He praises her for “helping to plan and stage the event every other year. For the 2005 and 2007 symposia,” he adds, Tudor “served as co-editor with me of the published proceedings, reading and commenting on all the papers submitted, and joining in the selection of those to include.”

Surely it means a great deal that these colleagues who have worked so closely with Tudor think so highly of her contributions to service. The evidence in the portfolios indicates that Tudor and her colleagues work together to distribute the service more or less equally among themselves. Indeed, the similarity among the different candidates’ service records throws into doubt the very possibility of seeing Tudor’s service as less than the service of her colleagues. To judge her service as deficient would require a similar conclusion for at least 3 of the 4 other candidates who were deemed qualified for promotion and tenure. Therefore, I see no reasonable grounds for ranking Tudor’s service in such a way that it would contribute to denying her the promotion and tenure that her colleagues were granted for the same level of work for the University that they all served.

Once we put all this information and all these comparisons together across the 5 candidates’ records of teaching, scholarship, and service, the facts speak for themselves. The facts show no reasonable, objective, or fair grounds for denying Professor Tudor the same promotion that was granted to her colleagues.



Robert Dale Parker  
Professor of English  
University of Illinois

June 6, 2016



**List of Documents Considered for This Report**

This report was based on the following documents.

- Article by R. J. Tudor, “Historical and Experiential Postmodernism: Native American and Euro-American.” OAG/DLC/USA v. SOSU – CIV-15-324/004931-50.
- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Rachael J. Tudor, submitted by Lucretia C. Scoufos, 1/14/10. OAG/DLC/USA v. SOSU – CIV-15-324/001137-38.
- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Rachel J. Tudor, submitted by John Brett Mischo, 11/29/09. OAG/DLC/USA v. SOSU – CIV-15-324/001133-34.
- Memorandum on the subject of promotion and tenure recommendation (regarding Virginia A. Parrish), submitted by Lucretia C. Scoufos, 2/12/09. OAG/DLC/USA v. SOSU – CIV-15-324/007384.
- Memorandum of notification of promotion and tenure status (regarding Virginia A. Parrish), submitted by Larry Minks, 2/16/09. OAG/DLC/USA v. SOSU – CIV-15-324/007383.
- Letter approving promotion of Virginia Parrish, from Michael D. Turner, 4/20/09. OAG/DLC/USA v. SOSU – CIV-15-324/007381.
- Letter recommending Margaret W. Cotter-Lynch for promotion and tenure, from Lucretia C. Scoufos, 1/14/10. PI001960.
- Memorandum of notification of promotion status (regarding Margaret Cotter-Lynch), submitted by Douglas N. McMillan, 2/15/10. OAG/DLC/USA v. SOSU – CIV-15-324/007437.
- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Virginia Parrish, submitted by John Brett Mischo, 11/30/08. OAG/DLC/USA v. SOSU – CIV-15-324/007389-90.
- Letter recommending tenure and promotion for Virginia Parrish, from John Brett Mischo, 11/26/08. OAG/DLC/USA v. SOSU – CIV-15-324/007386-87.
- Letter recommending tenure and not promotion for Mark Spencer, from John Brett Mischo, 12/1/06. OAG/DLC/USA v. SOSU – CIV-15-324/007506-07.
- Letter recommending tenure and promotion for Mark Spencer, from C. W. Mangrum, 1/11/07. OAG/DLC/USA v. SOSU – CIV-15-324/007505.

- Letter recommending tenure and not promotion for Mark Spencer, from Douglas McMillan, 2/12/07. OAG/DLC/USA v. SOSU – CIV-15-324/007504.
- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Rachel J. Tudor, submitted by Douglas N. McMillan, not dated. OAG/DLC/USA v. SOSU – CIV-15-324/007703-04.
- Letter not recommending tenure and promotion for Rachel J. Tudor, from Lucretia C. Scoufos, 1/12/10. EEOC000855.
- Faculty Promotion and Tenure Evaluation Summary Confidential Analysis Worksheet, evaluating Janet Barker, not attributed or dated. OAG/DLC/USA v. SOSU – CIV-15-324/007470-71.
- Letter notifying Janet Barker of the decision to approve her promotion to associate professor with tenure, from Larry Minks, May 1, 2011. DOJ000156-57.
- Excerpt from Southeastern Academic Policies and Procedures Manual regarding the “Role of the Faculty” and “Faculty Participation.” EEOC000300-01.
- Letter recommending tenure and not promotion for Mark Spencer, from Douglas McMillan, 2/12/07. A different version of the other letter on the same topic from the same day. OAG/DLC/USA v. SOSU – CIV-15-324/012992.
- Excerpt from Southeastern Academic Policies and Procedures Manual regarding “Rank and Promotion” and “Tenure.” EEOC000327-35.
- Memorandum to Rachel Tudor from Douglas N. McMillan regarding denial of application for tenure and promotion, 4/30/10. EEOC000892-93.
- Promotion and Tenure Portfolio of Virginia A. Parrish. EEOC001676-2238.
- Promotion and Tenure Portfolio of Margaret Cotter-Lynch. EEOC002239-2474.
- Promotion and Tenure Portfolio of Rachel Tudor, 2010. EEOC003086-3271.
- Promotion and Tenure Portfolio of Mark Spencer. EEOC003521-3576.
- Portions of Promotion and Tenure Portfolio of Rachel Tudor, 2009. PI001308-35.
- Promotion and Tenure Portfolio of Janet L. Barker, 2010. DOJ000158-330.
- Letter recommending tenure and promotion for Margaret Cotter-Lynch, from John Brett Mischo, 11/29/09. PI001959.

- Letter recommending tenure and promotion for Margaret Cotter-Lynch, from Douglas McMillan, 1/14/10. OAG/DLC/USA v. SOSU – CIV-15-324/007437.
- Excerpt from Southeastern Academic Policy and Procedures Manual regarding “Faculty Development and Evaluation Policies.” EEOC000317-21.
- Letter approving tenure and promotion of Mark Spencer, from Jesse O. Snowden, 4/18/07. OAG/DLC/USA v. SOSU – CIV-15-324/007503.
- Letter to Robert Dale Parker from the Department of Justice, 5/18/16.
- Copies of emails from Prafulla Kar, Rachel Tudor, John Mischo, and Lucretia Scoufos documenting a new publication by Tudor, February 4 and February 11, 2010, and November 30, 2010. EEOC000063-64.
- Letter to Robert Dale Parker from the Department of Justice, 6/2/16.
- Southeastern’s “Faculty Senate Awards Policy,” Southeastern PDF provided by the Department of Justice.
- Article by Mark B. Spencer, “Dickinson’s Because I Could Not Stop for Death.”
- Article by Mark B. Spencer, “William Faulkner’s ‘A Rose for Emily’ and *Psycho*.”
- Article by Mark B. Spencer, “Recreating the Early Modern in the Postmodern: George Garrett’s *Death of the Fox*.”
- Article by Rachel Tudor, “A Reading of Jonathan Swift’s ‘A Modest Proposal’ Using Roman Jakobson’s Poetic Function.”
- *The Atrium* (journal) Fall 2010.
- Article by Rachel Tudor, “The Ethics and Ethos of Eighteenth-Century British Literature.”
- Article by Margaret Cotter-Lynch, “Teaching Ancient Biography.”
- Article by Jani L. Barker, “Racial Identification and Audience in *Roll of Thunder, Here My Cry* and *The Watsons Go to Birmingham—1963*.”
- Entries from the *Modern Language Association Directory of Periodicals* for the following journals: *ASEBL Journal*, *The Atrium*, *Journal of Contemporary Thought*, *Teaching American Literature*, *The Texas Review*, *Explicator*, and *Eureka Studies in Teaching Short Fiction*, accessed March 2, 2016

- Entry from the *Modern Language Association Directory of Periodicals for Children's Literature in Education*, May 4, 2016
- Entry from the *Modern Language Association Directory of Periodicals for Lamar Journal of the Humanities*, accessed May 18, 2016
- Website of journal *Research and Criticism*, <http://www.pencraftinternational.com/bookclub.htm>, accessed May 10, 2016
- Website of journal *Diesis*, <http://www.diesisjournal.org/submissions>, accessed May 10, 2016
- *The Atrium* (journal) website from 2013, accessed June 4, 2016.
- *Diesis* (journal) website from 2010, accessed June 4, 2016.
- *Teaching American Literature* website (journal) from fall 2009, accessed June 4, 2016.

# Exhibit 17

## DECLARATION OF DANIEL ALTHOFF

1. I am A Full Professor with tenure at Southeastern Oklahoma State University (“Southeastern”).
2. I started working at Southeastern in Fall 1998. Since that time, I have been in Southeastern’s English, Humanities, and Languages Department (“English Department”).
3. To my knowledge, Dr. Tudor is the first transgender professor at Southeastern.
4. To my knowledge, when Tudor transitioned from male to female, she was the only transgender person at Southeastern. Meaning, at the time, there were no other openly transgender faculty, staff, or students at Southeastern.
5. **Dr. Tudor’s gender transition.**
  - a. I recall that just before the start of the Fall 2007 term, Dr. Tudor hand delivered letters to me and other members of the English Department. A true copy of the letter I received is attached hereto as **Exhibit A** (bates marked PI002042 to PI002043) on the lower right hand corner).
  - b. When I was done reading the letter, I told Tudor that she was brave to transition to female while at Southeastern.

- c. After Tudor gave me her letter, I consistently used feminine pronouns to refer to Tudor and used only her female first name, Rachel, thereafter. I recall that all of my colleagues in the English Department did the same.
- d. To my knowledge, Tudor's gender transition was a non-issue with our English Department colleagues. I think some of my colleagues were surprised by Tudor's transition initially, but none of them ever said anything negative about Tudor's gender transition or her gender in my presence. Given the size of the Department, if there had been concerns raised I likely would have learned of them at some point.
- e. To my knowledge, Tudor's gender transition was a non-issue with students taking classes in the English Department. Southeastern has a relatively small student body. I do not recall ever hearing a student complain or say anything negative about Tudor's gender transition or her gender. Given the small size of Southeastern's student body, if there had been concerns raised by students I likely would have learned of them at some point.
- f. I do not have any knowledge of how Southeastern's administration immediately reacted to Tudor's gender transition or her gender. Between the time Tudor gave me her letter and her separation

from Southeastern at the end Spring 2011, the faculty and administration had very little direct interaction.

**6. Southeastern's promotion and tenure process during Tudor's employ.**

This is what I recall about the tenure and promotion processes in place while Dr. Tudor worked at Southeastern:

- a. Tenure track faculty could apply for promotion and tenure at any time, but applications were typically made sometime during their fifth, sixth, or seventh year at Southeastern.
- b. The common understanding was that if someone's application for tenure and/or promotion failed, they could reapply. I found this surprising.
- c. I recall that professors other than Tudor were permitted to withdraw their applications at any point during the tenure and promotion process without being penalized. Once withdrawn, these professors were permitted to reapply during the next application cycle.
- d. I recall that professors other than Tudor were permitted to reapply for tenure and/or promotion after their applications were rejected.

**7. Tudor's attempt to reapply in the 2010-11 cycle.**

- a. I recall that Tudor attempted to reapply for tenure and promotion in the 2010-11 cycle.



- b. Sometime in the middle of the 2010-11 term, I learned that Dr. Douglas McMillan refused to allow Tudor the opportunity to reapply in the 2010-11 cycle.
- c. Sometime thereafter, I learned that the Faculty Senate, which is the representative voice of the Southeastern faculty, voted to demand that the Southeastern administration let Tudor reapply in the 2010-11 cycle.
- d. Sometime thereafter, I learned more about the circumstances surrounding the Southeastern administration's refusal to allow Tudor to reapply for promotion and tenure in the 2010-11 cycle. I believed there to be many suspicious procedures cited in the administration's refusal memorandum and that it was otherwise totally unfair to deprive Tudor of the opportunity to reapply in the 2010-11 cycle. I had not at the time (and to this day have not) seen anything like the Southeastern administration's refusal to allow Tudor to reapply for promotion and tenure in the 2010-11 cycle.
- e. During the 2010-11 term, I believed that Tudor should be allowed to reapply for promotion and tenure and that, if her application merited promotion and tenure, she should be granted promotion and tenure.

- f. To my knowledge, the Southeastern faculty was unified in its desire that Dr. Tudor be allowed to reapply for promotion and tenure in the 2010-11 cycle.
- g. To my knowledge, the Southeastern campus was not in any way torn apart by Tudor's grievances against the Southeastern administrators or her appeals related to the tenure and promotion process in 2009-10 and 2010-11. To my recollection, the faculty was united behind Dr. Tudor.
- h. To my knowledge, if the Southeastern administration had allowed Tudor to reapply in the 2010-11 cycle, Southeastern's faculty, including myself, would have supported Tudor being allowed the opportunity to reapply for promotion and tenure. However, grant of reapplication itself would not have guaranteed Tudor would have been awarded promotion and tenure—it only would have given Tudor the opportunity to reapply.

**8. Southeastern's nondiscrimination and harassment policies during Tudor's employ at Southeastern.**

- a. Southeastern had nondiscrimination and harassment policies during this period, but I do not recall receiving training on these at any time and did not have a deep understanding of how these policies even worked. I generally knew that one could complain

about racial discrimination during this period. I do not recall specifically that one could complain about gender discrimination of any kind during this period.

- b. I recall that during this period, Southeastern's nondiscrimination and harassment policies were memorialized in writing. I recall that though some types of discrimination and harassment were expressly listed—such as race discrimination—other types were not listed. Specifically, I recall that during this period neither sexual orientation nor gender identity (or any other phrase that might capture transgender persons specifically or LGBT persons more broadly) were listed as protected categories in Southeastern's policies.
- c. I recall that during this period, I thought that the absence of specific language pointing to sexual orientation and/or gender identity (or any other phrase that might capture transgender persons specifically or LGBT persons more broadly) in Southeastern's policies meant that discrimination or harassment faced by gay or transgender persons was not redressable under Southeastern's policies and, more broadly, under Oklahoma state law.

d. I recall that close in time to Tudor's termination from Southeastern, the Faculty Senate passed a resolution requesting that the administration revise Southeastern's policies to expressly protect gay and transgender persons from discrimination and harassment.

e. During this period, Southeastern essentially operated on a "don't ask, don't tell" basis with regards to sexual orientation and/or transgender status. It was my understanding that because Southeastern did not have any codified protections for gay and/or transgender persons, faculty members were at risk of being fired if they made their gay and/or transgender status public.

f. I personally found the absence of gay and/or transgender status protections during this period to have a chilling effect on faculty at Southeastern.

g. During this period, given the lack of express protections for gay and/or transgender persons on campus, it is not surprising that a gay and/or transgender faculty member who faced discrimination or harassment would not make complaints about it.


9. **Southeastern's nondiscrimination and harassment policies since Tudor left Southeastern.** This is what I know about Southeastern's current nondiscrimination and harassment policies:

- a. Shortly after President Burrage came to Southeastern, Southeastern changed its nondiscrimination and harassment policies.
- b. Southeastern's policies now expressly protect gay and/or transgender persons from discrimination and harassment.
- c. To my knowledge, it is now commonly understood by the faculty that Southeastern's policies protect gay and/or transgender persons from discrimination and harassment.

10. **Tudor's return to Southeastern.** To my knowledge, if Tudor were to return to Southeastern this would be a non-issue for the faculty. There is no bad blood between Tudor and the Southeastern faculty.

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

Executed on (date) October 10, 2017 in (location) Durant, Oklahoma.

  
\_\_\_\_\_  
Dr. Daniel Althoff

# Exhibit A

Dear Colleague.

I hope you will pardon this intrusion, but I am obliged to share some personal information with you. Please allow me to premise my disclosure with an acknowledgement of how much I value being a member of this community of educators and learners. I have labored my entire life to be a contributing member of such a community, and I feel privileged to be here. I want to be clear about this, because my retiring personality may have been misinterpreted by some as unfriendliness. The reason for this letter is that after a lifetime of searching, and with the assistance of professional guidance, I have come to the conclusion that I am also a member of another community—the transgender. Unfortunately, this community is frequently misunderstood, often ridiculed, widely discriminated against, and sometimes subject to violence. Hence, the necessity for this letter. I do not want being a member of the transgender community to cause discomfort or anxiety to members of my academic community. Please allow me to share a few basic facts about transgenderism. It is a part of one's core identity and is present from birth. Some say that it is not a choice, but I believe everything one does is an act of will with purpose. For me, the choice is either to be reclusive and unhappy, or to strive to find a place in life where I may be true to my core identity and create personal and professional relationships based on openness free from fear. Next, it is important to know that a transgender person is not a transvestite or crossdresser—it is not sartorial, it is physiological. I, for instance, have been following a physician prescribed regimen of hormone adjustment therapy for months. Finally, transgenderism has nothing to do with sex or sexual orientation. Perhaps the confusion comes from the unfortunate fact that our language uses “sex” and “gender” as synonyms. In actuality, transgenderism is a human and civil rights issue, and it should not be taboo to discuss it.

I assure you that I will continue to comport myself in a professional manner with attention to my responsibilities. I hope you will look on this occasion, as I do, as an opportunity for education and personal growth.



You probably have questions that I have not addressed. You are welcome to discuss them with me. My most pressing question is how you will respond to my revelation. I will listen to your opinion and value your advice.

Presently, I am planning on transitioning at the beginning of the Fall semester. I have legally changed my name to Rachel. After I transition, please address me by my new name with corresponding pronouns. I am keenly aware the period of transition will be confusing and awkward for everyone. Please let me know if there is anything I can do to put you at ease.

Very best regards,

R. Tudor

# Exhibit 18

## DECLARATION OF MARGARET COTTER-LYNCH

1. I am a Full Professor with tenure at Southeastern Oklahoma State University (“Southeastern”).
2. I started working at Southeastern in Fall 2005. Since that time, I have been in Southeastern’s English, Humanities, and Languages Department (“English Department”).
3. To my knowledge, Dr. Tudor is the first transgender professor at Southeastern.
4. To my knowledge, when Tudor transitioned from male to female, she was the only transgender person at Southeastern. Meaning, at the time, there were no other openly transgender faculty, staff, or students at Southeastern.
5. **Dr. Tudor’s gender transition.**
  - a. I recall that just before the start of the Fall 2007 term, Dr. Tudor hand delivered a letter to me and other members of the English Department. A true copy of the letter I received is attached hereto as **Exhibit A** (bates marked PI002042 to PI002043) on the lower right hand corner).
  - b. I first learned of Tudor’s gender transition from her letter.
  - c. On or around the day I received Tudor’s letter, myself and other female professors in the English Department invited Tudor to

have lunch with us. Our intent was to express support to Tudor and make clear to her that her female colleagues accepted her as one of us.

- d. After Tudor gave me her letter, I consistently used feminine pronouns to refer to Tudor and used only her female first name, Rachel, thereafter. I recall that all of my colleagues in the English Department did the same.
- e. To my knowledge, Tudor's gender transition was a non-issue with our English Department colleagues. Given the small size of the Department, if there had been concerns raised I likely would have learned of them at some point.
- f. To my knowledge, Tudor's gender transition was a non-issue with students taking classes in the English Department. Southeastern has a relatively small student body. I do not recall ever hearing a student complain or say anything negative about Tudor's gender transition or her gender. Given the small size of Southeastern's student body, if there had been concerns raised by students I likely would have learned of them at some point.
- g. I do not have any knowledge of how Southeastern's administration immediately reacted to Tudor's gender transition or her gender.

**6. Tenure and promotion policies in effect during Tudor's employ.**

a. During this period, it was my understanding that to get tenure and promotion to associate professor an applicant had to demonstrate they were qualified in teaching, scholarship, and service. It was also my understanding that an applicant need have some showing for each criteria, but only had to be "excellent" in two criteria.

**b. English Department criteria for promotion and tenure.**

- i. During my interview at Southeastern for the tenure-track position which later led to my current tenured position, Department Chair John Mischo told me that the English Department had its own criteria for tenure and promotion.
- ii. It was my understanding up through the time of my own successful application for promotion and tenure in the 2009-10 cycle that if I met the Department's criteria I would get promotion and tenure.
- iii. The English Department's criteria remained in place up through the 2009-10 cycle. A true copy of the Department's criteria is attached hereto as **Exhibit B** (bates marked PI1177 to PI1180 on the lower right hand corner).

c. **Department made tenure and promotion decisions.**

During Tudor's employ, it was my understanding that the Department's criteria gave specificity to Southeastern's policies for tenure and promotion which were in the Academic Policies and Procedures Manual ("APPM").

d. **APPM Policy 3.7.4.** During Tudor's employ, it was my further

understanding that APPM policy 3.4.7 (a true copy of which is attached hereto as **Exhibit C** [bates marked EEOC300 to EEOC301 on the lower right hand corner]), stood for the principle that tenure and promotion decisions were made at the department-level. I based this understanding on the portion of 3.7.4 highlighted in **Exhibit C**. More specifically, I understood that in tenure and promotion decisions, RUSO and the Southeastern administration should ultimately "concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail."

e. **Conversations leading up to 2009-10 cycle.** I had many

discussions leading up to the 2009-10 application cycle about the Department's criteria and the fact that tenure and promotion decisions were ultimately made at the department-level. In each conversation with my colleagues in the English Department, I

was reassured that tenure and promotion at Southeastern was decided at the department-level and according to the Department's criteria. Moreover, every application I had been aware of up to the 2009-10 cycle which had been approved at the department-level had been approved by the Dean, Vice President for Academic Affairs, and the President.

7. **My application for promotion and tenure in the 2009-10 cycle.** I applied for tenure and promotion to associate professor in the 2009-10 cycle. My application was approved at the departmental-level by the tenure and promotion committee and the department chair. My application was passed on to and approved by Dean Socufos, Vice President McMillan, and President Minks. I was notified via letter by President Minks sometime in May 2010 that I had been awarded promotion and tenure.
8. **Tudor's attempt to reapply in the 2010-11 cycle.** I recall that Tudor attempted to reapply for promotion and tenure during the 2010-11 cycle and that in October 2010 McMillan issued a memorandum barring Tudor from reapplying. I recall that around the time I learned of McMillan's bar on Tudor's reapplication that I thought the rationales he cited were ridiculous. I thought that Tudor was more than qualified for promotion and tenure. I also thought that McMillan's stated

rationale that Tudor's reapplication would "inflame the relationship between faculty and administration" was completely without merit—indeed, the administration's refusal to allow Tudor's reapplication made things exponentially more tense between the faculty and administration going forward.

9. **Stubblefield's "investigation."** Sometime in Fall 2010 Claire Stubblefield began an investigation into one of Tudor's complaints about her tenure and promotion issues at Southeastern. In the course of her investigation, Stubblefield called me into her office for questioning. During this meeting Stubblefield told me to secure my own tenure and promotion portfolio because it might be needed for "legal purposes" down the road. I do not recall Stubblefield asking me questions about my 2009-10 application or her trying to gather any information from me pertinent to her investigation. Indeed, it was my impression that Stubblefield was simply going through the motions. The meeting was fairly brief. Stubblefield asked me only perfunctory questions. It seemed to me that Stubblefield had already concluded that Tudor's problems would not be resolved at her level. I recall towards the end of the meeting that Stubblefield advised me to "look out for Rachel."



10. **Southeastern's nondiscrimination and harassment policies during Tudor's employ at Southeastern.**

- a. Southeastern had nondiscrimination and harassment policies during this period.
- b. I believe that near the time I was hired at Southeastern I was advised about these policies. I do not recall thinking about or inquiring as to whether Southeastern's policies protected gay and transgender people at that time.
- c. Some time after Dr. Tudor's transition from male to female, I started to wonder whether gay and transgender people were protected under Southeastern's policies.
- d. Some time after Dr. Tudor's transition from male to female, I thought that the absence of specific language pointing to sexual orientation and/or gender identity (or any other phrase that might capture transgender persons specifically or LGBT persons more broadly) in Southeastern's policies meant that discrimination or harassment faced by gay or transgender persons was not redressable under Southeastern's policies.
- e. Some time after Dr. Tudor's transition from male to female, I grew concerned that the absence of specific language pointing to sexual orientation and gender identity (or any other phrase that

might capture transgender persons specifically or LGBT persons more broadly) in Southeastern's policies would lead some employees to think that it was okay to discriminate against and/or harass gay and/or transgender persons at Southeastern.

- f. I recall that during this period, I personally thought Southeastern's policies should expressly protect sexual orientation and gender identity (or any other phrase that might capture transgender persons specifically or LGBT persons more broadly).
  - g. I recall that while Tudor was still at Southeastern, the Faculty Senate passed a resolution requesting that the administration revise Southeastern's policies to expressly protect gay and transgender persons from discrimination and harassment.
  - h. I recall that the Southeastern administration—specifically the Office for Academic Affairs, which at that time was headed by Douglas McMillan—did not respond to the Faculty Senate's resolution. As a result, Southeastern's policies were not amended during Tudor's employ to expressly protect gay and transgender persons from discrimination and harassment.
11. **Tudor's complaints and grievances at Southeastern and Tudor's work environment.**

- a. During the 2010-11 term, I learned that Tudor had filed several complaints and grievances at Southeastern. I recall discussing Tudor's options with her at the time. I recall discussing with Tudor many of the complaints, grievances, and appeals she filed during this period. I recall thinking at the time that, under Southeastern's policies, she had done everything should could to grieve the tenure and promotion issues internally.
- b. During the 2010-11 term, I learned from Tudor that she had been bared by the Southeastern administration from using the women's restrooms on campus since her gender transition. Prior to Tudor's disclosure, I do not recall ever seeing Tudor use a women's restroom at Southeastern. After Tudor's disclosure, I remember noticing that she only ever used the unisex handicap restrooms on campus.
- c. During the 2010-11 term, I noticed dramatic changes in Tudor. Tudor seemed very stressed a lot of the time. Whereas Tudor in the past had been upbeat at work, she at that point started to seem "beaten down" and appeared very tired. I recall at least one phone conversation I had with Tudor during this time where she broke down crying as we were discussing what was happening to her at Southeastern.

d. Thinking back to what I saw Tudor go through in her last years at Southeastern, if I were in her shoes, I would have felt like the environment was toxic and hostile. Indeed, I do not think I would have handled things as well as Tudor handled them given what she was forced to endure.

12. **My complaints about Tudor's treatment at Southeastern.**

a. In November 2010 I wrote a letter in support of Tudor's attempt to appeal McMillan's bar on her reapplication for promotion and tenure in the 2010-11 cycle. A true copy of my letter is attached hereto as **Exhibit D** (bates marked PI299 to PI300 on the lower right hand corner).

b. In April 2011 I sent an email to the Regional University System of Oklahoma ("RUSO") complaining about Tudor's treatment at Southeastern. An email thread that includes a true copy of my email sent on April 27, 2011 at 9:42am is attached hereto as **Exhibit E** (four pages marked "RUSOEMAIL425" in the lower right hand corner).

c. In April 2011 I made a public post on Facebook wherein I publicly grieved what happened to Tudor at Southeastern. An email thread containing the true text of my Facebook post is

attached hereto as **Exhibit F** (five pages marked “RUSOEMAIL601” in the lower right hand corner). The highlighted portions of **Exhibit F** represent the text that appeared in my Facebook post. The remaining text below the highlight is a statement of facts that I believe I received directly from Tudor around this time. The comments that appear below the text are comments that were left on my public Facebook post.

- d. In or around April 2011, I printed and mailed copies of an online petition which had garnered more than 4,000 signatures in support of Tudor. I sent copies of the petition with all the signature pages to RUSO in a large box. Inside the box were marked envelopes addressed to each regent. Prior to mailing the petition, I called Sheridan McAffree at RUSO who gave me RUSO’s mailing address and advised me how to send the petition to the RUSO regents’ attention. A true copy of the first page of that petition I sent to the RUSO regents is attached hereto as **Exhibit G** (bates marked PI815 in the lower right hand corner). To my knowledge the RUSO regents received the petitions I sent to them. However, the RUSO regents never responded to me about the petition.

13. **Conversations with Southeastern faculty and administrators between 2014 and 2015.**

- a. Sean Burrage became president of Southeastern in May 2014.
- b. *McMillan's untrue statement about the Southeastern faculty's support of Tudor.* In or around late August or early September 2014, I heard that Douglas McMillan had told people that the Southeastern faculty did not support Dr. Tudor and that the faculty did not want her to return to Southeastern. Shortly thereafter, I brought up McMillan's statements at a meeting of Southeastern's chapter of the American Association of University Professors ("AAUP"). Virginia Parrish and Chris Morretti and other professors were in attendance. During the meeting, we discussed the fact that we believed McMillan's statement was inaccurate. Chris Morretti (who was then the Chair of the Faculty Senate) suggested that the Faculty Senate formally poll the faculty to gather proof of the faculty's true sentiments regarding Tudor. The members in attendance voted that Virginia Parrish and I meet with President Burrage to inform him of the chapter's support for Rachel, disagreement with Dr. McMillan, and the Faculty Senate's willingness to conduct a faculty poll on the question.

c. *Conversation with President Burrage.* Shortly after the AAUP chapter meeting, Parrish and I met with President Burrage in his office. Parrish and I told Burrage about McMillan's statement. We advised him that we were coming to him as representatives of the faculty. We told him that McMillan's statement was not in line with the faculty's sentiments, and that the Chair of the Faculty Senate was prepared to formally poll the faculty to prove we both supported Tudor and wanted her to return to Southeastern. Burrage did not try to defend McMillan's statement. Nor did Burrage suggest that he needed or desired a poll of the faculty to ascertain the faculty's support of Tudor or her return to Southeastern. At some point later in the discussion, I recall that Burrage pointed to a stack of documents on his desk that appeared to be related to Tudor's court case. Burrage then said, "I am just trying to get my head around this stuff." Burrage never followed up with us on this issue.

d. *Another conversation with President Burrage.* In or around April 2015, I recall having a conversation with President Burrage at a state-level meeting of the AAUP hosted at Southeastern. At some point during the meeting, Burrage pulled

me aside and told me that Southeastern would be changing its policies to expressly protect gay and transgender persons from discrimination and harassment. Burrage told me that these revisions were a “no brainer” and that they should have happened a “long time ago.”

14. **Southeastern’s nondiscrimination and harassment policies since Tudor left Southeastern.**

- a. Southeastern’s policies now expressly protect gay and transgender persons from discrimination and harassment.
- b. To my knowledge, it is now commonly understood by all administrators, faculty, and staff that Southeastern’s policies protect gay and transgender persons from discrimination and harassment.

15. **Wilma Shires.**

- a. Wilma Shires is currently a tenure-track assistant professor in the English Department at Southeastern.
- b. In 2010, Shires was promoted from instructor to a tenure-track assistant professor in the English Department.
- c. During Tudor’s employ at Southeastern, Tudor’s area of specialization within the English Department was Native American literature.

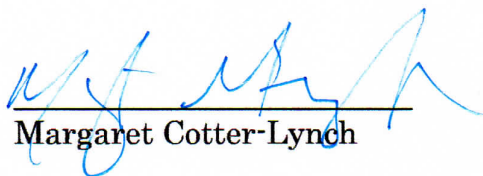


- d. Upon Tudor's separation from Southeastern in 2011, Shires took over Tudor's core classes, including all of the Native American literature classes Tudor taught.
- e. Upon Tudor's separation from Southeastern in 2011, Shires was assigned the office Tudor had previously occupied. Shires is still assigned that same office today.
- f. Wilma Shires is currently applying for promotion to assistant professor with tenure in the 2017-18 cycle.
- g. I am a member of Shires' departmental tenure and promotion committee for the 2017-18 cycle.
- h. It is my understanding that if Shires is awarded promotion and tenure in the 2017-18 cycle, that Shires will obtain a position that is equivalent to the one Tudor sought through her own applications in the 2009-10 and 2010-11 cycles.
- i. Shires wears stereotypically feminine clothing, has feminine mannerisms, has a stereotypically feminine voice, and otherwise holds herself out as and is recognized as female by all at Southeastern.
- j. I have no reason to believe that Shires is a transgender woman.

16. **Tudor's return to Southeastern.** To my knowledge, Southeastern's faculty would welcome Tudor back to Southeastern and the English Department would warmly welcome Tudor back.

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

Executed on (date) Oct 12, 2017 in (location) McKinney, TX

  
Margaret Cotter-Lynch

# Exhibit A

Dear Colleague.

I hope you will pardon this intrusion, but I am obliged to share some personal information with you. Please allow me to premise my disclosure with an acknowledgement of how much I value being a member of this community of educators and learners. I have labored my entire life to be a contributing member of such a community, and I feel privileged to be here. I want to be clear about this, because my retiring personality may have been misinterpreted by some as unfriendliness. The reason for this letter is that after a lifetime of searching, and with the assistance of professional guidance, I have come to the conclusion that I am also a member of another community—the transgender. Unfortunately, this community is frequently misunderstood, often ridiculed, widely discriminated against, and sometimes subject to violence. Hence, the necessity for this letter. I do not want being a member of the transgender community to cause discomfort or anxiety to members of my academic community. Please allow me to share a few basic facts about transgenderism. It is a part of one's core identity and is present from birth. Some say that it is not a choice, but I believe everything one does is an act of will with purpose. For me, the choice is either to be reclusive and unhappy, or to strive to find a place in life where I may be true to my core identity and create personal and professional relationships based on openness free from fear. Next, it is important to know that a transgender person is not a transvestite or crossdresser—it is not sartorial, it is physiological. I, for instance, have been following a physician prescribed regimen of hormone adjustment therapy for months. Finally, transgenderism has nothing to do with sex or sexual orientation. Perhaps the confusion comes from the unfortunate fact that our language uses “sex” and “gender” as synonyms. In actuality, transgenderism is a human and civil rights issue, and it should not be taboo to discuss it.

I assure you that I will continue to comport myself in a professional manner with attention to my responsibilities. I hope you will look on this occasion, as I do, as an opportunity for education and personal growth.

You probably have questions that I have not addressed. You are welcome to discuss them with me. My most pressing question is how you will respond to my revelation. I will listen to your opinion and value your advice.

Presently, I am planning on transitioning at the beginning of the Fall semester. I have legally changed my name to Rachel. After I transition, please address me by my new name with corresponding pronouns. I am keenly aware the period of transition will be confusing and awkward for everyone. Please let me know if there is anything I can do to put you at ease.

Very best regards,

R. Tudor

# **Exhibit B**



# English, Humanities, & Languages Tenure / Promotion Guidelines

## Understanding Regarding Evaluation Procedures

Applicants with one item from Category 1, High Merit, Level A, will be considered strong candidates for tenure / promotion. OR, Applicants with two or more items from Category 1, High Merit, Level B, will be considered strong candidates for tenure / promotion. Applicants with items exclusively from Category 1, Commendable Merit, may or may not be considered strong candidates for tenure / promotion. It is understood that activity in Category 2 is valuable and expected but is not sufficient in and of itself for tenure and/or promotion.

It is understood that scholarly publication by peer-review is intensely competitive and will therefore carry more weight than solicited and other categories of publication as well as more weight than conference presentations.

### Category 1 Scholarly Publication

#### High Merit Achievement

##### Level A

Book Publications through Peer-Reviewed / Refereed / Blind Submission

- 1 scholarly monograph
- 2 edited collection
- 3 academic textbook
- 4 book-length scholarly translation

##### Level B

Periodical Publications through Peer-Reviewed / Refereed / Blind Submission

- 1 peer-reviewed articles
- 2 article-length translations
- 3 collections of creative work (poetry, fiction, or performance of dramatic work)
- 4 publication of paper in conference proceeding via competitive peer review

### Editing Scholarly Journals

- 1 editing peer-review journals
- 2 editing conference proceedings

Proof of peer review will be established with copy of journal submission criteria explicitly or implicitly stating that the publication underwent peer review. An "article" will be no less than five published pages.

### Commendable Achievement

#### Publications through Solicitation, Contract, or Short Publications

- 1 solicited articles
  - 2 book reviews
  - 3 reference book entries
  - 4 scholarly notes (e.g., *Explicator*)
  - 5 individual creative works of (poetry, fiction, or performance of dramatic work)
  - 6 publication of paper in conference proceedings selected noncompetitively
- Excluded from Category 1 are newspaper reviews, features, letters to the editor, in-house (including SOSU) university publications as well as any other form of publication not considered scholarly or not considered relevant to the mission of the EHL Department. Also excluded are self-published or "vanity press" publications.

## Category 2 Scholarly Presentations

### High Merit Achievement

- 1 national or international conference presentations
- 2 invited presentations at an academic conference or institution (not same as having conference paper accepted)

### Commendable Achievement

- 1 regional conference presentations
- 2 state or local conference presentations
- 3 in-house (including SOSU) unofficial university presentations

Excluded from Category 2 are graduate student conferences.



## Expectations Regarding Teaching in Tenure & Promotion

Candidates will be expected to excel in these five areas.

- 1 Align course objectives to program objectives
- 2 Employ a variety of instructional approaches
- 3 Integrate technology where/when possible
- 4 Maintain accessibility to students
- 5 Relate scholarship to course content and/or pedagogy

### Evidence & Documentation of Excellence in Teaching

- 1 Course portfolios (syllabi, student evaluations, essay assignments, exams, etc.)
- 2 Peer evaluation letters
- 3 Student evaluations (department form)
- 4 SUMMA or other university evaluations
- 5 Documentation relating course objectives to NCATE standards
- 6 Gen Ed assessment results (where possible)

Category 3 Service to Department and University

- 1 Be accessible and accurate in advisement
- 2 Assume leading role on various department committees, especially the Assessment, Planning, and Development Committee
- 3 Assume significant role in program assessment, preferably contributing to the writing of various assessment reports or chairing Assessment, Planning, and Development Committee
- 4 Provide significant input in general education assessment
- 5 Assume significant role in departmental Program Review
- 6 Volunteer for extra-curricular service (e.g., driving to airport for candidates, manning booths for recruitment, Sigma Tau Delta or Sigma Delta Pi advisor, working with Honors Program, Green Eggs & Hamlet advisor, etc.)
- 7 Represent department on university committees  
Mentor new faculty (for promotion for tenured faculty only)

**Evidence of Service to Department and University**

- 1 Regular advisement activity
- 2 Activity on Assessment, Planning & Development committee
- 3 Activity on Composition or Humanities committee
- 4 Activity on other department committees (e.g., hiring) where assigned
- 5 Activity on university committees as evidenced by committee request sheet
- 6 Activity as teacher education liaison (supersedes numbers 2-5)

*Revised May 2, 2005*

# Exhibit C



As the chief planning officer of an institution, the president has a special obligation to innovate and initiate. The degree to which a president can envision new horizons for the institution, and can persuade others to see them and to work toward them, will often constitute the chief measure of the president's administration.

The president must at times [take appropriate action to] infuse new life into a department; belatedly, the president may at times be required, working within the concept of tenure, to solve problems of obsolescence. The president will necessarily utilize the judgments of the faculty but may also, in the interest of academic standards, seek outside evaluations by scholars of acknowledged competence.

It is the duty of the president to see to it that the standards and procedures in operational use within the college or University conform to the policy established by the governing board and to the standards of sound academic practice. It is also incumbent on the president to ensure that faculty views, including [significant] dissenting views, are presented to the board in those areas and on those issues where responsibilities are shared. Similarly, the faculty should be informed of the views of the board and the administration on like issues.

The president is largely responsible for the maintenance of existing institutional resources and the creation of new resources; has ultimate managerial responsibility for a large area of nonacademic activities; is responsible for public understanding; and, by the nature of the office, is the chief person who speaks for the institution. In these and other areas the president's work is to plan, to organize, to direct, and to represent. The presidential function should receive the general support of board and faculty.

### **3.7.4 Role of the Faculty**

The faculty has primary responsibility for such fundamental areas of curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the institution may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in programs, determines when the requirements have been met, and recommends to the president and board the granting of the degrees.

Faculty status and related matters are primarily faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers

with the concurrence of the board. The governing board and president should, on questions of faculty status as in other matters where the faculty has a primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

The faculty should actively participate in the determination of policies and procedures governing salary increases.

The chair or head of a department, who serves as chief representative of the department within an institution, should be selected either by departmental election or by appointment following consultation with members of the department and of related departments; appointments should normally be in conformity with department members' judgment. The chair or department head should not have tenure in office; tenure as a faculty member is a matter of separate right. The chair or head should serve for a stated term but without prejudice to reelection or to reappointment by procedures which involve appropriate faculty consultation. Board, administration, and faculty should all bear in mind that the department chair or head has a special obligation to build a department strong in scholarship and teaching capacity.

### **3.7.5 Faculty Participation**

Agencies (committees, teams, etc.) for faculty participation in the government of the college or University should be established at each level where faculty responsibility is present. An agency should exist for the presentation of the views of the whole faculty. The structure and procedures for faculty participation should be designed, approved, and established by joint action of the components of the institution. Faculty representatives should be selected by the faculty according to procedures determined by the faculty.

The agencies may consist of meetings of all faculty members of a department, school, college, division, or University system, or may take the form of faculty-elected executive committees in departments and schools and a faculty-elected senate or council for larger divisions or the institution as a whole.

Among the means of communication among the faculty, administration, and governing board now in use are: (1) circulation of memoranda and reports by board committees, (2) joint ad hoc committees, (3) standing committees, and (4) membership of faculty members on administrative bodies. Whatever the channels of communication, they should be clearly understood and observed.

## **3.8 Relationship of Faculty Senate to the President**

Revised 01-10-1998

The Executive Committee of the Faculty Senate meets with the president periodically to discuss Senate-related issues. Upon request, the president meets with the Faculty Senate to brief the senators about pending University issues.

### **Figure B. Flow of Shared Governance**

EEOC000301

# Exhibit D

Department of English, Humanities,  
and Languages  
Southeastern Oklahoma State University  
November 17, 2010

Faculty Appellate Committee  
Southeastern Oklahoma State University

Dear Dr. Hall and Committee Members,

I write to you in support of Dr. Rachel Tudor's appeal of Dr. Douglas McMillan's decision to deny her the opportunity to apply for tenure and promotion. Dr. Tudor is an exemplary teacher, scholar, and colleague, and the allegations from Dr. McMillan are without merit.

According to any objective evaluation, Dr. Tudor's qualifications clearly exceed the expectations for tenure and promotion according to three separate standards: as stated in the Academic Policies and Procedures manual, as established by the Department of English, Humanities, and Languages, and as practiced by precedent. Dr. Tudor's teaching is exemplary, as exhibited by her teaching evaluations, observations of her teaching by colleagues, and her repeated nomination for the Faculty Senate teaching award. This aspect of her work is not cited as problematic by Dr. McMillan; I will therefore refrain from further elaboration, although I will be happy to provide further testimony on this aspect of Dr. Tudor's work upon request. I simply remind the committee that we are, at our heart, a teaching institution; the best interests of our students require that we attract and retain the highest quality classroom teachers, of which Dr. Tudor is a clear example.

In respect to service, an area cited as deficient in Dr. McMillan's decision, Dr. Tudor's work on campus in the past 6 years has been exemplary, and clearly exceeds the activity of many faculty, both tenured and untenured. Since her arrival on campus, Dr. Tudor has been active in organizing the biannual Native American Symposium, one of our campus's major events, which brings regional, national, and international recognition to Southeastern. Dr. Tudor was instrumental in bringing an OSLEP course to our campus in 2007, the only time in recent memory our campus has hosted one of these prestigious courses. Dr. Tudor organized the participation of Dr. Rennard Strickland, Distinguished Professor Emeritus at the University of Oregon Law School, and served as the supervising professor for this course. In addition, Dr. Tudor served as the chair of our department's Assessment, Planning, and Development committee from 2007-2010. As chair of this committee, Dr. Tudor collected and collated all assessment data for our three English programs, and prepared the yearly POAR reports. This, in itself, is an enormous job for a pre-tenure professor to take on. Finally, Dr. Tudor has served as a member of Faculty Senate for the past two years. All of this has been done in addition to standard university and departmental service expectations, including serving on hiring and

review committees, volunteering for Honors Day, and working with student groups. In short, Dr. Tudor not only amply fulfills service expectations for faculty members, but is exemplary in the range, depth, and dedication she has shown in service to our university.

The area of scholarship is often seen as difficult to objectively evaluate, as it ordinarily requires a careful consideration of both quality and quantity of scholarly activity. In Dr. Tudor's case, however, the evaluation is simple and evident, as her scholarly production exceeds standards for both quality and quantity. She currently has five peer-reviewed articles already published; four more accepted articles in press; and several more in the pipeline, including three which have been tentatively accepted pending revisions. Some of these are in the leading journals of her field; others clearly articulate the relevance of her work to a wider non-specialist audience. This shows that she is a respected scholar within Native American Studies, while simultaneously successfully promoting the importance of Native American literature within a wider context. She co-edited two volumes of the conference proceedings of the Native American Symposium, and has published two chapbooks of poetry since her arrival at Southeastern. To be blunt, Dr. Tudor has published more research than any other member of the department, tenured or untenured. Any question regarding her scholarly production must of necessity be based upon either ignorance or misunderstanding of the evidence, since there is really no question that Dr. Tudor has far exceeded any stated or unstated standard for scholarly production at this university.

In short, Dr. Tudor is an outstanding candidate for tenure and promotion. Dr. McMillan's statement that her service and research are insufficient is clearly unfounded and inaccurate. He was clearly mistaken in his opinion that consideration of Dr. Tudor's tenure file would be a waste of time; in addition, he has clearly tried to contradict the established policies for tenure and promotion, by presuming to truncate the process based upon personal opinion and insufficient data. I therefore ask that the Faculty Appellate Committee find in Dr. Tudor's favor, and recommend that she be allowed to pursue the established processes for achieving tenure and promotion.

Sincerely,

Dr. Margaret Cotter-Lynch  
Associate Professor of English



# Exhibit E

**From:** Sheridan McCaffree smccaffree@ruso.edu  
**Subject:** FW: letter in support of Rachel Tudor  
**Date:** April 27, 2011 at 4:15 PM  
**To:** "Richard Ogden" rco@lawokc.com

---

fyi

Sheridan McCaffree  
Executive Director  
Regional University System of Oklahoma  
3555 NW 58th St., Suite 320  
Oklahoma City, Oklahoma 73112

-----Original Message-----

**From:** Margaret W. Cotter-Lynch [mailto:mcotter@se.edu]  
**Sent:** Wednesday, April 27, 2011 9:42 AM  
**To:** smccaffree@ruso.edu  
**Subject:** FW: letter in support of Rachel Tudor

Dear Ms. McCaffree and Regents of the Regional University System of Oklahoma,

I sent the letter below to OSRHE over the weekend, and was just informed that this matter is more appropriately brought to your attention. I trust that you will investigate this matter and remedy the violations of established university policy.

**RUSOEMAIL425**

Thank you for your attention to this matter,

Dr. Meg Cotter-Lynch

Associate Professor of English

Southeastern Oklahoma State University

---

From: Margaret W. Cotter-Lynch

Sent: Monday, April 25, 2011 10:11 PM

To: communicationsdepartment@osrhe.edu

Subject: letter in support of Rachel Tudor

Dear Chancellor Johnson and Oklahoma State Regents,

I am deeply concerned about the recent tenure denial and imminent dismissal of Dr. Rachel Tudor, Assistant Professor of English at Southeastern Oklahoma State University. Dr. Tudor and I went up for tenure at the same time, from the same department, in the fall of 2009; I was granted tenure and promotion while she was denied. I was personally shocked by this outcome; any objective comparison of her qualifications and mine is striking. She is universally regarded as a stellar teacher; she has a solid service record, and she has FIVE times as many peer reviewed articles published as I do (she has 10 to my 2). In addition, the tenure process was conducted very differently in her case and mine; I was forwarded copies of detailed letters at periodic increments throughout the process, and kept informed of what was going on. She was left

**RUSOEMAIL425**

entirely in the dark.

Later investigations, by the Faculty Appellate Committee and the Faculty Senate, have shown that established procedures were repeatedly ignored in Dr. Tudor's tenure process. In the end, she was denied without being given a reason, in direct contradiction to our Academic Policies and Procedures manual. Furthermore, Dr. Tudor was denied the opportunity to reapply for tenure the following year, in spite clear precedent for this, and Dr. McMillan, our Vice President for Academic Affairs, stating in a letter that policy did not prohibit Dr. Tudor from reapplying.

Dr. Tudor has clearly been treated unfairly, in direct violation of established tenure policies and procedures at our university. I sincerely believe that this treatment has been motivated by bigotry on the part of some members of our upper administration, and I find that deeply, deeply distressing. Dr. Tudor has exhausted all recourse at the university level, as President Minks has repeatedly refused to heed the requests of the Faculty Appellate Committee and the Faculty Senate. As a result, I ask that you intervene in this matter to see that Dr. Tudor is reinstated, and her tenure case be given a fair, impartial hearing in the 2011-2012 academic year.

Thank you very much for your attention to this matter.

Sincerely,

**RUSOEMAIL425**

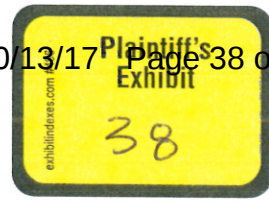
Dr. Meg Cotter-Lynch

Associate Professor of English

Southeastern Oklahoma State University

**RUSOEMAIL425**

# Exhibit F



REINSTATE DR. RACHEL TUDOR

# PETITIONS

[START A PETITION](#)

[BROWSE](#)

[log in / Join](#)

## PETITION CLOSED

This petition is now closed. You can still make a difference in the Care2 community by signing other petitions today..

[BROWSE PETITIONS](#)

### Reinstate Dr. Rachel Tudor

4,080 SUPPORTERS

BY [concerned citizens and colleagues](#)

TARGET: Shendan McCaffree and Regents of the Regional University System of...

4,080

5,000

we've got 4,080 supporters, help us get to 5,000 by October 22, 2011

[overview](#)

Dr. Rachel Tudor has been denied tenure at Southeastern Oklahoma State University and informed that her employment will be terminated effective May 31, 2011. It appears that this denial and dismissal are connected to discrimination against her for being transgender.

For nearly two years, the administration at Southeastern has repeatedly and egregiously violated established policies and procedures in the review of Dr. Tudor's application for tenure and promotion. The Faculty Appeals Committee has found in favor of Dr. Tudor twice, and the Faculty Senate has passed a resolution in support of her. Meanwhile, the administration arbitrarily re-wrote the Academic Policies and Procedures manual in the midst of the process, in order to facilitate Dr. Tudor's dismissal.

Given the egregious administrative misconduct and implication that Dr. Tudor is being dismissed due to her gender rather than her excellent professional qualifications, we hereby request that the State Regents reinstate Rachel Tudor and ensure that her tenure case is fairly evaluated on the quality of her work as a teacher and scholar.

## you have the power to create change.

START SHARING AND WATCH YOUR IMPACT GROW

|     |    |       |       |
|-----|----|-------|-------|
| 686 | 79 | Email | embed |
|-----|----|-------|-------|

<http://www.thepetitionsite.com/1/help-rachel-tudor> [9/22/15, 8:54:36 AM]

other urgent petitions need your help

## TAKE ACTION NOW



**Tell Ellen DeGeneres to Remove Leather From Her Clothing Line!**

88,033 SUPPORTERS

[sign petition](#)



**URGENT Signatures Needed to Stop OC Animal Control From Killing Karma The Husky**

280,812 SUPPORTERS

[sign petition](#)



**End Commercial Aerial Hunting of Wild Hogs**

77,749 SUPPORTERS

[sign petition](#)

## MAKE A DIFFERENCE

[start a new petition](#)

the #1 petition site in the world

[site feedback](#)

# Exhibit G



**From:** dmcmillanr@aol.com dmcmillanr@aol.com  
**Subject:** Fwd: THOUGHT YOU MIGHT WANT TO READ THIS  
**Date:** April 25, 2011 at 10:29 AM  
**To:** cbabb@ruso.edu

---

-----Original Message-----

From: Bridgette Hamill <bridgette\_hamill@yahoo.com > >  
To: dmcmillanr <dmcmillanr@aol.com > >  
Sent: Sat, Apr 23, 2011 3:58 pm  
Subject: THOUGHT YOU MIGHT WANT TO READ THIS

**Matt brought this to my attention yesterday. I logged on today to see what he was talking about and thought you might want to read it. This was posted on facebook yesterday -- I guess.**

## **Fight discrimination and help Rachel Tudor**

by Meg Cotter-Lynch on Friday, April 22, 2011 at 6:18pm

My friend and colleague, Rachel Tudor, has been denied tenure at our university and informed that her employment will be terminated effective May 31, 2011. Evidence suggests that this denial and dismissal are due to discrimination against her for being transgender. In a mess that has gone on for nearly two years, the administration at our university has repeatedly and egregiously violated established policies and procedures. The Faculty Appeals Committee has found in favor of Rachel twice, and the Faculty Senate has passed a resolution in support of her. Meanwhile, the VP for Academic Affairs and the President arbitrarily re-wrote the Academic Policies and Procedures manual in the midst of the process, in order to allow the VP for Business Affairs (!) to overrule the decision of the Faculty Appeals Committee.

I also encourage you all to visit her blog to learn more about her and her situation: <http://rachel-s-friends.blogspot.com/2011/04/southeastern-oklahoma-state-university.html>. There you will find contact information for the Oklahoma Board of Regents; please write and request that Rachel be reinstated.

### Statement of Facts

Dr. Rachel Tudor has been employed as an assistant professor of English, humanities, and languages for the past seven years at Southeastern Oklahoma State University ("SOSU"). She currently serves on the Faculty Senate, Faculty Personnel Policies Committee, and enjoys consistent enrollment (and in many instances re-enrollment) in

**RUSOEMAIL601**

the courses which she offers. Dr. Tudor has published at least 10 academic articles and is well regarded by her students and colleagues.

Dr. Tudor is a transgendered female who formally transitioned in 2007. After transitioning, Dr. Tudor was instructed by SOSU's human resource department to only use a single-stall handicap bathroom on a different floor than where her office is located. She presumes the direction came from Dr. Douglas McMillan, the vice president of academic affairs, who reportedly had also inquired whether Dr. Tudor could be terminated because her lifestyle "offends his Baptist beliefs." Human resources denied his request to terminate her but did direct Dr. Tudor to use the separate bathroom facility.

Assistant professors at SOSU are given seven years in which to obtain tenure, with the initial probationary period ending after five years. It is not uncommon at SOSU for applicants to pursue more than one application before being granted tenure. Dr. Tudor knows of two examples of active professors at SOSU who pursued multiple applications before obtaining tenure including the current chair of the Faculty Senate's Personnel Policy Committee.







Applications for tenure are considered and voted on by a faculty committee. When Dr. Tudor applied for tenure in 2009 she was recommended by the Tenure Review Committee by a vote of 4-1, subsequently her department chair also recommended her for tenure and promotion. However, the dean and the vice president of academic affairs disregarded the committee's recommendation and denied tenure, but refused to provide any explanation for the denial. The dean regularly refers to Dr. Tudor by the incorrect pronoun (i.e. "him") although the dean is well aware that Dr. Tudor is female. Dr. Tudor filed an appeal with the Faculty Appellate Committee claiming that the dean's and Dr. McMillan's office did not provide her due process in explaining why tenure was denied. The Faculty Appellate Committee found in favor of Dr. Tudor, and directed the administration to provide Dr. Tudor with the reason(s) for its denial of tenure. SOSU's administration determined that the appellate committee's ruling was merely a recommendation and was not required to comply.

Dr. Tudor planned to re-apply for tenure in the 2010. However, before the application period began she received a memo from Dr. Doug McMillan stating that she would not be permitted to apply for tenure, alleging that Dr. Tudor's application would "inflame the relationship between the administration and the faculty." However, the timing of the memo immediately after SOSU was informed that Dr. Tudor had filed a discrimination complaint with the US Dept of Education suggests retaliation was the true cause of the administration's action. Dr. Tudor is not aware of any other case in which an otherwise eligible professor has been forbidden to reapply for tenure. Dr. Tudor filed another grievance with the Faculty Appellate Committee, which again found in her favor. The decision was presented to the president's designee, Mr. Ross Walkup. The president's designee did not concur with the Faculty Appellate Committee's decision, and Dr. Tudor appealed to the president of the university, Dr. Larry Minks. At the time of the filing of Dr. Tudor's grievance the policy of SOSU provided that the Faculty Appellate Committee's recommendation be given to the president's designee who would in turn relay the recommendation directly to the president. However, the president's designee, Ross Walkup, an employee in the university's business office, refused to affirm the











recommendation of the Faculty Appellate Committee. The administration amended the grievance policies to permit the president's designee to issue his own separate recommendation to the president. Meanwhile, the Faculty Senate passed a resolution, without a single opposing vote, calling on the president to allow Dr. Tudor to apply for tenure. Eventually, the president issued a letter to Dr. Tudor denying her appeal citing, *inter alia*, a supposed lack of precedence for professors reapplying for tenure after denial (a fact readily regarded as untrue).

Dr. Tudor has exhausted her remedies at the university level. There is no other appellate process or avenue to pursue her grievance. Complaints are pending with the US Equal Employment Opportunity Commission and the Oklahoma Human Rights Commission.

Dr. Tudor's contract with SOSU, and therefore her employment, is scheduled to expire on May 31, 2011.

- -  [Beatriz Eugenia Ramírez Betances](#) Meg, I will make sure all of my contacts are aware of Dr. Tudor's situation. Do you have a Spanish translation of this note? If you don't, I can translate it within the weekend so we can get international support as well.  
23 hours ago
  -  [Meg Cotter-Lynch](#) FANTASTIC! No, I don't have a Spanish translation. If you can do it, great; if not, let me know, and I can ask one of our Spanish profs to do it. THANK YOU!  
23 hours ago
  -  [Beatriz Eugenia Ramírez Betances](#) Your welcome! Yes, I can do it. As soon as I have it I'll give it to you and will distribute it to some of the LGBT activist I know in South America and here in Puerto Rico  
23 hours ago
  -  [Beatriz Eugenia Ramírez Betances](#) Is there a petition page? It will be helpful to gather signatures of support.  
23 hours ago
  -  [Meg Cotter-Lynch](#) I just revised to add a link to Rachel's blog, which has info about how to write to the regents. I'll work on starting a petition site, as well.  
23 hours ago
  -  [Beatriz Eugenia Ramírez Betances](#) Excellent!  
23 hours ago

**RUSOEMAIL601**

-  [Beatriz Eugenia Ramirez Betances](#) Also, make sure this note is public, so anyone can read it, even if they are not your facebook friends. You don't have to change all of your settings, just the one for this page.  
23 hours ago
-  [Katy Ann Glover](#) This is an outrage. Can we organize some sort of protest?  
23 hours ago
-  [Meg Cotter-Lynch](#) @ Bea: already done. Anyone can see it. @ Katy Ann: you can write to the Regents and sign the petition, once I get it organized. You can also talk to Rachel to ask how you can help!  
23 hours ago
-  [Katy Ann Glover](#) Oh I will! I was just wanting all of us to storm the president's office! Let's make signs and march around the loop!  
23 hours ago
-  [Twahna Kemp](#) I wonder if someone could write a letter I. The Durant Daily???  
19 hours ago
-  [Jonah Johnson](#) meg, is the OK ACLU involved in this?  
19 hours ago
-  [Meg Cotter-Lynch](#) @ jonah: I know she has contacted the ACLU (and the AAUP, and the MLA, and and and...); don't know what they have said back, but I'll check with her. This is all new, so we're channeling our outrage in many directions at once!  
18 hours ago
-  [Twahna Kemp](#) I say we all get T-shirts made saying "Reinstated Dr. Rachel Tudor" or something more clever...  
16 hours ago · 1 person Loading...
-  [Venus Opal Reese](#) Has Lamda Legel been contacted? What of the Human Rights Campain?  
5 hours ago
-  [Meg Cotter-Lynch](#) @ Venus: Lambda Legal turned the case down (they only do "impact litigation," and in the end this case hinges on tenure policy). HRC has been contacted at least once, but I haven't yet heard what their response is.  
2 hours ago

k>

**RUSOEMAIL601**

# Exhibit 19

**Claire Stubblefield**

---

**From:** Legako, Jana K. <jlegako@rose.edu>  
**Sent:** Sunday, January 09, 2011 1:48 AM  
**To:** Claire Stubblefield  
**Subject:** FW: Tudor-Discrimination Case  
**Attachments:** Tudor(timeline).docx; TudorConfidential (2).docx; Discrimination complaint-Tudor.docx; Tudor129.docx

Claire,

Please accept my apology for the delay in getting to you my conclusions. My mother who had total knee replacement on October 8, 2010, broke her hip. It has been a very hectic and stressful December and January.

The documents provided above have been reviewed. In addition, the policies and procedure relevant to this issue have been studied.

The policies and procedures support that a written statement of the action taken be submitted to the previous decision makers and faculty member by each decision maker (i.e. department chair, dean, vice president and president) after the Promotion and Tenure Review Committee's secret ballot. The policy is silent as to the content of the statement and one could reasonably assume a general statement such as "I do not concur with the decision of the Promotion and Tenure Review Committee and Department Chair" would suffice.

The policy only requires the President to state in detail the reasons he/she does not concur with the Promotion and Tenure Review Committee's decision. And, provide this written explanation to the Vice President for AA, the department chair, the Promotion and Tenure Review Committee, and the faculty member.

From our conversation, it is my understanding the Professor was provided this written notification by the President or his designee. In addition, since the Professor did request a hearing before the Faculty Appellate Committee, it is assumed the Professor received written notification from the Vice President for Academic Affairs. You may want to substantiate that the Dean and Department Chair forwarded their statements to the listed parties -- if they omitted this step in the policy, confirm that they omitted this step for all tenure applicants. This consistent omission will show that at this step in the process all were treated the same.

Normally with a race discrimination claim I run this query. In addition, with a little tweaking, this query will work with sex discrimination claims.

- (1) Does the claimant belong to the racial minority; (2) She/he applied for tenure and was qualified for tenure; (3) Despite qualifications she was rejected; and, (4) Similar qualifications got tenure.

Your request to have a qualified, unbiased, and objective third party review the portfolios of all tenure applicants was "textbook perfect." The third party's comments as to how the Professor's portfolio lacked in the required areas as outlined in the President's letter should assist in showing how the Professor does not meet #2 and #4 of her prima facie case. Focus on the legitimate nondiscriminatory reason for the Professor's rejection listed in the President's letter and bolstered the reasons by the third party review of the portfolios.

In addition, **being transgender is not a protected status.** However, harassment due to a person's sexual orientation would be a violation of the sexual harassment policy. You may want to take into consideration drafting a paragraph that states, "The University takes all claims of alleged sexually harassing behaviors as serious. And, after a thorough 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.

# Exhibit 20



**From:** Claire Stubblefield AHARMAN@se.edu  
**Subject:** Interesting Article  
**Date:** March 02, 2011 at 9:50 AM  
**To:** Cathy Conway /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=CCONWAY

Thanks Cathy. I want us to be a current as possible. Once you are feeling better, we will schedule a meeting to discuss.

---

**From:** Cathy Conway  
**Sent:** Wednesday, March 02, 2011 7:35 AM  
**To:** Claire Stubblefield  
**Cc:** Larry Minks  
**Subject:** Re: Interesting Article

Claire and President Minks,

It is my understanding that genetics is now a protected category by federal law and therefore we will need to add it to our EEO statement. How much to add about it is a question I sent to Charlie after his recent announcement to the HR directors about the new law. Claire, we may also need to update our sexual harassment policy as well. The SH policy may be where we could and should go into detail describing it. Charlie and I have not yet discussed this, he had wanted to talk about it by phone. Last week was a busy week with other matters and the board meeting, and I've been out sick this week.

Dr. Weigel's bullying laws SOLD presentation was very enlightening about the group most often bullied, the LGBTs. Still no federal law protecting this group, no state law yet either, per Dr. Weigel; however, school districts are beginning to add policies that address bullying in an effort to provide a safe learning environment for all of their students. I briefed Bryon and Claire about this presentation. Perhaps Charlie could shed more light on TCC's policy decision and if any other OK higher ed schools have done the same recently.

Cathy

Sent from my iPhone

On Mar 1, 2011, at 4:43 PM, " Claire Stubblefield " < [CStubblefield@se.edu](mailto:CStubblefield@se.edu) > > wrote:

---

**From:** SGA President  
**Sent:** Tuesday, March 01, 2011 4:41 PM  
**To:** Claire Stubblefield  
**Subject:** Interesting Article

**Hi Dr. Stubblefield,**

**Saw this article today. Thought you might be interested.**

**SEOSU1659**

## **TCC's new sexual orientation protections**

Tulsa World's Editorial Writers

2/21/2011

Tulsa Community College has joined the growing number of private and public employers to extend equal opportunity protections to students and employees regardless of their sexual orientation.

The school's regents approved the human resources policy change on Thursday.

Under the policy - similar to one passed by the city of Tulsa last year - the school will not discriminate in admissions, employment, financial aid or educational programs, activities or services based on whether an employee or student is gay, lesbian, heterosexual or bisexual.

Sexual orientation joins a long list of protected classes in school policy. Other protected classes include race, color, national origin, sex, age, religion, disability, status as a veteran, genetic information and any other class protected by applicable discrimination law.

It's important to emphasize that this doesn't represent any new rights given to people on basis of their sexual orientation. It simply assures all TCC students and employees that they will enjoy the same rights regardless of their orientation.

Many other major employers and other colleges have taken similar steps over the years and have found that it isn't just the right thing to do - although that is certainly true - but that it helps the institution grow and prosper.

Experience shows that equal opportunity protections such as TCC's won't just protect students and the employees, but will also make the institution stronger and more vibrant.

One of the college's official " core values " says, " Diversity is our common bond. Sincere appreciation for and cultivation of differences enriches our lives, the community, and the education we offer. It is a source of our pride and integral to our success. "

That's a wonderful statement and the new policy is obviously well-suited to the principle.

The new policy for TCC is a step forward for the institution and one the students, faculty, staff and administration can look to with pride.

*Original Print Headline: Diversity*

**SEOSU1659**

**Matthew Heggy**

President,

Student Government Association

580.745.2192

405.922.3403

Fax: 580.745.7466

< image001.jpg > >

**SEOSU1659**

# Exhibit 21



**From:** Lucretia Scoufos  
**Sent:** Friday, May 08, 2015 12:10 PM  
**To:** Charles Matthews; Dell McLain; Ed Mauzey; George Jacox; Glenn Melancon; Kitty Campbell; Larry Prather; Randy Prus; Stacy Weger; Stan Alluisi; Stevenson G. Smith; Teresa Golden; Tim Smith; Vicki Hudson; Vivian Guarnera; Wayne Jones; Alistair S. Maeer; Brooks Flippen; Chunmei Yoe; Corie Delashaw; Karen Prus; Carrie M. Schuh; Dana Clure; Kay D. Collins; Penny Bridwell; Chris Bradshaw; Deanna Moody; Halet Poovey; Nick Nichols; Richard T. Braley; Jacob E. Wallace; Jana L. Shackleton; Jeremy B. Blackwood; Jeri Walker; Marc White; Mary Ann Craige; Robert McFadden; Steven Emge; Tristan A. Eggener; Amy K. Anderson; Brett Elliott; Buddy Pierce; Christopher Moretti; Karl H. Frinkle; Layne Heitz; Linda Kallam; Patrick Reardon; C.W. VonBergen; Debra Haley; Lawrence S. Silver; Martin S. Bressler; Robert E. Stevens; Robert Howard; Rodney K. Leird; Bo Atterberry; Chad Speer; Courtne L. St Clair; Darin Grover; Jennifer Corkum; Kay Daigle; Kelly Green; Michael Reed; Mike Metheny; Ray D. Richards; Ron Faubion; Ryan M. Quinn; Sami Jo Cotton-Black; Scott C. Highsmith; Scott Willman; Steve P. Fanara; Caryn Witten; Daniel Althoff; Janet L. Barker; John Mischo; Lisa Coleman; Margaret W. Cotter-Lynch; Mark Spencer; Paula Smith Allen; Teresa Anderson; Virginia Parrish; Wilma Shires; Barbara McClanahan; Cathy L. Lightsey; Charles Weiner; Jerry C. Stout; Mary E. Nottingham; Nancy Hill; Robert Stewart Mayers; Susan Morrison; Toni Stiefer; William Fridley; Jackie L. Bearden; James Britton; Lie Qian; Loide Wasmund; Margaret Avard; Mike Morris; Ming-Shan Su; Mohamed Chehbouni; Nancy Paiva; Rhonda Richards; Steve McKim; Brad Ludrick; Diane Dixon; Doug Wood; Erica Corbett; Joni Aldridge; Josie Mendenall; Judy Williams; Stanley Rice; Sunny Dixon; Tim Patton; Blythe Duell; Charla Hall; Daniel Weigel; Dennis R. Brewster; Hallie Stephens; James Knapp; Jane Elder; Jennifer Hicks; Jon Reid; Kimberly Donovan; Reba J. Criswell; John G. Van Bebber; Kyle Thomas; Susan L. Dilbeck; Hansheng S. Chen; Kalana Malimage; Larry Prather; Theresa Hrcir  
**Cc:** Claire Stubblefield; Doug McMillan; Mindy House; Teena D. Harlin  
**Subject:** FW: Discrimination and Title IX Statements for Syllabi  
**Attachments:** Equal Opportunity Syllabus Statement2015.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Department Chairs & All Faculty, please follow the directive from Dr. Stubblefield in her email below. Also, Department Chairs, along with full time faculty, will you please make sure that all adjuncts are informed that this addition is to be included in ALL 2015-16 syllabi beginning with the Summer 2015 syllabi.

Thank you,  
 Lucretia

*Lucretia Scoufos, Ph.D.*  
*Executive Dean for Academic Affairs*  
*Professor of Communication*  
*Southeastern Oklahoma State University*  
*1405 N. 4<sup>th</sup> Avenue, PMB 4107*  
*Durant, OK 74701*  
*Toll-free 1-800-435-1327 ext. 2278*  
*P: 580.745.2278*  
*F: 580.745.7476*



**From:** Claire Stubblefield  
**Sent:** Friday, May 08, 2015 10:51 AM  
**To:** Judy Boone  
**Cc:** Lucretia Scoufos; Doug McMillan; Diane Dean  
**Subject:** Discrimination and Title IX Statements for Syllabi

President Burrage added **two new categories of protected status to the SE discrimination policy**, I ask that the attached combined policy statements be added to publications and '15-'16 syllabi until further notice. Thank you. If discussion is needed, do not hesitate to call.

*Dr. Claire Stubblefield*  
Southeastern Oklahoma State University  
Office of Equity, Compliance and Diversity  
1405 N. 4<sup>th</sup> Ave.; PMB 2750  
Durant, Oklahoma 74701  
580-745-3090 FAX 580-745-7448  
[cstubblefield@se.edu](mailto:cstubblefield@se.edu)



**Equal Opportunity Statement**

In Compliance with Title VI of the Civil Rights Act of 1964, Executive Order 11246 as amended, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, and other Federal Laws and Regulations, Southeastern Oklahoma State University does not discriminate on the basis of race, color, national origin, sex, **sexual identity, sexual orientation**, age, religion, handicap, disability, or status as a veteran in any of its policies, practices or procedures, this includes but is not limited to admissions, employment, financial aid, and educational services.

**Title IX of the Education Amendments of 1972** (20 U.S.C. § 1681) states: No person in the United States, shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance...”

Southeastern Oklahoma State University does not discriminate on the basis of sex in its education programs or activities, in compliance with Title IX and the U.S. Department of Education’s regulations at 34 C.F.R. §§ 86.1 et seq. Individuals who believe they have been discriminated against on the basis of sex may contact S.E.’s Title IX Coordinator at 580-745-3090, [titleix@se.edu](mailto:titleix@se.edu), or PMB 2750.

# Exhibit 22





# Civil Rights & Title IX Policy for Faculty, Students and Staff

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**INTRODUCTION**

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Southeastern Oklahoma State University affirms its commitment to an educational and working environment free from discrimination and harassment on the basis of race, color, national origin, religion, sex, sexual orientation, gender, age, disability, veteran status, and other protected characteristics. Discrimination of any kind, including harassment and retaliation, will not be tolerated. This policy specifically covers all civil rights and Title IX matters for all faculty, students, staff, student and employee applicants, contractors and visitors when the University becomes aware of discrimination, harassment or retaliation through a complaint or by other means. Southeastern is committed to promptly ending any instances of discrimination, harassment, or retaliation and taking appropriate measures to effectively prevent the repetition of such conduct. The University will impose appropriate sanctions to reasonably ensure that such actions are not repeated, and steps will promptly be taken to remedy the effects of the misconduct.

The University is committed to preventative programming and outreach to the campus community in order to improve campus attitudes and understanding about discrimination, harassment, sexual misconduct, effective consent, bystander intervention, and other important behavioral wellness topics.

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**POLICY STATEMENT**

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Southeastern Oklahoma State University, in compliance with applicable federal and state law and regulations, does not discriminate and prohibits discrimination on the basis of race, color, religion, national origin, sex, age, disability, sexual orientation, gender identity, or status as a veteran in any of its policies, practices, procedures, or programs. This includes, but is not limited to: admissions, employment, financial aid, and educational services.

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**PRIMARY AUTHORITY**

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The application of other University policies not related to discriminatory misconduct may trigger this policy if any report or complaint that arises under those processes contains elements of discriminatory misconduct, and will therefore be addressed in accordance with this policy prior to the resolution of other claims.

**Examples:** A student grade appeal typically routed through the Academic Appeals Committee, but which contains allegations of racial discrimination must first be evaluated in accordance with the policies and procedures contained herein, before continuing through that committee.

An employee appeal from suspension, demotion, or discharge which contains allegations of gender based discrimination must first be evaluated in accordance with the policies and procedures contained herein, before continuing through that committee.

---

**PRIOR POLICIES ARE REPLACED BY THIS POLICY**

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**Note:** This policy has been developed to simplify and consolidate all equity-based processes and procedures under one umbrella policy. This policy replaces the following University policies, or specific portions listed, that were in place prior to adoption:

- 1) Academic Policies and Procedures Manual, § 1.8 Nondiscrimination, Equal Opportunity, and Affirmative Action Policy.
- 2) Academic Policies and Procedures Manual, § 4.4.6 Faculty Grievance Policy (insofar as discrimination complaints are concerned).
- 3) Academic Policies and Procedures Manual, § 7.4 Sexual Harassment, Sexual Relationship, and Sexual Assault Policy.
- 4) Academic Policies and Procedures Manual, § 7.5 Racial and Ethnic Policy.
- 5) Academic Policies and Procedures Manual, § 7.14 Americans with Disabilities Act Policy.
- 6) Administrative, Professional, and Support Staff Employee Handbook, § vi Nondiscrimination, Equal Opportunity, and Affirmative Action Policy.
- 7) Administrative, Professional, and Support Staff Employee Handbook, § 6 Americans with Disabilities Act Policy.
- 8) Administrative, Professional, and Support Staff Employee Handbook, § 8.9 Sexual Harassment, Sexual Relationship, and Sexual Assault Policy.
- 9) Administrative, Professional, and Support Staff Employee Handbook, § 8.13 Racial and Ethnic Harassment Policy.
- 10) Administrative, Professional, and Support Staff Employee Handbook, § 13 Employee Complaint Policy.
- 11) Student Handbook, § D Gender Based and Sexual Misconduct Policy and related definitions of gender-based discrimination, harassment, and retaliation in § B of the Student Handbook.
- 12) Sexual Harassment and Violence, Discrimination, Retaliation and Domestic Violence Policy.
- 13) The Grievance Procedure for Faculty, Staff, and Students with Disabilities.
- 14) Policy on Services for Students with Disabilities.
- 15) Policy for Special Housing Requests for Students with Disabilities.
- 16) Service and Assistance Animal Policy
- 17) Policy for Addressing Requests for Academic Modifications Under the Americans with Disabilities Act
- 18) Criteria for Accepting Documentation of Disabilities

The Civil Rights & Title IX Policy is the official University policy outlining discrimination grievance procedures. Residual copies of the policies listed above are outdated may not be relied upon in any manner upon adoption of this policy.

---

**POLICY APPROVAL**

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|   |                |
|---|----------------|
| Southeastern Oklahoma State University – Director of Compliance and Safety: | March 1, 2017  |
| Regional University System of Oklahoma General Counsel’s Office:            | April 17, 2017 |
| President of Southeastern Oklahoma State University:                        | May 10, 2017   |

---

**PRIMARY CONTACT FOR INQUIRES ABOUT THIS POLICY**

---

Michael Davis, J.D.  
Director of Compliance and Safety  
Title IX Coordinator  
Administration Building, Room 311  
425 West University Blvd. Durant, OK  
Phone: 580-745-3090  
Email: [mdavis@se.edu](mailto:mdavis@se.edu)

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## PART SIX TRANSGENDER INCLUSION

Southeastern is committed to ensuring an inclusive campus community for all students, faculty, staff, and visitors. This includes freedom from discrimination and harassment based on gender identity or transgender status. The University will not exclude, separate, or deny benefits to, or otherwise treat differently on the basis of sex, any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.

- Gender Identity:** An individual's internal sense of gender. A person's gender identity may be different from or the same as a person's sex assigned at birth.
- Transgender:** Describes those individuals whose gender identity is different from the sex they were assigned at birth.
- Gender Transition:** The process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

When the University is notified that a student or employee will begin to assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with that student's gender identity. There is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.

### **Third Party Harassment:**

Southeastern will not tolerate harassment that targets an individual based on gender identity or transgender status. If such sex-based harassment creates a hostile environment, the University will take action to end the harassment, prevent its recurrence, and remedy its effects.

### **Identification and records:**

All students, employees, and contractors of Southeastern are expected to treat individuals consistent with their gender identity even if their education or employment records indicate a different sex. This includes an expectation to use the appropriately gendered pronouns, prefixes, or abbreviations when referring to an individual either directly or indirectly.

Southeastern will entertain requests to amend educational records to make them consistent with the student or employee's gender identity. Unless an individual's name and/or gender are changed by law, not all documents may be able to be amended.

**Facilities, including Housing:**

Gender-segregated facilities, including restrooms, locker rooms, housing, and hotel room assignments on University sponsored trips must permit access consistent with an individual's gender identity.

**Fraternities and Sororities:**

Title IX, and the requirements of this University policy, do not apply to the membership practices of social fraternities and sororities. Such organizations are exempt, and may have their own policies in regard to sex and gender identity.

**Athletics:**

Southeastern enforces equal opportunity for transgender student athletes. To the extent any of this policy conflicts with current NCAA Division II rules, the official NCAA Division II rules will be the controlling policy as applied to student athletes at Southeastern.

A transgender student athlete should be allowed to participate in any sports activity so long as that athlete's use of hormone therapy, if any, is consistent with the National College Athletic Association (NCAA) existing policies on banned medications. Specifically, a transgender student athlete should be allowed to participate in sex-separated sports activities under the following conditions:

**Transgender student athletes who are undergoing hormone treatment**

1. A male-to-female (MTF) transgender student athlete who is taking medically prescribed hormone treatment related to gender transition may participate on a men's team at any time, but must complete one year of hormone treatment related to gender transition before competing on a women's team.
2. A female-to-male (FTM) transgender student athlete who is taking medically prescribed testosterone related to gender transition may not participate on a women's team after beginning hormone treatment.
3. A female-to-male (FTM) transgender student athlete who is taking medically prescribed testosterone for the purposes of gender transition may compete on a men's team with an NCAA approved medical exception.
4. In any case where a student athlete is taking hormone treatment related to gender transition, the use of an anabolic agent or peptide hormone must be approved by the NCAA before the student-athlete is allowed to participate in competition while taking these medications. The NCAA recognizes that some banned substances are used for legitimate medical purposes. Accordingly, the NCAA allows exception to be made for those student-athletes with a documented medical history demonstrating the need for regular use of such a drug. The institution, through its director of athletics, may request (to the NCAA) an exception for use of an anabolic agent or peptide hormone by submitting to the NCAA medical documentation from the prescribing physician supporting the diagnosis and treatment.

**Transgender student athletes who are NOT undergoing hormone treatment**

1. Any transgender student athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.
2. A female-to-male transgender student athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.
3. A male-to-female transgender student athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.

#### **Participation in Mixed Gender Sport Activities**

A mixed team has both female and male participants and may be restricted in championship play according to specific national governing body rules.

#### **Transgender student athletes who are undergoing hormone treatment**

1. For purposes of mixed gender team classification, a male-to-female (MTF) transgender student athlete who is taking medically prescribed hormone treatment related to gender transition shall be counted as a male participant until the athlete has completed one year of hormone treatment at which time the athlete shall be counted as a female participant.
2. For purposes of mixed gender team classification, a female-to-male (FTM) transgender student athlete who is taking medically prescribed testosterone related to gender transition shall be counted as a male participant and must request a medical exception from the NCAA prior to competing because testosterone is a banned substance.

#### **Transgender student athletes who are NOT undergoing hormone treatment**

1. For purposes of mixed gender team classification, a female-to-male (FTM) transgender student athlete who is not taking testosterone related to gender transition may be counted as either a male or female.
2. For purposes of mixed gender team classification, a female-to-male (FTM) transgender student athlete who is not taking testosterone related to gender transition participating on a women's team shall not make that team a mixed gender team.
3. For purposes of mixed gender team classification, a male-to-female (MTF) transgender student athlete who is not taking hormone treatment related to gender transition shall count as a male.

#### **The student's responsibility**

1. In order to avoid challenges to a transgender student's participation during a sport season, a student athlete who has completed, plans to initiate, or is in the process of taking hormones as part of a gender transition shall submit the request to participate on a sports team in writing to the athletic director upon matriculation or when the decision to undergo hormonal treatment is made.\*



2. The student shall submit her or his request to the athletic director. The request shall include a letter from the student's physician documenting the student athlete's intention to transition or the student's transition status if the process has already been initiated. This letter shall identify the prescribed hormonal treatment for the student's gender transition and documentation of the student's testosterone levels, if relevant.

\* The student is encouraged to meet with someone who can offer support and advice through the process, if desired. Should the student want help in finding such a person, a list of people who might serve in that role is available from the Athletic Director, the Title IX Coordinator, and the Office of the Dean of Students.

### **Disputation**

If at any point the athletics section of this Transgender Inclusion Policy is disputed, the Athletics Compliance Officer shall notify the Director of Compliance and Safety. The Civil Rights and Title IX Policy and Procedure will govern the dispute. For parts of this policy that relate to athletics, no part of this policy is intended to conflict with NCAA policies and/or rules for member institutions, and to the extent any such conflict exists, the University will defer to NCAA regulations and interpretations of such regulations.

### **Policies for Intramural Sports**

People participating in any intramural sports or other athletic programs, such as physical education courses, may participate in accordance with their gender identity, should that be relevant, regardless of any medical treatment.

### **Locker Rooms.**

Anyone using sports facilities on campus—whether SE athletes, visiting athletes, or other participants and attendants—shall have access to the changing, shower, and toilet facilities that accord with their gender identity. Private facilities will be made available if asked for but transgender people will not be required to use them.

### **Accommodations for travel.**

When possible, athletes traveling to other schools should be assigned accommodations based on their gender identity, with more privacy provided, if possible, when requested.

### **Names and Pronouns.**

Teammates, coaches, and other participants in sports shall refer to people by their preferred names and pronouns.

### **Dress Codes and Uniforms**

Dress codes should enable all athletes and other sports participants to dress in accord with their gender identity. For example, instead of requiring gendered forms of “dressy,” such as a skirt or dress, dress codes should require students to dress with appropriate formality in ways that suit their gender identity. Since both transgender and cisgender athletes may have preferred gender expressions that do not conform to traditional norms of dress—for instance, not all women feel comfortable in a skirt—this policy should be understood to apply to all athletes. Uniforms, too, ideally, should not conflict with an athlete’s gender identity.

### **Education**

Athletes, coaches, trainers, and other people involved in SE Athletics should be educated about trans identities and the principles of transgender inclusion. They should be knowledgeable about how, in their particular roles, to support trans people, and prepared to put this knowledge to use.

**At schools or venues where or against which SE athletes compete.** Without naming or violating the privacy of transgender athletes or personnel in question, relevant authorities and personnel at those venues should be informed about expectations for the treatment of transgender athletes—including accommodation, pronoun, and name use—during and outside of play

RECORD COPY

This policy takes full effect on May 10<sup>th</sup>, 2017 and shall be distributed online and as an appendix in all Student, Employee, and Faculty handbooks.

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**Sean Burrage, President**  
Southeastern Oklahoma State University

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**Date**

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**Michael J. Davis, Director of Compliance & Safety**  
Southeastern Oklahoma State University

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**Date**

# Exhibit 23

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

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

DEPOSITION OF WHITNEY POPCHOKE

TAKEN ON BEHALF OF THE PLAINTIFF INTERVENOR

IN OKLAHOMA CITY, OKLAHOMA

ON AUGUST 11, 2016

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REPORTED BY: ROSIE STANDRIDGE, CSR

**Whitney Popchoke**

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1 don't need to go through the binder. But there are  
2 benefit booklets in this binder from 2007, 2008, 2009,  
3 2010, and '11?

4 A. Yes.

5 Q. To your knowledge, did the benefit booklets  
6 all have the same exclusion?

7 A. Yes.

8 Q. And that exclusion is an exclusion that's in  
9 quotation marks in defendants' responses to paragraph  
10 67?

11 A. I do not know that it's verbatim.

12 Q. Is it defendants' understanding that the  
13 exclusion, even if not verbatim in each of those  
14 years, 2007, 2008, 2009, 2010, and 2011, more or less  
15 has the same effect?

16 A. Yes.

17 Q. I want you to have Plaintiff's Exhibit 163  
18 and 164 side by side, just to make it a little bit  
19 easier for you to answer a few questions. In both of  
20 those exhibits, you can turn to the page that includes  
21 the paragraph marked 67.

22 So I'm going to read to you paragraph 67  
23 from Plaintiff's Exhibit 164. It reads as follows:  
24 SEOSU admits the health insurance plan offered to all  
25 of its employees contain numerous exclusions,

**Whitney Popchoke**

1 listed in Plaintiff's Exhibit 165 was in effect?

2 A. Yes.

3 Q. And what years were those?

4 A. 2010 through current.

5 Q. Did the health plans in effect for the  
6 calendar years between 2005 and 2009 include a similar  
7 exclusion?

8 A. Yes.

9 Q. To your knowledge, did defendants make any  
10 efforts to remove -- strike that.

11 Is it okay with you if I just refer to the  
12 exclusion that's in Plaintiff's Exhibit 165 that  
13 you've said generally existed in more or less the same  
14 form as the transsexual exclusion?

15 A. Yes.

16 Q. Thank you.

17 Did defendants take any efforts to remove  
18 the transsexual exclusion in 2005?

19 A. No.

20 Q. Why not?

21 MS. COFFEY: Object to form.

22 A. That is when we were with OSEEGIB, and we  
23 had no negotiation power when we were under OSEEGIB.

24 Q. (By Mr. Young) In 2005 did defendants have  
25 the ability to seek insurance outside of the OSEEGIB

Whitney Popchoke

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1 ability to seek the removal of the transsexual  
2 exclusion in 2010?

3 A. Yes.

4 Q. In 2011 did defendants take any steps to  
5 remove the transsexual exclusion?

6 A. No.

7 Q. Why not?

8 A. Same.

9 Q. Same being --

10 A. As I just mentioned, I -- I don't know.

11 Q. And in 2011 did defendants have the ability  
12 to request the removal of the transsexual exclusion?

13 A. Yes.

14 Q. In 2012 did defendants take any steps to  
15 remove the transsexual exclusion?

16 MS. COFFEY: You can probably fast-forward  
17 and cover all the years and ask her. Her answers will  
18 be the same.

19 MR. YOUNG: Okay. Happy to do so.

20 Q. (By Mr. Young) So I think the years that we  
21 have remaining are 2012, 2013, 2014, 2015, and 2016.  
22 For those years as a group, did defendants take any  
23 steps to remove the transsexual exclusion?

24 A. No.

25 Q. Why not?



**Whitney Popchoke**

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1           A.    I do not know.

2           Q.    For that same grouping of years, 2012 to  
3 2016, did defendants have the ability to request the  
4 removal of the transsexual exclusion?

5           A.    Yes.

6           Q.    And just to clarify, for 2011 to 2016, why  
7 do you believe that the defendants did have the  
8 ability to request the removal of the exclusion?

9                   MS. COFFEY: Object to form.

10          A.    Because with a fully insured insurance plan,  
11 you can always ask to change the policy that you're  
12 given. But it is standard procedure to get -- to take  
13 what the vendor gives you as the insurance. And that  
14 way, you ensure that what they give you is compliant,  
15 because, once again, we rely on them for their  
16 compliance.

17          Q.    (By Mr. Young) When you were -- you just  
18 used the word "vendor," correct?

19          A.    Vendor, carrier. Yes.

20          Q.    The vendor for the 2011 and 2016 period,  
21 does that mean BlueCross BlueShield?

22          A.    Yes.

23          Q.    Okay. To your knowledge, would it be costly  
24 to remove the transsexual exclusion?

25          A.    I do not know.

**Whitney Popchoke**

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1 person between 2005 and present has made an inquiry  
2 about whether the health benefits plan covered  
3 transgender services?

4 MS. COFFEY: Same objection as prior  
5 questions.

6 A. Not to my knowledge.

7 Q. (By Mr. Young) Do you know who might have  
8 information regarding inquiries made about whether the  
9 health benefits plan between 2005 and present cover  
10 transgender services?

11 A. I do not.

12 Q. Do you know on what date defendants became  
13 aware that their health benefits plan had a  
14 transsexual exclusion?

15 MS. COFFEY: Object to form.

16 A. I do not.

17 Q. (By Mr. Young) Do you have any reason to  
18 believe that defendants were unaware of the existence  
19 of the transsexual exclusion between 2005 and present?

20 MS. COFFEY: Object to form.

21 A. I don't -- I don't know that we specifically  
22 knew one way or the other.

23 Q. (By Mr. Young) You said one way or the  
24 other. Can you explain what you meant by that?

25 A. Yes. Whether it was or wasn't covered, the

**Whitney Popchoke**

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1 transgender exclusion. We didn't know whether it was  
2 an exclusion or it wasn't an exclusion.

3 Q. Did defendants have access to the health  
4 benefits booklets between 2005 and present?

5 A. Yes.

6 Q. So I guess I'm trying to understand why --  
7 strike that.

8 Did you previously testify that defendants  
9 were aware that a transgender exclusion existed in the  
10 health benefits booklets?

11 A. Yes.

12 Q. Okay. Was there a time at which defendants  
13 were not aware that exclusion existed in the health  
14 benefits booklets?

15 A. Just that it -- it wasn't a specific  
16 exclusion as to be put in there, is what I meant by  
17 that.

18 Q. So I'm just asking a clarifying question  
19 here. Are you making a distinction between something  
20 the defendants requested to be put in a plan as  
21 opposed to something that defendants later found  
22 within the plan?

23 MS. COFFEY: Object to form. Misstates her  
24 testimony.

25 THE WITNESS: Will you repeat the question?

**Whitney Popchoke**

1 (Record was read)

2 MS. COFFEY: Object to form.

3 A. Yes.

4 Q. (By Mr. Young) Is it your understanding  
5 that between 2005 and present, that defendants had  
6 access to the plan documents?

7 A. Yes.

8 Q. Is there anything that would have precluded  
9 the defendants from reviewing those plan documents?

10 A. No.

11 THE REPORTER: Did you answer?

12 A. No. Sorry. Yeah.

13 Q. (By Mr. Young) Is there a certain point at  
14 which defendants became aware that the exclusion  
15 existed?

16 MS. COFFEY: Object to form. Asked and  
17 answered. She's already testified that the defendants  
18 were familiar with the terms that were contained in  
19 the plan. But she clarified previously regarding that  
20 they may made no specific effort to include that as an  
21 exclusion.

22 Q. (By Mr. Young) You can answer.

23 A. They knew -- I mean, they knew it was in  
24 there, but I don't know -- I don't know the date that  
25 they became aware of it being included.

**Whitney Popchoke**

1 Q. To your knowledge, at any point between 2005  
2 and present, has a person on the health plan ever  
3 complained to defendants about the transsexual  
4 exclusion?

5 MS. COFFEY: Object to form.

6 A. Not to my knowledge.

7 Q. (By Mr. Young) Do you know if there's  
8 anyone else at the defendants' who would have more  
9 knowledge about such complaints?

10 A. I do not.

11 Q. Between 2005 and present, have defendants  
12 maintained any policy or mechanism through which  
13 persons on the health plan can complain to defendants  
14 directly about plan exclusions?

15 MS. COFFEY: Object to form. Asked and  
16 answered.

17 A. No.

18 Q. (By Mr. Young) So is there any way that  
19 someone on the health plan could complain to  
20 defendants about a health plan exclusion directly?

21 MS. COFFEY: Object to form. Asked and  
22 answered.

23 A. Yes.

24 Q. (By Mr. Young) And how would that complaint  
25 be processed?

**Whitney Popchoke**

1 MR. YOUNG: Benefits coordinator with that  
2 grievance. Sorry.

3 A. If they -- you asked if they wanted to file  
4 a complaint with the school, who would they go to, and  
5 that would be the individual they would go to.

6 Q. (By Mr. Young) Is there any policy or other  
7 document that explains that the benefits coordinator  
8 at the school is the appropriate person to bring a  
9 complaint about health benefits plan exclusion to?

10 MS. COFFEY: Object to form.

11 A. Again, no.

12 Q. (By Mr. Young) So how do you know that that  
13 would be the appropriate person to bring such a  
14 complaint to?

15 MS. COFFEY: Object to form.

16 A. Because that's the person in charge of  
17 benefits.

18 Q. (By Mr. Young) I assume that you know that  
19 that is the person in charge of benefits, in part  
20 because of the training you went through for your  
21 current job; is that correct?

22 A. No.

23 MS. COFFEY: Object to form.

24 Q. (By Mr. Young) So what are you basing your  
25 knowledge upon, then?

**Whitney Popchoke**

1 A. Their title as benefits coordinator.

2 Q. To your knowledge, at any point between 2005  
3 and present, has any person on one of defendants'  
4 health plans brought a complaint about a health plan  
5 exclusion to someone with the title benefits  
6 coordinator?

7 MS. COFFEY: Object to form.

8 A. I don't know.

9 Q. (By Mr. Young) Who would know?

10 A. I don't know.

11 Q. Did you take any steps to ascertain who  
12 would know?

13 A. No.

14 Q. Within the RUSO system, between 2005 and  
15 present -- strike that.

16 Do all of the schools within the RUSO system  
17 have someone at the school with the title similar to  
18 benefits coordinator?

19 A. Yes.

20 Q. And persons with such titles have existed at  
21 the schools between the time period 2005 and present?

22 A. Yes.

23 Q. So I'm just going to ask you general  
24 questions about benefits coordinators for the schools,  
25 which includes Southeastern. Is that okay?

**Whitney Popchoke**

1 A. Yes.

2 Q. So if a person on one of the health plans  
3 brought a complaint about a health exclusion to the  
4 benefits coordinator, what would be the health  
5 coordinator's role in resolving that complaint?

6 A. They would take them to -- or they would  
7 show them how to get in touch with BlueCross  
8 BlueShield.

9 Q. Would they do anything else?

10 A. If asked.

11 Q. Did -- would a health benefits coordinator  
12 during this time period have the ability to request  
13 that BlueCross BlueShield drop the exclusion?

14 A. No.

15 Q. So what would be the purpose of speaking  
16 with a benefits coordinator?

17 MS. COFFEY: Object to form.

18 A. To assist in the appeal process.

19 Q. (By Mr. Young) Between 2010 and present,  
20 when defendants were with BlueCross BlueShield -- make  
21 this a little bit easier -- do you have any knowledge  
22 as to whether someone on the health plan could use the  
23 BlueCross BlueShield appeal process as a way to remove  
24 a benefits exclusion?

25 A. Yes.



**Whitney Popchoke**

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1 I mean job title -- that someone on defendants' health  
2 plan could go to for assistance in challenging the  
3 transsexual exclusion?

4 A. The HR director.

5 Q. Okay. And what would the HR director's role  
6 be?

7 A. The same as the benefits coordinator.

8 Q. Would there be any other persons -- and,  
9 again, I mean job titles -- that someone on the health  
10 plan could go to for assistance in challenging the  
11 transsexual exclusion?

12 A. Not to my knowledge.

13 Q. Is there any document or policy that  
14 memorializes that someone on the defendants' health  
15 benefits plan could go to the HR director for  
16 assistance in challenging a categorical exclusion?

17 MS. COFFEY: Object to form.

18 A. No.

19 Q. (By Mr. Young) So what are you basing your  
20 answer upon, then, if there's no document that says  
21 that that's the appropriate person to go to?

22 MS. COFFEY: Object to form.

23 A. If you have a question with benefits or  
24 something having to do with HR, HR is typically the  
25 place you would go to resolve those questions.

**Whitney Popchoke**

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1 Q. (By Mr. Young) But you have no specific  
2 documentation or no information received from an  
3 interview that you conducted in preparation for  
4 today's deposition that informs your answer?

5 MS. COFFEY: Object to form.

6 A. No.

7 Q. (By Mr. Young) To your knowledge, between  
8 2005 and present, has any person on defendants' health  
9 plan gone to an HR director to challenge the  
10 transsexual exclusion?

11 A. I do --

12 MS. COFFEY: Object to form.

13 A. I do not know.

14 Q. (By Mr. Young) Do you know who would have  
15 such knowledge?

16 A. I do not.

17 Q. Do you know whether, between 2005 and  
18 present, anyone on defendants' health plan has gone to  
19 a person with the title HR director to challenge any  
20 exclusion on the health plan?

21 MS. COFFEY: Object to form.

22 A. I do not know.

23 Q. (By Mr. Young) Do you know who would know?

24 A. I do not.

25 Q. Did you take any steps in preparation for

**Whitney Popchoke**

1 today's deposition to ascertain who would know?

2 A. I did not.

3 Q. Okay. Other than going to someone with the  
4 title benefits coordinator or someone with the title  
5 HR director, is there any other person -- which I mean  
6 title -- that someone on the health benefits plan  
7 could go to to challenge an exclusion?

8 MS. COFFEY: Object to form. Asked and  
9 answered.

10 A. No.

11 Q. (By Mr. Young) Between 2005 and present,  
12 could someone on the health benefits plan file a  
13 complaint of discrimination to challenge an exclusion  
14 on the health plan?

15 MS. COFFEY: Object to form.

16 A. I don't know.

17 Q. (By Mr. Young) Do you know who would know?

18 A. No.

19 Q. Did you take any steps in preparation for  
20 today's deposition to ascertain who would know?

21 A. No.

22 MS. COFFEY: Object to form.

23 Q. (By Mr. Young) Do you have any reason to  
24 believe that someone on defendants' health plan,  
25 between 2005 and present, could not file a complaint

**Whitney Popchoke**

1 of discrimination with defendants to challenge an  
2 exclusion on the health plan?

3 MS. COFFEY: Object to form.

4 A. I do not.

5 Q. (By Mr. Young) Do you have any knowledge as  
6 to whether anyone, between 2005 and present, has filed  
7 a discrimination complaint with defendants to  
8 challenge an exclusion on the health plan?

9 MS. COFFEY: Object to form.

10 A. Including current?

11 Q. (By Mr. Young) 2005 to present, so that  
12 brings us up to 2016.

13 A. So yes.

14 Q. Okay. How many complaints are you aware of?

15 A. One.

16 Q. What year did that complaint occur in?

17 A. 2016.

18 Q. You're looking at a document. What -- what  
19 are you looking at?

20 A. This current case.

21 Q. Okay. So -- thank you.

22 So outside of Dr. Tudor, has anyone else  
23 ever filed a complaint?

24 A. No.

25 MS. COFFEY: Object to form.

**Whitney Popchoke**

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1 to defendants, rather than the vendor, about an issue  
2 with the health plan, that they could go to someone  
3 with the title benefits coordinator or possibly  
4 someone with the title human resources. Am I  
5 understanding your testimony correctly?

6 A. Yes.

7 Q. If there was a situation where someone on  
8 the health plan could not get help from the benefits  
9 coordinator or someone with the title HR, is there  
10 anyone else they could go to?

11 MS. COFFEY: Object to form. Asked and  
12 answered.

13 A. No.

14 Q. (By Mr. Young) To clarify, someone with the  
15 title of benefits coordinator or HR, that would be  
16 someone who worked at one of the RUSO schools, right?

17 A. Correct.

18 Q. Was there anyone at RUSO who someone could  
19 go to if they had concerns about their health plan?

20 A. RUSO as in the board office or -- RUSO means  
21 a group of six schools.

22 Q. Uh-huh.

23 A. So I'm not sure.

24 Q. Okay. Is there anyone in the RUSO  
25 administrative offices that someone on the health plan

**Whitney Popchoke**

1 scanning in documents or something of that nature, I  
2 could assist with that process.

3 Q. So is it correct to say, then, that your  
4 assistance is limited to facilitating this person  
5 making complaints to BlueCross BlueShield or sending  
6 information to BlueCross BlueShield?

7 MS. COFFEY: Object to form.

8 A. Correct.

9 Q. (By Mr. Young) And if I'm remembering your  
10 prior testimony correctly, you're not aware of any  
11 internal policies or procedures through which someone  
12 on the health plan could complain within defendants'  
13 ambit?

14 A. Correct.

15 MS. COFFEY: Object to form. Misstates her  
16 prior testimony.

17 Q. (By Mr. Young) You can answer.

18 A. Correct.

19 Q. I'm going to switch gears a little bit.  
20 I believe you previously testified that defendants  
21 relied upon the vendors to ensure that the health  
22 benefits plan complied with applicable federal laws;  
23 is that correct?

24 A. Correct.

25 Q. Other than relying upon the vendors to

**Whitney Popchoke**

1 comply with federal laws, did defendants take any  
2 independent steps to ensure that the plans complied  
3 with federal laws?

4 MS. COFFEY: Objection. Asked and answered.

5 A. Not to my knowledge.

6 Q. (By Mr. Young) Do you know who at  
7 defendants' would have knowledge of that?

8 A. Charlie Babb.

9 Q. Do defendants have any written policies or  
10 procedures for reviewing the health benefits plan on a  
11 yearly basis to ensure compliance with the law?

12 A. We do not.

13 Q. Do you have any knowledge as to why there  
14 are no such procedures to check the health benefits  
15 plan for compliance with federal law?

16 MS. COFFEY: Object to form. Calls for  
17 speculation.

18 A. I do not.

19 Q. (By Mr. Young) Between 2005 and 2009, was  
20 there anyone affiliated with the defendants whose  
21 responsibility it was to read through the whole health  
22 plan?

23 MS. COFFEY: Object to form. Asked and  
24 answered.

25 A. I don't know.

**Whitney Popchoke**

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1 Q. Did you take any steps in preparation for  
2 today's deposition to ascertain that?

3 A. I did not.

4 Q. Between 2005 and present -- assume the whole  
5 set of questions for this time period. During that  
6 period, have defendants requested any changes to their  
7 health plans?

8 A. Not to my knowledge.

9 Q. Do you know who would have knowledge of  
10 that?

11 A. BlueCross BlueShield.

12 Q. What about the time period where BlueCross  
13 BlueShield was not the vendor?

14 A. OSEEGIB.

15 Q. Do you have any knowledge as to whether,  
16 when the Affordable Care Act went into effect,  
17 defendants took any steps to ensure that the health  
18 plans complied with the Affordable Care Act?

19 A. Outside of relying on BlueCross BlueShield  
20 and the amendments that were then put in place,  
21 nothing.

22 Q. Is it your understanding that the health  
23 plans did undergo some sort of change as initiated by  
24 BlueCross BlueShield to bring it in compliance with  
25 the Affordable Care Act?



**Whitney Popchoke**

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1 Southeastern's answer, at paragraph 67 both of those  
2 documents have the following language: Admits the  
3 health insurance plan offered to all of its employees  
4 contain numerous exclusions, including the following  
5 exclusion: For transsexual surgery or any treatment  
6 leading to or in connection with transsexual surgery.

7 Is that correct?

8 A. Correct.

9 Q. What is defendants' understanding of the  
10 effect of the exclusion I just quoted for you?

11 A. By not having that exclusion in -- or by  
12 having that exclusion in the benefit, then any  
13 transsexual surgery that was performed would be  
14 cost -- the cost would be out of pocket.

15 Q. How do defendants define transsexual  
16 surgery?

17 MS. COFFEY: Object to form.

18 A. We don't.

19 Q. (By Mr. Young) Do defendants have any  
20 understanding of what specifically is deemed a  
21 transsexual surgery for the purposes of the health  
22 benefits plan?

23 MS. COFFEY: Object to form.

24 A. Yes.

25 Q. (By Mr. Young) And what is that

Whitney Popchoke

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1 understanding?

2 A. It would be any gender reassignment surgery  
3 and any procedures that would be included in that.

4 Q. Would you agree with me that that means any  
5 surgery sought as treatment for a condition called  
6 gender dysphoria?

7 MS. COFFEY: Object to form.

8 A. Yes.

9 Q. (By Mr. Young) Other than the transsexual  
10 exclusion that we just discussed not covering  
11 surgeries, does it have any other effects?

12 MS. COFFEY: Object to form. RUSO's already  
13 answered that it's not within their determination as  
14 to what is and isn't covered.

15 MR. YOUNG: Understood. Let me rephrase  
16 that.

17 Q. (By Mr. Young) I'm asking you about  
18 defendants' understanding of the effect of the  
19 exclusion. To defendants' understanding, does the  
20 exclusion -- the transsexual exclusion exclude  
21 anything other than surgeries?

22 MS. COFFEY: Object to form. Asked and  
23 answered.

24 A. It would be anything that goes along with  
25 it, the medication, I believe the hormone treatments,

**Whitney Popchoke**

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1 and I don't know what else.

2 Q. (By Mr. Young) Do defendants also  
3 understand the transsexual exclusion to have the  
4 effect of excluding coverage for psychological  
5 counseling?

6 MS. COFFEY: Object to form.

7 A. I don't know about that. We do cover  
8 counseling.

9 Q. (By Mr. Young) Cover counseling generally?

10 A. Yeah.

11 MS. COFFEY: Object to form.

12 Q. (By Mr. Young) But you don't know if  
13 counseling sought by a transgender person to treat  
14 gender dysphoria would be covered?

15 A. I do not know that.

16 Q. Do you know who would know?

17 A. BlueCross BlueShield.

18 Q. And that would be BlueCross BlueShield for  
19 the 2010 to present period?

20 A. Correct. And OSEEGIB prior.

21 Q. Do defendants have any knowledge as to  
22 whether the surgeries and medications that are  
23 excluded under the transsexual exclusion in the health  
24 plan are otherwise provided to other persons enrolled  
25 in the plan?

**Whitney Popchoke**

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1 defendants. Is there a different entity I should be  
2 asking that question to?

3 A. Yes.

4 Q. And what entity is that?

5 A. BlueCross BlueShield.

6 Q. Do defendants have the ability to pose that  
7 question to BlueCross BlueShield?

8 MS. COFFEY: Object to form.

9 A. Potentially.

10 Q. (By Mr. Young) Why are you saying  
11 potentially?

12 A. It could be classified information. I'm not  
13 sure if they would have that information for us or  
14 not.

15 Q. Sticking with hormones, do you have any  
16 knowledge as to whether defendants' health plan  
17 provides estrogen hormones to people on the health  
18 plan?

19 MS. COFFEY: Object to form.

20 A. I believe we do.

21 Q. (By Mr. Young) And what makes you believe  
22 that you do?

23 A. It doesn't say -- our plan documents don't  
24 say that we don't cover them.

25 Q. Is it defendants' understanding that

**Whitney Popchoke**

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1 estrogen sought by someone with gender dysphoria to  
2 treat gender dysphoria would be excluded under the  
3 plan?

4 MS. COFFEY: Object to form.

5 A. I do not know.

6 Q. (By Mr. Young) Do you know who at  
7 defendants' would know?

8 A. No.

9 MS. COFFEY: Object to form.

10 Q. (By Mr. Young) Is this a question that you  
11 believe could be answered by BlueCross BlueShield?

12 A. Yes.

13 Q. And I believe I know your answer to this,  
14 but I have to ask it anyways. Do defendants have the  
15 ability to pose that same question to BlueCross and  
16 BlueShield?

17 MS. COFFEY: Object to form.

18 A. Potentially.

19 Q. (By Mr. Young) And your caveat,  
20 potentially, here is only because you're uncertain as  
21 to whether that information is classified?

22 A. Correct.

23 Q. Between 2005 and present, are you aware of  
24 any other exclusions in defendants' health plan that  
25 specifies specific kinds of surgeries that were

**Whitney Popchoke**

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1 excluded?

2 A. Yes.

3 Q. And what are those?

4 A. Cosmetic surgeries.

5 Q. Any others?

6 A. Bariatric surgeries. Oh, gosh. You're  
7 testing me.

8 Q. I don't mean to test you. But you're  
9 aware --

10 A. There are a lot, yes. There are others,  
11 yes.

12 Q. Other surgeries?

13 A. Yes.

14 Q. Okay. Do you have any understanding as to  
15 why certain surgeries, other than the transsexual  
16 surgery and the transsexual exclusion, are excluded?

17 MS. COFFEY: Object to form.

18 A. I do not know.

19 Q. (By Mr. Young) Do you know of anyone at  
20 defendants' who would have such knowledge?

21 A. No one.

22 Q. Is this a question again that should be  
23 posed to one of the vendors?

24 A. Yes, sir.

25 Q. And, once again, is this a question that

**Whitney Popchoke**

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1 defendants could pose directly to the vendors?

2 A. Yes.

3 MS. COFFEY: Object to form.

4 Q. (By Mr. Young) At any point in time, have  
5 defendants taken steps to solicit a health plan that  
6 did not include a transsexual exclusion?

7 A. I do not know.

8 Q. Who would know?

9 A. I -- I don't know.

10 Q. Are you aware of any reason why defendants  
11 could not put out a solicitation seeking a health plan  
12 without a transsexual exclusion?

13 A. No.

14 Q. When does open enrollment start for the 2017  
15 calendar year?

16 A. It varies by school.

17 Q. Is there like a general time period or is it  
18 all over the place?

19 A. Generally, in the month of October.

20 Q. So are RUSO and the RUSO schools currently  
21 preparing for open enrollment?

22 A. Yes.

23 Q. Do defendants currently have a copy of  
24 whatever health plans are going to be offered during  
25 open enrollment in October 2016?

**Whitney Popchoke**

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1 A. An idea. Yes.

2 Q. What do you mean by an idea?

3 A. Yes, we do.

4 Q. Do any of those health plans that are going  
5 to be offered in October 2016 have transsexual  
6 exclusions in them?

7 A. I do not know.

8 Q. Are you aware of whether defendants took any  
9 steps to find health plans to offer in October 2016  
10 which do not include a transsexual exclusion?

11 A. We did not.

12 Q. Were there ever any discussions about  
13 seeking out such policies?

14 MS. COFFEY: Object to form.

15 A. I don't know.

16 Q. (By Mr. Young) Do you know who would know?

17 A. Possibly Charlie Babb. Sorry.

18 Q. Why do you believe it might -- that Charlie  
19 Babb might know?

20 A. He's a member of the OKHEEI board. He fills  
21 in for Sheridan McCaffrey. They switch off as members  
22 of the OKHEEI board.

23 Q. Okay. So just for clarification's sake, you  
24 were pointing to Charlie Babb possibly, not because  
25 he's legal counsel to RUSO, but because of his role on



**Whitney Popchoke**

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1 plans that they choose cannot provide breast  
2 reconstruction surgery for any other medical  
3 condition?

4 MS. COFFEY: Object to the form. Misstates  
5 her testimony.

6 A. No.

7 Q. (By Mr. Young) I'm trying to understand  
8 defendants' understanding of what the 1998 Women's  
9 Cancer Rights Act -- what effect that law has on their  
10 ability to cover under the health benefits plan breast  
11 reconstruction, just to give you a grounding here.

12 So why did you cite the 1998 Women's Cancer  
13 Rights Act to answer the question?

14 MS. COFFEY: Objection. Asked and answered.

15 A. That is the reason breast reconstruction is  
16 covered, and that is the reason that it is cited in  
17 our book as being covered as the result of a  
18 mastectomy. As a direct result of mastectomy, breast  
19 construction is covered.

20 Q. (By Mr. Young) When you say "we decided,"  
21 do you mean defendants decided?

22 A. BlueCross BlueShield.

23 Q. For the 2005-2009 --

24 A. And OSEEGIB. I think it's a federally  
25 mandated act as well.

**Whitney Popchoke**

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1 Q. I think earlier you testified that one of  
2 the reasons why defendants switched from OSEEGIB to  
3 BlueCross BlueShield was to save money; is that  
4 correct?

5 MS. COFFEY: Object to form.

6 A. Correct.

7 Q. (By Mr. Young) Have defendants made any  
8 other changes to their health benefits plans to save  
9 money --

10 MS. COFFEY: Object to form.

11 Q. (By Mr. Young) -- between 2005 and present?

12 MS. COFFEY: Object to form.

13 A. No.

14 Q. (By Mr. Young) Have defendants, between  
15 2005 and present, ever decided to not comply with the  
16 federal law in order to save money?

17 MS. COFFEY: Object to form.

18 A. No.

19 Q. (By Mr. Young) Is it defendants'  
20 understanding that the transsexual exclusion that  
21 we've been talking about all day is permissible under  
22 federal law?

23 MS. COFFEY: Object to form.

24 A. Yes.

25 Q. (By Mr. Young) What informs that answer?

Whitney Popchoke

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1 A. Because we are reliant on the vendors to  
2 comply with the federal law and they have it as an  
3 exclusion.

4 Q. Is there anything else that informs your  
5 answer?

6 A. No.

7 Q. Have defendants taken any steps to ascertain  
8 whether BlueCross BlueShield has been sued for failing  
9 to comply with federal law by maintaining similar  
10 transsexual exclusions?

11 A. No.

12 Q. Why not?

13 MS. COFFEY: Object to form.

14 A. I don't know.

15 Q. (By Mr. Young) Do you know who would know?

16 A. Probably Charlie Babb.

17 Q. And is that -- are you identifying Mr. Babb  
18 because he's RUSO's legal counsel or because of his  
19 role in the OSEE -- what's the abbreviation?

20 A. OKHEEI.

21 Q. Can you explain to me why you're pointing to  
22 Mr. Babb?

23 A. Legal.

24 Q. Legal counsel.

25 MS. COFFEY: Is this a good place -- good

**Whitney Popchoke**

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1 time for a break?

2 MR. YOUNG: We can take a break, yes. Off  
3 the record.

4 (Recess 12:31 p.m. to 12:46 p.m.)

5 Q. (By Mr. Young) Welcome back from the break.  
6 I'm just going to finish up my last questions for the  
7 day, and then we can let you go.

8 A. Perfect.

9 Q. Okay. So in the time period 2005 to 2009,  
10 are you aware of whether anyone on defendants' health  
11 plan requested coverage of medically necessary care to  
12 treat gender dysphoria?

13 MS. COFFEY: Object to form.

14 A. Not to my knowledge.

15 Q. (By Mr. Young) Did you take any steps to  
16 ascertain that?

17 A. I did not.

18 Q. Why not?

19 A. Confidentiality.

20 Q. Any other reasons?

21 A. No.

22 Q. Based upon defendants' understanding of the  
23 transsexual exclusion that was in effect in the 2005  
24 to 2009 time period, do you believe such services  
25 would have been covered?

**Whitney Popchoke**

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1           A.    No.

2           Q.    And why is that?

3           A.    The plan documents -- if you refer to the  
4 plan documents, they specifically state that -- I  
5 think the wording is sex transformation surgeries are  
6 not included -- included. Sorry.

7           Q.    Okay. So your understanding, based upon the  
8 exclusion that you were just paraphrasing --

9           A.    Yes.

10          Q.    -- is that it would have been impossible to  
11 get such services covered in the 2005-2009 time  
12 period?

13          A.    Without an appeal.

14          Q.    What makes you believe an appeal would have  
15 facilitated coverage?

16          A.    That's what appeals are there for. The  
17 appeals are there to go against any of the exclusions  
18 or a denial of claims, to potentially get exclusions  
19 turned around. So it could have -- if you appealed  
20 the exclusion, you could potentially get it covered at  
21 that point.

22          Q.    I believe you previously testified that  
23 where a health plan is self-insured, the entity that  
24 contracted with the vendor to get that health plan has  
25 some sort of flexibility in determining, like, what is

# Exhibit 24

**Oklahoma Higher Education Employees Insurance Group**  
a/k/a OKHEEI Group

**Minutes of Regular Meeting**

655 Research Parkway  
Oklahoma City, Oklahoma

Video Conferencing Sites:

**East Central University**

Science Hall, Room 309  
1100 E 14th St  
Ada, OK 74820  
(580) 559-5539

Attendees: Dawn Thurber, Lynn Lofton

Thursday, October 6, 2016  
10:00 a.m.

**1. Announcement of Filing Meeting Notice and Posting of the Agenda in Accordance with the Open Meeting Act.**

The OKHEEI Group Board of Trustees met in regular session at 10:00 a.m., October 6, 2016, at State Regents, 655 Research Parkway, Oklahoma City, Oklahoma. Notice of the meeting had been properly filed with the Secretary of State by December 15, 2015 and a copy of the Agenda posted by 10:00 a.m., in compliance with the Open Meeting Act.

**a. Call meeting to order**

Chair Dennis Westman (MSC) called the meeting to order at 11:04 a.m.

**b. Attendance**

**The following OKHEEI Board of Trustees were present:**

Designee T. Lynn Lofton, East Central University – via iTV  
Dennis Westman, Murray State College  
Designee Christy Landsaw, Northeastern Oklahoma State University  
Anita Simpson, Northern Oklahoma College  
David Pecha, Northwestern Oklahoma State University  
Designee Kim Andrade, Redlands Community College  
Kent Lashley, Rose State College  
Sheridan McCaffree, RUSO Administrative Office  
Braden Brown, Seminole State College  
Dennis Westman, Southeastern Oklahoma State University  
Brenda Burgess, Southwestern Oklahoma State University  
Patti Neuhold, University of Central Oklahoma  
Tricia Latham, Western Oklahoma State College

**The following Trustees were absent:**

None

Designee T. Lynn Lofton, East Central University – via iTV  
Dennis Westman, Murray State College  
Designee Christy Landsaw, Northeastern Oklahoma State University  
Anita Simpson, Northern Oklahoma College  
David Pecha, Northwestern Oklahoma State University  
Designee Kim Andrade, Redlands Community College  
Kent Lashley, Rose State College  
Sheridan McCaffree, RUSO Administrative Office  
Braden Brown, Seminole State College  
Dennis Westman, Southeastern Oklahoma State University  
Brenda Burgess, Southwestern Oklahoma State University  
Patti Neuhold, University of Central Oklahoma  
Tricia Latham, Western Oklahoma State College

**Voting against the motion:** None

**Abstaining:** None

Patti Neuhold (UCO) made the motion, seconded by Anita Simpson (NOC) to cover gender assignment according to Option B of the proposal, which does not cover surgical procedures.

**Voting for the motion:**

Dennis Westman, Murray State College  
Designee Christy Landsaw, Northeastern Oklahoma State University  
Anita Simpson, Northern Oklahoma College  
David Pecha, Northwestern Oklahoma State University  
Designee Kim Andrade, Redlands Community College  
Kent Lashley, Rose State College  
Sheridan McCaffree, RUSO Administrative Office  
Braden Brown, Seminole State College  
Dennis Westman, Southeastern Oklahoma State University  
Brenda Burgess, Southwestern Oklahoma State University  
Patti Neuhold, University of Central Oklahoma  
Tricia Latham, Western Oklahoma State College

**Voting against the motion:**

Designee T. Lynn Lofton, East Central University – via iTV

**Abstaining:** None

**Motion passes by a vote of 12 to 1.**

10. Whitney Popchoke, RUSO/OKHEEI, discussed the option for an RFP and/or “piggybacking” on an existing state contract.



**Oklahoma Higher Education Employees Insurance Group**  
a/k/a OKHEEI Group

**Minutes of Regular Meeting**

State Regents  
655 Research Parkway  
Oklahoma City, Oklahoma

Video Conferencing Sites:

**East Central University**

Science Hall, Room 309  
1100 E 14th St  
Ada, OK 74820  
(580) 559-5539

Attendees: Jessica Kilby, Dawn Thurber, Lynn Lofton, Rhonda Kinder, Rob Thompson

**Western Oklahoma State College**

Main Building, Room HLC116  
2801 N Main St  
Altus, OK 73521  
(580) 471-6994

Attendees: April Nelson, Tricia Latham

**Thursday, November 10, 2016**

**10:00 a.m.**

**1. Announcement of Filing Meeting Notice and Posting of the Agenda in Accordance with the Open Meeting Act.**

The OKHEEI Group Board of Trustees met in special session at 10:00 a.m., November 10, 2016, at State Regents, 655 Research Parkway, Oklahoma City, Oklahoma. Notice of the meeting had been properly filed with the Secretary of State by December 15, 2015 and a copy of the Agenda posted by 10:00 a.m., in compliance with the Open Meeting Act.

**a. Call meeting to order**

Chair Dennis Westman (MSC) called the meeting to order at 10:01 a.m.

**b. Attendance**

**The following OKHEEI Board of Trustees were present:**

Jessica Kilby, East Central University – via iTV  
Dennis Westman, Murray State College  
Designee Christy Landsaw, Northeastern State University  
Anita Simpson, Northern Oklahoma College  
David Pecha, Northwestern Oklahoma State University  
Jena Marr, Redlands Community College  
Krista Norton, Rose State College  
Sheridan McCaffree, RUSO Administrative Office  
Designee Courtney Jones, Seminole State College  
Dennis Westman, Southeastern Oklahoma State University  
Brenda Burgess, Southwestern Oklahoma State University  
Patti Neuhold, University of Central Oklahoma  
Tricia Latham, Western Oklahoma State College – via iTV

Sheridan McCaffree (RUSO) made the motion, seconded by Jena Marr (RCC), to approve the minutes of the October 27, 2016 Special Meeting.

**Voting for the motion:**

Jessica Kilby, East Central University – via iTV  
Dennis Westman, Murray State College  
Designee Christy Landsaw, Northeastern State University  
Anita Simpson, Northern Oklahoma College  
David Pecha, Northwestern Oklahoma State University  
Jena Marr, Redlands Community College  
Krista Norton, Rose State College  
Sheridan McCaffree, RUSO Administrative Office  
Designee Courtney Jones, Seminole State College  
Dennis Westman, Southeastern Oklahoma State University  
Brenda Burgess, Southwestern Oklahoma State University  
Patti Neuhold, University of Central Oklahoma  
Tricia Latham, Western Oklahoma State College – via iTV

**Voting against the motion:** None

**Abstaining:** None

2. Nancy Gerrity, RUSO, discussed the need to modify the October 6<sup>th</sup> vote for changes in gender assignment coverage since it was decided by the RUSO General Counsel that OKHEEI does have to abide by Section 1557 of the IRS Code.

Sheridan McCaffree (RUSO) made the motion, seconded by David Pecha (NWOSU) to cover all medically necessary gender assignment surgery as required.

**Voting for the motion:**

Jessica Kilby, East Central University – via iTV  
Dennis Westman, Murray State College  
Designee Christy Landsaw, Northeastern State University  
Anita Simpson, Northern Oklahoma College  
David Pecha, Northwestern Oklahoma State University  
Jena Marr, Redlands Community College  
Krista Norton, Rose State College  
Sheridan McCaffree, RUSO Administrative Office  
Designee Courtney Jones, Seminole State College  
Dennis Westman, Southeastern Oklahoma State University  
Brenda Burgess, Southwestern Oklahoma State University  
Patti Neuhold, University of Central Oklahoma  
Tricia Latham, Western Oklahoma State College – via iTV

**Voting against the motion:** None

**Abstaining:** None

# Exhibit 25

### DECLARATION OF MARK SPENCER

1. I am a Full Professor with tenure at Southeastern Oklahoma State University ("Southeastern").
2. I started working for Southeastern in August 2001 as an Assistant Professor. The entire time that I have worked for Southeastern I have worked in the Department of English, Humanities, and Languages.
3. I received tenure and the position of Associate Professor during the 2006-07 academic year.
4. When I applied for tenure and promotion to Associate Professor during the 2006-07 academic year, in accordance with Southeastern's Procedure for Granting Promotion and Tenure, I submitted a portfolio of my work in support of my application.
5. The faculty Promotion and Tenure Committee ("P&T Committee") that reviewed my portfolio recommended that I receive tenure but not promotion.
6. Dr. John Mischo, who was Chair of the Department of English, Humanities, and Languages at the time, concurred with the P&T Committee that I should receive tenure but not promotion.
7. After Dr. Mischo recommended that I receive tenure but not promotion, the Dean of Southeastern's School of Arts and Sciences, Dr. C.W. Mangrum, recommended that I receive tenure and promotion to the position of Associate Professor.

8. After Dr. Mangrum recommended that I receive tenure and promotion to Associate Professor, Southeastern's Vice President for Academic Affairs, Dr. Douglas McMillan, reviewed my portfolio.
9. I was informed that Dr. McMillan decided to recommend that I should not receive tenure or promotion to Associate Professor.
10. After I learned that Dr. McMillan had decided to recommend that I should not receive tenure or promotion, I spoke to Drs. Mischo, Mangrum, McMillan, and the President of Southeastern, Jesse Snowden about my application for promotion and tenure.
11. These conversations all occurred during the 2006-07 academic year before President Snowden made a final decision on whether to recommend that I receive promotion and tenure.
12. When I spoke to Dr. McMillan, he told me that he thought I needed to improve my record in the area of scholarship in order to qualify for promotion and tenure. He recommended that I attend more conferences and send more articles out for publication.
13. I understood Dr. McMillan to be giving me advice on how I could improve my portfolio so that I would have a better chance of obtaining promotion and tenure the following academic year.
14. During this meeting, I asked Dr. McMillan if he would have any concerns with me speaking with President Snowden about my application and he said that he did not mind if I spoke to President Snowden.

15. After I spoke to Dr. McMillan, I spoke to President Snowden and asked whether I could supplement my portfolio if I sent out some articles for publication.

16. President Snowden told me he had checked with Dr. McMillan and they both agreed that if I sent out some articles for publication, I could supplement my portfolio at that point in time.

17. In the Spring of 2007, after President Snowden told me that it would be fine for me to supplement my portfolio, I sent out four articles for publication and supplemented my portfolio with that information.

18. The four articles that I submitted for publication were all ultimately published.

They are as follows:

- a) Spencer, M. (2009). "Writing Medieval Women (and Men): Sigrud Undset's *Kristin Lavransdatter*," *Studies in Medievalism XVII: Defining Medievalisms*, ed. Karl Fugelso. Woodbridge, Suffolk and Rochester, NY: Boydell & Brewer, 121-140.
- b) Spencer, M. (2008) "Patriarchal Attitudes: Eva Figes' *The Tree of Knowledge* and Deborah Milton," *Lamar Journal of the Humanities* 33(1), 13-24.
- c) Spencer, M. (2008). "The Dark Side of the Renaissance: Pär Lagerkvist's *The Dwarf*," *South Carolina Review* 41(1), 134-41.
- d) Spencer, M. (2007). "Recreating the Early Modern in the Postmodern: George Garrett's *Death of the Fox*." *Lamar Journal of the Humanities* 32 (1), 5-19.

19. President Snowden then, based on my supplemented portfolio, recommended that I receive tenure and promotion to Associate Professor.

20. The letter I received from President Snowden is dated April 18, 2007 and a true and correct copy of it is attached to this declaration. It bears the page number "OAG/DLC/USA v. SOSU - CIV-15-324/007503" in the lower righthand corner.

21. The Regional University System of Oklahoma Board of Regents subsequently approved President Snowden's recommendation and, as a result, I received tenure and promotion to Associate Professor.
22. Of the four articles that I submitted for publication in the Spring of 2007, only "Recreating the Early Modern in the Postmodern: George Garrett's *Death of the Fox*" was accepted for publication before President Snowden made his decision to recommend that I receive tenure and promotion to Associate Professor. However, I am not sure whether I informed President Snowden that this article had been accepted for publication before he made his decision to recommend that I receive tenure and promotion to Associate Professor.
23. As indicated above, the article "Patriarchal Attitudes: Eva Figes' *The Tree of Knowledge* and Deborah Milton" was ultimately published in the Lamar Journal of the Humanities. However, at the time that I supplemented my portfolio in the Spring of 2007, I had submitted this article to the Dalhousie Review.
24. It was not until sometime after President Snowden recommended that I receive tenure and promotion to Associate Professor that I submitted this article to the Lamar Journal of the Humanities.

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

Executed on (date) 5-2-16 in (location) DURANT, OK



\_\_\_\_\_  
Mark Spencer, Ph.D.



Jesse O. Snowden, Ph.D.  
*President*

April 18, 2007

Dr. Mark Spencer  
Department of English, Humanities and Languages  
PMB 4121  
Southeastern Oklahoma State University  
Durant, OK 74701-0609

Dear Dr. Spencer:

Based upon the recommendation of Dr. Doug McMillan, Interim Vice President for Academic Affairs, I have approved the recommendation that you be promoted in academic rank from Assistant Professor to **Associate Professor** and be granted **tenure** in the Department of Accounting and Finance at Southeastern Oklahoma State University effective with the 2007-2008 academic year.

*Congratulations* on your most recent academic achievement and best wishes for your continued success.

Sincerely,

Jesse O. Snowden  
President

cc: Dr. Doug McMillan  
Dr. C.W. Mangrum  
Dr. John Mischo  
Ms. Cathy Conway



# Exhibit 26

To be filed under seal.

# Exhibit 27




OFFICE OF THE DEAN

SCHOOL OF ARTS AND SCIENCES  
SOUTHEASTERN OKLAHOMA STATE UNIVERSITY  
1405 N. FOURTH AVE., PMB 4107  
DURANT, OK 74701-0609

580-745-2634  
FAX 580-745-7476  
WWW.SE.EDU

To: Douglas McMillan  
Interim Vice President for Academic Affairs

From: Lucretia C. Scoufos   
Dean, School of Arts and Sciences

Date: January 12, 2010

Subject: Recommendation to deny tenure and to give Rachel J. Tudor, Ph.D., a one-year terminal appointment at the rank of Assistant Professor in the Department of English, Humanities and Languages for the 2010-2011 Academic Year

Although there is evidence that Dr. Tudor is a generally effective classroom teacher, her record of scholarship, in my view, falls well short of the noteworthy achievement required for promotion to Associate Professor with tenure. Since coming to Southeastern, there appears to be only one peer-reviewed paper submitted for publication, which has been accepted, but not yet published.

Likewise, there is little documentation of service activity in Dr. Tudor's portfolio, other than routine departmental assignments. She was elected to the Faculty Senate in 2009, and has served one semester.

Dr. Tudor's portfolio appears to be incomplete. In addition to lack of documentation of service activity, there are no letters of recommendation from tenured faculty members in her department. The single sentence recommendations for promotion and tenure from the departmental committee and the chair fail to give any justification for the recommendation for promotion and tenure.

Therefore, based on the available documentation, I am unable to recommend Dr. Rachel J. Tudor for promotion to Associate Professor or for tenure. My recommendation is that she be given a one-year, terminal appointment for the 2010-2011 academic year.

---

SOUTHEASTERN OKLAHOMA STATE UNIVERSITY

# Exhibit 28

This document was originally filed under seal. It is no longer sealed and this unsealed version replaces the file-stamped place-holder previously on the docket for document 205-28

***United States of America & Dr. Rachel Tudor v. Southeastern Oklahoma State University & the Regional University System of Oklahoma (W.D. Okla.),***  
**Case No. CIV-15-324-C**

**SETTLEMENT AGREEMENT**  
**BETWEEN THE UNITED STATES OF AMERICA AND SOUTHEASTERN**  
**OKLAHOMA STATE UNIVERSITY AND THE REGIONAL UNIVERSITY SYSTEM**  
**OF OKLAHOMA**

**I. INTRODUCTION**

1. This Settlement Agreement (“Agreement”) is entered between Plaintiff, the United States of America (“the United States”), through the Department of Justice and Defendants Southeastern Oklahoma State University (“Southeastern”), and the Regional University System of Oklahoma (“RUSO”), through their authorized representatives. Plaintiff and Defendants are referred to herein as the “Parties.” Southeastern and RUSO are referred to collectively as the “Defendants.”

2. This Agreement resolves a Complaint filed by the United States on March 30, 2015, against Defendants in the United States District Court for the Western District of Oklahoma, *United States of America v. Southeastern Oklahoma State University & the Regional University System of Oklahoma*, Case No. CIV-15-324-C, ECF No. 1 (“Complaint”), as well as any and all Title VII claims that could have been brought by the United States, up to the date of this agreement, based on the factual allegations set forth in the Complaint.

3. In its Complaint, the United States alleged that Defendants violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (“Title VII”), by discriminating against Dr. Rachel Tudor (“Complaining Party”), a transgender professor, based on her sex and by retaliating against her.

4. Complaining Party moved to intervene in the United States' case on April 9, 2015, ECF No. 7, and the Court granted her intervention on May 4, 2015, ECF No. 23. Complaining Party's Complaint in Intervention alleged violations of Title VII similar to those alleged by the United States and included additional claims under Title VII. At all times during the course of this litigation, Complaining Party has been represented by her own attorneys. Complaining Party's claims are not resolved by this Agreement. Plaintiff shall not, unless legally required to do so, provide direct assistance to Complaining Party, Defendants, or their counsel regarding their claims or defenses in this lawsuit. This includes aid in discovery, research, motion drafting, writing, document review and/or production, payment of expert witnesses, witness preparation, access to investigators or other U.S. Department of Justice personnel, trial preparation, technical or other information technology support, and financial assistance.

## **II. RECITALS**

5. The allegations of the United States against Defendants are set forth in detail in the Complaint.

6. The Parties agree, for the purposes of this case only, that Southeastern and RUSO are an integrated enterprise and may be treated as a single employer.

7. Defendants dispute the allegations of the United States and deny that they discriminated against or retaliated against Complaining Party in violation of Title VII.

8. Nevertheless, the Parties agree that the controversy should be resolved without further proceedings of any kind.

9. To avoid the delay, uncertainty, inconvenience and expense of further litigation of Plaintiff's claims, and in consideration of the mutual promises and obligations set forth below, the Parties agree and covenant to the following material terms and conditions:

### **III. TERMS AND CONDITIONS**

#### **A. DEFINITIONS**

10. "Days" refers to calendar days, unless business days are clearly specified in the context of a specific provision of this Agreement. To the extent this Agreement refers to "business days," those days are Monday, Tuesday, Wednesday, Thursday, and Friday regardless of whether the Defendants actually conduct business on those days. If any deadline referenced in this Agreement should fall on a weekend, State of Oklahoma holiday, or federal holiday, the deadline shall be moved to the next business day.

11. "Effective Date" refers to the date of the signature of the last signatory to the Agreement.

12. "Policies" refers to all employment, personnel, and labor policies or manuals that relate to the relationship between Defendants and their employees or job applicants, including but not limited to Southeastern's Academic Policies and Procedures Manual, any non-discrimination or non-retaliation policies, and any policies or manuals applicable to the investigation of complaints of discrimination or retaliation.

13. "Supervisor" refers to (1) any employee who has the authority to hire, fire, promote, transfer, discipline, or take any other tangible employment action against another employee; and/or (2) any employee who possesses the authority to direct the work activities of at least one other employee.

14. "Underlying Case" refers to Plaintiff's Complaint.

**B. PROHIBITED CONDUCT AND AFFIRMATIVE OBLIGATIONS**

**i. Non-Discrimination and Non-Retaliation**

15. Defendants will not discriminate against applicants or employees on the basis of sex (including a person's non-conformity to sex stereotypes) in violation of Title VII.

16. Defendants will not retaliate against any individual, including Complaining Party, because they opposed any practice that they believe in good faith violates Title VII; filed a charge with the United States Equal Employment Opportunity Commission ("EEOC") or any other state or local agency charged with enforcing anti-discrimination laws; or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII and/or in connection with this case.

**ii. Designation of EEO Officer at Southeastern**

17. Defendants have designated an individual at Southeastern to serve as Equal Employment Opportunity Officer ("EEO Officer"). The EEO Officer shall be an employee of Southeastern, and the President of Southeastern shall serve as the only immediate supervisor for the EEO Officer. Southeastern shall employ an EEO Officer that meets the terms of this Agreement for the entire duration of this Agreement.

18. The EEO Officer will be responsible for (a) investigating potential Title VII violations or overseeing others who are called upon to investigate potential Title VII violations; (b) training or overseeing the training of employees on their Title VII rights; (c) implementing the policy changes discussed in this Agreement and training employees on those changes; and (d) performing other tasks as described below. Defendants will create a written job description for the EEO Officer that incorporates the job requirements described in this Agreement and they will provide it to the United States for review within 60 days of the Effective Date. The United



States' review of the job description will take place under the same timeframes and procedures set forth below in Paragraph 21(a)-(b).

19. The EEO Officer will undergo, or has undergone, 32 hours of training on how to conduct investigations of discrimination complaints during his or her first year as EEO Officer and 8 hours of continued training on this topic every year thereafter.

- a. The United States shall have the opportunity to review the proposed EEO Officer training, and shall have the right to object to such training if it does not comply with the terms of this Agreement.
- b. The training will cover, at a minimum, investigative techniques related to gathering and reviewing documentary and electronic evidence; interviewing witnesses; making credibility determinations; writing investigative reports; and avoiding appearances of bias toward complainants or respondents.
- c. Within 60 days of the Effective Date, Defendants will identify the training program(s) the EEO Officer will undergo, or has undergone in the year prior to the Effective Date, and provide to Plaintiff all proposed training materials. Plaintiff's review of the training will occur in accordance with the timeline set forth in Paragraph 31(c)-(d) for review of other required training programs and materials. If Plaintiff objects to the training program(s) or materials and a dispute arises, the Parties would follow the procedure described in the Dispute Resolution section of this Agreement to resolve the dispute. To the extent the EEO Officer identified has undergone training during the year prior to the Effective Date that satisfies Defendants' obligations under Paragraph 19, Plaintiff will not unreasonably refuse to credit such training toward the 32-hour requirement.

- d. Within fifteen (15) days of the EEO Officer's completion of the initial 32 hours of training, and the continued training annually thereafter, Defendants shall provide written confirmation to Plaintiff that the training has been completed.

20. The President of Southeastern will annually evaluate the EEO Officer's handling and/or overseeing of investigations and training.

- a. For the investigations performance criterion, evaluation metrics must include whether the EEO Officer: (a) met the timeframes for investigating complaints, which are discussed below; (b) conducted investigations in a proper and impartial manner; and (c) complied with all policies, including the new or revised policies implemented pursuant to Paragraphs 21-30.
- b. For the training performance criterion, the EEO Officer will solicit anonymous feedback from employees who underwent training. The President will consider that feedback, among other things, when rating the EEO Officer's performance.
- c. The President's annual evaluation of the EEO Officer's performance will include a detailed written explanation of the factual basis for the evaluation.

**iii. Policy Changes**

21. Southeastern will modify its Policies, as defined in Paragraph 12 above, as they pertain to protected classes under Title VII, *i.e.*, race, color, sex, religion, national origin, and retaliation for protected conduct. To the extent existing Policies, including but not limited to Southeastern's Academic Policies and Procedures Manual, are inconsistent with the requirements of Paragraphs 22 to 30 below, Defendants shall revise those existing Policies.

- a. No later than sixty (60) days after the Effective Date, Defendants shall provide copies of any proposed Policies created or revised pursuant this Agreement to Plaintiff for review.
- b. Plaintiff will notify Defendants in writing within thirty (30) days of receipt of the proposed Policies pursuant to Paragraph 21(a) whether it has any objections to the proposed Policies. The notification shall specify the nature of the objection, if any. Plaintiff shall not unreasonably object, and may only object on the basis that the proposed Policies do not conform to the terms of this Agreement. The Parties shall make a good faith effort to confer regarding any disagreements concerning the proposed Policies prior to instigating breach proceedings pursuant to Paragraph 39.
- c. Immediately after Plaintiff notifies Defendants that it has no objections to their Policy modifications or, in the event Plaintiff asserts an objection, immediately after Plaintiff's objections to the revised Policies are resolved, Defendants shall implement and shall adhere to the modified Policies.

**22. The Policies must specify the following regarding who may investigate and make decisions about discrimination or retaliation complaints:**

- a. Neither a respondent nor a complainant in a discrimination or retaliation investigation may be one of the decision makers charged with determining whether the respondent discriminated or retaliated against the complainant.
- b. **If a discrimination or retaliation complaint is made either by or against the President of Southeastern, except as provided in Paragraph 22(b)(iii) below, someone who does not work for Southeastern must investigate the complaint. If a discrimination or retaliation complaint is made by or against the President of Southeastern:**

- i) The person who investigates the complaint must satisfy the same investigative training requirements as the EEO Officer, which are discussed in Paragraph 19 above.
- ii) The RUSO Board of Regents will make the final decision on the merits of the complaint.
- iii) Where the RUSO Board determines that the President of Southeastern is named as a respondent in a Complaint merely because of the Office of the President's position within the hierarchy of Southeastern management, and not because of any alleged conduct by the President personally, the investigation of that complaint may be conducted by an employee of Southeastern. In this instance, the RUSO Board must document the basis for its decision to permit the investigation to be conducted by a Southeastern employee.

23. The Policies will clearly explain how individuals may make discrimination and retaliation complaints, including:

- a. The Policies will state that employees or applicants may make discrimination or retaliation complaints either orally or in writing to any person in their direct chain of command at Southeastern, the EEO Officer at Southeastern, or the RUSO Board. If the complaint is made orally initially, the recipient and/or the EEO Officer will direct the complainant to submit a written complaint. The EEO Officer may assist with the write-up if requested. The complainant shall make any necessary corrections to the write up of the complaint, and then the complainant shall sign and date the write up of the complaint.

- b. The Policies will state that employees and applicants may make discrimination and/or retaliation complaints to an appropriate agency external to RUSO or Southeastern, such as the U.S. Equal Employment Opportunity Commission (“EEOC”). The Policies will provide the name and contact information (phone number, email, etc.) of the EEO Officer, the EEOC, the U.S. Department of Justice Civil Rights Division, and any other state or local government agency that could investigate Title VII complaints against Southeastern. The Policies will be timely updated when there are changes in any of these names and/or contact information.

24. The Policies will make the following statements regarding the handling of complaints:

- a. Investigations of complaints will be promptly conducted and completed.
- b. The EEO Officer or an investigator under the EEO Officer’s oversight will conduct all investigations in a fair and impartial manner.
- c. The EEO Officer and/or investigators will be subject to discipline if they conduct an investigation in an unfair or partial manner.
- d. Retaliation for filing a complaint or participating in a discrimination and/or retaliation investigation is strictly prohibited.

25. The Policies will make the following statements regarding the reporting responsibilities of Supervisors:

- a. All Supervisors who witness conduct or receive complaints of discrimination or retaliation shall promptly report such actions to the EEO Officer so that the EEO

Officer can ensure that complaints are promptly investigated, if necessary, in accordance with this Agreement and/or the Policies.

- b. Any Supervisor who witnesses or becomes aware of conduct that she or he reasonably believes may be discriminatory or retaliatory must promptly report the conduct to the EEO Officer, even if the Supervisor has not received a complaint.
- c. All Supervisors shall report complaints and/or information about discrimination or retaliation promptly. Absent unusual circumstances, Supervisors should report complaints and/or information about discrimination within ten (10) days.

26. The Policies will state that an employee or applicant who claims that he or she was subjected to discrimination and/or retaliation is not required (before making a complaint or during the course of the investigation of his or her complaint) to discuss the alleged discriminatory and/or retaliatory conduct with the person alleged to have committed the discrimination and/or retaliation.

27. The Policies will state that the EEO Officer will provide written notice to the respondent(s) and complainant(s) when he or she initiates an investigation. This written notice shall be provided within five (5) business days of the EEO Officer's receipt of a complaint or, if the EEO Officer determines that some preliminary investigation must occur prior to notifying the respondent(s) and complainant(s), within five (5) business days of the conclusion of that preliminary investigation. The written notice shall also state:

- a. that the investigation should be completed within sixty (60) days of the EEO Officer's receipt of the complaint or information and, if it is not, the EEO Officer will inform the complainant, or putative victim, and respondent(s) of how much longer the EEO Officer believes the investigation will take;

- b. that an investigative report will be provided to the respondent(s) and complainant(s), (or putative victim(s) in the absence of a complaint), and this report will describe the investigator's findings of fact and conclusions of merit with respect to each allegedly discriminatory and/or retaliatory action;
- c. that retaliation against complainant(s) for filing a complaint, or against witnesses for participating in the investigation, is prohibited by law and university policy;
- d. the identity of the person who will conduct the investigation and information about the complainant's and respondent's option to request that the investigator recuse himself or herself if the complainant or respondent has good faith basis to believe that the investigator will not conduct a proper and impartial investigation;
- e. that the EEO Officer welcomes feedback from the complainant(s) and respondent(s) on whether they believe the investigation was conducted properly and impartially, and the complainant(s) and respondent(s) will receive an optional survey at the conclusion of the investigation which will seek this feedback; and
- f. if the EEO Officer conducted a preliminary investigation prior to providing notice of the investigation to complainant(s) and respondent(s), the basis of the need for the pre-notice preliminary investigation.

28. If the EEO Officer receives information that reasonably supports allegations that discrimination and/or retaliation may have occurred but the putative victim(s) has not complained, the Policies will state that the EEO Officer will do the following:

- a. Within five (5) business days of learning of the conduct, but prior to initiating an investigation, the EEO Officer will communicate with the putative victim(s) to gather information and to determine whether the putative victim(s) wants an

investigation to be conducted. If the EEO Officer determines that a preliminary investigation must be completed before notifying the putative victim(s), the EEO Officer will notify the putative victim(s) within five (5) days of the completion of that preliminary investigation.

- b. The EEO Officer will then decide, within five business (5) days after communicating with the putative victim(s), whether to initiate an investigation, keeping in mind that the EEO Officer may initiate an investigation even if the putative victim(s) does not want an investigation to be conducted.
- c. If, after communicating with the putative victim(s), the EEO Officer decides to initiate an investigation, the notification requirements described in Paragraph 27 shall be followed, except that the written notice shall be provided within five business (5) days of the EEO Officer's decision to initiate an investigation pursuant to Paragraph 28(b).

29. The Policies will provide a process for the EEO Officer and/or other investigator to recuse himself or herself if (1) his or her impartiality might reasonably be questioned; (2) he or she has a personal bias in favor of or against the complainant(s) or respondent(s); or (3) he or she is a respondent and/or took part in any of the allegedly discriminatory and/or retaliatory actions. The Policies will also set forth that:

- a. If the investigator refuses to recuse himself or herself upon the request of a complainant or respondent, the person who requested recusal may appeal that decision to the President of Southeastern and, after the President, to the RUSO Board.



- b. If an investigator recuses himself or herself, a person from another RUSO institution with the requisite investigatory training (discussed in Paragraph 19) may conduct the investigation instead.

30. The Policies will describe the investigative training requirements for the EEO Officer described in Paragraph 19, and will require any individual whom Southeastern charges with conducting discrimination and retaliation investigations to satisfy those same investigative training requirements.

**iv. Training**

31. Southeastern shall provide one-time, in-person mandatory Title VII training, conducted by a trainer from outside Southeastern and RUSO and covering the issue of Title VII's protections for people who do not conform to sex stereotypes, to all Southeastern employees within 120 days of the Effective Date. The training shall be available for remote participation at the time it is conducted and shall be recorded on video. Attendance at a showing of the recorded training shall satisfy this training requirement for those employees who are unable to attend the live training, either in person or remotely, despite reasonable efforts to do so. Plaintiff shall identify three trainers that would be acceptable to it, and RUSO shall select from among those trainers.

- a. No later than twenty (20) days after the Effective Date, Defendants shall identify for Plaintiff the trainer that they have selected from among the three trainers that Plaintiff proposed.
- b. No later than sixty (60) days after the Effective Date, Defendants shall provide to Plaintiff a description of their selected trainer's proposed mandatory training program as well as copies of the training materials.

- c. If Plaintiff has objections to the trainer's proposed training program or materials, then Plaintiff will notify Defendants in writing within thirty (30) days of receipt of the proposed training program and materials. The notification shall specify the nature of the objection, and Plaintiff shall not unreasonably object; Plaintiff's ability to review and object to the training program and materials shall be limited to ensure that the program and materials conform to the terms of this Agreement. The Parties shall make a good faith effort to confer regarding any disagreements concerning the training program or materials prior to instigating breach resolution discussions or proceedings pursuant to Paragraph 39.
- d. Within 21 days of completion of the training described in this Paragraph, Defendants shall provide written confirmation to Plaintiff that the training has been completed and that all employees of Southeastern attended and completed the training.

32. Within 180 days of the Effective Date and annually thereafter, Defendants must provide in-person training on Southeastern's non-discrimination and non-retaliation policies (including any revisions to the Policies) and Title VII to all Southeastern employees. The training shall be available for remote participation at the time it is conducted and shall be recorded on video. Attendance at a showing of the recorded training shall satisfy this training requirement for those employees who are unable to attend the live training, either in person or remotely, despite reasonable efforts to do so.

- a. The training described in Paragraph 31 may satisfy this requirement for annual training on Title VII for the year in which it is given.

- b. No later than 120 days after the Effective Date, Defendants shall provide to the United States a description of the proposed training program and copies of the proposed training materials for the annual training pursuant to Paragraph 32.
- c. If Plaintiff has objections to Defendants' proposed training program or training materials, then Plaintiff will notify Defendants in writing within thirty (30) days of receipt of the proposal pursuant to Paragraph 32(b). The notification shall specify the nature of the objection, and Plaintiff shall not unreasonably object. Plaintiff's ability to review and object to the training program and materials shall be limited to ensure that the program and materials conform to the terms of this Agreement, including that the materials are consistent with Defendants' Policies, including any revisions to those Policies required by this Agreement. The Parties shall make a good faith effort to confer regarding any disagreements concerning the proposed training prior to instigating breach resolution discussions or proceedings pursuant to Paragraph 39.
- d. Within twenty-one (21) days of completion of the training described in this Paragraph, Defendants shall provide written confirmation to Plaintiff that the training has been completed, and that all employees of Southeastern attended and completed the training.

33. All new Southeastern employees must receive training on Southeastern's non-discrimination and non-retaliation policies and Title VII within fourteen (14) business days of their first day of employment by Southeastern. This requirement may be satisfied by the annual training pursuant to Paragraph 32, provided it occurs within fourteen (14) business days of their first day of employment by Southeastern.

34. Within one hundred-eighty (180) days of the Effective Date and annually thereafter, Southeastern shall train all Supervisors on handling employee complaints of discrimination and/or retaliation that fall under one or more of the protected categories in Title VII (race, color, sex, religion, national origin, and retaliation for protected conduct). Southeastern shall also inform Supervisors that they could be subject to discipline if they do not, under the Policies revised or created pursuant to this Agreement, promptly inform the EEO Officer of discrimination and/or retaliation complaints.

- a. No later than one-hundred twenty (120) days after the Effective Date, Defendants shall provide to Plaintiff a description of the proposed training program and proposed training materials for the annual Supervisor training pursuant to Paragraph 34.
- b. If Plaintiff has objections to Defendants' proposed training program or training materials, then Plaintiff will notify Defendants in writing within thirty (30) days of receipt of the proposal pursuant to Paragraph 34(a). The notification shall specify the nature of the objection and Plaintiff shall not unreasonably object. Plaintiff's ability to review and object to the training program and materials shall be limited to ensure that the program and materials conform to the terms of this Agreement. The Parties shall make a good faith effort to confer regarding any disagreements concerning the proposed training prior to instigating breach resolution discussions or proceedings pursuant to Paragraph 39.
- c. Within twenty-one (21) days of completion of the training described in Paragraph 34, Defendants shall provide written confirmation to Plaintiff that the training has been completed and that all Supervisors attended and completed the training.

#### **IV. DOCUMENT RETENTION, COMPLIANCE MONITORING, AND TERM OF THE AGREEMENT**

35. While this Agreement remains in effect, Defendants will retain documents relevant to implementation of the Agreement, such as documents showing which employees attended mandatory trainings; documents related to sex discrimination or retaliation complaints; and documents related to the evaluation of the EEO Officer's performance. Plaintiff may request documents and information for purposes of monitoring Defendants' compliance with the Agreement and Defendants shall make those documents available to Plaintiff within forty-two (42) days of Defendants' receipt of such a request.

36. Defendants must notify Plaintiff within twenty-eight (28) days of the initiation of any investigation of alleged sex discrimination (including discrimination based on non-conformity to sex stereotypes) and/or retaliation as described in Paragraph 16. Defendants will produce any non-privileged documents related to sex discrimination and/or retaliation investigations that Plaintiff requests.

37. Defendants' obligations under the Agreement will expire twenty-four (24) months from the Effective Date, or after all of the relief specified in the Agreement has been implemented, whichever is later.

#### **V. DISPUTE RESOLUTION**

38. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of or compliance with this Agreement prior to initiating any court action.

39. If Plaintiff has a good faith belief that there has been a failure by either or both Defendant(s) to perform in a timely manner any act required by this Agreement, or otherwise to act in conformance with any provision thereof, whether intentionally or not, then Plaintiff will notify Defendants in writing of the concerns about purported breach, and the Parties will attempt

to resolve those concerns in good faith. Unless otherwise expressly agreed in writing, Defendants shall have twenty-one (21) days from the date the United States provides notification of any breach of this Agreement to cure the breach or provide written explanation as to why the perceived breach is not actually a breach of this Agreement. If the parties are unable to resolve a dispute over whether Defendants have breached the Agreement, Plaintiff may file a civil action to enforce the Agreement. The Parties agree that the United States District Court for the Western District of Oklahoma is a proper venue to enforce this Agreement and that they may, in any action to enforce this agreement, seek to have the court impose any remedy authorized at law or equity including, but not limited to, remedies available under Title VII. The Parties further agree that Plaintiff will not be required to exhaust any administrative remedies through the EEOC before filing an action to enforce the Agreement.

40. For the purposes of an action to enforce this Agreement, the Parties agree that each and every provision of this Agreement is material.

#### **VI. TERMINATION OF LITIGATION HOLD**

41. The Parties agree that, as of the date of the dismissal of the Underlying Case, litigation is not “reasonably foreseeable” concerning the matters alleged in Plaintiff’s Complaint. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the Party is no longer required to maintain such litigation hold. Nothing in this Paragraph relieves any Party of any other obligations imposed by this Agreement. Nothing in this Paragraph affects any other litigation hold that the Parties may have in place with respect to claims outside of Plaintiff’s Complaint.

## **VII. DURATION, EXECUTION, AND OTHER TERMS**

42. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

43. Five (5) business days after the execution of this Agreement, the Parties will sign and file a Joint Stipulation of Dismissal of the Underlying Case pursuant to Federal Rule of Civil Procedure 41(a)(1).

44. This Agreement, being entered with the consent of the Parties, shall not constitute an admission, adjudication or finding on the merits of the allegations made in Plaintiff's Complaint, and it also shall not prejudice either party or be admissible by either party in any future proceedings except as described in Section V. The entry of this Agreement shall not preclude litigation of any facts or issues in any proceeding between Defendants and any other individuals.

45. Each Party shall bear its own legal and other costs incurred in connection with this litigation, including the preparation and performance of this Agreement.

46. Each Party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

47. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Western District of Oklahoma. This provision does not constitute, and should not be construed as, a waiver by Plaintiff of sovereign immunity, or any other jurisdictional or legal defense available to Plaintiff. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be

construed against any Party for that reason in any subsequent dispute. This Agreement constitutes the complete agreement among the Parties and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein. This Agreement may not be amended except by written consent of all of the Parties.

48. The undersigned representatives of RUSO and Southeastern and their counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

49. This Agreement is binding on RUSO and Southeastern's successors, transferees, heirs, and assigns.

50. The Parties agree that, until final resolution of Complaining Party's claims, they will not issue a press release regarding this case or the Agreement or post the Agreement on the website or social media accounts of the Department of Justice and will not substantively respond to requests from the press for comment on the Agreement unless response to such press requests is otherwise required by law.

51. Until final resolution of Complaining Party's claims, the United States agrees to inform the Defendants if it receives a Freedom of Information Act ("FOIA") request for the Agreement before producing the Agreement to the FOIA requester.

52. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.



53. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.

**FOR PLAINTIFF UNITED STATES:**



GREGORY B. FRIEL  
Deputy Assistant Attorney General  
Civil Rights Division

DATED: Aug. 29, 2017

DELORA L. KENNEBREW  
Chief  
Employment Litigation Section  
Civil Rights Division

MEREDITH L. BURRELL  
Deputy Chief  
Employment Litigation Section  
Civil Rights Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Patrick Henry Building, Fourth Floor  
Washington, DC 20530

**FOR DEFENDANT SOUTHEASTERN OKLAHOMA STATE UNIVERSITY:**



President Sean Burrage

DATED: August 30, 2017

**FOR DEFENDANT REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA:**



As Regent Mark Stansberry, *Chairman*

DATED: 8/29/17

# Exhibit 29

Department of English, Humanities,  
and Languages  
Southeastern Oklahoma State University  
November 17, 2010

Faculty Appellate Committee  
Southeastern Oklahoma State University

Dear Dr. Hall and Committee Members,

I write to you in support of Dr. Rachel Tudor's appeal of Dr. Douglas McMillan's decision to deny her the opportunity to apply for tenure and promotion. Dr. Tudor is an exemplary teacher, scholar, and colleague, and the allegations from Dr. McMillan are without merit.

According to any objective evaluation, Dr. Tudor's qualifications clearly exceed the expectations for tenure and promotion according to three separate standards: as stated in the Academic Policies and Procedures manual, as established by the Department of English, Humanities, and Languages, and as practiced by precedent. Dr. Tudor's teaching is exemplary, as exhibited by her teaching evaluations, observations of her teaching by colleagues, and her repeated nomination for the Faculty Senate teaching award. This aspect of her work is not cited as problematic by Dr. McMillan; I will therefore refrain from further elaboration, although I will be happy to provide further testimony on this aspect of Dr. Tudor's work upon request. I simply remind the committee that we are, at our heart, a teaching institution; the best interests of our students require that we attract and retain the highest quality classroom teachers, of which Dr. Tudor is a clear example.

In respect to service, an area cited as deficient in Dr. McMillan's decision, Dr. Tudor's work on campus in the past 6 years has been exemplary, and clearly exceeds the activity of many faculty, both tenured and untenured. Since her arrival on campus, Dr. Tudor has been active in organizing the biannual Native American Symposium, one of our campus's major events, which brings regional, national, and international recognition to Southeastern. Dr. Tudor was instrumental in bringing an OSLEP course to our campus in 2007, the only time in recent memory our campus has hosted one of these prestigious courses. Dr. Tudor organized the participation of Dr. Rennard Strickland, Distinguished Professor Emeritus at the University of Oregon Law School, and served as the supervising professor for this course. In addition, Dr. Tudor served as the chair of our department's Assessment, Planning, and Development committee from 2007-2010. As chair of this committee, Dr. Tudor collected and collated all assessment data for our three English programs, and prepared the yearly POAR reports. This, in itself, is an enormous job for a pre-tenure professor to take on. Finally, Dr. Tudor has served as a member of Faculty Senate for the past two years. All of this has been done in addition to standard university and departmental service expectations, including serving on hiring and

review committees, volunteering for Honors Day, and working with student groups. In short, Dr. Tudor not only amply fulfills service expectations for faculty members, but is exemplary in the range, depth, and dedication she has shown in service to our university.

The area of scholarship is often seen as difficult to objectively evaluate, as it ordinarily requires a careful consideration of both quality and quantity of scholarly activity. In Dr. Tudor's case, however, the evaluation is simple and evident, as her scholarly production exceeds standards for both quality and quantity. She currently has five peer-reviewed articles already published; four more accepted articles in press; and several more in the pipeline, including three which have been tentatively accepted pending revisions. Some of these are in the leading journals of her field; others clearly articulate the relevance of her work to a wider non-specialist audience. This shows that she is a respected scholar within Native American Studies, while simultaneously successfully promoting the importance of Native American literature within a wider context. She co-edited two volumes of the conference proceedings of the Native American Symposium, and has published two chapbooks of poetry since her arrival at Southeastern. To be blunt, Dr. Tudor has published more research than any other member of the department, tenured or untenured. Any question regarding her scholarly production must of necessity be based upon either ignorance or misunderstanding of the evidence, since there is really no question that Dr. Tudor has far exceeded any stated or unstated standard for scholarly production at this university.

In short, Dr. Tudor is an outstanding candidate for tenure and promotion. Dr. McMillan's statement that her service and research are insufficient is clearly unfounded and inaccurate. He was clearly mistaken in his opinion that consideration of Dr. Tudor's tenure file would be a waste of time; in addition, he has clearly tried to contradict the established policies for tenure and promotion, by presuming to truncate the process based upon personal opinion and insufficient data. I therefore ask that the Faculty Appellate Committee find in Dr. Tudor's favor, and recommend that she be allowed to pursue the established processes for achieving tenure and promotion.

Sincerely,

Dr. Margaret Cotter-Lynch  
Associate Professor of English

# Exhibit 30

**From:** Claire Stubblefield /O=SOSU/OU=SOSU/CN=RECIPIENTS/CN=CSTUBBLEFIELD  
**Subject:** TudorConclusion Letter  
**To:** Microsoft Exchange

Now Now. It ' s HER personnel file J

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**From:** Cathy Conway  
**Sent:** Thursday, November 18, 2010 3:49 PM  
**To:** Claire Stubblefield  
**Subject:** RE: TudorConclusion Letter  
**Sensitivity:** Confidential

Claire,

Lucretia ' s name is spelled Scoufos. Also, under Findings, Complaint 3, Southeastern needs to be capitalized.

It will be interesting to see Charlie ' s comments. You did a very good job of writing your report. Did Bridgette have any helpful information for you? If Dr. Tudor requests to see T & P info in his personnel file, I will need to send him to Bridgette. . .

Thanks,  
Cathy

**Cathy A. Conway**  
Director, Human Resources  
Southeastern Oklahoma State University  
1405 N. 4th Avenue  
Durant, OK 74701-0609  
Pho: 580.745.2162  
FAX: 580.745.7484  
Email: cconway@se.edu



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**From:** Claire Stubblefield  
**Sent:** Thursday, November 18, 2010 1:20 PM  
**To:** Cathy Conway  
**Subject:** TudorConclusion Letter

NEED FEEDBACK. Can you help?



# Exhibit 31

UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF OKLAHOMA

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

\*\*\*\*\*

ORAL DEPOSITION OF  
CATHY CONWAY  
MARCH 10, 2016

\*\*\*\*\*

ORAL DEPOSITION OF CATHY CONWAY, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and -numbered cause on the 10th day of March, 2016, from 8:58 a.m. to 4:52 p.m., before Chrissa K. Mansfield-Hollingsworth, CSR in and for the State of Texas, reported by machine shorthand, at the offices of U.S. Attorney's Office, located at 600 East Taylor Street, Suite 2000, Sherman, Texas, pursuant to the Federal Rules of Civil Procedure.

1           A. Well, he told me to send the documents to him.  
2 I told him what documents I had received. And it was a  
3 new -- a new experience and I needed some guidance, if  
4 he had any for me.

5           Q. What else was discussed during that  
6 conversation with Mr. Babb?

7           A. Well, I don't recall if it was that  
8 conversation or if Charlie reviewed the materials and  
9 then we talked.

10          Q. What else did you talk about at that point?

11          A. We talked about review of policies, any  
12 applicable policies or possibly applicable policies. He  
13 explained to me about the period of time an individual  
14 goes through prior to the sex reassignment surgery  
15 that's typically a year to give the person an  
16 opportunity to make their decision before surgery. We  
17 talked about -- or he advised me about something that  
18 was being discussed, he thought, at the time. He wasn't  
19 sure if it had been approved yet in the Tenth Circuit  
20 about the use of bathroom facilities during this time;  
21 that in another circuit or circuits, a person during  
22 the -- during the year of transition pre-op had to use a  
23 bathroom of the same biological sex.

24          Q. Anything else you remember about that  
25 discussion with Mr. Babb?

1 Should I give this to you to give to Bridgette, question  
2 mark. Had you talked to Dr. McMillan about Dr. Tudor's  
3 name change before you sent this e-mail?

4 A. I may have. I don't recall.

5 Q. Is there anything that would refresh your  
6 memory?

7 A. Only if Dr. McMillan recalls if I called him to  
8 tell him Dr. Tudor was changing her name.

9 Q. If you had -- strike that. Then the last  
10 sentence of your June 4th, 2007 e-mail to Dr. McMillan  
11 says, If you are planning to discuss Dr. Tudor with the  
12 department chair and dean, would you like me to be there  
13 and advise them about the two university policies I  
14 discussed with Dr. Tudor about last week, question mark.  
15 Do you remember talking to Dr. McMillan about those  
16 university policies that you referenced in that sentence  
17 prior to sending him this e-mail?

18 A. No.

19 Q. The fourth page of Exhibit 26 appears to be  
20 some handwritten notes. Do you recognize those notes?

21 A. Yes.

22 MS. COFFEY: For the record, will you  
23 indicate the Bates number?

24 MR. TOWNSEND: Sure. The Bates number of  
25 the page is DOJ 12.

1 MS. COFFEY: Thanks.

2 Q. (By Mr. Townsend) Are those your handwritten  
3 notes?

4 A. Yes.

5 Q. It appears to say Call Charlie in the middle of  
6 the notes. Is that -- am I reading that correctly?

7 A. Yes.

8 Q. Do these notes reflect a call that you had with  
9 Mr. Babb?

10 A. Yes.

11 Q. All right. There is a -- there is a portion of  
12 the notes that is circled. Do you see that right to the  
13 left of where it says Call Charlie?

14 A. Yes.

15 Q. Can you read what's in that circle?

16 A. Yes.

17 Q. Please do so.

18 A. Employer came up with a policy that people to  
19 use bathroom according to current biological status.

20 Q. Then directly below that circle in handwriting  
21 that is vertical as opposed to horizontal across the  
22 page there's some handwriting that appears to start by  
23 saying, Tenth Circuit. Is that correct?

24 A. Yes.

25 Q. Could you read what it says.

1 A. Tenth Circuit -- yes.

2 Q. Please do so.

3 A. Tenth Circuit, case pending, hasn't ruled yet,  
4 but some, I can't make out that exactly, circuits  
5 protected by Title VII for transition year. And then  
6 there's two lines drawn to the circled part.

7 Q. And then there's a word with two lines  
8 underneath it that looks like available. Is that what  
9 it says?

10 A. Yes.

11 Q. So in the center of this note, does it say  
12 Call -- it says Call Charlie, right?

13 A. Yes.

14 Q. And then what does it say right below Charlie?

15 A. RE, colon.

16 Q. And then what does it say right below RE colon?

17 A. Handicapped, unisex bathroom.

18 Q. And then bathroom is underlined twice, right?

19 A. Yes, as is available.

20 Q. And then what does this other text on the note  
21 say that you haven't read yet?

22 A. This is all new to us too, but we think that  
23 the best option, and then there's a line, is for this --  
24 is for -- this is some of my shorthand, for you to use  
25 this restroom, your choice.

1 second sentence under that says, Advise what his gender  
2 presentation will be at SOSU. The his in that sentence  
3 is Dr. Tudor, correct?

4 A. Yes.

5 Q. At this point, are you still getting used to  
6 the name change?

7 MS. COFFEY: Object to form.

8 A. Yes.

9 Q. (By Mr. Townsend) And that's the only reason  
10 you used his in these notes?

11 MS. COFFEY: Object to form.

12 A. No.

13 Q. (By Mr. Townsend) Why else did you use the  
14 pronoun his in these notes to refer to Dr. Tudor?

15 A. Because I am telling them that Dr. Tudor is to  
16 advise them as to which gender presentation Dr. Tudor  
17 will use at Southeastern. We don't know yet for sure.

18 Q. And are those the same reasons you used the  
19 pronoun his to refer to Dr. Tudor further down the page  
20 under the heading advice/opinion about which gender  
21 presentation to use?

22 MS. COFFEY: Object to form.

23 A. Yes.

24 Q. (By Mr. Townsend) All right. And then at the  
25 bottom of these notes, there's a heading that says,

1 A. At some point I was.

2 Q. If I told you that this was part of  
3 Southeastern's response to Dr. Tudor's EEOC charge,  
4 would that refresh your recollection as to whether  
5 you've seen this before?

6 A. I would have to read further.

7 Q. Take your time.

8 A. (Witness perusing document) Yes.

9 Q. Did you have a role in formulating any of the  
10 responses to the allegations in this document?

11 A. I reviewed a portion of it.

12 Q. Which portion?

13 A. Page 3.

14 Q. So Page 3 is a response to the allegation that  
15 is stated at the bottom of Page 2, correct?

16 A. Yes.

17 Q. All right. In the first paragraph on Page 3,  
18 fifth line down, there's a sentence that states, Since  
19 Dr. Tudor was a preoperative male to female, they also  
20 had a conversation about the use of restroom facilities  
21 as this may be one of the major issues that could arise  
22 in the employment setting, especially when, such as  
23 here, the bathroom facilities are public in nature and  
24 can accommodate several people at one time. Did I read  
25 that correctly?



1 A. Yes.

2 Q. Why was the fact that Dr. Tudor was  
3 preoperative relevant to the conversation about restroom  
4 facilities?

5 MS. COFFEY: Object to form.

6 A. This was new to all of us.

7 Q. (By Mr. Townsend) Is that the only reason?

8 A. Dr. Tudor had changed her name and presented  
9 herself as a female.

10 Q. The term preoperative used in that sentence  
11 that I read, what operation is that referring to?

12 MS. COFFEY: Object to form.

13 A. Well, as stated, male to female.

14 Q. (By Mr. Townsend) So is that referring to sex  
15 reassignment surgery?

16 A. Yes.

17 MS. COFFEY: Object to form.

18 Q. (By Mr. Townsend) So why was the fact that  
19 Dr. Tudor had not had sex reassignment surgery relevant  
20 to the conversation about the use of restroom  
21 facilities?

22 MS. COFFEY: Object to form. Asked and  
23 answered.

24 A. She was beginning her year of transition. She  
25 changed her name.

1 Q. (By Mr. Townsend) What difference did it make  
2 that she had not had the surgery, the sex  
3 reassignment --

4 MS. COFFEY: Objection, form. Asked and  
5 answered.

6 Q. (By Mr. Townsend) Let me rephrase the  
7 question. What difference did it make in the  
8 conversation about the use of restrooms that she had not  
9 had sex reassignment surgery?

10 MS. COFFEY: Objection, form. Asked and  
11 answered.

12 A. She was in her transition year. I don't -- I  
13 think I've already answered the question.

14 Q. (By Mr. Townsend) All right. In the next  
15 paragraph of this response on Page 3, second sentence,  
16 There was some concern that female students and female  
17 employees who knew Dr. Tudor as male may be  
18 uncomfortable with and threatened by a male preoperative  
19 Dr. Tudor in the female restroom while presenting as a  
20 female. Did I read that correctly?

21 A. Yes.

22 Q. Who was concerned about female students and  
23 female employees possibly being uncomfortable with and  
24 threatened by a male preoperative Dr. Tudor in the  
25 female restroom?

1 A. Uncomfortable? I was.

2 Q. Why?

3 A. Because it was new. Students who knew  
4 Dr. Tudor as Dr. T.R. Tudor may see her for the first  
5 time as Dr. Rachel Tudor.

6 Q. Do you think that they would have been any more  
7 or less uncomfortable if she had had sex reassignment  
8 surgery?

9 MS. COFFEY: Object to form.

10 A. I don't think they would know.

11 Q. (By Mr. Townsend) Right. So I guess back to  
12 my question: Why did it make any difference whether she  
13 had had sex reassignment surgery?

14 MS. COFFEY: Object to form.

15 A. She changed her name. She was presenting as a  
16 female. I don't know when she was going to have the  
17 surgery for sure, if she even had it.

18 Q. (By Mr. Townsend) Did you -- do you know who  
19 wrote this response to the allegation that's on Page 3?

20 A. No, not for certain.

21 Q. Did you write any part of it?

22 A. No.

23 Q. Did you make any suggested edits to it?

24 A. I don't recall.

25 Q. Did you review it for accuracy?

1 A. Yes.

2 Q. Was there anyone else other than you, that you  
3 know of, who was concerned that female students and  
4 female employees who knew Dr. Tudor as a male may be  
5 uncomfortable with or threatened by male preoperative  
6 Dr. Tudor in the female restroom while presenting as  
7 female?

8 MS. COFFEY: Object to form.

9 A. I've explained before. Threatened was not a  
10 concern I had.

11 Q. (By Mr. Townsend) Did anyone else have that  
12 concern?

13 A. I don't know.

14 Q. In the first sentence -- oh, no. Strike that.  
15 In the third paragraph, last sentence on -- the third  
16 paragraph on Page 3 of this exhibit, Exhibit 30, it  
17 says, It was recommended that Cathy Conway, HR director,  
18 contact Dr. Tudor and suggest that he may want to use  
19 this private restroom during the transition period of  
20 time. In that -- did I read that sentence correctly?

21 A. Yes.

22 Q. In that sentence, Dr. Tudor's referred to by  
23 the pronoun he, correct?

24 A. Yes.

25 Q. Do you have an understanding as to why

1 you understand it.

2 A. Could you repeat it, please?

3 Q. Yes. Is one of the purposes of sex  
4 reassignment surgery to ensure that transgender people  
5 can use the restroom that matches their gender identity?

6 MS. COFFEY: Same objection.

7 A. No, unless law requires it.

8 Q. (By Ms. Weiss) Unless law requires what?

9 A. If there was a law that required a surgery.

10 Q. Do you mean if there's a law that requires a  
11 surgery in order to use a bathroom?

12 A. No. Anyone can use a bathroom.

13 Q. Let me rephrase that. Laws that would dictate  
14 which sex uses which restrooms?

15 A. Yes.

16 Q. And are you aware of any such laws that govern  
17 Southeastern University?

18 A. No, not --

19 Q. Okay. What steps did you take to learn more  
20 about transgender people after Dr. Tudor came out as a  
21 transgender woman?

22 MS. COFFEY: Object to form.

23 A. I just sought advice from my general counsel.

24 Q. (By Ms. Weiss) Okay. Did you read any books  
25 on transgender issues?

1 policy terms?

2 A. Yes.

3 Q. And did you review those on a yearly basis?

4 A. Just as there was a bid or a change in law that  
5 we were advised was making some revision to a policy or  
6 coverage.

7 Q. Do you think it would -- do you believe that it  
8 would violate EEO policy to exclude benefits for sex  
9 reassignment surgery?

10 MS. COFFEY: Object to form.

11 A. I don't know.

12 Q. (By Ms. Weiss) Did you discuss that with  
13 Mr. Babb?

14 A. No.

15 MS. COFFEY: Object to form.

16 Q. (By Ms. Weiss) Why did you not discuss that  
17 with Mr. Babb?

18 MS. COFFEY: Object to form.

19 A. This was never brought to my attention, if it  
20 was an issue.

21 Q. (By Ms. Weiss) Wasn't sex reassignment  
22 important?

23 MS. COFFEY: Object to form. Important to  
24 what?

25 Q. (By Ms. Weiss) Was it -- was sex reassignment

1 annual review? It was something that you would  
2 continually look at the policies to address?

3 A. Yes, as anything -- any changes came up in  
4 regulations. We had up to four meetings a year with  
5 RUSO legal counsel on anything that had come up that we  
6 needed to know about, any suggestions to the policy  
7 changes or requirements.

8 Q. Did you ever review the Southeastern faculty  
9 health benefits plan for compliance with EEO laws?

10 A. There was no faculty health insurance plan.

11 Q. Did you ever review the Southeastern health  
12 benefits plans for compliance with EEO laws?

13 A. Yes. But if you're talking about detailed  
14 policy coverages for detailed specific procedures, for  
15 instance, only if there was a change in regulation or if  
16 someone recognized there could be a problem or an issue.

17 Q. Okay. Why is it an issue that Dr. Tudor had  
18 not had sex reassignment surgery at the time that she  
19 transitioned to living as a female?

20 MS. COFFEY: Object to form. You're  
21 mischaracterizing the testimony. She never said it was  
22 an issue. That was your word.

23 Q. (By Ms. Weiss) Was there a problem caused by  
24 the fact that Dr. Tudor had not had sex reassignment  
25 surgery at the time that she began living as a female?

1 protected.

2 Q. (By Ms. Weiss) Okay. But there was nothing in  
3 the policy -- Southeastern policy that specifically  
4 protected transgender people?

5 MS. COFFEY: Object to form. Asked and  
6 answered.

7 A. There's nothing in written policy. There was  
8 nothing in written policy.

9 Q. (By Ms. Weiss) Okay. I'll direct your  
10 attention to Plaintiff's Exhibit 26. Okay. On the  
11 first page marked DOJ 9, it says that you discussed or  
12 you advised Dr. Tudor of SOSU Policies 1.8 and 7.4. Did  
13 I read that correctly?

14 A. Yes.

15 Q. Why did you advise Dr. Tudor of those policies  
16 if they did not protect her in 2007?

17 MS. COFFEY: Object to form.  
18 Mischaracterizes her testimony.

19 Q. (By Ms. Weiss) Okay. Strike that. Why  
20 discuss 1.8 and 7.4 with Dr. Tudor in 2007?

21 A. Because she's an employee and she's afforded  
22 nondiscrimination, equal opportunity and affirmative  
23 action. She's afforded information about the sexual  
24 harassment policy and how to turn in a complaint if she  
25 felt that she was being sexually harassed.



1 accustomed?

2 MS. COFFEY: Object to form.

3 A. Well, I didn't talk about Dr. Tudor every day,  
4 so I don't know. Maybe the second or third time she was  
5 discussed, perhaps. I don't know for sure.

6 Q. (By Ms. Weiss) So if someone were to use male  
7 pronouns now with regard to Rachel Tudor, would that be  
8 appropriate or inappropriate?

9 MS. COFFEY: Object to form.

10 A. Female would be appropriate if they know  
11 Dr. Tudor to be female.

12 Q. (By Ms. Weiss) And do you know Dr. Tudor to be  
13 female?

14 A. She appears to be female. I don't know for  
15 sure. She appears to be. All this documentation is  
16 about her being transgender.

17 Q. So would it be inappropriate to use male  
18 pronouns now in regard to Dr. Tudor?

19 MS. COFFEY: Object to form.

20 A. No.

21 Q. (By Ms. Weiss) And why not?

22 A. It seems it would be more appropriate to refer  
23 to Dr. Rachel Tudor with female.

24 Q. So if someone referred to Dr. Rachel Tudor now  
25 with male pronouns, would that be inappropriate?

# Exhibit 32



6/1/07  
3:45  
Dr. Jordan 580-931-9743



2nd  
T.8. Nordmann & 2014  
T.4. Subal...  
Dress w/ class & dea

Your garden  
presentation  
@ SDSU

Thank you for the  
information

- advice/opinion -  
sent from your  
counselor or  
psychologist  
(Mrs. Porter)

hardly...  
This is all new to us too,  
but we...  
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Sherman, TX 75090  
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psychologist  
key...  
for a year  
including...  
garden  
presentation

RACHEL TROON  
931-9743

# Exhibit 33

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

|                             |   |                     |
|-----------------------------|---|---------------------|
| UNITED STATES OF AMERICA,   | ) |                     |
|                             | ) |                     |
| Plaintiff(s),               | ) |                     |
|                             | ) |                     |
| RACHEL TUDOR,               | ) |                     |
|                             | ) |                     |
| Plaintiff Intervenor,       | ) |                     |
|                             | ) |                     |
| -vs-                        | ) | No. 5:15-CV-00324-C |
|                             | ) |                     |
| SOUTHEASTERN OKLAHOMA STATE | ) |                     |
| UNIVERSITY, and             | ) |                     |
|                             | ) |                     |
| THE REGIONAL UNIVERSITY     | ) |                     |
| SYSTEM OF OKLAHOMA,         | ) |                     |
|                             | ) |                     |
| Defendant(s).               | ) |                     |

DEPOSITION OF LAWRENCE MINKS, PhD

TAKEN ON BEHALF OF THE PLAINTIFF(S)

IN ARDMORE, OKLAHOMA

ON MAY 19, 2016

---

REPORTED BY: LESLIE A. FOSTER, CSR

**Lawrence Minks, PhD**

30

1 Q (BY MR. TOWNSEND) Do you have any reason to  
2 question Dr. Weiner's honesty?

3 MS. COFFEY: Object to form.

4 A I don't know.

5 Q (BY MR. TOWNSEND) Is there anything that would  
6 refresh your recollection -- well, strike that.

7 When you say, "I don't know," are you  
8 indicating that you don't remember anything that would  
9 lead you to question his honesty?

10 MS. COFFEY: Object to form.

11 Q (BY MR. TOWNSEND) Let me ask a different way.  
12 You said that you do not have any reason to question  
13 Weiner's honesty. Is that right?

14 MS. COFFEY: Object. Misstates the testimony.

15 Q (BY MR. TOWNSEND) All right. I just want to  
16 make sure I understand your testimony. So are saying you  
17 don't know of any reason to question Dr. Weiner's  
18 honesty?

19 MS. COFFEY: Object to form.

20 A I -- no, I don't know.

21 Q (BY MR. TOWNSEND) Do you have any reason to  
22 believe that Dr. Weiner is a dishonest person?

23 MS. COFFEY: Object to form.

24 A I don't know.

25 Q (BY MR. TOWNSEND) When did you learn that

Lawrence Minks, PhD

31

1 Dr. Tudor was a transgender woman?

2 A My -- my first year.

3 Q Your first year as what?

4 A President.

5 Q And how did you learn that she was a

6 transgender woman?

7 A I don't recall specifically.

8 Q Did you know Dr. Tudor was a transgender woman

9 when you were reviewing her promotion and tenure

10 application?

11 MS. COFFEY: Object to form.

12 A Yes.

13 Q (BY MR. TOWNSEND) Do you believe Dr. Tudor is

14 male?

15 MS. COFFEY: Object to form.

16 A I -- I don't know.

17 Q (BY MR. TOWNSEND) What information would you

18 need to know whether Dr. Tudor is male?

19 MS. COFFEY: Object to form.

20 A I don't understand the question.

21 Q (BY MR. TOWNSEND) You don't know if Dr. Tudor

22 is male, is what you said. Correct?

23 A Yes.

24 Q And I'm trying to get at why you don't know if

25 Dr. Tudor is male.



**Lawrence Minks, PhD**

32

1 MS. COFFEY: He told you he doesn't know.

2 Q (BY MR. TOWNSEND) Okay. What information would  
3 you need for you to be able to know whether Dr. Tudor is  
4 male?

5 MS. COFFEY: Asked and answered. Object to  
6 form.

7 A I don't know.

8 Q (BY MR. TOWNSEND) Do you believe Dr. Tudor is  
9 female?

10 MS. COFFEY: Object to form.

11 A I don't know.

12 Q (BY MR. TOWNSEND) What information would you  
13 need to determine whether Dr. Tudor is female?

14 MS. COFFEY: Object to form.

15 A I don't know.

16 Q (BY MR. TOWNSEND) Do you believe Ms. Coffey's  
17 female?

18 MS. COFFEY: Object to form.

19 You know what? That question's inappropriate,  
20 Allan. If you want to ask this witness about questions  
21 regarding this case, that's fine. But don't start  
22 bringing anything personal about people that are not  
23 witnesses in this case.

24 Why don't you -- if you want to ask him a  
25 question, ask him about yourself.

**Lawrence Minks, PhD**

33

1 MR. TOWNSEND: Are you instructing him not to  
2 answer?

3 MS. COFFEY: No. I'm telling you that you're  
4 out of line and inappropriate, and I suggest you get your  
5 questions back in line.

6 Q (BY MR. TOWNSEND) Do you need the question  
7 repeated back to you? Did you -- do you remember what my  
8 question was before Ms. Coffey spoke?

9 A No.

10 MS. COFFEY: His question was whether or not  
11 I'm female.

12 MR. TOWNSEND: No. Please -- please --

13 THE WITNESS: Oh.

14 MS. COFFEY: Why bother?

15 MR. TOWNSEND: You're not deposing the witness.

16 MS. COFFEY: No, I'm not. I just told him what  
17 the question was.

18 MR. TOWNSEND: Please read back the question.

19 MS. COFFEY: Because I said it incorrectly? Is  
20 that it?

21 THE COURT REPORTER: "Question: Do you believe  
22 Ms. Coffey's female?"

23 THE WITNESS: Yes.

24 Q (BY MR. TOWNSEND) Do you believe that I am  
25 male?

**Lawrence Minks, PhD**

34

1 A Yes.

2 Q Do you believe Ms. Meyer is female?

3 A I don't know.

4 Q Do you believe Mr. Young is male?

5 A I don't know.

6 Q Do you know of any other transgender people  
7 that have worked at Southeastern other than Dr. Tudor?

8 MS. COFFEY: Object to form.

9 A I don't -- I don't recall.

10 Q (BY MR. TOWNSEND) Did you and Dr. Weiner ever  
11 speak about Dr. Tudor?

12 MS. COFFEY: Object to form.

13 A I don't recall.

14 Q (BY MR. TOWNSEND) Did you and Dr. Weiner ever  
15 speak about Dr. Tudor's gender transition?

16 MS. COFFEY: Object to form.

17 A No.

18 Q (BY MR. TOWNSEND) Did you ever speak to  
19 Dr. Tudor about her gender transition?


20 MS. COFFEY: Object to form.

21 A No.

22 Q (BY MR. TOWNSEND) Do you know anyone who's  
23 worked at Southeastern who had any moral or religious  
24 beliefs about transgender people?

25 MS. COFFEY: Object to form.

# Exhibit 34

**From:** Rachel Tudor [racheltudor3731@gmail.com](mailto:racheltudor3731@gmail.com)   
**Subject:** Re: Recollection of Dress and Gender Comportment of Persons Attending Minks Deposition on 5/19/16  
**Date:** May 24, 2016 at 6:23 PM  
**To:** Ezra Young [eyoung@jtweisslaw.com](mailto:eyoung@jtweisslaw.com)

RT

1. Rachel Tudor: absence of facial hair, long length head hair in traditionally female style, women's fashion hat, black skirt, black hose, women's blouse, women's watch, rings, women's casual shoes, women's grey sweater, make-up, feminine voice, female pronouns.
2. Ezra Young: presence of facial hair, short length head hair in traditional men's style, tie, men's business suit, men's dress shoes, fitbit, wedding ring, no make-up, masculine voice, male pronouns.
3. Allan Townsend: presence of facial hair, short length head hair in traditional men's style, tie, men's business suit, men's dress shoes, wedding ring, no make-up, masculine voice, male pronouns.
4. Valerie Meyer: absence of facial hair, mid-length head hair in feminine bun style, women's navy business suit with skirt, women's blouse, women's shoes, wedding ring, women's watch, dangling earrings, subtle makeup, feminine voice, female pronouns.
5. Dixie Coffey: absence of facial hair, short hair in unisex style, black women's slacks, black and grey women's blouse in a snake-skin pattern, watch, bold make-up, feminine voice except when she was angry, female pronouns.

Is this what you want?

On Tue, May 24, 2016 at 11:42 AM, Ezra Young <[eyoung@jtweisslaw.com](mailto:eyoung@jtweisslaw.com)> wrote:  
Rachel,

We need you to memorialize (via email) a short, and accurate (to your recollection) account of the gender presentation of a few people who attended the Minks deposition on 5/19/16 (this is the deposition we attended in Ardmore, Oklahoma).

Specifically, can you please describe the following persons gender appearance—including presence/absence of facial hair, lengths of head hair (and whether it was groomed in traditionally female or male style), attire (e.g., men's business suit, women's business suit, men's dress shoes, heels), jewelry (watch, earrings, wedding rings, etc.), wearing make-up/ not wearing-make-up, etc, deep voice/high pitched voice, etc. Please also indicate (if you recall) what if any pronouns/ titles were used by persons during the deposition to describe these people. For instance, for myself, do you recall people using male pronouns/titles to refer to me or something else?

It's okay if you don't recall details for each person, just do your best to succinctly describe what they were wearing.

These are the persons I need you to describe:

1. Rachel Tudor
2. Ezra Young
3. Allan Townsend
4. Valerie Meyer
5. Dixie Coffey

Please complete this as soon as possible—we want to make sure that we get your recollection recorded while your memory is still fresh. If you have any questions or concerns please reach out to me.

Best,

Ezra Young, Esq.  
Law Office of Jillian T. Weiss, P.C.  
P.O. Box 642  
Tuxedo Park, NY 10987  
Tel: [\(949\) 291-3185](tel:(949)291-3185)  
Fax: [\(917\) 398-1849](tel:(917)398-1849)  
Email: [eyoung@jtweisslaw.com](mailto:eyoung@jtweisslaw.com)  
Web: [jtweisslaw.com](http://jtweisslaw.com)

NOTICE: This email and attachments are confidential, intended solely for listed recipients. No permission is given to forward this email or attachments without written consent. I use email for your convenience, but note that email is inherently insecure, with significant risk of third-party interception. If you prefer not to take the risk, please let me know in writing, and I will use fax or mail for all communications. Email, including personal email accessed via the web, created or viewed through employer-provided systems, including smartphones, can be viewed by the employer. See [ABA Opinion No. 11-459](#).

Ezra Young is admitted to practice law in New York only, and any statements in reference to laws or legal requirements outside of those states are not intended as legal advice unless and until representation by this firm is accepted by a court or government agency operating in your state. Consult an attorney admitted to practice in your state for qualified legal advice. Statements herein are not intended as legal advice or to create an attorney-client relationship unless and until you and this firm have signed a written retainer agreement.

--

*There will be justice when those who are not injured are as outraged as those who are.* Thucydides

# Exhibit 35

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

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

DEPOSITION OF DOUGLAS MCMILLAN

TAKEN ON BEHALF OF THE PLAINTIFF

IN OKLAHOMA CITY, OKLAHOMA

ON AUGUST 10, 2016

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REPORTED BY: ROSIE STANDRIDGE, CSR



## Douglas McMillan

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10:30 1 for.

10:30 2 The -- the thing I looked for among those is  
10:30 3 do we have a record of where there's some sort of a  
10:30 4 continuous quality to it. And you may have to ask me  
10:30 5 some more specific questions to be able to help you  
10:30 6 understand that. But there -- it -- it can't be one,  
10:31 7 say, in 1984 and another one in 2000. There needs to  
10:31 8 be a more continuous element of it.

10:31 9 Q. So I think what you said was that for EHL  
10:31 10 faculty, you wanted to see some refereed scholarship  
10:31 11 in order to determine that there was noteworthy  
10:31 12 achievement in scholarship?

10:31 13 A. I need to see, for all of those disciplines  
10:31 14 that share that same standard, EHL, psychology,  
10:31 15 education, all of them, an investment of the  
10:31 16 individual faculty member in their scholarship that  
10:31 17 reflects an ongoing, continuous element of it.

10:31 18 Q. Right. I'm going to ask you about the  
10:31 19 continuous issue.

10:31 20 A. Okay.

10:31 21 Q. But I wanted to focus now on the refereed  
10:31 22 aspect of --

10:31 23 A. Okay.

10:31 24 Q. -- the scholarship.

10:31 25 A. Could you ask me that again, then?

## Douglas McMillan

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10:39 1 A. That they have done some service that's --  
10:39 2 meets certain -- certain requirements.

10:39 3 Q. Service to what?

10:39 4 A. Can be a variety of things. Can be to the  
10:39 5 university. It can be to their professional  
10:39 6 organization, a national -- like for example, some  
10:39 7 faculty at Southeastern have served as officers in a  
10:39 8 national organization.

10:39 9 It could be, for those areas where it's  
10:39 10 possible to do this, service even to a local entity.  
10:39 11 Like some of the business faculty help small business.  
10:40 12 You know, could be -- those could all be elements of  
10:40 13 it.

10:40 14 But the most critical piece to it is that  
10:40 15 it -- that, again, there's a -- a continuousness to  
10:40 16 it, that it's not I did something for a couple of  
10:40 17 months and then I didn't do anything again for six  
10:40 18 months and then -- or the next year.

10:40 19 There's a -- there's an element of  
10:40 20 demonstrating that the bestowing of tenure is going to  
10:40 21 be something you've demonstrated that you're going to  
10:40 22 continue to do these things past the point of tenure  
10:40 23 being given.

10:40 24 Q. Why is that important, they're going to  
10:40 25 continue to do service after getting tenure?

**Douglas McMillan**

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11:13 1 international journal, where did they fall on that  
11:13 2 quality indicator. And if I had questions about that,  
11:13 3 I would ask the department chair or the dean to find  
11:13 4 out.

11:13 5 Q. When you were reviewing Dr. Tudor's  
11:13 6 portfolio, did you ask Dean Scoufos any questions  
11:13 7 about it?

11:13 8 A. Yes.

11:13 9 Q. What did you ask her?

11:13 10 A. I asked her what an open mic chapbook was.

11:13 11 Q. Anything else?

11:13 12 A. I asked also for her to find out about the  
11:13 13 quality of the journal, some of the journal. I don't  
11:13 14 remember which one.

11:13 15 Q. Did you ask Dr. Mischo any questions about  
11:13 16 Dr. Tudor's portfolio?

11:14 17 A. Directly?

11:14 18 Q. Yes.

11:14 19 A. No.

11:14 20 Q. Did you ask Dean Scoufos to ask Dr. Mischo  
11:14 21 anything?

11:14 22 A. I don't remember who -- I don't remember, to  
11:14 23 tell you the truth.

11:14 24 Q. You said "directly" before. Did you  
11:14 25 indirectly ask Dr. Mischo for any information about

Douglas McMillan

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16:17 1 A. Me --

16:17 2 MR. JOSEPH: Object to the --

16:17 3 A. -- personally?

16:17 4 MR. JOSEPH: -- form.

16:17 5 Q. (By Mr. Townsend) Yes, you personally.

16:17 6 A. Okay. Yes, for that and a variety of other.

16:17 7 I don't -- I don't struggle with that issue.

16:17 8 Q. Now, you just said a little bit ago there  
16:17 9 were two antithetical teachings about transgender  
16:17 10 people. What were those two teachings?

16:17 11 A. One was that it was -- that God created male  
16:17 12 and female and those -- with the implication that  
16:17 13 gender is based on biological -- what we're born as in  
16:17 14 terms of gender.

16:17 15 The other one said in an interesting  
16:17 16 contradiction that it's a biological thing that a  
16:17 17 person would feel, say, for example, a woman trapped  
16:18 18 in a man's body, that -- and that it is not a -- it's  
16:18 19 not a -- a sin necessarily.

16:18 20 So I've heard two very opposite teachings  
16:18 21 about it which I think reflected people don't know --  
16:18 22 don't know what the -- what the reality of that is or  
16:18 23 that Christians haven't closed the book on that issue  
16:18 24 yet.

16:18 25 Q. So where do you come down on those two

Douglas McMillan

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16:18 1 antithetical views?

16:18 2 A. Still considering, still reflective about  
16:18 3 it.

16:18 4 Q. Have you ever thought that transgender  
16:18 5 people were immoral?

16:18 6 A. Immoral?

16:18 7 MR. JOSEPH: Object to the form.

16:18 8 Q. (By Mr. Townsend) Well, let me strike that.  
16:18 9 Have you ever had any religious beliefs  
16:18 10 about transgender people being immoral?

16:18 11 MR. JOSEPH: Object to the form. Are you  
16:18 12 asking, are transgenders engaged in immoral activity?  
16:19 13 Or are you asking their nature is immoral?

16:19 14 MR. TOWNSEND: All right. I'll clarify.

16:19 15 Q. (By Mr. Townsend) Have you ever had any  
16:19 16 religious beliefs about transgender people by their  
16:19 17 nature being immoral?

16:19 18 A. We're all -- from a biblical perspective, we  
16:19 19 all are in that same situation.

16:19 20 Q. Have you ever had any religious beliefs  
16:19 21 about transgender people being immoral because they  
16:19 22 are presenting themselves as a gender that's different  
16:19 23 than the gender they were assigned at birth?

16:19 24 A. I don't -- I don't have that question closed  
16:19 25 in my thinking.

Douglas McMillan

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16:19 1 Q. And has your --

16:19 2 A. I don't have a definitive answer for you.

16:19 3 Q. Has your thinking on that been the same as  
16:19 4 long as you can remember?

16:19 5 A. In terms of not knowing the answer to it?

16:19 6 Q. Yes.

16:19 7 A. Yes.

16:19 8 Q. So going back to when you first learned that  
16:19 9 Dr. Tudor was a transgender person, you've had the  
16:20 10 same views about the morality of transgender people  
16:20 11 presenting themselves as a gender different from the  
16:20 12 gender they were assigned with?

16:20 13 A. I lost you.

16:20 14 MR. JOSEPH: Object to the form.

16:20 15 Q. (By Mr. Townsend) All right. Is there any  
16:20 16 difference in your views about transgender people  
16:20 17 today compared to your views about transgender people  
16:20 18 back when you learned that Dr. Tudor was a transgender  
16:20 19 person?

16:20 20 A. No, I'm still reflective and not sure what  
16:20 21 the answer is to it.

16:20 22 Q. In that segment of the EEOC interview,  
16:20 23 you -- you used the term "biblical lifestyle." What  
16:20 24 does that mean to you?

16:21 25 A. Someone who's trying to pattern their lives

Douglas McMillan

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16:45 1 Q. Did you ever have any opportunity to discuss  
16:45 2 those conflicting teachings with anyone who was a  
16:45 3 member of the Red River Cowboy Church?

16:45 4 A. Not that I recall.

16:45 5 Q. Switching gears a bit. Warning again.

16:45 6 A. Okay.

16:45 7 Q. I believe earlier today, you testified that  
16:45 8 you were personally still thinking through whether  
16:45 9 transgender people should be permitted to use rest  
16:45 10 rooms that match their gender identity; is that  
16:45 11 correct?

16:45 12 A. Still listening.

16:45 13 Q. Still listening.

16:45 14 Do you think it's important that people  
16:45 15 should be able to use the rest room that matches their  
16:45 16 gender identity?

16:46 17 A. I haven't come to a conclusion one way or  
16:46 18 the other.

16:46 19 Q. Are you concerned at all that nontransgender  
16:46 20 people might be uncomfortable using a rest room with a  
16:46 21 transgender person?

16:46 22 A. I don't think that, no. I don't think  
16:46 23 that's my thing that I'm thinking about with it.

16:46 24 Q. Can you explain to me a little bit about  
16:46 25 what the thing is that you're thinking about?

## Douglas McMillan

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16:46 1 A. Just it's a new concept, I think -- new for  
16:46 2 me. It may not be new for someone who's transgender,  
16:46 3 but it's a new concept. And as -- you know, as our  
16:46 4 society seems to struggle with it a little bit, I'm  
16:46 5 listening to -- to both sides trying to determine  
16:46 6 what's a compassionate response to a person in that  
16:46 7 situation, what's a Christ-like response to that.

16:46 8 Q. Do you think it would be a compassionate  
16:47 9 response to prohibit transgender people from using the  
16:47 10 rest room that matches their gender identity?

16:47 11 A. I haven't settled the issue, so I couldn't  
16:47 12 go forward to give you a one way or the other.

16:47 13 Q. Do you personally believe it's possible for  
16:47 14 someone to change their sex?

16:47 15 MR. JOSEPH: Object to the form.

16:47 16 A. Their -- I don't know. I would say no, but  
16:47 17 I don't know.

16:47 18 Q. (By Mr. Young) What -- what makes you want  
16:47 19 to say no?

16:47 20 A. The -- I just don't understand how you can  
16:47 21 change at a cellular level the biological  
16:47 22 manifestation of male or female. Now, I understand  
16:47 23 that a -- I'm beginning to understand that a person  
16:47 24 can feel differently than that, has a different gender  
16:48 25 identity. That's the concept I'm -- I'm trying to



## Douglas McMillan

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16:48 1 reflect on, wrestle with.

16:48 2 Q. Does the fact that you are uncertain whether  
16:48 3 someone can change their sex in any way inform your  
16:48 4 uncertainty about which rest rooms transgender people  
16:48 5 should use?

16:48 6 A. No.

16:48 7 Q. So --

16:48 8 A. I mean, I don't -- I don't have an ax to  
16:48 9 grind when it comes to any of those issues. I'm just  
16:48 10 simply reflecting and trying to determine for myself  
16:48 11 what my views are on it.

16:48 12 Q. Do you think it's important that people  
16:49 13 generally have access to rest rooms that they're  
16:49 14 comfortable with?

16:49 15 MR. JOSEPH: Object to the form.

16:49 16 A. I still haven't settled that issue, so I  
16:49 17 don't know how I can comment on it.

16:49 18 Q. (By Mr. Young) You have no personal  
16:49 19 opinions regarding rest room access generally?

16:49 20 A. I'm uncomplete -- incomplete, not finished.

16:49 21 Q. Do you have any personal concerns about  
16:49 22 black people using the same rest rooms as white  
16:49 23 people?

16:49 24 A. No.

16:49 25 Q. Why do you not have concerns in that

Douglas McMillan

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16:49 1 situation?

16:49 2 A. Because that -- I'm -- I'm not struggling  
16:49 3 with that issue.

16:49 4 Q. Do you believe that that presents a  
16:49 5 different sort of problem?

16:49 6 A. I don't know.

16:49 7 MR. JOSEPH: Object to the form.

16:49 8 Q. (By Mr. Young) At any point in your life,  
16:49 9 have you struggled with the issue of whether black  
16:49 10 people should use the same rest room as white people?

16:50 11 A. No.

16:50 12 Q. I believe earlier today, you testified that  
16:50 13 at some point in time -- you weren't exactly sure of  
16:50 14 the exact date -- you had a conversation with  
16:50 15 Ms. Conway at Southeastern about Dr. Tudor and rest  
16:50 16 room use. Is that correct?

16:50 17 A. Yeah, yes.

16:50 18 Q. During your conversation with Ms. Conway,  
16:50 19 did you tell Ms. Conway that you were personally  
16:50 20 undecided about which rest room transgender people  
16:50 21 should use?

16:50 22 A. I didn't know it was an issue at that point.  
16:50 23 I thought I was being asked on a need -- based on a  
16:50 24 need for privacy.

16:50 25 Q. Do you recall whether you asked Ms. Conway

# Exhibit 36

**Lucretia Scoufos**

**From:** Randy Prus  
**Sent:** Friday, April 30, 2010 11:54 AM  
**To:** Lucretia Scoufos  
**Subject:** RE: RE:



Lucretia,

I don't know of an "Open Mic" publisher. I take the term to mean "unpublished" or "self-collected." Poetry generally circulates in communities of mostly small journals and presses. Often the journals/presses are ephemeral, but the important aspects of poetry are the communities in which they circulate. "Open Mic" is somewhat dubious, to me.

Randy Prus  
English, Humanities and Languages  
Southeastern Oklahoma State University  
580-745-2582

**From:** Lucretia Scoufos  
**Sent:** Friday, April 30, 2010 11:49 AM  
**To:** Randy Prus  
**Subject:** Fwd: RE:

Because you you are the expert, could you tell me if these are usually published, unpublished, refereed? Please educate me, Randy.

Lucretia

Sent from my iPhone

Begin forwarded message:

**From:** Lisa Coleman <LColeman@se.edu>  
**Date:** April 30, 2010 11:25:09 AM CDT  
**To:** Lucretia Scoufos <LScoufos@se.edu>, John Mischo <JMischo@se.edu>, Randy Prus <RPrus@se.edu>  
**Subject:** RE:

These terms relate to poetry presentations. Randy is the expert on this.

Lisa

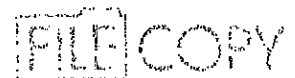
-----Original Message-----

**From:** Lucretia Scoufos  
**Sent:** Friday, April 30, 2010 11:24 AM  
**To:** John Mischo; Randy Prus; Lisa Coleman  
**Subject:**

What is an "open mic chapbook"? I am not familiar with this and believe it to be in the English discipline.

Lucretia

Sent from my iPhone



### **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*

---

### **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*

---

ZACH WEST, OBA #30768

*Assistant Solicitor General*

ANDY N. FERGUSON

*Staff Attorney*

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*Counsel for Defendants-Appellees/Cross-Appellants*