



March 25, 2019

VIA HAND-DELIVERY

Dr. Wayne Lewis
Commissioner of Education
Kentucky Department of
300 Sower Boulevard
Frankfort, Kentucky 40601

RE: Request for Documentation, 2nd Response

Dear Dr. Lewis:

This letter is my second response to your email sent March 14, 2019, regarding a request for Jefferson County Public Schools (JCPS) employee sick leave documentation and records. Pursuant to KRS 156.010 and 156.210, you specifically requested the following:

1. *The names of all teachers that called in sick for February 28, March 5-7, and/or March 12-14, 2019 and the day(s) for which each teacher called in sick;*
2. *Any and all affidavits or certificates of a reputable physician stating that the employee was ill or caring for an ill family member on the day(s) the employee called in sick, as required by KRS 161.155 for the granting of any sick leave; and*
3. *Documentation of the district's policies, procedures, and/or protocols for collecting sick leave affidavits or certificates and verifying qualification for the granting of sick leave.*

On March 18, I provided responses to Request item #2 and Request item #3. Thank you for granting my request for an extension of time to provide a response to Request item #1.

Response to Request #1: As stated in my previous response, JCPS utilizes a third-party vendor to provide a web-based technology platform for certified employees to request leave and the resulting request for a substitute teacher (<https://www.jefferson.kyschools.us/applitrack->

[absence-management-login](#)). Attached, please find preliminary documents and records responsive to your request as contained within this platform for February 28, March 6-7 and March 12-14, 2019. As JCPS was in session on March 5, 2019, documentation from that date was excluded per the clarification of KDE's general counsel. Due to the voluminous nature of these records, we are providing a hand-delivered flash drive to ensure complete delivery of the requested information.

KRS 156.210, states the Commissioner of Education "shall have access to the papers, books and records of all teachers, trustees, superintendents, or other public school officials." This broad statutory authority is unique to the Commissioner and does not extend to outside entities or the media. JCPS acknowledges that you requested and are receiving this documentation pursuant to KRS 156.210. As you know, the Kentucky Open Records Act governs the release of public records and any exceptions that may apply for members of the public and the media. While JCPS is providing the documentation to you as requested under your authority as Commissioner, JCPS does not conclude that these same documents are subject to release under the Open Records Act.

KRS 61.878(1)(i) and (j) make exceptions for preliminary recommendations and applies equally to any public release by either JCPS or the Kentucky Department of Education (KDE).

KRS 61.878 The following public records are excluded from the application of KRS 61.870 to 61.884

....

- (1)(i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give note of final action of a public agency;**
- (j) Preliminary recommendations and preliminary memoranda in which opinions are expressed or policies formulated or recommended [.]**

The attached documentation and records of teachers that called in sick on February 28, March 6-7 and March 12-14, 2019, are preliminary and were not yet finalized. When a JCPS certified school-based employee uses the Absence Management system, the employee may withdraw that request up to the beginning of the workday. As a result, a requested leave day, sick leave or other qualifying leave, is not finalized until the first moment of the beginning of the workday. Because the days in question were cancelled well before the beginning of the workday, the leave requests were preliminary and never finalized. While the Commissioner is entitled to access this information outside of the Open Records Act pursuant to KRS 156.210, the list of names does not lose "preliminary" status when shared between two public agencies (See OAG 87-28). Because of this, JCPS asserts that the attached list is not subject to public disclosure by either JCPS or the KDE. Additionally, the KDE may have other exceptions that apply to requests for this information.

Finally, I must note that included in the list of names provided are those school-based certified staff that makeup the “average” number of leaves that would have taken place on those dates despite other factors that may have been at play that caused leave requests to outnumber available substitutes in JCPS for those days. As mentioned in my previous letter, on an average student attendance day in JCPS, there are approximately five-hundred (500) certified employee absences due to sick, personal, emergency, military and other types of leaves permitted by Jefferson County Board of Education policy.

Feel free to contact me with any additional questions.

Sincerely,

A handwritten signature in blue ink that reads "m. pollio".

Martin A. Pollio, Ed.D.
Superintendent

Enclosure (Flash Drive)

c Deanna Durrett, KDE General Counsel (without enclosure)
Kevin C. Brown, JCPS General Counsel