



TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ <http://www.tea.state.tx.us>

Felipe T. Alanis
Commissioner of Education

MEMORANDUM

TO: Christina Comer, Director of Science
FROM: Ann Smisko, Associate Commissioner for Curriculum, Assessment, and Technology
DATE: June 12, 2003
RE: Letter of Reprimand and Notice of Disciplinary Probation

In accordance with OP 07-08, *Employee Disciplinary Actions and Complaint Procedures*, this disciplinary action is being issued due to your misconduct in connection with the performance of your professional duties (OP 07-08, Section 8(a)(4)).

As you know, the Internal Audit Division has been conducting an investigation into grants that were awarded by TEA to the Alamo Community College District (ACCD). As a result of the investigation, it was found that you accepted payments from the ACCD that were paid through two grants that you administered as part of your duties as the Director of Science: the Comprehensive Assessment Training in Science (CATS) grant and the UT Regional Collaboratives Grant (which was a subcontract between UT and the ACCD Science Center); and you accepted payment for work you performed on the Atlas project.

Some of the documents necessary to a complete investigation of these matters are currently unavailable due to the grand jury investigation involving the ACCD and the San Antonio Education Foundation (Foundation). For this reason, the Internal Audit investigation has not been concluded, and it will continue when additional records are released. This disciplinary action is based on information available at this time and the preliminary findings of the Internal Auditor.

Payments from CATS Grant and UT Subcontract

The internal auditor's review of payment vouchers at ACCD found a total of \$1,802 was paid to you from the CATS grant between November 6, 2000 and August 31, 2001 (in five separate payments). Three payments totaling \$760 were made to you from the UT subcontract between August 21, 2001 and January 12, 2002. The funds were designated as "Consultant Fees" on an ACCD form titled "Request for Consultant Services."

Your explanation for the payments was that they were reimbursements for expenses for trips made to work on the grant projects. However, you were unable to provide receipts for the reimbursed expenses including travel. You stated that you had not seen the "Consultant Services" forms, and that the forms had been signed on your behalf by an ACCD employee. You also stated that you were not aware that the travel expenses had been paid from the grants that you were responsible for administering. You indicated the ACCD Director had given you the impression that the expenses were paid by the Foundation, rather than by ACCD. However,

the payment vouchers clearly state "Alamo Community College District," and the voucher stubs specify a code for the source of funds.

If the money you received through ACCD from the CATS grant and UT Subcontract was payment for consulting services in connection with those grants, then the payments would violate Government Code § 572.051 and OP 07-04, *Agency Standards of Conduct and Conflicts of Interest*, and such payments would potentially violate §36.07 and §36.08 of the Texas Penal Code.

The agency does not yet have sufficient information to determine whether the payments in question were for consulting fees or travel reimbursements.

If the fees paid to you by ACCD were for travel reimbursements, these payments were received in violation of OP 08-08, *Travel Definitions, Regulations and Rules*. OP 08-08, Section 6 (j) provides:

- j. Reimbursements Not Payable. A traveling employee or official whose division has the responsibility for general or compliance monitoring, auditing, examining, or investigating of school districts and other entities that receive funds from the agency may not be reimbursed for travel expenses from those entities. In addition, a traveling employee or official whose division manages or administers or has the responsibility for auditing, examining, monitoring, or investigating a specific grant or contract may not be reimbursed for travel expenses from that particular grant or contract unless authorized by federal law. A traveling employee or official who violates this provision shall forfeit the reimbursed expenses to the state and will not be eligible to receive travel advances for the remainder of the fiscal year.

Payments Received for Texas Atlas Project

During the investigation, you disclosed that you were paid \$1000 for work performed on the Texas Atlas project. Materials developed by the Texas Atlas project were used in the CATS grant deliverables. Work performed by you consisted of writing an introduction for the Atlas and creating two charts used in the project. You stated that the \$1000 was paid by the Foundation. No receipts were found indicating the source of this payment.

You stated that you did not think that working on the Atlas project conflicted with your responsibilities as a TEA employee because you performed the work on your own time, and you believed that you had "creative" rights with respect to a technical paper you produced on personal time. In addition, you stated that you were asked to work on the Atlas project due to your expertise in the field and previous work on the national Atlas project.

Even if you worked on the Atlas project on your own time, accepting payment for work performed on a CATS grant deliverable constitutes a conflict of interest under Government Code § 572.051 and OP 07-04. In addition, you failed to submit a Disclosure Reporting Form for supplementary employment, as required by OP 07-04, Section 6.

This reprimand serves as notice to you regarding the necessity of full compliance with the agency's Standards of Conduct and Conflicts of Interest specified in OP 07-04, and the applicable state laws discussed above. You are hereby placed on disciplinary probation for a period of one year from the date of this memorandum. Any further violation of the agency policies and standards of performance addressed herein will result in disciplinary action up to and including termination.

The disciplinary actions being imposed are based on information and documentation available at this time. If evidence of any violations known or unknown at this time becomes available to the agency, further disciplinary action may be taken as warranted by the additional information.

Please sign below to acknowledge that you have received this Memorandum and that you are aware that it will be placed in your personnel file. Your signature does not indicate agreement with the contents of the document or the disciplinary actions imposed.

Chris Castillo-Corner

Signature

6/12/03

Date

Attachments: OP 07-04
Disclosure Reporting Form
OP 07-08
OP 08-08

cc: Harvester Pope, Senior Director, Division of Human Resources

MEMORANDUM

TO: Chris Castillo-Comer

FROM: Monica Martinez

DATE: February 23, 2007

RE: Letter of Counseling

This letter of counseling is being issued pursuant to Operating Procedure (OP) 07-08 and is intended to remind you of performance expectations related to your essential and non-essential job responsibilities. Over the past several months I have developed serious concerns regarding your job performance with respect your involvement with work outside the agency and failure to follow supervisory directives. In particular, I am concerned about the incidents listed below.

On the morning of November 16, 2006, I specifically asked you not to communicate with anyone outside the agency regarding the State Board of Education item on the fourth year of science requirements and asked that you notify George or me immediately if anyone, including board members asked you for information on this topic.

At 11:40 a.m. on that same morning you sent an email address to Texas Regional Collaborative members, TUSC, SESnet and other Earth Science Colleagues summarizing the SBOE meeting events of the previous day and attaching an email from Kenn Heydrick. This email was sent in direct violation of the directive not to communicate with anyone regarding these issues.

This constitutes insubordination as explained in the TEA OP 07-08 and will not be tolerated.

(3) Insubordination - Failure to follow a directive given by a supervisor or other agency representative who possesses the authority to give the directive; use of language or conduct that shows disrespect towards one's supervisor(s); acting outside the scope of one's authority.

I have become aware of your participation in a conference outside of Austin for which you did not seek prior approval as evidenced by three documents that indicate your participation at the Rio Grande Valley Science Association Conference on Saturday February 3, 2007. All travel whether agency funded or not, in which you represent the agency must be approved in advance. Additionally, as was explained in the work group meeting we had on February 16, 2007, all presentations must be approved by me prior to the presentation date.

During the week of February 12, you attended two off-site meetings for which no "Off-site Activity Request" was submitted. Please be reminded of division procedures that

require off-site approval for all meetings other than Student Assessment item review meetings (internals, externals, and data review).

It is very important that you understand and follow all directives given by division and agency leadership including but not limited to the following.

- You are not to attend or present at any meeting or conference, whether on your own time or on agency time, in which you represent the agency, attend as the Director of Science, or present on a science related topic unless you have obtained the appropriate prior approval.
- You are not to travel in-state or out-of-state to represent the agency as the Director of Science, whether on your own time or on agency time, unless you have obtained prior approval.
- When making any presentations, you are to obtain approval on the content prior to the presentation.
- You are not to communicate in writing or otherwise with anyone outside the agency in any way that might compromise the transparency and/or integrity of the upcoming TEKS development and revision process.

Please let me know if you have any questions about any information presented in this memorandum or any of the directives that have been outlined above.

Reynolds, Lizzette

From: Jackson, Sharon L.
Sent: Friday, October 26, 2007 11:23 AM
To: Reynolds, Lizzette
Cc: Lambert, Noell; Barnes, Susan; Martinez, Monica G.; Shindell, Tom
Subject: RE: Barbara Forrest in Austin 11/2

Good grief...I agree. I'll take care of this.

Sharon L. Jackson, Ph.D.
Texas Education Agency
Standards and Alignment
Phone: (512) 463-9483
Fax: (512) 475-2266

From: Reynolds, Lizzette
Sent: Friday, October 26, 2007 11:21 AM
To: Barnes, Susan; Martinez, Monica G.; Shindell, Tom; Jackson, Sharon L.
Cc: Lambert, Noell
Subject: FW: Barbara Forrest in Austin 11/2
Importance: High

Please see message below sent on TEA email. This is highly inappropriate and again, I believe this is an offense that calls for termination or, at the very least, reassignment of responsibilities.

I am requesting that Sharon and Monica immediately contact Chris Comer and tell her to retract this email or at least send a message to these people that what she did was an inappropriate use of her state email and that this is her personal opinion and not the opinion of the agency.

I am cc: Noell because this is something that the State Board, the Governor's Office and members of the Legislature would be extremely upset to see because it assumes this is a subject that the agency supports.

Team, I don't know what previous actions have been taken with respect to her conduct as a state employee but it is my understanding that this is a frequent issue.

I am out today sick but am asking your support in resolving this very critical set of circumstances.

Lizzette

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

From: Comer, Chris
Sent: Friday, October 26, 2007 9:49 AM
To: STATBOD@googlegroups.com; Kamil Jbeily; 'Carol Fletcher'; 'Kevin Fisher'; 'texasearth@googlegroups.com'; Day,

12/13/2007

Martinez, Monica G.

From: Reynolds, Lizzette
Sent: Friday, October 26, 2007 11:21 AM
To: Barnes, Susan; Martinez, Monica G.; Shindell, Tom; Jackson, Sharon L.
Cc: Lambert, Noell
Subject: FW: Barbara Forrest in Austin 11/2
Importance: High

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

From: Comer, Chris
Sent: Friday, October 26, 2007 9:49 AM
To: STATBOD@googlegroups.com; Kamil Jbeily; 'Carol Fletcher'; 'Kevin Fisher'; 'texasearth@googlegroups.com'; Day, Gina; Harris-Lawrence, Julie; 'BTenBrin

Cc: Pickhardt, Irene
Subject: FW: Barbara Forrest in Austin 11/2

FYI

Chris Castillo Comer
Director of Science
Texas Education Agency
1701 N. Congress Ave.
Austin, TX 78701-1494

chris.comer@tea.state.tx.us

Ph: 512-463-9581
Fx: 512-463-8057

Please join our listserv @ www.tea.state.tx.us/list and click on "science"

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

From: Glenn Branch [mailto:glenn.branch@tea.state.tx.us]
Sent: Tuesday, October 23, 2007 7:09 PM
To: Glenn Branch
Subject: Barbara Forrest in Austin 11/2

Dear Austin-area friends of NCSE,

I thought that you might like to know that Barbara Forrest will be speaking on "Inside Creationism's Trojan Horse" in Austin on November 2, 2007. Her talk, sponsored by the Center for Inquiry Austin, begins at 7:00 p.m. in the Monarch Event Center, Suite 3100, 6406 North IH-35 in Austin. The cost is \$6; free to friends of the Center.

In her talk, Forrest will provide a detailed report on her expert testimony in the Kitzmiller v. Dover School Board trial as well as an overview of the history of the "intelligent design" movement. Forrest is a Professor of

Philosophy in the Department of History and Political Science at Southeastern Louisiana University; she is also a member of NCSE's board of directors.

For further details, visit:

http://www.centerforinquiry.net/austin/events/barbara_forrest_inside_creationisms_trojan_horse_lecture/

Sincerely,

Glenn Branch
Deputy Director
National Center for Science Education, Inc.
420 40th Street, Suite 2
Oakland, CA 94609-2509
510-601-7203 x305
fax: 510-601-7204
800-290-6006

<http://www.ncseweb.org>

Not in Our Classrooms: Why Intelligent Design Is Wrong for Our Schools

<http://www.ncseweb.org/nioe>

Eugenie C. Scott's Evolution vs. Creationism

<http://www.ncseweb.org/evc>

NCSE's work is supported by its members. Join today!

<http://www.ncseweb.org/membership.asp>

Martinez, Monica G.

From: Comer, Chris
Sent: Friday, October 26, 2007 9:48 AM
To: 'Glenn Branch'
Subject: RE: Barbara Forrest in Austin 11/2

Thanks so much Glenn,
I will help get the word out.
CC

Chris Castillo Comer
Director of Science
Texas Education Agency
1701 N. Congress Ave.
Austin, TX 78701-1494

chris.comer@tea.state.tx.us

Ph: 512-463-9581
Fx: 512-463-8057

Please join our listserv @ www.tea.state.tx.us/list and click on "science"

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

From: Glenn Branch [mailto:branch@ncseweb.org]
Sent: Tuesday, October 23, 2007 7:09 PM
To: Glenn Branch
Subject: Barbara Forrest in Austin 11/2

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For further details, visit:
http://www.centerforinquiry.net/austin/events/barbara_forrest_inside_creationisms_trojan_horse_lecture/

Sincerely,

Glenn Branch
Deputy Director
National Center for Science Education, Inc.
420 40th Street, Suite 2
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Eugenie C. Scott's Evolution vs. Creationism <http://www.ncseweb.org/evc>

NCSE's work is supported by its members. Join today!
<http://www.ncseweb.org/membership.asp>



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Robert Scott
Commissioner

MEMORANDUM

TO: Susan Barnes

THROUGH: Sharon Jackson *[Signature]*

FROM: Monica Martinez *[Signature]*

DATE: November 5, 2007

RE: Proposed Disciplinary Action

HUMAN RESOURCES
11/6 PM 4:08

In accordance with OP 07-08, *Employee Disciplinary Actions and Complaint Procedures*, I propose to terminate the employment of Chris Castillo-Comer due to misconduct and insubordination. Ms. Comer has engaged in a series of incidents evidencing a serious lack of good judgment and failure to follow agency policies and supervisory directives.

Ms. Comer is employed as the Director of Science in a Manager III level position. As the Director of Science, Ms. Comer should understand that it is her job to explain law and rule regarding the science Texas Essential Knowledge and Skills (TEKS), but not cross the line into providing guidance or opinions about instructional methodology or any other matters about which we have no statutory authority. It is crucial for Ms. Comer to exercise good judgment and the utmost care when sharing information regarding science education in Texas whether orally or in writing. It is also essential that Ms. Comer support the integrity of the upcoming TEKS development and revision process and ensure that it does not appear in any way that she is advocating for any given position or stance. Ms. Comer should be well aware of her role in the TEKS revision process and the need to maintain neutrality based on the guidance provided by agency management and division procedures as well as numerous meetings and discussions on this topic.

The following summarizes Ms. Comer's recent history of performance problems and the incidents giving rise to this proposed action. On February 23, 2007 Ms. Comer was given a Letter of Counseling due to concerns about her involvement with work outside the agency and failure to follow supervisory directives. The Letter of Counseling included the following directives:

- You are not to attend or present at any meeting or conference, whether on your own time or on agency time, in which you represent the agency, attend as the Director of Science, or present on a science related topic unless you have obtained the appropriate prior approval.

- You are not to travel in-state or out-of-state to represent the agency as the Director of Science, whether on your own time or on agency time, unless you have obtained prior approval.
- When making any presentations, you are to obtain approval on the content prior to the presentation.
- You are not to communicate in writing or otherwise with anyone outside the agency in any way that might compromise the transparency and/or integrity of the upcoming TEKS development and revision process.

On October 9, 2007, it was reported that Ms. Comer stood up in front of the Texas Regional Collaboratives Science Directors, who represent educators from all over the state, and said that Robert Scott was only Acting Commissioner and that there was no real leadership at the agency. This comment demonstrates a serious lack of judgment and constitutes misconduct as defined in OP 07-08, Section 8(a)(4).

(4) Misconduct - Improper, unacceptable, and/or unlawful behavior. Some examples of misconduct include:

(p) Conduct that negatively impacts TEA.

On October 26, 2007, Ms. Comer forwarded an email from her TEA email account to a group of people, including two external email groups, that announced a presentation on creationism and intelligent design entitled "Inside Creationism's Trojan Horse". The email states that the speaker is a board member of a science education organization, and the email clearly indicates that the group opposes teaching creationism in public education. Sending this email not only demonstrates a serious lack of good judgment, it also violates the directive Ms. Comer was given not to communicate in writing or otherwise with anyone outside the agency in any way that might compromise the integrity of the TEKS development and revision process. This constitutes misconduct in violation of OP 07-08, Section 8(a)(4)(p) as well as insubordination as defined by OP 07-08, Section 8(a)(3).

(3) Insubordination - Failure to follow a directive given by a supervisor or other agency representative who possesses the authority to give the directive; use of language or conduct that shows disrespect towards one's supervisor(s); acting outside the scope of one's authority.

When Dr. Jackson asked Ms. Comer about this situation, she replied that she was only forwarding information. However, the forwarding of this event announcement by Ms. Comer, as the Director of Science, from her TEA email account constitutes much more than just sharing information. Ms. Comer's email implies endorsement of the speaker and implies that TEA endorses the speaker's position on a subject on which the agency must remain neutral. Thus, sending this email compromises the agency's role in the TEKS revision process by creating the perception that TEA has a biased position on a subject directly related to the science education TEKS.

Ms. Comer's forwarding of this email not only violates an established directive, as stated above, it directly conflicts with her responsibilities as the Director of Science. In addition, Ms. Comer's

assertion that she sent the email innocently is itself unacceptable, as it indicates that she lacks an adequate understanding of TEA's role in the TEKS process and her appropriate role as the Director of Science.

On October 29, 2007 Ms. Comer attended a meeting at the Courtyard Marriot without submitting an off-site activity form or obtaining approval to attend the meeting. This violates the directive Ms. Comer was given not to travel in-state or out-of-state to represent the agency as the Director of Science, whether on her own time or on agency time, unless she obtained prior approval. This also constitutes insubordination pursuant to the TEA OP 07-08.

On August 14, 2007, Ms. Comer sent me an email stating that she had given a "verbal report sans slideshow" at a Texas Science Educational Leadership Association meeting. Ms. Comer said they wanted to post the presentation on their website and she was requesting approval of a PowerPoint presentation after the fact. Ms. Comer did not obtain prior approval to present at this meeting which violates the directives specified in the Letter of Counseling to obtain prior approval to make a presentation and prior approval on the content of the presentation. The fact that the presentation was made without back up slides does not exempt Ms. Comer from this directive. This also constitutes insubordination pursuant to the TEA OP 07-08.

Additionally, the PowerPoint slides submitted to me for approval after the fact include information about the SBOE TEKS review process for science that had not yet been confirmed by the SBOE and was therefore inappropriate to share. The slides also include comments on policy implications that are inappropriate for Ms. Comer to make. In addition, the presentation includes information on conceptual chemistry and physics courses, the inclusion of which could be viewed as Ms. Comer and/or the agency advocating for this teaching methodology. This demonstrates extreme lack of good judgment with respect to determining which information is and is not appropriate to share, and a lack of understanding of the impropriety of including such information in a presentation. The fact that Ms. Comer gave a presentation that included inappropriate content demonstrates that she lacks an adequate understanding of her appropriate role as Science Director.

Based on the reasons set forth above, I request that you approve this recommendation for the termination of Ms. Comer's employment. This action is necessary due to Ms. Comer's repeated incidents of insubordination, the seriousness of her misconduct, and the extent to which she has demonstrated poor judgment.

☒ Approved ☐ Disapproved

Date: Nov. 5, 2007

Susan Barnes

Susan Barnes

Associate Commissioner for Standards and Programs

Attachments: Letter of Counseling
Email from Chris Comer dated 10-26-07
Email from Chris Comer dated 8-14-07

Cc: Tom Shindell
Harvester Pope

HUMAN RESOURCES
November 8, 2007 PM 8:35
Texas Education Agency

Chris Castillo Comer

November 7, 2007

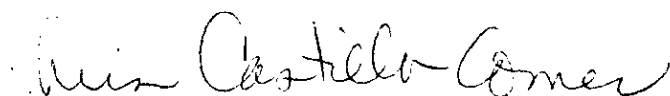
To Whom It May Concern:

I hereby tender this letter of resignation effective immediately. I would also like to take this opportunity to thank you for allowing me to serve as Director of Science for the children of Texas for nine plus years.

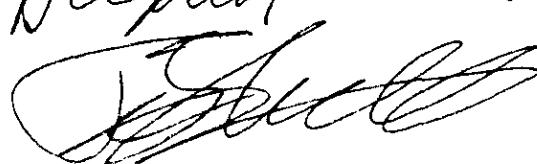
During this time, I served with honor and dignity. I feel that Texas has been a leader in science education around the country. Texas teachers and students have improved in their understanding of scientific knowledge and skills and continue to strive toward world class standards. It was always my goal to provide service to the state for good science and to treat everyone I came in contact with dignity and respect.

My sincere goal is for the further improvement of science literacy and the state of Texas. If there is anything I can ever do to bring that goal forward, please feel free to contact me in the future.

Sincerely,



Chris Castillo Comer

Accepted 11-8-07


Managers III
Res: 0456
CC: 210
B: 15

Budget
Harvester
Lisa

Payroll
Rachel
Patricia

11-9-07

Reynolds, Lizzette

From: Reynolds, Lizzette
Sent: Monday, December 03, 2007 8:04 PM
To: Ratcliffe, Debbie; Jones, Adam; Lambert, Noell
Subject: FW: Science

Now I'm getting emails on my personal address.

It makes me sick to think that people who know nothing about me are making assumptions based on speculation and a total disregard for the truth.

I can't just brush this crap off. I want to respond and tell them to leave me alone because they don't know me or what I believe....that I don't wear Laura Ashley high neck dresses....and that I don't carry the Bible to work.

Finally, I want them to know the truth about an employee who has no legal case against the agency because she abused her position for years.....

Just when I thought I could handle it, ignore the blogs and move on, this happens.....

I'll give it one more week. If this doesn't die down or I continue to be attacked by people who know nothing about me except that I worked for GWB, I want to issue a statement or something to clear my name. No one may care or ever print it but sitting by and letting this all go isn't my style.

Of course, your advice and counsel are appreciated.

Lizzette

From: Lizzette Reynolds, [REDACTED]
Sent: Mon 12/3/2007 7:47 PM
To: Reynolds, Lizzette
Subject: Fw: Science

----- Forwarded Message -----

From: Ted O'Loughlin <teddyo@excite.com>
To: lizzettereynolds [REDACTED]
Sent: Monday, December 3, 2007 1:55:21 PM
Subject: Science

Dear Mrs. Reynolds,

It has come to my attention that you advocate for the teaching of Intelligent Design, i.e. Creationism, as if it were science. It is not. And should not be taught as such to Texas students or any other students for that matter. Creationism/Intelligent Design if taught, should only be taught in theology or religious studies classes.

Creationism is based on faith. Science is not. The reason science works is because it can be proved and disproved. It can be tested. Now I know you'll probably tell me that it's just a theory and you'd be right.

12/13/2007

Reynolds, Lizzette

From: Reynolds, Lizzette
Sent: Wednesday, December 12, 2007 8:07 PM
To: Barbara Cargill
Subject: FW: ONE MORE BUZZ

From: David Reynolds [mailto:████████████████████]
Sent: Wed 12/12/2007 7:32 PM
To: Reynolds, Lizzette
Subject: FW: ONE MORE BUZZ

Bottom line:
 No one will read the whole story.
 They will remember the headline though.

December 12, 2007 6:37 PM

[Printable Version Of This Item](#)

COMER OUT ON A HISTORY OF PROBLEMS, NOT EVOLUTION

Poor documentation, not evolution, is the problem.

The only way the *Texas Education Agency* is going to get out of its current deep public relations pit is to hire a credible science director and do it quickly.

The quicksand only appears to be getting deeper on the agency's dismissal of its veteran science director **Chris Comer**, whose last damning sin appeared to be forwarding an e-mail on a lecture by an expert on the recent intelligent design debate. A memo at the time of her dismissal – which quoted a vague comment about then-Acting Commissioner **Robert Scott** in a conference session and a failure to get her speeches and PowerPoint presentations approved prior to conferences – appeared somewhat flimsy.

The media – and probably, more so, the science education community through its blogs – has jumped on the evolution angle of that final e-mail. It's provided great fodder for speculation, especially given that the current conservative bent of the *State Board of Education*. Now-Commissioner Scott keeps hinting to the media that Comer had a history of problems at the agency, but her personnel file offers up a vague answer on just what her work history was at TEA.

The only real way to get a sense of where TEA is headed is to see who is going to replace Comer and whether that process will be an open search for someone with credibility within the science community. Even there, the answer is murky. Agency types fear that this, too, will be misconstrued, so the best you get is a rather tepid quote from Scott.

"The science director's job is posted," Scott said. "We invite all qualified applications to apply. We want to hire a top science educator for this important position."

TEA's dismissal of Comer may or may not be related to Comer's pro-science pro-evolution stance. It's certainly allowed groups like the *Texas Freedom Network* to make hay over Comer's forced resignation and led to a letter to Scott this week from 100 rather unhappy professors protesting the possibility of intelligent design making its way into Texas science standards next year. Even worse, it's pushed Scott into a corner to make a statement that the agency needs to remain neutral on academic subject debates, which is all but impossible in most subject areas.

What is apparent is that the agency – if it did have a case -- bungled this firing. Comer was cited for making inappropriate off-the-kuff statements in her role as science director that were not sanctioned by the agency. She was reined in back in 2003 for accepting consultant fees off of a contract she managed for the agency. Neither of these offenses reflected well on Comer – and probably would have been an issue if they were persistent problems – but her personnel file is almost silent on the issue.

“I have rarely seen an agency mismanage terminating an employee as badly as these people have, especially in a state agency, where employees really don’t have due process,” said a representative with one of the teacher groups. “Now this story has a life of its own, and there’s nothing the agency can do except get pounded.”

So it’s important to review what is actually in Comer’s personnel file, slim as it is, before jumping to any conclusions. Comer starts out with excellence evaluations from her supervisor, then declining marks for her excessive absences from the office. The same comments, tantalizing vague, are repeated from evaluation to evaluation.

“During the next 12 months, a primary goal for Chris will be to create a more acceptable balance between the demands that require her to be out of the office and the need for time during the regular TEA day to be in the office,” wrote her supervisor **David D Anderson** in her 2002 review. “While Chris is responsible for developing her own schedule and for supervising the schedule of her assistant director, she must improve her efforts to communicate her schedule as well as changes in her schedule to division management.”

In 2003, Comer receives her most serious reprimand, from then-Associate Commissioner **Ann Smisko**. In most cases, the progression of discipline for an employee is a letter of counseling and then a letter of reprimand and then termination. In the June memo, agency officials have chosen a serious letter of reprimand to warn Smisko about accepting payments from the grants that she has been managing at the agency.

An internal audit by TEA noted that *Alamo Community College* paid Comer on a grant she managed, a kind of double-dipping that is prohibited by the agency. Comer insisted the payments were for travel expenses, although she could not provide receipts.

“You stated that you had not seen the Consultant Service forms, and that the forms had been signed on your behalf by an ACCD employee,” Smisko wrote of the payment. “You also stated that you were not aware that the travel expenses had been paid from the grants that you were responsible for administering. You indicated the ACCD Director had given you the impression that the expenses were paid by the Foundation, rather than ACCD. However, the payment vouchers clearly state Alamo Community College District, and the voucher stubs specify a code for the source of the funds.”

Smisko goes on to say that if Comer had accepted money through ACCD from the grant and subcontract as a consultant, it would be a violation of government code.

“The agency does not yet have sufficient information to determine whether the payments in question were for consulting fees or travel reimbursements,” Smisko wrote.

If this acceptance of outside pay had been willful – and not just a paperwork mistake – it would have been a violation of law. This would have been especially problematic to the agency because these funds, ultimately, were tied to grants that flowed through a math and science education program at *Alamo Community College* run by **Joan Drennan-Taylor**. TEA grant money flowed to this program to host conferences.

Drennan-Taylor was Comer’s former supervisor and one of three references on Comer’s original application to the agency. She was a co-host on TEA-funded conferences with Comer. She also was eventually convicted, in 2005, of embezzling almost \$1 million from the college district. Drennan-Taylor was sentenced to eight years in prison.

TEA likely had suspicions about just how much Comer benefited financially from her relationship to Drennan-Taylor, but they never tied down those suspicions with facts or documentation. As it says in the letter of reprimand about grant payments, “Some of the documents necessary to a complete investigation of these matters are currently unavailable due to the grand jury investigation involving the ACCD and the San Antonio Education Foundation. For this reason, the Internal Audit investigation has

not been concluded, and it will continue when additional records are released,” Smisko wrote. That, however, is the last mention of these documents in Comer’s personnel file. Comer was never implicated in Drennan-Taylor’s misdeeds. The agency took no further action. By the time any other infractions were filed against Comer, those who knew the Comer situation the best -- Anderson and Smisko -- had left the agency.

In the meantime, however, the agency did heavily tighten travel restrictions on all members of the Curriculum division shortly after the Comer letter of reprimand, limiting travel and requiring pre-approval for all trips. At the time, that policy was attributed to a tightened budget at the education agency.

More recently, under new supervisors, Comer got excellent reviews from her immediate supervisor in 2006, even better marks than her middle years at the agency. Nothing else problematic existed in her personnel file until 2007, when a letter of counseling is issued on Comer’s absences outside the agency and her remarks to various science educator groups on unresolved issues before the State Board of Education, including specifics on the new fourth-year science requirements.

In one incident in the letter of counseling, supervisor **Monica Martinez** notes that Comer was directed not to inform science groups of any unresolved specifics about fourth-year science. Only hours later, Comer sends a letter to various science groups on the subject.

“This e-mail was sent in direct violation of the directive not to communicate with anyone regarding these issues,” Martinez wrote, noting a subsection of Texas Education Agency’s operating procedures on insubordination.

The problems that the agency had with Comer -- too much time leading state groups, too much frank discussion on unresolved agency issues and too much unaccounted time away from the agency office -- are probably the same reasons why science educators are such fierce supporters of Comer. She has a reputation as a strong speaker and a direct leader who was especially forthcoming about problems surrounding science at the agency.

Nowhere in the file does it talk about Comer’s position on evolution. This may or may not have been a serious problem with agency staff. If they did, it would probably come out in some other type of documentation or discussions that have not been revealed to date. A session with the Curriculum staff last fall on taking no position on academic issues was intended to underline the fact that TEA staff members should be careful about interjecting their views into unresolved debates on academic subjects. Whether its evolution or grammar, that’s likely to present TEA with headaches. TEA’s curriculum leaders are experts in their fields. They wouldn’t be hired otherwise. They have opinions on their subject areas. It is clearly difficult to see their work -- or the work of a team of qualified educators -- overturned in what is often perceived in the academic community as a political vote of the SBOE that is based more on ideology than research.

Agency spokeswoman **Debbie Graves Ratcliffe** notes that it is important that TEA staff members maintain a professional demeanor in the curriculum drafting process. Staff members are expected to be facilitators, not participants.

“The curriculum staff members coordinate and facilitate the TEKS writing and adoption process, but teachers who are appointed to writing panels actually draft the curriculum standards and the State Board of Education adopts the standards,” Ratcliffe said. “The agency employees then work to implement the standards. The staff needs to remain impartial because they have to work with people on all sides of the issues, whether it is evolution and creationism or whole language and phonics.”

In firing Comer, TEA staff did execute within its own operating procedure. They did have the latitude to fire Comer in their final disciplinary action, but it was poorly executed and weakly credible with only limited documentation and bolstered by vague performance reviews.

As one teacher association lobbyist noted, the agency would have been better off to have drafted a memo at the time of any concern over Comer’s communications and comments and then executed on that memo.

“You’ve got to have a deal. Either you have a deal or you don’t have a deal, and everybody has to sign off on that deal. Otherwise, you don’t fire her,” said the lobbyist. “You put a memo in front of her and

you say, 'If you ever do this again, we're going to fire you.' And if she signs it, then that's a deal. If she does it again, then you have two options. You tell her, you can resign quietly and not talk about this, and we'll give you a fine reference letter, or we can fire you. That's the way you do it."

It would seem, at least in some camps, that the agency that deals with appropriate and inappropriate teacher hirings, simply didn't handle this firing well. Ironically, the Texas Education Agency is now run by two of the best-connected political insiders at the Capitol. Scott and Deputy Commissioner **Lizzette Gonzales Reynolds**, who worked in Education Secretary **Margaret Spellings'** administration. Both should know the meaning of political fall-out of firing an employee over such a contentious issue. In the meantime, other actions by the agency would probably be a more appropriate venue to determine whether TEA is going to shift from evolution to a more intelligent design curriculum. The choice of teacher members on the science *Texas Education of Knowledge and Skills* review panel – and which members of the SBOE nominated them – is one good clue. How the agency posts its *Request for Qualification* for a facilitator – and who is chosen -- to oversee the science TEKS process is another. And, most of all, the candidate who replaces Comer should be a good clue as to how the agency intends to maintain its neutrality on academic issues.

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From: qr@quorumreport.com [mailto:qr@quorumreport.com]

Sent: Wednesday, December 12, 2007 7:25 PM

To: David Reynolds

Subject: ONE MORE BUZZ

The Quorum Report website <http://www.quorumreport.com> has been updated.

COMER OUT ON A HISTORY OF PROBLEMS, NOT EVOLUTION

MCMURREY TO FILE FOR SENATE NEXT WEEK

Thank you for your interest!

If you want to be removed from this list, you can remove yourself online. You will need the following information which will be provided at the bottom of each email notification:

Email Address: [REDACTED]

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[REDACTED]

12/13/2007

OP 07-08 - EMPLOYEE DISCIPLINARY ACTIONS AND COMPLAINT PROCEDURES

1. Purpose. To publish guidelines for employee disciplinary actions and procedures for employee complaints.
2. Scope. This procedure applies to all employees of the Texas Education Agency (TEA) except those employees who serve as Directors I-V, General Counsels IV and V, Portfolio Managers III, and Chief Traders II. OP 07-21, Performance Appraisals, Disciplinary Actions, and Complaint Procedures Applicable to Directors I-V, General Counsels IV and V, Portfolio Managers III, and Chief Traders II, addresses disciplinary actions and complaint procedures for these employees.
3. Responsibility. The Division of Human Resources is the office of primary responsibility (OPR) for this procedure.
4. Nondiscrimination. TEA shall comply fully with the nondiscrimination provisions of all federal and state laws, rules, and regulations by assuring that no person shall be excluded from consideration for recruitment, selection, appointment, training, promotion, retention, or any other personnel action, or be denied any benefits or participation in any educational programs or activities which it operates on the grounds of race, religion, color, national origin, sex, disability, age, or veteran status (except where age, sex, or disability constitutes a bona fide occupational qualification necessary to proper and efficient administration).
5. Retaliation Prohibited. An employee who files a complaint pursuant to this OP shall not be retaliated against in any manner. Any employee who is found to have taken a retaliatory employment action will be subject to disciplinary action.
6. At-Will Status. TEA is an employment-at-will agency which means every employee serves at the will of the Commissioner and can be dismissed for any legally permissible reason. This OP and its implementation do not affect the employment at-will status of TEA employees, or otherwise create a property interest or contract right. Accordingly, this OP neither modifies the "at-will" status nor constitutes a contract of employment.
7. Probationary Period. All employees are initially hired on a probationary basis. The probationary period extends through the first 12 months of employment. Disciplinary actions may be taken during the probationary period without regard to progressive disciplinary considerations.
8. Disciplinary Actions.
 - a. Reasons for Disciplinary Actions. Disciplinary actions may be required for many reasons. Some, but not all of these reasons, are listed and defined as follows:
 - (1) Inadequate Job Performance - Job performance and/or productivity below that expected or required.
 - (2) Inadequate Job Knowledge - Demonstrated failure to possess or acquire the knowledge required to adequately perform the job.
 - (3) Insubordination - Failure to follow a directive given by a supervisor or other agency representative who possesses the authority to give the directive; use of language or conduct that shows disrespect towards one's supervisor(s); acting outside the scope of one's authority.
 - (4) Misconduct - Improper, unacceptable, and/or unlawful behavior. Some examples of misconduct include:

- (a) Physical or verbal abuse;
 - (b) Deliberately disrupting the normal office routine or the performance of other employees;
 - (c) Falsifying time or travel reports;
 - (d) Using the apparent authority of the agency for personal gain;
 - (e) Knowingly disclosing confidential information to an individual not authorized to receive it;
 - (f) Outside employment that constitutes a conflict of interest;
 - (g) Use of alcoholic beverages, controlled substances, inhalants, and illegal drugs/substances while on duty; or any other time if it affects the employee's behavior or performance on the job;
 - (h) Intentional falsification or misstatement of information on employment applications or other official government documents;
 - (i) Conviction of criminal offense;
 - (j) Unauthorized use of state property;
 - (k) Failure to report any conflict of interest;
 - (l) Inappropriate comments which would be construed by a reasonable person to be insulting or demeaning to others, including ethnic, racial, or sexual comments;
 - (m) Any form of sexual harassment;
 - (n) Misuse of work hours and/or leave time;
 - (o) Failure to follow or adhere to established policies of TEA; or established rules or procedures within the employee's division or office;
 - (p) Conduct that negatively impacts TEA;
 - (q) Refusal to fully participate in internal or external agency investigations;
 - (r) Failure to communicate with a supervisor or other authorized agency representative the current status of any medical condition which prevents attendance at work; and
 - (s) Failure to report leave time taken.
- (5) Unacceptable Absenteeism. Occurs when an employee is unable to adequately perform his or her job due to absenteeism, or when the normal day-to-day work activities of the office are disrupted due to an employee's use of unscheduled leave.
- (6) Unscheduled Leave. Any leave not approved in advance, other than sick or emergency leave, which creates a hardship on the employee's division and/or job functions.

- (7) Unauthorized Absence. An unauthorized absence occurs when an employee:
 - (a) Fails to report to work and does not promptly notify supervisor of acceptable reason for the absence; or
 - (b) Takes leave time without prior approval, or in cases of sick leave or emergency leave, without notifying the supervisor at the earliest practicable time.
 - (8) Unacceptable Tardiness. Habitual tardiness that causes the employee's productivity to suffer and/or places a hardship on the employee's division.
 - (9) Job Abandonment. Fails to report to work without prior approval for leave and does not provide notification regarding the nature of the absence or expected date of return within a reasonable period of time.
- b. Disciplinary Action Guidelines. Disciplinary action may be taken for employee actions or inactions which are unacceptable, unlawful, or not in compliance with TEA policies. Management is not constrained by these guidelines from taking any appropriate disciplinary action warranted by the unique circumstances concerning individual employees. No specific disciplinary action is a prerequisite for any other disciplinary action. The existence of any disciplinary process does not constitute an entitlement or right to such process.

The disciplinary action taken will be made on a case-by-case basis after taking into consideration:

- (1) The type and severity of the misconduct or performance deficiency involved;
 - (2) The degree to which the employee holds responsibility for his or her actions or behavior;
 - (3) The employee's work record (including any prior history of disciplinary problems);
 - (4) Any mitigating circumstances surrounding these situations; and/or
 - (5) The impact on TEA's missions.
- c. Types of Disciplinary Actions. Disciplinary action should be in keeping with the underlying reason for such actions. Where appropriate, progressive discipline will be used. In all cases, the disciplinary action will be designed to fit the individual circumstances and may include involuntary dismissal even though the misconduct or performance deficiency is a first occurrence. Types of disciplinary actions include, but are not limited to, the following:
- (1) Letter of counseling;
 - (2) Written reprimand;
 - (3) Adverse employment actions, which may include:
 - (a) Suspension with or without pay;
 - (b) Salary reduction;
 - (c) Transfer or reassignment;

- (d) Demotion; and
 - (e) Involuntary dismissal.
- d. Procedures for Adverse Employment Actions. The following procedural steps must be followed for recommended adverse employment actions, as defined in Section 8(c)(3), unless the Commissioner determines that exceptional circumstances require immediate action and/or deviation from these procedural steps. *For adverse employment actions originating out of the offices of the Commissioner, deputy commissioners, associate commissioners, or any other office not reporting to an associate commissioner, the procedures for adverse employment actions will be determined by the head of the office in question with the Commissioner reserving the right to make the final decision.*
- (1) Adverse employment actions must be initiated by the immediate supervisor through the division manager and next level manager, if applicable after consultation with the Division of Human Resources and legal review. Proposed adverse employment actions must be in writing and specify the acts of the employee constituting grounds for such discipline and the type of sanction being proposed. A draft of the proposed action should be forwarded to the Division of Human Resources for review.
 - (2) The proposed adverse employment action must be forwarded to the associate commissioner responsible for the division in question. Within 10 working days, unless agreed otherwise, the associate commissioner or the associate commissioner's designee must decide in writing whether to approve, deny, or modify the proposed adverse employment action. The associate commissioner may consult with the employee in question, the employee's supervisor(s), including the applicable coordinator, and other persons having relevant knowledge. If the associate commissioner approves or modifies the action, the Division of Human Resources and an appropriate supervisor will provide the employee written notice of the adverse employment action and inform the employee of the appeals process discussed below in paragraph 3.
 - (3) The employee may appeal the decision to the Commissioner. The appeal shall be processed pursuant to Section 9(d)(5) of this OP, titled "Formal Presentation - Step Four (FINAL)." This appeal must be in writing, stating all grounds for challenging the decision. It must be filed with the Commissioner's office within 5 working days from receipt of the notice described above in paragraph 2. A copy of this appeal must also be filed at the same time with *both* the manager of the Division of Human Resources and the agency's Chief Counsel.
- e. Procedures for Letters of Counseling and Written Reprimands. Letters of counseling and written reprimands may be issued by the employee's supervisor(s) whenever deemed appropriate.
- f. Administrative Leave or Reassignment. Employees may be placed on administrative leave with pay or reassigned pending approval of an adverse employment action or pending the outcome of proceedings brought under this OP. Such administrative leave or reassignment shall not be considered a disciplinary action.
- g. Dismissals for Non-Disciplinary Reasons. Reductions in force are non-disciplinary actions and will be conducted in accordance with OP 07-25, Reduction in Force.
- h. Entitlement to Terminal Leave Upon Dismissal. Employees who are dismissed for disciplinary reasons will have the leave available to employees who resign or who are otherwise terminated for non-disciplinary reasons.

- i. **Personnel Files.** Only final actions will become part of an employee's official personnel file. A letter of counseling is not considered a final action.
- j. **Employee Representative.** The employee may represent himself or herself or has the right to be represented by an individual of his or her choice. If the chosen representative is an employee of TEA, the representative must take annual or compensatory leave, or leave without pay, for the time used during work hours for such representation. The representative cannot claim the right to strike.

9. Employee Complaints on Conditions of Employment Other Than Claims of Sexual Harassment.

- a. The following complaint procedures are available to TEA employees with regard to complaints relating to conditions of their employment or disciplinary actions. Employees who are bringing a complaint regarding an adverse employment action, as defined by Section 8(c)(3), shall proceed directly to Step Three. The Commissioner reserves the right to deviate from these procedures when deemed appropriate. These procedures do not apply to sexual harassment claims, which are addressed by OP 07-29, Sexual Harassment.

For employee complaints originating out of the offices of the Commissioner, deputy commissioners, or associate commissioners, the procedure for employee complaints will be determined by the head of the office in question with the Commissioner reserving the right to make the final decision.

- b. Conditions of employment subject to these complaint procedures include treatment of employees, wages, hours, benefits, promotions, work assignments, or any other matter which is appropriate for communication between TEA and its employees.

Any employee who has a complaint related to any type of discrimination is encouraged to use the complaint procedures in this OP, as it may be the most efficient way for TEA and the employee to explore and resolve disputes. Using these internal complaint procedures will not prevent the employee from filing complaints of discrimination with the appropriate state or federal agency.

- c. Documents or information relating to complaints brought under this OP must be kept in separate files and do not become part of an employee's official personnel file or any personnel files kept in the employee's division.
- d. **Complaint Procedures.** The following procedural steps must be followed:
 - (1) **Informal Presentation.** At the earliest appropriate time, an employee should informally present to his or her supervisor(s) any problem or concern about employment conditions.
 - (a) If a complaint, either formal or informal, involves allegations of discrimination or harassment based on race, sex, religion, color, national origin, disability, age, or veteran status, the employee's supervisor shall refer the complaint to the EEO Coordinator. The EEO Coordinator shall investigate all complaints of illegal discrimination or harassment. See OP 07-17, Nondiscrimination.
 - (b) If any complaint, either formal or informal, involves allegations of unlawful conduct or serious misconduct on the part of TEA or a TEA employee (other than illegal discrimination or harassment), the complaint shall be referred to the Internal Audits Division for review and possible investigative action. Upon review, the internal auditor will either investigate the complaint or refer it back to the appropriate

supervisor. Upon conclusion of an investigation, the auditor will report the investigative findings to the appropriate supervisor for disposition of the complaint.

(2) Formal Presentation - Step One.

- (a) If informal resolution is not possible or successful, the employee may file a written complaint with his or her immediate supervisor within 10 working days from the occurrence of the events forming the basis of the complaint or the informal presentation of the complaint, whichever is later in time. The written complaint shall be submitted on a Grievance Form, and shall specify in detail the factual basis underlying the complaint and the relief being sought. The employee shall forward a copy of the written complaint to the Division of Human Resources.
- (b) Within 10 working days of receiving the written complaint, the supervisor must provide either a written response to the complaint or written notification stating that he or she will be unable to meet such deadline. If unable to provide a response within 10 days, the supervisor will indicate an approximate date when the employee may expect a response.
- (c) If the supervisor fails to provide a response or notification of extended deadline within 10 days, or fails to meet the projected timeline, the employee has the option of proceeding to the next step.
- (d) If the immediate supervisor is subordinate to the division manager, the employee shall repeat Step One.

(3) Formal Presentation - Step Two.

- (a) The employee may appeal the results of the supervisor's review to the next level manager by filing a written appeal within 5 working days of receiving the written response or within 5 working days of a lapsed deadline (as discussed in Section 9(d)(2)(b) above).
- (b) Within 10 working days, the Step Two manager must issue a written decision, unless a different time period is required and the employee is so notified. The manager may confer with the employee, the employee's supervisor(s), and any other persons having relevant knowledge of the situation.

(4) Formal Presentation - Step Three.

- (a) The employee may appeal the Step Two decision to the appropriate associate commissioner, if the Step Two decision-maker was a manager other than an associate commissioner, by filing a written appeal within 5 working days of receiving the Step Two response. If the Step Two manager was an associate commissioner, then the employee may proceed to Step Four.
- (b) Within 10 working days, the associate commissioner must issue a written decision, unless a different time period is required and the employee is so notified. The associate commissioner may confer with the employee, the employee's supervisor(s), and any other persons having relevant knowledge of the situation.

(5) Formal Presentation - Step Four (FINAL). The employee may file a final appeal to the Commissioner with a copy being sent to *both* the manager of the Division of Human Resources and the Chief Counsel of Legal Services. The appeal must be submitted in

writing within 5 working days of receiving the decision being appealed, and must describe the basis of appeal, the evidence supporting the employee's position, the previous efforts to resolve the complaint, and the relief sought. The Commissioner or the Commissioner's designee will determine on a case-by-case basis the appropriate process, if any, to use for the appeal.

- e. Status of Complaint After Termination or Resignation. If the remedy requested by the employee can reasonably be granted after the employment relationship has ended, then the former employee has the option of continuing the complaint process until its conclusion.

Bill Monroe
Chief of Operations

July 2, 2002
Effective Date

Grievance Form

MARTINEZ

AFFIDAVIT

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

CHRISTINA CASTILLO COMER
Plaintiff,

v.

ROBERT SCOTT, Commissioner, Texas
Education Agency, in his official
capacity and TEXAS EDUCATION
AGENCY,
Defendants.

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CA No. 1:08CV00511-LY

AFFIDAVIT OF MONICA MARTINEZ

BEFORE ME, the undersigned authority, on this day personally appeared **Monica Martinez**, who being first duly sworn according to law, upon her oath, deposed and said:

“My name is Monica Martinez. I am over eighteen years of age and am fully competent to make this Affidavit. I have personal knowledge of the facts contained herein, and they are all true and correct.

I am the Policy Director in the Curriculum Division at the Texas Education Agency (TEA). I have worked at TEA for four years. When I was first hired my title was Curriculum Director. During a division reorganization earlier this year my title was changed to Policy Director.

My degree is in public policy with a focus on education policy. Prior to my employment with TEA, I was the Director of Curriculum at and part owner in SureScore, Inc. Our company worked with schools to help first generation college applicants prepare for college. My responsibilities included developing curriculum for students and training teachers on our programs. Before that I was the Standards Program Coordinator at the El Paso Collaborative for Academic Excellence. In this position my primary responsibilities included working with

teachers K-12 to reflect on and improve their teaching in light of national, state, and local standards.

My current job responsibilities include providing leadership and oversight by planning, implementing, and monitoring the review of the Texas Essential Knowledge and Skills (TEKS) which are the state standards for what students should know and be able to do at each grade level in each subject. My work includes coordination of meetings for committees of educators and stakeholders that are appointed by the State Board of Education to review the TEKS and make recommendations for revisions. I interact with SBOE members to support the review process. I also provide general guidance to TEA staff and review committee members regarding the review process and deliverables. I am also responsible for coordinating preparation of SBOE and Commissioner of Education administrative rules that provide further guidance regarding education law. I provide direction, guidance, and assistance to all division staff regarding policy issues. This part of my job includes review and approval of listserv messages, content to be posted on the website, policy related correspondence, and collaboration with other TEA divisions on various projects including review of instructional materials and support for student assessment.

Prior to the division reorganization I was also responsible for supervising the directors and assistant directors for English language arts and reading, mathematics, science and social studies. This included managing correspondence, leave, and travel for these staff members. I communicated management expectations and directives to and completed performance assessments for these staff members. I provided support, assistance and direction to staff members in their responses to executive branch, legislative, SBOE, and TEA Management requests.

I was Ms. Comer's direct supervisor from January 2006 until she left the agency. I regularly communicated with Ms. Comer and other subject area directors about their job responsibilities. When I first began supervising Ms. Comer, she was generally cooperative and appeared to be following agency policies and division procedures. As time passed Ms. Comer became less forthcoming about meetings she was attending and information she was sharing with educators throughout the state. She also became more dismissive of my instructions to her. On numerous occasions the division director (George Rislov), deputy associate commissioner (Sharon Jackson), and associate commissioner (Susan Barnes), and I had reminded all division staff that we work for the SBOE as a whole and cannot appear to be serving the interests of individual members. For example, at an SBOE meeting in November 2006 it was brought to my attention that my superiors, including the Commissioner of Education at that time were concerned that Ms. Comer was providing information to one particular SBOE member in order to help that member build an argument for adopting a certain set of rules related to high school science courses. On the last day of that SBOE meeting I asked Ms. Comer not to communicate with anyone outside the agency regarding the deliberations of the SBOE on the science requirements to ensure we were not releasing information that was premature or inaccurate. A few hours after I spoke with her, Ms. Comer forwarded an email to a group of science educators sharing the information I explicitly asked her to refrain from sharing.

On a number of occasions I reminded staff members whom I supervised, both in small groups and individually, that we must be careful not to advocate for or against a certain position regarding curriculum issues that were being considered or were expected to be considered by the State Board of Education. For example, one such occasion related to adoption of new rules for graduation requirements that included additional credits of math and science. There were issues

such as whether or not the course Integrated Physics and Chemistry should continue to count as a science credit. The SBOE was split on this issue and I reminded staff that we could not advocate for one side or the other. I also reviewed PowerPoint slides that staff would use for various presentations and often corrected information that was inaccurate or that gave guidance or opinions we are not authorized to give. As a result of such communications, all staff members under my supervision, including Chris Comer, should have been well aware of the expectation to remain neutral with respect to any curriculum issues under review by the SBOE.

Over a series of months it came to my attention that Ms. Comer was attending meetings out of town and throughout the Austin area without obtaining prior approval. At that time division procedures required all staff members to submit a request for approval of off-site meetings and out of town presentations. I learned after the fact on a number of occasions that Ms. Comer was attending meetings and making presentations without obtaining prior approval. Once, when I asked Ms. Comer for some slides to present at a meeting, she sent me a presentation with a title from a meeting in the Rio Grande valley that I had no prior knowledge of and that she had not obtained prior approval for.

We explained to staff on numerous occasions that we could not allow them to travel to regional meetings due to funding constraints and limited staff. We cannot appear to provide certain areas of the state with preferential treatment by attending their meetings when we cannot attend all meetings. Ms. Comer often chose not to tell me or the division director about meetings she was attending so she would not be told she could not go.

On one occasion, Ms. Comer called in to tell us she would not be at work because she had to be with her father at the hospital. The division director later found evidence on a fax

machine in the office that a school district was going to pay Ms. Comer for a presentation given on the day she was supposed to be with her father at the hospital.

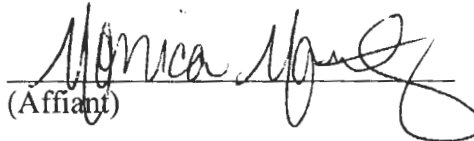
It was incidents like those described in the previous paragraphs that lead to a letter of counseling, a step in the disciplinary process, that I issued to Ms. Comer in February of 2007. In the Letter of Counseling, I specified a list of directives to Ms. Comer, including that she must not “communicate in writing or otherwise with anyone outside the agency in any way that might compromise the transparency and/or integrity of the upcoming TEKS development and revision process.” Ms. Comer chose to ignore the directives I laid out in the February letter of counseling and a series of additional incidents led to the memorandum recommending her termination.

As specified in the Proposed Disciplinary Action memo, Ms. Comer demonstrated a serious lack of appropriate judgment and violated supervisory directives on numerous occasions. Ms. Comer’s forwarding of the Barbara Forrest email, which was one of several incidents cited, was in direct violation of the directive not to communicate with anyone outside the agency in any way that might compromise the TEKS revision process. This communication violated the prior directive because it implied endorsement of a position on a subject that was expected to be debated in the upcoming TEKS revision process.

When Dr. Shindell and I met with Ms. Comer on November 7, 2007, Dr. Shindell indicated that we were there to talk about her employment status with the agency. He showed Ms. Comer the memorandum I had written and Dr. Barnes, our Associate Commissioner for Standards and Programs, had approved. He gently explained that the memorandum recommended termination of her employment and that she had the opportunity to resign. Dr. Shindell invited Ms. Comer to read the memo and told her we were there to answer any questions she had. We waited quietly while Ms. Comer read through the memo and supporting

documentation. When Ms. Comer finished reading the documents, Dr. Shindell asked if she had any questions. She did not have any immediate questions. Dr. Shindell told Ms. Comer she did not have to make a decision right then and that she could take the rest of the day to think about what she wanted to do. Dr. Shindell offered to provide Ms. Comer with assistance in cleaning out her office and taking her belongings to her home. He invited Ms. Comer to take the rest of the day as administrative leave and they made arrangements to meet in his office the following day so she could tell him what she had decided. Dr. Shindell asked Ms. Comer not to communicate with anyone at the agency while she was on administrative leave. The following day, Ms. Comer informed Dr. Shindell of her decision to resign.

Further, affiant sayeth naught."


(Affiant)

SIGNED under penalty of perjury, on this the 15th day of September, 2008.

NOTARY PUBLIC, THE STATE OF TEXAS

Notary's printed name: G Wilkerson

My Commission expires: G Wilkerson 5/12/09

