

TAMALPAIS UNION HIGH SCHOOL DISTRICT

Office of the Superintendent

September 23, 2019

To: TUHSD Principals and Site Budget Secretaries
Presidents of Redwood Foundation, Drake Fund and Tam High Foundation
TUHSD Fine Arts Departments

From: Dr. Tara Taupier, Superintendent
Corbett Elsen, Chief Financial Officer

Re: Guest Artist practices & IRS/State of California law regarding independent contractors

Background:

Given enhanced enforcement by the Internal Revenue Service (IRS) and the State of California regarding the criteria defining independent contractors (e.g. guest artists) versus employees who have to pay additional statutory and fringe benefits, the Marin County Office of Education (MCOE) is providing school districts updated guidance to ensure compliance with federal and state law, avoid unexpected employer and employee tax payments and penalties, and undesirable and sudden changes to programming as it relates to the practice of using 'guest artists' in our schools. As a result, the three major high school foundations (i.e. Foundations - Redwood Foundation, Drake Fund, and Tam High Foundation) have asked TUHSD to provide clarification into the past and ongoing practice of the Foundations supporting grant requests for "guest artists" at all three comprehensive high schools.

From the three Foundations' perspectives, they have supported many requests for guest artists given available funding. However, doing so has led to some unintended consequences of funding annually recurring 'assistant teacher' positions under the grant category of guest artist.

Given it's not the three foundations intention nor their charter to operate as an alternative employer to the district, the Foundations have sought clarity from TUHSD to:

1. Create a working definition of the term 'guest artist',
2. Identify what circumstances the Foundations can continue to support (or not) moving forward in alignment with federal and state law and each foundation's mission, and
3. Develop common TUHSD practices as related to 'guest artists' to ensure consistent access across our sites to the educational value provided by approved 'guest artists' in our various programs.

The purpose of this memo is to provide clarity and guidance to staff in response to the three above requests made jointly by the Foundations.

TAMALPAIS UNION HIGH SCHOOL DISTRICT

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September 23, 2019

1) Working Definition of 'Guest Artist' & IRS's criteria for Independent Contractors

The three Foundations agreed to generally define "guest artists" as periodic, at-will, limited support for teachers across a variety of activities. Their contributions are short term in nature for a defined time period, and are delivered in limited blocks during the day, or for fixed, weeks-long periods of time on a project-specific basis. While they support the teacher, the class could function without this person if necessary.

Unlike a regular part time teacher or teaching assistant, they do not:

- Design semester- or year-long curriculum for the class, or
- Have teaching responsibilities similar to a district employee or partner teacher

Internal Revenue Service's Criteria for Independent Contractors (e.g. Guest Artists):

The IRS (and State of California) has become increasingly strict as to the definition of an independent contractor, which is the legal personnel category guest artists would fall under. If all three items of the criteria below apply, then (and only then) is it an independent contractor situation.

- A. The worker is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- B. The worker performs work that is outside the usual course of the hiring entity's business ("independent, separate, and distinct business from that of the employer"), regardless of where the work occurs; and
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

If any of the three criteria above do not apply, then the guest artist does not fit the IRS's definition of an independent contractor and, therefore, must be paid as a District employee with all applicable employer-paid and employee-paid statutory and fringe benefit rates and tax deductions, which can range from 20-35% additional costs for the employer and employee.

TAMALPAIS UNION HIGH SCHOOL DISTRICT

Office of the Superintendent

September 23, 2019

2) Identify what circumstances the Foundations can continue to support (or not) moving forward in alignment with federal and state law and each Foundation’s mission

Below, please see examples of grant requests and how they will be considered by each Foundation. This list includes examples of situations and is not meant to be exhaustive.

Yes - will continue to be funded	No - will <u>not</u> be funded	No - will also <u>not</u> be funded from the 2020-21 school year onward
<p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> ● Guest director/choreographer for one-time theater production ● Guest artist for a single workshop on pottery skills on the wheel ● Guest musician to support a Program’s music project for a reasonably specified amount of time 	<p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> ● Music or other department teaching assistants who co-teach in an integrated, ongoing role throughout the school year 	<p>Includes, but is not limited to:</p> <ul style="list-style-type: none"> ● “Second set of hands” to increase support and supervision <ul style="list-style-type: none"> ○ 9th grade engineering class ● Support for ceramics class <ul style="list-style-type: none"> ○ Load kilns, work one on one with students, or do class demonstrations

Note: The above examples in the table are for demonstration purposes and not meant to be exhaustive of all scenarios.

3) Develop common TUHSD practices as related to ‘guest artists’ to ensure consistent access across our sites to the educational value provided by approved ‘guest artists’ in our various programs

It is agreed by all involved that guest artists provide an invaluable enrichment to our TUHSD educational programs. But given increase federal and state scrutiny and with financial resources being stretched further compared to the recent past, TUHSD and the Foundations mutually agree that the guidelines provided in this document will continue the guest artists’ significant contributions to all of our sites while also complying with tax guidelines.

For additional guidance, below are suggestions for each group to consider.

Teachers: Before submitting a Foundation grant request for a guest artist, be certain to first compare the scope of work proposed for the guest artist grant proposal against the definition provided above, the IRS criteria for independent contractor and examples provided above in the table. If additional support is needed, please check with your Budget Secretary or TUHSD Accounting Coordinator (Frank Cardinale - fcardinale@tamdistrict.org ext. 1042). No grant request to a foundation for guest artist support should be submitted without confirmation

TAMALPAIS UNION HIGH SCHOOL DISTRICT

Office of the Superintendent

September 23, 2019

from the Principal that the grant proposal aligns with the 'guest artist' criteria and other information outlined in this document.

Principals & Budget Secretaries: There will inevitably be some cases that are 'gray' and do not clearly fit the above criteria. If that is the case, please contact your Business Office colleagues or TUHSD Accounting Coordinator (Frank Cardinale) for further support and resources (including MCOE).

Foundations: If any questions regarding grant proposals arise as related to guest artists, please clarify with the grant requestor first, then communicate with the Principal for further guidance on alignment with agreed-upon 'guest artist' criteria. Again, the CFO (Corbett Elsen) and TUHSD Accounting Coordinator (Frank Cardinale) are available for further guidance and resources.