complaint, the System collected samples, which showed that there was lead paint on some wall surfaces, as well as the exterior window frames. The System scheduled scraping and painting of the exterior windows. Additionally, as wipe samples from the window wells showed lead levels above HUD guidelines, the System brought in an independent contractor to clean all of the window wells and sills, by wiping them down with a phosphorus solution (TR 684-687).

The record reflects that the Claimant filed a complaint with MOSH on March 16, 1998, alleging that there were hazardous conditions at Highlandtown, and asking that the building be evacuated and assessed (CX 227). Her complaint was referred to Highlandtown by MOSH (CX 230). The record also includes the Claimant's April 4, 1998, complaint to MOSH, in which she cites her qualifications, and alleges that James Mosher Elementary School had serious exterior lead hazards, and that she had videotaped the exterior (CX 278). She felt that the building needed to be evacuated, and assessed for lead and asbestos hazards. On April 9, 1998, the Claimant again filed a complaint with respect to James Mosher (CX 231). On May 7, 1998, the Claimant again wrote to MOSH, requesting that an inspector visit Highlandtown immediately, to determine if the school needed to be closed. She also claimed that there was documentation that persons attending James Mosher had elevated blood lead levels (CX 233).[30]

In response, MOSH inspectors performed an inspection at James Mosher, which included paint sampling and analysis. As five of the samples showed the presence of lead paint, wipe sampling was performed in July 1998. Those results showed that there was lead based paint on a window near three vents in one room, and on a window ledge in another room. Air monitoring in the room with the window near the three vents resulted in a reading below the limit of detection. Three citations were issued in connection with electrical issues, but none in connection with lead based paint or asbestos hazards, although MOSH made some recommendations, including informing the summer clean-up crew of the sampling results so that they could protect themselves while working, performing more extensive sampling to determine the extent of the lead bearing dust, and abating the exterior and interior lead bearing paint throughout the building.

MOSH also wrote to the Claimant on July 9, 1998, to report that they had conducted an inspection at Highlandtown. The inspector had observed several badly damaged walls with peeling paint, but no process that would generate airborne lead levels. An air sample was taken in the third floor teachers' lounge, but no airborne lead was detected. Samples were also taken of the chipping paint. The inspector observed no friable asbestos, nor was there any work being done that would be likely to damage or disturb any asbestos containing material. He noted that the school had an asbestos management plan. The results of the samples were provided to the Claimant (CX 235). However, the Claimant found it very suspicious that MOSH did not find

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[30] There is no such documentation in this record. In addition, James Mosher was not one of the schools that had been identified as having problems with lead in the water in the 1993 study of the System schools (CX 281, p. 131).

lead paint at Highlandtown, as it was built in 1933, and therefore is presumed to have lead paint. Her videotape shows this paint chipping and peeling, and therefore she felt that it should have been closed (TR 587-588).

The Claimant did not receive a formal assessment of her performance for the 1996-1997 school year, due to her sporadic attendance (CX 5). In her Annual Evaluation Report of the Claimant for the 1997-1998 school year, Ms. Fields indicated that the Claimant met expectations in all criteria. She commented that the Claimant made an excellent adjustment in a difficult situation, by being flexible even when she was given a classroom change. In her comments on her evaluation, however, the Claimant took issue, stating that she had not been "given a classroom change," but that she had requested to be moved to a classroom, and as a result, was able to work away from the chaos of an open space environment. She referred to the fact that she could not tolerate the mental, emotional, or physical disruption of an open-spaced environment. She also asked for a response to her April 3, 1998 letter asking about her upcoming classroom arrangement, and that her request for a voluntary transfer be honored (CX 278).

However, in August 1998, the Claimant received notice that she was again assigned to Southeast. According to the Claimant, all of the mathematics teachers were based in one room, and they moved to different classrooms to teach their classes. The Claimant felt that she was being harassed as a whistleblower, and before school started, she wrote to Ms. Fields to request that she be moved to a separate classroom, or transferred. Subsequently, Ms. Fields, as well as the department head, met with her, and she explained her problems with the open space, and the fact that there were too many teachers in the room. The Claimant felt that Ms. Fields was rude and disrespectful; Ms. Fields told her she could only transfer if she got a replacement. The Claimant, however, did not think it was her duty to obtain a replacement if she wanted a transfer. She went home. A few days later, according to the Claimant, the department head called, and told her that they did not want to lose her as a math teacher, and the other math teachers had decided to move the math department downstairs, leaving her the classroom for herself (TR 363-369).[31]

The Claimant returned to Southeast on September 15, 1998. Problems soon arose, however, and on September 25, 1998, Ms. Fields met with the Claimant to discuss her latenesses and absences. Ms. Fields also requested that the Claimant keep her emergency lesson plans in the office. This offended the Claimant, who always had emergency lesson plans for a substitute, which she kept in her drawer. She refused to agree to keep them in the main office. Again on September 29, the Claimant and Ms. Fields met to discuss the new starting time for teachers,

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[31] Ms. Fields documented this with a memorandum to the Claimant dated September 15, 1998 (CX 201). The Claimant responded the next day, taking issue with what she viewed as Ms. Field's unprofessionalism, inappropriate body language, and lack of cooperation in trying to resolve the matter, as well as what she viewed to be unsubstantiated allegations in the September 15 memorandum regarding the Claimant's duty to walk students to class (CX 202).

which had been changed from 8:30 a.m. to 7:35 a.m. The Claimant had a conflict, as she had to drop her son off at school in the morning; she felt that she was being treated unfairly, as Ms. Fields knew of this situation.[32] The Claimant asked for a transfer to a senior high school, where they started later. Ms. Fields refused, because she did not have a replacement for the Claimant (TR 374-377).

In her testimony at the Claimant's dismissal hearing, Ms. Fields indicated that the Claimant had serious attendance problems at Southeast (CX 281, pp. 68-69). She asked the Claimant to meet with her several times, and after a meeting on September 28, 1998, sent her a memo confirming the meeting, and the fact that the Claimant had been late 15 times during that school year. Ms. Fields referred the Claimant to the staff handbook with the attendance reliability policy. According to Ms. Fields, the attendance problem had gotten to the point of "almost impossible."[33]

The Claimant testified that after she was transferred to Southeast, she heard rumors from staff persons that the drinking water was contaminated with lead. She noticed that the staff had bottled water in the teachers lounges, but the students were drinking from the fountains. She tried not to get involved, and said nothing about this during the 1997-1998 school year (TR 424-425).[34] During the 1998-1999 school year, she continued to hear such rumors, and she asked Ms. Fields about them. According to the Claimant, Ms. Fields told her that there had never been a problem with lead in the water.[35] According to the Claimant, someone on the staff told her that there had been a letter about lead in the water in City schools, including Southeast, but she never saw any documentation of this (TR 425). In January 1999, she wrote to MOSH, who responded that this was out of their jurisdiction, but they would refer her complaint to the Health Department (TR 427; CX 246). The complaint, filed by the Claimant on January 1, 1999, alleges that the water fountains could be contaminated with lead or other hazards, and that there were rumors of lead in the water (CX 245).

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[32] In fact, the decision to change the starting time was made by the School Board, not by Ms. Fields (CX 281, p. 371).

[33] At the Claimant's dismissal hearing, Ms. Fields testified that the Claimant was absent six times between November 19, 1997 and June 1998; no latenesses were listed, because such records were not kept that school year (CX 281, 367).

[34] The record reflects that the Claimant was "involved" during that time period in making complaints about the alleged conditions at James Mosher, Highlandtown, and Farimount.

[35] In contrast, at the Claimant's dismissal hearing, Ms. Fields candidly discussed the results of the 1992-1993 System-wide study, which showed that there were in fact lead problems at Southeast, which were addressed by shutting off certain fountains, and providing bottled water stations for the students and staff. This was no secret, and according to Ms. Fields, the report was posted on the bulletin board in the office.

At the Claimant's dismissal hearing, Ms. Fields testified that on February 10, 1999, she asked the Claimant to meet with her as soon as possible, but no later than February 12.[36] The Claimant did not report as requested. On February 24, 1999, Ms. Fields sent the Claimant a memo, again scheduling her for a meeting on February 26, and informing her that it was essential that she meet with the Claimant. The Claimant refused to sign the notice. According to Ms. Fields, at that point, the Claimant had been absent nine and a half days, and late 85 times during that school year (CX 281, pp. 69-72).

In response to a call from the Claimant, asking them to come out and inspect the drinking fountains for lead, the Health Department went to Southeast on February 11, 1999, took samples, and found that one of the fountains that was supposed to be turned off, outside the main office, was in fact on.[37] Their report showed low water pressure in some of the fountains, and faucet deterioration in others. The Health department recommended that the fountain outside the main office be turned off, and that additional bottled water drinking stations be added. The school system was not cited for any lead problems at Southeast. As the school had added additional water stations, and the fountains broke often enough anyway, Ms. Fields and Mr. Elam decided to turn all of the fountains off. Ms. Fields also requested that the "blitz team" do the repairs suggested by the Health Department, including turning off the fountains and the sinks in the science laboratory (CX 279, CX 281, pp. 61-66).[38]

The Claimant was observed entering Farimount at about 7:25 a.m. on February 22, 1999, and going into the girls' bathroom. She did not report to the principal or sign in at the office, although the law requiring that visitors sign in is clearly posted at the entrance to the building (EX 19). The Claimant filed a complaint with MOSH, which responded on April 13, 1999. Ms. Kammerman of MOSH indicated that a senior industrial hygienist had reviewed the information she provided, and that an inspection had been done with the contractor at the site, which was closed in September 1998. Ms. Kammerman stated that no overexposure to lead was found at any time for the employees of the contractor, and lead abatement had been performed prior to the renovation work. She indicated that even if some lead particles were to become airborne, the

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[36] Ms. Fields had provided the Claimant with a notice of "attendance reliability," showing five absences as of January 26. The Claimant refused to sign the notice, stating that she wanted to check the handbook and with the payroll clerk. Ms. Fields then instructed her secretary to hand deliver a notice, which the Claimant again refused to sign.

[37] According to Mr. Elam, this fountain, which is in House 40, was supposed to be shut off, and he could not explain why it was turned on (TR 670).

[38] The report prepared on February 11, 1999, indicated that a follow-up inspection would be performed one month later. At that time, testing of the fountain in House 40, outside the main office (which had been shut off) showed that there was 18.3 ppb in the first draw, and .5 ppb in the second draw (CX 281 [CEO 16]).

possibility of overexposure to school employees was extremely low. Further, exposure to the children attending the daycare was not under their jurisdiction. The hygienist advised MOSH not to conduct an inspection at that time (CX 257). The Claimant took issue with these conclusions, and asked MOSH to reconsider (CX 258). In response, MOSH assigned the Claimant's complaint for investigation (CX 262).

In the meantime, the Claimant took her own water samples at Southeast in early January 1999. The Claimant has never precisely identified the water fountain where she got the samples, other than to say that it was in House 40, and that the faucet was in use. She sent them to an EPA certified laboratory, and received a report, dated January 29, 1999, showing that there were 18 parts lead per billion in the first draw sample, and less than 5 (or below the detection limit) on the post-flush sample (TR 429; CX 247). The report reflects that over 15 is considered hazardous.[39] The Claimant called Ms. Fields, and told her that she could prove there was lead in the drinking water. To the Claimant's amazement, Ms. Fields was not concerned, and did not seem to care. According to the Claimant, although she was being watched and monitored at her job, she felt morally responsible for the children, and felt obligated to inform the parents. She did not believe that the "higher powers" would be interested, and thus she did not approach anyone else in the school hierarchy (TR 436-440).[40]

Nor did the Claimant approach the School Improvement Team, a group of parents, teachers, and community organizations that meets regularly to discuss issues dealing with school improvement (CX 281, pp. 254-262). The Claimant testified at her dismissal hearing that she verbally expressed her concerns about the water at Southeast to the head of this team, who was a fellow teacher, and discussed the possibility that she could be on the agenda to speak at an upcoming meeting. Although the Claimant mentioned it again, she did not press the issue after that, as she did not want to be a nuisance. The Claimant testified that she saw this teacher almost daily, and figured that if she was ready for the Claimant to come forth, she would tell her so (CX 281, pp. 275-276).

Instead, without getting permission from Ms. Fields, she approached a clerical staff person at the school, whose name she could not recall, and asked for a copy of the parents' names and addresses (TR 441).[41] She then prepared approximately 500 copies of a letter, dated

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[39] There is no evidence that the Claimant ever shared this report with anyone, other than to represent that the "expert" testing showed that there were 18 parts per billion in the water sample.

[40] Indeed, it appears that the Claimant did not share the results of her testing with anyone, including MOSH, the City Health Department, or the SIT team.

[41] At her dismissal hearing, the Claimant testified that she thought these names and addresses were accessible to the teacher at any time, and she did not see it as a violation. She did

February 24, 1999, discussing lead in the water, which she mailed to the names on the list (CX 248). She also included her business card in each letter, according to her, in case any parents had questions.

The letter stated, *inter alia*,

> PLEASE BE ADVISED THAT your child's school has lead in the drinking water. The process for testing for lead in the drinking water was directed by an expert in lead abatement, who is certified and accredited by the Maryland Department of Environment, and who is also trained, certified, and accredited to sample water for lead contamination.
>
> The lead level in the water is higher than what is acceptable by the Environmental Protection Agency.
>
> . . . . . .
>
> Your child needs to be tested to see if he/sshe [sic] has been potentially exposed to lead. Please, don't wait too long to have your child tested because the lead only stays in your child's blood stream for about 6 to 8 weeks.

Ms. Fields began receiving calls from parents on the morning of February 25. At the Claimant's dismissal hearing, she testified that the first call she received was from a parent who was very upset over the letter, which she had gotten in the mail. According to Ms. Fields, the parent did not believe that the school sent it, but wanted to know who did. The parent indicated that the letter included the Claimant's card. The parent was upset about the contents of the letter, as well as the fact that it did not come from the school (CX 281, pp. 51-52). According to Ms. Fields, the phone lines became so tied up with calls from concerned parents and the media that the area office was unable to get through, and had to use the telefax for emergencies (CX 281, pp. 53-54).

Ms. Fields held an emergency faculty meeting because, as she put it, the System had been plastered all over the evening news for two days. According to her testimony at the Claimant's dismissal hearing, the teachers were not concerned about the allegations in the letter, and indeed, no other teachers had made previous complaints about lead in the water. The teachers did complain about the fact that an emergency faculty meeting had been scheduled on Friday, requiring that observations be canceled. The teachers also complained that the letter had gone out without their knowledge, and asked if Ms. Fields had sent a rebuttal. She recalled that there was a question about whether the kitchen in the faculty room had ever been tested. Ms. Fields told the teachers that she would check; the teachers assured her that they did not drink from this

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acknowledge that she did not ask Ms. Fields for permission, because she knew Ms. Fields would not give it, nor did she ask her supervisor, the head of the math department (CX 281, 264-265, 275).

facility, but just wanted to know (CX 281, pp. 378-380).

Dr. Abernethy immediately notified the CEO as well as the Labor Relations department of the letter sent by the Claimant. Dr. Abernethy reviewed the matter, to ensure that they had corroborating facts from the February 11 inspection by the Health Department, as well as the 1993 initial review of lead in all of the school system water, and checked with Mr. Elam. She then wrote a memo recommending that the Claimant be suspended without pay, to be reviewed by the CEO. Dr. Abernethy noted that the parents were unduly alarmed, that unauthorized access had been made to the files of all of the students in that school, and letters were sent to the children without permission. According to Dr. Abernethy, it was a serious disruption of the educational process. Dr. Abernethy noted that the Health Department's February 11 report found one faucet that had more lead than it should, but that it had been labeled out of order, and had to be turned on to be tested.[42] There was no substantiation for a claim that there was lead in the water (CX 281, pp.19-21).

According to the Claimant, she was subsequently called to the office to take a call from Dr. Abernethy, who asked her if she had signed the letter. The Claimant would not answer the question, but told Dr. Abernethy that if she could prove it, the Claimant would "take the charge." The Claimant asked Dr. Abernethy if she had checked the validity of the claims she made in the letter, told her to have a nice day, and hung up on her (TR 446-450).

In a memorandum to Michael Maher, at the Office of Labor Relations, dated February 25, 1999, Dr. Abernathy noted that the Claimant had called the Health Department to come out and inspect the drinking fountains for lead. They did so on February 11, 1999, and their report showed low water pressure in some of the fountains, and faucet deterioration in others. Their recommendation was to turn off the one fountain outside the main office. However, as additional water stations had been added, and the fountains broke often anyway, the principal and Mr. Elam decided to turn all of the fountains off. Dr. Abernathy reported that Ms. Williams had sent a letter dated February 24, 1999 to parents about lead in the drinking water at Southeast. Dr. Abernathy felt that the conclusions and recommendations were erroneous, sensationalized, irresponsible, and caused untold and unnecessary alarm. She noted that the Claimant did not have permission to speak for the School System about its responsibility to the children, and in fact, when the schools were required to notify parents in 1992 and 1993 about testing, they did so. Dr. Abernathy reported her conversation with the Claimant, indicating that the Claimant did not deny that she had written the letter, although she stated that if they could identify her as the person who sent it, she would take the charge. Dr. Abernathy recommended that the CEO suspend the Claimant for misconduct in office (CX 279, CX 281, p. 18) .

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[42] This appears to be the fountain in House 40, which was turned on by the Health Department for the follow-up testing in March 1999, and which produced results almost identical to those obtained by the Claimant.

The following day, Ms. Fields called the Claimant to the office; the vice principal was present as well. Ms. Fields told the Claimant that she had been getting many calls from parents and the media, and that it was causing a disruption in the school. During this meeting, the Claimant took notes, and interrupted frequently to ask the vice principal to confirm what was in her notes. He did not respond.[43] According to the Claimant, she told Ms. Fields that she did not have proper representation, and she wished to adjourn the meeting. Ms. Fields told the Claimant that she was suspended without pay, effective immediately, and that she would receive a certified letter to that effect. The Claimant testified that she went directly to the union representatives to tell them about the meeting (TR 449-450).

According to a memorandum from Ms. Fields to Dr. Abernathy, after she was informed that she was suspended, the Claimant stated that she did not hear anything that Ms. Fields said, and that she would be at school Monday morning. She then went to the foyer, where she was heard talking loudly about the "damn water." When she was asked not to use profanity, she denied doing so (CX 279).

The Claimant did not get a certified letter over the weekend. According to the Claimant, she came to school on Monday, where the union representative had told her to meet him. They sat in the office, where the Claimant was provided with the letter; she then went home (TR 453). In contrast, Ms. Fields' memorandum to Dr. Abernathy indicates that the Claimant sat in the office commenting to parents who came in about the lead in the water, and informing students who came into the office that Ms. Fields had fired her (CX 279). At the dismissal hearing, Ms. Fields testified that the Claimant came to school, and she asked her to wait in the inner office, but the Claimant insisted on waiting in the outer office, where she confronted parents who came in about lead in the water, and told students that Ms. Fields had fired her. Ms. Fields got a call from the union representative, who was waiting for the Claimant at the area office. He immediately came to the school, but the Claimant had left the office. He found her, they were provided with the letter of suspension, and they then left (CX 281, pp. 54-57).

This letter, from Robert Booker, the CEO of the Baltimore City Public School System, confirms that he approved Ms. Fields' recommendation of suspension without pay, finding the Claimant's actions to be disruptive to the education program (CX 250).

On February 26, 1999, Ms. Fields sent a letter to the parents, informing them that the information contained in the Claimant's letter was inaccurate. She did not identify the Claimant as the author of the letter, but explained the procedures and steps that had been undertaken at Southeast to ensure that it was safe. She noted that the entire school system had been tested in 1992-1993, and that Southeast had been identified as one of the schools with lead more than 20 parts per billion when the water was not flushed before drinking. Southeast, as well as all

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[43] According to Ms. Fields, the vice principal's role was as a witness, and she instructed the Claimant that he would not participate in the meeting (CX 281, p. 77).

schools in Baltimore, complied with the EPA's requirements to flush and/or turn off water fountains. She noted that there had been bottled water available at Southeast, and that the fountains were flushed by the lead custodian. She also mentioned that at the latest testing by the Health Department, they recommended that a fountain outside the main office be turned off, due to faucet deterioration. She decided to turn off all faucets, and add more water stations. She stated that there was no danger to students or staff of exposure to lead in the water, and regretted any inconvenience or unnecessary alarm that resulted from the irresponsible actions of the person who wrote the letter.

On April 26, 1999, Dr. Patricia Abernethy recommended that the Claimant be dismissed for misconduct in office (CX 270). Both Dr. Abernathy and Ms. Fields testified at the Claimant's dismissal hearing that even if the allegations in the letter were true, they still would have recommended disciplinary action, because of the unnecessary disruption that had been caused, and because of the Claimant's use of what Dr. Abernathy characterized as "scare tactics." Ms. Fields felt that the Claimant's suspension and dismissal was justified on the basis of her unauthorized access of the student files, while Dr. Abernathy indicated that the form of discipline may have been different if the allegations had any merit (CX 281, pp. 342-346; 383).[44] According to Dr. Abernathy, a teacher needs permission either from her or from the principal to have access to the school system's list of names and addresses, which is privileged information (CX 281, pp. 348-349).

Mr. Robert Booker recommended that the Board dismiss the Claimant for misconduct in office, citing her circulation of the letter on or about February 24, 1999, erroneously stating that the school's drinking water was lead contaminated (CX 270). The statement noted that parents and media contacted the school about their concerns, and that there had been an emergency staff meeting, in which the principal, Ms. Fields, advised the staff that the water was safe, and was not lead contaminated. The statement indicated that on February 26, 1999, Ms. Fields had asked the Claimant to attend a conference to discuss the letter, and to give her an opportunity to explain her role regarding the letter. At that conference, Ms. Fields advised the Claimant that she intended to recommend that the Claimant be suspended without pay. On March 1, 1999, Dr. Booker indicated to the Claimant that he had accepted this recommendation, and that the Claimant was on emergency suspension without pay, pending further disciplinary action.

The Statement reflected that since she was employed by the Baltimore City Public School System, the Claimant had engaged in similar conduct that caused some level of disruption in the

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[44] Ms. Fields noted that at the time of the February 1999 incident, she had only requested that the Claimant be put on suspension, not dismissed, until she could investigate. She stated that when the Claimant was informed that she was suspended, she stood in the hallway erroneously claiming that she was fired, and threw what Ms. Fields called a "hissy fit," referring to the "damn water," while students and parents were leaving the building at dismissal. She felt that the Claimant had not set a professional example (CX 281, 384).

System. Specifically, the Statement noted that on December 3, 1996, the Claimant wrote a letter to the mayor, claiming that staff and students at Farimount had been exposed to lead as a result of a renovation project at the school. Copies were given to staff, students, and Farimount parents. The Claimant referred to herself as a lead abatement expert, and discounted the results of the November 1996 study by Johns Hopkins University, which specifically found that the project had not exposed the staff and students to unsafe amounts of lead.

Additionally, the Statement noted the preparation and distribution of a letter by the Claimant, claiming that an expert had cited three System schools as lead based paint and asbestos hazards, and identifying the Claimant as a lead expert. The letter was given to staff, students, and parents, and caused a panic among the parents of students at one of the schools, James Mosher Elementary. The principal contacted the Department of Facilities to confirm the accuracy of the letter, and was advised that the Department was not aware of any citations issued against the school for lead paint and asbestos, and confirmed that all System schools had been inspected for such hazards in accordance with the law.

A hearing was held on August 26, 1999, before a hearing examiner for the Baltimore City Board of School Commissioners (CX 281). The hearing officer subsequently determined that there was merit to the Claimant's allegations, and recommended that the CEO's recommendation of dismissal be denied by the Board (CX 139). However, the Board did not accept the hearing officer's conclusions.

Mr. Booker took exception to the conclusions of the hearing examiner, noting that the testimony of the witnesses established that the recommendation to dismiss the Claimant was based on, *inter alia*, the Claimant's inappropriate conduct with respect to her unauthorized dissemination of information directly to the public and media (CX 276). Mr. Booker argued that while the hearing examiner was correct in concluding that the Claimant had the right to file a complaint with MOSH about safety and health issues that affect the public, he erred in failing to find that her unauthorized access to confidential student records for personal and perhaps professional gain rose to the level of misconduct in office. He noted that the Claimant acknowledged that she did not obtain permission to access the addresses, or to mail the notice. He stated:

> These addresses constitute confidential student information that the Respondent would not otherwise have had access to as private citizen. Indeed, by attaching a business card to the notice identifying herself as a lead abatement expert, it can reasonably be argued that Respondent was actually soliciting the parents for business. . . . Further, Respondent's admission that she did not bring her concerns to the attention of her superior shows a total disregard for the chain of command. Her actions created a conflict or appearance of conflict between the interest of the BCPSS and that of her own.

Mr. Booker argued that the Claimant's actions bore on her fitness to teach, and that the record supported a finding that her repeated pattern of inappropriate behavior incited panic and

disruption in the System, citing to the three separate occasions when the Claimant disseminated information to parents, students, and staff concerning health and safety issues at the schools. He claimed that the Claimant's failure to follow the chain of command when addressing safety issues had caused the community to lose confidence in the Board's ability to protect the health and safety of the children in its charge, and that the integrity of the system had been seriously compromised by her actions.

By letter dated December 8, 1999, Ms. Donaldson advised the Claimant that the Board of School Commissioners, by majority vote, rejected the hearing officer's recommendation, and upheld the dismissal decision of the Chief Executive Officer. Ms. Donaldson noted that her case would be on the Board's December 14, 1999 public business meeting for final action, and that after that, she would receive the Board's final order (CX 280). By this Order, the Board found that the Claimant committed misconduct in office by failing to follow the chain of command when she disseminated information about alleged potential health hazards at three System schools. Additionally, the Board also found that she did not have permission to obtain the home addresses of the approximately 500 students at Southeast, and that this confidential student information was wrongfully acquired to further the Claimant's personal goals and objectives. The Board concluded that the Claimant violated the Ethics Laws and Codes of Conduct of Baltimore City in attaching her personal business card to this communication. The Board disagreed with the hearing examiner's conclusions, and found that the Claimant's repeated failure to follow proper procedure when addressing alleged health and safety concerns had a direct bearing on her fitness to teach, such that it would undermine her future classroom performance and overall impact on students (RX 21).

The Claimant testified that after she was fired from the School System, she taught at her son's school for about two months in the spring of 1999 (TR 534). She has worked as a volunteer teacher there a few times since then (TR 535). According to the Claimant, she has not had time to look for another teaching job, as she spends much of her time in the library in connection with her various litigations. She receives unemployment compensation benefits (TR 536-537). According to the Claimant, she is aware that she is required to actively seek employment, but she has explained to the people at the unemployment compensation office that she is trying to clear her reputation before looking for another job (TR 538).

The Claimant acknowledged that her doctor has diagnosed her with depression and stress, and suggested medication. She is angry at the "system," and suspicious that MOSH has been concealing the facts; she will not take medication, but prefers to rely on her faith (TR 541-550).

Dr. Stephen W. Siebert performed a psychiatric evaluation of the Claimant on October 16, 1997, in connection with her workers compensation claim. He reviewed the results of the lead testing performed on the students and staff in November 1996; Dr. Peck's psychiatric evaluation of December 23, 1996; and the Claimant's workers' compensation claim. Dr. Siebert noted that Dr. Peck diagnosed the Claimant with major depression, but that the Claimant disagreed, as she felt she suffered from major stress. He also referred to the results of her

November 8, 1996 blood test by Dr. Jacobs, which was essentially negative, although she reported to the media that the test showed lead in her system. According to Dr. Siebert, the Claimant understood that this result was negative, but nevertheless she was concerned about her past exposure to lead. Dr. Siebert reported that the Claimant had been scheduled for evaluation in April, July, and August of 1997, but that she did not appear. She told him that she was protesting a psychiatric evaluation until she had a "six part examination according to OSHA guidelines." Among other conclusions, Dr. Siebert noted that the Claimant was preoccupied to an extreme degree with environmental hazards, but that it was unclear to what extent her concerns were valid, versus obsessions, phobic anxiety, or delusions. He noted that some of her allegations seemed highly implausible, and that her concerns or ideas might not be reality based. He noted her somewhat paranoid stance, and her belief that there was a coverup involving many people. He felt that the Claimant was not persuaded by evidence to the contrary, but rationalized facts to her own beliefs. For example, even though she had a negative serum lead test, she nevertheless continued to believe that she was exposed nine years earlier, and dismissed any reports or studies done by the school, claiming they were biased or fraudulent. Dr. Siebert felt that the Claimant had a delusional disorder with persecutory ideas and querulous paranoia. He found no evidence that she suffered an accidental injury on September 19, 1996, noting that she continued to work until early November, when her main complaint was the low temperature in the building. In his opinion, none of these anxieties or fears were sufficient to result in an acute stress or posttraumatic stress disorder. Further, he found no evidence that the Claimant had any symptoms of major depression. He felt that she had either a delusional or personality disorder representing a preexisting condition, not causally related to any accidental injury (CX 137).

DISCUSSION

Alleged Protected Activity

The Claimant alleges that she was unlawfully terminated on December 8, 1999, due to her involvement in a lengthy course of protected activities relating to her complaints and attempts to expose lead and asbestos hazards at several System schools.

Claimant's Prayer for Relief

The Claimant seeks a variety of remedies in this claim. First, she seeks an order compelling the System to take a number of steps that, in her view, would ensure that the risk of exposure to lead or asbestos in the schools would be eliminated. The Acts under which this claim is brought do not provide the authority for the issuance of such an order.

The Claimant also seeks compensatory damages in the amount of approximately $70,000, comprising back pay and interest, insurance benefits, medical expenses, and other expenses, as well as punitive damages in the amount of $78,000,000.

The Applicable Law

The Claimant in a whistleblower case initially has the burden of proving a *prima facie* case by a preponderance of the evidence. To prove a *prima facie* case, an employee must establish each of the following elements:

1) That the employee engaged in protected activity;

2) That the employer knew that the employee engaged in protected activity;

3) That the employer took some adverse action against the employee; and

4) The employee must present evidence sufficient to at least raise an inference that the protected activity was the likely reason for the adverse action.

Scerbo v. Consolidated Edison Co. of New York, Inc., 89 CAA-2 (Sec'y Nov. 13, 1992). Once the Claimant has established her *prima facie* case, the Respondent has the burden of presenting evidence that the alleged adverse action was motivated by legitimate, nondiscriminatory reasons. If the Respondent articulates a legitimate, nondiscriminatory reason for its action, the Claimant must establish that the Respondent's proffered reason was not its true reason, but was a pretext. The ultimate burden of persuasion of the existence of intentional discrimination rests with the employee. *Texas Dep't of Community Affairs v. Burdine,* 450 U.S. 248, 254-55 (1981).

The Respondent need not persuade the Court that it was actually motivated by the proffered reasons, but it is sufficient if the Respondent's evidence raises a genuine issue of fact as to whether it discriminated against the Claimant. To accomplish this, the Respondent must clearly set forth, through the introduction of evidence, the reasons for the Claimant's dismissal.

Protected Activity

To establish the first element of the Claimant's *prima facie* case, she must prove that she engaged in protected activity. The Secretary has broadly defined protected activity as the report of an act which the complainant reasonably believes is a violation of the environmental acts. The Secretary has also stated that a complainant under an employee protection provision need not prove an actual violation of the underlying statute. *See Yellow Freight System, Inc. v. Martin,* 954 F.2d 353, 357 (6th Cir. 1992). Rather, an employee's complaint must be "grounded in conditions constituting reasonably perceived violations" of the environmental acts. *Johnson v. Old Dominion Security*, 86- CAA-3 to 5 (Sec'y May 29, 1991), slip op. at 15; *Crosier v. Westinghouse Hanford Co.*, 92-CAA-3 (Sec'y Jan. 12, 1994).

The issue of the reasonableness of a claimant's perception of environmental violations has been discussed in the context of a refusal to report to work until the perceived hazard has been addressed. Thus, in *Sutherland v. Spray Systems Environmental*, 95-CAA-1 (Sec'y Feb. 26,

1996), the Secretary, citing, *inter alia, Pensyl v. Catalytic, Inc.,* 83-ERA- 2 (Sec'y Jan. 13, 1984), noted that a work refusal loses protection under the CAA and the TSCA after the perceived hazard has been investigated by responsible management officials, and if found safe, adequately explained to the employee. "Management has the prerogative to determine which means it deems to be most effective provided such means comport with requisite safety and health standards. There is no requirement for management to engage in a dialog with the refusing workers as to which procedure would be most efficacious." Slip op. At 5-6.

In *Stockdill v. Catalytic Industrial Maintenance Company, Inc.*, 90-ERA-43 (Sec'y Jan. 24, 1996), the Secretary agreed with the ALJ's conclusion that the Complainant's initial concerns about wearing a dust mask lost their protection after the Respondent adequately responded to the Complainant's concerns. The ALJ found that the Respondent in fact went to significant lengths to investigate and explain the safety of the work area, and gave the Complainant opportunities to change his mind about the work refusal.

In the context of this particular case, it is analytically useful to address the character of the Claimant's diverse activities and to determine if she has in fact established a *prima facie* case. While I find that many of the Claimant's activities fall squarely within the definition of protected activity under the various statutes applicable to this case, I also find that not all of those activities so qualify. Thus, the Claimant's complaints to various regulatory groups, as well as her public airing of her concerns about the potential safety hazards presented by the renovation project occurring at Farimount, were clearly protected activity within the meaning of the applicable statutes. In response to these concerns, which appear to have been shared, at least initially, by other teachers and staff at the school, the System undertook significant activity to ensure that the environment was safe, that any potential problems were corrected, and that a plan was in place to monitor the safety of the occupants during the renovation. Thus, the System engaged an environmental contractor to clean the building after activity by the general contractor apparently impacted some lead and asbestos surfaces, with clearance and monitoring by the appropriate regulatory agencies. The System also engaged an environmental contractor to perform ongoing asbestos abatement under applicable protocols, to identify areas affected by the renovation, remove the occupants, perform the abatement under containment, and take clearance samples before reoccupancy. To allay concerns of the teachers and parents, the System offered blood testing, which did not show any link between exposure at the school and elevated blood levels. The school was inspected numerous times, by MOSH, and by the City Health Department; no one found any violations.

In her subsequent complaints and allegations, as well as at the hearing, the Claimant ignored the fact that this cleaning had taken place, and that clearance testing had been done before each cleaned area was released for occupancy. Instead, she focused on the fact that only 45 lead dust samples were taken, which in her "expert" opinion was an insufficient number of samples. Of course, as Mr. Elam pointed out, as the System had elected to clean the entire building, it did not make sense to spend time or money taking additional samples. The Claimant

has presented no credible evidence that the cleaning was done improperly, or that hazards remained afterward. Indeed, in response to her complaint, an inspector from MOSH conducted an inspection, finding nothing to substantiate the Claimant's many complaints, including raw sewage in the drinking fountains. MOSH did note chipping and peeling paint in hallways where dropped ceilings had been removed, and in some of the classrooms. However, as part of the renovation project, the school was to be repainted, and in fact the System contacted a lead removal contractor, and asked the Maryland Department of Environment for surveillance during this process. The MOSH inspectors noted no violations, and recommended no citations.

In addition, while the renovation project was ongoing, there was an asbestos abatement project at Farimount, to identify areas that would be affected by the renovation, remove the occupants, perform the abatement under containment, and take clearance samples before reoccupancy.

Finally, at least in part due to the concerns raised by the Claimant, the System conducted sampling of blood for elevated lead levels, under the auspices of Johns Hopkins. This was made available to all students and staff, and the results did not show any link between exposure at the school and elevated blood lead levels. Teachers and staff were informed of the results of the lead dust wipe analysis, as well as the blood sampling analysis. Indeed, these reports received extensive coverage on local news broadcasts.

For whatever reasons, the Claimant refused to accept the validity of any report or study that contradicted her opinions. She did not participate in the study by Johns Hopkins, although she had her blood tested by her private physician. Despite the fact that this test, as well as a second one performed the next year, showed that her blood level was normal, she continued to represent that she had lead in her system.[45] She interpreted the results of the wipe sampling analysis as showing that there was enough lead dust to poison everyone in the building. When MOSH determined that the City had followed appropriate regulatory guidelines, she interpreted those results as confirmation that there was asbestos and lead at Farimount. Again, when Dr. Amfrey responded to Ruth Ann Norton, explaining that the appropriate state and local regulatory agencies had determined that the school was safe for continued occupancy, and noting that the System was conducting a thorough cleaning as a precaution, and screening students and staff, and had developed protocols for impacting lead paint surfaces, the Claimant interpreted his letter as confirmation that the renovation project created a lead based paint hazard.

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[45] She also stated in her Incident Report, regarding the alleged incident of November 7, 1996, that she had lead deposits in her bones and parts of her body, an allegation for which there is no support in the record.

The Claimant did not report for work during most of the 1996-1997 school year. However, she did continue to agitate, writing repeatedly to the Mayor, videotaping the school as well as interviews with students, and testifying at a city council meeting. The media again publicized her allegations, but again, when the council concluded that there was not a problem, she was astounded. Nor could she believe that the Baltimore City Health Department, which inspected the building at that time, found no evidence of environmental violations. Indeed, despite all of these findings, she contacted parents and conducted meetings, and appeared on public television, alleging that the building was unsafe.

Similarly, at James Mosher, in response to the Claimant's complaints, an inspection was conducted by MOSH, but again, no environmental hazards were identified. At Highlandtown, in response to the Claimant's complaint, MOSH again inspected, but found no environmental violations, despite the Claimant's unsupported claim that there was documentation of elevated blood levels in persons at James Mosher. At Southeast, the Claimant's complaint about the safety of the drinking water was addressed by testing, which showed problems only at one fountain, which was supposed to be turned off, and again, steps were taken to ensure that any potential hazards were avoided, by turning off all drinking fountains, and providing additional sources of drinking water for the occupants.

Indeed, it is safe to say that, in large part due to the Claimant's activity, important steps were taken by the System to ensure the safety of students and staff in these school buildings. But at some point her activities lost their character as protected activity. *See, e.g., Mosbaugh v. Georgia Power Co.*, 91 ERA 1 & 11 (ALJ Oct. 30, 1992), where the ALJ found that even if the Claimant's hundreds of hours of covert tape recording was protected at the outset, its continuation and scope because so egregious and potentially disruptive to the workplace that it lost any protected status that it once may have possessed.

Once the concerns raised by the Claimant were addressed, it was no longer reasonable for her to continue claiming that these schools were unsafe. It appears that the Claimant was unwilling to accept the conclusions of the numerous agencies who investigated her complaints, and determined that they were unfounded. Indeed, the Claimant suggested throughout her testimony, and in the fliers she circulated to parents, that there was a coverup by public officials, who did not want to reveal the "truth." She was suspicious of MOSH; she felt that the Mayor was not doing his job. She discounted the reports by the experts whose job and profession was to assess environmental and safety risks, and instead relied on her status as an "expert," by virtue of her attendance and certification for assessing environmental risks. But although she assailed the results of various tests as misleading and unreliable, she offered no support or documentation for her bald allegations, other than her surreptitious videotapes.

Clearly, by December 1996, it was no longer reasonable for the Claimant to continue to

allege that the conditions at Farimount were unsafe. By that time, the testing and cleanup had occurred, a lead abatement contractor and asbestos contractor were engaged on an ongoing basis, and the staff and students had been screened for elevated lead levels. MOSH had investigated the Claimant's complaints, and found that the building was safe for occupancy.

The Claimant based her allegations of lead problems at Highlandtown, by her own account, on a rumor from a parent, as well as her own surreptitious videotaping of the inside of the school, and her knowledge that the school was old, and therefore had lead based paint. However, once MOSH investigated her complaints and determined that there was no lead based paint hazard, there was no reasonable basis for her continued allegations. Again, she has never put forth any basis for her claim that this investigation was unreliable.

With respect to James Mosher, again, the MOSH inspectors performed an inspection in response to her complaint, issuing no citations for lead based paint or asbestos hazards, but making safety recommendations for workers. Once this determination was made, there was no reasonable basis for the Claimant's continued allegations about James Mosher, nor has the Claimant, despite her "expertise," ever put forth any facts to support these allegations.

At Southeast, again in response to rumors, the Claimant made a complaint to the Health Department about lead in the water. The Health Department responded promptly, making recommendations to turn off a fountain and add additional bottled water stations, but not citing the school for any lead problems. In response, the school system shut all of the fountains. The Claimant did not accept the results of this inspection, however, but relied on her own "expert" testing of the water from the fountain outside the main office.[46] In fact, the results of her testing showed that although the lead level was high on the first sample, after flushing, it was at acceptable levels. But even if there were problems with the lead level in this fountain, they were addressed by turning it off, along with all of the other fountains. There could not be a potential for lead exposure if the water was not available to the students. Nevertheless, the Claimant circulated a letter to 500 parents, telling them that there was lead in their child's drinking water at school, and referring to the results of her testing, giving the impression that all of the water fountains had been tested as part of an official process, which found dangerous levels of lead in the water, when in fact it was the Claimant who was the "expert," and who had sampled one

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[46] This may be the same fountain that both Mrs. Fields and Mr. Elam testified was supposed to be turned off as a result of the 1992-1993 study. Mr. Elam testified that it was unaccountably on when the Health Department checked in February 1999; apparently, it was shut off again at that time, and turned on for testing by the Health Department in March 1999. The testing results obtained by the Claimant were almost identical to the results obtained by the Health Department on this fountain, both before and after flushing, suggesting that it is the same fountain.

fountain. Furthermore, her statement that there was lead in the drinking water was simply erroneous, as all of the fountains had been turned off, and the students and staff were using bottled water. There was no reasonable basis for the Claimant's allegations.

Viewing the record as a whole, it is fair to say that the Claimant has demonstrated a tendency to interpret facts in a way that suits her purposes. In other words, many of her claims are replete with half-truths and outright misrepresentations. Thus, she told Ms. White, and went on the air to publicly claim that her blood tests had shown lead in her system, implying that she had been poisoned by her exposure to the school, when in fact she had not received the results of her blood test at the time, which in any event turned out to be normal. Indeed, when she finally returned to school in March 1997 and completed an incident report, she claimed that she had been out sick because she was exposed to lead, but in the next breath, when offered the chance to be tested, she claimed that her lead level was low, due to her health habits. Apparently she did not wish to share the results of either of her blood tests, which were normal.

In the spring of 1997, after the uproar of the previous fall had apparently died down, the Claimant again went public, taking her surreptitious videotape to the city council meeting, and handing out the paint and dust sampling report that had been provided to the teachers in November 1996. She did not mention that since that report, the school had been thoroughly cleaned, and in response to a direct question from Councilman Kane, she replied that she did not know if any cleaning had taken place. Of course, this was not true: the record reflects that she, as well as the other teachers and staff, and indeed the public, by virtue of the news reports videotaped by the Claimant, knew that the cleaning had taken place, and that the System had taken significant steps to address the concerns raised by the report.

Very telling is the videotape that the Claimant made at Farimount in the spring of 1997. Although the videotape indeed shows rundown conditions, it is not clear whether the areas that appear on the tape were occupied, or in the process of renovation. Nor is it possible to tell from the videotape whether these conditions presented environmental hazards, in the form of lead or asbestos dust. The Claimant's "interviews" of the students are self-serving and clearly coached by the Claimant. There is no documentation whatsoever in the record that Ms.Tiffany Burgess had elevated lead levels, or if she did, that they were due to conditions in the school. The allegation that she received a $500 bribe as "hush money" is patently ridiculous, especially in light of the fact that the existence of lead paint and asbestos at the school was never kept secret, and the System candidly shared that information, as well as the steps that were taken to address any potential dangers, with staff and students. The Claimant's manipulation of these students was disgraceful and borders on scandalous.

It is worth noting that for the last three school years that she was employed by the Baltimore City Public School System, the Claimant had serious attendance problems. Indeed,

she was absent for most of the 1996-1997 school year, and her attendance problems had become serious during the 1998-1999 school year. Coincidentally, the Claimant took her water samples at a time when Ms. Fields was attempting, unsuccessfully, to get the Claimant to meet with her to discuss her attendance problems.[47] Again coincidentally, the Claimant had such a meeting scheduled two days after she sent out her letter. A reasonable inference to be drawn is that the Claimant's activities were motivated in substantial part by her hope that she could avoid disciplinary action by virtue of her status as a whistleblower. Of course, protected activity does not lose its character as protected activity merely because a person has dual motives for his or her protected activity. But in this instance, given that the Claimant had longstanding and serious attendance problems, and the fact that there was no factual basis for her continued allegations, her apparent attempt to use the cloak of whistleblower to avoid disciplinary action sheds light on the reasonableness of her beliefs, and therefore the protected status of her activities.

It is also worth noting that although the Claimant apparently went out of her way to agitate about conditions at several public schools, sometimes on the basis of nothing but rumors, she never raised a question about the safety of her own son's school, where she taught for several months in 1999. Indeed, she testified that she although she offered her services as an expert free of charge, she never actually assessed whether there were any hazards at the school (TR 536-539). This strongly suggests that her activities were motivated, not so much by her concern for children, but by her desire to avoid disciplinary action.

Whether the Claimant's activities stemmed from a psychiatric disorder, manifested by her obsession and refusal to accept any conclusions contrary to her own beliefs, as suggested by Dr. Siebert, or from a desire to avoid disciplinary action, cannot be established with certainty, nor need it be. Regardless of her motivation, by February 1999, when she mailed her letter to the parents, her allegations were not grounded in conditions that constituted reasonably perceived violations of the environmental statutes. Thus, I find that the mailing of this letter was not protected activity, nor was the distribution of the fliers on the two previous occasions.

Adverse Action

To establish the third element of her *prima facie* case, the Claimant must prove that the

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[47] The Claimant explained that, although she was aware of rumors of lead in the water at Southeast from the time she started working there, she kept quiet because she did not want to cause problems or be a nuisance. She apparently did not recognize similar constraints about her activities in connection with Fairmount, Highlandtown, and James Mosher, which occurred while she was working at Southeast.

Respondent took some adverse action against her.[48] In this case, the Claimant alleges that the adverse action was her dismissal. As it is a step in the dismissal process, I also consider the Claimant's claim to include her suspension without pay. I find that the Claimant has established that the Respondent took adverse action against her by virtue of these acts. However, the Claimant must also at least raise an inference that protected activity was the likely reason for the adverse action.

With respect to her suspension without pay, effective March 1, 1999, it is clear that the precipitating cause of that action was the letter that the Claimant mailed out to parents about lead in the water at Southeast. The testimony and the internal memoranda in the record amply demonstrate that the Claimant's immediate supervisor, Ms. Fields, as well as higher authorities in the system, such as Ms. Wighton, were aware of the Claimant's various activities in connection with possible health hazards at the schools. Again, it is also clear that the System responded appropriately to all of the inspections and inquiries generated by the Claimant. But over the three years that the Claimant engaged in her various activities, there was no disciplinary action taken against her, as the Claimant agrees in her posthearing brief. In fact, she received a favorable evaluation for the 1998-1999 school year. I have found that the Claimant's mailing of the February 24, 1999 letter was not protected activity, and thus the Claimant has not raised an inference that protected activity was the likely reason for her suspension.

Similarly, the Statement of Charges presented to the Board by Robert Booker, the Chief Executive Officer, in support of the recommendation of dismissal, refers to her circulation of the February 24, 1999 letter, as well as her circulation of her December 3, 1996 letter to the Mayor regarding exposure to lead at Farimount, and her circulation of her letter citing Farimount, James Mosher, and Highlandtown as lead based paint and asbestos hazards, pointing out that the information in those letters was unfounded, and caused disruption in the System. I find that these activities, which occurred after the Claimant's complaints had been addressed and resolved, were not protected within the meaning of the environmental statutes, as they were not based on a reasonable perception of an environmental hazard.

But even if the Claimant's activities in these instances were found to be protected activity, resulting in adverse action by the Respondent, I find that the record clearly establishes that the Respondent had a legitimate and nondiscriminatory reason for its actions in suspending the Claimant, and then dismissing her.

In this case, the Claimant alleges that it was her ongoing course of conduct, involving the

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[48] The record clearly establishes that the System was aware of the Claimant's media, letter writing, and flier campaign.

filing of numerous complaints with the Maryland Occupational Safety and Health Administration, and the City Health Department, and her attempts to publicize what she perceived as health and safety problems as well as a coverup by the school system, that spurred the System to terminate her in December 1999. The facts, however, overwhelmingly establish otherwise.

Thus, the record reflects that between late August 1996 and her dismissal in December 1999, the Claimant engaged in an extensive series of activities that she felt were necessary to address her perceived health and safety concerns at several Baltimore City Public Schools. She filed numerous complaints with MOSH alleging lead dust and asbestos hazards at Farimount, Southeast, Highlandtown, and James Mosher. On numerous occasions, she contacted the media, both print and broadcast, to air her environmental concerns and allegations. She complained persistently to public officials, including the Mayor and the Health Department Inspector. She notified parents of her allegations, distributed fliers, called meetings, and picketed. She testified at a public hearing on lead paint poisoning. It is clear from the record that her supervisors were aware of her activities.

The record also overwhelmingly demonstrates that the Claimant did not suffer any adverse action as a result of these activities. In fact, it appears that the System took the allegations seriously, and undertook to investigate, and if necessary, take corrective action. Thus, when the Claimant, along with other staff at Farimount, expressed concerns about possible lead dust exposure at Farimount, the System hired a contractor to collect lead dust samples at the school for analysis. An earlier System wide study performed in 1992 and 1993 had shown that there was lead paint in the walls, but no lead dust. When the results of this testing showed elevated lead levels in six of the forty five samples collected, possibly as the result of the renovation activity impacting the lead paint surfaces, the System engaged an environmental contractor to clean the entire building.

Despite the failure of the Claimant to report for work for most of the school year, and her diverse and well-publicized activities alleging environmental hazards at the school, the record does not reflect that any adverse action was taken by the System against the Claimant during this school year. In fact, the only action that was even close to a reprimand was the notice from Ms. White, instructing her not to videotape inside the school building. Nor does the record reflect any adverse action against the Claimant up to February 1999, despite her continued and well-publicized activities with respect to James Mosher, Highlandtown, and Fairmount.

With respect to the March 1, 1999 suspension, I find that the Respondent has clearly established that this action was motivated by legitimate and nondiscriminatory reasons. By that time, the Claimant had been agitating in connection with alleged health and safety hazards for over two years. Yet there is no evidence that she ever suffered any recrimination from the

System as a result of her activity, despite the fact that it caused some disruption for the schools involved, and resulted in much media publicity that was clearly not favorable to the Respondent. In fact, the System did respond, by addressing those problems uncovered as a result of the Claimant's complaints. Indeed, despite the fact that by February 1999, her attendance and tardiness problems had become severe, there is no evidence that she was subjected to disciplinary action on any grounds.

Ms. Fields testified that her recommendation of suspension without pay was based on the fact that the Claimant had obtained the names and addresses of parents without authorization, and had sent out information that was untrue and unnecessarily alarming to those parents. In fact, at that time Ms. Fields had in her hands the report from the City Health Department, finding that there were no problems with lead in the water. According to Ms. Fields, the responses generated by the Claimant's false and sensational letter caused a serious disruption in the functioning of the office, and required the scheduling of emergency meetings to address the situation, and the attention generated by the media. Ms. Fields testified that, even if the Claimant's allegations had some merit, she still would have recommended her suspension for obtaining unauthorized access to the list of names and addresses. Ms. Wighton also confirmed that, even if there were merit to the Claimant's claims, she still would have recommended some form of discipline, although the form of that discipline may have been different. However, as the System had just completed an inspection by the City Health Department, based on the Claimant's complaint, it was clear that her claims were baseless.

With respect to the Claimant's dismissal, the Statement of Charges identifies three activities as the basis for the charge of misconduct: the circulation of the February 24, 1999 letter, the circulation of the December 3, 1996 letter to the Mayor about lead exposure at Fairmount, and the circulation of the letter (in the spring of 1997) about Fairmount, James Mosher, and Highlandtown. The identified misconduct does not include the Claimant's complaints to MOSH or the City Health Department, or her publicized allegations on television or at the City Council meeting. Rather, it is limited to that conduct on the part of the Claimant that caused disruption in the school system, by unnecessarily alarming parents and diverting school resources to respond to inquiries, when in fact the System had adequately responded to the concerns raised by the Claimant.

The Secretary has set the standard for indefensible behavior fairly high, noting that the right of the employer to maintain shop discipline must be balanced against the heavily protected rights of employees under the whistleblower statutes, and that to fall outside the statutory protection, an employee's conduct must be indefensible under the circumstances. *Carter v. Electrical District No. 2 of Pinal,* 92 TSC 11 (Sec'y July 26, 1995). However, the Secretary has also noted:

> That employees are protected while presenting safety complaints does not give them *carte blanche* in choosing the time, place and/or method of making those complaints. . . . Nor is an otherwise protected employee automatically absolved from abusing his status and overstepping the defensible bounds of conduct – even when provoked. . . . Furthermore, certain forms of "opposition" conduct, including illegal acts or unreasonably hostile or aggressive conduct, may provide a legitimate, independent, and nondiscriminatory basis for adverse action. . . .

Garn v. Toledo Edison Co., 88 ERA 21 (Sec'y May 18, 1995). In making his decision, the Secretary relied on the decision of the Seventh Circuit Court of Appeals in *NLRB v. Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union, Local 705*, 630 F.2d 505 (1980), in which the Court found that the employees' dismissal did not violate their right to engage in protected activity. The employees were discharged after complaining about their salaries during a union steward meeting, using the union's CB radios to discuss their complaints, and distributing letters concerning their wage demands to union executives who were attending a political luncheon. The Court found that the employees' failure to follow procedure, coupled with their poor work performance, and prior warnings concerning their performance, justified dismissal. The Court noted:

> [a]n employer should not be penalized for good-heartedness with employees who choose to flout its rules and ignore its warnings. . . . There must be room in the law for a right of an employer somewhere, some time, at some stage, to free itself of continuing, unproductive, internal, and improper harassment.

Id. at 508.

Here, the Claimant clearly was entitled to make health and safety complaints, which she did, repeatedly, with no evidence that the System ever retaliated against her. However, her persistent unfounded and sensationalized claims, which she circulated directly to parents, clearly overstepped the bounds of defensible conduct. It is abundantly clear that the Claimant was suspended, and later discharged, because of her disruptive conduct in circulating false and inflammatory fliers to parents, not once, but three separate times.

It is unclear why the System did not address the earlier incidents at the time they occurred, with some form of discipline. Apparently, the System "went along" after the Claimant's unfounded agitation on the first occasion she distributed fliers to the parents. The System "went along" after the second incident, even though once again there was no basis for the Claimant's sensational claims, and the Claimant by that time was a serious attendance problem. It appears that the incident in February 1999 was the final straw. But as the Seventh Circuit Court of Appeals noted, an employer should not be penalized for good-heartedness with employees who choose to flout its rules and ignore its warnings. *Truck Drivers, supra,* at 509.

The System has a legitimate interest in maintaining an orderly environment for the education of the children in its charge, and in maintaining a level of trust with the parents of those children. That the Claimant has a right to raise health and safety concerns does not automatically entitle her to override these interests. The System is entitled to have its employees, and especially its teachers, act in a professional manner that fosters such an orderly environment and level of trust. There is ample room for employees of the System to raise health and safety concerns, as the Claimant did, within these bounds. However, the Claimant's repeated, unfounded, and sensationalized missives to parents overstepped these bounds, and especially in light of the fact that her concerns had been addressed and responded to by every health and safety organization responsible for overseeing those concerns, her actions were manifestly indefensible. I find that the reasons articulated in the Statement of Charges are legitimate and nondiscriminatory.

Even if they were not, the Claimant has not established that the reasons proffered for both her suspension and her dismissal, that is, her unauthorized use of the list of names and addresses, and her disruption of the System by circulation of unfounded allegations, were not its true reason, but were a pretext. The continuing theme of the Claimant's testimony and evidence is that the System (as well as MOSH, the Mayor, the City Council, and the City Health Department) wants to keep her from exposing the "truth," and that the System fired her because she has tried to expose this "truth." Of course, if the System really wanted to silence or retaliate against the Claimant, it would have done so in the fall of 1996, when, largely due to her agitation, the System received a great deal of unfavorable publicity. They did not do so, but kept her on as a teacher for over two more years, despite the fact that she was on "sick leave" for much of that time, and was a serious attendance problem otherwise. It was not unreasonable, unfair, or discriminatory for the System to fire the Claimant, not for making complaints about environmental hazards, but for circulating unfounded, misleading, and alarming missives directly to parents, when her allegations had been addressed and discounted by the public agencies responsible for monitoring them. Frankly, it is somewhat disturbing that the System did not address the two earlier incidents; perhaps the circulation of the February 1999 letter was simply the straw that broke the camel's back. In any event, I find that the Respondent has set forth legitimate and nondiscriminatory reasons for the Claimant's suspension and dismissal, and that the Claimant has not established that these reasons were a pretext.

CONCLUSION

I have carefully reviewed all of the evidence of record in this case, and I find that the Complainant has not proven that the Respondent was motivated in whole or in part by any protected activity on the Claimant's part when it suspended, and then dismissed the Complainant from her job as a teacher in the Baltimore City Public School System.

SERVICE SHEET

CASE NAME: Baltimore City Public Schools/Williams
CASE NO.: 2000-CAA-15
TITLE OF DOCUMENT: Recommended Decision and Order

A copy of the above entitled document was mailed to the following parties:

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U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20001-8002

Date Issued: 12-15-00

Case No. 2000-CAA-15

In the Matter of:

Diana R. Williams,
Complainant

v.

Baltimore City Public School,
Respondent

SUPPLEMENT TO RECOMMENDED DECISION AND ORDER

In the Recommended Decision and Order that I issued on November 30, 2000, several exhibits which were admitted into evidence during the hearing were inadvertently omitted from the listing of admitted exhibits on page 2 of that decision. Thus, Claimant's Exhibit 83 and Claimant's Exhibits 113-130 were, in fact, admitted at the hearing in this matter, and were considered by me in rendering my Recommended Decision and Order.

LINDA S. CHAPMAN
Administrative Law Judge

SERVICE SHEET

CASE NAME: Baltimore City Public Schools/Williams
CASE NO.: 2000-CAA-15
TITLE OF DOCUMENT: Supplement To Recommended Decision and Order

A copy of the above entitled document was mailed to the following parties:

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