

**CONSIDERATION OF AN ORDER OF RULEMAKING TO AMEND
5 CSR 20-100.230, VIRTUAL INSTRUCTION PROGRAM**

STATUTORY AUTHORITY:

Sections 161.092 and 161.670, RSMo

Consent
Item

Action
Item

Report
Item

PRIORITY AREA

Success-Ready Students & Workforce Development

SUMMARY

On June 9, 2020, the State Board of Education approved a notice of proposed rulemaking to amend 5 CSR 20-100.230, Virtual Instruction Program. The proposed amendment was open for public comment from July 15, 2020, through August 14, 2020. The Department of Elementary and Secondary Education received 720 comments during the comment period.

The proposed changes to the rule include the following:

- Provide a process for the inclusion of local education agency (LEA) offered virtual programs in the Missouri Course Access Program (MOCAP) catalog,
- Limit the time between an enrollment request and the decision to allow enrollment,
- Limit the time an LEA has to submit the entire record of a board appeal to the Department, and
- Require LEAs to file the number of applications approved and denied with the Department.

PRESENTER

Chris Neale, Assistant Commissioner; and Caysie Turner, Virtual Administrator, Office of Quality Schools will assist in the presentation and discussion of this agenda item.

RECOMMENDATION

The Department recommends that the State Board of Education approve the order of rulemaking to amend 5 CSR 20-100.230, Virtual Instruction Program, and that the State Board finds this amendment necessary to carry out the purposes of Section 161.670, RSMo.

Title 5 - Department of Elementary and Secondary Education
Division 20 - Division of Learning Services
Chapter 100 - Office of Quality Schools

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under section 161.092, RSMo 2016, and section 161.670, RSMo Supp. 2019, the board adopts a rule as follows:

5 CSR 20-100.230 is adopted.

A notice of proposed rulemaking containing the text of proposed rule was published in the *Missouri Register* on July 15, 2020 (45 MoReg 1067-1068). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received comments from seven hundred and twenty (720) individuals regarding the proposed amendment.

Editor's Note: Due to the volume of comments received relating to 5 CSR 20-100.230, Virtual Instruction Program, the Missouri Department of Elementary and Secondary Education (department) is unable to publish a complete list of individuals commenting on this rule. The department maintains a copy of all individual comments which is available upon request. Requests should be made to the Custodian of Records, Department of Elementary and Secondary Education, PO Box 480, Jefferson City, MO 65102-0480.

COMMENT #1: Parents, Leslie Faraccio, Daniele Brown, and Sandra Muellersman, requested the enrollment response time be shortened. They requested the time frames of fifteen (15) days, one (1) week, and two (2) weeks.

RESPONSE AND EXPLANATION OF CHANGE: The department received numerous comments regarding the enrollment response time. The department recognizes timely enrollment decisions are in the best interest of students. The department will modify section (7) to ten (10) business days, for a response to an enrollment request.

COMMENT #2: Dr. Peter Stiepleman, Superintendent of Columbia Public Schools, requested that the time Local Education Agencies (LEAs) have to complete appeals information start once the district is notified by the department.

RESPONSE: The department declines to make a change based on this comment. Due to time frames established by section 161.670, RSMo, this change is not possible. The department will make every effort to notify the LEA immediately upon receipt of an appeal.

COMMENT #3: Dr. Jerry Hobbs, Executive Director of Missouri Education Reform Council, supports the language relating to Missouri Course Access and Virtual School Program (MOCAP) enrollment decisions that states “[i]f a student requests enrollment in a MOCAP course or

fulltime virtual school, the Local Education Agency (LEA) must either approve or deny the request within thirty (30) days,” or the decision will be deemed to be approved.

RESPONSE: Please see response to comment #1. No additional changes have been made to the rule based on this comment.

COMMENT #4: Dr. Jerry Hobbs, Executive Director of Missouri Education Reform Council, also commented that a more reasonable time frame for making an enrollment decision would be seven (7) days.

RESPONSE: Please see the response to comment #1. No additional changes have been made to the rule based on this comment.

COMMENT #5: Dr. Jerry Hobbs, Executive Director of Missouri Education Reform Council, provided one response with several general statements about MOCAP that were not responsive to the amendments to the rule.

RESPONSE: No changes have been made to the rule based on these comments not associated with the proposed amendment. The department will keep these comments in mind for future improvements to the MOCAP program.

COMMENT #6: Dr. John Jungmann, Superintendent of Springfield Public Schools, suggested language in section (7)(B) be changed to allow five (5) business days to respond to any appeals for MOCAP programming in order to allow for holidays, school closures, and weekends.

RESPONSE: Due to time frames established by section 161.670, RSMo, which requires the department to make an enrollment decision within seven (7) calendar days of receipt of the appeal, the department declines to make this change.

COMMENT #7: The department received six hundred and eighteen (618) form letters through an email address associated with oneclickpolitics.com, stating they were from parents in support of the proposed rule change requiring enrollment decisions within thirty (30) days.

RESPONSE: No changes have been made to rule based on these comments.

COMMENT #8: The department received six hundred and eighteen (618) form letters through an email address associated with oneclickpolitics.com stating they were from parents urgently seeking virtual education options due to COVID-19, and that the approval process for students seeking full-time virtual school enrollment should be waived immediately.

RESPONSE: Section 161.670, RSMo, establishes the enrollment process that must be approved by the LEA. No changes have been made to the rule based on these comments. The MOCAP office sent emails with the MOCAP phone number to all of the over 600 email addresses provided and asked if they could be of assistance. Some of the email addresses were incorrect and “bounced back”; some people emailed back and asked to be taken off “our” mailing list; and those who did respond indicated that they did not send the email and did not know what it was about. One person called because he thought the email was about unemployment. He wanted to take online classes but he has a high school degree and no children. One person responded that she requested MOCAP enrollment the day before and was awaiting a decision.

COMMENT #9: Phil Murry, Missouri NEA Board President, requested that the department add a section to the rule requiring all virtual providers operating in Missouri to provide timely data to the district regarding how each student is performing in a virtual course or full-time virtual program.

RESPONSE: This comment is not related to the amendments being proposed. No changes have been made to the rule based on this comment. The department will keep this comment in mind for future improvements to the MOCAP program.

COMMENT #10: The department received twenty one (21) comments from school officials requesting that subsection (7)(A) be omitted, and the enrollment decision remain solely an administrative decision, in order to allow for Individualized Education Program (IEP) and section 504 to follow the Individuals with Disabilities Education Act (IDEA) and provisions of Free and Appropriate Public Education (FAPE) for students with disabilities. Specifically, automatic decisions for students with disabilities are not allowable under IDEA or section 504, as these decisions are required to be a team process.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees to add the following to section (7), “excluding students with an Individualized Education Plan (IEP) or 504 plan.”

COMMENT #11: The department received sixty two (62) comments from school superintendents stating the language of the current statute does not give the department the ability to create additional timelines, and any attempt to insert a specific timeline would exceed the department’s authority. Additionally, if the department chooses to move forward with the rule, the language be changed to business days.

RESPONSE: The department has the authority through rule making, to clarify the statutory requirements found in section 161.670, RSMo. No changes have been made to the rule based on these comments.

COMMENT #12: The department received sixty two (62) comments from school superintendents stating the proposed language of section (7) is too vague and could lead to misunderstanding that the time frame is for both the initial staff determination and the local board of education decision.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees to add the clarification of “initial” to section (7). The department agrees to add further language that indicates when the ten (10) business day period begins for enrollment decisions.

COMMENT #13: The department received sixty two (62) comments from school superintendents communicating concerns about the proposed timeline and meeting the requirements of IDEA and section 504 for students with disabilities.

RESPONSE: Please see response to comment #10. No additional changes have been made to the rule based on these comments.

COMMENT #14: The department received sixty two (62) comments from school superintendents about subsection (7)(B), requesting that the department rescind this provision. The commenters request that the time limitation be changed to five (5) calendar days if the department moves forward.

RESPONSE: Due to time frames established by section 161.670, RSMo, which require the department to make an enrollment decision within seven (7) calendar days of receipt of the appeal, the department declines to make this change.

COMMENT #15: The department received sixty two (62) comments from school superintendents about section (8), stating that because no requirement exists within the state statute to mandate schools to report this information, they request this section be removed. The

comment requests that if the department chooses to move forward, the requested information be collected for all virtual courses and programs, not just those limited to MOCAP.

RESPONSE: Because the rule being amended is specific to MOCAP, no changes have been made to the rule based on these comments.

COMMENT #16: The department received sixty three (63) comments from school superintendents requesting the department require all virtual providers operating in Missouri to provide public schools timely data regarding how the student is performing to allow them to meet their statutory requirements.

RESPONSE: This comment is not related to the amendments being proposed. As a result, no changes have been made to the rule based on these comments. The department will keep these comments in mind for future improvements to the MOCAP program.

COMMENT #17: The department received a comment from Jeff Lancial with Pearson Online and Blended Learning, supporting the rule and requesting the timeline be changed to five (5) days and any denial of the request will be accompanied with a written explanation along with supporting rationale.

RESPONSE: Please see the response to comment #1. No additional changes have been made to the rule based on this comment.

COMMENT #18: The department received six (6) comments that were not responsive to the rule.

RESPONSE: No changes have been made to the rule based on these comments.

COMMENT #19: The department received a comment from Rocky Valentine, Superintendent of Sparta RIII School District, expressing concern about the proposed MOCAP amendment, and that the failure to approve the proposed changes would have a negative impact on small districts.

RESPONSE: No changes have been made to the rule based on this comment.

COMMENT #20: Melissa Randol, Executive Director of Missouri School Boards Association (MSBA), commented that proposed section (7) conflicts with state statute because the state statute clearly allows for both an initial decision, an appeal of that decision, and then gives the school board or governing body an additional thirty 30 (thirty) days to make the final LEA decision.

RESPONSE: The department agrees to make a change that resolves this issue. Please see the change for clarification in comment #12. No additional changes have been made to the rule based on this comment.

COMMENT #21: Melissa Randol, Executive Director of MSBA, commented concern about subsection (7)(B) and that the seventy-two (72) hour deadline does not factor in weekends, holidays, or situations where school offices are closed. Further, the regulation does not allow for an extension of any reason and begins when the appeal is filed with the department, not when the district is notified. MSBA recommends three (3) business days from the date the LEA is notified by the department.

RESPONSE: Due to time frames established by section 161.670, RSMo, which requires the department to make an enrollment decision within seven (7) calendar days of receipt of the appeal, the department declines to make this change.

COMMENT #22: Melissa Randol, Executive Director of MSBA, commented that the proposed regulatory change adds specific requirements for LEAs that serve as MOCAP providers but does not explicitly require the same assurances from all MOCAP providers. MSBA recommends that the regulation be amended and clarified to provide the same level for all MOCAP providers. MSBA is concerned that the differences between subsections (4)(A) and (4)(B) could be interpreted to mean that the department intended to apply different standards depending on the sponsor of the course.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees to add clarification to the Purpose section of the regulation to note that the requirements are the same for both kinds of providers.

COMMENT #23: Melissa Randol, Executive Director of MSBA, provided comment on additional laws, regulations and other standards which should be included in the review for MOCAP providers.

RESPONSE: The department appreciates this comment and intends to review the information for future improvements to the MOCAP program. No changes have been made to the rule based on this comment.

COMMENT #24: Melissa Randol, Executive Director of MSBA, shared concern that section (5) on accessibility has been deleted. MSBA encouraged the reference of Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act of 1973 (section 504), in addition to section 161.935, RSMo.

RESPONSE: The section on accessibility was moved. Please reference subparagraph (4)(B)3.D.

COMMENT #25: Melissa Randol, Executive Director of MSBA, commented that the regulation should be reviewed for consistency. Sometimes the term “vendor is used and sometimes the term “courseware provider” is used, see subsection (3)(A) and section (4). Also, sometimes the term local education agencies (LEAs) is used and sometimes “school district and charter schools” MSBA is concerned this type of discrepancy could be used by a MOCAP provider to avoid legal compliance.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates the suggestion for consistency and will make the necessary changes to use the terms “provider” and “LEA” where appropriate for the sections provided for in the amendment.

COMMENT #26: Jeanette Cowherd, Superintendent of Park Hill School District, commented she supported the thirty (30)-day initial approval decision and also no concern in reporting approvals or denials.

RESPONSE: Please refer to the Response for Comment # 1.

COMMENT #27: Jeanette Cowherd, Superintendent of Park Hill School District, stated she understood the need for the seventy-two (72) hour time limit based on the seven (7)-day time limit for the department but said that four (4) or five (5) days would be helpful.

RESPONSE: Due to time frames established by section 161.670, RSMo, which requires the enrollment decision must be communicated from the department to the student within seven (7) days, the department declines to make this change.

COMMENT #28: Jeanette Cowherd, Superintendent of Park Hill School District, commented that the most important issue to address is timely data to schools. “Timely” is too vague and open

to interpretation, she suggests a specific time frame for providers and that weekly would be appropriate.

RESPONSE: The department appreciates this comment and intends to review the information for future improvements to the MOCAP program. No changes have been made to the rule based on this comment.

COMMENT #29: Jordan McGrain, the Executive Director of National Coalition for Public School Options, provided one response with several general statements that did not suggest specific changes to the rule.

RESPONSE: The department appreciates these comments and intends to review the information for future improvements to the MOCAP program. The department is committed to helping families and districts so that eligible Missouri students have access to MOCAP. The department encourages parents who have questions or concerns to reach out to the department. No changes have been made to the rule based on these comments.

COMMENT #30: Jordan McGrain, the Executive Director of National Coalition for Public School Options, supports the concept that inaction by a district should be deemed as an approval but that thirty (30) days does not represent the “typical process” for course enrollment. He requests that the time frame be shortened to three (3) days with a potential extension for IEPs, and that this take effect immediately.

RESPONSE: Please see the response to comment #1. No additional changes have been made to the rule based on this comment.

COMMENT #31: Jordan McGrain, the Executive Director of National Coalition for Public School Options, commented that the appeals process should be addressed and heard by the governing board with “some expedience” and that the parent must be afforded the right to be represented by counsel. The parent should be given equal time to present the case and witnesses and that no new reasons for denial or new evidence should be presented by the district administration at the appellate hearing.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees to clarify that in the event of an appeal to the department, the department will require the LEA provide the initial good cause justification for the denial of enrollment. The remainder of this comment falls within the purview of the LEA.

COMMENT #32: Jordan McGrain, Executive Director of National Coalition for Public School Options, included “redline edits” to the proposed amendment and many of these edits included sections not being amended at this time.

RESPONSE: The department will take the edits to sections not being amended at this time into consideration for future improvements to the MOCAP program. To the extent Mr. McGrain’s recommended edits are already addressed in this Order of Rulemaking, the department will not repeat its responses.

COMMENT #33: During a review of the proposed rule, the department noted that due to an accidental drafting oversight, the acronym for the term “local education agencies” – LEA -- should have been first introduced in section (3) rather than in subsection (3)(B).

RESPONSE AND EXPLANATION OF CHANGE: The department will provide the acronym for local education agencies in section (3).

COMMENT #34: During a review of the proposed rule, the department noted that clarity about submitting appeals could be improved by changing the website listed in section (7)(B) from dese.mo.gov to www.mocap.mo.gov.

RESPONSE AND EXPLANATION OF CHANGE: The department will list the MOCAP website in section (7)(B).

5 CSR 20-100.230 Virtual Instruction Program

PURPOSE: This rule establishes policies and procedures for the Missouri Department of Elementary and Secondary Education (department) to implement a public virtual school program to serve school-age students residing in the state, as authorized by section 161.670, RSMo. There are two paths to become an approved MOCAP provider, through the Request for Proposal (RFP) process or in partnership with an LEA. This rule specifically addresses requirements for LEAs, the same requirements are addressed by the RFP.

- (3) Credit. Course credit earned through MOCAP shall be recognized by all local education agencies (LEAs) in Missouri.
 - (A) Courseware providers will notify LEAs of the percentage complete and the grade percentage earned in each course.
 - (B) LEAs will accept all transfer credit earned from any MOCAP course.
 - (C) LEAs will ensure transcripts specify which credits were earned through MOCAP courses.
- (4) Provider and Course Inclusion in the MOCAP Catalog. There are two methods by which virtual providers and virtual coursework will be included in the MOCAP Catalog:
 - (A) Request for Proposals. If more than one (1) provider is determined to be in compliance with the provisions of section 161.670, RSMo, the requirements of this rule, to meet qualifications of the MOCAP Qualified Vendor List, to be responsive to the request for proposal issued by the department by meeting the standards for course alignment to Missouri State Learning Standards, web accessibility for students with disabilities, agreeing to all mandatory contractual terms specified within the request for proposal, agreeing to acceptable contractual terms for all negotiable contractual items within the request for proposal, and section 162.1250, RSMo, the department shall ensure that multiple content providers are allowed.
 - (B) LEAs.
 1. LEAs may request that the department include virtual courses offered by the school district or charter school in the MOCAP catalog.
 2. Requests must be made by January 1 for inclusion in the fall catalog and July 1 for inclusion in the spring catalog.

3. The LEA is deemed to be an approved provider; however, before courses are included in the MOCAP catalog, the LEA must demonstrate that they meet the requirements of sections 161.670 and 162.1250, RSMo, including, but not limited to:

A. Pricing and billing structures meet the requirements of section 161.670, RSMo;

B. Student information is secure and the LEA's designee signs the department's attestation that they have measures in place to prevent data breaches and that data breaches are reported pursuant to sections 162.1475 and 407.1500, RSMo;

C. Courses are taught by teachers appropriately certified by the department as required by section 161.670, RSMo;

D. Courses meet the standards of section 161.935, RSMo, to assure compliance with federal accessibility laws; and

E. Courses are aligned to Missouri State Learning Standards.

4. If a LEA offers virtual courses or a full-time virtual program that is purchased from another vendor, the LEA is the approved provider. The approved provider's responsibilities include, but are not limited to, coordination of enrollment, billing, progress and completion reporting, educator assignment reporting, and dispute resolution.

(7) MOCAP Enrollment Decisions. If a student, excluding students with an Individualized Education Plan (IEP) or a 504 plan, requests enrollment in a MOCAP course or full-time virtual school, the LEA must either approve or deny the initial request within ten (10) business days, defined as any non-holiday weekday in which the administrative offices operate normal business hours. The ten (10) business day period will begin when the LEA receives the request. A failure to render and communicate the initial decision within ten (10) business days will be deemed to be an enrollment approval.

(A) MOCAP enrollment decisions for students with disabilities must be made by the student's IEP or 504 team.

(B) Appeals to the department of enrollment in MOCAP courses can be made through the department's website: www.mocap.mo.gov. If a student or parent (appellant) files an appeal to the department of an enrollment decision, the department will notify the appellant and the LEA of receipt of the appeal. The appellant, when filing the appeal, must submit any and all material previously submitted to the governing board of the LEA whose decision is being appealed along with the final decision of the governing board. The school district or charter school will have seventy-two (72) hours from the filing of the appeal to submit the full record, including evidence given by the LEA used to make the governing board's decision. The LEA must provide the initial good cause justification for the enrollment decision. If necessary, the department may ask for clarification of the materials presented.