

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

CHRISTINA CASTILLO COMER
Plaintiff,

v.

ROBERT SCOTT, Commissioner, Texas
Education Agency, et al.,
Defendants.

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CA No. 1:08CV00511-LY

**DEFENDANT’S UNOPPOSED REQUEST FOR THE COURT TO TAKE JUDICIAL
NOTICE OF PROPOSED RULES**

TO THE HONORABLE LEE YEAKEL:

In support of his unopposed request for the Court to take judicial notice of proposed revisions to the Texas Essential Knowledge and Skills for Science, the defendant respectfully submits the following.

I.

On February 12, 2009, the undersigned counsel for defendant contacted plaintiff’s counsel by e-mail to inquire whether the plaintiff opposes this request. Counsel replied on February 17 that “Plaintiff does not oppose this request, subject to her right to respond to Defendant’s filing.”

II.

At its most recent meeting, the State Board of Education voted to propose revisions to 19 T.A.C. chapter 112, Texas Essential Knowledge and Skills for Science. The proposed revisions were filed with the Texas Register on February 2, 2009, for public review and comment, to be followed by a vote at the March SBOE meeting on whether to finally adopt them. The proposed TEKS can be viewed at <http://www.tea.state.tx.us/rules/home/>, then to “Proposed SBOE Rules,” then to: “Text of Proposed Revisions to 19 TAC Chapter 112, Subchapter A

Text of Proposed Revisions to 19 TAC Chapter 112, Subchapter B

Text of Proposed Revisions to 19 TAC Chapter 112, Subchapter C.”

For convenience, a copy of the proposed revisions is attached to this Request.

III.

Under proposed new chapter 112, subchapter C, the science TEKS for high school, beginning in the 2010-11 school year, §112.34(c) provides:

- (7) Science concepts. The student knows evolutionary theory is a scientific explanation for the unity and diversity of life. The student is expected to:
- (A) analyze and evaluate how evidence of common ancestry among groups is provided by the fossil record, biogeography, and homologies, including anatomical, molecular, and developmental;
 - (B) analyze and evaluate the sufficiency or insufficiency of common ancestry to explain the sudden appearance, stasis, and sequential nature of groups in the fossil record;
 - (C) analyze and evaluate how natural selection produces change in populations, not individuals;
 - (D) analyze and evaluate how the elements of natural selection, including inherited variation, the potential of a population to produce more offspring than can survive, and a finite supply of environmental resources, result in differential reproductive success;
 - (E) analyze and evaluate the relationship of natural selection to adaptation and to the development of diversity in and among species; and
 - (F) analyze and evaluate the effects of other evolutionary mechanisms, including genetic drift, gene flow, mutation, and recombination.

At its March 2009 meeting, the State Board of Education will decide, inter alia, whether to adopt the foregoing and/or to restore the “strengths and weaknesses” language contained in the current TEKS on biology with respect to evolution.

IV.

The defendant respectfully requests the Court take judicial notice of the proposed revisions to 19 T.A.C. chapter 112, Texas Essential Knowledge and Skills for Science.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division

/s/ James C. Todd
JAMES C. TODD
Texas Bar No. 20094700
Assistant Attorney General
Office of the Attorney General
General Litigation Division -019
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120 (Telephone)
(512) 320-0667 (Facsimile)
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

As recited in part I above, on February 12, 2009, I contacted plaintiff's counsel by e-mail to inquire whether the plaintiff opposes this request. Counsel replied on February 17 that "Plaintiff does not oppose this request, subject to her right to respond to Defendant's filing."

/s/ James C. Todd
JAMES C. TODD

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
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|-----------------------------------|---|-----------------------|
| CHRISTINA CASTILLO COMER | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | CA No. 1:08CV00511-LY |
| | § | |
| ROBERT SCOTT, Commissioner, Texas | § | |
| Education Agency, in his official | § | |
| capacity and TEXAS EDUCATION | § | |
| AGENCY, | § | |
| Defendants. | § | |

ORDER

On this day the Court considered Defendant's Unopposed Request for the Court to Take Judicial Notice of Proposed Rules. After due consideration, the Court is of the opinion that the Motion is meritorious and that it should be granted. Accordingly,

The Court takes judicial notice of proposed revisions to 19 Texas Administrative Code chapter 112, Texas Essential Knowledge and Skills for Science.

SIGNED this _____ day of March, 2009.

HON. LEE YEAKEL
UNITED STATES DISTRICT JUDGE

SUBCHAPTER “A”

Text of Proposed Revisions to 19 TAC

Chapter 112. Texas Essential Knowledge and Skills for Science

Subchapter A. Elementary

§112.1. Implementation of Texas Essential Knowledge and Skills for Science, Elementary.

The provisions of §§112.2-112.7 of this subchapter shall be superseded by §§112.11-112.16 of this subchapter beginning with the 2010-2011 school year ~~[implemented by school districts beginning September 1, 1998, and at that time shall supersede §75.28(a) (6) of this title (relating to Science)]~~.

§112.10. Implementation of Texas Essential Knowledge and Skills for Science, Elementary, Beginning with School Year 2010-2011.

The provisions of §§112.11-112.16 of this subchapter shall be implemented by school districts beginning with the 2010-2011 school year and at that time shall supersede §§112.2-112.7 of this subchapter.

§112.11. Science, Kindergarten, Beginning with School Year 2010-2011.

(a) Introduction.

- (1) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process."
- (2) Recurring themes are pervasive in sciences, mathematics, and technology. These ideas transcend disciplinary boundaries and include patterns, cycles, systems, models, and change and constancy.
- (3) The study of elementary science includes planning and safely implementing classroom and outdoor investigations using scientific processes, including inquiry methods, analyzing information, making informed decisions, and using tools to collect and record information, while addressing the major concepts and vocabulary, in the context of physical, earth, and life sciences. Districts are encouraged to facilitate classroom and outdoor investigations for at least 80% of instructional time.
- (4) In Kindergarten, students observe and describe the natural world using their five senses. Students do science as inquiry in order to develop and enrich their abilities to understand scientific concepts and processes. Students develop vocabulary through their experiences investigating properties of common objects, earth materials, and organisms.
 - (A) A central theme throughout the study of scientific investigation and reasoning: matter and energy; force, motion, and energy; Earth and space; and organisms and environment is active engagement in asking questions, communicating ideas, and exploring with scientific tools. Scientific investigation and reasoning involves practicing safe procedures, asking questions about the natural world, and seeking answers to those questions through simple observations and descriptive investigations.
 - (B) Matter is described in terms of its physical properties, including relative size and mass, shape, color, and texture. The importance of light, heat, and sound energy is identified as it relates to the students' everyday life. The location and motion of objects are explored.
 - (C) Weather is recorded and discussed on a daily basis so students may begin to recognize patterns in the weather. Other patterns are observed in the appearance of objects in the sky.
 - (D) In life science, students recognize the interdependence of organisms in the natural world. They understand that all organisms have basic needs that can be satisfied through interactions with living and nonliving things. Students will investigate the life cycle of plants and identify likenesses between parents and offspring.

(b) Knowledge and skills.

- (1) Scientific investigation and reasoning. The student conducts classroom and outdoor investigations following home and school safety procedures and uses environmentally appropriate and responsible practices. The student is expected to:
 - (A) identify and demonstrate safe practices as described in the Texas Safety Standards during classroom and outdoor investigations, including wearing safety goggles, washing hands, and using materials appropriately;
 - (B) discuss the importance of safe practices to keep self and others safe and healthy; and
 - (C) demonstrate how to use, conserve, and dispose of natural resources and materials such as conserving water and reusing or recycling paper, plastic, and metal.
- (2) Scientific investigation and reasoning. The student develops abilities to ask questions and seek answers in classroom and outdoor investigations. The student is expected to:
 - (A) ask questions about organisms, objects, and events observed in the natural world;
 - (B) plan and conduct simple descriptive investigations such as ways objects move;
 - (C) collect data and make observations using simple equipment such as hand lenses, primary balances, and non-standard measurement tools;
 - (D) record and organize data and observations using pictures, numbers, and words; and
 - (E) communicate observations with others about simple descriptive investigations.
- (3) Scientific investigation and reasoning. The student knows that information and critical thinking are used in scientific problem solving. The student is expected to:
 - (A) identify and explain a problem such as the impact of littering on the playground and propose a solution in his/her own words;
 - (B) make predictions based on observable patterns in nature such as the shapes of leaves; and
 - (C) explore that scientists investigate different things in the natural world and use tools to help in their investigations.
- (4) Scientific investigation and reasoning. The student uses age-appropriate tools and models to investigate the natural world. The student is expected to:
 - (A) collect information using tools, including cameras; computers; hand lenses; non-standard measuring items such as paper clips and clothespins; weather instruments such as demonstration thermometers and wind socks; primary balances; cups; bowls; timing devices, including clocks and timers; magnets; collecting nets; notebooks; and materials to support observations of habitats of organisms such as terrariums and aquariums; and
 - (B) use senses as a tool of observation to identify properties and patterns of organisms, objects, and events in the environment.
- (5) Matter and energy. The student knows that objects have properties and patterns. The student is expected to:
 - (A) observe and record properties of objects, including relative size and mass, such as bigger or smaller and heavier or lighter, shape, color, and texture; and
 - (B) observe, record, and discuss how materials can be changed by heating or cooling.
- (6) Force, motion, and energy. The student knows that energy, force, and motion are related and are a part of their everyday life. The student is expected to:
 - (A) use the five senses to explore different forms of energy such as light, heat, and sound;
 - (B) explore interactions between magnets and various materials;

- (C) observe and describe the location of an object in relation to another such as above, below, behind, in front of, and beside; and
- (D) observe and describe the ways that objects can move such as in a straight line, zigzag, up and down, back and forth, round and round, and fast and slow.
- (7) Earth and space. The student knows that the natural world includes earth materials. The student is expected to:
 - (A) observe, describe, compare, and sort rocks by size, shape, color, and texture;
 - (B) observe and describe physical properties of natural sources of water, including color and clarity; and
 - (C) give examples of ways rocks, soil, and water are useful.
- (8) Earth and space. The student knows that there are recognizable patterns in the natural world and among objects in the sky. The student is expected to:
 - (A) observe and describe weather changes from day to day and over seasons;
 - (B) identify events that have repeating patterns, including seasons of the year and day and night; and
 - (C) observe, describe, and illustrate objects in the sky such as the clouds, Moon, and stars, including the Sun.
- (9) Organisms and environments. The student knows that plants and animals have basic needs and depend on the living and nonliving things around them for survival. The student is expected to:
 - (A) differentiate between living and nonliving things based upon whether they have basic needs and produce offspring; and
 - (B) examine evidence that living organisms have basic needs such as food, water, and shelter for animals and air, water, nutrients, sunlight, and space for plants.
- (10) Organisms and environments. The student knows that organisms resemble their parents and have structures and processes that help them survive within their environments. The student is expected to:
 - (A) sort plants and animals into groups based on physical characteristics such as color, size, body covering, or leaf shape;
 - (B) identify parts of plants such as roots, stem, and leaves and parts of animals such as head, eyes, and limbs;
 - (C) identify ways that young plants resemble the parent plant; and
 - (D) observe changes that are part of a simple life cycle of a plant: seed, seedling, plant, flower, and fruit.

§112.12. Science, Grade 1, Beginning with School Year 2010-2011.

(a) Introduction.

- (1) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process."
- (2) Recurring themes are pervasive in sciences, mathematics, and technology. These ideas transcend disciplinary boundaries and include patterns, cycles, systems, models, and change and constancy.
- (3) The study of elementary science includes planning and safely implementing classroom and outdoor investigations using scientific processes, including inquiry methods, analyzing information, making informed decisions, and using tools to collect and record information, while addressing the major concepts and vocabulary, in the context of physical, earth, and life sciences.

Districts are encouraged to facilitate classroom and outdoor investigations for at least 80% of instructional time.

- (4) In Grade 1, students observe and describe the natural world using their five senses. Students do science as inquiry in order to develop and enrich their abilities to understand the world around them in the context of scientific concepts and processes. Students develop vocabulary through their experiences investigating properties of common objects, earth materials, and organisms.
- (A) A central theme in first grade science is active engagement in asking questions, communicating ideas, and exploring with scientific tools in order to explain scientific concepts and processes like scientific investigation and reasoning; matter and energy; force, motion, and energy; Earth and space; and organisms and environment. Scientific investigation and reasoning involves practicing safe procedures, asking questions about the natural world, and seeking answers to those questions through simple observations and descriptive investigations.
- (B) Matter is described in terms of its physical properties, including relative size and mass, shape, color, and texture. The importance of light, heat, and sound energy is identified as it relates to the students' everyday life. The location and motion of objects are explored.
- (C) Weather is recorded and discussed on a daily basis so students may begin to recognize patterns in the weather. In addition, patterns are observed in the appearance of objects in the sky.
- (D) In life science, students recognize the interdependence of organisms in the natural world. They understand that all organisms have basic needs that can be satisfied through interactions with living and nonliving things. Students will investigate life cycles of animals and identify likenesses between parents and offspring.

(b) Knowledge and skills.

- (1) Scientific investigation and reasoning. The student conducts classroom and outdoor investigations following home and school safety procedures and uses environmentally appropriate and responsible practices. The student is expected to:
- (A) recognize and demonstrate safe practices as described in the Texas Safety Standards during classroom and outdoor investigations, including wearing safety goggles, washing hands, and using materials appropriately;
- (B) recognize the importance of safe practices to keep self and others safe and healthy; and
- (C) identify and learn how to use natural resources and materials, including conservation and reuse or recycling of paper, plastic, and metals.
- (2) Scientific investigation and reasoning. The student develops abilities to ask questions and seek answers in classroom and outdoor investigations. The student is expected to:
- (A) ask questions about organisms, objects, and events observed in the natural world;
- (B) plan and conduct simple descriptive investigations such as ways objects move;
- (C) collect data and make observations using simple equipment such as hand lenses, primary balances, and non-standard measurement tools;
- (D) record and organize data using pictures, numbers, and words; and
- (E) communicate observations and provide reasons for explanations using student-generated data from simple descriptive investigations.
- (3) Scientific investigation and reasoning. The student knows that information and critical thinking are used in scientific problem solving. The student is expected to:
- (A) identify and explain a problem such as finding a home for a classroom pet and propose a solution in his/her own words;

- (B) make predictions based on observable patterns; and
- (C) describe what scientists do.
- (4) Scientific investigation and reasoning. The student uses age-appropriate tools and models to investigate the natural world. The student is expected to:
 - (A) collect, record, and compare information using tools, including cameras; computers; hand lenses; non-standard measuring items such as paper clips and clothespins; weather tools such as classroom demonstration thermometers and weather vanes; primary balances; cups; bowls; timing devices, including clocks and timers; magnets; collecting nets; notebooks; materials to support observations of habitats of organisms such as aquariums and terrariums; and safety goggles; and
 - (B) measure and compare organisms and objects using non-standard units.
- (5) Matter and energy. The student knows that objects have properties and patterns. The student is expected to:
 - (A) classify objects by observable properties of the materials from which they are made such as larger and smaller, heavier and lighter, shape, color, and texture; and
 - (B) predict and identify changes in materials caused by heating and cooling such as ice melting, water freezing, and water evaporating.
- (6) Force, motion, and energy. The student knows that force, motion, and energy are related and are a part of everyday life. The student is expected to:
 - (A) identify and discuss how different forms of energy such as light, heat, and sound are important to everyday life;
 - (B) predict and describe how a magnet can be used to push or pull an object;
 - (C) describe the change in the location of an object such as closer to, nearer to, and farther from; and
 - (D) demonstrate and record the ways that objects can move such as in a straight line, zig zag, up and down, back and forth, round and round, and fast and slow.
- (7) Earth and space. The student knows that the natural world includes rocks, soil, and water that can be observed in cycles, patterns, and systems. The student is expected to:
 - (A) observe, compare, describe, and sort components of soil by size, texture, and color;
 - (B) identify and describe a variety of natural sources of water, including streams, lakes, and oceans; and
 - (C) gather evidence of how rocks, soil, and water help to make useful products.
- (8) Earth and space. The student knows that the natural world includes the air around us and objects in the sky. The student is expected to:
 - (A) record weather information, including relative temperature, such as hot or cold, clear or cloudy, calm or windy, and rainy or icy;
 - (B) observe and record changes in the appearance of objects in the sky such as clouds, the Moon, and stars, including the Sun;
 - (C) identify characteristics of the seasons of the year; and
 - (D) demonstrate that air is all around us and observe that wind is moving air.
- (9) Organisms and environments. The student knows that the living environment is composed of relationships between organisms and the life cycles that occur. The student is expected to:
 - (A) sort and classify living and nonliving things based upon whether or not they have basic needs and produce offspring;

