

# Missouri Course Access and Virtual School Program (MOCAP) for Special Education and Section 504 Students

## ***About MOCAP:***

The Missouri Course Access and Virtual School Program (MOCAP) has developed a catalog of virtual online courses for students. Since the 2019-2020 school year, students have been able to take an entire course from any Internet-connected computer, available 24 hours a day, seven days a week. MOCAP's mission is to offer Missouri students equal access to a wide range of high quality courses, flexibility in scheduling, and interactive online learning. The [Missouri Department of Elementary and Secondary Education \(DESE\)](#) and the [State Board of Education](#) oversee administration and quality assurance activities such as related content and delivery of courses. Local Education Agencies (LEAs), meaning public school districts and charter schools, that provide virtual education outside of MOCAP are responsible for ensuring alignment and other statutory requirements are met.

## ***About Special Education/Section 504 Requirements:***

Pursuant to the Individuals with Disabilities Education Act (IDEA) (20 USC Section 1400, et seq. and its implementation regulations at 34 CFR Section 300) and the Americans with Disabilities Act (Section 504) (42 U.S.C. ch. 126 § 12101 et seq.), the identification and education of students with disabilities or students who are in need of accommodations contained in a Section 504 Plan, is the responsibility of the LEA that enrolls the student.

## ***Frequently Asked Questions:***

### **1. Can a student with a disability served under an IEP or a Section 504 Plan register for a MOCAP course?**

Yes. If a student with a disability served under an Individualized Education Program (IEP) or a Section 504 Plan was enrolled full time in a LEA for the preceding semester, the student can register for a MOCAP course, if it has been determined that registration for MOCAP is the best educational interest of the student.

### **2. Who decides if a student with a disability served under an IEP or a Section 504 Plan who is enrolled in the LEA should register for MOCAP courses?**

When a student with a disability served under an IEP or a Section 504 Plan or the student's parent/guardian requests registration for MOCAP courses, the IEP team or the Section 504 Committee must convene to consider how registering in virtual courses will impact provision of a Free and Appropriate Public Education (FAPE) for a student with a disability or a Section 504 Plan. The IEP team or the Section 504 Committee will need to determine if virtual education is appropriate for the student to receive FAPE. Additionally, the IEP team or the Section 504 Committee must make decisions about MOCAP registration and develop an IEP or a Section 504

Plan that describes how FAPE will be provided in conjunction with MOCAP courses before registration is considered at the LEA level.

**3. Do MOCAP providers deliver special education services or accommodations and modifications?**

None of the MOCAP providers offer special education services (specially designed instruction) or related services, but they do provide accommodations and modifications. The responsibility for the provision of FAPE, which includes the provision of special education and related services described in the IEP or the provision of accommodations and modifications in the Section 504 Plan, lies with the LEA in which the student is enrolled.

MOCAP providers only implement accommodations and modifications. LEAs are advised to investigate what accommodations and modifications the specific MOCAP providers can implement within their specific virtual learning programs. It is critical that the IEP team or the Section 504 Committee consider the limitations of virtual instruction before deciding that a student with an IEP or a Section 504 Plan should register for MOCAP.

**4. Who is responsible for the implementation of accommodations and/or modifications for a student with a disability or a Section 504 Plan who is enrolled in a LEA and taking MOCAP courses?**

The IEP team or Section 504 committee are responsible for making the determination that registering a student with an IEP or a Section 504 plan in a MOCAP course is in the educational best interest of the student and will confer FAPE. If the IEP team or the Section 504 Committee determine that a student's enrollment in MOCAP is appropriate, then the IEP or Section 504 plan will be revised to include the services, aids, supports, accommodations, and modifications that will be required in order for the IEP or Section 504 plan to be reasonably calculated to confer educational benefit to the student. The LEA shall then send the MOCAP provider a description of the accommodations and modifications contained in the IEP (such as Form F from the IEP) or Section 504 Plan). The LEA retains responsibility for ensuring the accommodations and modifications are provided as written in the student's IEP or Section 504 Plan. LEAs must work closely with MOCAP providers to develop a monitoring protocol or process to ensure that providers are implementing accommodations and modifications as written in the IEP or Section 504 Plan while the student is taking MOCAP courses.

**5. If a student is taking MOCAP courses fulltime, who would be considered the regular education teacher of the child to participate in the IEP meetings or on the Section 504 Committee?**

The Federal Regulations (34 CFR 300.321(a)) describe IEP team requirements including participation of a regular education teacher:

- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)

34 CFR Part 104 is the regulation implementing Section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving federal financial assistance. A Section 504 Committee is comprised of teachers, counselors, and a Section 504 Coordinator who are knowledgeable about the child, evaluation data, placement, and accommodation options (parents are not part of Section 504 accommodation committee, but are provided notice and receive a copy of the plan).

**6. What should be done if the accommodations and modifications currently contained in the student's IEP or Section 504 Plan are inappropriate for the MOCAP coursework they are taking?**

The IEP team or Section 504 Committee should reconvene to discuss what accommodations and modifications would be appropriate for the student to receive FAPE while taking MOCAP coursework. Any revisions to the accommodations and modifications should be based on the unique needs of the child and *not* driven by the MOCAP provider's ability to provide the accommodation or modification. LEAs can consider purchasing virtual courses from a variety of vendors listed on MOCAP's web site. When MOCAP providers cannot provide a specific accommodation or modification required to provide FAPE then registration in MOCAP should be reconsidered.

**7. Can an IEP team or Section 504 Committee determine that virtual education is not appropriate for the student?**

Section 161.670.3(2), RSMo states that any student can be denied registration in MOCAP courses if it "is not in the best educational interest of the student." In some instances, the IEP team or Section 504 Committee may determine that accessing coursework virtually is not appropriate for the student to receive FAPE. When making registration decisions, schools should consider factors such as:

- Does the student have the self-regulation, self-independence, and organizational skills necessary to meet the demands of virtual education?
- Can the student utilize the technology necessary to access and complete the coursework?
- Will accommodations and modifications be enough for the student to make progress in the general education curriculum?
- How will the student continue to access special education services or Section 504 accommodations and modifications from the LEA?
- How will the LEA and the MOCAP provider collaborate to monitor student progress while taking MOCAP courses?

**8. If the IEP team or the Section 504 Committee determine that virtual education is not appropriate to meet the student's needs and to provide FAPE to the student, but the parent/guardian prefers a virtual course, can the student take a MOCAP course?**

Find out WHY the parent/guardian prefers virtual courses. Explain why the IEP team or Section 504 Committee decided that registration in virtual courses is not in the student's best educational interest and why the LEA would not be able to provide FAPE if the student were registered in virtual courses. The LEA would then provide prior written notice (PWN) describing why the

parent's/guardian's request to register in virtual courses was refused. As with any decision of an IEP team, parents/guardians have IDEA due process rights that the student and parent/guardian can pursue according to procedural safeguards. Section 504 also provides due process rights that the student and parent/guardian can pursue as well.

If the IEP team or Section 504 Committee determines initially or after reevaluation, that based upon a student's unique needs, that a virtual education is not appropriate to meet the student's needs and does not provide FAPE, even with the provision of appropriate and individualized accommodations, modifications, aids, or services, to the student but the parent/guardian disagrees and wants the student to access coursework virtually, what are some options in this scenario?

- As with any decision made by the IEP team regarding identification, evaluation, or placement, the parents/guardians have IDEA due process rights that can be pursued according to their procedural safeguards.
- As with any decision made by the Section 504 Committee regarding identification, evaluation, or placement, the parents/guardians have due process rights that can be pursued according to their procedural safeguards.
- The parents can revoke consent for special education services and/or accommodations and modifications. The child would then become a general education student and the MOCAP registration determination would then follow the process utilized for general education students of the LEA (see more information below).

**9. What if parents/guardians seek registration in a full-time course load in MOCAP and do not wish for their student to continue to receive special education services and/or accommodations and modifications from the LEA?**

Each student's IEP team determines what special education services a student needs to receive FAPE and that is no different for a student who is enrolled full-time in virtual courses. Similarly, the Section 504 Committee determines what accommodations and modifications are needed to remove barriers to education for the student. When a student no longer demonstrates a need for specialized instruction or accommodations and modifications, then the LEA should initiate a reevaluation to determine if the child is still eligible for special education or needs a Section 504 Plan.

If a student with an IEP continues to demonstrate a need for specialized instruction, but the parents/guardians do not want the student to receive specialized instruction and/or accommodations and modifications, then the parents/guardians may revoke services. Any revocation needs to be in writing. Parents/guardians need to be informed that when they revoke consent for special education and related services, they also revoke consent for all protections under IDEA. The parent/guardian also needs to understand that when they revoke consent for the child to receive special education services, the IEP simply be cannot be reinstated and IDEA process for an initial evaluation must be followed.

If a student with a Section 504 Plan continues to demonstrate a need for services, but the parents/guardians do not want the student to receive them, then the parents/guardians may ask to revoke Section 504 Plan services. Any request for revocation needs to be in writing. If the school

district believes that the Section 504 services need to continue, then the school district may initiate a Section 504 due process hearing to resolve the dispute. Parents/guardians need to be informed that if the Section 504 Plan is revoked, then all protections under Section 504 are also revoked. The parent/guardian also needs to understand that when the Section 504 services for the child are revoked, then the Section 504 cannot simply be reinstated. The Section 504 process for an initial evaluation must be followed.

#### **10. How does registration in MOCAP courses impact placement in the least restrictive environment for a child with an IEP or a Section 504 Plan?**

Registration in MOCAP courses could result in a change in placement for a child with an IEP or a Section 504 Plan. LEA's retain the responsibility to provide FAPE in the least restrictive environment even when they contract with virtual course providers to provide educational services to children with IEPs or a Section 504 Plan. IEP teams or Section 504 Committees must consider several factors when evaluating whether a student is being served in the least restrictive environment.

The following Federal Regulation (34 CFR) sections relate to factors that impact least restrictive environment in regard to a student served on an IEP:

##### **§ 300.114 LRE requirements.**

###### **(a) General.**

(2) Each [public agency](#) must ensure that -

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled

##### **§ 300.115 Continuum of alternative placements.**

(a) Each [public agency](#) must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in [paragraph \(a\)](#) of this section must -

(1) [Include](#) the alternative placements listed in the definition of special education under §

[300.39](#) (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

##### **§ 300.116 Placements.**

In determining the educational placement of a child with a disability, including a preschool child with a disability, each [public agency](#) must ensure that -

(a) The placement decision -

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the [evaluation](#) data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ [300.114](#) through 300.118;

(b) The child's placement - (1)

Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

#### **§ 300.117 Nonacademic settings.**

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § [300.107](#), each [public agency](#) must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The [public agency](#) must ensure that each child with a disability has the [supplementary aids and services](#) determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

The following Federal Regulation (34 CFR) sections relate to factors that impact least restrictive environment in regard to a student served on a section 504 plan:

#### **§104.34 Educational setting.**

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the

recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

**(b)** Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

**(c)** Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

#### **§104.37 Nonacademic services.**

**(a)** General.

**(1)** A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

**(2)** Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

**(b)** Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

**(c)** Physical education and athletics.

**(1)** In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not

discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

**11. Can an IDEA (special education) or Section 504 due process complaint be filed against MOCAP or a MOCAP provider?**

No, a parent/guardian cannot file special education or Section 504 due process complaints against MOCAP or a MOCAP course provider. The LEA is responsible for ensuring FAPE and that accommodations and modifications are being provided.

**12. Is the LEA still responsible for Child Find activities for students taking MOCAP coursework?**

Yes, the LEA is still responsible for Child Find activities which include locating, identifying, and evaluating students with disabilities, including those home-schooled or placed by their parents or guardians in a private school.

**13. If a student with a disability or a Section 504 Plan needs assistive technology in order to access the virtual courses for which they are registered, who is responsible for providing the assistive technology?**

If the IEP team or Section 504 Committee has determined registration in virtual courses is appropriate for a child, then the child's IEP or Section 504 Plan must include a description of the child's assistive technology needs and the LEA is responsible for providing any assistive technology that is necessary for the child to access the virtual coursework.