



## **Agency Post-Hearing Response to Public Testimony and Comments In the Matter of the Proposed Amendment to Rules Governing the K-12 Academic Standards in the Arts, *Minnesota Rules*, 3501.0820-3501.0865; Repeal of *Minnesota Rules*, 3501.0800, 3501.0805, 3501.0810 and 3501.0815; Revisor’s ID No. R-04531; OAH Docket No. 5-9005-35173**

*March 9, 2020*

### **Introduction**

On Monday, January 13, 2020, the Minnesota Department of Education (the department) communicated its intent to hold a hearing regarding the proposed rules governing the K-12 academic standards in the arts, Minnesota Rules Chapter 3501.0820-3501.0865 in a Dual Notice of Hearing published in the State Register.<sup>1</sup> A public hearing was held on the proposed rules governing the K-12 academic standards in the arts on March 2, 2020 at the department in Roseville, Minnesota. Members of the public testified in person and submitted written comments both in support of and in opposition to the proposed rules. The post-hearing comment period ran from March 3, 2020 through 4:30 p.m. on March 9, 2020.

This rulemaking is limited in scope to the rules proposed in that Notice under the authority of *Minnesota Statutes*, sections 120B.02, subdivision 1; Minnesota Statutes, sections 120B.021, subdivisions 1 and 3<sup>2</sup>, and Minnesota Statutes, section 120B.023.

The department has presented information to demonstrate that the proposed rules are needed and reasonable. That information is in the Statement of Need and Reasonableness (SONAR) and its supporting appendices; exhibits submitted into the record at the hearing and posted on the department’s rulemaking webpage; and in this document, hereinafter called the Post-Hearing Response.

This Post-Hearing Response includes the department’s response to issues, comments and concerns regarding the proposed K-12 academic standards in the arts rules raised at the hearing held on March 2, 2020. The

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<sup>1</sup> [Minnesota State Register, Volume 44, Number 29, p. 797.](#)

<sup>2</sup> The existing specific authority for the department to conduct rulemaking on the academic standards comes in part from the updated timeline set forth in Minnesota Statutes section 120B.021. This timeline was most recently updated by the legislature in 2016 to authorize review and revision of the existing arts standards on a ten year review cycle. The arts specific review timeline was also shifted forward one year from 2015-2016 to the 2017-2018 academic year. See [Minnesota 2016 Session Law, Ch. 189, Art 25, sec. 5.](#)

department may submit a follow-up to this Response during the rebuttal comment period between March 10 and March 16, 2020, to address comments that were submitted during the post-hearing comment period.

Many of the issues addressed at the hearing mirrored those raised in the comments received during the dual notice comment period, and so the department's Post Dual Notice Response to those comments is appended at the end of this document (Appendix A). As noted in MDE's Post Dual Notice Response, much of the testimony and the written comments received express concerns related to a statutory requirement and other issues that are not within the scope of this rulemaking project. However, the department heard several testimonies at the hearing that echoed the content of the large number of comments received in response to the dual notice, and so the department has chosen to respond to them here as well.

## **Clarification of Minnesota Statutory Requirements for Arts Education**

Throughout the hearing, testimony contained references to and demonstrated uncertainty as to what level and amount of instruction in arts education is required in grades K-12 in Minnesota. The current requirements for arts education in our state are embedded in several statutes and the existing 2008 rules governing the K-12 academic standards in the arts. In the interest of clarification, the relevant statutes are provided below:

### **Minnesota Statutes, section 120A.22<sup>3</sup>**

#### ***Summary of relevance to arts education***

This statute requires compulsory instruction for Minnesota students in a school within a certain age range. Compulsory Instruction law requires arts education to be a component of comprehensive educational opportunities for all students (ages 7-17) with a requirement that instruction be provided in the arts annually. Although the statute does not specifically state instruction must be provided "annually or every year, the department has long interpreted this statutory language to require annual instruction at each grade level due to the requirement that every child between the ages of 7-17 must receive instruction in the fine arts unless they have graduated.

#### ***Statute language***

##### **"120A.22 COMPULSORY INSTRUCTION.**

Subd. 5. Ages and terms.

(a) Every child between seven and 17 years of age must receive instruction unless the child has graduated. Every child under the age of seven who is enrolled in a half-day kindergarten, or a full-day kindergarten program on alternate days, or other kindergarten programs shall receive instruction....

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<sup>3</sup> [Minn. Stat. § 120A.22.](#)

Subd. 9. **Knowledge and skills.**

Instruction must be provided in at least the following subject areas:

- (1) basic communication skills including reading and writing, literature, and fine arts;...”

## **Minnesota Statutes, section 120B.024<sup>4</sup>**

### ***Summary of relevance to arts education***

State law sets out requirements for each core content area for graduation requirements. Minnesota Statutes, section 120B.024, subdivision 1(6) provides that one high school credit sufficient to satisfy all of the academic standards in the arts is required for high school graduation. Furthermore, subdivision 2(c) provides that a career and technical education credit *may* fulfill an arts credit requirement for graduation. It is important to note that Minnesota Rules, Ch. 3505.1150, subpart 2, provide further guidance regarding what must be in place for a CTE course to count for an arts credit. See pp. 4 and 9 below in this Post Hearing Response for more detail on this topic.

### ***Statute Language***

**“120B.024 CREDITS.**

Subdivision 1. **Graduation requirements.**

- (a) Students beginning 9th grade in the 2011-2012 school year and later must successfully complete the following high school level credits for graduation:

...

- (6) one credit of the arts sufficient to satisfy all of the state or local academic standards in the arts;...

Subd. 2. **Credit equivalencies.** (c) A career and technical education credit may fulfill a mathematics or arts credit requirement under subdivision 1, clause (2) or (6).”

## **Minnesota Statutes, section 120B.021<sup>5</sup>**

### ***Summary of relevance to arts education***

Minnesota Statutes section 120B.021 provides that the arts are required for statewide accountability, and therefore requires academic standards for the arts. In addition, state statute provides that students in

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<sup>4</sup> [Minn. Stat. § 120B.024.](#)

<sup>5</sup> [Minn. Stat. § 120B.021.](#)

elementary, middle, and high schools are required to receive arts instruction in a minimum number of arts areas. State law also specifically directs which stakeholders must advise the Commissioner, at a minimum, throughout the development process of state academic standards in the arts. This statute also sets out the timeline for the revision and review of the academic standards and related benchmarks in all core content areas, including the arts.

### ***Statute Language***

#### **“120B.021 REQUIRED ACADEMIC STANDARDS.**

##### **Subdivision 1. Required academic standards.**

(a) The following subject areas are required for statewide accountability:

...

(7) the arts, for which statewide or locally developed academic standards apply, as determined by the school district. Public elementary and middle schools must offer at least three and require at least two of the following four arts areas: dance; music; theater; and visual arts. Public high schools must offer at least three and require at least one of the following five arts areas: media arts; dance; music; theater; and visual arts.”

##### **Subd. 2. Standards development.**

(a) The commissioner must consider advice from at least the following stakeholders in developing statewide rigorous core academic standards in language arts, mathematics, science, social studies, including history, geography, economics, government and citizenship, and the arts:

(1) parents of school-age children and members of the public throughout the state;

(2) teachers throughout the state currently licensed and providing instruction in language arts, mathematics, science, social studies, or the arts and licensed elementary and secondary school principals throughout the state currently administering a school site;

(3) currently serving members of local school boards and charter school boards throughout the state;

(4) faculty teaching core subjects at postsecondary institutions in Minnesota; and

(5) representatives of the Minnesota business community....

...

##### **Subd. 4 Revisions and reviews required.**

...

(b) The commissioner must implement a review of the academic standards and related benchmarks in arts beginning in the 2017-2018 school year and every ten years thereafter.”

## Minnesota Statutes, section 120B.023<sup>6</sup>

### *Summary of relevance to arts education*

State academic standards, including the arts, must be supplemented with grade level benchmarks. In order for a student to complete an academic standard, that student must achieve all benchmarks for the given standard. State statute also provides that the Commissioner cannot change benchmarks once they are drafted unless specific legislative authorization is sought after completing the required review under Minnesota Statutes section 120B.021, subd. 4, listed above. Lastly, this statute states that the benchmarks are not subject to chapter 14, the Minnesota Administrative Procedures Act, which governs the formal rulemaking process and as such do not go through the rulemaking process like the standards language does.

### *Statute Language*

#### **"120B.023 BENCHMARKS.**

Subdivision 1. **Benchmarks implement, supplement statewide academic standards.**

(a) The commissioner must supplement required state academic standards with grade-level benchmarks. High school career and college-ready benchmarks may cover more than one grade. Schools must offer and students must achieve all benchmarks for an academic standard to satisfactorily complete that state standard.

...

(c) Once established, the commissioner may change the benchmarks only with specific legislative authorization and after completing a review under section 120B.021, subdivision 4.

(d) the benchmarks are not subject to chapter 14 and section 14.386 does not apply."

## The Role of the Statement of Need and Reasonableness (SONAR)

### Summary of Public Testimony

Some testimony included requests to edit the Statement of Need and Reasonableness (SONAR) for the proposed rule, specifically changing the word "and" to "or" in the rule-by-rule analysis where the proposed rule language was included in the SONAR. Some individuals were concerned that the SONAR would be used as a standards implementation support resource by districts and administrators, and that it contained points with which those testifying at the hearing disagreed.

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<sup>6</sup> [Minn. Stat. § 120B.023.](#)

## MDE Response

The purpose of the Statement of Need and Reasonableness (SONAR) in the formal rulemaking process is to provide a summary of the evidence and argument that the department is relying on to justify why the proposed rules are needed and reasonable. The information provided in the SONAR must be specific enough to allow interested persons to prepare testimony or evidence in favor of or in opposition to the proposed rules. This includes citations to research, studies, or law the agency anticipates relying on to support the rules. It also includes any information required by state statutes.<sup>7</sup> All references to requirements for arts education in Minnesota in the SONAR are based on the Minnesota statutes set forth above. The proposed rules and supporting benchmarks are aligned with those legal requirements.

The statement of need in a SONAR explains why an agency believes that the proposed rules are necessary to address the agency's regulatory concerns. In the case of the proposed arts standards, the changes are in response to the statutory requirement to have grade specific supporting benchmarks, which necessitated the shift away from grade-banded to grade specific benchmarks. When established rules are being amended, the statement of need may list a few aspects of the existing rules that have become outdated or have caused problems, and explain why an amendment to the rules is needed. In the case of the proposed arts standards, they have not been reviewed or revised since 2008 and since that time much development in the field of arts education has occurred. In addition, the National Core Arts Standards (NCAS) came out in 2014, supporting the need for updating the existing state arts standards.

The statement of reasonableness in the SONAR explains why the approach taken in the proposed rules is a good one and why department staff and the standards review committee chose to draft the rules as proposed. The SONAR for the proposed K-12 academic standards in the arts sets forth this rationale, as well as the proposed rule language. The SONAR is not a document that can be revised or edited after it is reviewed and signed by the Commissioner. The SONAR is an important snapshot in time that captures the wealth and breadth of knowledge and expertise that went into the rule drafting. It is important to maintain the integrity of the SONAR as originally written for the department, administrative law judge, and the public to be able to rely on the evidence and explanation from the department in the SONAR at the time the rules were proposed and the hearing was noticed about why the proposed rules are needed and reasonable, and to demonstrate that all legal requirements were met. As such, the department will not edit the SONAR, but all comments and statements in opposition to language written in the SONAR will become part of the official rulemaking record that is kept permanently by the department and they will be considered in the remainder of the formal rulemaking process.

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<sup>7</sup> The Minnesota Rulemaking Manual, Chapter 4, SONAR Development, *available at* <https://www.health.state.mn.us/data/rules/manual/chapters.html>. For a list of the required contents of a SONAR, read [Minnesota Rules, part 1400.2070](#), and [Minnesota Statutes, sections 14.131](#) (with a public hearing) and [14.23](#) (without a public hearing).

# Notification of Professional Associations Regarding Proposed Standards and Rulemaking

## Summary of Public Comments

Several individuals who provided testimony are a part of or represented Career and Technical Education (CTE) professional educator groups, including the Minnesota Technology and Engineering Education Association (MTEEA), the Minnesota Association of Family and Consumer Sciences (MAFCS), and the Minnesota Association for Career and Technical Administrators (MACTA).

Concern was expressed at the hearing that these groups were not included in the agency's Additional Notice Plan, and that they therefore did not receive timely communication of the Dual Notice. In addition, some individuals expressed a desire that representatives from the CTE community could have been involved earlier in the standards review and rulemaking process.

## MDE Response

### *Additional Notice Plan*

MDE has traditionally included a broad list of educator and administrator groups in the additional notice plan<sup>8</sup>. This long list includes Education Minnesota (the statewide educator union), Minnesota Elementary Principals Association, Minnesota Secondary Principals Association, Minnesota Association of School Administrators, Minnesota Superintendents, Charter School Directors, the Minnesota School Board Association, the Minnesota Rural Educators Association and more. In addition, when the proposed rules are academic standards, content area- specific groups directly related to the content are also included in the notice plan, in this case, arts education-related organizations. Furthermore, the additional notice plan list is identified in part through the stakeholders listed in Minnesota Statutes section 120B.021, subdivision 2(a) (see this language stated above on pps. 4-5 of this Post Hearing Response) as those who need to provide advice to the Commissioner. This list is not meant to be exclusionary, but rather focused on those most impacted by the content area.

At the beginning of each formal rulemaking process, as well as throughout the process, the department carefully reviews the additional notice plans of previous rulemaking projects in the same and other content areas to determine if additional entities or organizations need to be added or removed from the additional notice plan. The department also relies on individual teachers and district staff to remain active members of professional organizations to receive communication on current rulemaking projects. The department further relies on larger professional organizations to distribute rulemaking notices to its members. With each formal rulemaking project, the department carefully considers which groups and communities will be impacted by the proposed rules by both supporting and opposing the rules, and to include all of those impacted in the additional notice plan. The department makes a good faith effort to create an additional notice plan that balances the need to

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<sup>8</sup> See **Appendix B**, the additional notice plan and the list of general education organizations the department notified about important steps in the formal rulemaking process.

broadly notify and inform while not communicating with non-interested parties. The department continually strives to improve its outreach approach and thereby modifies its additional notice plan with each rulemaking project. The department also routinely submits its additional notice plan for all rulemaking projects early in the process to the administrative law judge for prior approval. The additional notice plan for the proposed K-12 arts standards rules was approved by Judge Mortenson in May of 2018.

The department will consider adding all professional educator groups to all rulemaking notifications to ensure that all education groups identified in MDE.org on the public facing department website receive notice about all proposed rules, thereby giving those groups the ability to decide what is relevant to their interests and needs. The department has added MAFCS, MTTEA and MACTA to its general education rulemaking notification listserv which is a part of all rulemaking additional notice plans. Although the department did not specifically include these organizations in its initial additional notice plan, there were multiple opportunities announced to the public and education community to be involved in the rulemaking process. These opportunities will be described in the next section.

### ***Prior Opportunities for Input***

Regarding the comments from testifiers who wanted to be involved earlier the standards review process, there were several opportunities to provide input on the standards throughout the process, prior to the beginning of the formal rulemaking process. They were as follows:

- The application to be a part of the standards review committee was open to anyone in Minnesota in the early spring of 2017;
- The Commissioner's assumptions, which included moving from grade-banded to grade-level benchmarks K-8 to comply with Minnesota statute, were initially posted on the department's public website as part of the committee application process, and are still posted online;
- As public meetings, the dates, times, and locations of every standards committee meeting was posted on the department's public website prior to and throughout the department's review process. Any member of the public may observe these meetings;
- The department invited the public to submit suggestions for revising the 2008 K-12 academic standards in the arts from August to September, 2017, through an online process that was completed prior to the first meeting of the Committee. The feedback was collected and submitted to the Committee for consideration early in the review process;
- The public was invited to submit online feedback following the release of the first and second drafts of the revised standards and benchmarks. The public was invited to provide feedback online via the department's public website, the Superintendent's mailing, email lists of arts educators, and collaborating organizations' emails and newsletters. The first public feedback period was February 15 to March 1, 2018, and 100 detailed responses were received to the online survey. The second public feedback period was March 27 to April 16, 2018, and 35 responses were received to the online survey;
- The public was invited to ask questions and submit comments at regional meetings hosted by the department. The meetings were held between February 20 and March 1, 2018, across the state of Minnesota in Rochester, Marshall, Fergus Falls, Duluth, Bemidji and Roseville; and
- In addition, early in the review process, department Career and Technical Education (CTE) staff presented to the committee about CTE so that lens for considering arts learning could be used throughout the review.



# Connections Between Academic Standard Rulemaking and Educator Licensing Rulemaking

## Summary of Questions and Public Comments

Educator licensing came up as an area with connection to the academic standards and related course offerings. Some testimony from the public included concern that the educators who can teach the arts standards are limited by licensure area. The connection between academic standards rulemaking and educator licensing rulemaking by the Professional Educators Licensing and Standards Board (PELSB) was addressed.

## MDE Response

Academic standards from any content area can be taught in any course. For example, a History course might also meet a few theater standards; or, a Visual Arts course might also meet a few English Language Arts standards. However, a course offered in a specific content area must be taught by an educator with the appropriate license, as determined by the Professional Educator Licensing and Standards Board (PELSB).

PELSB is the state agency that oversees educator licensure. As part of that responsibility, PELSB engages in the formal rulemaking process, separate from the department's formal rulemaking projects, regarding licensure and educator requirements for each content area. The PELSB rulemaking process generally begins after the completion of the department's formal rulemaking process for the academic standards in a given content area. This approach is intended to give PELSB an opportunity to draft high quality licensing rules that work with and in response to the new K-12 academic standards rules in a specific academic area. As the formal rulemaking process on the proposed K-12 academic standards in the arts nears the end of the formal process, PELSB will begin their rulemaking process on licensure in the arts.

## Language Change Request in Proposed Minnesota Rules, Ch. 3501.0820, subpart 3: "And" to "Or"

### Summary of Questions and Public Comments

Several testifiers requested that the department make a language change in Minnesota Rules, Ch. 3501.0820, subpart 3. Testifiers requested that the word "and" be changed to "or" in both the subpart and item text of the rule where arts areas are listed, separated by the word "and." Testifiers stated that the use of the word "and" instead of "or" could be interpreted by school staff to require schools to offer more arts courses in grades 6-8 or require instruction in each grade, in all arts areas, including both the Perform *and* Present strands.

The proposed rule language states:

Subp. 3. Perform (dance, music, and theater) and present (media arts and visual arts)

A. In dance, music, and theater:

...

B. In media arts and visual arts:....

The proposed rule language change requested by commenters and testifiers is the following:

Subp. 3. Perform (dance, music, ~~and~~ or theater) ~~and~~ or present (media arts ~~and~~ or visual arts)

A. In dance, music, ~~and~~ or theater:

...

B. In media arts ~~and~~ or visual arts:....

## MDE Response

The department received many duplicate requests to make this language change in the dual notice comment period and addressed this suggested change in the department's Post Dual Notice Response (see Appendix A). Due to the number of testifiers that continued to suggested this change at the hearing the department will address it further in this response.

The word "and" in this subpart of the proposed rule language was used to describe this strand as having two different and unique verbs that relate to a student's engagement in a particular arts area. The anchor standard language is the same for all five arts areas, however given the unique ways students demonstrate learning in an arts area, different verbs are generally associated with different arts areas. It is more common and appropriate to say one "performs" dance, music and theater for an audience. Similarly, it is more common and appropriate to say one "presents" media arts or visual arts. The department chose to use the verb most commonly associated with each arts area to illustrate the likely way students might showcase this aspect of artistic literacy in the respective arts areas. Thus, the word "and" is not used in the proposed rule language with the intent of requiring both "perform" and "present" for this strand of arts learning. Nor was the use of the word "and" intended to require all five arts areas or all of the arts areas associated with "perform" or "present." As stated in the department's Post Dual Notice Response, the department is open to making the change from "and" to "or", as it would not significantly change the intent or meaning of this proposed rule. However, the department does not believe this change is necessary as the word "and" is simply meant to connect the verbs "perform" and "present", given that they are two different ways of satisfying the same strand.

## Reduction in Electives Due to Increased Arts Requirements

### Summary of Questions and Public Comments

Testifiers at the hearing brought up another concern that was present in many written dual notice comments. They expressed concern that the required arts offerings will be increased in grades 6-8 as a result of the shift to grade-level benchmarks. Testifiers stated that the shift to grade-level benchmarks and related required arts course offerings will result in fewer elective course offerings, a reduction in teaching staff and less choice and exposure for students. The department addressed the arts course requirements earlier in this response and in its Post Dual Notice Response, however the department will also briefly address this issue here. Please see Appendix A.

## MDE Response

The department understands that many districts will have to change and adapt their current arts course offerings to adhere to the statutory requirements. However, as stated in the department's Post Dual Notice Response, if a district was not already offering arts instruction in each grade level in grades 6, 7, and 8, the district was not in compliance with state statute. Please see the department's Post Dual Notice Response in Appendix A for further discussion on this topic

The department also heard the concern and frustration of teachers and district staff about the impact that arts requirements may have on staffing and elective course offerings. Arts education requirements are set forth in statute and the department is required to review and revise academic standards in core content areas, which includes the arts, to comply with state requirement. The department's efforts in modifying the existing arts standards is not intended to make educators jobs more difficult, rather the department wants arts standards across the state to meet state requirements, and promote increased artistic literacy for all students. Elective offerings and educator licensing issues are outside the scope of this rulemaking project.

## Conclusion

This document constitutes the department's response to comments and testimony heard at the hearing on March 2, 2020. In conclusion, the department believes that the SONAR and supporting exhibits demonstrate that the proposed rules are needed and reasonable and in accordance with all regulatory and legal requirements. The department respectfully requests that the proposed rules be approved. If you have questions about this agency response, please contact Doug Paulson at (651) 582-8471 or [doug.paulson@state.mn.us](mailto:doug.paulson@state.mn.us).

Date: 3/8/20

Signature: Original Signed by Asst. Commissioner Burnham  
Bobbie Burnham, Assistant Commissioner  
Minnesota Department of Education

## Bibliography

[Minn. Stat. § 14.131.](#)

[Minn. Stat. § 14.23.](#)

[Minn. Stat. § 120B.021.](#)

[Minn. Stat. § 120A.22.](#)

[Minn. Stat. § 120B.023.](#)

[Minn. Stat. § 120B.024.](#)

[Minnesota 2016 Session Law, Ch. 189, Art 25, sec. 5.](#)

[Minnesota State Register, Volume 44, Number 29, p. 797.](#)

The Minnesota Rulemaking Manual, Chapter 4, SONAR Development,  
[https://www.health.state.mn.us/data/rules/manual/chapters.html.](https://www.health.state.mn.us/data/rules/manual/chapters.html)



## Response to Public Comments on Proposed Arts Standards

*February 25, 2020*

**Re: In the Matter of the Proposed Amendments to Rules Governing Minnesota K-12 Academic Standards in the Arts, Minnesota Rules 3501.0820-3501.0865; and Repeal of Minnesota Rules 3501.0800, 3501.0805, 3501.0810 and 3501.0815; Revisor's ID Number: RD4531; OAH Docket No. 5-9005-35173**

As part of the rulemaking process for the 2018 K-12 Academic Standards in the Arts, the Dual Notice was published in the State Register on January 13, 2020. The dual notice comment period ended on February 12, 2020. The department received 94 hearing requests with comments and 21 additional comments on the proposed rules.

This document outlines the concerns and issues raised in the comments received during the dual notice comment period, with response to each from the Minnesota Department of Education. Many of these comments were received from educators who teach Family and Consumer Science, Technology, or Engineering. Many of these comments express concerns related to a statutory requirement and other concerns that are not within the scope of this rulemaking project. However, due to the large number of comments the department received on these topics the department chose to address them below.

### Grade-level Benchmarks and Arts as a Core Content Area

#### Summary of Public Comments

Many commenters expressed concern that the shift from grade-banded benchmarks in the 2008 standards to grade-level benchmarks in the 2018 standards would have several negative outcomes. Many commenters objected to a statement in the SONAR which states a "shift from grade-banded to grade-level benchmarks at the K-8 level provides more detail, specificity, and clarity for the progression of learning in the arts." While the comments did not specifically dispute this statement, it was called out because it highlights the shift from grade-banded to grade-level benchmarks.

Commenters also expressed concern that this shift to grade-level benchmarks would lead to a new requirement that districts must provide arts instruction in every grade, K-8, thereby reducing or eliminating other electives at grades 6-8. In addition, commenters stated that although grade-level benchmarks are important for *core* academic courses, that the arts are *elective* courses and are not core content. Commenters expressed concern that grade-level benchmarks would lead to the arts becoming core academic courses and therefore required courses at the middle school level. There was also concern expressed that this new requirement would increase required arts courses beyond what is required in statute.

## MDE Response

### ***Arts are a core content area, as required in Minnesota state statutes***

For several decades, the arts have been a core content area in Minnesota statutes and rules. Over the last 16 years, Minnesota has created or adopted academic standards in nine content areas.<sup>1</sup> For that entire period, the arts have been included as core and required content. Since 2003, the Minnesota Legislature has required state academic standards in mathematics, language arts, science and social studies, and state or locally developed academic standards in the arts, as well as locally developed elective standards.<sup>2</sup> In 2016 the Legislature began requiring state standards for physical education. The revision and review of state academic standards is required in statute for the arts, mathematics, science, language arts, social studies, and physical education<sup>3</sup>. As some commenters noted, the Legislature began requiring academic standards in order to maintain Minnesota's commitment to rigorous educational expectations for all students, as well as to comply with the 2001 re-authorization of the ESEA, now widely known as the *No Child Left Behind Act of 2001*.<sup>4</sup>

Compulsory Instruction law requires arts education to be a component of comprehensive educational opportunities for all students (ages 7-16) with a requirement that instruction be provided in the arts every year.<sup>5</sup> Specifically, Minnesota Statutes, section 120A.22 states:

#### **"120A.22 COMPULSORY INSTRUCTION.**

Subd. 9. *Knowledge and skills.*

Instruction must be provided in at least the following subject areas:

(1) basic communication skills including reading and writing, literature, and fine arts;<sup>6</sup>

State law also provides that the arts are required for statewide accountability. State law requires that students in elementary, middle, and high schools learn arts standards in a minimum number of arts areas.<sup>7</sup> Specifically, Minnesota Statutes section 120B.021 states:

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<sup>1</sup> Minnesota has standards in Arts, Science, Language Arts, Social Studies, Mathematics, Physical Education, Health, Career and Technical Education and World Languages. See [Minnesota Rules Chapter 3501](#).

<sup>2</sup> [2003 Minnesota Laws, chapter 129, article 1, section 3](#); [Minn. Stat. § 120B.021 \(2003\)](#); and [Minn. Stat. § 120B.022 \(2003\)](#).

<sup>3</sup> [Minn. Stat. § 120B.021, subd. 4](#).

<sup>4</sup> *No Child Left Behind (NCLB)*, [Pub. L. 107-110](#) (2002).

<sup>5</sup> [Minn. Stat. § 120A.22, subd. 9](#).

<sup>6</sup> *Id.*

<sup>7</sup> [Minn. Stat. § 120B.021, subd. 1](#).

### “120B.021 REQUIRED ACADEMIC STANDARDS.

Subdivision 1. Required academic standards. (a) The following subject areas are required for statewide accountability:

....

(7) the arts, for which statewide or locally developed academic standards apply, as determined by the school district. Public elementary and middle schools must offer at least three and require at least two of the following four arts areas: dance; music; theater; and visual arts. Public high schools must offer at least three and require at least one of the following five arts areas: media arts; dance; music; theater; and visual arts.”<sup>8</sup>

### ***Grade-level benchmarks are required for academic standards by Minnesota state statutes***

Minnesota state law also requires supporting benchmarks for academic standards in core content areas in grades K-12, including the arts.<sup>9</sup> Academic standards describe the expectations in learning that all students must satisfy to meet state requirements for credit and graduation.<sup>10</sup> The benchmarks supplement the academic standards, and provide details about “the academic knowledge and skills that schools must offer and students must achieve to satisfactorily complete” the standards.<sup>11</sup>

The arts is the last core content area to shift from grade-banded to grade-level benchmarks, as required by Minnesota statute. The shift from grade-banded to grade-level benchmarks is not a choice, it is a legal requirement.

## **Required Amount of Arts Education and Reduction in Electives**

### **Summary of Public Comments**

Connected with the comments summarized above, commenters expressed concerns that the required arts offerings will be increased in grades 6-8 as a result of the shift to grade-level benchmarks. Commenters were concerned that the shift to grade-level benchmarks and related required arts course offerings removes the autonomy that districts previously had in offering arts standards at the grade level that worked best for the district.

Some commenters were concerned that K-8 grade-level benchmarks would lead many districts to interpret Minnesota Statutes section 120B.021, subd. 1, to mean that instruction in two arts classes will be required each year per grade level. Concerns were expressed that requiring two arts areas every year per grade level will result

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<sup>8</sup> [Minn. Stat. § 120B.021, subd. 1.](#)

<sup>9</sup> [Minn. Stat. § 120B.021, subd. 1\(6\).](#)

<sup>10</sup> [Minn. Stat. § 120B.02.](#)

<sup>11</sup> [Minn. Stat. § 120B.023, subd. 1.](#)

in the reduction in the number of elective courses that students can take. This, in turn, could potentially reduce the number of teaching positions for elective courses such as engineering, technology and family arts and consumer science. Commenters expressed concern that requiring instruction in two arts areas at each grade level, K-8, will also lead to fewer graduates experiencing middle school courses in the trades and other areas that are not arts-related careers, and this reduction will negatively impact the employee pipeline and economy in those areas. Finally, commenters expressed concern that the shift to grade-level benchmarks would lead to a reduction in choice and a requirement that students take arts courses even if they do not want to.

Other commenters expressed concern that it is not realistic to add staff licensed in the arts for additional arts areas, especially in smaller, rural districts. They contend that there are not enough licensed teachers, and that it should be possible for schools to embed arts standards in other content area courses.

### **MDE Response**

As outlined above, the arts *are* a core content area, and state statute sets out the requirements regarding the amount of arts education every Minnesota student receives. These statutory requirements have been in place for years, and nothing in Minnesota statute is changing as a result of the proposed rules. Districts' interpretation of the statutory requirements have varied widely across the state, with many having been out of compliance for years. For example, because compulsory instruction requires arts instruction every year, districts requiring only one or two arts courses during the sixth through eighth grade band are not in compliance with existing statutory requirements. Arts instruction is required each year. Elementary and middle schools must offer three and require two arts areas each year with grade-level benchmarks. This may lead to an increase in arts offerings for schools who do not currently require this level of arts learning. This increase in offerings is necessary in order to comply with statutory requirements and to ensure that students have equitable access to sequential and rigorous learning in this core content area across the state.

## **The Breadth and Depth of Learning In the Arts**

### **Summary of Comments**

Some commenters expressed the perspective that other courses and content areas teach creativity, and thus arts standards and required arts learning are not needed. For example, some comments highlighted the presence of creativity and the arts in Career and Technical Education (CTE) courses such as agriculture, foods and nutrition, design, and industrial technology. Some comments elaborated, "CTE is ART: plating a dish, designing a quilt, building a home, creating wood furniture, welding a bookshelf, planning and planting garden, these applied art activities are happening in tiny departments and teaching students design and art principles they will carry to all areas of their life work."



## MDE Response

### ***Breadth and depth of arts standards***

The department agrees that creativity can be taught and learned in content areas in addition to the arts. The department also agrees that the arts can be present in other content areas in meaningful and impactful ways. However, the proposed academic standards in the arts articulate a full, sequential, K-12 scope of arts learning that expands far beyond the completion of a creative, hands-on project.

The overarching goal of the arts standards is the development of artistic literacy for all Minnesota students. Artistic literacy is “the ability to combine foundational knowledge and skills in an art form with four processes fundamental to the arts: Creating, Performing or Presenting, Responding, and Connecting.” In order for all students to have a balanced understanding of and competency in the arts, they must master important concepts and skills in all four processes. Foundational knowledge and skills, such as design and art principles, are not a full arts education. No single artistic process, such as creating, represents a complete arts education. The intersection of authentic artistic processes with foundational knowledge and skill is where students build and demonstrate artistic literacy.

Process-based learning is a focus in the 2018 arts standards. This is not so much a shift as a continued prioritization of this approach to learning in the arts in Minnesota. The artistic processes that make up artistic literacy can be defined as follows:

- Creating: Generating original art, including conceiving and developing new artistic ideas and work.
- Performing (dance, music, and theatre): Realizing artistic ideas and work through interpretation and presentation.
- Presenting (media arts and visual arts): Interpreting and sharing artistic work.
- Responding: Understanding and evaluating how the arts convey meaning.
- Connecting: Relating artistic ideas and work with personal meaning and external context.

The framework of these four artistic processes is valuable because it links student learning to real artistic practice, rather than just theoretical knowledge. This framework is based on the way professional artists work. It captures the ways of working and thinking skills needed by students to become artistically literate. In addition, a range of real-world skills and social-emotional competencies are developed when there is a focus on *process* in student learning in the arts in addition to the *product*. For example, the Connect process focuses on the importance of the contexts in which artistic work is created, performed, presented, and responded to. Artistic work does not exist in a vacuum. Personal, cultural, societal, and historical contexts influence the creation and interpretation of artistic work. Artistic work, in turn, influences individuals, culture, society, and history. Understanding this two-way relationship unique to the Connect process is critical to becoming artistically literate in today's world.

### ***Career and Technical Education (CTE) and the Arts***

Because of the natural overlap of some CTE courses and the arts, a formal connection between CTE and the arts in statute has been present for years. [Minnesota Statutes section 120B.024, subd. 2](#) allows that at the high

school level, “A career and technical education credit may fulfill a mathematics or arts credit requirement...”<sup>12</sup> Minnesota Rules Chapter 3505.1150, subpart 2<sup>13</sup> provides further guidance regarding what must be in place for a CTE course to count for arts credit. Essentially, A CTE course may fulfill an arts credit if all of the following are true:

- Students must meet all of the arts standards in the relevant arts area in the course.
- The teacher of record must have a CTE license.
- The teacher of record must also have passed the Subject Assessment and Specialty Area Test required for Minnesota licensure for the relevant arts area.

These requirements highlight the substance and depth of standards-based arts learning that must be present in order to offer a CTE course that counts for an arts credit at the high school level. They also set a requirement that the instructor demonstrate arts education expertise by passing the Minnesota Teacher Licensure Examination (MTLE) in the relevant arts area. This option illustrates how meaningful arts learning in another content area can satisfy a core arts requirement.

## Request to Change a Word in Proposed Minnesota Rules 3501.0820, subpart 3.

### Summary of Comments

Many commenters requested changing “and” to “or” in a few places in the proposed language of Minnesota Rules Chapter 3501.0820, subp. 3. Currently this strand reads, “Perform (dance, music, and theater) and present (media arts and visual arts).” The proposed change would read, “Perform (dance, music, *or* theater) *or* present (media arts *or* visual arts).”

Commenters expressed concern that the use of the word “and” would result in an increase in the number of required arts courses in grades 6-8. Some commenters requested this change because they believed the word “and” would require the demonstration of learning in both Performance [dance, music, theater], and Presentation (media arts and visual arts). Others were concerned the “and” suggests that learning would be required in all five arts areas (dance, music, theater, media arts, and visual arts) and/or all the arts areas associated with “Perform” or “Present.”

### MDE Response

“And” is not used in the proposed rule language with the intent of requiring both “Perform” and “Present” for that strand of arts learning. Nor is it meant to require all five arts areas or all of the arts areas associated with “Perform” or “Present.” It describes this strand as having two different verbs that relate to a student’s

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<sup>12</sup> [Minn. Stat. § 120B.024, subd. 2.](#)

<sup>13</sup> [Minn. R. 3505.1150, subp. 2.](#)

engagement in a particular arts area, but the anchor standard language is the same for all five arts areas. However, “or” could be used in this subpart and it would not significantly change the intent or meaning of this proposed rule. The department is open to making this proposed change.

### Conclusion

As with all other core academic areas, students across Minnesota benefit from clear, specific, focused, and sequential academic standards and benchmarks. There are multiple ways to give feedback throughout Minnesota’s process for developing academic standards, and the arts standards committee relied on that feedback to make these proposed rules strong and useful.

The resulting proposed standards support career and college readiness in and through the arts. Learning in the arts builds key transferable skills that are applicable across areas of study and careers. Academic standards also drive improvements in instruction and curriculum as educators build standards-based learning. And finally, these academic standards provide a foundation for equitable access to sequential and rigorous arts education across Minnesota, regardless of zip code.

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[Minn. Stat. § 120B.021.](#)

[Minn. Stat. § 120A.22.](#)

[Minn. Stat. § 120B.023.](#)

[Minn. Stat. §120B.024.](#)

### Minnesota Rules

[Minnesota Rules Chapter 3501.](#)

[Minn. R. 3505.1150.](#)

# Appendix B

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Association of Metropolitan School Districts (AMSD)	Scott	Croonquist	Executive Director
Board of School Administrators (BOSA)	Tony	Kinkel	Executive Director
Board of School Administrators (BOSA)	Mary	Mackbee	Board Chair
BIE Schools - Bug-O-Nay-Ge-Shig			
BIE Schools - Circle of Life			
BIE Schools- Fond du lac Ojibew			
BIE Schools - Nay-Ah-Shing	Noah	Johnson	Joyce Shungobe-ED
BIE Schools-Red Lake	Ann	Lindquist	
Bridges Workplace Connection	Mary	Gottsch	Director
Charter School Partners	Al	Fan	Executive Director
East Metro Integration District/Equity Alliance MN	Jean	Lubke	Executive Director
Education Minnesota	Denise	Specht	President
Education Minnesota	Lucking	Carrie	Outreach Director
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ISD-Intermediate School District 917			
ISD-Northeast Metro 916			

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Mentoring Partnership of Minnesota (MPM)	Joellen	Gonder-Spacek	Executive Director
MinnCAN	Daniel	Sellers	Executive Director
Minneapolis Urban League	Steven	Belton	Interim President/CEO
Minnesota Administrators for Special Education (MASE)	John	Klaber	Executive Director
Minnesota Association for the Education of Young Children (NAEYC)	Sharon	Bergen	Executive Director
Minnesota Association of Charter Schools (MACS)	Eugene	Piccolo	Executive Director
Minnesota Association of Colleges for Teacher Education (MACTE)	Connie	Gayle	President
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Minnesota Association of Secondary School Principals (MASSP)	David	Adney	Executive Director
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Minnesota Citizens League	Sean	Kershaw	Executive Director
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Minnesota Elementary School Principal's Association (MESPA)	Jon	Millerhagen	Executive Director
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Minnesota Office of Higher Education (OHE)	Larry	Pogemiller	Commissioner
Minnesota Parent Teacher Student Association (MNPTA)	Tracy	Dewberry	President
Minnesota Private College Council (MPCC)	Paul	Cerkvenik	President
Minnesota Professional Educator Licensing and Standards Board (PELSB)	Alex	Liuzzi	Interim Exec Dir
Minnesota Rural Education Association (MREA)	Fred	Nolan	Executive Director
Minnesota School Boards Association (MSBA)	Kirk	Schneidawind	Executive Director
Minnesota State Colleges and Universities (MnSCU)	Steven	Rosenstone	Chancellor
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