No. 16-2982

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SABINA BURTON,

Plaintiff-Appellant,

v.

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

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Wisconsin
Case No. 14-cv-274
The Honorable Judge James D. Peterson

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT SABINA BURTON

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Seventh Circuit Rule 26.1, counsel for plaintiff-appellant states:

1. The full name of every party that the attorney represents in this case:

   Dr. Sabina Burton

2. The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

   Alderman Law Firm (Current)

   Hawks Quindel, S.C. (Terminated 4/1/2016)

   Fox & Fox, S.C. (Terminated 12/15/2014)

3. The parent corporations and any publicly held companies that own ten percent or more of the stock of the party represented by the attorneys:

   N.A.

Respectfully Submitted this 27th day of September, 2016

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JURISDICTIONAL STATEMENT

1. Jurisdiction of the District Court

In this civil action, Burton alleged that Defendants deprived her of her rights under 42 U.S.C. § 2000e et seq. (Title VII), 20 U.S.C. § 1681 (Title IX), the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983. Therefore, the U.S. District Court had original jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

2. Jurisdiction of the Court of Appeals

28 U.S.C. § 1291 confers jurisdiction over this appeal on the United States Court of Appeals. This appeal is taken from a final decision of the U.S. District Court for the Western District of Wisconsin entered on March 18, 2016, by the Honorable District Judge James D. Peterson.[1] (R. 90). Burton's Notice of Appeal was timely filed with the District Court on July 20, 2016. (R. 108).

[1] The Notice of Appeal, filed by pro se plaintiff-appellant Burton, indicates she appeals the June 22, 2016, denial of her Rule 59(e) motion to reconsider the final judgment, rather than the March 18, 2016, final judgment. (R. 106). As noted in the Docketing Statement, Burton requests this Court treat her appeal as one of the March 18, 2016, order granting summary judgment. (R. 90). *See Daniels v. Brennan*, 887 F.2d 783, 790 n.6 (7th Cir. 1989) (indicating, "An appeal from a denial of a Rule 59(e) motion is treated as an appeal from the judgment itself"); *See also Petru v. City of Berwyn*, 872 F.2d 1359, 1361-62 (7th Cir. 1989) (treating a notice of appeal from denial of Rule 59(e) motion as an appeal of the underlying judgment); *See also Serafinn v. Local 722,* 597 F.3d 908, 917 (7th Cir., 2010) (recognizing *Petru* as allowing appeals from Rule 59 denials as if from underlying judgments).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the court err by restricting Burton's protected activities, omitting her complaints about retaliation and discrimination?
2. Did the court err by restricting adverse actions against Burton to formal reprimands?
3. Did the court ignore a myriad of evidence showing a causal connection by wrongly circumscribing the protected activities and adverse actions it would consider?
4. Did the court improperly draw factual inferences in favor of the party moving for summary judgment?

STATEMENT OF THE CASE AND FACTS

In 2012, plaintiff-appellant and University of Wisconsin-Platteville ("UWP") Associate Professor Dr. Sabina Burton ("Burton") reported to the administration that a female student had received a solicitous note from one of Burton's Criminal Justice ("CJ") Department colleagues. Burton later complained that the CJ Chair was retaliating against her for that report and that there were sex-discriminatory practices in the CJ Department. Every time Burton complained about being treated unfairly, she was alienated and retaliated against even more, at first by her department chair but later by the administration as well.

As a result of this mistreatment, Burton filed the complaint initiating the underlying case on April 14, 2014. (R. 1).[2] On November 10, 2015, UWP filed a motion for summary judgment, arguing that Burton could not succeed on her claims. (R. 44). In opposing summary judgment, Burton dismissed six of her eight claims, leaving only her two retaliation claims. (R. 57:4). In an order dated March 18, 2016, the district court entered summary judgment in favor of UWP on those two claims. (R. 90:26). This appeal follows.

[2] References to "R.__:__" refer to the docket ("ECF") number and page number of items filed as part of the district court record.

In August of 2009, UWP hired Burton as an Assistant Professor within the CJ Department. (R. 45:7, ¶ 21). She was promoted to Associate Professor on August 26, 2012. (R. 45:8, ¶ 25). On October 10, 2012, a female student approached Burton after receiving an inappropriate and solicitous note from a male CJ professor. (R. 51-1 (image of the note, App. Ex. C; R. 51:2, ¶¶ 7-16). Burton immediately went by the CJ Chair's (Dr. Thomas Caywood, hereinafter "Chair Caywood") office but he was gone for the day. (R. 53-29:1). She emailed the Dean of Liberal Arts and Education (Elizabeth Throop, hereinafter "Dean Throop") and, without providing details, asked whether she should report inappropriate faculty conduct toward a student to the CJ Chair or to Student Affairs. (R. 53-23:2, App. Ex. D). Dean Throop instructed Burton to report the incident to the Dean of Students, which Burton did. (R. 53-23:1 (as to Dean Throop's instruction); R. 53-29:1 (as to Burton's report)).

The offending professor claimed he gave the solicitous note to the student as part of a secret experiment on societal norms. (R. 53-24:3). Dean Throop inquired whether the experiment had been approved in advance by the Institutional Review Board ("IRB"), as would have been required. (R. 53-24:3-4). The required approval had neither been sought nor given, so Chair Caywood said he had approved the experiment. (R. 53-24:3-4 (indicating that no approval was sought or given); R. 53-28:1 (indicating that Chair Caywood approved the "breach experiment")).

Later, the grievance committee found the offending professor had exercised "extremely poor judgment" as to the note, and expressed doubt that the reason for it was truly academic in nature. (R. 53-32:1, App. Ex. E). After the incident, the professor had sent an email to the class that the grievance committee determined was a "reprehensible… version of slut-shaming." (R. 53-32:1; R. 51:3-4, ¶¶ 22-26 (the student explaining that the email made her "look like an

idiot")). Despite the grievance committee's finding, the record does not reflect that the professor was either disciplined or reprimanded. (R. 42:7, l. 17-21 (Dean Throop indicates that Burton's relevant grievances resulted in "no consequences").

After the incident, rather than focusing on the professor's infraction, Chair Caywood focused on Burton's reporting of the matter. On October 16, 2012, he unilaterally issued a new policy on how such complaints should be handled. (R. 53-6). The gist of the new Caywood Policy was that, "If a student has a complaint about what a faculty/staff member said or did in class direct the student to come to me immediately. I will try to ascertain what exactly happened and if necessary forward the complaint to the appropriate persons on campus." (R. 53-6). The policy was announced at a departmental meeting the month after the incident, during which Burton indicated that Caywood "made a big deal about [Burton's reporting of the note]." (R. 38:261, l. 8-19). Dean Throop later indicated that she did not know "why Caywood did not manage this conflict and, indeed, why he exacerbated the problem by publicly chastising Burton for going around him." (R. 42:106, l. 22-25, p. 107, l. 1-5). On October 17, 2012, human resources director Jeanne Durr wrote Chair Caywood that "under the circumstances, [Dr. Burton had] acted quite appropriately." (R. 53-5). For the remainder of the semester after Burton reported the solicitous note, Chair Caywood took out his frustration over the incident on Burton. (R. 37-13:1-2). She reported the reprisal to the administration, to no avail. (R. 37-13:1).

Meanwhile, Burton had been assisting the CJ Department to become current with respect to cyber security, a critical component of modern criminal justice departments. (R. 53-19; R. 53-20; R. 54-5; R. 54-7). Those efforts were focused on developing a curriculum with a long-term goal in mind of developing a B.S. program in cyber security at UWP. (R. 53-49:3). The efforts were cooperative in nature, involving the Director of Sponsored Programs Bob Roberts, Chair

Caywood, and Burton. (R. 54-7:1; R. 53-49:1). On August 10, 2012, a City of Platteville and UWP feasibility study explained that UWP would, in the future, be "a leader in Forensic Science, Cyber Security, and Criminalistics." (R. 101-5:26).

On August 21, 2012, Burton was encouraged by the Chancellor's office to use the feedback she received from an April 2012 National Science Foundation ("NSF") grant application, which Chair Caywood formally endorsed, to prepare further applications. (R. 53-49:1; R. 54-6:1). The NSF grant application had been focused on UWP's efforts to develop an "Applied Bachelor of Science Degree in Cyber Science with curriculum allowing students to get certificates and/or minors in cyber security specializations." (R. 53-49:3).

Having done so, on September 12, 2012, Burton successfully secured a grant from AT&T for a modest sum ($7,000) that would allow Burton to develop the cyber security curriculum that would be a starting point for a potential cyber security program at UWP. (R. 37-6; R. 53-8:1). Chair Caywood did not oppose this effort. (R. 36-12:1). Additionally, in an email thread dated November 19, 2012, Chair Caywood suggested that Burton develop a certificate program in cyber security. (R. 53-9). Burton forwarded his suggestion to Dean Throop, who responded, "Terrific! This sounds like progress. I'm pleased for you." (R. 53-9). Burton also built webpages to show potential donors what the program might look like, if funded. (R. 37-2; R. 37-3). She showed the webpages to Chair Caywood on October 8, 2012. (R. 53-22). He did not voice any objections at that time and, in fact, showed support for Burton's efforts as late as October 10, 2012. (*Id.*; R. 36-12:1).

Despite Chair Caywood and Dean Throop's initial showing of support for Burton's efforts to build a cyber security curriculum at UWP, the pair's attitude toward Burton and her efforts changed after the solicitous note-reporting incident. (R. 53-9; R. 53-49:1; R. 37-5:1; R.

53-4). On January 24, 2016, the duo expressed concern over the AT&T grant application's portrayal of the department's cyber security initiatives. (R. 53-4 (Chair Caywood indicated, "I'm not aware that the CJ Department approved a cyber security program or the development of one"); R. 37-7 (Dean Throop indicates, "I have advised [Burton] to stop making representations about a 'cyber-security program'")). Dean Throop suggested to AT&T that perhaps the ceremony for Burton's grant be cancelled because of some wording in the draft press release. (R. 53-16:1). But it turned out to be an easy edit, and AT&T was able to update its draft to Dean Throop's satisfaction with a quick phone call. (R. 53-16:1). Despite the fuss, the award ceremony proceeded as planned on January 28, 2013. (R. 36-7:1). Later, it was recommended that Dean Throop write AT&T to repair the damage done to Burton's reputation in the kerfuffle, but she did not. (R. 101-21:2).

Despite previous support and even cooperation, on January 24, 2013, Chair Caywood wrote a formal letter to Burton to complain that she was putting "the cart before the horse" on her cyber security efforts. (R. 53-4:1). He complained to Burton that her webpages with the proposed program milestones were deceptive, even though he had not complained when Burton showed them to him the previous October. (R. 53-4:1; R. 53-22). Despite all his earlier support, even of the NSF application for program development, he now "caution[ed]" Burton not to advertise the pursuit of a cyber security curriculum, explaining "the department" was not in support. (R. 53-4:2). Of course, Chair Caywood's gaslighting greatly embarrassed Burton, as he copied Dean Throop on the letter, and it made Burton look like a rogue professor. (R. 37-5:3).

In January 2013, Burton became eligible for tenure, and so applied. (R. 45:8, ¶ 28). Chair Caywood did not support her tenure bid. (R. 36:9, ¶ 25; R. 40:79, l. 5-9; R. 48:15-17 (Chair Caywood explaining, "Women do not belong in the criminal justice field.")). Despite Chair

Caywood's efforts to derail Burton's campaign, on August 21, 2013, Burton's tenure bid was ultimately successful. (R. 45:8, ¶ 28).

On March 28, 2013, while she attempted to get her tenure despite being opposed by the CJ Chair, Burton complained that Chair Caywood was treating her unfairly, both in retaliation for the reporting incident described above and as part of his generally sex-unequal campaign. (R. 101-21:1 (explaining Burton's grievances against Chair Caywood)). On April 12, 2013, a hearing was held and the grievance committee found that Chair Caywood had "serious[ly] mishandled" the student complaint and punished Burton for her report, and showed an "appearance of favoritism toward one of Burton's male colleagues… [and] some lack of support for Dr. Burton." (R. 101-21:1). The committee recommended, in pertinent part, that the Dean of the College of Liberal Arts and Education write a letter to AT&T to restore Burton's professional reputation, that the Criminal Justice department take steps to resolve the dysfunction within the department and take advantage of Burton's willingness to be more actively involved in the hiring of new faculty members. (R. 101-21:2). As discussed *infra*, however, Burton was nonetheless excluded from all the search and screen committees formed for the Fall of 2014. (R. 43-6). Although they were not paneled to do so, the committee further recommended a course of action for the solicitous note-writing professor, Dr. Gibson, because his actions were "so egregious." (R. 53-32:1). The administration did not respond to or act on the grievance committee's findings and recommendations.

On July 10, 2013, Chair Caywood was removed from his position as departmental chair, and replaced by Mike Dalecki (hereinafter, "Chair Dalecki"). (R. 37-9:1). Chair Dalecki noted, "Tom [Caywood]'s removal and my replacing him was a tacit if not overt admission that at least some of her (Burton's) complaints were likely valid." (R. 34-2:4). In Dean Throop's internal

notes, she remarked that Chair Caywood had, indeed, "exacerbated the problem by publicly chastising Burton for going around him," with regard to reporting the solicitous note incident. (R. 42:106, l. 22-25, p. 107, l. 1-5). On August 13, 2013, Burton filed a discrimination charge with the Equal Rights Division ("ERD") alleging that Dean Throop and Chair Caywood had retaliated against her and that the university had failed to address her grievances regarding this retaliation as well as the sex discrimination in the CJ department. (R. 54-1). In a meeting with Chair Dalecki on October 17, 2013, he indicated that the Dean may not have confidence in Burton's ability to serve as chair in the future based on her complaints, although he conceded that if he "had [] experienced what she had experienced, [he] might have felt little alternative other than complaining to higher-ups" as well. (R. 34-2:3-4). He contrasted Burton's complaints to being a "team player" and being "someone [they] could trust." (R. 34-2:4).

On November 6, 2013, Burton complained that the administration had failed to follow the proper procedures as outlined in Faculty Bylaws (Part III, Article 1) when it replaced Chair Caywood with Chair Dalecki. (R. 53-33; R. 53-17). On December 2, 2013, a hearing was held, and the grievance committee found that the chair selection had not been consistent with university policy. (R. 53-17:1-2). Despite the grievance committee's findings, it only required that the proper procedure should be followed in appointing the next department chair. (R. 53-17:2).

Throughout 2013, the CJ department was patently dysfunctional, and undergoing administrative changes in an attempt to get it performing better. (R. 53-17:2; R. 101-21:1). The grievance committee recommended communication training. (R. 101-21:2). Human resources recommended diversity and harassment training. (R. 53-36; R. 48:17, l. 14-22). The upper administration encouraged hiring outside consultants to assist with conflict resolution in the

department. (R. 101-7:1). The mandatory communication training was never conducted, nor was diversity and harassment training, and outside consultants were never retained. (R. 47:18, l. 10-18 (Stackman indicated that she did not recall any conversations at the department level about communication or conflict resolution training); R. 48:17, l. 23-15, p. 18, l. 1-2 (Lohmann indicates that he did not take any steps to implement diversity and harassment training, nor was he aware if any such training was ever provided)).

Despite the foregoing, Burton persisted in excelling within the CJ department in the Fall of 2013. She oversaw the only successful faculty search that produced two new hires. (R. 39:483, l. 18-25, p. 484, l. 1-2). She taught more courses than required without any increase in her salary. (R. 39:438, l. 11-25; 439, l. 8-12). Her course evaluations were excellent. (R. 41:159, l. 1-21). Her relationship with other colleagues has remained collegial. (R. 46:8, l. 2-10 (a colleague describing her relationship with Burton as "good" and "collegial"); R. 47:21, l. 3-12 (a colleague describing Burton as "happy-go-lucky").

In July of 2014, Burton asked to teach in the online graduate program. (R. 34-4:2). Chair Dalecki said he would not allow her to do so because he anticipated the student minimum would not be met. (R. 34-4:1). However, the agreement for online course development does not indicate that a student minimum applies. (R. 53-2). He also said he did not want her teaching it as part of "load," although numerous other professors had done so. (R. 34-4; R. 46:24, l. 11-14).

On October 20, 2014, Burton filed a charge with the EEOC complaining about the ongoing discrimination and retaliation that she was experiencing at UWP. (R. 54-2). The following week, on October 28, 2014, Dean Throop sent Burton a Letter of Direction ("LOD") complaining about Burton's "activities." (R. 37-15:4-6).

- The LOD complained first about Burton's having made accusations about Chair Dalecki without factual support or specificity. (R. 37-15:4). Yet, Burton made her allegations specifically in a series of emails she sent prior to the LOD. (R. 43-6:2; R. 53-13; R. 43-1:2-4). She could also have presented evidence at a hearing on the matter, if the administration had not delayed the hearing Burton then requested for many months, to the point of being rendered moot. (R. 43-12:6-7). Burton further contends, *infra*, that her complaint had been a protected activity.

- The LOD complained that Burton had written a departmental email "threatening" the investigation of allegations of departmental corruption. (R. 37-15:4; R. 37-14:1-2). But no reasonable reader would interpret Burton's email as a "threat." (R. 37-14:1-2, App. Ex. G). It is more of a conversation point or, liberally construed, a proposition. (R. 37-14:1-2). Burton further contends, *infra*, that this discussion on how to rehabilitate the broken CJ Department in light of the corruption had been a protected activity.

- The LOD complained that Burton had not given more time attending to the German delegation. (R. 37-15:4). But the German delegation was a guest of the department, and invited by the International Programs Office. (R. 41:127, l. 22-25; R. 101-13). Burton's mother was very ill during that time, and any time Burton spent was unpaid. (R. 34-3). Burton had already given a considerable amount of time, and allowed transportation, events, and meals to be paid for by her personal honorarium. (R. 34-3; R. 39:386, l. 5-16).

- The LOD complained that Burton had asked assistant professor Valerie Stackman to housesit for her. (R. 37-15:4-5). Stackman defended that Burton had just asked if she would be willing to watch the house if Burton needed to visit her sick mother. (R. 47:13-14). Stackman had

responded, "Sure," but did not end up housesitting for Burton. (R. 47:14, l. 11-12). When Stackman mentioned the possibility to Chair Dalecki in passing, he dissuaded her from helping Burton, saying that the house could catch on fire. (R. 47:14-15). Burton and Stackman had a friendly relationship outside of work, as Stackman had asked Burton and Burton's husband to stand as witnesses to Stackman's wedding. (R. 47:39-40). Stackman's deposition testimony indicated housesitting was not a big deal to her, as she had previously baby and house sat for colleagues. (R. 47:15, l. 4-10). However, Dean Throop was informed about, so she and Chair Dalecki made a big deal out of it, going so far as to use it as an explanation for their earlier decision to remove Stackman as Burton's mentee. (R. 53-37:3; R. 37-15:4-5). Lohmann indicated that, during his time as human resources director at UWP, he was not aware of any employee who was disciplined for asking a colleague to house sit. (R. 48:43, l. 2-6). Although Dean Throop's letter complained that Burton had had "other poor interactions" with Stackman, this assertion was never explained nor substantiated and, in fact, was directly controverted by Dr. Stackman's deposition testimony. (R. 47:31, l. 3-12). The LOD concludes by complaining that Burton complained about Stackman's wrongful removal as Burton's mentee. (R. 37-15:5; R. 53-37:2). Burton contends, *infra*, that complaining about disparate treatment and retaliation in this instance was a protected activity.

- The LOD complained that Burton had sent a terse email to a staff member. (R. 37-15:5; R 37-11 (the allegedly terse email), App. Ex. H). But Caywood had used equally terse tones in the past without reproach and English is not Burton's first language. (R. 53-29:2 (email from Dr. Caywood), App. Ex. I; R. 43-8:4; R. 34-2:3 (acknowledging a language barrier in reference to colloquialisms). A reasonable read of the email indicates that it was not of such a

deplorable character that it should result in a write-up. (App. Ex. H.) Further, the email was soliciting information to contest a departmental matter, which Burton contends, *infra*, is a protected activity.

- The LOD complained about a situation where Burton had complained that Assistant Professor Dr. Patrick Solar violated university policy in the process of creating a job advertisement. (R. 37-15:5). Solar admitted the violation, and Burton had indicated it may be included in his annual report as provided for in the Policies and Procedures for the Criminal Justice Department (effective August 22, 2011), which are designed to give probationary faculty members like Solar input to help put them in good standing when they become eligible for tenure. (R. 53-14:1-2). The LOD characterized Burton as having "threatened" Dr. Solar, but a reasonable read of the email results in a finding that it is, at worst, harsh, but true. (R. 37-15:5; R. 53-14:1-2).

- Finally, the LOD complained that Burton had told students they were not required to go to the department chair with certain kinds of complaints. (R. 37-15:5). However, university policy lists several appropriate persons to whom victims of sexual harassment may take their complaints. (R. 40:65-66; R. 53-23:1).

The LOD directed Burton, in effect, to sit down and shut up. (R. 37-15:5-6). Burton, however, declined to do so. (R. 37-15:7; R. 54-17:1).

On November 12, 2014, Burton filed a grievance against Dean Throop concerning the LOD. (R. 37-15:7). Burton requested a hearing on her grievance, and indicated in a rebuttal document that the LOD was based on complaints that were either not true or admonished her for exercising her own rights to engage in protected activities. (R. 54-17:2; R. 37-15:30-38). Burton

did not receive a timely grievance hearing so, in December, Burton filed a charge with the Equal Employment Opportunity Commission (EEOC), alleging that she had experienced intimidation and disciplinary action "[a]s a result" of filing her first charge of discrimination. (R. 37-15:23; R. 54-2).

On November 13, 2014, the day after Burton filed her responsive grievance regarding the LOD, Provost Den Herder said publicly at a departmental outing, "Sabina is all alone on a sinking ship." (R. 52:3-4, ¶¶ 17, 18). In late November, 2014, Chair Dalecki chastised the graduate student who reported Herder's statements to Burton. (R. 52:5, ¶¶ 24-29). This graduate student then lost his position due to "lack of funds." (R. 52:6, ¶¶ 31-32).

The following week, Dean Throop emailed Burton and said she had been anonymously "informed" that Burton had cancelled her last class of the semester to go to Germany. (R. 43-3:2). The email asked for no confirmation or explanation, instead threatening that the Dean would be pursuing disciplinary measures against Burton. (R. 43-3:2). However, there was no factual basis for this allegation and threat; the students confirmed their and Burton's attendance in that class. (R. 42:15 l. 22-25, p. 16, l. 1-2; R. 43-3:1; R. 42:124, l. 21-23). On January 5, 2015, in a formal UWS 6.01 Complaint, Dean Throop complained that Burton's reaction to her attack by soliciting her students' confirmation that she had held classes was sufficient grounds for Dean Throop's LOD and ensuing formal complaint about Burton. (R. 37-15:2-3). In her deposition on October 28, 2015, Throop indicated that CJ Professor Deborah Rice initially informed her that Burton had cancelled class. (R. 42:14, l. 6-25). Rice denied that she so informed Dean Throop. (R. 49:14, l. 8-23).

The hearing Burton had requested on her grievance concerning the LOD was repeatedly delayed for 11 months against Burton's wishes. (R. 54-17:3-4). Nearly a year after she filed her

grievance, on October 16, 2015, the grievance committee finally offered to schedule a hearing. (R. 54-17:4). By this time, Burton had hired counsel and filed the complaint in the instant matter and, on counsel's advice, did not avail herself of the hearing. (R. 1).

Having become a *persona non grata,* Burton was no longer allowed to participate in prestigious committee or chair assignments. (R. 37-13:3 (in an email dated December 10, 2012, Chair Caywood denied Burton's request to chair a search and screen committee); R. 41:35, l. 8-24 (Dalecki recounts refusing Burton's request to chair a search and screen committee for one even one of three new positions)). She was denied membership on multiple search and screen committees. (R. 37-13:3; R. 41:35, l. 8-24). Following this denial, Burton emailed Dean Throop on December 10, 2012, indicating that she believed she was being discriminated against based on her sex. (R. 37-13:2). Even though she was qualified, she was not considered for department chair because the administration perceived her asserting her rights as being combative. (R. 34-2:3-4).

There were also many petty slights along the way. She was called crazy. (R. 52:3, ¶ 14). CJ staff told students that "Burton would not be at UW-Platteville much longer." (R. 52:3, ¶ 11). The administration removed Burton's mentee but refused to give a reason; only months later was she given the housesitting pretext. (R. 53-37:3; R. 37-15:4-5). Her restorative justice assignment was taken away and given to a new hire. (R. 41:100, l. 2-5 (Dalecki indicates that Burton worked on restorative justice); R. 41:100, l. 7-16 (Dalecki indicates he assigned another CJ professor to restorative justice because he did not want to "overburden" Burton)). But serving on committees and performing mentorship responsibilities are necessary to support an application for academic promotion. (R. 41:30, 36).

On March 18, 2016, the district court issued an order granting summary judgment in favor of Defendants. (R. 90:26). The court first concluded that Burton's Title IX claim failed because Burton "failed to adduce evidence of a materially adverse action." (R. 90:19). In reaching this conclusion, the court considered only two potentially adverse actions: (1) Caywood publicly 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 cyber security program. (R. 90:14).

The court further found that Burton's Title VII claim failed. (R. 90:19-26). The court first determined that Burton's reporting of the note was not a protected activity under Title VII, because there was no employment relationship between the student and the professor. (R. 90:19-20). The court next considered whether Burton could state a Title VII claim based on retaliation following (1) her charge with the ERD on August 13, 2013, and (2) her charge with the EEOC on December 9, 2014. (R. 90:20). In making this consideration, the court only considered two potentially adverse actions: (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. (R. 90:21-22). The court determined that Dean Throop's Letter of Direction and formal complaint to the chancellor are materially adverse actions, but that there was no causal connection between these items and Burton's charges and lawsuit. (R. 90:23-25).

Burton herein appeals.

SUMMARY OF THE ARGUMENT

In granting the Defendants' motion for summary judgment, the district court failed to consider the entirety of the evidence in support of Burton's claim, instead focusing its consideration on a few, select events. Summary judgment is only appropriate where all of the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, 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). In this case, it was impossible for the court to have construed all the facts in a light most favorable to Burton, because it did not consider Burton's full account of the facts. Therefore, because the district court only considered a select, few events and usurped the role of the fact-finder, its decision granting Plaintiffs' motion to dismiss was in error.

STANDARD OF REVIEW

This Court reviews a district court's grant of summary judgment using a de novo standard of review. *Gross v. PPG Indus. Inc.*, 636 F.3d 884, 888 (7th Cir. 2011). That is, this Court will review the judgment "without deference for the view of the district judge and hence almost as if the motion had been made to [this Court] directly." *Tobey v. Extel/JWP, Inc.*, 985 F.2d 330, 332 (7th Cir. 1993) (*citing Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1188 (7th Cir. 1990)). In undertaking this review, this Court must "*examine the entire record* in the light most favorable to [the nonmoving party]." *Carothers v. Cnty of Cook*, 808 F.3d 1140, 1147 (7th Cir. 2015) (*citation omitted*). Summary judgment is appropriate only where there are no genuine issues of material fact, and judgment is required as a matter of law. Fed. R. Civ. P. 56(a).

ARGUMENT

For Burton's claims of retaliation under both Title IX and VII, she must produce evidence which, when viewed in the light most favorable to her, would permit a reasonable jury to find that: (1) she engaged in protected activity; (2) Defendants took an adverse action against her; and (3) there is a causal connection between the protected activity and the adverse action. *Milligan v. Bd. of Trs. of S. Ill. Univ.*, 686 F.3d 378, 388 (7th Cir. 2012). "The showing a plaintiff must make to set out an adverse employment action required for a retaliation claim is lower than that required for a discrimination claim; a plaintiff must only show that the employer's action would cause a 'reasonable worker' to be dissuaded from making or supporting a charge of discrimination." *Chaib v. State*, 744 F.3d 974, 986-987 (7th Cir. 2014) (*citing Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)).

1. The court erred by restricting Burton's protected activities, omitting her complaints about retaliation and discrimination

A. Activities Protected Under Title VII

Title VII prohibits employment discrimination based on sex. 42 U.S.C. § 2000e-2(a)(1). 42 U.S.C. § 2000e-3(a) defines a statutorily protected activity to include opposing a practice made unlawful by Title VII. Therefore, Burton participated in a protected activity anytime she "report[ed] or otherwise oppos[ed] conduct prohibited by Title VII" in this instance, employment discrimination based on sex. *See Gleason v. Mesirow Financial, Inc.*, 118 F.3d 1134, 1146 (7th Cir. 1997). Burton is not required to show that the conduct she opposed was in fact a violation of either statute, as long as her opposition was "based on a good-faith and reasonable belief that [she] is opposing unlawful conduct." *O'Leary v. Accretive Health Inc.*, 657 F.3d 625, 631 (7th Cir. 2011).

In granting summary judgment, the district court concluded that Burton did not participate in a protected activity under Title VII when she reported the solicitous note because "Burton was not opposing an unlawful *employment* practice." (R. 90:19-20). However, the district court found that Burton engaged in protected activity under Title VII when she filed a complaint with the Equal Rights Division (ERD) on August 13, 2013, alleging that she was discriminated against because of her sex. (R. 90:21). The district court also considered that Burton filed a charge of discrimination with the EEOC on December 9, 2014, alleging in pertinent part that she had experienced retaliation for engaging in activities protected under Title VII. (R. 90:21). The district court concluded that Burton had properly exhausted her administrative remedies for retaliation. (R. 90:21).

The district court did not consider whether Burton engaged in any other protected activities. (R. 90 at 20-21). However, the record in this case indicate that Burton had engaged in many other activities protected under Title VII:

- On December 10, 2012, Burton emailed Dean Throop, indicating that Chair Caywood was discriminating against her and other women in the CJ department on the basis of their sex. (R. 37-13:2).
- In March of 2013, Burton filed a grievance with the Complaints and Grievances Commission against Chair Caywood for retaliation on the basis of her sex that was heard on April 12, 2013. (R. 101-21).
- On June 6, 2014, Burton emailed the CJ department and indicated that Dalecki "artificially mark[ed] Burton lower on teaching performance" due to her sex. (R. 43-1:2).

- On October 20, 2014, Burton filed a charge of discrimination with the EEOC, alleging that she was discriminated against in violation of Title VII on the basis of her sex. (R. 54-2:1, 3).

Burton's March 2013 grievance and October 20, 2014, charge with the EEOC are undeniably protected activities. *See Tomanovich v. City of Indianapolis*, 457 F.3d 656, 663 (7th Cir. 2006) (*citing Gleason v. Mesirow Fin., Inc.*, 118 F.3d 1134, 1147 (7th Cir. 1997) (explaining that "filing an official complaint with an employer may constitute statutorily protected activity under Title VII" where the complaint "indicate[s] the discrimination occurred because of sex…"); *See Tomanovich*, 457 F.3d at 663 (noting that the filing of a charge of discrimination with the EEOC satisfies the requirement that the plaintiff engage in statutorily protected activity).

Although less formal, Burton's emails dated December 10, 2012, and June 6, 2014, which complained of sex discrimination, were additionally protected activities. *See Casna v. City of Loves Park*, 574 F.3d 420, 427 (7th Cir. 2009) (holding, "an informal complaint may constitute protected activity for purposes of retaliation claims"). In *Casna*, this Court noted with approval that other circuits have held that statutorily protected activity can include "voicing informal complaints to superiors." *Id*. (*quoting Hertz v. Luzenac Am., Inc.*, 370 F.3d 1014, 1015 (10th Cir. 2004) (*further citations omitted*).

In granting summary judgment and dismissing Burton's case, the district court did not consider the additional four activities, discussed *supra*. Therefore, it considered that Burton's protected activities did not begin until August 13, 2013 (with the filing of her ERD complaint), rather than eight months prior, on December 10, 2012 (with her first email to Dean Throop indicating that she believed she was being discriminated against on the basis of her sex). As

described *infra* in section 2, many of the adverse actions taken against Burton took place during this eight-month period. However, without acknowledgement that Burton's protected activities began on December 10, 2012, the analysis of adverse actions taken against Burton was improperly limited.

B. Activities Protected Under Title IX

Under Title IX, "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Although Title IX does not include a separate retaliation provision, "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). Therefore, a plaintiff engages in a protected activity under Title IX where she protests or opposes sex discrimination in an educational program or activity.

In deciding Defendants' motion for summary judgment, the district court "assume[d] without deciding that Burton engaged in protected activity by assisting the student who complained of harassment" on October 10, 2012. (R. 90:13). The district court also determined that Burton participated in a protected activity by filing her ERD charge on August 13, 2013, which alleged in pertinent part that Chair Caywood had retaliated against her for assisting the student with her complaint. (R. 90:21; R. 54-1:3). However, these were not the only protected activities that Burton engaged in under Title IX. Additionally:

- On November 17, 2012, in an email to human resources director Jeanne Durr, Burton requested a meeting to discuss what she described as retaliation by Chair Caywood for her reporting of the solicitous note. (R. 54-14).

- On December 10, 2012, in an email to Dean Throop, Burton indicated that Chair Caywood was retaliating against her for having reported the sexual harassment incident by (1) asking Burton to step down from a search and screen chair position she was given in the beginning of the fall semester, (2) denying her request to chair a separate search and screen. (R. 53-57:1-2).
- In March of 2013, Burton filed a grievance arguing, in pertinent part, that Chair Caywood retaliated against her for having reported the sexual harassment by withdrawing support for her cyber security initiatives just before Burton was scheduled to receive the AT&T grant. (R. 101-21:1). Given that UWP stopped supporting Burton's professional initiatives, Burton was unable to use the funds in a manner consistent with the grant's express terms, and the "bulk" of the grant remains unused. (R. 37-5:1; R. 37-6; R. 42:134, l. 21-25, p. 135, l. 1).

Under the same analysis as for Title VII, *supra*, these all constituted protected activities.

2. The court erred by restricting adverse actions against Burton to formal reprimands

The standard for materiality is the same in Title IX and Title VII claims. *See Lucero v. Nettle Creek Sch. Corp.*, 566 F.3d 720, 728-729 (7th Cir. 2009). In a retaliation claim, 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 City of Chi.*, 637 F.3d 729, 740 (7th Cir. 2011) (*citations and internal quotation marks omitted*). While "not everything that makes an employee unhappy" is an adverse action, "the definition of an adverse employment action is generous." *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)); *Chaib,* 744 F.3d at 982 (*quoting Nagle v. Vill. of Calumet Park*, 554 F.3d 1106,

1116-1117 (7th Cir. 2009); *see also, Johnson v. Cambridge Industries, Inc*., 325 F.3d 892, 902 (7th Cir. 2003) (recognizing the "more generous standard that governs retaliation claims").

In considering Burton's Title IX claim, the district court considered only two adverse actions against Burton – criticism for reporting the solicitous note incident and withdrawal of support for her cyber security initiative. (R. 90:14-15). Indeed, these were the two categories of adverse actions laid out in Burton's opposition to summary judgment. (R. 57:8-17). However, the record and Burton's pleadings are rife with other actions by Defendants that a reasonable factfinder could conclude might "dissuade [employees] from engaging in the protected activity." *Silverman*, 637 F.3d at 740 (*quoting Roney v. Illinois Dep't of Transportation*, 474 F.3d 455, 461 (7th Cir. 2007). The most egregious of these actions include:

- On October 16, 2012, Chair Caywood implemented a policy in response to Burton's reporting of the solicitous note. (R. 53-6). Chair Caywood announced this new policy at a departmental meeting during which he complained about the way Burton reported the solicitous note. (R. 38:261, l. 8-19; R. 42:106, l. 22-25, p. 107, l. 1-5). He later indicated he should, in retrospect, probably should apologize. (R. 40:50, l. 3-5).
- In November, 2012, generally, Caywood "publicly chastised" Burton for having reported the solicitous note to the administration and correspondingly showed "lack of support for Dr. Burton." (R. 42:106, l. 22-25, p. 107, l. 1-5; R. 101-21:1 (findings of UWP Complaints & Grievances Commission)).
- On December 10, 2012, Caywood denied Burton's request to chair a search and screen committee. (R. 37-13:3). In his deposition, Dalecki admitted that he refused Burton's request to chair a search committee for even one of three new faculty members. (R. 41:35, l. 19-24).

- On January 24, 2013, Chair Caywood wrote Burton a long letter to complain about the website she made with proposed milestones for a cyber security program, effectively shutting down her efforts to get grants and develop curriculum because he asserted "the department" was not in support of her efforts. (R. 53-4 (Chair Caywood indicated, "I'm not aware that the CJ Department approved a cyber security program or the development of one")). Chair Caywood's letter came three months after Burton showed him the webpages; in the interim had been the solicitous note-reporting incident and his reprisal for her chosen course of action. (R. 53-22; R. 53-22; R. 53-29:1).
- On January 24, 2013, Dean Throop told Burton to stop talking about any cyber security program, even though these initiatives had previously been supported by Chair Caywood and the College Dean. (R. 37-7; R. 53-49:1).
- Between January and March 2013, Caywood publicly opposed Burton's bid for tenure. (R. 36:9, ¶ 25; R. 40:79, l. 5-9).
- On April 12, 2013, the grievance committee made findings that Caywood had favored one of Burton's male colleagues and shown her a lack of support. (R. 101-21:1). The administration ignored the findings and took no action. (R. 47:18, l. 10-18; R. 48:17-18).
- When Caywood was finally replaced by Dalecki as departmental chair, which Dalecki considered "a tacit if not overt admission that at least some of her (Burton's) complaints were likely valid," the tenor of Burton's treatment did not change, as she was now urged to drop an April 13, 2013, Equal Rights Division complaint about Caywood's mistreatment. (R. 34-2 (notes taken by Dr. Dalecki from mentoring meetings with Burton)).

- Further, when the administration did replace Caywood, it did so in violation of university policy and did not consider Burton. (R. 53-17:2). Burton complained, and the grievance committee determined she was right, but the administration again ignored Burton and the committee's findings. (R. 53-17:2 as to the committee's findings; R. 41:5, l. 8-14 (Dalecki served as interim chair from 2013 to 2015)).
- On August 7, 2014, Chair Dalecki removed Burton's assignment to mentor a young professor, Stackman, without explanation. (R. 53-37:2). In Dean Throops's October 28, 2014 Letter of Direction, Dean Throop indicated that Stackman was removed because Burton asked Stackman to house-sit and Burton engaged in "other poor interactions with" the mentee which Dean Throop did not describe. (R. 37-15:4-5). This reasoning is demonstrably pretextual, given that (1) this was not the reason given to Burton when her mentorship was initially dissolved (R. 53-37:2-3), (2) Stackman was unaware of any poor interactions between her and Burton (R. 47:31, l. 3-12), (3) Stackman and Burton had an extra-professional relationship in that Burton was invited to witness Stackman's marriage (R. 47:39, l. 25, p. 40, l. 1-2), and (4) housesitting for colleagues had never presented an issue for anyone other than Burton (R. 48:43, l. 2-6).
- On October 28, 2014, eight days after Burton's EEOC charge was filed, Dean Throop wrote Burton a Letter of Direction ("LOD") complaining about Burton's "activities." (R. 37-15:4-6). On November 12, 2014, Burton requested a hearing on a grievance she filed concerning the LOD that was never granted. (R. 54-17:2; R. 39:358, l. 9-18).
- On November 13, 2014, departmental colleagues and members of the administration were on an outing and said nasty things about Burton in front of a group of UWP

employees and students, which got back to Burton and was greatly embarrassing. (R. 52:3 ¶¶ 13-17).

- On December 16, 2014, Dean Throop accused Burton of having cancelled class and said she would be disciplined, without any investigation. (R. 43-3:2). When Burton shared this information with the students in the process of getting confirmation that she had, indeed, conducted class, Dean Throop used this response as something to hold against Burton and disciplined her. (R. 37-15:2).
- On January 5, 2015, Dean Throop's October 28, 2014, Letter of Direction was attached to and converted to a formal UWS 6.01 Complaint. (R. 37-15:1). The administration quickly responded to Throop, assigning an investigator by January 15, 2015, and tasking him to complete his report by February 2, 2015. (R. 42-77:2). The administration nonetheless delayed Burton's requested hearing on the Letter of Direction for 11 months, denying her due process on challenging Dean Throop's complaints. (R. 54-17:1, 4).

Considered in a light most favorable to Burton, this evidence establishes that Burton was subjected to a multitude of materially adverse actions beginning on October 16, 2012. Whether the reasons given for these adverse actions were pretextual or well-founded should have been left for a jury to decide.

In a Ninth Circuit case, the plaintiff filed the first of six formal complaints with the EPA's Office of Civil Rights in May 1979. *Yartzoff v. Thomas*, 809 F.2d 1371, 1373 (9th Cir.1987). Starting in August 1979, Yartzoff's supervisors transferred several job duties away from him and said he had become uncooperative. *Id.* Yartzoff filed two lawsuits in federal district court. *Id.* at 1373. The district court granted summary judgment against Yartzoff, which was overturned as to the retaliation counts on appeal. *Id*. The Ninth Circuit cautioned that the evidence of causal

connection was "weak," that the EPA had presented "strong evidence… showing legitimate reasons for its actions," but nonetheless held in Yartzoff's favor. *Id*. at 1378. It explained:

> Although the EPA introduced affidavits of co-workers attesting to Yartzoff's alleged uncooperative behavior, Yartzoff should be afforded an opportunity to cross-examine these individuals and allow the factfinder to weigh the evidence to determine whether the allegations of uncooperativeness were justified.

Id. at 1377-78.

That case is analogous to the instant case, except that there are many more adverse actions against Burton when the facts are construed in her favor. As with *Yartzoff*, Burton filed numerous complaints of discrimination and retaliation against her departmental superiors, starting in March of 2013, when Burton filed a grievance against Caywood for retaliation (R. 101-21). As in *Yartzoff*, superiors transferred several job duties away from Burton and said she had become uncooperative. (R. 43-6:1; R. 37-15:1). As *Yartzoff* was denied a reclassification to a higher GS level, Burton was denied the opportunity to meaningfully participate in departmental manners. (R. 43-6:1). Finally, the district courts in both cases failed to recognize that Burton and *Yartzoff* are entitled to have a *factfinder* weigh whether the reasons given for these adverse actions were pretextual or well-founded.

In the Eleventh Circuit, doctors employed at a Department of Veterans Affairs ("VA") hospital alleged that administrators created a retaliatory hostile work environment by spreading rumors about them, soliciting adverse reports about them from other employees, and warning others that the VA "would not settle frivolous complaints and lawyers would not run the hospital." *Gowski v. Peake,* 682 F.3d 1299, 1305 (11th Cir. 2012). On appeal, the Eleventh Circuit confirmed that judgment as a matter of law against the doctors was correctly denied. *Id.* at 1313. The court recognized that whether the harassment is "severe or pervasive" contains an objective and a subjective component. *Id*. at 1312. The Court recognized that this determination

can only be made by "looking at all the circumstances," and that, "[I]f there is substantial conflict in the evidence, such that reasonable and fair-minded persons in the exercise of impartial judgment might reach different conclusions, the motion [for judgment as a matter of law] must be denied." *Id*. at 1311-1312 (*citations and quotation marks omitted*).

Burton has put forward evidence of an unrelenting string of conduct that resulted in damage to Burton's career, as well as a hostile and uncomfortable workplace for Burton far beyond what is a fair or legal response to her asserting her own rights. Withdrawal of support from Burton's cyber security initiatives, as well as the removal or exclusion of Burton from department committees, mentoring opportunities, and the potential to serve as department chair, significantly limited Burton's career opportunities. Dean Throop's email to AT&T damaged Burton's reputation and potential ability to maintain and increase grants in the future. Burton has been inappropriately and professionally lambasted in front of peers and students alike. A reasonable jury could find that, taken together, these incidents were "more disruptive than a mere inconvenience or alteration of job responsibilities," which is necessary to establish materially adverse employment action. *Hobbs v. City of Chi*., 573 F.3d 454, 463-64 (7th Cir. 2009). For a jury to believe otherwise – that all those actions were mere "petty slights," "minor annoyances," and in the tenure of occurrences that "often take place at work and that all employees experience" – would be a best possible scenario for Defendants, but should not be decided as a matter of law. (R. 90:17).

Similarly, the court unfairly discounted the significance of the sudden withdrawal of support for Burton's professional project of assisting UWP in developing a cyber security program. Before the solicitous note incident, Burton was encouraged to use the April 2012 NSF grant application to prepare further applications. (R. 54-6:1). Chair Caywood had formally

endorsed the application, which listed Burton as the Project Director and was geared exclusively toward developing a cyber science B.S.N. degree and corresponding minor. (R. 53-49). When Burton fell out of favor with Caywood from the solicitous note incident, he pulled the plug on her by suddenly saying his "department" did not support her. (R. 53-4). This greatly undermined the work she had been doing thus far, and led to the end of her efforts to institute the program.

The district court in this case improperly curtailed the adverse actions that Burton experienced and substituted its judgment for the factfinder that the University "did not take any materially adverse actions against Burton." (R. 90:13). This conclusion, however, was made without the proper deference to the breadth of Burton's allegations through the course of litigation and, therefore, was fundamentally flawed. Burton's complaints have been ignored by UWP every step of the way, and she respectfully requests the opportunity to present them to a factfinder, as a reasonable jury may agree that UWP's actions against her were adverse in nature.

3. The court obliterated Burton's chance of showing a causal connection by wrongly circumscribing both protected activities and adverse actions, and ignoring evidence from which a reasonable jury could find that Plaintiff faced retaliation

A plaintiff in a retaliation case under Title VII or Title IX 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). She may show causation via circumstantial evidence, which 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).

Burton has presented evidence that, when viewed in a light most favorable to her, could allow a jury to conclude that the foregoing adverse actions had a causal relationship to her protected activities. The district court in this case took just a couple of Burton's protected activities, and just a couple of the actions against her, and found there was no evidence to support causal links between that very small sampling. However, a broader and fairer reading of these two categories would allow the following to be considered as evidence of the causal connection.

University administration failed to grant Burton timely hearings on her multiple grievances, failed to release results of the investigations, and failed to mediate. CJ Chair Dalecki encouraged Burton to drop the lawsuit. Burton was not considered for the department chair position when it became available because of her complaints. Dean Throop additionally developed a pattern of overreacting to situations involving Burton that caused Burton significant anxiety. This was particularly apparent when Dean Throop threatened to discipline Burton for allegedly cancelling class without first simply asking Burton about the unfounded anonymous report. It was also apparent when Dean Throop rashly suggested that the AT&T grant ceremony be cancelled at the last-minute because of some minor wording that needed revision in the draft press release.

Moreover, Dean Throop's listed concerns in her Letter of Direction and corresponding Complaint almost all concern complaints that Burton has made against UWP and its administration. Dean Throop ignored Burton's right to raise certain concerns to the administration. Moreover, the LOD and Complaint mischaracterizes Burton's actions as more serious than they were. For example, the LOD indicated that Burton "demand[ed]" that Dr. Stackman house-sit for her, and that Burton "threaten[ed]" Dr. Solar on his tenure application.

(R. 37-15:4-5). In reality, Burton only asked Dr. Stackman to house-sit if she had to go see her sick mother, and her email to Dr. Solar merely informed him that his violation of policy would be included in his annual evaluation (harsh, perhaps, but within the purview of official process). Additionally, Dean Throop's concern that Burton violated "standard operating procedure" by informing students to take certain kinds of complaints to someone other than the interim department chair was unfounded, because UWP policy indicates that students with such complaints can discuss them with the dean of academic affairs. (R. 40:65-66; R. 53-23:1).

It is against this backdrop that things unraveled for Burton at work, as she faced accumulating retaliation and poor treatment by Chair Caywood and, later, other members of the administration. This retaliation was not merely a result of her reporting of the solicitous note, as the district court would characterize Burton's argument. Rather, as Burton asserted her rights to be free from retaliation by Chair Caywood, those assertions themselves generated their own adverse reactions.

The district court further found "the timing of Throops's Letter of Direction also undercuts an inference of retaliatory animus," because "about six months passed between Burton's protected activity and Dean Throop's October 2014 letter of direction." (R. 90:25). However, this letter was not the first adverse action that Burton complained of, nor was the last protected activity from six months prior. In fact, only *eight days* passed between Burton's filing of a charge with the EEOC on October 20, 2014, and Dean Throop's Letter of Direction dated October 28, 2014. (R. 54-2:1; R. 37-15:4).

Indeed, according to Dean Throop, Chair Caywood "publicly chastised" Burton for her reporting of the note as early as November of 2012. (R. 42:106, l. 22-25). Moreover, "if the time interval standing alone is long enough to weaken an inference of retaliation, the plaintiff is

entitled to rely on other circumstantial evidence to support her claim." *Malin v. Hospira, Inc.*, 762 F.3d 552, 560 (7th Cir. 2014); *See also Juarez v. Ameritech Mobile Communications, Inc.*, 957 F.2d 317, 321-22 (7th Cir. 1992) (considering the timing of plaintiff's complaints together with other circumstantial evidence of retaliatory motive).

In the same way that Chair Caywood supported the development of a cyber security program before the solicitous note incident, but later acted like that was just Burton's private fantasy, the evidence can be interpreted to indicate that Dean Throop similarly changed her tone in response to Burton's protected complaints. For instance, at the onset of the solicitous note incident, Dean Throop took a stand and indicated that "such a note could be rightly interpreted as sexual harassment regardless of intent." (R. 36-5:6). Fast-forward to the depositions in this case, however, after Burton's formal actions against the University, and Throop dismissed the note as a "complaint of a biased student," adding, "It was not a sexual advance." (R. 42:114, l. 23-25, p. 115, l. 1-2).

Had the court not circumscribed the protected activities taken by Burton, as well as the adverse actions taken against Burton, it would have likely found that, taken in a light most favorable to Burton, a genuine issue of material fact exists as to whether there was a causal connection between them. Given this genuine issue of material fact, summary judgment was inappropriate, and the issue of causation should have been left for a jury to decide.

4. The court improperly drew factual inferences in favor of the party moving for summary judgment

Summary judgment is only appropriate where the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits show "there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The district court must construe all facts in the light most favorable to the

nonmoving party and draw all reasonable inferences in favor of that party when determining whether a genuine issue of material fact exists. *See Bombard v. Fort Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996).

Importantly, it was impossible for the district court to have construed all the facts in a light most favorable to Burton because the court did not consider Burton's full account of the facts. *See Simpson v. Merchants Recovery Bureau, Inc*., 171 F.3d 546, 551 (7th Cir. 1999) (explaining that the district court could not construe all facts in Simpson's favor where Simpson was "never afforded the opportunity to present her account of the facts"). *Simpson* differs from the instant case in that the *Simpson* court entered summary judgment sua sponte. *Id*. at 547. However, the court's failure to consider much of the record before it had the same impact at the district court's sua sponte grant of summary judgment in *Simpson* in that it prevented Burton from having her full side of the story be considered in the summary judgment proceedings.

The district court's findings of fact, descriptions of the incidents, and choice of wording all indicate that it drew many improper factual inferences, and failed to view the evidence in a light most favorable to Burton, which is required on summary judgment. For example:

- The district court indicated that Gibson properly apologized to the entire class concerning the solicitous note. (R. 90:3 (indicating, "Caywood . . . advised the professor to send an apology to the entire class, which he did"). This was contrary to the grievance committee's finding that Gibson's "apology" email "failed to debrief his class" and constituted a "reprehensible . . . version of slut-shaming." (R. 53-32:1).
- Similarly, the district court referred to Gibson as the "breach-experimenting professor," which resolved the factual question of whether the note was a "breach experiment" (even in light of obvious ludicrousness of this explanation from the record), rather than

resolving the factual question in Burton's favor that this was a legitimate and inappropriate faculty advance on a student. (R. 90:3; R. 53-32:1-2).

- In the context of discussing Chair Caywood's new policy on how complaints such as the note incident should be handled, the district court characterized such issues as "harmless matters." (R. 90:4). This characterization ignored Dean Throop's acknowledgment that "[the solicitous note] could well be a significant HR and Title IX issue." (R. 53-24:3).
- The district court characterized Burton's November 17, 2012, complaint against Chair Caywood as "ongoing bitterness." (R. 90:5). This characterization ignored Burton's actual complaint that she "fe[lt] retaliated against" by Chair Caywood based on her handling of the solicitous note. (R. 54-14).
- The district court consistently indicated that Burton merely "perceived" hostility and other negative actions towards her, indicating that it was not construing the facts in her favor. (R. 90:2, 4, 5, 7, 19). This ignored Dean Throop's indication that Chair Caywood's initial response to the note was "disturb[ing]," and Chair Dalecki's admission that Chair Caywood's removal was a "tacit if not overt admission" that Burton's complaints were valid. (R. 53-24:3; R. 34-2:4).
- The district court explained that Burton "is not immune from supervision and discipline." (R. 90:2). This ignored Burton's statutory right to be immune from discipline where it arises from her participation in statutorily protected activities. Moreover, there are no allegations that Burton has actually violated any university policy and, in this respect, Burton should be immune from discipline.
- The district court characterized Burton's grievances concerning Dalecki's violations of university policy and law as "disagreements" on various matters. (R. 90:8). In reality,

these grievances were a mechanism through which Burton lodged serious complaints arguing that her statutory rights to be free from discrimination and retaliation were violated.

- The district court determined that the graduate student who told Burton about the negative public comments made about her lost his position "because of insufficient funds." (R. 90:8). Had the district court construed the facts in a light most favorable to Burton, it would have considered that the lack of funds was pretextual, and a result of the student's having reported the negative things said about Burton to Burton.
- The district court unfairly characterized Burton's various issues with Dean Throop as a mere "conflict," which downplayed the seriousness of Burton's claims of retaliation and ignores the breadth of evidence on record. (R. 90:8).
- The district court concluded, "The record demonstrates that Throop had a factual basis for her conclusions" in the LOD. (R. 90:25). Even a cursory review of the record indicates that this was not the case. For example, the LOD indicated that Stackman was removed as Burton's mentee due to "poor interactions" between Stackman and Burton that Throop does not further describe. (R. 37-15:4-5). The record shows that Stackman is unaware of any such "poor interactions." (R. 47:31, l. 3-12). The LOD indicates that Burton had too-vaguely complained about Chair Daleckis' mistreatment of her. (R. 37-15:4). Yet, the record shows that Burton has clearly laid out her complaints on multiple occasions. (R. 43-6:1; R. 53-13). The LOD complained about an email that Burton "threatened" the investigation of allegations of departmental corruption. (R. 37-15:4; R. 37-14:1-2). However, the record reveals that this was merely a suggestion. (R. 37-14:1-2). The LOD indicated that Burton did not give enough time attending to the German

delegation. (R. 37-15:4). However, the record shows that the German delegation was invited by the International Programs Office, and was a guest of the department. (R. 41:127, l. 22-25; R. 101-13). The record further shows that Burton's mother was very ill that weekend, and any time she would have spent would have gone unpaid. (R. 34-3). The LOD indicated that Burton sent a terse email to a staff member. (R. 37-15:5; R. 37-11). However, a reasonable read of the email does not indicate it is of such a deplorable character that it should result in a write-up, and Burton is a non-native English speaker. (R. 37-11). The LOD indicated that Burton complained about a violation of university policy by Assistant Professor Dr. Patrick Solar. (R. 37-15:5). The record reveals that Solar admitted the violation, and Burton simply informed him that the violation may be included in the annual report on Burton's opinion of him, which she was required to file annually until he would become eligible for tenure. (R. 53-14:1-2; R. 34-1:8). The LOD finally indicated that Burton told students they were not required to go to the department chair with certain kinds of complaints. (R. 37-15:5). The record indicates that Burton's advice was in line with university policy. (R. 40:65-66; R. 53-23:1).

- The district court determined that "Caywood's public criticism of how Burton handled the student incident was not a materially adverse action." (R. 90:16). This was directly contradictory to Dean Throop's indication that Chair Caywood had "exacerbated the problem by publicly chastising Burton," as well as Chair Dalecki's indication that Chair Caywood's removal was "a tacit if not overt admission that at least some of [Burton's] complaints were valid." (R. 42:106, l. 22-25, p. 107, l. 1-5; R. 34-2:4).
- The district court indicated, "Federal courts do not second guess [internal business and personnel decisions] absent some evidence that the employer's decisions was 'completely

unreasonable.'" However, the proper standard for determining a motion for summary judgment asks whether "there is no genuine dispute as to any material fact." Fed. R. Civ. P. 56(a).

In light of these factual inferences, it is clear that the district court did not apply the proper standard in deciding Defendants' motion for summary judgment. It did not "resolv[e] all evidentiary conflicts in [Burton]'s favor and accord[] [Burton] the benefit of all reasonable inferences that may be drawn from the record." *Coleman v.* Donahoe, 667 F.3d 835, 842 (7th Cir. 2012). Therefore, this court should reverse the district court's grant of summary judgment and remand the case to be considered under the appropriate standard.

CONCLUSION

For the forgoing reasons, the District Court's grant of summary judgment should be reversed and this matter should be remanded to the district court for further proceedings.

Respectfully Submitted this 27th day of September, 2016

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 10,775 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011 in Times New Roman font, size 12.

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CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), counsel certifies that all material required by Circuit Rule 30(a) and (b) are included in the Appendix of Appellant

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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered with CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated this 27th day of September, 2016

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INDEX TO APPENDIX

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

SABINA BURTON,

Plaintiff,

v.

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

Defendants.

OPINION & ORDER

14-cv-274-jdp

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

Opening Brief
EXHIBIT A

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.[1]

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.

[1] 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.[2] 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 cyber-security 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

[2] 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.[3] 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,

[3] 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.[4] 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:

[4] 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.[5] 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

[5] 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 to 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.

1. 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/

_____

JAMES D. PETERSON
District Judge

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

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.

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

Opening Brief
EXHIBIT B

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.[1] 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.

[1] 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." *Obriecht 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.[2] 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

[2] 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/

_____
JAMES D. PETERSON
District Judge

Zupec – Exhibit A

Zimbra **burtons@uwplatt.edu**

Re: proposal

From : Elizabeth A Throop <throope@uwplatt.edu> Wed, Oct 10, 2012 05:12 PM
Subject : Re: proposal
To : Sabina Burton <burtons@uwplatt.edu>

Thank you, Sabina. We need to discuss the entire concept in much more depth with your colleagues, of course!

As for the student, I suggest that you direct that person to Artanya West, the dean of students. That seems to be where such things are going these days all over campus. Let me know if I can be of any help at all.

Best,
Liz

Dr. Elizabeth A. Throop
Dean, College of Liberal Arts and Education
160 Gardner
University of Wisconsin Platteville
1 University Plaza
Platteville, Wisconsin 53818-3099
608-342-1151
608-342-1409 (fax)
throope@uwplatt.edu

----- Original Message -----
From: "Sabina Burton" <burtons@uwplatt.edu>
To: "Elizabeth A Throop" <throope@uwplatt.edu>
Sent: Wednesday, October 10, 2012 5:01:44 PM
Subject: proposal

Hi Liz,

Just read up on some of the email exchange regarding the grant proposal. I totally understand your position. I feel a bit overwhelmed as well. I learned 2-3 weeks ago that the deadline for the Oct. proposal was Oct.14. Then Bob Roberts who has been working with me had a family emergency to attend to for several days and all efforts pretty much seized for that time being. Sponsored Office has also been swamped with grant writing requests and I didn't get much help from them either. Now Bob is back and I've been scrambling to get information together for the application. I do most of the work late at night as I don't want my classwork to suffer.

I very much hope we can put a solid grant application together in the next 1-3 months that will have a real chance of getting funded so we can be the first institution in the Tri-State area to implement cyber-security and homeland security. You may have noticed that I'm somewhat passionate about this idea. ;) I just don't want to miss this great opportunity for

our school. Thank you for your time and support in this matter.

On a different note, one of my student approached me today and showed me a note that she has received from one of our CJ faculty. It was an inappropriate note. I assume I'll talk to Tom about it? Or is it better to involve student affairs.

Thanks, Liz.

To: Chancellor Dennis Shields
From: Complaints and Grievances Committee
Re: Addendum to the Burton-Caywood Grievance
Date: April 17, 2013

Dear Chancellor Shields,
In the course of reviewing a complaint brought by Dr. Sabina Burton against Dr. Tom Caywood, specific information was discussed related to a third party. While the grievance committee was not paneled to determine a course of action related to this third party, his actions were so egregious that the committee felt compelled to provide this letter to your for review.

The Facts
On Wednesday, October 10, 2012, by his own admission, Dr. Lorne Gibson conducted a "sample breaching experiment" in two of his Criminal Justice research methods courses. In both cases, he approached a female student prior to the start of the lecture and handed her a note without saying a word. On the half-page of paper was a handwritten note :"call me tonight!!!642-0020" Dr. Gibson confirmed to his department chair, Dr. Caywood, that is indeed his personal cell phone number. The next day, upon learning from Dr. Caywood that one of the two women selected for this "experiment" had complained to another faculty member, Dr. Gibson emailed all his students in both sections an explanation of the events of the previous day. Included in this email were the following statements:

I would like to apologize to any students who weren't aware of the experimental nature of the note. I made a mistake in assuming it was easily apparent given the context of the lesson topic and how often I make fun of myself. I apologize to anyone who wasted time outside of class in reacting to my example, or for any anxiety it may have caused. Please do not feel compelled to identify yourself as one of the example subjects or groups.

Our Concerns (in ascending order of seriousness)

1. Dr. Gibson showed extremely poor judgment in conducting an in-class example of a study, *which purpose is to elicit strong, uncomfortable reactions in the participant*. The committee also questions Dr. Gibson's use of his personal number, as that had no relevance to the alleged purpose.
2. Dr. Gibson, it appears given his email of the following day, failed to debrief his class about the nature of this experiment. This is concerning for any first year research student and undermines Dr. Gibson's competence to teach research methods ethically and effectively.
3. Dr. Gibson's email is beyond reprehensible. Given the likelihood his note passing was witnessed by at least one other student, his "please do not feel compelled to identify yourself" comment rings hollow. He effectively "outted" the young women by his email, which he then compounds by suggesting they were too stupid ("I made the mistake of assuming it was easily apparent") and over-reactive ("anyone who wasted time outside of class"). This version of "slut-shaming" suggests Dr. Gibson has serious liabilities and lacks even a fundamental understanding of structural sexism.

Our Recommendations

1. Dr. Gibson should be required to attend instruction in maintaining an equitable and safe classroom for all his students
2. All of Dr. Gibson's lectures and "class-room activities" should be reviewed by the Criminal Justice Department for appropriateness.
3. Dr. Gibson should take a refresher course in professional ethics as it relates to research participants.

DS 245 5319

Chronological list of events in CJ since June 2012

Throop notes

1. Almost upon my arrival, I was involved in a grade dispute between Burton and Fuller regarding an on-line graduate student's final paper. I do not know why Caywood did not manage this conflict; I would expect a chair to be able to handle an issue like this.

2. In October 2012 Burton came to me with a student's account concerning Gibson, who handed the student a note (there was a picture) saying "Call me ☺" and his phone number. I do not know why Caywood did not manage this conflict, and indeed why he exacerbated the problem by publicly chastising Burton for going around him. When I discussed the matter with Caywood and Gibson, Caywood attempted to explain it away to me as a classroom exercise; Gibson attempted to instruct me on the use of "breach experiments" and claimed that the note was a breach experiment. It of course is NOT a proper breach experiment and was interpreted by the student as sexual harassment. Well-trained sociologists will demonstrate breach experiments by, for instance, walking into class wearing completely inappropriate clothing (a former [male] colleague has done breach experiments coming into class wearing a frilly wedding dress and snorkel fins and proceeds to conduct class as though there is nothing unusual).

3. In November 2012 Caywood came to me concerned about Burton's representation of her expertise to the Center for New Ventures as focused on cyber-security (she has no publications or demonstrable academic training in the subject) rather than confronting Burton himself. He brought me web pages Burton had created claiming that UW Platteville had a cyber-security program. He seemed unable to manage Burton's misrepresentations and drew me into what turned into a huge drama regarding a small grant awarded by the AT&T Foundation to fund—as it turns out—the non-existent CJ cyber-security program. Burton and Caywood kept drawing me into their problems.

4. In December 2012 and January 2013, in direct violation of State law concerning the hiring of newly retired annuitants, Caywood arranged for Lomax to teach in the Spring 2013 semester. State law does not permit any communication regarding a re-hire until 30 days (at that time; it is now 75 days) after the official date of retirement. Caywood knowingly altered the start date for Lomax to 31 days after his official date of retirement, in direct violation of the law and committing fraud. His illegal behavior resulted in Lomax donating his time to the university as a volunteer. When I confronted Caywood on this illegal activity, he laughed and said that's what you get when you deal with former law enforcement: "we know how to get around the law." I didn't think it was funny.

It was at this juncture that I became seriously concerned about Caywood's management of the Criminal Justice department. He seemed unable to perform at a minimally competent level given how frequently I was being called in to deal with major issues. He also seemed to be encouraging, or at least abetting, bad behaviors by his male colleagues Gibson and Dutelle (as will be seen below) and ignoring or denigrating the excellence work of his female colleagues.

5. For example, in April 2013, the Chancellor received an email from the director of a HR department at a DC-based defense contractor attaching an email thread in which Dutelle, who had been working with the department in placing CJ graduates into employment, was interpreted as asking for a bribe (Dutelle called it a "finder's fee"). While Dutelle, when confronted, denied that he was asking for a bribe, the defense contractor remained unconvinced. In the discussion with Dutelle and Caywood, held by Den Herder and myself, Caywood was highly defensive and castigated Den Herder and me for making him feel like a fourth-grader being summoned by the principal.

6. Caywood bypassed me and went to Den Herder to ask for a particular salary rate for an academic staff member in April of 2013.

7. In June 2013, Dutelle came to me very concerned about an academic staff member's behavior toward him, behavior that he had reported to Caywood and HR in February. Caywood did nothing about the behavior (neither did HR). While I do not have the full picture of what exactly transpired in the department last year between Dutelle and the (now former) academic staff member, I yet again was brought into an issue that a chair should have been handling. Ultimately I helped to convince the academic staff member that a resignation would be in the best interests of everyone.

I and HR had offered Caywood various opportunities for mediation between he and Burton—he declined all efforts to reach out to help him with conflict resolution.

Because of all of these issues, I was having serious concerns about Caywood's ability to lead the CJ department effectively without intensive management training for him. In early July 2013, Den Herder and I met with him to discuss the department in the previous year (I had had similar formal meetings with chairs throughout the year). We outlined the issues discussed above and explored with him how to resolve the problems. We offered to send Caywood to chairs' workshops, management training, or conflict resolution training. He refused to consider any of these options. I then said, "well, Tom, how do you plan to avoid having another year like the one we just finished?" He said "I will just hope for the best, I guess." I said "That troubles me a great deal. That can't happen." He said "Maybe it's time for new leadership." I said "Maybe it is. Are you stepping down?" "I guess so," he said. "Who would you suggest replace you as a temporary chair?" I asked. He suggested Mike Dalecki. Den Herder, Caywood, and I then went into a discussion of salary, duties, and how to handle the transition, all of which he agreed with. I sent an email to the department discussing the change in leadership once Dalecki agreed to take on the role; Caywood, in the meantime, sent emails painting the discussion in very different ways than either Den Herder or I recall it.

Caywood did behave relatively well during the transition but, from what I understand through forwarded emails by various members of the department, has been quite difficult and obstructionist in DRB and search deliberations and discussions.

With regard to elections, I will agree that an election should have been held in the summer before opting for an external candidate. I actually did not expect that Caywood would step down; I was very hopeful that he would have been willing to acquire the management skills necessary to allow the department to run at a minimally acceptable level. His resignation was something of a surprise, creating a leadership vacuum and an emergency due to his sudden resignation, and my examination of the governance documents covering this situation really didn't provide me with much guidance given that they do not seem to address 12-month positions. He certainly did not suggest that an election was necessary.

Since this body has already addressed the issue of chair selection through the Burton grievance, there is no need for additional deliberation on this matter.

Zimbra **caywood@uwplatt.edu**

Re: EMAIL UPDATE - Can we call a spade a spade?

From : Sabina Burton <burtons@uwplatt.edu> Thu, Jun 05, 2014 10:45 PM

Subject : Re: EMAIL UPDATE - Can we call a spade a spade?

To : Michael Dalecki <dalecki@uwplatt.edu>

Cc : Thomas E Caywood <caywood@uwplatt.edu>, Dana L Cecil <cecild@uwplatt.edu>, Steven Elmer <elmerst@uwplatt.edu>, Cheryl Fuller <banachoc@uwplatt.edu>, Lorne Gibson <gibsonlo@uwplatt.edu>, Joe Lomax <lomaxj@uwplatt.edu>, Rex Reed <reedre@uwplatt.edu>, Deborah L Rice <ricede@uwplatt.edu>, Edward Ross <rosse@uwplatt.edu>, Pat Solar <solarp@uwplatt.edu>, Sheri Kratcha <kratcha@uwplatt.edu>, Amy Nemmetz <nemmetza@uwplatt.edu>, Valerie Stackman <stackmanv@uwplatt.edu>, Diana Johnson <johnsondi@uwplatt.edu>

I plan to tell students the truth about what's been happening in the department. I would like to know how long Dutelle (who ironically wrote a book on "ethics") or Johnson knew they would be leaving before they told the department about their plans to do so. Both waited until the last minute to inform the department of their decision to depart, leaving their students (and us) hanging. I have never worked with such inconsiderate and unprofessional colleagues before. I think the students deserve to know who is responsible for the "train wreck" and put blame where blame is due. Our FI students were aggressively recruited into a program with, as confirmed by the recent reports, at least partially false information or intentional lack of information. Their prospect for being hired into an FI job after graduation is poor. Most states require CSIs to have LE field experience. Academies and police/Sheriff's departments train in fingerprinting, photography etc. in a much shorter time-span. Police officers can specialize in forensics in in-departmental training at low or no cost.

This "train wreck" shouldn't be our mess to clean up. FI students deserve to know what they are up against so they can make meaningful, informed career choices before it is too late for them to do so, before we take their money for a program we

know is flawed and understaffed. Let the students know who abandoned them and give them some options for moving forward into a field of study that has some hope of securing them a good paying job. My focus is on the CJ program. I recommend that the FI program be turned back into an emphasis and that we put our attention on restorative justice, cyber-crime/cyber-forensics, homeland security and white collar crime. We had two outside evaluators and nationally recognized (and not self-proclaimed!) experts with no personal stake in this department or program give us their "2 cents." Let's talk about their recommendations and how we can apply them to our department.

I would like to see an investigation into this matter. Dutelle and Johnson both leaving on short notice seems like a conspiracy to damage the department (and the students). I wouldn't be surprised if we get at least one more sudden "resignation" at the worst timing for students. As a public institution there really should be an investigation into potentially corrupt behavior that if substantiated would allow for legal remedies (e.g., tuition reimbursement for students who cannot continue their FI education as planned). As a parent of a student myself, I would want to know what is going on. I think the Attorney's General office would be a good institution to look into this mess.

Letting your employer know that you are leaving as soon as you accepted a new position is not just ethical but demonstrates professional courtesy and maturity. Ed Ross, who will be dearly missed by all of us, has been a great recent example (and he has not been kept out of his office because of giving notice!).

We wouldn't have a job without our students. Our actions or inaction affects their futures. Many of our students (and their parents) have made great sacrifices to be here. They don't deserve to pay the cost of some faculty selfishness or pettiness.

I must say I am very glad that my daughter chose a different program than FI ...

We have a chance now to make some difficult decisions and effect some changes for the better. Let's do it right this time. Let's start being transparent in our dealings. Let's keep open minds as we look to the future of our department. Let's work together for the good of the school and students. Let's follow policy. Let's follow policy and law. Let's use some good old common sense going forward. I have many ideas for moving past this point in our department's history. Most of my suggestions in the past have been ignored or have been thrown back in my face. I hope those days are behind me. I hope those of us remaining in the department can act like professionals.

My 2 cents ...

Sabina

----- Original Message -----
From: "Michael Dalecki" <dalecki@uwplatt.edu>
To: "Michael Dalecki" <dalecki@uwplatt.edu>, "Sabina Burton" <burtons@uwplatt.edu>, "Thomas E Caywood" <caywood@uwplatt.edu>, "Dana L Cecil" <cecild@uwplatt.edu>, "Steven Elmer" <elmerst@uwplatt.edu>, "Cheryl Fuller" <banachoc@uwplatt.edu>, "Lorne Gibson" <gibsonlo@uwplatt.edu>, "Joe Lomax" <lomaxj@uwplatt.edu>, "Rex Reed" <reedre@uwplatt.edu>, "Deborah L Rice" <ricede@uwplatt.edu>, "Edward Ross" <rosse@uwplatt.edu>, "Pat Solar" <solarp@uwplatt.edu>, "Sheri Kratcha" <kratcha@uwplatt.edu>, "Amy Nemmetz" <nemmetza@uwplatt.edu>, "Valerie Stackman" <stackmanv@uwplatt.edu>
Sent: Thursday, June 5, 2014 9:42:09 AM
Subject: EMAIL UPDATE

In this email:

DIANA JOHNSON LEAVING UW-PLATTEVILLE
PERSONNEL ISSUES AND SEARCHES
700-HOUR ACADEMY

****

DIANA JOHNSON LEAVING UW-PLATTEVILLE

In a move that surprised many of us, Diana Johnson resigned her position at UW-Platteville on June 4. She is moving to Milwaukee. We wish her the best as she moves on to a new stage in her life.

Obviously we have some position filling to do and work has begun on that. If you know of anyone who may be able to fill in for Diana's courses in the fall, please let me know.

****

PERSONNEL ISSUES and SEARCHES

Our next year promises to be busy from a personnel point of view. Here are the position openings:

Ed Ross (retiring December 2014)
Aric Dutelle (June 1 2014)
Diana Johnson (June 4 2014)

THROOP EXHIBIT UUU - 003

Zimbra **burtons@uwplatt.edu**

Info requested

From : Sabina Burton <burtons@uwplatt.edu> Tue, Oct 07, 2014 07:23 AM

Subject : Info requested

To : Deborah L Rice <ricede@uwplatt.edu>

Deb,

I need the following information for my complaint:

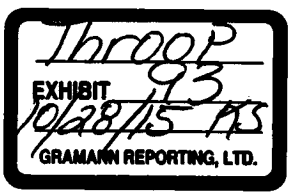
(a) Who authorized your directed study with Alex Marsh in Fall 2013?
(b) For how many credits did he signed up with you?
(c) Did Alex pass the study? What was his grade?
(d) What was the title of his paper/project? What was it for?
(e) Who was the project turned in to?
(f) Please provide me a copy of the paper of the directed study.

This is what I know: Alex told me that he is developing the itinerary for the German delegation's visit. He also wrote a letter for the Chancellor to officially invite the Germans. You never coordinated the project with me nor did you discuss it with me. You took over and I didn't spend much thought on the project teaching overload, grad. seminar and directed studies for other students.

Thanks for sending the info.

Sabina

Opening Brief
EXHIBIT H



THROOP EXHIBIT RRR - 001

Zimbra **burtons@uwplatt.edu**

Re: research methods

From : Sabina Burton <burtons@uwplatt.edu> Wed, Oct 17, 2012 12:09 PM
Subject : Re: research methods
To : Thomas E Caywood <caywood@uwplatt.edu>
Cc : Elizabeth A Throop <throope@uwplatt.edu>

Tom,

Alexandra approached me after my Wed. afternoon class at around 4:30 pm. After talking to her I checked to see if you were still in but you already left. I sent an email to Liz Throop at 5:01 pm in response to the grant proposal message that I got from her. I added toward the end that a student reported an incident with a faculty member to me, that I intended to report that to you, the chair, and if that was all I had to do. Liz emailed back that I should also refer the student to student affairs. This made sense to me as the sexual harassment training that I have received at my previous job mandated that in sexual harassment incidents involving faculty/staff & student we always had to get a student representative involved as well.

I talked to Aric Dutelle after 5:29 pm the same day. I wanted to talk to a friend as I was deeply concerned about the incident. It didn't make sense to me at all.

Next day I saw you first thing, talked to you in office 1166. You seemed surprised and shocked about the news. I'm very sure that I mentioned to you I would see student affairs next. I had no intentions of talking to anyone behind your back and was sure you wanted me to do the right thing.

I did not talk to Lorne. Frankly I didn't want to nor did I think it was my responsibility or necessary. When I was in the police academy a police instructor hit on me when I delivered something to his office. I was very upset then, felt vulnerable, and not taken seriously as a cadet. I reported the event to someone else but it was dismissed and not taken seriously. I can tell you it had an emotional impact on me. Whenever that instructor was around I was nervous and uncomfortable, even though he never made advances again. I never shot well when he was at the range and I'm sure my evals were lower because of the event. I can relate to Alexandra's discomfort.

I hope Lorne will understand that his poorly conducted "experiment" put me in a very uncomfortable situation. I feel used. I wish Alexandra hadn't come to me. She wouldn't have if Lorne had conducted his experiment professionally. I don't need and didn't ask for this stress in my life and in my working relationships. Perhaps you should ask Lorne to talk to me. It would be nice to get an apology from the highly

trained and qualified person whose lack of attention to detail and control of a poorly conceived and executed "experiment" has caused you to question my professionalism in this matter. It was Lorne's actions that started this mess, not mine. Until this event I had the highest regard and respect for Lorne and an apology will go a long way to restoring my respect for him. I would also like to know why Lorne did not obtain the required permissions for conducting experiments of this nature. Those permissions are required to protect people like Alexandra and myself from collateral damage such as we are now experiencing. This has strained my professional relationship with Lorne and has made you question my ability to handle these situations in the future. I acted in a professional manner in this experience and given similar circumstances in the future would do the same thing again.

I am ccing Dean Throop with my response.

Respectfully,

Sabina Burton

----- Original Message -----
From: "Thomas E Caywood" <caywood@uwplatt.edu>
To: "Sabina Burton" <burtons@uwplatt.edu>
Sent: Wednesday, October 17, 2012 8:42:23 AM
Subject: research methods

Would like a time line concerning Lorne's research class. What time did A. Zupec first contact you? Was it by phone or in person?
What time did you call Aric?
At what time did you notify the dean and possibly others about the note?
At any time did you contact or attempt Lorne to ask about the note?

Tom Caywood, Ph.D.
Chairman, Criminal Justice Department
UW-Platteville

UW-P 003363