

Navigating Divisive Concepts Laws: Resources for PK–12 Music Educators

Karen Salvador and Ryan D. Shaw¹

Executive Summary: Divisive Concepts Laws (DCLs)² are legislative and executive actions that restrict teaching, professional learning, and student learning in K–12 schools and higher education regarding race, gender, sexuality, and American history. As of September 1, 2023, twenty states had passed DCLs affecting education.³ In addition to state-level DCLs, local educational agencies such as school boards have enacted similar policies. The findings in [NAfME’s DCL Report](#) demonstrated that DCLs are interfering with some music educators’ ability to create a well-rounded and comprehensive music education—not because such an education violates DCLs, but because of the vagueness of DCLs and the inconsistency with which they are interpreted and enforced. It is therefore with the intent of helping music educators create relevant, inclusive, high-quality music instruction for all students that we offer the following suggestions for navigating DCLs. In the full document below, we offer four steps to help educators address the following five main points music educators should consider and present some relevant resources.

- 1) **Know the policies that affect you.** Is it settled law? Is it an executive order? Is it proposed legislation at the state level, or is it something being considered by your district’s school board? What enforcement mechanisms are in place, and what consequences exist around non-compliance?
- 2) **Take actions that are legal.** Our focus is on reducing negative effects of DCLs (and people who misinterpret DCLs) that are resulting in unnecessary limitations on curriculum and responsive pedagogical practices. While individual teachers certainly can choose to resist the laws in covert or overt ways, we are encouraging people to be well-informed and cognizant of the risks of different responses.
- 3) **Respect the dignity and worth of each student.** DCLs disproportionately affect the education of students of color and students who are LGBTQ+. Teachers can obey the laws while acting ethically and enacting pedagogies that honor and validate student identities. (Re)framing policies can help teachers continue excellent, diverse, responsive instruction that attends to social, emotional, cultural, and ability-based differences.
- 4) **Consider alternative terminology.** If certain words are taboo—whether because they are specifically enumerated in a DCL or because they have taken on a controversial connotation (e.g., diversity, implicit bias)—consider what terms may be swapped in to facilitate work without fundamental changes.
- 5) **Know Your Curriculum.** Know the approved music curriculum in your school/district, and how your lessons relate. If DCLs are ambiguous, local decisions may hinge on whether music instruction is or is not clearly based in the official curriculum. Examine the curriculum, and have a rationale ready in case anyone has concerns about the relevance or appropriateness of anything you’ve programmed or taught.

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² The term “divisive concepts” derives from [Executive Order 13950](#) (2020). Many lawmakers and others who influence policy took ideas and language directly from this document, which is why the term “Divisive Concepts Law” is a common way to refer to these laws and policies. They are also called other things including [Educational Gag Orders](#) and [Educational Intimidation Bills](#).

³ Although some scholars classify other laws as DCL, such as those targeting gender affirming care, in this document, we focused specifically on DCL in education. The following seventeen states had enacted laws [Pen America](#) defined as “Educational Gag Orders:” AZ, AR, FL, GA, ID, IN, IA, KY, MS, NH, ND, OK, SC, SD, TN, TX, UT. Seven states had state-level executive orders or policies: AL, AR, FL, MT, SD, UT, VA. Throughout the document, we use the term “DCL” to include not only state-level laws, executive orders, and policies, but also those enacted at local levels.

Navigating Divisive Concepts Laws: Resources for PK–12 Music Educators: Full Report

Karen Salvador and Ryan D. Shaw⁴

Divisive Concepts Laws (DCLs)⁵ are legislative and executive actions that restrict teaching, professional learning, and student learning in K–12 schools and higher education regarding race, gender, sexuality, and U.S. history (see [this report](#)). As of September 1, 2023, twenty states had passed DCLs affecting education.⁶ In addition to state-level DCLs, local educational agencies such as school boards have enacted policies similar to DCLs. In 2022, the National Association for Music Education (NAfME) surveyed PK–20 music educators and music teacher educators to learn about the impacts of DCLs (full report [here](#)). Respondents ($N = 315$) held mixed views. Many described self-censorship, restricted curriculum, unclear implementation processes, fear about their own identities becoming an issue, and challenges with student relationships. In contrast, about half reported no impacts from DCLs, for reasons including living in a place that does not have them, agreeing with the laws, or refusing to acquiesce to the laws. In this document we offer suggestions on how practicing music educators in PK–12 schools can navigate DCLs.

Before we make those suggestions, some NAfME members have wondered why NAfME is gathering information about DCL impacts on music curriculum/instruction, students, and educators or offering ideas regarding DCLs. NAfME’s mission is to be “a collaborative community that supports music educators and advocates for equitable access to music education,” and NAfME envisions itself as “an association where all people are heard, seen, and feel they belong throughout their lifelong experiences in music” (see [NAfME’s Strategic Plan](#)). As such, equity, inclusion, and belonging are pillars of NAfME’s leadership in music education. NAfME’s 2017 [Position Statement on Inclusivity and Diversity in Music Education](#) states:

A well-rounded and comprehensive music education program, as envisioned in the 2014 National Music Standards, should exist in every American school; should be built on a curricular framework that promotes awareness of, respect for, and responsiveness to the variety and diversity of cultures; and should be delivered by teachers whose culturally responsive pedagogy enables them to successfully design and implement such an inclusive curricular framework.

The position statement then asks NAfME members to support inclusivity and diversity in music education by:

1. Building music programs that address achievement in all areas set forth in the 2014 Music Standards, including the study of a wide variety of music-making that encompasses styles and genres of music broadly representing America’s cultural diversity.

⁴ Andrew Bohn, a PhD student, and Karla Evans, a master’s student (both at Michigan State University), contributed research assistance to this project.

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2. Understanding their community’s needs and interest in music-making, including diverse musical styles and genres.
3. Welcoming any and all students who want to learn music, regardless of exceptionalities, identity, orientation, or cultural background in their music programs K–12.
4. Seeking to learn about musical styles and traditions that are not part of the educator’s own musical background through in-person and online professional development opportunities.

The findings in [NAfME’s DCL Report](#) demonstrated that DCLs are interfering with some members’ ability to create this well-rounded and comprehensive music education—not because such an education violates DCLs, but because of the vagueness of DCLs and the inconsistency with which they are interpreted and enforced. Misconceptions about these laws (and about the nature of culturally responsive pedagogy and social emotional learning, among other approaches) make it more challenging for music educators to meet student needs as well as persist and thrive in their profession. Moreover, DCLs are affecting music educator recruitment and retention at a time when many school districts are facing teacher shortages.

It is therefore with the intent of helping music educators create relevant, inclusive, high-quality music instruction for all students that we offer the following suggestions for navigating DCLs.

Navigating DCLs: Four Steps

Step 1: Know the Exact Language of the Law or Policy

This document is not legal advice. As a first step, every educator must find out what state and local laws and policies are in effect where they teach. Educators may also find it prudent to consider or seek guidance on how narrowly or broadly the decision-makers at their school or district are interpreting any applicable laws and policies, and what enforcement measures may be taken if an educator’s actions are deemed in violation of DCLs or applicable policies. [This table](#) can help you locate exact language for state-level laws, policies, and executive orders. At the local level, resources from the University of California Los Angeles ([UCLA](#)) and the American Civil Liberties Union ([ACLU](#)) may be helpful, and we also recommend speaking with local leaders who are knowledgeable about policy. Because varied interpretation is a known issue with DCLs, it is essential that teachers know the exact language of a given law or policy.

Findings from the NAfME DCL report indicated that teachers were restricting curriculum in ways that DCLs do not actually require. For example, music educators were choosing not to program spirituals or gospel songs, and they were limiting discussion on the historical context of musics like jazz or music from the civil rights movement. This “[chilling effect](#)” associated with DCLs has led to unnecessary narrowing (and whitening) of music curricula. Music educators in affected states and districts must follow laws and policies. However, we urge music educators to know exactly what the laws are that affect them and advocate regarding how excellent music education that includes diverse musics presented within cultural context, attention to social and emotional learning, equitable treatment for students with a variety of identities, and culturally responsive pedagogy is not in violation of these laws.

Step 2: Consider Facts and Ethics

Once an educator knows the exact policies in place in their district, region, and state, they should critically consider what is factual and ethical. DCLs and related policies are vague, leaving room for various people (including teachers, students, administrators, and parents) to interpret them differently. For example, while some

DCLs specifically prohibit teaching *The 1619 Project*,⁷ Iowa’s HF802 also prohibits teaching other “similarly developed curriculum.”⁸ Iowa legislators did not explain the metrics for determining what “similarly developed curriculum” means, tacitly encouraging teachers to avoid materials that might share characteristics with *The 1619 Project*.

Interpretations of DCLs are often affected by media personalities and politicians using talking points that are not based in fact. For example, Critical Race Theory (CRT) is not something that is typically taught in PK–12 schools, but many people are intent on banning CRT from PK–12 schools, even when they cannot define what CRT is (see this [blog](#) and [associated report](#)). Additionally, some proponents of DCLs say they are necessary to prevent “grooming” of children in schools, implying—without evidence—that teachers are engaging in sexual misconduct or surreptitiously convincing students to become LGBTQ+. To navigate DCLs, teachers must first engage in critical thinking about what is true, both for teachers/education in general and also for themselves.

An educator’s professional ethics also provide guidance for interpreting DCLs. In 2014, the National Association of State Directors of Teacher Education and Certification (NASDTEC) created the [Model Code of Ethics for Educators \(MCEE\)](#), which they updated in 2023. Some states subsequently adopted MCEE (sometimes with modifications). Aspects of the MCEE that are particularly relevant to teachers’ interpretation of DCLs include:

The professional educator demonstrates an ethic of care through:

1. Seeking to understand students’ educational, academic, personal, and social needs as well as their values, beliefs, and cultural background;
2. Respecting the dignity, worth, and uniqueness of each individual student including, but not limited to, actual and perceived gender, gender expression, gender identity, sexual orientation, civil status, family status, religion, age, disability, race, ethnicity, socioeconomic context and culture; and
3. Establishing and maintaining an environment that promotes the emotional, intellectual, physical, and sexual safety of all students.

(Excerpt from Principle 3: Responsibility to students)

In a pluralistic school, people who have minority identities or views have an equal right to ethical treatment, which includes materials that reflect them and meet their needs. Operating in a pluralistic setting like a school may also mean that someone’s individual morals may not align with what is ethical behavior for a professional educator. For example, a few respondents to the NAFME survey responded that they believe that being transgender is a mental illness or against their religion. However, in a school, the ethical action is seeking to understand students, respecting their dignity, and establishing safe environments as described above.

Step 3: Consider Your Options

When teachers are faced with policies like DCLs, they have a range of options. They can—and do—react in a variety of ways, and understanding the options for response may be helpful as educators are considering what to do in a given situation. Though DCLs are different from other policies in some notable ways, they are not wholly dissimilar from other policies. For example, when music teachers faced new teacher evaluation laws around 2010,

⁷ The [1619 Project](#) is a Pulitzer Prize-winning set of long-form journalism, coordinated by Nikole Hannah-Jones, that chronicles slavery and its aftermath in the United States. It is specifically named/forbidden in some DCL.

⁸ Sheppard, M. (2023). Legislating whiteness: An emotion discourse analysis of divisive concepts legislation. *Pedagogy, Culture & Society*, 1-19. <https://doi.org/10.1080/14681366.2023.2242351>

they had choices to make. Many of these choices—then and now—depend on contextual factors. Teachers work within multiple contexts—at the personal level, the school and district level, and even the societal level. The table below outlines categories of actions that teachers have taken when policies have changed in the past.

	Response Option	Definition
Acceptance	Willful Compliance	A teacher likes the policy; they agree with most or all of the particulars and are happy to go along.
	Silver Lining	A teacher doesn't love the policy, but they don't hate it; they are willing to work with it and they seek out a benefit—something they can find value in for their work.
Covert Resistance	Ignoring	A teacher does not support the policy, but they are pretty sure no one is paying close attention to compliance; they attempt to ignore the policy and continue with business as usual.
	Reinterpreting	A teacher doesn't support the policy, but they can't or don't want to ignore it; they take an ambiguous policy and fill in the particulars as they see fit, or they reframe a policy completely so it works for them.
	Fabrication/Faking	A teacher doesn't support a policy; they pretend to comply, which may require falsifying something.
Overt Resistance	Individual Resistance	A teacher doesn't support a policy; they take an individual stand, protesting to administrators, an elected board, the public.
	Collective Resistance	A teacher doesn't support a policy; they organize a coalition of like-minded others and mount a public protest.

It may be helpful to think of this in terms of specific divisive concepts laws discussed in the recent NAFME report. Here are hypothetical examples of what teacher responses might look like:

	Response Option	Examples
Acceptance	Willful Compliance	A given DCL stipulates there be no curricular inclusion of “critical race theory”; a music educator agrees with the policy and looks through all curricular materials to make sure—sometimes taking an overly cautious approach that eliminates material that brings up race (such as the blues) but is not critical race theory.
	Silver Lining	A new DCL requires impartial discussion of any controversial aspects of history; a music educator likes the idea of critical thinking and decides to feature more structured debates

		about historical and present-day social contexts of music.
Covert Resistance	Ignoring	A music educator wonders whether their approach to a Black History Month concert violates a new state DCL. They include small research project and ask students to explore the legacy of slavery and Jim Crow laws. They are fairly sure, however, that no one in their school district would raise an issue, so they decide to ignore the DCL and go ahead with their plan.
	Reinterpreting	A given DCL stipulates that no materials used in classes may state that an individual should be discriminated against based on race, ethnicity, sex, and other characteristics; the music educator uses this as a means to create an entire concert around the notion of historical fights for equality.
	Fabrication/Faking	A given DCL requires that all lesson plans be made public, posted on a school district’s website for each course taught; a music teacher posts some generic unit plans (but they aren’t specific to her class—just ones she’s used before).
Overt Resistance	Individual Resistance	A new DCL stipulates that there be no instruction related to sexual orientation or gender in grades 4–12 unless required by standards or related to health education; a music educator wears a shirt reading “Don’t Say Gay?” as they speak to the local news media about affirming gay and gender-nonconforming students.
	Collective Resistance	Same as the last example, except this time the educator teams with other music teachers in their county; they conduct a “Teach-In” about LGBTQ+ composers and perform musical selections.

Every choice here has pros and cons and carries different risks. With overt resistance responses, the calculus is clear. Publicly fighting DCL policies may endanger a music teacher’s job or may at least embroil them in controversy. At the same time, resisting individually or in concert with others has the potential to raise consciousness about troubling policies. Over time, such persistent action could lead to meaningful change.

Accepting policies that go against one’s moral compass or interfere with one’s notion of professional purpose is not without risks, however. In this sense, compliance, attempting to ignore DCLs, or fabricating/faking compliance can cause stress and tension in the long term. Researchers like Doris Santoro have noted numerous instances where educators struggled and sometimes quit their jobs because they were demoralized by trying to

teach in the face of reforms with which they disagreed (see a few of her publications [here](#)). These teachers were not “burned out” in the traditional sense—it was when directives were in conflict with their notion of “good work” that they could not continue teaching. In other words, covertly dealing with DCLs could contribute to professional unease and frustration over time.

Step 4: Plan, Communicate, and Act

Once music educators know the exact policies that affect them, consider facts and ethics, and contemplate their options, they can then plan, communicate, and act. As always, planning arises from a consideration of what curriculum requires and what students need. The purpose of this resource is to assist music educators in maintaining a diverse music curriculum in which students engage through pedagogies that are responsive to their cultures and abilities.

Additional planning related to DCLs includes not only researching laws and policies (discussed earlier) but also due diligence on teaching materials. This research ensures materials are appropriate to curricular goals and present both [windows, mirrors, and sliding doors](#)⁹ for children to see themselves and the world and offer opportunities for students to share their musical ideas and develop their own musical voices. Planning for inclusive instruction must always include due diligence for the appropriateness of materials and relative authenticity of pedagogical and performance practices.¹⁰

Communication is a reciprocal exercise that includes speaking and listening. Educators serve communities, and communities have different characteristics—this is part of the reason that culturally sustaining pedagogies are so important. Right now, polarization is increasingly an issue, so teachers may need to lead by example, helping people feel heard, seen, and valued, and building trust with administrators and community members. Hearing peoples’ concerns and asking about their hopes for their children might highlight common ground.

One district music supervisor profiled in the NAFME report started asking the teachers he supervised for their concert programs at the planning stage. His intent was not to censor the teachers he supervised, but to help teachers communicate with parents, administrators, and community members about how and why these programs were good for students. In doing this, he was also able to prevent students from performing a song with racist roots. Such additional communication among teachers and administrators can be beneficial. However, many administrators have taken a restrictive interpretation on DCLs, fearing community backlash. Often, however, such interpretations are not based on careful consideration of what the laws actually say or what children need.

As the next step in this project, we will [survey members again](#) regarding the impacts of DCLs (responses requested by December 15, 2023).

⁹ Dr. Rudine Sims Bishop coined this metaphor to describe the ways children’s literature can operate; we join many in arguing that musics operate in similar ways for children.

¹⁰ This source (free to NAFME members if you log in on the website) offers one process for research. Howard, K. (2021). Ethical Song Research for the General Music Teacher. *General Music Today*, 34(3), 42-44.