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August 16, 2019

By U.S. Mail and electronic mail:

Dr. Shawn Poyser
Superintendent
Warsaw R-IX School District
20363 Lane of Champions
Warsaw, MO 65355
spoyser@warsawk12.org

Tracey Spry, Brandy Fajen, Michael Schockmann,
Dr. Amy Breshears, Drew Burdick, Adam Arnett, and
Carolynn Fisher
Board of Education Members
Warsaw R-IX School District
20363 Lane of Champions
Warsaw, MO 65355

Dear Dr. Shawn Poyser and Board Members:

I am writing to you on behalf of, and as attorney for, Richard and Shelley Justason (“Parents”) regarding the recent statements/correspondence of Warsaw R-IX School District (the “District”) to them relating to their daughter’s (“Minor’s”) enrollment in the online program known as/provided by the Missouri Virtual Academy (“MOVA”). As this letter, and response thereto, may be made public, I am not naming Minor, nor will I describe her debilitating medical condition. More details follow, but I think all parties involved will agree that it is in the best educational interest of the Minor to participate in an online program.

And yet, the District is seeking to undermine what the parents have determined, after consultation with Minor’s multiple physicians, to be in her best interest, based not on information suggesting this determination is wrong, but a claimed lack of information to prove it is right. Such analysis goes well beyond spurious, while the attempt to intimidate the parents into “accepting” **fu**education or enrollment in regular classes (whether by suggesting an alternative would “involve lawyers,” or by reporting Minor’s absence from regular classes as unexcused, thus prompting daily truancy warnings to the Parents) goes well beyond that. Regardless of your choice¹ among the options described at the end of this letter, such intimidation shall cease immediately.

¹ Should you choose poorly, a lawyer is now involved, and proof of Minor’s enrollment in MOVA will be provided upon request to same.

That said, and for the benefit of any Board members not familiar with Minor's request, on June 17, 2019, the District signed a form approving her enrollment in MOVA under the Missouri Course Access Virtual School Program (RSMo 161.670, or "MOCAP"). That form has been redacted and attached hereto, and specifically provides confirmation that the District finds MOVA enrollment to be in Minor's best interest. Then, despite no substantive change in Minor's circumstances/needs, on July 26th the District wrote to the Parents stating that it would not approve Minor's enrollment in MOVA, or even perform the MOCAP "best interest" analysis which is required thereby to support any denial of enrollment in a MOCAP approved program (as set out below, MOVA was an approved program at all relevant times, regardless of any DESE posturing/unlawful interference). And finally, on August 7th, and again without any change to Minor's needs/circumstances, the District sent its third (and current) position on enrollment, i.e. that it would not perform the mandatory best interest analysis until such time as MOVA provided proof of its compliance with mere technical requirements set out in RSMo §162.1250.

Of course, what has changed since June, is that a judgment (the "Writ") was entered in Cole County by Judge Wood, ordering DESE to list MOVA as an approved program under MOCAP. In that case, the Fulton School District ("Fulton") similarly refused to enroll its students in MOVA due to their alleged need to confirm RSMo §162.1250 compliance (in fact, Fulton sent a letter, attached hereto, which asserted suspiciously identical compliance prerequisites to enrollment approval).² Quite explicit in that Writ, notwithstanding Dr. Poyser's selective interpretation of but one (1) sentence thereof, is that MOVA, by definition, currently and at all relevant times hereto complie(d/s) with §162.1250. See for instance, par. 24 of the Writ ("[A]ll that is necessary is that Grandview approve....").

As such, it is irrefutable that your July 26th email was both wrong, as to MOVA participation under MOCAP and (consequently) statutorily deficient, as a notice of an enrollment denial, for lack of any basis or notice of appeal rights. Your August 7th email fared no better, and in fact only proves that your MOCAP enrollment process is statutorily invalid for not being "substantially similar to the typical process by which a district student would enroll in courses offered by the school district". It is indisputable that Minor qualifies to apply through the District for enrollment in a MOCAP program, and that MOVA is an approved MOCAP program. There are no additional prerequisites to Minor enrolling at the District's expense. Period. As such, the District may only "terminate or alter the course offering if it is found the course or full-time virtual school is not meeting the educational needs of the students enrolled in the course." No such finding is alleged, or even possible at this time.

Notwithstanding such finality, nothing in MOCAP states that a home district must request §1250 compliance information from a MOCAP approved provider, before approving enrollment. Similarly, nothing therein provides that you may request such information before denying same. If a district has insufficient information to make a denial, they must approve enrollment in a MOCAP course.

Moreover, nothing in MOCAP even suggests that §1250 standards should or can be included in the resident district's review of best interest; quite the opposite. Those requirements must be met to become MOCAP approved, which MOVA is. Furthermore, and more relevant to the District's changing

² I litigated that case, and did not seek attorney's fees from Fulton or DESE, because the issue of whether MOVA should automatically become an approved MOCAP provider had not yet been decided by a Missouri Court. Subsequent cases will enjoy no such luxury.

position following J.Wood's Writ, since DESE is the final administrative arbiter of "best interest," and since, as of August 5th DESE will no longer be able to use §1250 compliance status to heighten access standards for automatically approved providers, your reading of MOCAP and the Writ would simply dissolve the latter and, less simply, completely restructure the former. In short, your argument is indefensible, at best. To be absolutely blunt, your (and/or DESE's latest) attempted end run around a statutory, and now judicial loss, will fail.

In summary, try as the District/DESE might to eventually find/invent one, there are no loopholes built into MOCAP. Approval, not denial, is the MOCAP default, as it is not the student's/parent's burden to prove their best interest, or disprove your desired negative. This is so, because parents are better suited than the district in which they happen to reside, to determine their child's best interest. As in any governmental attempt to wedge between child and parent, absent a drastic set of facts, or even a complete abdication of parental concern therefor (neither of which is even alleged in this case), accepting such parental determination is the default. More to the point, I find the District's (most recent) argument to be made in bad faith, and its demand that the parents of a home-bound child help pressure MOVA into restoring DESE's lost political control/capital, unconscionable.

As such (and assuming, arguendo, that it is any way necessary when the District has never terminated the program offering pursuant to the mandatory MOCAP procedure), please immediately confirm your approval of Minor's enrollment and ongoing participation in MOVA (i.e., its acceptance of financial responsibility therefor). If you/DESE later wish to change your strategy, yet again, to rely on the program termination procedure provide by MOCAP, please provide any/all recommendations and/or evaluations of progress/success so required to support such action. Alternatively, if your third change of position yields an alleged denial of enrollment (albeit improperly) as of your July or August emails, please immediately set this matter for an appeal hearing at a school board meeting. If you have neither confirmed enrollment approval, nor set an appeal of your newly alleged denial thereof, by the 23rd, I will accept your refusal as a determination that we have no administrative relief available, and proceed to file suit in order to correct the District's arbitrary decision and infringement of Minor's rights (specifically, her statutory right to an education which no rational, or feeling person would attempt to deny her, even if they had a far better, or at least consistent, rationale for doing so).

Very truly yours,


Joshua M. Schindler

Grandview R-2 School District

CERTIFICATION FOR NON-RESIDENT STUDENT TO ENROLL FULL-TIME IN MISSOURI VIRTUAL ACADEMY (MOVA)

MISSOURI VIRTUAL ACADEMY

POWERED BY K12

INSTRUCTIONS: Submit the fully completed Certification form to your resident school district for approval and upload to the K12/MOVA Parent Portal – www.k12/MOVA.com (along with any other documents required by your resident school district). *If your resident school district has a Board approved application form – please ensure you include as well.

School Year for which Full-time enrollment is requested
2019-2020

I. GENERAL INFORMATION

To be completed and signed by the parent or legal guardian and student (or just the student if age 18 or older). This form must be submitted to and signed by the School District Official / Charter School Official of the student's resident school district.

Legal Name of Student <i>First, Middle Initial, Last (A separate form must be completed for each student)</i>		Sex	Birthday (Mo/Day/Yr)	
[Redacted] Justason		M <input type="checkbox"/>	[Redacted]	
Student Ethnicity		F <input checked="" type="checkbox"/>	MOSIS Number	
Student Race		Home Phone (Area Code/Number)		
white		[Redacted]		
Name of Legal Parent or Guardian		Relationship to Student		
Shelley R. Justason		mother		
Work Phone (Area Code/Number)	Cell Phone (Area Code/Number)	Email		
[Redacted]	[Redacted]	[Redacted]		
Mailing Address		City	State	Zip Code
[Redacted]		Edwards	MO	65326
Physical Address (if different than above)		City	State	Zip Code
same				
What grade will the Student be in for the 2019-20 school year?				
K <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/>				

II. SCHOOL INFORMATION

Name of Resident School District (This is the school district you are currently attending)
Warsaw R-IX School District

Name of School or Charter School (This is the school or charter school you are currently attending)
20363 Lane of Champions, Warsaw Mo. 65355

Address of School or Charter School (This is the school or charter school you are currently attending)
20363 Lane of Champions, Warsaw Mo. 65355

Name of School Counselor (Please Print) _____ Email: _____

- | | |
|--|--|
| Yes <input checked="" type="checkbox"/>
No <input type="checkbox"/> | Will the student have attended the resident school district or charter school Full-time for the semester immediately prior to enrolling in the virtual program? |
| Yes <input checked="" type="checkbox"/>
No <input type="checkbox"/> | If no, does the student have a documented medical condition or psychological diagnosis that prevented the student from attending a school in the resident district the prior semester? <i>home bound</i> |
| Yes <input checked="" type="checkbox"/>
No <input type="checkbox"/> | I understand that I will need to acquire and submit an updated transcript or report card to Missouri Virtual Academy prior to enrollment approval. |

III. REQUEST AND CERTIFICATION OF BEST EDUCATIONAL INTEREST OF STUDENT

Pursuant to the Missouri Course Access and Virtual School Program Law (Mo. Stat. 161.670), Student requests approval from School to enroll in Missouri Virtual Academy (MOVA) for the 2019-2020 School Year. MOVA is an approved program provided by the Grandview R-2 School District under Mo. Stat. 162.1250. The undersigned parent or guardian recognizes that state law provides the option for a student to receive instruction in a virtual setting using technology, intranet, and/or internet methods of communication and certifies that the Student's enrollment in the Virtual Program is in the best educational interest of Student. Expedited review and approval is requested.

IV. SIGNATURES (Required)

All the information provided in this agreement is accurate and complete.

Signature of Parent or Legal Guardian (if student is less than 18 years old)

Shelley R. Justason

Date Signed (Mo/Day/Yr)

Signature of District/Charter Official

[Signature]

Date Signed (Mo/Day/Yr)

6/17/19

V. INSTRUCTIONS

Instructions to Student and Legal Guardian

Complete this application as part of the enrollment process in the Missouri Virtual Academy (MOVA), a virtual program of the Grandview R-2 School District.

- Complete all information in Section I and II
- Sign Section IV and send or deliver this application to your resident School District Official or Charter School Official for permission/signature to enroll.
- Upload a copy of the completed application to the Missouri Virtual Academy Parent Portal – www.k12/MOVA.com

The resident school district or charter school may only deny this request for "good cause" by determining that enrollment in the virtual program or courses is not in the educational best interest of the student. The reason for any denial must be stated in writing and students must have any opportunity to appeal the denial to the local school district board or the board of the charter school. The governing board must issue their decision in writing within 30 calendar days of the official board hearing. Student may appeal a decision of the governing board to the department of elementary and secondary education which shall provide a final enrollment decision within seven calendar days.

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,)
)
v.)
)
MISSOURI DEPT. OF ELEMENTARY)
AND SECONDARY EDUCATION,)
)
FULTON PUBLIC SCH. DIST.,)
)
and)
)
GRANDVIEW R-II SCH. DIST.,)
)
Respondents/Defendants.)

CASE NO.: 19AC-CC00293
DIVISION: _____

FINAL ORDER AND JUDGMENT OF WRIT OF MANDAMUS

This matter comes before the Court upon the Relator Miya Estill’s Petition for Writ of Mandamus, and declaratory and injunctive relief against Respondents Missouri Department of Elementary and Secondary Education (“DESE”), Fulton Public School District (“Fulton”) and Grandview R-11 School District (“Grandview”). The Relator (“Estill”) seeks to enroll her children (each a “Minor” and collectively, the “Minor Children”) in an online course or program offered by Grandview known as “MOVA,” under a new statutory program known as MOCAP. Their home school district, Fulton, does not recognize the MOVA courses as approved under this MOCAP program, and DESE has refused to include same on a “List” it keeps of MOCAP approved courses. As such, Fulton has refused to allow the minor children to enroll in these courses under MOCAP.

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.

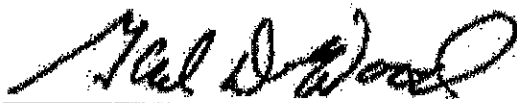
29. Injunctive relief does not provide Relator with an equally adequate remedy. The Court finds that granting a Peremptory Writ of Mandamus is required to timely protect the rights of Relator and her Minor Children under the MOCAP statute.

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.

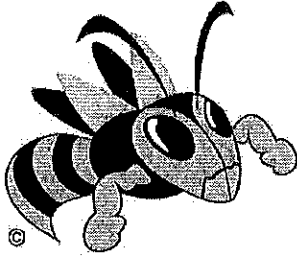
Court costs of this action taxed to Respondent Department of Elementary and Secondary Education. This is a final judgment for purposes of Rule 74.01.



Judge Gael D. Wood

August 5, 2019

Cc: Wendy Boggiano (wboggiano@mickesotoole.com)
Celynda L. Bradsher (Cbrasher@tuethkeeney.com)
James H. Klahr (James.Klahr@ago.mo.gov)
Joshua Schindler (Josh@Schindlerlawfirm.com)



Fulton Public Schools

Dr. Jacque Cowherd, Superintendent of Schools
Dr. Ty Crahn, Assistant Superintendent

Karfe Millard, Director of Special Services
Karen Snetten, PD & School/Community Programs

July 3, 2019

VIA US MAIL

Missouri Virtual Academy Program Coordinator
Grandview R-2 School District
11470 Highway C
Hillsboro, Missouri 63050

Re: Missouri Virtual Academy

Dear Sir or Madam:

You have expressed interest in contracting with Fulton School District 58 ("the District") to provide virtual instruction to the District's students. To allow the District to properly consider your request, please promptly provide the following information:

1. Does your program align with Missouri's show-me curriculum standards? If so, please provide sufficient information and materials to demonstrate that your program aligns with said standards.
2. Does your program comply with Missouri's requirements for teacher certification? If so, please provide sufficient information and materials to demonstrate that your program complies with said requirements.
3. Does your program satisfy the standards set forth in Missouri Revised Statute § 162.1250.5(1) – (12)? If so, please provide sufficient information and materials to demonstrate your program's compliance with the following standards:
 - The virtual course or virtual program utilizes appropriate content-specific tools and software;
 - Orientation training is available for teachers, instructors, and students as needed;
 - Privacy policies are stated and made available to teachers, instructors, and students;
 - Academic integrity and internet etiquette expectations regarding lesson activities, discussions, electronic communications, and plagiarism are stated to teachers, instructors, and students prior to the beginning of the virtual course or virtual program;
 - Computer system requirements, including hardware, web browser, and software, are specified to participants;
 - The virtual course or virtual program architecture, software, and hardware permit the online teacher or instructor to add content, activities, and assessments to extend learning opportunities;
 - The virtual course or virtual program makes resources available by alternative means, including but not limited to, video and podcasts;

- Resources and notes are available for teachers and instructors in addition to assessment and assignment answers and explanations;
 - Technical support and course management are available to the virtual course or virtual program teacher and school coordinator;
 - The virtual course or virtual program includes assignments, projects, and assessments that are aligned with students' different visual, auditory, and hands-on learning styles;
 - The virtual course or virtual program demonstrates the ability to effectively use and incorporate subject-specific and developmentally appropriate software in an online learning module; and
 - The virtual course or virtual program arranges media and content to help transfer knowledge most effectively in the online environment.
4. Please provide detailed information on how your program addresses the needs of students with disabilities, including, but not limited to, how your program complies with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and the Individuals with Disabilities Education Act (IDEA).
 5. Please describe how and when you communicate with school districts regarding their students who have enrolled in your program. Specifically, please provide detailed information on how school districts are able to monitor the progress of the students enrolled in your program and what, if any, support your program offers to the school districts.
 6. Does your program have a method for receiving regular feedback regarding your program performance and/or recommendations for improvements to your program? If so, please describe the process by which a school district would provide such feedback/recommendations and the process by which you consider such feedback and/or recommendations.
 7. Please provide any additional promotional materials you would like the District to consider in its review of your program.

Sincerely,

A handwritten signature in black ink, appearing to read "Ty Crain", with a large, stylized flourish at the end.

Dr. Ty Crain
Assistant Superintendent
Fulton School District 58