

The Schindler Law Firm, P.C.

Attorneys at Law

141 North Meramec Avenue, Suite 201
Saint Louis, Missouri 63105

Phone: (314) 862-1411
Facsimile: (314) 862-1701
Email: josh@schindlerlawfirm.com

August 28, 2020

BY ELECTRONIC MAIL

Mark T. Bedell, Ed.D.
Superintendent - KCPS
askthesupt@kcpublicschools.org; legall@kcpublicschools.org;
admissions@kcpublicschools.org; mbedell@kcpublicschools.org

KCPS School Board Members

pmansur@kcpublicschools.org; nhogan@kcpublicschools.org; mabarca@kcpublicschools.org;
rcortes@kcpublicschools.org; mjones@kcpublicschools.org; wasserstrom@kcpublicschools.org;
jwolfsie@kcpublicschools.org; board@kcpublicschools.org

Dear Dr. Bedell and School Board Members:

This is a formal demand that the Kansas City Public Schools ("KCPS") immediately cease and desist its ongoing statutory violations and infringement of parents' rights in its implementation of the Missouri Course Access and Virtual School Program ("MOCAP"), sent on behalf of my clients, the National Coalition for Public School Options-Missouri Chapter, and individual parents and students who have requested enrollment into MOCAP.

The attached documents, both created by KCPS staff, clearly demonstrate that KCPS is operating in violation of RSMo § 161.670 in multiple ways. The result of these ongoing violations is that Kansas City families and students are being actively denied their rights to access the virtual learning courses or programs that best meet the needs of their family, as guaranteed by Missouri law. At any time this would be a serious infringement. In the midst of the Covid pandemic, these violations are all the more unconscionable and downright dangerous.

More specifically, the attached documents demonstrate at least the following violations of statutory rights:

- KCPS is requiring students interested in enrolling into a MOCAP course of program to jump through more hoops and bureaucracy to complete the enrollment, than they do for its own courses and preferred alternatives. In fact, KCPS is utilizing an entirely different enrollment process for its favored virtual program, than any other a family may have selected. This practice is in direct violation of §161.670 3.(b)(2), which requires that the enrollment for any MOCAP course or program be, "substantially similar to the typical process by which a district student would enroll in courses offered by the school district." Moreover, DESE's Administrative Memo, dated August 19, 2020, (see attached) makes

crystal clear that despite a district having its own or favored program, all MOCAP programs must be equally available. However, the process described in the attached flow chart for the favored program are, in fact, substantially “dissimilar.” Any parent must reject KCPS’ pressure towards its favored program not once, but twice, in order to even enter the prolonged process to choose any other MOCAP course or program. Many parents caught in this process would not even know their right to a virtual courses or programs *of their choice* is being flagrantly violated.

- MOCAP requires that decision-making be made based solely on the “best educational interest of the student.” KCPS’s own internal documentation (see attached) demonstrates that KCPS’s financial interests are a key factor in decision-making. KCPS went so far as to calculate the anticipated financial impact on the district of implementing the law properly. The entire KCPS virtual enrollment process has been irrevocably compromised by district leadership injecting their financial interests into what is required to be an individualized process about students and an individualized analysis of best educational interest.
- KCPS purports to usurp the role of DESE in this described process, wrongfully conducting an analysis into and then deciding whether a MOCAP approved course or program deserved to be so listed. In addition to assuming a role the law has assigned to other entities, such a process also wrongfully injects issues unrelated to the individual student into what is supposed to be an analysis solely of that student’s best educational interest. The process then compounds this wrong, by foisting this unlawfully created need for re-affirmation of program and/or course compliance upon each requesting family. Again, such course/programs, as confirmed by DESE, are operated by Missouri school districts in full compliance with all relevant laws. In short, the entire process outlined by KCPS’s internal documents wrongfully places a burden of proof on parents that the law places elsewhere.

We demand that KCPS immediately cease utilizing this unlawful MOCAP enrollment process, and immediately institute a process in which enrollment in any MOCAP course or program is substantially similar to the typical process KCPS otherwise utilizes, in compliance with Mo. Stat. 161.670. KCPS must similarly stop inserting its financially driven program preferences over the rights of parents to choose the virtual course or program best for their family and child. The legal rights of any parent in this process – regardless of the final outcome – are being severely violated thereby.

Very truly yours,

/s/ Joshua M. Schindler
Joshua M. Schindler

Administrative Memo

Date: August 19, 2020
To: School Administrators
From: Chris Neale, assistant commissioner, Office of Quality Schools
Subject: QS-20-010 – 2020-21 School Year Information

The Department of Elementary and Secondary Education (DESE) is issuing additional guidance on a variety of topics pertaining to the 2020-21 academic year.

Alternative Methods of Instruction – Extended (AMI-X) Plan Implementation

Teacher certification requirements do not change when implementing approved AMI-X plans. Approved plans are designed to ensure that students will receive meaningful instruction and feedback each week with continuity. Teachers should teach the content for which they are certified and assigned. The minimum acceptable level of instruction is equivalent to two full days of onsite instruction, as specified in 5 CSR 30.660.085, which was authorized by the State Board of Education on July 7, 2020.

Missouri Course Access and Virtual School Program (MOCAP)

DESE is providing the following clarifications based on a number of inquiries about virtual instruction and the obligations of school districts and charter schools under MOCAP.

- Eligible students may request enrollment in MOCAP courses or full-time virtual programs of his or her choice. School districts and charter schools must enroll students in their requested courses, unless it is not in the students' best educational interest. Enrollment requests from students with disabilities must follow the Individualized Education Program process. Decisions on enrollment requests must be made in a timely manner.
- School districts and charter schools may develop and offer virtual learning options outside of MOCAP. The virtual coursework must meet the requirements of Section 162.1250, RSMo, to be claimed for state aid. Regardless of any school district or charter school virtual program being offered, MOCAP enrollment must also be made available to eligible students. A MOCAP request cannot be denied solely because a school district or charter school provides its own virtual program or provides a program through a vendor contract.
- If a school district or charter school uses a vendor that provides only curriculum, the school must have a Missouri certified teacher leading that course to claim attendance credit. The MOCAP course catalog lists curriculum-only providers by placing an "N/A" in the Missouri Certificated Educator box.

Opening Virtually

A number of school districts and charter schools will open virtually. Since those schools have also expressed an intention to return to onsite instruction, when possible, DESE interprets these plans to be examples of Intermittent Blended Instruction. Attendance will be based on the onsite rate as noted in Administrative Memo [QS-20-007](#).

Technology Fees

The increased use of technology to provide educational opportunities during the COVID-19 pandemic has raised a number of questions about charging fees to families for technology usage. The Missouri Constitution requires that students receive a free public education. As a reminder, in 1977, the Missouri Supreme Court handed down an opinion that held it was unconstitutional for a school district to charge fees for registration and coursework. Prior to this case, the Attorney General of Missouri rendered two opinions that indicated that Article IX, s1(a) of the Missouri Constitution requires a free public education in which course fees may not be charged and for which students cannot be required to furnish materials.

School districts and charter schools are cautioned that financial barriers that impact student access to necessary technology may be found unconstitutional. School districts and charter schools are advised to consult with their school attorneys about this topic.

Afterschool Programs

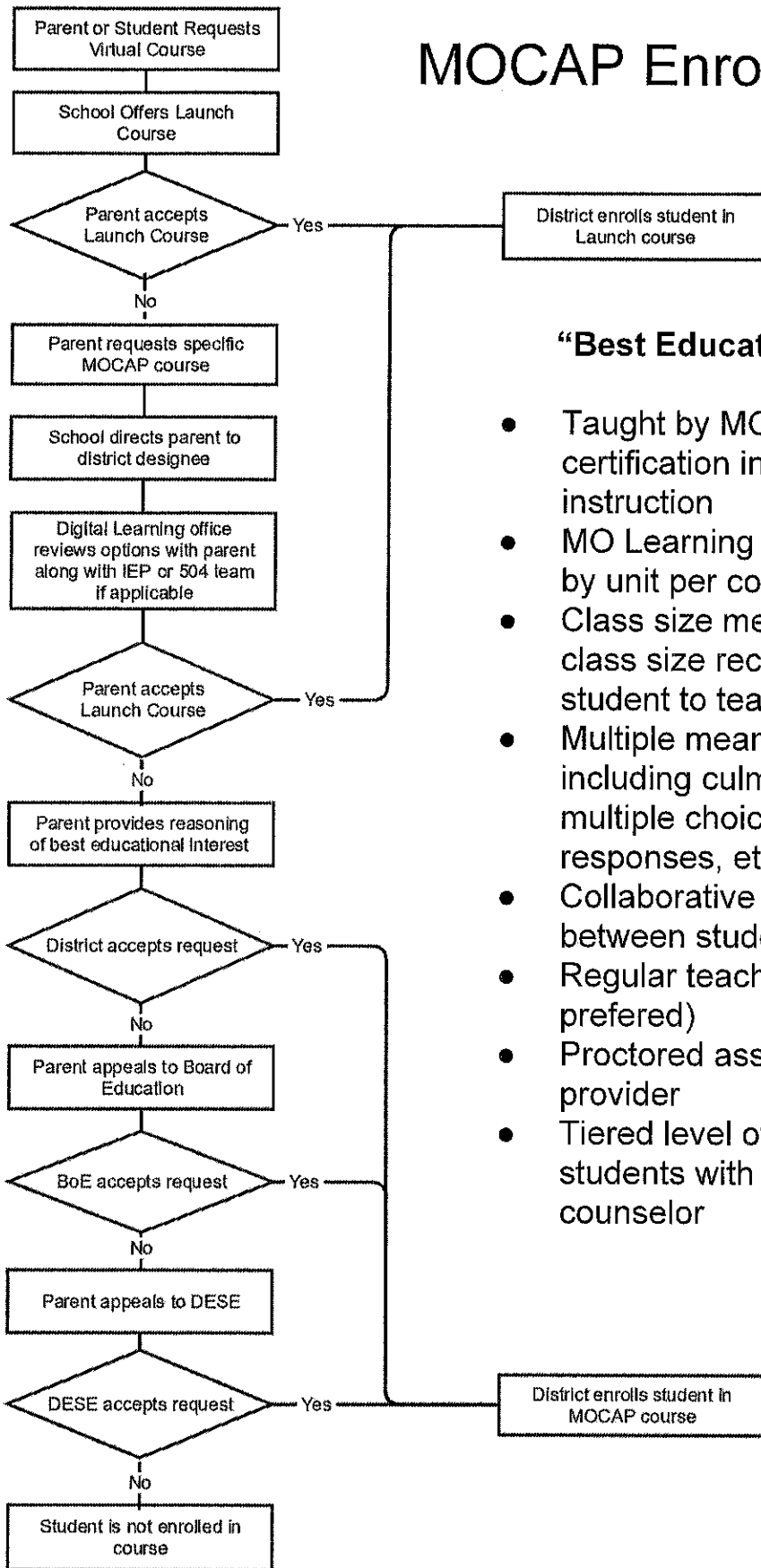
Afterschool programs receiving grants under Title IV, Part B, 21st Century Community Learning Center (21st CCLC) may only use grant funds to provide 21st CCLC services during non-school hours or periods when school is not in session. School districts and charter schools opening using a distanced learning method to begin the school year must communicate the instructional start and stop times to the 21st CCLC programs. These programs may then provide services outside of this instructional time. The same restrictions on when 21st CCLC grant funds can be used applies to school district and charter school grant recipients.

Questions and Contact Information

For further information, please contact the following:

- AMI-X: Jocelyn Strand at 573-751-4426 or msip@dese.mo.gov
- MOCAP: Caysie Turner at 573-522-3651 or caysie.turner@dese.mo.gov
- Opening Virtually: Caysie Turner at 573-522-3651 or caysie.turner@dese.mo.gov
- Technology Fees: Peggy Landwehr at 573-751-3527 or counsel@dese.mo.gov
- Afterschool Programs: Cindy Heislen at 573-522-2627 or exl@dese.mo.gov

MOCAP Enrollment Process



“Best Educational Interest”

- Taught by MO teacher with certification in the content area of instruction
- MO Learning Standards aligned by unit per course
- Class size meets DESE seated class size recommendations for student to teacher ratio
- Multiple means of assessment including culminating projects, multiple choice questions, essay responses, etc.
- Collaborative assignments between students
- Regular teacher interaction (video preferred)
- Proctored assessments by provider
- Tiered level of support for students with online teacher and counselor

MOCAP Providers

Some outside MOCAP providers market our families very hard. We believe it is in the best educational interest to keep our students in the district with our teachers from not only a student support level but also a financial level.

Outside MOCAP Provider Course Cost	
Cost of Moving all students to an Outside MOCAP Provider based on current KCVA enrollment.	
Elementary Students (MOVA K12 Online)	\$88,200.00
High School Students (LAUNCH)	\$699,720.00
Total	\$797,920.00