

MISSOURI STATE BOARD OF EDUCATION AGENDA ITEM:		April 2019	
CONSIDERATION OF AN ORDER OF RULEMAKING TO AMEND RULE 5 CSR 20-100.230, VIRTUAL INSTRUCTION PROGRAM			
STATUTORY AUTHORITY:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Section 161.670, RSMo	Consent Item	Action Item	Report Item
STRATEGIC PRIORITY			
Access, Opportunity, Equity – Provide all students access to a broad range of high-quality educational opportunities from early learning into post-high school engagement.			
SUMMARY			
On December 6, 2018, the State Board of Education approved a notice of proposed rulemaking to amend Rule 5 CSR 20-100.230, relating to the Virtual Instruction Program. This notice of proposed rulemaking was published for comment on February 15, 2019.			
The proposed amendment revises the state virtual instruction program as authorized in Section 161.670, RSMo. This revision was necessitated by the passage of legislation in the 2018 session of the General Assembly.			
The Department of Elementary and Secondary Education received nine comments to the proposed amendment.			
PRESENTER			
Chris Neale, Assistant Commissioner, 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 authorize publication in the <i>Missouri Register</i> of an order of rulemaking to amend Rule 5 CSR 20-100.230, relating to the 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. 2018, the board amends a rule as follows:

5 CSR 20-100.230 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2019 (44 MoReg 678-679). 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 nine (9) comments on the proposed amendment.

COMMENT #1: David Veit, Chief Technology Officer; Steve Siegler, Deputy CIO for Operations; and Stephen Meyer, Acting CISO for State of Missouri – Office of Administration – Information Technology Division, suggests the following change for section: [(6)](4) [Multiple Providers] General Requirements. Replace the following: “and secure data standards by the Missouri Office of Administration’s Cyber Security Office” with “and agreeing to all mandatory contractual terms specified within the request for proposal, and agreeing to acceptable contractual terms for all negotiable contractual items within the request for proposal.”

RESPONSE AND EXPLANATION OF CHANGE: The Department of Elementary and Secondary Education (department) agrees with the substance of this comment and will amend section (4).

COMMENT #2: David Veit, Chief Technology Officer; Steve Siegler, Deputy CIO for Operations; and Stephen Meyer, Acting CISO for State of Missouri – Office of Administration – Information Technology Division, suggests deleting section (6) Learning Management System. All learning management systems must be deemed low-risk by the Missouri Office of Administration’s Cyber Security Office.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and will remove section (6), renumbering the rest of the rule accordingly. Third-party security “rating” services provide a point in time evaluation which may or may not reflect the ongoing security posture of the solution.

COMMENT #3: Dr. John Jungmann, Superintendent, Springfield Public Schools, suggests section (2) language return to the “best educational interest” and remove “based on academic prerequisites and each student’s age and academic readiness” from the rule.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and will amend section (2).

COMMENT #4: Dr. John Jungmann, Superintendent, Springfield Public Schools, suggests section (4) to define “vendor” as a term reserved for non-district providers.

RESPONSE: No changes have been made to this rule as a result of this comment. Section 161.670.12, RSMo specifies that “No content provider shall be allowed that is unwilling to accept payments in the amount and manner as described under subdivision (3) of subsection (3) of this section....”

COMMENT #5: Zeke Rash, Director of State and Strategic Client Relations for Connections Academy, suggests the rule allow for full-time enrollment with the virtual providers and not be enrolled in the district.

RESPONSE: No changes have been made to this rule as a result of this comment. Section 161.670.2, RSMo states that students enrolled in the Missouri Course Access and Virtual School Program (MOCAP) shall be included in the student enrollment of the school district in which the student physically is enrolled. Section 161.670.3(2), RSMo states that local education agencies adopt an enrollment policy for MOCAP courses that is substantially similar to the typical process by which a district student would enroll in courses offered by the local education agency. Section 161.670.3(1)(b), RSMo states that a student must receive approval from the local education agency prior to enrolling.

COMMENT #6: Zeke Rash, Director of State and Strategic Client Relations for Connections Academy, suggests that full-time approved virtual school programs should be allowed to operate as independent local education agencies and enrollment should be open to all K-12 Missouri students.

RESPONSE: No changes have been made to this rule as a result of this comment. Missouri statute does not provide for virtual schools to act as local education agencies.

COMMENT #7: David D. Baker, Director with Missouri Assistive Technology (MO-AT), suggests that the rule clarify what responsibility MOCAP vendors have for implementing modifications/accommodations and stipulated in a student’s Individualized Education Program (IEP) or 504 Plan.

RESPONSE: No changes have been made to this rule as a result of this comment. Federal law requires the local education agency to implement modifications and accommodations as well as other requirements as written in an IEP and as required by the IDEA and sections 162.670 to 162.999, RSMo. In addition, vendors agree per the state MOCAP RFP to comply with all state and federal laws.

COMMENT #8: Steven Beldin, Director of Innovation and Learning, Missouri Council of Administrators of Special Education (MO-CASE), is concerned that removing all references to students with disabilities in the proposed amended regulation and providing no guidance at all on how to ensure compliance with IDEA/Section 504/ADA as applicable to MOCAP may impede access for students with disabilities, and leave districts vulnerable to complaints and litigation. Mr. Beldin advocates that the issues of who is legally obligated to provide accommodations and modifications and who is legally obligated to provide assistive technology need to be addressed in the amended regulation.

RESPONSE: No changes have been made to this rule as a result of this comment. Federal law requires the local education agency to implement modifications and accommodations as well as

other requirements as written in an IEP and as required by the IDEA and sections 162.670 to 162.999, RSMo. In addition, vendors agree per the state MOCAP RFP to comply with all state and federal laws.

COMMENT #9: The National Coalition of Public School Options, Missouri Chapter (PSO), Missouri Education Reform Council (MERC), and The Children's Education Alliance of Missouri (CEAM) submitted a new draft of the order of rulemaking as its comment.

RESPONSE: No changes have been made to this rule as a result of this comment as it exceeds the scope of the notice and comment process.

5 CSR 20-100.230 Virtual Instruction Program

(2) Access. School officials will advise students who are considering MOCAP courses about whether those courses are in the best educational interest of that child.

(4) General Requirements. If more than one (1) vendor 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 of Elementary and Secondary Education (department) by meeting the minimum standards for course alignment of 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 162.1250, RSMo, the department shall ensure that multiple content providers are allowed.

(6) Transfer. When a student transfers to another local education agency, the MOCAP credit and enrollment(s) will also be transferred to the new local education agency without interruption. This transfer provision applies equally to any transfer, including those associated with treatment facilities.

(7) Reporting. The following are requirements for reporting MOCAP coursework.

(A) Local Education Agencies will report MOCAP courses using the appropriate delivery system codes specified by the department.

(B) Courseware providers will transmit reports to the department in a manner and format and on a timeline specified by the department.

(C) All courses offered by MOCAP must use course numbers established by the department.