



The matter was presented to this Court only on the requested Writ of Mandamus. Upon the stipulated facts, testimony presented at hearing, and statutory analysis described below, this Court makes its determination of whether a peremptory writ should be granted.

The Court makes the following findings:

1. Estill and Minor Children reside in Fulton, Missouri, within the geographic boundaries of Respondent Fulton Public School District.
2. Minor Children have been enrolled in the Fulton public school system for at least one full semester.
3. Respondent Grandview and Fulton are Missouri school districts.
4. Respondent DESE resides in Cole County, Missouri.
5. Estill requested that Fulton approve Minor Children's enrollment in MOVA for the 2019-2020 school year pursuant to the Minor Children's rights to participate in the Missouri Access and Virtual School Program (as established by Mo. Rev. Stat § 161.670 ("MOCAP")).
6. Estill, as parent of the Minor Children, believes that enrollment with MOVA and in the courses as comprehensive full-time equivalents is in the individual and collective best interest of her children.
7. MOCAP at § 3(14) reads: "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 the Missouri course access and virtual school program. 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.”

8. As stipulated, and shown both in admitted evidence (correspondence from Grandview to these parties) and by the admissions of Dr. Chris Neal (testifying on behalf of DESE), Grandview has determined that the MOVA courses comply with all requirements set forth in §1250, and thereafter repeatedly and at all relevant times, informed both DESE and Fulton that it has made such determination.
9. The MOVA courses in which Minor D.N.E. wish to 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 Mo. Rev. Stat § 162.1250 (2011) (“§1250”).
10. The MOVA courses in which Minors J.T. and M.T wish to 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.
11. However, on May 22, 2019, Fulton denied the Estill enrollment request.
12. Dr. Neal stated that DESE has no reason to believe that the MOVA courses/program do not comply with §1250.
13. DESE does not object to Grandview Students taking MOVA Courses during the school year, or even non-Grandview students taking these same MOVA courses in the summer. It objects only to non-Grandview students enrolling in MOVA during the regular school year under MOCAP.

14. DESE does not pre-approve courses or enrollment therein when offered to students attending Grandview schools.
15. DESE does not pre-approve courses or enrollment therein when offered to non-Grandview students over the summer.
16. DESE has never objected to the courses and enrollment therein (as to students attending a Grandview school or for students from any school district in the State of Missouri enrolled during the summer semester) based on compliance with the provisions of §1250 or accessibility standards.
17. Summer classes are treated the same, and earn equal credit toward graduation requirements, as classes taken during the regular school year; the only difference, according to Dr. Neal's testimony, being open enrollment/coding issues for reimbursement purposes.
18. Despite this, the MOVA courses/program are not included on DESE's List, such that the List provides only one approved (K-5) course, and no full-time equivalent programs, on the MOCAP List.
19. To be included on the List, DESE requires school districts and charter schools in the State of Missouri which wish to participate in MOCAP to go through the same process (respond to a more than fifty page request for proposal) as all other providers (those which are not Missouri school districts and charter schools).
20. An online class/program's compliance with §1250 does not change based on the residence of the student enrolled therein or whether the class is sought during the summer or the regular school year.

21. “The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning.” *City of Willow Springs v. Mo. State Librarian*, 596 S.W.2d. 441, 445 (Mo. Banc. 1980).
22. The legislative goal of MOCAP is stated as follows: “Any student under the age of twenty-one in grades kindergarten through twelve who resides in this state shall be eligible to enroll in the Missouri course access and virtual school program ....” RSMo §161.670.1.
23. A plain reading of RSMO. 161.670.3 (14) shows unequivocally that the legislature intended to treat school districts and charter schools of Missouri who wish to offer online courses/programs through MOCAP differently than providers without such a presence in the State of Missouri.
24. More specifically, per 161.670.3(14), for MOVA to participate in MOCAP, all that was required of Grandview was to determine that the courses/program complied with RSMo. §162.1250. At such time, the only requirement: a) that they be accepted as MOCAP courses by other Missouri school districts seeking to make a determination as to enrollment/denial (based solely on a determination of student best interest); and b) that they be placed on the List (thereby providing the required notice to an enrolling

school district), was Grandview's conveyance to them of this determination.

25. To find otherwise, would render this provision meaningless, especially in light of the legislature's use of the word "automatic," and the sentence which reads, "[a] school district or charter school offering such a course or virtual program shall be deemed an approved provider."
26. This conclusion is consistent with a plain reading of 162.1250.5 which places the burden on school districts to ensure that they comply with that statute.
27. The principle of the writ of mandamus is that "public officers are required to perform ministerial duties without any request or demand, and the entire public has the right to that performance." *State ex rel. Twenty-Second Judicial Circuit v. Jones*, 823 S.W.2d 471, 475 (Mo. Banc. 1992).
28. The court finds that the evidence demonstrates that absent the relief ordered the Minor Children will be denied the ability to seek enrollment in a MOCAP course for which they otherwise qualify. Moreover, the absence of such relief would adversely affect the two (2) Minor Children who are in elementary school, even more, given the lack of any MOCAP alternative, save a single fifth grade English class.

29. Injunctive relief does not provide Relator with an equally adequate remedy. The Court finds that granting a Peremptory Writ of Mandamus is required to timely protect the rights of Relator and her Minor Children under the MOCAP statute.

**NOW, THEREFORE**, it is the judgment of the Court that the Relator's request for a Peremptory Writ of Mandamus is granted as to Respondent Department of Elementary and Secondary Education only.

Respondent Department of Elementary and Secondary Education shall immediately put the MOVA courses/program on the List of approved MOCAP course/programs/providers and file with this Court that it has complied no later than 4:30 p.m. on August 6, 2019.

All other relief requested in the Petition not specifically granted herein is denied.

Court costs of this action taxed to Respondent Department of Elementary and Secondary Education. This is a final judgment for purposes of Rule 74.01.



Judge Gael D. Wood

August 5, 2019

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