



Music Education in the Law

by Robert Floyd

Fine arts holds a most prominent placement in law and State Board rule. Regardless, I continue to receive numerous calls from members with questions about arts-related situations that are affected by state law or State Board rule. I usually refer them to the document on our website entitled “What the Law Says,” a concise explanation of the critical policies that most frequently come into question. In this article, I aim to share a bit more detail on each of these policies.

Mission and Objectives

Objective 4 of the Texas Education Code (TEC) states: “A *well-balanced and appropriate* curriculum will be provided to all students.” Chapter 28.002 of the TEC states, “Each district shall ensure that all children in the district *participate actively in a balanced curriculum designed to meet individual needs.*”

Quite often when I testify at the capitol, I include the above objective from General Provisions, Chapter 4, of the TEC—the 1,600+ pages of law that define education policy in our state. Note that this objective states that a well-balanced education will be provided not to *some* students, but to *all* students. Further, TEC, Chapter 28, speaks to ensuring that *all* children have the opportunity to participate actively in a balanced curriculum *designed to meet individual needs.*

HB 5, signed into law at the conclusion of the 2013 legislative session, took a significant step in allowing our students to pursue their passion, as demonstrated by the adoption of five endorsements, one of which accommodates the Arts and Humanities

student.

When students are denied a well-balanced education because of pull-out and test remediation for STAAR, it is sometimes helpful to point to Objective 4 as a reminder of an original objective of the law to ensure every child receives an education that includes the arts.

Required Curriculum

The required curriculum includes foundation *and* enrichment subjects. The word *required* in the TEC means that “each school district that offers kindergarten through grade 12 shall offer this curriculum.”

The above statement is found in TEC, Chapter 28.002, in the section that speaks to Courses of Study, Texas Essential Knowledge and Skills, and Curriculum. This statement lists the subjects that must be taught and clearly speaks to the importance of students receiving exposure to all subjects of the required curriculum, which includes both foundation and enrichment subjects addressed below. Fine arts is a part of the enrichment curriculum and thus required to be taught.

Foundation Courses

English language arts, mathematics, science, and social studies are called *foundation courses* because the TEC’s academic objectives identify these courses as the foundation of a well-balanced and appropriate education. These subjects will continue to drive assessment and accountability at the state level.

For several sessions, TMEA has considered seeking a sponsor for legislation that would move fine arts from the enrichment to the foundation curriculum. At TMEA's request, a bill was drafted during the last session that would not move fine arts up to foundation but would *tear down the wall* between foundation and enrichment; however, there was not sufficient time to get the bill successfully through the process. It will continue to be an area of importance for teachers of fine arts and all enrichment disciplines.

Enrichment Courses

Fine arts courses are a part of the enrichment curriculum, a component of the required curriculum. By definition, *enrich* means "to make richer, to add greater value or significance." It does not mean *extra, not necessary, elective, or optional*.

These courses are an integral part of the educational process and in many cases are the courses that give meaning and substance to a child's education and to his or her life. By law, school districts, as a condition of accreditation, must utilize the TEKS in delivering instruction in all subjects of the required curriculum—not just in foundation courses. *Four of the five new endorsements for graduation are anchored in enrichment subjects*. The Foundation High School Program requires all students to earn three enrichment course credits toward graduation (1 P.E. credit, 1 fine arts credit, and 2 languages other than English credits).

Texas Essential Knowledge & Skills

The State Board of Education identifies the Texas Essential Knowledge and Skills (TEKS) for all subjects of the required curriculum. The TEKS define what students should know and be able to do in each academic subject area and each grade level. Newly revised TEKS are currently in place for all fine arts disciplines.

Early drafts of the 1995 TEC rewrite mandated there would be TEKS only for the foundation subjects. TMEA convinced the House Public Education Chair that if a course is important enough to be required to be taught then the curriculum should comply with state standards. However, when this 1995 version of the TEC was adopted and signed into law by then Governor Bush, TEKS for enrichment subjects were only guidelines, sending the message that those subjects,

including fine arts, were not as important as foundation courses.

In 2003, SB 815 was passed by the legislature with TMEA's support. It required that the TEKS drive curriculum for all subjects of the required curriculum *as a condition of accreditation*. No piece of legislation in recent years has elevated the status of fine arts and other enrichment subjects more than SB 815. In addition, in 2011, SB 6 was passed that requires school districts to provide instructional materials that cover 100% of the TEKS in all fine arts courses.

Elementary Requirements

State Board rule (Texas Administrative Code [TAC], Title 19, Part 2, Chapter 74, Subchapter A) mandates that school districts provide TEKS-based instruction in music, art, and theatre at each grade level. School districts may deliver this instruction in a variety of arrangements and settings.

This means that students must receive music instruction in grades K–5. While a classroom generalist is certified to teach music, as well as theatre and art, a well-trained music specialist is much more qualified to deliver this music instruction. The TEKS for art and theatre are quite often embedded in English language arts and social studies courses.

Middle School Requirements

State Board rule (TAC, Title 19, Part 2, Chapter 74, Subchapter B) mandates that each student must complete one TEKS-based fine arts course in grades 6, 7, or 8. A district shall offer and maintain evidence that students in middle school have the opportunity to take courses in at least three of the four disciplines in fine arts (art, music, theatre, and dance).

The requirement to offer three of the four disciplines in fine arts may be reduced to two by the commissioner of education upon application of a school district with a total middle school enrollment of fewer than 250 students.

High School Required Course Offerings

High schools must offer at least two of the four state-approved fine arts subjects (art, music, theatre, and dance).

Graduation Requirements

Under state law, the Foundation High

School Program requires one credit of fine arts for graduation for all students earning a Texas diploma. Students under this latest graduation program may pursue an Arts and Humanities endorsement that allows the serious music student the flexibility to take multiple fine arts courses that count toward graduation. Fine arts continues to be defined as an "academic core component" in the Foundation High School Program in the State Board rules, entitled the TAC, Title 19, Part 2, Chapter 74, Subchapter B.

P.E. Credit Through Fine Arts Participation

In accordance with local district policy, the one-credit physical education graduation requirement may be earned by participating in marching band or by successfully completing any fine arts course that includes at least 100 minutes of moderate to vigorous physical activity.

A student may receive both a fine arts and P.E. credit if they successfully complete a band course and participate in the activity, marching band. However, a student completing other TEKS-based fine arts courses, such as show choir, that include the above stated 100-minute physical activity requirement, will not receive *both* the fine arts and P.E. credit.

No Pass No Play

All TMEA and UIL activities are extracurricular and thus fall under the rules of No Pass No Play. TMEA continues to work with UIL staff and the Commissioner of Education's office at TEA to define UIL Concert and Sightreading Contest as an evaluation rather than a competition or activity. As such, it would not be subject to No Pass No Play rules. Significant progress has been made, but a schedule for a final decision is unknown at this time.

Pull-out for Test Preparation and Remediation

Much has been discussed about this subject over the years, and in 2013 TMEA was finally successful in having language included (in HB 5) that limits such action by school districts.

As HB 5 states, the board of trustees of each school district shall adopt and strictly enforce a policy limiting the removal of students from class for remedial tutoring or test preparation. A district may not

remove a student from a regularly scheduled class for remedial tutoring or test preparation if, as a result of the removal, the student would miss more than 10% of the school days on which the class is offered, unless the student's parent or another person standing in parental relation to the student provides to the district written consent for removal from class for such purpose.

For updated information on this topic, I encourage you to go to www.tmea.org/pullout.

The law does not limit the pull-out practice to the degree we all wish it did, but the above language, if followed, takes a significant step in protecting a student's right to be successful in non-assessed subjects such as music.

Community and Student Engagement

In accordance with the Texas Education Code (TEC), §39.0545(a), each school district shall assign performance ratings to the district and each campus for community and student engagement for fine arts based on locally determined criteria.

Each school district shall designate a local committee to determine criteria

that districts shall use to evaluate and assign a rating to its fine arts program of Exemplary, Recognized, Acceptable, or Unacceptable for the district and each campus. Each school district shall require the local committee(s) to determine the criteria that districts shall use to evaluate and assign a status of "Yes" or "No" on the record of the district and each campus regarding compliance with statutory reporting and policy requirements under the TEC, §39.0545. TMEA members should encourage parents and community members to utilize this opportunity to advocate for the value of the arts in the education of the whole child.

Federal Legislation: Every Student Succeeds Act

On December 10 President Obama signed into law S. 1177, the Every Student Succeeds Act. This new legislation replaces the core academic curriculum definition from No Child Left Behind with new language defining the components of a well-rounded education. For the first time, music is listed in the law as a stand-alone subject, providing clarity and meaning to the importance of

music and the arts in a child's education. The new proposed legislation also mandates the inclusion of the arts in STEM education.

As a reminder, the TEC contains the laws that guide education in our state, while the State Board of Education and Commissioner's Rules provide the rules school districts follow to carry out the law. The above listing does not include every law and rule that may protect fine arts on your campus or in your district, but it does highlight the major areas. We always have to be mindful of that fact that while law and rule guide the educational process in our state, we live and work in a state where the cornerstone of educational philosophy is driven by local control. Thus, if districts persist in depriving students of meaningful participation in your program, there is sometimes little the state can do.

As always, this office will continue to serve as a resource for you when you need answers to policy questions that may surface in your district. We will assist you in any way we can. 

Music Education in the Law

Fine arts education requirements are defined in the Texas Education Code (TEC) passed by the Texas Legislature. Below is an outline of requirements in law that affect music education which, along with art, theatre, and dance make up the fine arts.

Texas Education Code Mission & Objectives

A well-balanced and appropriate curriculum will be provided to all students. — TEC, Objective 4.

Each district shall ensure all children in the district participate actively in a balanced curriculum designed to meet individual needs. — TEC, Chapter 28.002

Required Curriculum and Skills

The TEC directs school districts with kindergarten through grade 12 to offer the **Required Curriculum**.

The TEC segments the Required Curriculum into Foundation and Enrichment subjects. Fine arts is part of the **Enrichment Curriculum** and thus must be taught.

The State Board of Education adopts the Texas Essential Knowledge and Skills (TEKS) for all subjects of the Required Curriculum. **Music TEKS** are defined for every level, and instruction must cover 100% of these TEKS as a condition of accreditation. Districts must provide instructional materials that cover 100% of the TEKS in all fine arts courses.

Requirements at the Grade Level



Elementary

State Board rule mandates that school districts provide TEKS-based instruction in all subjects/courses of the Required Curriculum in grades K–5, including music.



Middle School

State Board rule mandates that each student complete one fine arts course in grades 6–8, and the district must offer courses in three of the four fine arts disciplines (or two, if reduced by the commissioner of education based on school size).



High School

High schools must offer at least two of the four state-approved fine arts subjects. Every high school student must successfully complete one fine arts credit to graduate.



Pull-out Limitations

The TEC directs school districts to establish policies that strictly limit the pull-out of students from a regularly scheduled class for remedial tutoring or test preparation. The policy limits pull-out to 10% of the school days on which the class is offered (unless authorized to extend to 25% by a parent/guardian).



Graduation

The TEC states that the Foundation High School Program require one credit of fine arts for graduation for all students. Students under the latest graduation program may pursue an Arts and Humanities endorsement that allows the serious music student the flexibility to take multiple fine arts courses as part of their graduation plan.