

SHORT RECORD  
NO. 16-2982  
FILED 7/20/16

UNITED STATES DISTRICT COURT  
For the WESTERN DISTRICT OF WISCONSIN

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DR. SABINA BURTON,  
Plaintiff,

v.

Case No. 14-CV-274

BOARD OF REGENTS UNIVERSITY OF  
WISCONSIN, THOMAS CAYWOOD,  
ELIZABETH THROOP, and MICHAEL  
DALECKI,  
Defendants.

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**NOTICE OF APPEAL**

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Notice is hereby given that I, Sabina Burton, plaintiff in the above named case hereby appeal to the United States Court of Appeals for the 7<sup>th</sup> Circuit from the final judgment entered on the 22<sup>nd</sup> day of June, 2016.

Executed on July 20, 2016

s/Sabina Burton  
Plaintiff  
5768 Maple Glen Lane  
Platteville, WI 53818

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

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SABINA BURTON,

Plaintiff,

v.

OPINION & ORDER

BOARD OF REGENTS OF THE UNIVERSITY  
OF WISCONSIN SYSTEM,  
THOMAS CAYWOOD, ELIZABETH THROOP, and  
MICHAEL DALECKI,

14-cv-274-jdp

Defendants.

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Plaintiff Sabina Burton is now a tenured associate professor of criminal justice at the University of Wisconsin-Platteville (UWP). Several years ago, Burton advocated for a student who complained of sexual harassment at the hands of another UWP professor. Burton contends that, as a consequence of her advocacy for this student and her subsequent efforts to assert her own rights, she has faced discrimination and retaliation from UWP colleagues and administrators. She brings this suit against defendant Board of Regents of the University of Wisconsin System (the entity responsible for UWP) and three employees of UWP.

Burton's complaint alleged multiple causes of action under four federal laws: Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; the Equal Pay Act; and the Equal Protection Clause of the Fourteenth Amendment. Defendants have moved for summary judgment on all claims. In response, Burton has conceded that she cannot succeed on many of her claims, leaving two retaliation claims that Burton regards as the heart of this suit. First, Burton contends that she faced retaliation for assisting the student with her sexual harassment complaint, in violation of Title VII and Title IX. Second, Burton contends that, also in violation of Title VII, she faced retaliation for asserting her own

rights by filing a charge of discrimination with the Wisconsin Department of Workforce Development-Equal Rights Division (ERD) and by filing this lawsuit.

Title VII and Title XI prohibit retaliating against an individual who asserts her rights in employment and education, respectively. But neither law requires—or, frankly, permits—a federal court to referee every dispute generated by the friction of day-to-day operations in university departments. As this opinion explains, Burton perceived slights and a lack of collegiality, and she felt personal embarrassment at the hands of her colleagues. But those are not materially adverse actions, and they do not amount to actionable retaliation. Burton also received a formal letter of direction, which led to a disciplinary complaint. Although these were adverse actions, Burton has not adduced evidence to show a causal link to her protected activity (i.e., filing a charge of discrimination and bringing this lawsuit).

As a university faculty member, Burton works with a high degree of autonomy. But she is not immune from supervision and discipline. Federal courts are properly reluctant to second-guess the personnel decisions of university administrators, and Burton has given this court no reason to do so here. Defendants are entitled to summary judgment.

#### UNDISPUTED FACTS

Except where noted, the following facts are undisputed.<sup>1</sup>

Burton began working at UWP in 2009, as a tenure-track assistant professor in the criminal justice department, which is part of the College of Liberal Arts and Education.

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<sup>1</sup> Several of Burton's citations to the record in her proposed findings of fact are incorrect. The errors appear to be careless ones: the wrong paragraph of an affidavit, or an incorrect docket number. Defendants have compounded the problem by objecting to the proposed facts as unsupported, rather than providing the correct citation (which is obvious in most cases). Because these facts are not actually in dispute, the court includes them in this opinion.

Burton was a successful faculty member, and in January 2012, she was promoted to associate professor. At the time, defendant Thomas Caywood was chair of the criminal justice department. Defendant Elizabeth Throop became dean of the College in June 2012.

The trouble starts in October 2012. One of Burton's colleagues in the criminal justice department was lecturing on the subject of "breach experiments," which are essentially provocations designed to display social norms by violating them so that they can be studied. The professor demonstrated a breach experiment: in plain view of the class, he handed a female student a note that read "Call me tonight!!" and included his cell phone number. Dkt. 51-1. The student did not recognize the exchange as a demonstration, and she was upset by the note. Later that day, she sought out Burton to talk about the incident. Afterwards, Burton emailed dean Throop, alerting her to the apparent harassment of the student. Throop suggested that the student speak to the dean of students.

The next day, Burton followed up on the student's complaint and spoke with Caywood. Burton also forwarded to Caywood an email that she had received from the student the night before, with an image of the note. Burton indicated that she would contact student affairs, but she did not tell Caywood that she had already emailed Throop. Caywood spoke with the breach-experimenting professor that day, learned that the note had been part of a demonstration, and advised the professor to send an apology to the entire class, which he did. When Caywood emailed Burton to explain the situation, Burton suggested that department faculty be informed about all such experiments in the future. Caywood responded that this was not necessary and that if students had problems with faculty members, then they needed to come see him to sort out those problems.

Word got around to administrative personnel at UWP, including the chancellor, the provost, and the human resources department. Over the next two days, Throop emailed Caywood to express her serious concerns with the experiment and with Caywood's response to it. Throop also emailed Burton—who, by this point, had become the student's informal liaison and advocate—asking her to assure the student that the matter would be taken seriously and resolved as quickly as possible. When Caywood asked to interview the student to find out what happened, the director of human resources told him to drop the issue because her office would handle it. The parties do not explain how UWP eventually resolved the incident, but the resolution of the underlying complaint is not relevant to Burton's claims in this case.

In the following months, Burton experienced what she perceived to be unwarranted public criticism for the way that she had handled the student's complaint. For example, about one week after the incident, Caywood prepared a memo outlining the steps that faculty members should take if a student came to them with a problem concerning another faculty member. The memo instructed that students should first contact the faculty member in person to resolve the issue directly, if the problem was along the lines of a low grade or poor attendance. For complaints about what a faculty member said or did, students were to come directly to Caywood. For behavior that could potentially amount to criminal conduct, faculty members were to contact campus police. Caywood circulated this memo to the members of the criminal justice department.

At a department meeting in November 2012, Caywood reiterated his instruction that student issues should be brought to his attention so that harmless matters did not go all the way to the provost. Burton felt that the announcement was a veiled public reprimand from

her department chair, and she emailed the director of human resources at UWP to request a meeting. She wrote that Caywood's comments were in retaliation against her for assisting the student and that she could not accept Caywood's "ongoing bitterness." Dkt. 54-14.

About the same time, Burton perceived a sudden loss of support from Caywood and Throop regarding Burton's efforts to develop a new curriculum in cybersecurity, which Burton, Caywood, and others had been working on since February 2012. The project would involve an extended process. Establishing a new course required approval from the college curriculum committee, and then approval of the university curriculum committee. A new emphasis, program, major, or minor, would ultimately need approval from the Board of Regents. As a preliminary step, Burton and Caywood had worked together on a grant application to the National Science Foundation to secure substantial funding for the cybersecurity curriculum, although the application was unsuccessful.

In the fall of 2012, Burton secured an informal offer from AT&T of a modest amount of private funding for the cybercrime program. In the formal written application to AT&T, Burton wrote that UWP would use the money "[t]o support the development and implementation of a cyber-security curriculum for undergraduate and graduate students." Dkt. 37-1, at 2. The application also indicated that UWP was "in the process of developing a curriculum for cyber-security," and that a milestone of the project would be to develop and implement an undergraduate cyber-security course by February 2013. *Id.* at 2-3.

Throop and Caywood were concerned with how Burton was portraying the status of UWP's cybersecurity program. In January 2013 (three months after the student harassment incident), an AT&T representative drafted a press release to announce the company's donation. The representative sent the release to Burton, who edited the draft and returned it

the next morning. Burton attached her edits to an email on which Caywood and Throop were copied. As edited, the release referred to “the development of a new cyber security program,” and to a “new course . . . expected to be available to undergraduate students beginning spring of 2012.” Dkt. 36-7, at 1.<sup>2</sup> But Burton had not yet formally submitted any proposed cybersecurity courses to the college curriculum committee or to the university curriculum committee.

Throop responded to the draft press release in an email to Burton, Caywood, and AT&T’s representative, writing that: “This press release concerns me deeply. There are a number of highly inaccurate--indeed, misleading--statements regarding the status of cybersecurity curricula at the University of Wisconsin-Platteville. I am not confident that the ceremony being planned is wise given this.” Dkt. 53-16, at 1. Caywood also responded to Burton’s email, noting similar concerns and cautioning Burton “on how [she was] presenting [her] ideas and visions in the media.” Dkt. 53-4, at 2. Later that same day, however, Throop emailed Burton and Caywood to explain that she and the AT&T representative had talked over the phone and agreed to additional revisions that would alleviate Throop’s concerns. On January 30, 2013, AT&T presented \$7,000 to Burton in a public ceremony.

Around the same time, Caywood and Throop also identified issues with two websites that Burton had created, both of which discussed a cybersecurity program at UWP. Caywood and Throop felt that these websites inaccurately suggested that UWP had developed or was actively developing a cybercrime program. Throop tried to arrange a meeting with Burton and

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<sup>2</sup> The press release was drafted to go out on January 28, 2013. Dkt. 36-7, at 1. Thus, the reference to “spring of 2012” appears to have been a typo, although the parties do not address the discrepancy.

Caywood to discuss the issues with the websites and the AT&T funding, but Burton refused to meet.

In January 2013, at her earliest eligibility, Burton applied for tenure. She was granted tenure, effective for the 2013-14 academic year. Burton thus enjoyed substantial job security: tenure extends for an unlimited period, and tenured faculty can be dismissed only for just cause and only after due notice and a hearing. *See* Wis. Admin. Code UWS § 4.01.

In August 2013, Burton filed a discrimination charge with the ERD. The charge alleged that: (1) Caywood had discriminated against her because she was a woman and retaliated against her for reporting the student harassment; (2) Throop and the human resources director had discriminated against her; (3) Throop had defamed her; and (4) the university had been deliberately indifferent to her grievances.

In the summer of 2013, Caywood stepped down, and defendant Michael Dalecki became interim chair of the criminal justice department. But the change of chair did not end Burton's frustrations. After Burton filed her charge with the ERD, she continued to experience what she perceived to be hostile treatment at the hands of her colleagues and supervisors. For example, Dalecki had several conversations with Burton, during which he encouraged her to drop her ERD charge and lawsuit and expressed disappointment or told Burton to "get over it" each time she refused to do so.<sup>3</sup> Dalecki also told Burton that she could not expect to file a lawsuit without suffering consequences, reminding her to think about how her actions would affect her chances of eventually becoming chair of the criminal justice department. At least one other faculty member also pressured Burton to drop her suit,

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<sup>3</sup> Defendants dispute what exactly Dalecki said, and they contend that Burton has taken his comments out of context. But there is no dispute that Dalecki encouraged Burton to drop her claims.

indicating that Burton would be “dean material,” but not if she continued to challenge administrators.

Burton continued to disagree with Dalecki and others throughout the 2013-14 academic year and into the summer. The disagreements concerned committee appointments, personnel changes, and departmental management. In addition, Dalecki chastised a graduate student who shared with Burton comments about her that he had overheard a department staff member make at a social event. The graduate student later lost his position because of insufficient funds. Burton contends that all of these actions were in retaliation for her filing a charge with the ERD and a lawsuit in this court.

Burton also had run-ins with Throop. Their conflict came to a head in October 2014, when Throop wrote Burton a letter of direction. The letter identified seven events that Throop described as showing “a consistent pattern of unprofessional and inappropriate behavior.” Dkt. 37-15, at 5. In brief, Throop was concerned that Burton had:

- accused Dalecki of misconduct without a factual basis for doing so, and made these accusations public by emailing the entire department, the provost, and the chancellor;
- written an inflammatory email to the entire department incorrectly accusing a recently resigned colleague of unethical behavior and implying that she would ask the Wisconsin Attorney General to investigate;
- abruptly passed off responsibility for a visit from colleagues in Germany after having organized the visit;
- asked a new assistant professor who had been Burton’s mentee to house-sit for Burton during the summer (which Throop felt was unprofessional, given Burton’s seniority over the mentee);
- sent an email to a staff member using an unnecessarily accusatory and unprofessional tone;

- threatened a junior faculty member with consequences to his future bid for tenure because Burton incorrectly believed that he had improperly carried out his duties as the chair of a committee; and
- encouraged students to bypass the department chair with complaints against other professors because he was biased.

Throop concluded the letter by providing Burton with five specific directions, and she warned Burton that failure to follow the directions would result in disciplinary action.

Burton responded to the letter of direction in writing. She generally disagreed with Throop's summary of the relevant facts, and she flatly refused to accept any of Throop's directions. Given Burton's refusal to cooperate, Throop filed a complaint with the chancellor on January 5, 2015, pursuant to Wis. Admin. Code UWS § 6.01.<sup>4</sup> Throop asked the chancellor to write Burton a formal letter of reprimand that would be placed in her personnel file. At this point, it is not clear from the record whether Throop's complaint has been resolved, nor what discipline, if any, Burton has received.

Another incident occurred in December 2014, when Throop incorrectly accused Burton of cancelling a class without permission. Throop emailed Burton about the canceled class, and she copied Dalecki (but no one else). The email was terse, and it concluded by stating that "I will be forced to pursue disciplinary measures as a result." Dkt. 43-3, at 2. Throop's information turned out to be incorrect: Burton had not cancelled class. But rather than responding directly to Throop to explain, Burton sent an email to her class:

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<sup>4</sup> This provision establishes complaint procedures for "conduct by a faculty member which violates university rules or policies . . . , but which [is] not serious enough to warrant dismissal proceedings." Wis. Admin. Code UWS § 6.01.

Dear Student,

Dean Throop falsely accused me of canceling my class last Friday and wants to fire me over it. Please see the email below to see her extremely harsh and false accusations.

I ask that you please reply to this email with your confirmation that I did teach my class last Friday, Dec 12, 2014 to prove to Dean Throop that I did not cancel the class. This is extremely important for me. Dean Throop wants to fire me. If you came to class on Friday, Dec 12, 2014 you know that I was there. Dean Throop wants to discipline me for not being at the class. She is just looking for reasons to “discipline” me. Your confirmation that I was in class on that day will convince her that she has her facts wrong and could save me from severe discipline that I don’t deserve.

Why does Dean Throop want to hurt me you ask? Well, since I am asking you for an honest response I will give you an honest answer to this question.

On Oct 11, 2012 a female student came to me with a complaint of a sexual advance by a male faculty member. I helped the student report the complaint to Student Affairs. I have been mercilessly harassed since then for my actions in assisting that student.

I have tried to keep students out of this conversation but the Dean has put me in a position where I need students to confirm my presence in my classes last Friday. I need your help. Please reply to this email as soon as you can with your confirmation that I was in class on Friday, Dec 12, 2014.

Thank you so much.

*Id.* at 1. Several students responded that Burton had taught her class, and Burton forwarded at least one of the responses to Throop, Dalecki, the provost, the chancellor, and human resources. Throop did not discipline Burton for cancelling class.

Burton pursued several grievances to address these issues with UWP administrators. Those efforts were unsuccessful, and so Burton filed suit in this court on April 14, 2014.

Dkt. 1. Burton filed a second amended complaint on September 11, 2015. Dkt. 28. The

court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, because Burton's claims arise under federal law.

#### ANALYSIS

Burton's second amended complaint alleged multiple causes of action, some against the Board of Regents, some against Caywood, some against dean Throop, and some against Dalecki. Defendants have moved for summary judgment on all causes of action. Dkt. 32. Burton's brief in opposition to defendants' motion concedes to dismissal of most of the causes of action, with the exception of the retaliation claims that she brings against the Board of Regents as the legal entity that runs UWP and employs her. Dkt. 57, at 4.

Summary judgment is appropriate if defendants show "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Defendants are entitled to summary judgment on a claim if they show that Burton lacks evidence to support an essential element on which she bears the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To avoid summary judgment, Burton "must set forth specific facts showing that there is a genuine issue for trial." *Id.* She may not simply rely on the allegations in her pleadings to create such a dispute, but must "demonstrate that the record, taken as a whole, could permit a rational finder of fact to rule in [her] favor." *Johnson v. City of Fort Wayne*, 91 F.3d 922, 931 (7th Cir. 1996).

## A. Retaliation for supporting the student's harassment complaint

Burton alleges that defendants retaliated against her for supporting the student who complained of harassment in October 2012. Burton contends that this retaliation violates both Title IX (which prohibits forms of sex discrimination in education), Dkt. 28, ¶¶ 202-05, and Title VII (which prohibits workplace discrimination), *id.* ¶¶ 199-201.

### 1. Title IX

Under Title IX, “[n]o 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.” 20 U.S.C. § 1681(a). Unlike Title VII, Title IX does not include a separate retaliation provision. Nevertheless, “Title IX’s private right of action encompasses suits for retaliation, because retaliation falls within the statute’s prohibition of intentional discrimination on the basis of sex.” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 178 (2005).

Courts apply Title VII’s retaliation framework to evaluate retaliation claims under Title IX. *Milligan v. Bd. of Trs. of S. Ill. Univ.*, 686 F.3d 378, 388 (7th Cir. 2012). Under this framework, a plaintiff can prove her retaliation claim using either the direct method of proof or the indirect method of proof. *Id.* Burton is proceeding via the direct method.<sup>5</sup> Burton must therefore adduce evidence that: (1) she engaged in protected activity under Title IX; (2) defendants took an adverse action against her; and (3) there is a causal connection between her protected activity and the adverse action. *Cung Hnin v. TOA (USA), LLC*, 751

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<sup>5</sup> Burton does not explicitly forgo the indirect method. But she does not contend that she “was treated less favorably than similarly situated employees who did not engage in statutorily protected activity,” which is an essential element of a *prima facie* case under the indirect method. *Turner v. The Saloon, Ltd.*, 595 F.3d 679, 688 (7th Cir. 2010).

F.3d 499, 508 (7th Cir. 2014). The court will assume without deciding that Burton engaged in protected activity by assisting the student who complained of harassment. But even so, the evidence of record confirms that defendants did not take any materially adverse actions against Burton. Because Burton cannot establish a necessary element, defendants are entitled to summary judgment on Burton's Title IX retaliation claim.

**a. Preemption**

Before turning to the merits, the court addresses defendants' preliminary argument that Burton's Title IX claim is preempted by Title VII. Defendants rely on the general rule that "Title VII's own remedial mechanisms are the only ones available to protect the rights created by Title VII." *Yasiri v. Bd. of Regents of Univ. of Wis. Sys.*, No. 99-cv-0051, 2000 WL 34230253, at \*8 (W.D. Wis. Jan. 28, 2000) (quoting *Waid v. Merrill Area Pub. Sch.*, 91 F.3d 857, 862 (7th Cir. 1996), *abrogated by Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246 (2009)). According to defendants, Burton cannot pursue a Title IX claim in this case because she is seeking redress for injuries that she suffered in the context of her employment. The court disagrees.

Defendants' expansive reading of the preemption rule would run headlong into the Supreme Court's decision in *Jackson*, which allowed a teacher to bring a retaliation claim under Title IX based on allegations that he received negative performance reviews and was removed from a coaching position in retaliation for complaining about unequal funding for a girls basketball team. 544 U.S. at 171. Burton's case is analogous in all material respects: she helped a student address sexual harassment by a professor, and then she suffered unfavorable employment actions. It is irrelevant that Burton was not personally subjected to discrimination under an education program because Title IX "is broadly worded; it does not

require that the victim of the retaliation must also be the victim of the discrimination that is the subject of the original complaint.” *Id.* at 179.

The authority that defendants cite does not support preempting Burton’s Title IX claim. For example, defendants invoke *Ludlow v. Northwestern University*, in which another district court concluded that “Congress did not intend that Title IX serve as an additional protection against gender-based discrimination regardless of the available remedies under Title VII.” No. 14-cv-4614, 2015 WL 5116867, at \*4 (N.D. Ill. Aug. 28, 2015) (citations and internal quotation marks omitted). But *Ludlow* was not a retaliation case; it involved a professor who alleged that his university discriminated against him on the basis of his gender by investigating him for sexual assault and treating him differently in the investigation than it did the female student who had complained of assault. *Id.* at \*1-3. The same is true for many of the decisions that defendants cite to support their preemption arguments. These cases involved allegations of direct sex discrimination, not retaliation for conduct that Title IX protects. *See, e.g., Waid*, 91 F.3d at 860 (teacher denied full-time position because of her sex); *Blazquez v. Bd. of Educ. of Chi.*, No. 05-cv-4389, 2006 WL 3320538, at \*11 (N.D. Ill. Nov. 14, 2006) (teacher denied an aide because of her sex).

Title VII does not preempt Burton’s Title IX retaliation claim. The court turns to the merits of that claim.

**b. Materially adverse action**

Burton identifies what she contends are two materially adverse actions that constituted retaliation under Title IX: (1) Caywood publically criticized Burton in the months following her report of student harassment; and (2) Caywood and dean Throop withdrew their support of Burton’s efforts to develop a cybercrime curriculum. Dkt. 57, at

10-19. Based on the undisputed facts of this case, no reasonable jury could conclude that either action was materially adverse.

The standard for materiality is the same in Title IX and Title VII cases. *See Lucero v. Nettle Creek Sch. Corp.*, 566 F.3d 720, 728-29 (7th Cir. 2009). “Not everything that makes an employee unhappy is an actionable adverse action.” *Brown v. Advocate S. Suburban Hosp.*, 700 F.3d 1101, 1106-07 (7th Cir. 2012) (quoting *Stephens v. Erickson*, 569 F.3d 779, 790 (7th Cir. 2009)). “Because an adverse employment action under Title VII’s retaliation provision must be ‘materially’ adverse, it is important to separate significant from trivial harms.” *Id.* (citations and internal quotation marks omitted). Thus, “[i]n a retaliation case, an adverse action is one that a reasonable employee would find to be materially adverse such that the employee would be dissuaded from engaging in the protected activity.” *Silverman v. Bd. of Educ. of Chi.*, 637 F.3d 729, 740 (7th Cir. 2011) (citations and internal quotation marks omitted). None of the adverse actions that Burton identifies for her Title IX claim satisfy these requirements.

Burton proposes a lenient standard for determining whether defendants’ actions were materially adverse because her protected conduct in this case was altruistic: she was not complaining about harassment that *she* suffered, but was instead helping someone else handle harassment. Indeed, the Seventh Circuit has recognized that “it takes less to deter an altruistic act than to deter a self-interested one.” *Washington v. Ill. Dep’t of Revenue*, 420 F.3d 658, 662 (7th Cir. 2005); *see also Herrnreiter v. Chi. Hous. Auth.*, 315 F.3d 742, 746 (7th Cir. 2002). But even under Burton’s proposed standard, she has not identified conduct that rises to the level of actionable retaliation.

Caywood's public criticism of how Burton handled the student incident was not a materially adverse action. According to Burton, Caywood's new policy was obviously intended to criticize or reprimand her because it directed faculty to handle student complaints differently from the way that she handled the incident in October 2012. As Burton paraphrases, Caywood announced to the department that someone had "made a big deal out of a student complaint and before notifying him took it all the way to the provost." Dkt. 54-14. But the evidence of record is that Caywood developed a policy for how faculty should handle issues that students had with professors because he believed that the lack of instruction was at least partly responsible for how the student incident had been handled—or "mishandled," to use Caywood's words. Dkt. 36, ¶ 31. The policy did not expressly denounce the way that Burton addressed the incident; it merely established a different procedure for responding to similar events in the future. Dkt. 53-6.

The other instances of Caywood being less than collegial to Burton do not amount to actionable retaliation. For example, Burton takes issue with Caywood "tersely asking her for a timeline and identities of those to whom she had spoken" about the student incident. Dkt. 57, at 11. But Caywood's email simply sought information; he did not accuse Burton of wrongdoing or express concerns over how she handled the situation. Dkt. 53-29. And once the director of human resources explained to Caywood that he was not to investigate further, Caywood dropped the issue. Dkt. 36, ¶ 30 and Dkt. 53-5.

Burton also vaguely alludes to Caywood having significant discretionary power over the lives and career prospects of faculty members by virtue of having been the chair of the department. Dkt. 57, at 11-12. She contends that in light of the power imbalance, Caywood's implicit criticism was particularly troubling for her. But tellingly, Burton does not

base her Title IX retaliation claim on any adverse decisions that Caywood made that affected her career. In fact, in November 2012—the same month as his alleged reprimand—Caywood approved Burton’s request to take on an additional course (and receive additional compensation). Two months later, Caywood approved Burton’s request to use department funds to take students to a conference. And finally, Caywood supported Burton’s successful bid for early tenure in 2013.

The court will accept Burton’s recollection that Caywood publicly expressed irritation at her making a big deal out of the student complaint. But no reasonable jury could conclude that the lone statement would deter professors from helping students report sexual harassment in the future. Quite the opposite: Caywood’s purpose was to give faculty in his department a uniform procedure for addressing student complaints. Dkt. 36, ¶ 31. Construing the new policy as an implicit reprimand—as Burton asserts it was—does not change the analysis. “Even under the more generous standard that governs retaliation claims, a reprimand without more is not an adverse employment action.” *Chaib v. Indiana*, 744 F.3d 974, 987 (7th Cir.), *cert. denied*, 135 S. Ct. 159 (2014) (citations and internal quotation marks omitted).

Burton’s dissatisfaction with how Caywood presented the policy and treated her in the months following the student incident is essentially a complaint about the “petty slights or minor annoyances that often take place at work and that all employees experience,” but which do not qualify as materially adverse actions. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). Neither a bruised ego, nor a lone instance of public humiliation constitutes actionable retaliatory conduct. *Flaherty v. Gas Research Inst.*, 31 F.3d 451, 457 (7th Cir. 1994); *Spring v. Sheboygan Area Sch. Dist.*, 865 F.2d 883, 885-86 (7th Cir. 1989).

Burton therefore cannot base a Title IX retaliation claim on Caywood's response to how she handled the student incident.

For substantially similar reasons, Burton's consternation over Throop and Caywood's response to the AT&T press release cannot support her Title IX claim either. The evidence of record contradicts Burton's assertion that Throop and Caywood damaged her reputation by informing the AT&T representative that the draft press release was unacceptable. Throop's email was direct: it conveyed her concern about misleading statements that described the status of the cybersecurity curricula at UWP. But the email was not accusatory or disparaging. Throop did not attribute the misstatements to Burton—or to anyone, for that matter. Dkt. 53-16, at 1.

Although Burton speculates that the situation damaged her reputation with AT&T, as well as with a state legislator, she has not adduced admissible evidence to support her speculation. To the contrary, the entire controversy was short-lived. Ten minutes after her first email, Throop sent a second email explaining that the AT&T representative would edit the press release to alleviate her concerns. AT&T went through with the donation, and Burton received the check at a public ceremony. There is no evidence in the record that Burton later tried, unsuccessfully, to obtain additional funding from AT&T, nor is there evidence that the state legislator or anyone else refused to work with Burton because of the incident with the AT&T press release.

Caywood's email concerning the press release and the representations about UWP's cybersecurity curricula that appeared on Burton's websites was stern, and he ended the message by cautioning Burton about how she was presenting her ideas in the media or on the Internet. Dkt. 53-4, at 2. But the email was essentially constructive. Caywood explained the

steps for developing a new curriculum, described the last time that the department had undertaken such a project, and gave Burton specific examples of the statements that she had made that were, in his opinion, inaccurate. *Id.* at 1-2. Burton does not contend that Caywood sent the email to anyone else or voiced his concerns to Burton's peers or supervisors. Thus, other than her own disappointment or disagreement with Caywood's opinion, Burton has not adduced evidence of negative consequences that she experienced because of the email. Rather, in the midst of what Burton perceived as hostility, she was awarded tenure. Under these circumstances, no reasonable jury could agree with Burton that Throop's email or Caywood's email (or the two combined) would have dissuaded future efforts to assist students with potential harassment.

Burton has failed to adduce evidence of a materially adverse action, an essential element of her Title IX claim. Defendants are therefore entitled to summary judgment on Burton's retaliation claim under Title IX.

## 2. Title VII

Burton also contends that the retaliation that she faced for helping the female student violates Title VII. As with her Title IX claim, Burton must adduce evidence of three elements to make a prima facie case of retaliation under Title VII: (1) protected activity; (2) a materially adverse action; and (3) a causal connection. *Cung Hnin*, 751 F.3d at 508. The court has already concluded that Burton did not suffer a materially adverse action in response to assisting the student. But this claim fails for a second reason as well: Burton did not engage in an activity protected under Title VII when she assisted the student.

Title VII prohibits employers from retaliating against employees who engage in statutorily protected activity. 42 U.S.C. § 2000e-3(a). Here, Burton cannot assert a Title VII

retaliation claim based on these allegations because there was no employment relationship between the student and the professor and because Burton was not complaining that she herself was harassed. Thus, Burton was not opposing an unlawful *employment* practice, which is a required element of a retaliation claim under § 2000e-3(a). Burton does not respond to defendants' argument, essentially conceding the point. *See Cincinnati Ins. Co. v. E. Atl. Ins. Co.*, 260 F.3d 742, 747 (7th Cir. 2001). Defendants are therefore entitled to summary judgment on Burton's claim that she faced retaliation for helping the student in violation of Title VII.

### **B. Retaliation for Burton's own charges of discrimination**

Burton also alleges that defendants retaliated against her for filing charges of discrimination and this lawsuit. There are two administrative charges at issue in this case. The first charge, which Burton filed with the ERD on August 13, 2013, alleged that she had been discriminated against because of her sex and retaliated against for assisting the student with her complaint. Dkt. 54-1. The second charge, which Burton filed with the Equal Employment Opportunity Commission (EEOC) on December 9, 2014, alleged that she had experienced intimidation and disciplinary action "[a]s a result" of filing her first charge of discrimination. Dkt. 54-2.

#### **I. Exhaustion**

The court again starts with a preliminary issue before turning to the merits of this retaliation claim. Defendants acknowledge that filing a charge is a protected activity under Title VII. But they contend that Burton's second charge did not provide enough detail to fulfill her obligation to exhaust administrative remedies before filing a federal lawsuit. *See Cheek v. W. & S. Life Ins. Co.*, 31 F.3d 497, 500 (7th Cir. 1994) ("As a general rule, a Title VII plaintiff cannot bring claims in a lawsuit that were not included in her EEOC charge.").

Specifically, defendants argue that the second charge did not identify the adverse or disciplinary actions that Burton suffered in retaliation for filing her first charge.

Burton disagrees, asserting that her second charge gave adequate notice of her claims. In the second filing, Burton charged sex discrimination and retaliation beginning on April 15, 2009, and continuing through October 28, 2014 (the date of dean Throop's letter of direction). Dkt. 54-2, at 11. Burton also complained of a "continuing action." *Id.* Defendants are correct that the charge does not identify Throop or Dalecki as the retaliators, but Burton indicated that she had "been subjected to intimidation and disciplinary action," *id.*, which are the two adverse actions that she complains of in this lawsuit. Regardless, Burton's intake questionnaire and supplement to her second charge provided plenty of details about the retaliation that she wanted the agency to investigate. These materials satisfy a plaintiff's obligation to exhaust her claims, so long as it is clear that she intended for the agency to investigate her allegations. *Vela v. Village of Sauk Village*, 218 F.3d 661, 664 (7th Cir. 2000). Such is the case here.

Burton engaged in protected activity when she filed her first charge in August 2013. Burton's second charge exhausted her administrative remedies for the retaliation that she suffered after filing the first charge. Burton has satisfied the exhaustion requirement, and the court turns to the merits of her claim.

## **2. Materially adverse actions**

Burton identifies two categories of adverse actions that she suffered in retaliation for filing a charge of discrimination and beginning this lawsuit: (1) during the 2013-14 school year, Dalecki repeatedly pressured Burton to drop her charges; and (2) between October 2014 and January 2015, dean Throop took or threatened to take disciplinary actions against

Burton. Dkt. 57, at 23-24. No reasonable jury could conclude that Dalecki's conduct toward Burton was materially adverse. The same is true for one instance in which Throop threatened Burton with discipline, but later rescinded that threat. The two instances in which Throop actually pursued discipline, however, qualify as materially adverse actions.

Again, the same standard of materiality applies: "an adverse action is one that a reasonable employee would find to be materially adverse such that the employee would be dissuaded from engaging in the protected activity." *Silverman*, 637 F.3d at 740 (citations and internal quotation marks omitted).

According to Burton, Dalecki began pressuring her to drop her lawsuit in October 2013. Burton emphasizes that, in context, Dalecki's statements could reasonably be construed as threats. And by "context," Burton means that Dalecki was the chair of her department and had been appointed by Throop over the objections of several members of the department. Calling Dalecki's actions "threats" overstates the evidence; Burton did not go that far during her deposition, instead testifying that Dalecki "tried to convince [her] that it would be in [her] best interest to let go of it." Dkt. 39 (Burton Dep. 451:19-20). But even accepting Burton's characterization, Dalecki's statements do not qualify as materially adverse actions because nothing ever came of them. "[I]t is well established that unfulfilled threats that result in no material harm cannot be considered an adverse employment action under Title VII." *Hottenroth v. Village of Slinger*, 388 F.3d 1015, 1030 (7th Cir. 2004) (citing *Ajayi v. Aramark Bus. Servs., Inc.*, 336 F.3d 520, 531 (7th Cir. 2003)); see also *Dunn v. Wash. Cty. Hosp.*, 429 F.3d 689, 692 (7th Cir. 2005) ("Almost all of what Dunn characterizes as 'retaliation' is verbal requests from Coy to withdraw her complaint of sexual harassment. . . . Yet his statements did not cause Dunn any injury (that is to say, no adverse employment

action occurred).”). Burton has adduced evidence that Dalecki pressured her to drop her charges, lawsuits, and grievances. But without more, this pressure is not materially adverse. Burton cannot base her Title VII retaliation claim on Dalecki’s statements.

For the same reasons, Burton cannot base her Title VII retaliation claim on Throop’s December 2014 email threatening to discipline her for cancelling class. Although being falsely accused of cancelling class may have caused Burton some anxiety, she was not disciplined and was able to quickly and easily refute Throop’s accusation. Thus, just as Dalecki’s unfulfilled threats to block Burton from advancing her career do not qualify as materially adverse actions, neither does Throop’s unfulfilled threat of discipline.

This leaves Throop’s letter of direction and formal complaint to the chancellor, which defendants acknowledge are “arguably materially adverse actions.” Dkt. 63, at 9-10. The court agrees: a formal letter of direction and a request for discipline could certainly dissuade an employee from filing a charge of discrimination or a federal lawsuit. Burton has identified a materially adverse action (or set of actions) on which to base a Title VII retaliation claim.

### **3. Causal connection**

For the final element of Burton’s prima facie case, she must adduce evidence of a causal connection between her charge and later lawsuit and dean Throop’s letter of direction and § 6.01 complaint. A plaintiff in a Title VII retaliation case must show that her protected activity was the “but for” cause of an adverse action, which “means that the adverse action would not have happened without the activity.” *Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 828 n.1 (7th Cir. 2014).

Burton does not have direct evidence of Throop’s motives and must therefore adduce circumstantial evidence of retaliatory animus. Circumstantial evidence can include suspicious

timing, ambiguous statements, similarly situated employees who were treated differently, pretextual reasons for the adverse employment action, “and other bits and pieces from which an inference of retaliatory intent might be drawn.” *Lambert v. Peri Formworks Sys., Inc.*, 723 F.3d 863, 869 (7th Cir. 2013). In this case, Burton relies on evidence of pretext: she contends that the allegations in Throop’s letter of direction were so obviously false that they must have been a cover for retaliatory animus. Dkt. 57, at 29-30. The court disagrees.

Burton responded to the letter of direction by disputing Throop’s factual assertions and accusing Throop of misconduct. *See generally* Dkt. 37-15, at 30-38. She takes the same approach in opposing defendants’ motion for summary judgment, essentially inviting the court to determine whether Throop was right or wrong to write Burton the letter. But this is not the court’s role in a Title VII case. Federal courts “do not evaluate whether the stated reason [for an adverse action] was inaccurate or unfair.” *Harden v. Marion Cty. Sheriff’s Dep’t*, 799 F.3d 857, 864 (7th Cir. 2015) (citations and internal quotation marks omitted). Rather, courts look for evidence of pretext, which “involves more than just faulty reasoning or mistaken judgment on the part of the employer; it is a lie, specifically a phony reason for some action.” *Id.* (citations and internal quotation marks omitted). Thus, the court’s task here is to determine whether Burton has adduced evidence from which a reasonable jury could conclude that Throop did not sincerely believe the reasons that she gave for writing the letter of direction and pursuing further discipline.

Throop’s letter of direction identified specific conduct or correspondence that, in Throop’s opinion, demonstrated Burton’s unprofessional behavior. Throop attached some of the pertinent correspondence to the § 6.01 complaint, and she also referred to the conduct outlined in the letter of direction. By and large, Burton did not dispute then (and does not

dispute now) that she wrote the emails that Throop described or that she took the actions that Throop identified. *See, e.g.*, Dkt. 37-12; Dkt. 37-14; Dkt. 37-15, at 8-29; Dkt. 54-11. What Burton wants to challenge is how Throop *perceived* and *characterized* those events, and whether Throop should have accepted Burton's explanations for each of them. But these are the types of internal business and personnel decisions which federal courts do not second guess, absent some evidence that the employer's decision was "completely unreasonable." *Hobgood v. Ill. Gaming Bd.*, 731 F.3d 635, 646 (7th Cir. 2013). Here, the record demonstrates that Throop had a factual basis for her conclusions. Burton's mere disagreement with Throop's decisions and with how Throop viewed Burton's conduct is not evidence of pretext.

The timing of Throop's letter of direction also undercuts an inference of retaliatory animus. Burton filed her first charge of discrimination in August 2013, and she filed this lawsuit against Throop in April 2014. This means that about six months passed between Burton's protected activity and Throop's October 2014 letter of direction. The gap itself is not dispositive because "a long time interval between protected activity and adverse employment action may weaken but does not conclusively bar an inference of retaliation." *Malin v. Hospira, Inc.*, 762 F.3d 552, 560 (7th Cir. 2014), *reh'g denied*, (Sept. 16, 2014). But, as defendants point out, Throop independently took actions that *benefited* Burton during the period between her first charge and the letter of direction. Specifically, Throop sought and obtained an equity adjustment to Burton's salary in March 2014. Such intervening beneficial treatment undermines a plaintiff's assertion of retaliatory animus. *See, e.g., Albrechtsen v. Bd. of Regents of Univ. of Wis. Sys.*, 309 F.3d 433, 437 (7th Cir. 2002).

Burton cannot establish that Throop's letter of direction and later disciplinary complaint were a pretext for retaliation. Summary judgment is appropriate on Burton's Title VII claim of retaliation for filing charges of discrimination and this lawsuit.

### C. Conclusion

Burton's department, like almost any workplace, has its abrasive personalities, and the department produces its share of annoyances and disputes. Burton has found herself at the center of such conflicts over the past few years. But employers are entitled to manage, and even reprimand, their employees. Federal courts are not personnel departments, and federal retaliation law does not impose liability for every slight that an employee experiences. In this case, Burton has not adduced evidence from which a reasonable jury could find that defendants retaliated against her. Defendants are therefore entitled to summary judgment.

### ORDER

IT IS ORDERED that:

1. Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Elizabeth Throop, and Michael Dalecki's motion for summary judgment, Dkt. 32, is GRANTED.
2. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered March 17, 2016.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge

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

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DR. SABINA BURTON,

Plaintiff,

JUDGMENT IN A CIVIL CASE

v.

Case No. 14-cv-274-jdp

BOARD OF REGENTS OF THE  
UNIVERSITY OF WISCONSIN  
SYSTEM, DR. THOMAS CAYWOOD,  
DR. ELIZABETH THROOP, and  
DR. MICHAEL DALECKI,

Defendants.

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This action came before the court for consideration with District Judge James D. Peterson presiding. The issues have been considered and a decision has been rendered.

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IT IS ORDERED AND ADJUDGED that judgment is entered in favor of defendants Board of Regents of the University of Wisconsin System, Dr. Thomas Caywood, Dr. Elizabeth Throop, and Dr. Michael Dalecki against plaintiff Dr. Sabina Burton dismissing this case.

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s/ J. Smith, Deputy Clerk  
Peter Oppeneer, Clerk of Court

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3/18/2016  
Date

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

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SABINA BURTON,

Plaintiff,

v.

OPINION & ORDER

BOARD OF REGENTS OF THE UNIVERSITY  
OF WISCONSIN SYSTEM,  
THOMAS CAYWOOD, ELIZABETH THROOP, and  
MICHAEL DALECKI,

14-cv-274-jdp

Defendants.

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Plaintiff Sabina Burton brought this suit to challenge what she perceived to be discrimination and retaliation from colleagues and administrators at the University of Wisconsin—Platteville (UWP), where Burton is a tenured professor. Eight months into the case, Burton fired her counsel. Dkt. 12. She found new counsel, who vigorously litigated this case through discovery and dispositive motions.

I granted defendants' motion for summary judgment after concluding that Burton would not be able to prove critical elements of her claims at trial. Dkt. 90. In the wake of that ruling, Burton insisted on a course of action that her counsel would not follow. Dkt. 96, ¶ 2. I granted counsel's motion to withdraw. Dkt. 97.

Burton has now filed a pro se motion for reconsideration of my summary judgment decision. Dkt. 99. She contends that her former counsel did not allow her to proofread or edit the brief in opposition to defendants' motion for summary judgment, and that, as a result, counsel failed to dispute facts that Burton instructed them to dispute with evidence that she provided. Dkt. 100, ¶ 2. Burton has assembled this evidence and filed corrections and updates to several documents that her former counsel submitted in opposition to

summary judgment. *See* Dkt. 98; Dkt. 100; Dkt. 101; Dkt. 102. Through these filings, Burton purports to demonstrate genuine disputes of material fact that require a trial.

After reviewing Burton's submissions, I conclude that she is not entitled to relief under Federal Rule of Civil Procedure 59(e). I will deny her motion for reconsideration.

## BACKGROUND

I recounted the material facts of the case in my opinion on defendants' motion for summary judgment. Dkt. 90. Although Burton takes issue with some of the finer points, the basic facts have not changed. I will summarize those facts here, and I will discuss Burton's recently submitted materials in the analysis section of this opinion.

Burton began working in the criminal justice department at UWP in 2009, and she was promoted to associate professor in 2012. She later received tenure, effective for the 2013-14 academic year. The defendants in this case include the Board of Regents, Thomas Caywood (the former chair of Burton's department), Michael Dalecki (who replaced Caywood as chair of the department), and Elizabeth Throop (the dean of the college that included Burton's department).

The first of two critical events in this case occurred in October 2012. One of Burton's colleagues upset a student during a lecture on breach experiments. The student sought out Burton to talk about the incident, and Burton emailed Throop to alert her that the student had been harassed. In the following months, Burton experienced what she perceived to be unwarranted public criticism for the way that she had handled the student's complaint. According to Burton, Caywood was upset that she had taken the issue to the dean instead of him. Caywood became bitter toward Burton and was less than collegial on several occasions.

At the time that the student incident occurred, Burton was developing a new cybersecurity curriculum. In the course of developing the curriculum, Burton secured a grant from AT&T. But Throop and Caywood took issue with the press release that Burton had approved to announce the donation. In their opinion, the press release incorrectly reported the status of the new curriculum as more developed than it really was. Despite Throop and Caywood's concerns, AT&T was able to correct the press release in time to present Burton with a check at a public ceremony in January 2013. About the same time, Throop and Caywood also identified other issues with how Burton was portraying the status of the curriculum to the public. Burton contends that Throop and Caywood's criticisms and their sudden drop in support were in retaliation for Burton assisting the student.

The second critical event in this case occurred in August 2013, when Burton filed a charge of discrimination with the Wisconsin Department of Workforce Development—Equal Rights Division (ERD). Burton charged that: (1) Caywood had discriminated against her because she was a woman and retaliated against her for reporting the student harassment; (2) Throop and the human resources director had discriminated against her; (3) Throop had defamed her; and (4) the university had been deliberately indifferent to her grievances.

After Burton filed her charge with the ERD, she continued to experience what she perceived to be hostile treatment by her colleagues and supervisors. Dalecki—who had replaced Caywood as department chair by that point—repeatedly encouraged her to drop the charge, and he expressed disappointment or told Burton to “get over it” each time that she refused to do so. Dalecki also implied that Burton was hurting her future opportunities to pursue administrative positions at UWP by continuing with the charge and later lawsuit. Burton and Dalecki had several disagreements throughout the 2013-14 academic year. The

disagreements concerned committee appointments, personnel changes, issues with graduate students, and department management. Burton contends that Dalecki's actions were in retaliation for the ERD charge and this lawsuit.

Burton's relationship with Throop deteriorated as well. In October 2014, Throop wrote Burton a letter of direction, identifying seven events that Throop described as showing "a consistent pattern of unprofessional and inappropriate behavior." Dkt. 37-15, at 5. Burton responded to the letter by disagreeing with Throop's summary of the relevant facts and by flatly refusing to accept any of Throop's directions. Given Burton's refusal to cooperate, Throop filed a complaint with the chancellor on January 5, 2015, asking him to write Burton a formal letter of reprimand that would be placed in her personnel file.

Burton pursued several grievances to address her concerns with UWP administrators. When those efforts proved unsuccessful, Burton filed suit in this court. I granted defendants' motion summary judgment, which disposed of the entire case.

#### ANALYSIS

Burton moves for reconsideration of my summary judgment decision, pursuant to Rule 59(e). Dkt. 99. She contends that her corrections and additions to the materials that her former counsel submitted demonstrate disputes of material fact that require a trial.

"A Rule 59(e) motion will be successful only where the movant clearly establishes: (1) that the court committed a manifest error of law or fact, or (2) that newly discovered evidence precluded entry of judgment." *Cincinnati Life Ins. Co. v. Beyrer*, 722 F.3d 939, 954 (7th Cir. 2013) (citations and internal quotation marks omitted). But Rule 59(e) is not "a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party

to introduce new evidence or advance arguments that could and should have been presented to the district court prior to the judgment.” *Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir. 1996). Because Burton does not identify a manifest error of law or fact, and because she does not present newly discovered evidence, Burton is not entitled to relief under Rule 59(e). And even if I were to reconsider my summary judgment decision based on the evidence that Burton now identifies, I would reach the same conclusions.

The first type of motion under Rule 59(e) requires the movant to show that a court committed a manifest error of law or fact. But “[a] ‘manifest error’ is not demonstrated by the disappointment of the losing party. It is the wholesale disregard, misapplication, or failure to recognize controlling precedent.” *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (citations and internal quotation marks omitted). Burton does not identify controlling precedent that I failed to apply.<sup>1</sup> Burton also does not argue that I misunderstood the facts of the case as defendants and her former counsel presented them. Thus, Burton is not actually contending that I committed a manifest error of law or fact. Instead, she catalogues additional evidence that was not presented at summary judgment and asks me to revisit my earlier decisions with this evidence in mind. *See* Dkt. 103, at 1 (“Please review my attached findings of facts, corrections to Defendants’ Proposed Findings of Fact and my corrections to Plaintiff’s Brief in Opposition to Summary Judgment.”). The mere fact that Burton has additional evidence and arguments for me to consider does not mean that I committed a manifest error of law or fact in deciding defendants’ motion for summary judgment.

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<sup>1</sup> This court is within the Seventh Circuit, so I must adhere to decisions from that court of appeals. Many of the cases that Burton cites in her brief are from other circuits, and they are persuasive precedent only, not binding.

As for the second type of Rule 59(e) motion, Burton has not presented “newly discovered evidence.” Despite the circumstances that led Burton to file her motion, none of the evidence that she presents is “new”—it was all available to her and to her attorneys when they opposed defendants’ motion for summary judgment. “[M]otions under Rule 59(e) cannot be used to present evidence that could have been presented before judgment was entered.” *Obrecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008). Burton hired the attorneys who represented her in this case; they were not forced upon her. Those attorneys presented Burton’s case on her behalf, and she cannot pursue relief under Rule 59(e) just because she disagrees with their strategic decisions. It is too late for that. “A party seeking to defeat a motion for summary judgment is required to wheel out all its artillery to defeat it. . . . Reconsideration is not an appropriate forum for rehashing previously rejected arguments or arguing matters that could have been heard during the pendency of the previous motion.” *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996).

Burton has not identified a manifest error of law or fact that I committed in granting defendants’ motion for summary judgment, nor has she identified newly discovered evidence that changes the result in this case. I will therefore deny her motion for reconsideration.

Even if I were to review my summary judgment opinion in light of the evidence and arguments that Burton presents now, I would still conclude that defendants are entitled to judgment as a matter of law. Burton alleged two retaliation claims: one under Title IX of the Education Amendments of 1972, and one under Title VII of the Civil Rights Act of 1964. Both claims required Burton to prove the same elements. *Milligan v. Bd. of Trs. of S. Ill. Univ.*, 686 F.3d 378, 388 (7th Cir. 2012). To withstand summary judgment, Burton needed to adduce evidence that: (1) she engaged in protected activity; (2) defendants took an adverse

action against her; and (3) there was a causal connection between her protected activity and the adverse action. *Cung Hnin v. TOA (USA), LLC*, 751 F.3d 499, 508 (7th Cir. 2014).

For Burton's Title IX claim, I assumed without deciding that Burton engaged in protected activity when she assisted the student who complained about harassment. Dkt. 90, at 13. But I concluded that Burton had failed to adduce evidence of a materially adverse action that defendants took against her. This element required Burton to demonstrate an action or series of actions "that a reasonable employee would find to be materially adverse such that the employee would be dissuaded from engaging in the protected activity." *Silverman v. Bd. of Educ. of Chi.*, 637 F.3d 729, 740 (7th Cir. 2011) (citations and internal quotation marks omitted). Burton identified two categories of materially adverse actions: (1) Caywood publically criticized her and was not collegial toward her; and (2) Caywood and Throop withdrew their support of her efforts to develop a cybercrime curriculum. I concluded that these actions did not qualify as materially adverse.

In moving for reconsideration, Burton contends that there were other instances of Caywood being rude or unfriendly toward her. *See* Dkt. 103, at 5-7.<sup>2</sup> For example, two days after the student incident occurred, Caywood did not reply to a morning greeting from Burton, and he gave her a stern look when he saw her later that day. On a different occasion, Caywood did not respond to an email from Burton informing him about a news crew coming to interview her. Throop later commented that Burton should have informed the college

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<sup>2</sup> Burton does not identify record evidence to support most of her factual assertions. *See, e.g.*, Dkt. 102 (Burton's responses to defendants' proposed findings of fact) and Dkt. 103, at 5-22 (Burton's list of adverse actions that she suffered). This court requires parties to cite directly to record evidence to support their proposed findings of fact and their responses to an opponent's proposed findings of fact. Dkt. 9, at 12-15. Because Burton failed to comply with these procedures, I would likely disregard her factual assertions, which would further support my conclusion that she has failed to create a genuine dispute of material fact.

about the event. Caywood also wrote a harsh email to Burton (and cc'd Throop). The email came shortly after Burton had learned that her father was terminally ill. According to Burton, Caywood's timing was deliberate: he intended for Burton to receive the email during a troubling time (but Burton has only speculation to support this assertion).

At summary judgment, I concluded that Burton had adduced evidence of only "petty slights or minor annoyances that often take place at work and that all employees experience," which do not qualify as materially adverse actions. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). Burton's motion for reconsideration presents more of the same: Caywood was cold toward her and his reprimands were embarrassing. These are not adverse actions that give rise to a retaliation claim in federal court. *Sweeney v. West*, 149 F.3d 550, 556 (7th Cir. 1998) ("Absent some tangible job consequence accompanying [unfair or undeserved] reprimands, we decline to broaden the definition of adverse employment action to include them.").

Burton characterizes Throop and Caywood's responses to the AT&T press release as demonstrating a sudden withdrawal of support for the curriculum that she was developing. But Throop worked with an AT&T representative to promptly correct the issue with the press release, and Burton received the donation at a public ceremony. Moreover, Throop and Caywood encouraged Burton to continue developing the curriculum, but they urged her to comply with UWP's procedures for doing so. *See, e.g.*, Dkt. 53-4 and Dkt. 37-5, at 1. Their disapproval of the AT&T press release was not a materially adverse action.

For Burton's Title VII claim, I concluded that she had engaged in protected activity by filing a charge of discrimination. Dkt. 90, at 21. I also concluded that although Dalecki's pressure to drop the charge and lawsuit did not qualify as an adverse action, Throop's letter

of direction and formal complaint to the chancellor *did* qualify. But Burton still could not succeed on her Title VII claim because she had not adduced evidence of a causal connection between her protected activity and Throop's actions. Burton's motion for reconsideration challenges my conclusion that Dalecki's actions did not qualify as materially adverse and my conclusion that there was no evidence of a causal connection.

Burton had several disagreements with Dalecki, but I have already concluded that these did not qualify as materially adverse actions. In her motion for reconsideration, Burton identifies a few other petty slights that she endured. For example, Dalecki refused to put "Dr." in front of Burton's name on a list of department email addresses, and he "corrected and humiliated [her] in a department email for [her] response to a very devastating" evaluation of the department (Burton later apologized to Dalecki for the tone of that response). Dkt. 103, at 9, 11. These slights and personality conflicts do not qualify as materially adverse actions for purposes of a Title VII retaliation claim.

Burton's motion for reconsideration also recasts much of the evidence concerning Dalecki's threats after she filed a charge of discrimination and this lawsuit. But Burton did not dispute at summary judgment that these threats were empty: Dalecki never followed through on them. "[I]t is well established that unfulfilled threats that result in no material harm cannot be considered an adverse employment action under Title VII." *Hottenroth v. Village of Slinger*, 388 F.3d 1015, 1030 (7th Cir. 2004) (citing *Ajayi v. Aramark Bus. Servs., Inc.*, 336 F.3d 520, 531 (7th Cir. 2003)). Now, in moving for reconsideration, Burton adds a few factual allegations. Dalecki assigned a newly hired professor to manage one of Burton's projects, Dkt. 103, at 11, and he did not assign Burton to several search committees, *id.* at 15. From her submissions, I infer that Burton wanted these assignments. But Burton has not

explained how, or adduced evidence that, she was actually injured by not receiving them and how that injury would deter a reasonable employee from filing a charge of discrimination. At this point, Burton has not identified anything more than her own personal disappointment with Dalecki's decisions, which does not qualify as a materially adverse action.

This leaves Throop's letter of direction and formal disciplinary complaint. At summary judgment, I concluded that Burton had failed to adduce evidence of a causal connection between her protected activity and Throop's adverse actions. Burton sought to prove causation through pretext, by showing that Throop's reasons for disciplining her were so obviously false that they must have been a cover for retaliation. Burton takes the same approach in her motion for reconsideration. Dkt. 103, at 17 ("I believed Throop's accusations in the Letter of Direction to be false and in retaliation of a protected activity, or multiple protected activities. I have evidence to prove her accusations as false but I was never given a chance to present my side of the story.").

Federal courts "do not evaluate whether the stated reason [for an adverse action] was inaccurate or unfair." *Harden v. Marion Cty. Sheriff's Dep't*, 799 F.3d 857, 864 (7th Cir. 2015) (citations and internal quotation marks omitted). Thus, Burton's belief that Throop's accusations were false is irrelevant. The issue is not whether Burton can prove that Throop was wrong to issue her a letter of direction. Instead, Burton must identify record evidence demonstrating that Throop did not honestly believe the reasons that she gave for disciplining Burton. In my summary judgment opinion, I concluded that Throop had at least some factual basis for her decisions because she cited to specific events in her letter of direction. Burton obviously disagrees with Throop's description of the underlying events and with how Throop responded to them. But a federal court is not the forum in which to present these types of

disputes. I will not second guess internal business and personnel decisions, absent some evidence that the employer's decision was "completely unreasonable." *Hobgood v. Ill. Gaming Bd.*, 731 F.3d 635, 646 (7th Cir. 2013). Burton failed to meet this standard at summary judgment, and her recent submissions do not change that.

#### CONCLUSION

Burton does not contend that I committed a manifest error of law or fact, and she does not present newly discovered evidence that would change my earlier decisions. Burton simply disagrees with the way in which her former counsel presented this case. But this is not a proper reason for seeking reconsideration under Rule 59(e). I must therefore deny her motion. And even if I were to consider the evidence that Burton discusses in her recent submissions, I would still conclude that defendants are entitled to judgment as a matter of law on Burton's retaliation claims.

#### ORDER

IT IS ORDERED that plaintiff Sabina Burton's motion for reconsideration, Dkt. 99, is DENIED.

Entered June 21, 2016.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge

# UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

Sabina Burton, Plaintiff )

v. )

Bd. of Regents of the University of Wisconsin )  
System, Defendant )

Case No.: 14-CV-274

## BILL OF COSTS

Judgment having been entered in the above entitled action on 03/18/2016 against Sabina Burton, Plaintiff,  
*Date*  
the Clerk is requested to tax the following as costs:

Fees of the Clerk .....	\$ _____
Fees for service of summons and subpoena .....	_____
Fees for printed or electronically recorded transcripts necessarily obtained for use in the case .....	<u>4,863.99</u>
Fees and disbursements for printing .....	<u>209.60</u>
Fees for witnesses ( <i>itemize on page two</i> ) .....	<u>0.00</u>
Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case. ....	_____
Docket fees under 28 U.S.C. 1923 .....	_____
Costs as shown on Mandate of Court of Appeals .....	_____
Compensation of court-appointed experts .....	_____
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828 .....	_____
Other costs ( <i>please itemize</i> ) .....	_____
<b>TOTAL</b>	<b>\$ <u>5,073.59</u></b>

*SPECIAL NOTE:* Attach to your bill an itemization and documentation for requested costs in all categories.

### Declaration

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill has been served on all parties in the following manner:

Electronic service  First class mail, postage prepaid

Other: \_\_\_\_\_

s/ Attorney: Anne Bensky

Name of Attorney: Anne Bensky

For: Board of Regents of the University of Wisconsin System Date: 03/22/2016  
*Name of Claiming Party*

### Taxation of Costs

Costs are taxed in the amount of \$5,073.59 and included in the judgment.

Peter A. Oppeneer  
*Clerk of Court*

By: s/ J. Titak  
*Deputy Clerk*

6/22/2016  
*Date*

## UNITED STATES DISTRICT COURT

Witness Fees (computation, cf. 28 U.S.C. 1821 for statutory fees)							
NAME , CITY AND STATE OF RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
						<b>TOTAL</b>	\$0.00

### NOTICE

**Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:**

“Sec. 1924. Verification of bill of costs.”

“Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.”

**See also Section 1920 of Title 28, which reads in part as follows:**

“A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.”

**The Federal Rules of Civil Procedure contain the following provisions:**

**RULE 54(d)(1)**

Costs Other than Attorneys’ Fees.

Unless a federal statute, these rules, or a court order provides otherwise, costs — other than attorney's fees — should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 day's notice. On motion served within the next 7 days, the court may review the clerk's action.

**RULE 6**

(d) Additional Time After Certain Kinds of Service.

When a party may or must act within a specified time after service and service is made under Rule5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

**RULE 58(e)**

Cost or Fee Awards:

Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

**U.S. District Court  
Western District of Wisconsin (Madison)  
CIVIL DOCKET FOR CASE #: 3:14-cv-00274-jdp**

Burton, Sabina v. Board of Regents of the University of  
Wisconsin System et al  
Assigned to: District Judge James D. Peterson  
Referred to: Magistrate Judge Stephen L. Crocker  
Cause: 20:1681 Title IX

Date Filed: 04/14/2014  
Date Terminated: 03/18/2016  
Jury Demand: Plaintiff  
Nature of Suit: 442 Civil Rights: Jobs  
Jurisdiction: Federal Question

**Plaintiff**

**Dr. Sabina Burton**

represented by **Sabina Burton**  
5768 Maple Glen Lane  
Platteville, WI 53818  
(608) 331-0203  
Email: [sabinaburton@live.com](mailto:sabinaburton@live.com)  
PRO SE

**B. Michele Sumara**  
Hawks Quindel, S.C.  
222 East Erie Street  
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414-271-8650x309  
Fax: 414-271-8442  
Email: [msumara@hq-law.com](mailto:msumara@hq-law.com)  
*TERMINATED: 04/01/2016*

**Mary E. Kennelly**  
Fox & Fox, S.C.  
124 W. Broadway  
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608-258-9588  
Fax: 608-258-9105  
Email: [mkennelly@foxquick.com](mailto:mkennelly@foxquick.com)  
*TERMINATED: 12/15/2014*

**Timothy E. Hawks**  
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414-271-8650  
Fax: 414-271-8442  
Email: [thawks@hq-law.com](mailto:thawks@hq-law.com)  
*TERMINATED: 04/01/2016*

V.

**Defendant**

**Board of Regents of the University of  
Wisconsin System**

represented by **Monica A. Burkert – Brist**  
Wisconsin Department of Justice  
P.O. Box 7857  
Madison, WI 53707  
608-266-1795  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Anne Maryse Bensky**

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**ATTORNEY TO BE NOTICED**

**Katherine D. Spitz**  
 Wisconsin Department of Justice  
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 608-266-1001  
 Fax: 608-267-8906  
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**ATTORNEY TO BE NOTICED**

**Defendant**

**Dr. Thomas Caywood**

represented by **Monica A. Burkert – Brist**  
 (See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Anne Maryse Bensky**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Katherine D. Spitz**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Dr. Elizabeth Throop**

represented by **Monica A. Burkert – Brist**  
 (See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Anne Maryse Bensky**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Katherine D. Spitz**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Dr. Michael Dalecki**  
 One University Plaza  
 Platteville, WI 53818

represented by **Anne Maryse Bensky**  
 (See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Katherine D. Spitz**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
04/14/2014	<u>1</u>	COMPLAINT against All Defendants. ( Filing fee \$ 400 receipt number 0758-1331342.), filed by All Plaintiffs. (Attachments: # <u>1</u> JS-44 Civil Cover Sheet,

		# <u>2</u> Summons Board of Regents of the UW System, # <u>3</u> Summons Thomas Caywood, # <u>4</u> Summons Elizabeth Throop) (Kennelly, Mary) (Entered: 04/14/2014)
04/14/2014		Case randomly assigned to William M Conley and Magistrate Judge Stephen L. Crocker. (jat) (Entered: 04/14/2014)
04/14/2014		Standard attachments for Judge William M. Conley required to be served on all parties with summons or waiver of service: <u>NORTC</u> , <u>Corporate Disclosure Statement</u> . (jat) (Entered: 04/14/2014)
04/14/2014	<u>2</u>	Summons Issued as to Board of Regents of the University of Wisconsin System, Thomas Caywood, Elizabeth Throop. (Attachments: # <u>1</u> Summons Caywood, # <u>2</u> Summons Throop) (jat) (Entered: 04/14/2014)
05/19/2014	<u>3</u>	ORDER Reassigning Case. Case reassigned to District Judge James D. Peterson for all further proceedings. William M. Conley no longer assigned to case. Signed by District Judge William M. Conley on 5/16/2014. (lak) (Entered: 05/19/2014)
06/02/2014		Action Requested: Counsel for plaintiff requested to promptly file proof of service. (krj) (Entered: 06/02/2014)
06/02/2014	<u>4</u>	Waiver of Service Returned Executed by Defendant Elizabeth Throop. Elizabeth Throop waiver sent on 4/21/2014, answer due 6/20/2014. (Kennelly, Mary) (Entered: 06/02/2014)
06/02/2014	<u>5</u>	Waiver of Service Returned Executed by Defendant Board of Regents of the University of Wisconsin System. Board of Regents of the University of Wisconsin System waiver sent on 4/21/2014, answer due 6/20/2014. (Kennelly, Mary) (Entered: 06/02/2014)
06/02/2014	<u>6</u>	Waiver of Service Returned Executed by Defendant Thomas Caywood. Thomas Caywood waiver sent on 4/21/2014, answer due 6/20/2014. (Kennelly, Mary) (Entered: 06/02/2014)
06/20/2014	<u>7</u>	ANSWER by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Elizabeth Throop. (Attachments: # <u>1</u> Certificate of Service) (Bensky, Anne) (Entered: 06/20/2014)
06/23/2014		Set Telephone Pretrial or Status Conference: Telephone Pretrial Conference set for 7/16/2014 at 01:30 PM before Magistrate Judge Stephen L. Crocker. Counsel for Plaintiff responsible for setting up the call to chambers at (608) 264-5153. [ <u>Standing Order Governing Preliminary Pretrial Conference</u> attached] (krj) (Entered: 06/23/2014)
07/11/2014	<u>8</u>	Joint Preliminary Pretrial Conference Report by Plaintiff Sabina Burton. (Kennelly, Mary) (Entered: 07/11/2014)
07/16/2014		Minute Entry for proceedings held before Magistrate Judge Stephen L. Crocker: Telephone Preliminary Pretrial Conference held on 7/16/2014 [:10] (skv) (Entered: 07/16/2014)
07/21/2014	<u>9</u>	Pretrial Conference Order – Amendments to Pleadings due 8/29/2014. Dispositive Motions due 4/13/2015. Settlement Letters due 8/28/2015. Motions in Limine due 9/4/2015. Response to Motion due 9/18/2015. Final Pretrial Conference set for 9/30/2015 at 04:00 PM. Jury Selection and Trial set for 10/5/2015 at 09:00 AM.. Signed by Magistrate Judge Stephen L. Crocker on 7/18/14. (jat) (Entered: 07/21/2014)
08/29/2014	<u>10</u>	AMENDED COMPLAINT against All Defendants, filed by All Plaintiffs. (Kennelly, Mary) (Entered: 08/29/2014)
09/12/2014	<u>11</u>	ANSWER to Amended Complaint by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Elizabeth Throop. (Bensky, Anne) (Entered: 09/12/2014)
12/12/2014	<u>12</u>	Motion to Withdraw as Attorney by Plaintiff Sabina Burton. (Kennelly, Mary) (Entered: 12/12/2014)

Case: 16-2982 Document: 1-1 Filed: 07/20/2016 Pages: 54 (45 of 57)	
12/15/2014	<u>13</u> ** TEXT ONLY ORDER ** Plaintiff's attorney has moved to withdraw from this lawsuit, reporting that plaintiff has fired her, plaintiff anticipates finding replacement counsel "reasonably promptly" and plaintiff is aware of her ongoing obligations to abide the court's scheduling deadlines. <i>see</i> dkt. <u>12</u> . Because a party in a civil case has no "right" to an attorney, and because plaintiff is the instigator here, the court will GRANT counsel's motion to withdraw with the unequivocal admonition to plaintiff that the schedule set on July 16, 2014 ( <i>see</i> dkt. <u>9</u> ) remains firmly in place. Signed by Magistrate Judge Stephen L. Crocker on 12/15/14. (jat) (Entered: 12/15/2014)
12/17/2014	<u>14</u> Notice of Appearance filed by Timothy E. Hawks for Plaintiff Sabina Burton. (Hawks, Timothy) (Entered: 12/17/2014)
12/17/2014	<u>15</u> Notice of Appearance filed by B. Michele Sumara for Plaintiff Sabina Burton. (Sumara, B.) (Entered: 12/17/2014)
02/10/2015	<u>16</u> Joint Motion to Amend/Correct <u>9</u> Pretrial Conference Order, by Plaintiff Sabina Burton. (Hawks, Timothy) (Entered: 02/10/2015)
02/11/2015	<u>17</u> ** TEXT ONLY ORDER ** On February 10, 2015, the parties jointly reported that plaintiff now suffers an acute medical condition that has required her to take a leave of absence from work from January 2015 through May 2015, with a related medical procedure scheduled for March 2015. As a result, plaintiff requests, and defendants do not oppose, extending the dates and deadlines—including those that already have passed—by six and a half months. Notwithstanding the court's admonition to plaintiff in a December 15, 2014 text-only order (dkt. <u>13</u> ) that the court would not change the schedule in the face of plaintiff's unilateral decision to fire her attorney eight months into her lawsuit and on the cusp of her expert disclosure deadline, the court is willing to restore to both sides any time lost due to plaintiff's medical treatment by providing a five-month extension of the dispositive motion deadline and trial date upon submission, under seal, of a letter or other document from plaintiff's medical care provider confirming that plaintiff actually will be acutely incapacitated (to use counsel's phrase) from January to May 2015. Upon receiving such confirmation, the court will reset the dispositive motion deadline to mid-September, 2015 and reset trial to early or mid-March, 2016. Signed by Magistrate Judge Stephen L. Crocker on 2/11/15. (jat) (Entered: 02/11/2015)
02/20/2015	<u>18</u> Response re: <u>17</u> Text Only Order. <i>Medical Note of Dianna Bearse, D.O. dated February 19, 2015</i> , by Plaintiff Sabina Burton. ( <u>Sealed Document</u> ) (Hawks, Timothy) (Entered: 02/20/2015)
03/06/2015	<u>19</u> Joint Motion to Amend/Correct <u>16</u> Joint Motion to Amend/Correct <u>9</u> Pretrial Conference Order, by Plaintiff Sabina Burton. (Attachments: # <u>1</u> Exhibit A: Correspondence dated 1/9/15) (Hawks, Timothy) (Entered: 03/06/2015)
03/20/2015	<u>20</u> ** TEXT ONLY ORDER ** The parties' joint motion to amend the schedule <u>19</u> is granted. The parties' suggested dates are accepted and entered by the court. The jury selection and trial is reset for April 4, 2016 at 9:00 a.m., with the final pretrial conference set for March 30, 2016 at 4:00 p.m. Signed by Magistrate Judge Stephen L. Crocker on 3/20/15. (jat) (Entered: 03/20/2015)
03/20/2015	Reset Trial Deadlines: Dispositive Motions due 9/18/2015. Settlement Letters due 2/26/2016. Motions in Limine due 3/4/2016. Response to Motion due 3/11/2016. (jat) (Entered: 03/20/2015)
07/01/2015	<u>21</u> Notice of Appearance of Katherine D. Spitz for Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Elizabeth Throop. (Spitz, Katherine) Modified on 7/2/2015 (jls). (Entered: 07/01/2015)
09/03/2015	<u>22</u> Motion for Leave to File <i>Supplemental Complaint</i> by Plaintiff Sabina Burton. (Attachments: # <u>1</u> Exhibit A: Supplemental Complaint) (Hawks, Timothy) (Entered: 09/03/2015)
09/03/2015	<u>23</u> Brief in Support of <u>22</u> Motion for Leave to File <i>Supplemental Complaint</i> by Plaintiff Sabina Burton (Attachments: # <u>1</u> Exhibit A: Saratoga Potato Chips v Classic Foods ND Indiana 2014) (Hawks, Timothy) (Entered: 09/03/2015)

Case: 16-2982 Document: 1-1 Filed: 07/20/2016 Pages: 54 (46 of 57)	
09/03/2015	<u>24</u> Motion to Amend Briefing Schedule ( <i>Amend Scheduling Order and Request Scheduling Conference</i> ) by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Elizabeth Throop. Motions referred to Magistrate Judge Stephen L. Crocker. Response due 9/10/2015. (Spitz, Katherine) (Entered: 09/03/2015)
09/04/2015	<u>25</u> Response Stating No Opposition by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Elizabeth Throop re: <u>22</u> Motion for Leave to File filed by Sabina Burton (Spitz, Katherine) (Entered: 09/04/2015)
09/04/2015	<u>26</u> Response Stating No Opposition by Plaintiff Sabina Burton re: <u>24</u> MOTION to Amend Briefing Schedule, filed by Elizabeth Throop, Thomas Caywood, Board of Regents of the University of Wisconsin System. (Hawks, Timothy) (Entered: 09/04/2015)
09/08/2015	<u>27</u> ** TEXT ONLY ORDER ** Plaintiff Sabina Burton's motion for leave to file a supplemental complaint, Dkt. <u>22</u> , is GRANTED as unopposed. Plaintiff should file a single amended complaint that contains all of her factual allegations and that will be the operative pleading in this case. As for scheduling, the trial date of April 4, 2016, remains firm. But the parties may discuss defendants' motion to adjust the other deadlines in this case, Dkt. <u>24</u> , at a telephonic conference with Magistrate Judge Crocker on September 11, 2015, at 10:00 a.m. Counsel for Plaintiff responsible for setting up the call to chambers at (608) 264-5153. Signed by District Judge James D. Peterson on 9/8/2015. (jls) (Entered: 09/08/2015)
09/11/2015	<u>28</u> SECOND AMENDED COMPLAINT against All Defendants, filed by Sabina Burton. (Sumara, B.) Modified on 9/11/2015. (lak) (Entered: 09/11/2015)
09/11/2015	Minute Entry for proceedings held before Magistrate Judge Stephen L. Crocker: Telephone Scheduling Conference held on 9/11/2015 [:15] (cak) (Entered: 09/11/2015)
09/11/2015	<u>29</u> AMENDED Scheduling Order: Dispositive Motions due 11/10/2015. Settlement Letters due 2/26/2016. Motions in Limine due 3/4/2016. Response to Motion due 3/18/2016. Final Pretrial Conference set for 3/30/2016 at 04:00 PM. Jury Selection and Trial set for 4/4/2016 at 09:00 AM. Signed by Magistrate Judge Stephen L. Crocker on 9/11/2015. (jls) (Entered: 09/11/2015)
09/11/2015	<u>30</u> Waiver of Service Returned Executed by Defendant Michael Dalecki. Michael Dalecki waiver sent on 9/11/2015, answer due 11/10/2015. (Sumara, B.) (Entered: 09/11/2015)
09/25/2015	<u>31</u> ANSWER to Amended Complaint ( <i>Answer and Defenses to Plaintiff's Second Amended Complaint</i> ) by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. (Bensky, Anne) Modified on 9/27/2015. (lak) (Entered: 09/25/2015)
11/10/2015	<u>32</u> <b>MOTION FOR SUMMARY JUDGMENT</b> by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. Brief in Opposition due 12/1/2015. Brief in Reply due 12/11/2015. (Spitz, Katherine) (Entered: 11/10/2015)
11/10/2015	<u>33</u> Declaration of David S. Kieckhafer filed by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop re: <u>32</u> Motion for Summary Judgment, (Attachments: # <u>1</u> Exhibit A – CJ Dep't Courses) (Spitz, Katherine) (Entered: 11/10/2015)
11/10/2015	<u>34</u> Declaration of Michael Dalecki filed by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop re: <u>32</u> Motion for Summary Judgment, (Attachments: # <u>1</u> Exhibit B – CJ Policies, # <u>2</u> Exhibit C – Meeting Notes, # <u>3</u> Exhibit D – 6-9-14 Email, # <u>4</u> Exhibit E – email re online courses, # <u>5</u> Exhibit F – Apr 2015 scheduling emails, # <u>6</u> Exhibit G – Sept 2012 monkey email, # <u>7</u> Exhibit H – 9-18-13 alumni award email) (Spitz, Katherine) (Entered: 11/10/2015)

11/10/2015	<u>35</u>	Declaration of Janelle Crowley filed by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop re: <u>32</u> Motion for Summary Judgment, (Attachments: # <u>1</u> Exhibit I – Burton Appointment and promotion dates, # <u>2</u> Exhibit J – 7–28–19 salary letter, # <u>3</u> Exhibit K – 6–11–10 salary letter, # <u>4</u> Exhibit L – 7–1–11 salary letter, # <u>5</u> Exhibit M – 6–8–12 salary letter, # <u>6</u> Exhibit N – 6–8–12 letter from Shields, # <u>7</u> Exhibit O – 3–13–14 Throop memo, # <u>8</u> Exhibit P – 3–26–14 Letter from Shields, # <u>9</u> Exhibit Q – 8–1–11 Burton request for summer appt, # <u>10</u> Exhibit R – Burton additional payment, # <u>11</u> Exhibit S – 5–11–12 Anderson Memo, # <u>12</u> Exhibit T – Burton Additional Payment for spring 2013, # <u>13</u> Exhibit U – Burton Additional Payment for distance learning course, # <u>14</u> Exhibit V – Dutelle Appointment and promotion dates, # <u>15</u> Exhibit W – 6–13–08 Salary Letter for Dutelle, # <u>16</u> Exhibit X – 7–17–Salary Letter for Dutelle, # <u>17</u> Exhibit Y – 2–8–10 Probationary faculty appointment letter to Dutelle, # <u>18</u> Exhibit Z – Position Search Form 5 contract request for Dutelle, # <u>19</u> Exhibit AA – 7–1–11 Salary Letter from Shields to Dutelle, # <u>20</u> Exhibit BB – 6–8–12 Salary Letter from Shields to Dutelle, # <u>21</u> Exhibit CC – 5–3–12 Letter from Nimocks Den Herder to Dutelle, # <u>22</u> Exhibit DD – 3–15–13 Salary Letter from Nimocks to Dutelle, # <u>23</u> Exhibit EE – 8–28–13 Letter from Nimocks Den Herder to Dutelle re temp salary adjustment, # <u>24</u> Exhibit FF – 9–24–13 Salary letter from Shields to Dutelle, # <u>25</u> Exhibit GG – 12–13–13 Salary letter from Nimocks Den Herder to Dutelle, # <u>26</u> Exhibit HH – 8–23–13 Limited Appointment letter for Dutelle, # <u>27</u> Exhibit II – 8–23–13 Letter from Shields to Dutelle, # <u>28</u> Exhibit JJ – 5–19–14 Letter from Shields to Dutelle, # <u>29</u> Exhibit KK – Gibsons Appointment and promotion dates, # <u>30</u> Exhibit LL – 3–16–11 Probationary faculty appointment letter for Gibson, # <u>31</u> Exhibit MM – Position Search Form 5 Contract Request for Gibson, # <u>32</u> Exhibit NN – 6–8–12 Salary letter from Shields to Gibson, # <u>33</u> Exhibit OO – 5–3–12 Letter from Nimocks Den Herder to Gibson, # <u>34</u> Exhibit PP – 9–24–13 Salary letter from Shields to Gibson, # <u>35</u> Exhibit QQ – 10–16–14 Salary Letter from Shields to Gibson) (Spitz, Katherine) Modified on 11/12/2015: Corrected typo. (lak) (Entered: 11/10/2015)	(47 of 57)
11/10/2015	<u>36</u>	Declaration of Thomas Caywood filed by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop re: <u>32</u> Motion for Summary Judgment, (Attachments: # <u>1</u> Exhibit SS – 5–2012 Email exchange re interns, # <u>2</u> Exhibit TT – Email exchange re Graduate Counsel Approval, # <u>3</u> Exhibit UU – 1–15–2013 email exchange re Washington DC conference, # <u>4</u> Exhibit VV – 2–12–2013 re PACCE projects, # <u>5</u> Exhibit WW – Email exchange re breach experiment, # <u>6</u> Exhibit XX – Gibsons 10–11–12 email re breach experiment, # <u>7</u> Exhibit YY – New Release re AT&T, # <u>8</u> Exhibit ZZ – Prior Learning Credit, # <u>9</u> Exhibit AAA – 12–2012 email exchange re search and screens, # <u>10</u> Exhibit BBB – Dutelle Business Records, # <u>11</u> Exhibit CCC – 12–2012 email exchange re intelligence work, # <u>12</u> Exhibit DDD – October 2012 email exchange, # <u>13</u> Exhibit EEE – UW Travel Expense Report, # <u>14</u> Exhibit FFF – 4–2–2013 UW Travel Expense Report) (Spitz, Katherine) (Entered: 11/10/2015)	
11/10/2015	<u>37</u>	Declaration of Elizabeth Throop filed by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop re: <u>32</u> Motion for Summary Judgment, (Attachments: # <u>1</u> Exhibit GGG – Grant Application, # <u>2</u> Exhibit HHH – Cyber Security Websites,	

		<p># <u>3</u> Exhibit III – Cyber Security Website,  # <u>4</u> Exhibit JJJ – 1–24 email to Provost,  # <u>5</u> Exhibit KKK – 1–24 Burton Email re AT&amp;T grant,  # <u>6</u> Exhibit LLL – AT&amp;T Check,  # <u>7</u> Exhibit NNN – 1–24–13 email re press conferences,  # <u>8</u> Exhibit OOO – 1–25–13 Direction form Throop to Caywood,  # <u>9</u> Exhibit PPP – 7–10–13 Email from Burton,  # <u>10</u> Exhibit QQQ – 10–2–14 Burton email re Dalecki,  # <u>11</u> Exhibit RRR – Rice Demand email,  # <u>12</u> Exhibit SSS – 7–11–13 Email from Burton opposing Dalecki nomination,  # <u>13</u> Exhibit TTT – 12–11–12 Search and Screen complaints,  # <u>14</u> Exhibit UUU – June 2014 email re contacting AG,  # <u>15</u> Exhibit WWW – 1/5/2015 Memorandum and 10–28–14 Letter of Direction,  # <u>16</u> Exhibit XXX – Burton Rebuttal to letter of direction) (Spitz, Katherine) Modified on 11/12/2015. (lak) (Entered: 11/10/2015)</p>
11/10/2015	<u>38</u>	Deposition of Sabina Burton taken on 07/23/15 & 07/24/15. (Spitz, Katherine) (Entered: 11/10/2015)
11/10/2015	<u>39</u>	Deposition of Sabina Burton taken on 10/22/15. (Spitz, Katherine) (Entered: 11/10/2015)
11/10/2015	<u>40</u>	Deposition of Thomas Caywood taken on 08/21/15. (Spitz, Katherine) (Entered: 11/10/2015)
11/10/2015	<u>41</u>	Deposition of Michael Dalecki taken on 10/07/15. (Spitz, Katherine) (Entered: 11/10/2015)
11/10/2015	<u>42</u>	Deposition of Elizabeth Throop taken on 10/28/15. (Spitz, Katherine) (Entered: 11/10/2015)
11/10/2015	<u>43</u>	<p>Declaration of Anne Bensky filed by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop re: <u>32</u> Motion for Summary Judgment, (Attachments:  # <u>1</u> Exhibit YYY – Call a spade a spade email,  # <u>2</u> Exhibit ZZZ – 4–2–15 email re defamation allegations,  # <u>3</u> Exhibit AAAA – 12–17–14 email to student,  # <u>4</u> Exhibit BBBB – 5–9–14 Email re graded materials,  # <u>5</u> Exhibit CCCC – Fall 2015 Teaching Assignments,  # <u>6</u> Exhibit DDDD – 9–25–14 email re Faculty Searches,  # <u>7</u> Exhibit EEEE – Discovery Responses,  # <u>8</u> Exhibit FFFF – Burton CV,  # <u>9</u> Exhibit GGGG – 8–22–email to Governor Walker,  # <u>10</u> Exhibit HHHH – Burton 10–30–14 EEOC,  # <u>11</u> Exhibit IIII – Damages and Demands by Burton,  # <u>12</u> Exhibit JJJJ – 10–12–14 Burton email exchange w–Fairchild,  # <u>13</u> Exhibit KKKK – 10–22–14 Burton email to Lohman,  # <u>14</u> Exhibit LLLL – 10–11–14 Burton email to Provost) (Spitz, Katherine) (Entered: 11/10/2015)</p>
11/10/2015	<u>44</u>	Brief in Support of <u>32</u> Motion for Summary Judgment, by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. (Spitz, Katherine) (Entered: 11/10/2015)
11/10/2015	<u>45</u>	Proposed Findings of Fact filed by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop re: <u>32</u> Motion for Summary Judgment. (Spitz, Katherine) (Entered: 11/10/2015)
12/01/2015	<u>46</u>	Deposition of Cheryl Banachowski–Fuller taken on 11–17–15. (Hawks, Timothy) (Entered: 12/01/2015)
12/01/2015	<u>47</u>	Deposition of Valerie Stackman taken on 11–16–15. (Hawks, Timothy) (Entered: 12/01/2015)
12/01/2015	<u>48</u>	Deposition of John Lohmann taken on 11–17–15. (Hawks, Timothy) (Entered: 12/01/2015)

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12/01/2015	<u>49</u> Deposition of Deborah Rice taken on 11-17-15. (Hawks, Timothy) (Entered: 12/01/2015)
12/01/2015	<u>50</u> Declaration of Dr. Dianna Bearse filed by Plaintiff Sabina Burton <i>in Opposition</i> re: <u>32</u> Motion for Summary Judgment. (Hawks, Timothy) (Entered: 12/01/2015)
12/01/2015	<u>51</u> Declaration of Alexandra Zupec filed by Plaintiff Sabina Burton <i>in opposition</i> re: <u>32</u> Motion for Summary Judgment, (Attachments: # <u>1</u> Exhibit A – Photograph of the note) (Hawks, Timothy) (Entered: 12/01/2015)
12/01/2015	<u>52</u> Declaration of Ronald Jacobus filed by Plaintiff Sabina Burton <i>in opposition</i> re: <u>32</u> Motion for Summary Judgment. (Hawks, Timothy) (Entered: 12/01/2015)
12/01/2015	<u>53</u> Declaration of Timothy E. Hawks filed by Plaintiff Sabina Burton <i>in opposition</i> re: <u>32</u> Motion for Summary Judgment, (Attachments: # <u>1</u> Exhibit 1 – Ex 2 1st Discovery Answers/Responses, # <u>2</u> Exhibit 2 – Ex 17 MOA online course development, # <u>3</u> Exhibit 3 – Ex 19 FDRA grant, # <u>4</u> Exhibit 4 – Ex 6 Caywood 1/24/13 letter, # <u>5</u> Exhibit 5 – Ex 9 Caywood/Durr 10/17/12 re faculty issue, # <u>6</u> Exhibit 6 – Ex 18 Caywood memo 10/16/12, # <u>7</u> Exhibit 7 – Ex 23 Nimocks memo 10/26/10, # <u>8</u> Exhibit 8 – Ex 24 Burton to Caywood 11/12/12 AT&T, # <u>9</u> Exhibit 9 – Ex 27 Caywood to Burton re cybercrimes 11/19/12, # <u>10</u> Exhibit 10 – Stojkovic report, # <u>11</u> Exhibit 11 – Ex 32 Dalecki/Jacobus transcript, # <u>12</u> Exhibit 12 – Ex 40 Barraclough to Shields 4/8/15, # <u>13</u> Exhibit 13 – Ex 47 Dalecki Burton emails to mtg 10/2 & 8/14, # <u>14</u> Exhibit 14 – Ex 48 CJ search violation 10/16/14, # <u>15</u> Exhibit 15 – Ex 52 student evaluation report, # <u>16</u> Exhibit 16 – Ex 62, email ATT 1/23-24, # <u>17</u> Exhibit 17 – Ex 99 Drefcinski to Shields 12/13/13, # <u>18</u> Exhibit 18 – 11/15-16/10 emails, # <u>19</u> Exhibit 19 – 3/28/12 Michael Gay email, # <u>20</u> Exhibit 20 – 4/9-10/12 Caywood group folder, # <u>21</u> Exhibit 21 – 2012 Chicago mtg, # <u>22</u> Exhibit 22 – 10/8/12 Burton to Caywood re journal, # <u>23</u> Exhibit 23 – 10/10/12 Throop Burton re proposal, # <u>24</u> Exhibit 24 – 10/11/12 note & IRB concern Caywood, # <u>25</u> Exhibit 25 – 10/11/12 emails Caywood Burton & Zupec, # <u>26</u> Exhibit 26 – 10/11/12 email Burton Throop re Lorne, # <u>27</u> Exhibit 27 – 10/11-12/12 Caywood Burton re Lorne, # <u>28</u> Exhibit 28 – 10/12/12 Burton to Zupec follow up, # <u>29</u> Exhibit 29 – 10/17/12 Burton Caywood Throop re research methods, # <u>30</u> Exhibit 30 – 10/17/12 Durr Caywood Herder Throop faculty issue, # <u>31</u> Exhibit 31 – 11/19/12 Burton Caywood cybercrime, # <u>32</u> Exhibit 32 – 4/17/13 Complaints & Grievances Committee to Shields re addendum, # <u>33</u> Exhibit 33 – 11/6/13 Burton to Shane filing Throop grievance, # <u>34</u> Exhibit 34 – 12/13/13 Shane to Shields, # <u>35</u> Exhibit 35 – 7/2/14 Fuller Burton Dalecki, # <u>36</u> Exhibit 36 – 12/11/13 Lohmann notes, # <u>37</u> Exhibit 37 – 8/8/14 Dalecki Burton about Stackman mentor, # <u>38</u> Exhibit 38 – 3/13/14 Throop to den Herder, # <u>39</u> Exhibit 39 – Ans/Responses – 2nd Discovery, # <u>40</u> Exhibit 40 – Ex. 145, emails Burton Lohmann, 12/10/14, # <u>41</u> Exhibit 41 – Ex 148 Hamer, # <u>42</u> Exhibit 42 – Ex 149 press release summer abroad, # <u>43</u> Exhibit 43 – 4/1/11 Caywood letter – grant release of duties, # <u>44</u> Exhibit 44 – 10/6/12 emails to Caywood/Throop, # <u>45</u> Exhibit 45 – 11/15/12 CJ dept minutes, # <u>46</u> Exhibit 46 – 12/11/12 Applied Research–WiSys Technology Advancement Grant Pre-proposal feedback, # <u>47</u> Exhibit 47 – Burton Fuller email 25% of load, # <u>48</u> Exhibit 48 – Burton to Caywood meet w/Throop 11/14/12, # <u>49</u> Exhibit 49 – NSF,

		<p># <u>50</u> Exhibit 50 – Burton to Roberts w/proposal,  # <u>51</u> Exhibit 51 – EEOC transmittal TEH letter 7/21/15,  # <u>52</u> Exhibit 52 – TEH to EEOC – request Right to Sue 7/27/15,  # <u>53</u> Exhibit 53 – Laird v. Cragin Federal Bank, 1994 WL 13662,  # <u>54</u> Exhibit 54 – Yasiri v. Board of Regents of University of Wisconsin System, 2000 WL 34230253,  # <u>55</u> Exhibit 55 – Notes on mtg Throop, Caywood, Den Herder 7/8/13,  # <u>56</u> Exhibit 56 – Throop UW6 complaint against Burton 1/5/15,  # <u>57</u> Exhibit 57 – Burton, Throop, Caywood emails re: Request to Chair Search &amp; Screen) (Hawks, Timothy) Modified on 12/2/2015: Corrected typos. (lak) (Entered: 12/01/2015)</p>
12/01/2015	<u>54</u>	<p>Declaration of Dr. Sabina Burton filed by Plaintiff Sabina Burton <i>in opposition</i> re: <u>32</u> Motion for Summary Judgment, (Attachments:  # <u>1</u> Exhibit 1 – 2013 ERD/EEOC &amp; Right to Sue,  # <u>2</u> Exhibit 2 – 2014 2nd EEOC TEH Letter Right to Sue,  # <u>3</u> Exhibit 3 – UWP appointment,  # <u>4</u> Exhibit 4 – Kory Wein 7/30/12 email urgent request,  # <u>5</u> Exhibit 5 – Smyrski emails re: SaTC 8/17/12,  # <u>6</u> Exhibit 6 – Smyrski emails re: NSF 8/21/12,  # <u>7</u> Exhibit 7 – NSF Rob Hasker etc,  # <u>8</u> Exhibit 8 – 10/3/12 mtg Throop,  # <u>9</u> Exhibit 9 – 10/11/12 Burton to Throop fear Caywood reprimand,  # <u>10</u> Exhibit 10 – 10/15/12 mtg Burton Throop,  # <u>11</u> Exhibit 11 – 9/23/15 Burton response to Throop UW6 complaint,  # <u>12</u> Exhibit 12 – Burton, Caywood, Throop emails re: News,  # <u>13</u> Exhibit 13 – Oct, 2012 emails RE cyber security initiatives on campus,  # <u>14</u> Exhibit 14 – 11/17/12 Burton/Durr email re: Request for meeting,  # <u>15</u> Exhibit 15 – 10/4/12 Burton/Lomas email RE AT&amp;T application,  # <u>16</u> Exhibit 16 – Oct, 2012 emails re: timeframe for a CJ Dept NSF proposal,  # <u>17</u> Exhibit 17 – Emails re: Grievance against Throop) (Hawks, Timothy) Modified on 12/2/2015: Corrected typos. (lak) (Entered: 12/01/2015)</p>
12/01/2015	<u>55</u>	<p>Response to Proposed Findings of Fact filed by Plaintiff Sabina Burton re: <u>32</u> Motion for Summary Judgment. (Hawks, Timothy) (Entered: 12/01/2015)</p>
12/01/2015	<u>56</u>	<p>Proposed Findings of Fact filed by Plaintiff Sabina Burton re: <u>32</u> Motion for Summary Judgment. (Hawks, Timothy) (Entered: 12/01/2015)</p>
12/01/2015	<u>57</u>	<p>Brief in Opposition by Plaintiff Sabina Burton re: <u>32</u> Motion for Summary Judgment, filed by Elizabeth Throop, Thomas Caywood, Board of Regents of the University of Wisconsin System, Michael Dalecki. (Hawks, Timothy) (Entered: 12/01/2015)</p>
12/01/2015	<u>58</u>	<p>Second Declaration of Timothy E. Hawks filed by Plaintiff Sabina Burton <i>in opposition</i> re: <u>32</u> Motion for Summary Judgment, (Attachments:  # <u>1</u> Exhibit 1 – Prendergast v. Chemical Personnel Search, 2008 WL 927960) (Hawks, Timothy) Modified on 12/2/2015. (lak) (Entered: 12/01/2015)</p>
12/04/2015	<u>59</u>	<p>Supplemental Declaration of Timothy E. Hawks filed by Plaintiff Sabina Burton <i>in opposition</i> re: <u>32</u> Motion for Summary Judgment. (Hawks, Timothy) Modified on 12/7/2015. (lak) (Entered: 12/04/2015)</p>
12/07/2015	<u>60</u>	<p>Supplemental Declaration of Dr. Sabina Burton filed by Plaintiff Sabina Burton <i>in opposition</i> re: <u>32</u> Motion for Summary Judgment, (Attachments:  # <u>1</u> Exhibit 1 – 5/9/14 Email – Burton to Dalecki) (Hawks, Timothy) Modified on 12/7/2015. (lak) (Entered: 12/07/2015)</p>
12/07/2015	<u>61</u>	<p>Second Supplemental Declaration of Timothy E. Hawks filed by Plaintiff Sabina Burton <i>in opposition</i> re: <u>32</u> Motion for Summary Judgment. (Hawks, Timothy) Modified on 12/7/2015. (lak) (Entered: 12/07/2015)</p>
12/11/2015	<u>62</u>	<p>Reply in Support of Proposed Findings of Fact filed by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop re: <u>32</u> Motion for Summary Judgment. (<i>Defendants' Reply to Plaintiff's Response to Defendants' Proposed Findings of Fact.</i>) (Bensky, Anne) (Entered: 12/11/2015)</p>

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12/11/2015	<u>63</u> Brief in Reply by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop in Support of <u>32</u> Motion for Summary Judgment. (Bensky, Anne) (Entered: 12/11/2015)
12/11/2015	<u>64</u> Response to Proposed Findings of Fact filed by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop re: <u>32</u> Motion for Summary Judgment. (Bensky, Anne) (Entered: 12/11/2015)
03/04/2016	<u>65</u> Rule 26(a)(3) Pretrial Disclosures by Plaintiff Sabina Burton. (Hawks, Timothy) (Entered: 03/04/2016)
03/04/2016	<u>66</u> Proposed Voir Dire by Plaintiff Sabina Burton. (Hawks, Timothy) (Entered: 03/04/2016)
03/04/2016	<u>67</u> Proposed Jury Instructions – Liability and Damages by Plaintiff Sabina Burton. (Hawks, Timothy) (Entered: 03/04/2016)
03/04/2016	<u>68</u> Proposed Special Verdict – Liability by Plaintiff Sabina Burton. (Hawks, Timothy) (Entered: 03/04/2016)
03/04/2016	<u>69</u> Proposed Special Verdict – Damages by Plaintiff Sabina Burton. (Hawks, Timothy) (Entered: 03/04/2016)
03/04/2016	<u>70</u> Exhibit List by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. (Bensky, Anne) (Entered: 03/04/2016)
03/04/2016	<u>71</u> Witness List by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. (Bensky, Anne) (Entered: 03/04/2016)
03/04/2016	<u>72</u> Proposed Voir Dire by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. (Bensky, Anne) (Entered: 03/04/2016)
03/04/2016	<u>73</u> Proposed Jury Instructions – Liability and Damages by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. (Bensky, Anne) (Entered: 03/04/2016)
03/04/2016	<u>74</u> Proposed Special Verdict – Damages by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. (Bensky, Anne) (Entered: 03/04/2016)
03/04/2016	<u>75</u> Proposed Special Verdict – Liability by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. (Bensky, Anne) (Entered: 03/04/2016)
03/04/2016	<u>76</u> Motion to Bifurcate by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. Response due 3/11/2016. (Bensky, Anne) (Entered: 03/04/2016)
03/04/2016	<u>77</u> Motions in Limine by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. (Bensky, Anne) (Entered: 03/04/2016)
03/04/2016	<u>78</u> Motion in Limine by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. (Attachments: # <u>1</u> Exhibit – Schutz Expert Report, # <u>2</u> Exhibit – Schutz CV) (Bensky, Anne) Modified on 3/7/2016: Expert report has not been filed as a separate docket entry yet. (lak) (Entered: 03/04/2016)
03/07/2016	<u>79</u> Response Stating No Opposition by Plaintiff Sabina Burton re: <u>76</u> Motion to Bifurcate filed by Elizabeth Throop, Thomas Caywood, Board of Regents of the University of Wisconsin System, Michael Dalecki. (Hawks, Timothy) (Entered: 03/07/2016)
03/07/2016	<u>80</u> Exhibit List by Plaintiff Sabina Burton. (Hawks, Timothy) (Entered: 03/07/2016)
03/09/2016	<u>81</u> Expert Report of Kevin L. Schutz, M.S., L.P.C. by Plaintiff Sabina Burton, (Attachments: # <u>1</u> Exhibit – Kevin L. Schutz CV and Trial & Deposition Trial Testimony List)

		(Hawks, Timothy) (Entered: 03/09/2016)
03/10/2016	<u>82</u>	Declaration of Timothy E. Hawks filed by Plaintiff Sabina Burton <i>in opposition to Defendants' Proposed Jury Instructions and re: 78</i> Motion in Limine, (Attachments: # <u>1</u> Exhibit 1 – Dubin v. Board of Madison Area Technical Coll. Dist., No. 10–cv–35 (W.D. Wis. Apr. 26, 2011) (ECF No. 124), # <u>2</u> Exhibit 2 – Corral v. UNO Charter Sch. Network, Inc., No. 10–CV–3379, 2013 WL 1855824 (N.D. Ill. May 1, 2013), # <u>3</u> Exhibit 3 – Lalowski v. Corinthian Sch., Inc., No. 10–C–1928, 2012 WL 245203 (N.D. Ill. Jan. 26, 2012)) (Hawks, Timothy) (Entered: 03/10/2016)
03/10/2016	<u>83</u>	Declaration of B. Michele Sumara filed by Plaintiff Sabina Burton <i>in Opposition re: 78</i> Motion in Limine, (Attachments: # <u>1</u> Exhibit 1 – Kevin L. Schutz Letter Dated March 10, 2016) (Hawks, Timothy) Modified on 3/11/2016. (lak) (Entered: 03/10/2016)
03/10/2016	<u>84</u>	Response to Proposed Voir Dire <i>of Defendants</i> by Plaintiff Sabina Burton. (Hawks, Timothy) (Entered: 03/10/2016)
03/10/2016	<u>85</u>	Response to Proposed Special Verdict – <i>Liability and Damages of Defendants</i> by Plaintiff Sabina Burton. (Hawks, Timothy) (Entered: 03/10/2016)
03/11/2016	<u>86</u>	Brief in Opposition by Plaintiff Sabina Burton re: <u>77</u> Motions in Limine filed by Elizabeth Throop, Thomas Caywood, Board of Regents of the University of Wisconsin System, Michael Dalecki. (Hawks, Timothy) Modified on 3/14/2016. (lak) (Entered: 03/11/2016)
03/11/2016	<u>87</u>	Brief in Opposition by Plaintiff Sabina Burton re: <u>78</u> Motion in Limine, filed by Elizabeth Throop, Thomas Caywood, Board of Regents of the University of Wisconsin System, Michael Dalecki. (Hawks, Timothy) (Entered: 03/11/2016)
03/11/2016	<u>88</u>	Objections to <u>73</u> Proposed Jury Instructions – <i>Liability and Damages</i> , by Plaintiff Sabina Burton. (Hawks, Timothy) Modified on 3/11/2016. (lak) (Entered: 03/11/2016)
03/11/2016	<u>89</u>	Motion in Limine by Plaintiff Sabina Burton. (Hawks, Timothy) (Entered: 03/11/2016)
03/18/2016	<u>90</u>	ORDER granting <u>32</u> Motion for Summary Judgment. Signed by District Judge James D. Peterson on 3/18/2016. (jls) (Entered: 03/18/2016)
03/18/2016	<u>91</u>	JUDGMENT entered in favor of Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop dismissing the case. (jls) (Entered: 03/18/2016)
03/22/2016	<u>92</u>	Bill of Costs by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop. Motions referred to Peter A. Oppeneer, Clerk of Court. Objection to Bill of Costs due 4/1/2016. Brief in Support to Bill of Costs due 4/11/2016. Brief in Reply in Opposition to Bill of Costs due 4/18/2016. (Attachments: # <u>1</u> Invoices) (Bensky, Anne) (Entered: 03/22/2016)
03/29/2016	<u>93</u>	<b>** TEXT ONLY ORDER **</b> Plaintiff Sabina Burton has emailed the court to request an extension of what she is worried is the 10–day deadline to request reconsideration of the court's summary judgment order. She attaches what she describes as, essentially, a rough draft of her request. But she asks me to disregard her submission if the deadline is actually 28 days, as her attorneys have advised. Her attorneys are right: the deadline for a motion under Federal Rule of Civil Procedure 59 for a new trial or to alter or set aside a judgment is 28 days from the entry of judgment. I have not reviewed her attached submission, and I will deny her request as unnecessary. Signed by District Judge James D. Peterson on 3/29/2016. (jls) (Entered: 03/29/2016)
03/31/2016	<u>94</u>	Notice by Defendants Board of Regents of the University of Wisconsin System, Thomas Caywood, Michael Dalecki, Elizabeth Throop <i>of Request to Receive Communications to the Court</i> . (Bensky, Anne) (Entered: 03/31/2016)
04/01/2016	<u>95</u>	Motion to Withdraw as Attorney by Plaintiff Sabina Burton. Response due 4/8/2016. (Hawks, Timothy) (Entered: 04/01/2016)

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04/01/2016	<u>96</u> Declaration of Timothy E. Hawks filed by Plaintiff Sabina Burton <i>in Support</i> re: <u>95</u> Motion to Withdraw as Attorney. (Hawks, Timothy) Modified on 4/3/2016. (lak) (Entered: 04/01/2016)
04/01/2016	<u>97</u> ** TEXT ONLY ORDER ** Plaintiff Sabina Burton's counsel has moved to withdraw, citing a fundamental disagreement with their client. Dkt. <u>95</u> . The motion to withdraw is GRANTED, provided that counsel first informs Burton of all deadlines applicable to her case. Signed by District Judge James D. Peterson on 4/2/2016. (mfh) (Entered: 04/01/2016)
04/13/2016	<u>98</u> Affidavit of Sabina Burton. (Attachments: # <u>1</u> Envelope) (jef),(ps) DVD exhibit filed conventionally and located in the clerk's office exhibit room. (jef) (Entered: 04/13/2016)
04/15/2016	<u>99</u> Motion for Reconsideration re <u>91</u> Judgment, <u>90</u> Order on Motion for Summary Judgment by Plaintiff Sabina Burton. (Burton, Sabina),(ps) (Entered: 04/15/2016)
04/15/2016	<u>100</u> Declaration of Sabina Burton re <u>99</u> Motion for Reconsideration / Correction of Mistakes in the <u>57</u> Brief in Opposition of Summary Judgment, by Plaintiff Sabina Burton. (Burton, Sabina),(ps) Modified docket text on 4/15/2016 (nlm). (Entered: 04/15/2016)
04/15/2016	<u>101</u> Declaration of Sabina Burton re <u>99</u> Motion for Reconsideration / Correction of Mistakes and Omissions in Plaintiff's <u>56</u> Additional Proposed Findings of Fact, by Plaintiff Sabina Burton. (Attachments: # <u>1</u> Exhibit 1 – SB001210–12 – Caywood shows support for future cyber effort, # <u>2</u> Exhibit 1 – SB001210–12 – Caywood shows support for future cyber effort, # <u>3</u> Exhibit 3 – SB001358 – Press Release Concerns Throop Deeply, # <u>4</u> Exhibit 4 – UW–P–003493 – Press Release Published, # <u>5</u> Exhibit 5 –SB000944 –pg26 InnovationCtr–Feasibility Study, # <u>6</u> Exhibit 6 – SB01091–Burton invites Caywood to speak, # <u>7</u> Exhibit 7 – ZA–7– Chancellor–Department Ltr–7–26–13, # <u>8</u> Exhibit 8 – Analytics–journalofCJ–CS–midJanto10–1–13, # <u>9</u> Exhibit 9 – SB000886–887 – Email chain Jan 24–2013, # <u>10</u> Exhibit 10 – UW–P–00313–316 – Reply to Caywood Letter 1–24–13, # <u>11</u> Exhibit 11 – 551–a – Dalecki still abusing 10–2–14, # <u>12</u> Exhibit 12 – 622a – Appeal to DRB marks, # <u>13</u> Exhibit 13 – Invitation Brandenburg signed by Anderson not Burton, # <u>14</u> Exhibit 14 – Link to Proposal–migraines–1–24–13, # <u>15</u> Exhibit 15 – SB000892–3 – Burton to DenHerder–about unfair, # <u>16</u> Exhibit 16 – SB000903 – Burtons stmts are not inaccurate, # <u>17</u> Exhibit 17 – UW–P–000074 – Burton explains to Caywood–1–28–13, # <u>18</u> Exhibit 18 – UW–P–000178 – Durr notes are inaccurate, # <u>19</u> Exhibit 19 – UW–P 000562–568 – Email string student harassment issu, # <u>20</u> Exhibit 20 – UW–P–005940–41 – Throop notes, # <u>21</u> Exhibit 21 – ZA – GrievanceCommissionFindings–4–19–13, # <u>22</u> Exhibit 22 – ZA–5 – Grv Commsn Findings 7–10–13) (Burton, Sabina),(ps) Modified docket text on 4/15/2016 (nlm). (Entered: 04/15/2016)
04/15/2016	<u>102</u> Declaration of Sabina Burton re <u>99</u> Motion for Reconsideration / Correction of Mistakes in Plaintiff's <u>55</u> Response to Defendants' Proposed Findings of Fact, by Plaintiff Sabina Burton. (Attachments: # <u>1</u> Exhibit 1 – Breakfast is available on campus) (Burton, Sabina),(ps) Modified docket text on 4/15/2016 (nlm). (Entered: 04/15/2016)
04/15/2016	<u>103</u> Brief in Support of <u>99</u> Motion for Reconsideration by Plaintiff Sabina Burton (Burton, Sabina),(ps) (Entered: 04/15/2016)
04/15/2016	<u>104</u> ** TEXT ONLY ORDER ** Plaintiff Sabina Burton has filed a motion to alter or amend the judgment in this case, pursuant to Federal Rule of Civil Procedure 59(e). Dkt. <u>99</u> . The court will review plaintiff's motion and determine whether a response from defendants is necessary. If so, the court will set a briefing schedule for the motion. No further submissions are required at this time. Signed by District Judge James D. Peterson on 4/15/2016. (jef),(ps) (Entered: 04/15/2016)

04/20/2016	<u>105</u>	Certificate of Service by Plaintiff Sabina Burton as to <u>98</u> Affidavit. (Burton, Sabina),(ps) (Entered: 04/20/2016)
06/22/2016	<u>106</u>	ORDER denying <u>99</u> Motion for Reconsideration. Signed by District Judge James D. Peterson on 6/21/2016. (jef),(ps) (Entered: 06/22/2016)
06/22/2016	<u>107</u>	ORDER on Bill of Costs: Costs Taxed in favor of Defendants in the amount of \$5,073.59. Signed by Peter A. Oppeneer, Clerk of Court by J. Titak, Deputy Clerk on 6/22/16. (jat),(ps) (Entered: 06/22/2016)
07/20/2016	<u>108</u>	NOTICE OF APPEAL by Plaintiff Sabina Burton as to <u>106</u> Order on Motion for Reconsideration, <u>107</u> Order Taxing Costs. Filing fee of \$ 505, receipt number 0758-1849753 paid. No Docketing Statement filed. (Burton, Sabina),(ps) (Entered: 07/20/2016)
07/20/2016	<u>109</u>	Appeal Information Packet. (nln),(ps) (Entered: 07/20/2016)

## UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



Office of the Clerk  
Phone: (312) 435-5850  
www.ca7.uscourts.gov

### NOTICE OF CASE OPENING

July 20, 2016

No. 16-2982	<p>SABINA BURTON, Plaintiff - Appellant</p> <p style="text-align: center;">v.</p> <p>BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM, et al., Defendants - Appellees</p>
<b>Originating Case Information:</b>	
<p>District Court No. 3:14-cv-00274-jdp Western District of Wisconsin Clerk/Agency Rep Peter Oppeneer District Judge James D. Peterson</p> <p>Case filed: 07/20/2016 Case type: cv/pri Fee status: Paid Date of Judgment: 06/21/2016 Date NOA filed: 07/20/2016</p>	

The above-captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit.

#### **Deadlines:**

<u>Appeal No.</u>	<u>Filer</u>	<u>Document</u>	<u>Due Date</u>
16-2982	Sabina Burton	Docketing statement due	07/27/2016

16-2982	Sabina Burton	Transcript information sheet	08/03/2016
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16-2982	Sabina Burton	Appellant's brief	08/29/2016
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**NOTE:** This notice is issued to counsel of record, in furtherance of the revised *Circuit Rule 3(d)*, to provide necessary information regarding this appeal. Please verify this notice for accuracy. Counsel are encouraged to provide a fax and/or e-mail address to the court. If any corrections are necessary, please indicate those corrections on this notice and return it to the Clerk's Office within ten (10) days.

**THIS NOTICE SHALL NOT ACT AS A SUBSTITUTE FOR MOTIONS FOR NON-INVOLVEMENT / SUBSTITUTION OF COUNSEL. COUNSEL ARE STILL REQUIRED TO FILE THE APPROPRIATE MOTIONS.**

**Important Scheduling Notice!**

Notices of hearing for particular appeals are mailed shortly before the date of oral argument. Criminal appeals are scheduled shortly after the filing of the appellant's main brief; civil appeals after the filing of the appellee's brief. If you foresee that you will be unavailable during a period in which your particular appeal might be scheduled, please write the clerk advising him of the time period and the reason for such unavailability. Session data is located at <http://www.ca7.uscourts.gov/cal/calendar.pdf>. Once an appeal is formally scheduled for a certain date, it is very difficult to have the setting changed. See Circuit Rule 34(e).

form name: c7\_Docket\_Notice(form ID: 108)

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

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



Office of the Clerk  
Phone: (312) 435-5850  
[www.ca7.uscourts.gov](http://www.ca7.uscourts.gov)

**NOTICE OF DOCKETING - Short Form**

July 20, 2016

**To:** Peter Oppeneer  
Clerk of Court

The below captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit:

Appellate Case No: 16-2982

Caption:  
SABINA BURTON,  
Plaintiff - Appellant

v.

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN  
SYSTEM, et al.,  
Defendants - Appellees

District Court No: 3:14-cv-00274-jdp  
Clerk/Agency Rep Peter Oppeneer  
District Judge James D. Peterson

Date NOA filed in District Court: 07/20/2016

If you have any questions regarding this appeal, please call this office.