

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**PENNSYLVANIA DEPARTMENT
OF EDUCATION,** :
 :
 Petitioner, :
 :
 :
 v. : **Docket No. 146 C.D. 2020**
 :
 ALLEN WING, :
 Respondent. :

**PENNSYLVANIA DEPARTMENT OF EDUCATION'S
DESIGNATION OF THE CONTENTS OF THE REPRODUCED RECORD
AND STATEMENT OF THE ISSUES FOR REVIEW**

Petitioner, the Pennsylvania Department of Education (PDE), pursuant to Pa.R.A.P. 2154(a), files the following Designation of the Contents of the Reproduced Record and Statement of the Issues for Review.

Designation of the Contents of the Reproduced Record

The Department designates the entire Original Record filed by the Office of Open Records (OOR) on June 2, 2020, as the Reproduced Record for this appeal. A copy of the OOR's letter which lists the content of the Original Record is attached as PDE Exhibit A. Undersigned counsel has conferred with Respondent Allen Wing who does not object to this Designation.

Statement of the Issues for Review

The Department designates the following issues for review:

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(1) whether the OOR erred in determining that the requested public school teacher PVAAS job performance rating scores are not exempt from disclosure under the Pennsylvania Right-to-Know Law. 65 P.S. § 67.708(b)(7);

(2) whether the OOR erred in determining that requested public school teacher PVAAS job performance rating scores are not prohibited from public dissemination by the Public School Code. 24 P.S. § 11-1123(p);

(3) whether the OOR erred in determining that disclosure of the requested information is not prohibited by the constitutional right to privacy of the involved teachers.

Respectfully submitted,

/s/ Robert M. Tomaine

Senior Assistant Counsel
Attorney I.D. No. 81396

Pennsylvania Department of Education
Office of Chief Counsel
333 Market Street, 9th Floor
Harrisburg, PA 17126
(717)787-5500

Date: June 18, 2020

PDE EXHIBIT A



pennsylvania

OFFICE OF OPEN RECORDS

June 2, 2020

VIA FIRST CLASS MAIL

Michael Krimmel, Esq.
Chief Clerk
Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2100
Harrisburg, PA 17106-2575

**RE: Submission of Record in:
Pennsylvania Department of Education v. Allen Wing,
No. 146 CD 2020**

Dear Mr. Krimmel:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *Department of Transportation v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

Office of Open Records Docket No. 2019-2293:

1. The appeal filed by Allen Wing (“Requester”) to the Office of Open Records (“OOR”), received November 18, 2019.
2. Official Notice of Appeal dated November 19, 2019, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. The submission filed by the Department of Education and confirmation of receipt by the Requester dated November 26, 2019.
4. The Final Determination dated January 15, 2020, issued by the OOR.

Chief Clerk
Commonwealth Court of Pennsylvania

June 2, 2020
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The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'CRB', with a large, sweeping flourish at the end.

Charles Rees Brown
Chief Counsel

Attachments

cc: Allen Wing (Requester)
Robert M. Tomaine, Jr., Esq. (Agency)

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PROOF OF SERVICE

I, Robert M. Tomaine, Senior Assistant Counsel, Pennsylvania Department of Education, hereby certify that on this 18th day of June 2020, I caused to be served a true and correct copy of the foregoing document upon the following in the manner described below:

Allen Wing
Service by First Class Mail
2412 North 54th Street
Philadelphia, PA 19131
(Respondent)

Pennsylvania Office of Open Records
Service by First Class Mail
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: 717-787-9903

BY: /s/ Robert Tomaine
Robert M. Tomaine
Senior Assistant Counsel
Attorney I.D. No. 81396
Pennsylvania Department of Education