

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

STATE OF MISSOURI EX REL.)
 MIYA ESTILL, and MIYA ESTILL,)
 Individually and as Next Friend of Minors)
 D.N.E., J.T., and M.T.,)

Relator/Plaintiff,)

CASE NO. _____

v.)

DIVISION: _____

MISSOURI DEPT. OF ELEMENTARY)
 AND SECONDARY EDUCATION,)

Serve at: 205 Jefferson St.)
 Jefferson City, MO)
 c/o Comm. Dr. M.Vandeven)

FULTON PUBLIC SCH. DIST.,)

Serve at: 2 Hornet Dr.)
 Fulton, MO)
 c/o Jacque, Cowherd, Ed.D.)

and)

GRANDVIEW R-II SCH. DIST.,)

[Hold Service])

Respondents/Defendants.)

PETITION FOR WRIT OF MANDAMUS, AND
DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Miya Estill (“Estill”), as Relator, individually and as Next Friend of minors, D.N.E., J.T., and M.T., (the “Minors”), through counsel, and for her Petition, states as follows:

Statement of Facts Applicable to All Counts

1. Estill and the Minors reside in Fulton, Missouri, within the geographic boundaries of Respondent Fulton Public School District (“Fulton”).
2. Respondent Missouri Department of Elementary and Secondary Education (“DESE”)

resides in Cole County, Missouri for purposes of venue.

3. Respondent Fulton is a Missouri school district.
4. Each Minor has been enrolled in the Fulton public school system for at least one (1) full semester.
5. In Fulton's absence complete relief cannot be accorded among those already parties, and/or Fulton claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may impair or impede its ability to protect that interest.
6. Defendant Grandview R-II School District ("Grandview") is a Missouri school district.
7. Grandview should join this action as a Plaintiff, as it claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may impair their ability to protect that interest. It will not do so, and as such is made a Defendant.
8. Jurisdiction and venue are therefore proper in this Court under RSMo §508.010 and §536.050, and Missouri Rule 52.04.
9. Estill requested that Fulton approve the Minors' enrollment in online courses offered by Grandview ("MOVA"), for the 2019-2020 school year (Fulton classes are to start August 21, 2019, MOVA classes start August 13, 2019), pursuant to Minors' rights to participate in the Missouri Course Access and Virtual School Program (as established by RSMo § 161.670, "MOCAP").
10. The MOVA courses in which Minor D.N.E. should be enrolled (as available at: <https://mova.k12.com/curriculum/middle-school.html>, the "MOVA Middle School Courses"), have been offered by Grandview to its own students for several years, under a

program codified at RSMo § 162.1250 (“§1250”).

11. Grandview has determined that the MOVA Middle School Courses comply with all requirements set forth in §1250.
12. The MOVA courses in which Minors J.T., and M.T should be enrolled (as shown at <https://mova.k12.com/curriculum/k-5.html>, the “MOVA K-5 Courses” and with the MOVA Middle School Courses, the “Courses”), are currently offered to Grandview and non-Grandview students pursuant to §1250.
13. Grandview has determined that the MOVA K-5 Courses comply with all requirements set forth in §1250.
14. Estill, as parent of the Minors, has determined that enrollment with MOVA and in the Courses as comprehensive full-time equivalents, was/is in the individual and collective best interest of her children, the Minors.
15. DESE does not pre-approve Courses or enrollment therein when offered to students attending Grandview schools.
16. DESE does not pre-approve Courses or enrollment therein when offered to non-Grandview students over the summer.
17. However, at all relevant times, DESE has approved of the Courses and enrollment therein, when offered to students attending Grandview schools, by providing payment/reimbursements therefore to Grandview under the Missouri funding formula.
18. At all relevant times, DESE has similarly approved of the Courses and enrollment therein, when offered to non-Grandview students during the summer.
19. DESE has, in fact, done so as to thousands of such Course enrollments.
20. On information and belief, DESE has never challenged a school district’s determination of

§1250 compliance regarding any online class offered by any Missouri school district to a student attending one of its schools.

21. At all relevant times, DESE has considered and does consider the Courses to be in compliance with all requirements set forth in §1250, as to students attending a Grandview school.
22. An online class's compliance with §1250 does not change based on the residence of the student enrolled therein.
23. Moreover, DESE relies on non-Missouri school district/private party MOCAP providers' "assurance statements" that their courses "align" with §1250 requirements. See <https://mocap.mo.gov/vendors/>.
24. At all relevant times, Grandview has assured DESE that the Courses align to the Missouri Learning Standards and §1250.
25. On May 22, 2019, Fulton denied Estill's request by email, stating that "we don't use other district's online curriculum" and that no K-5 courses are available through MOCAP.
26. On June 13, 2019, Plaintiff informed Fulton that these were statutorily invalid reasons for denying Estill's request.
27. On June 20, 2019, following discussions with DESE regarding this denial, Fulton changed its theory for denying Estill's request, writing instead that the Courses had not been approved by DESE.
28. On June 21, 2019, DESE circulated an email (the "Notice") to Fulton and other school districts, excluding all MOVA courses from a list (the "List") of online providers/courses DESE claimed/s represents the only online programs to which Missouri students have a statutory right of enrollment under MOCAP. See Exhibit A, attached hereto.

29. The List is also provided on DESE's MOCAP website, available at: <https://mocap.mo.gov/> (the "Website"), which states that online courses provided by Missouri school districts "are not MOCAP courses...." See <https://mocap.mo.gov/districts.html>.
30. DESE's List does not include any programs with K-5 courses. As such, according to DESE and Fulton, Minors J.T. and M.T. have no MOCAP courses available to them.
31. Approval of an individual student's full-time curriculum, and creation thereof from available classes, is entrusted to Missouri school districts.
32. Fulton does not reference the online courses to which its students are entitled to seek admission under MOCAP, in its or its handbooks (available at: <http://www.fulton58.org/vnews/display.v/SEC/For%20Parents%7CSchool%20Handbooks>), or, upon information and belief, in its registration documents.
33. Fulton has similarly not made clear the availability of such online courses on its webpage.

Count I - Relief Sought Against DESE

34. That the Notice be amended (and thereafter re-sent) to show inclusion of the Courses in the List.
35. That the Website, and any other DESE guidance, rules, letters, memos, reporting and/or program codes, instructions, or other written work, be amended in similar fashion.

Entitlement to Relief Sought Against DESE

36. **RSMo § 161.670 provides, in relevant part (and with emphasis added):**

3. (14) Any online course or virtual program **offered by a school district** or charter school, including those offered prior to August 28, 2018, which meets the requirements of section 162.1250 **shall be automatically approved to participate in [MOCAP]**. Such course or program shall be subject to periodic renewal. A school district or charter school offering such a course or virtual school program shall be deemed an approved provider.

...

11. The department shall be responsible for creating the Missouri course

access and virtual school program catalog providing a listing of all courses authorized and available to students in the state, detailed information, including costs per course, about the courses to inform student enrollment decisions, and the ability for students to submit their course enrollments.

37. RSMo §162.1250 provides, in relevant part:

4.On-line classes should be considered like any other class offered by the school district or charter school.

5. Any school district or charter school that offers instruction in a virtual setting, develops a virtual course or courses, or develops a virtual program of instruction shall ensure that the [standards] are satisfied....

38. DESE has no discretion, or authority, regarding approval of online courses offered by school districts, so long as they meet the requirements of §1250.

39. As to school district offerings, DESE oversight is explicitly specified in and limited by MOCAP, to the following: periodic renewal (MOCAP sec.3.14) and revocation/suspension following notice and a reasonable cure period (MOCAP sec. 3.12). Neither such right applies until after a course is **automatically** authorized under MOCAP sec. 3.14.

40. DESE has no authority to determine §1250 satisfaction, see §1250, at subsection 5, and in fact relies on “assurances” from providers as to same when “authorizing” their online offerings.

41. Grandview has concluded that the Courses meet the requirements of §1250, as is their statutory duty/right, offering same to the students attending its schools. DESE has accepted same as to every Grandview student as to every enrollment thereby in a Course.

42. Such compliance cannot be found when Grandview students are enrolled, but lost as to an individual student based on his/her residence.

43. There are twelve (12) items to be met regarding such compliance, none of which deal with student location. Given the online nature of the underlying subject, it strains the imagination to produce any such hurdles. They are largely technical requirements: content-

specific tools and software, orientation training is available, privacy policies are stated, internet etiquette is explained, system requirements are specified, and other logistics regarding the software, media, presentation used. In other words, not only is student location not involved, but neither is course substance.

44. Therefore, and assuming, arguendo, that DESE has any authority to pre-approve §1250 compliance as to MOCAP offerings made by a Missouri school district, DESE has done so as to the Courses.
45. DESE is statutorily obligated to create the List, see MOCAP sec. 12, and has no discretion to exclude therefrom, courses/providers automatically authorized pursuant to MOCAP sec. 3.14.

WHEREFORE, Estill seeks an Order issuing the Writ of Mandamus described in paragraphs 34 and 35, supra, her attorney's fees incurred in seeking same, and other relief as this court deems just.

Count II - Relief Sought Against Fulton

46. That Fulton approve each Minor's enrollment in their chosen Courses, or issue appealable denial determinations based exclusively on the individual best interests of any Minor denied such enrollment.

Entitlement to Relief Sought Against Fulton

47. Statements set forth in Ct.I are re-asserted herein.
48. Nothing in RSMo § 161.670, prevents a school district from establishing a comprehensive, full-time equivalent course of study from available MOCAP classes
49. Nothing in MOCAP, provides DESE with pre-approval rights as to such course of study.
50. Nothing in such statutes provides DESE with discretion to exclude the Courses.

51. However, such statute does provide that:

- a. A school district or charter school **shall allow** any eligible student who resides in such district to enroll in [MOCAP] courses **of his or her choice** as a part of the student's annual course load each school year **or a full-time** virtual school option, with any costs associated with such course or courses to be paid by the school district or charter school if: (a) the student is enrolled full-time in and has attended [for at least the semester preceding the request] a public school...; and (b)...a student has received approval from his or her school district....” RSMo §161.670.3(1) (emphasis added); and
- b. “If the school district or charter school disapproves a student's request to enroll in a course or courses provided by the Missouri course access and virtual school program, **including full-time enrollment** in courses provided by [MOCAP], the reason shall be provided in writing and it shall be for good cause. Good cause justification to disapprove a student's request for enrollment in a course shall be a determination that doing so is not in the best educational interest of the student. In cases of denial by the school district or charter school, [they] shall inform the student and the student's family of their right to appeal ... to the local school district board....” *Id.* at section 3(2) (emphasis added).

52. The Minors are eligible to enroll in a full time MOCAP program.

53. Estill and the Minors have chosen to enroll in MOVA and the Courses.

54. MOVA and the Courses are automatically approved/available under MOCAP.

55. Fulton has no discretion to exclude MOVA or the Courses from the Minors’ statutory right to enroll in the full-time program of their choice, unless after making individual

assessments as to their best interest.

56. Fulton has refused to make such assessment, or issue an appealable denial in writing based thereupon.

57. Fulton has no discretion to refuse to make such assessment, and thereafter either approve enrollment, or deny same (giving the reason therefor in writing) and inform Estill of her right to appeal such decision to the school board.

WHEREFORE, Estill seeks an Order issuing the Writ of Mandamus described in par. 46, supra, her attorney's fees incurred in seeking same, and other relief as this court deems just.

Count III – Declaratory Judgement (DESE and Fulton)

58. Estill hereby restates all prior paragraphs, and pleads in the alternative as follows:

59. This court may declare rights, status, and other legal relations whether or not further relief is or could be claimed. RSMo § 527.010. “No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.” *Id.*

60. A declaratory judgment is open to any person “whose rights, status, or other legal relations are affected by a statute.” § 527.020. Moreover, the declaratory judgment statutes are “to be liberally construed,” § 527.120, and administered to “terminate the controversy or remove an uncertainty.” § 527.050; see also Missouri Rule 87.

61. Estill and the Minors are directly affected by the application of RSMo § 161.670, have an interest conferred by same, and have no adequate remedy at law.

62. More specifically, under MOCAP, the Minors are entitled to seek enrollment in the full-time online program of their choice, and have Fulton pay the tuition thereof if approved.

63. Estill and the Minors have so chosen MOVA and the Courses.

64. Both DESE and Fulton have declared that MOVA and the Courses are not available to the Minors under MOCAP, owing to DESE's alleged right to approve same, and its declination to do so.

65. As stated above, MOVA has determined that the Courses meet the requirements of §1250.

66. Therefore, the Courses are automatically approved under MOCAP, sec. 3 (14).

67. Alternatively, DESE has accepted and confirmed that MOVA and the Courses met/meet the requirement of §1250.

68. Therefore, the Courses are automatically approved under MOCAP, sec. 3 (14).

69. As such, the Minors may seek enrollment in the Courses under MOCAP, and Fulton is required to pay the related tuition.

WHEREFORE, Estill seeks an Order declaring: that the Courses meet the requirements of RSMo §162.1250; that the Courses are approved under MOCAP; that the Minors are entitled to seek enrollment in the Courses on a full-time basis under MOCAP; and that if enrollment therein is approved, the related tuition will be paid by Fulton. Additionally, Estill asks for her attorney's fees incurred in seeking this Order, and other such relief as this court deems just.

Count IV – Declaratory Judgement (Fulton)

70. Estill hereby restates all prior paragraphs.

71. Estill and the Minors are directly affected by the application of RSMo § 161.670, have an interest conferred by same, and have no adequate remedy at law.

72. "School districts or charter schools shall inform parents of their child's right to participate in the program. Availability of the program shall be made clear in the parent handbook, registration documents, and featured on the home page of the school district or charter

school's website.” MOCAP, sec. 4.

73. Fulton has not made clear the availability of such online courses on its webpage, providing only a link (buried in a drop down list of other links, and entitled “MOCAP” vs. any term that might actually help a student/parent understand their right to online courses), to a cryptic DESE webpage (<https://mocap.mo.gov/>) which states with executory pride, that they are “in the process of developing a catalogue of virtual online courses” and that “[s]tudents will be able to take” such courses.

74. Similarly, Fulton does not reference the online courses available to its students, as of right under MOCAP, its handbooks (available at: <http://www.fulton58.org/vnews/display.v/SEC/For%20Parents%7CSchool%20Handbooks>), or upon information and belief, in its registration documents.

WHEREFORE, Estill seeks an Order declaring Fulton in violation of MOCAP requirements, for attorney’s fees incurred in seeking this Order, and for other relief this court deems just.

Count V – Injunctive Relief (DESE)

75. Estill hereby restates all prior paragraphs, and pleads additionally as follows:

76. If the Court grants the Writ requested in Count I, or the declaratory relief requested in Count III, it will follow by necessity that the Minors will be able to seek enrollment in the Courses.

77. The 2019-2020 school year, however, begins in August, 2019, and immediate court intervention is required to vindicate Estill’s, the Minors’, and other Missouri students’ rights under Missouri law.

78. It is in the public interest for the Minors, and other Missouri students, to be able to obtain their statutorily guaranteed education for this school year.

79. Furthermore, Estill has a high probability of success on the merits in these actions against

DESE; there is no adequate remedy at law as to the declaration of the underlying rights/duties, and irreparable harm will result if an injunction is not granted, as monetary remedies cannot provide Minors, or other students, the education they will be denied during this school year, whether for reliance on DESE misrepresentations or inability to mitigate pending correction thereof.

WHEREFORE, Plaintiff requests that this Court enter a judgment in her favor providing temporary, preliminary, and permanent injunctive relief prohibiting DESE from informing or suggesting to any district or person: that online courses not included on the List do not meet the requirements of MOCAP; that Courses are not approved under MOCAP; or that Courses do not meet the requirements of §1250 or MOCAP.

Count VI – Injunctive Relief (Fulton)

80. Estill hereby restates all prior paragraphs, and pleads additionally as follows:

81. If the Court grants the Writ requested in Count II, or the declaratory relief requested in Count III, it will follow by necessity that the Minors will be able to seek enrollment in the Courses.

82. The 2019-2020 school year, however, begins in August, 2019, and immediate court intervention is required to vindicate Estill's, the Minors', and other Fulton students' rights under Missouri law.

83. It is in the public interest for the Minors, and other Fulton students, to be able to obtain their statutorily guaranteed education for this school year.

84. Furthermore, Estill has a high probability of success on the merits in these actions against Fulton; there is no adequate remedy at law as to the declaration of the underlying rights/duties, and irreparable harm will result if an injunction is not granted, as monetary

remedies cannot provide Minors, or other students, the education they will be denied during this school year, whether for reliance on Fulton inaction, misrepresentations, or their inability to mitigate pending correction thereof.

WHEREFORE, Plaintiff requests that this Court enter a judgment in her favor providing temporary, preliminary, and permanent injunctive relief prohibiting Fulton from using Course approval by DESE or under MOCAP as a reason to avoid its statutory duty to approve any Minor's, or other student's enrollment in the Courses, or deny same based solely on a determination of their individual best interest.

Respectfully submitted,

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