



Date Issued: 11-30-00

Case No.: 2000-CAA-15

In the Matter of:	Diana R. Williams, Complainant
v.	Baltimore City Public School, Respondent

Appearances

Diana R. Williams, Pro Se

Brian K. Williams, Esq.
For the Respondent

RECOMMENDED DECISION AND ORDER

This proceeding arises under Section 322(a)(1-3) of the Clean Air Act, 42 U.S.C. § 7622; Section 110(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9610; Section 507(a) of the Federal Water Pollution Control Act, 33 U.S.C. § 1367; Section 1450(i)(1)(A-C) of the Safe Drinking Water Act, 42 U.S.C. § 300j-9; Section 7001(a) of the Solid Waste Disposal Act, 42 U.S.C. § 6971; and Section 23(a)(1-3) of the Toxic Substances Control Act, 15 U.S.C. 2622.

The employee protection provisions of each of these Acts prohibit an employer from discharging or otherwise discriminating against any employee because the employee engages in activities that are subject to protection under the Act.

On or about December 14, 1999, the Claimant filed a claim with the United States Department of Labor against her former employer, the Baltimore City Public School System, Respondent, for unlawful discharge and discrimination in violation of the above listed statutes. After investigating the Claimant's complaint, the Department of Labor Occupational Safety and Health Administration found on June 9, 2000, that the Claimant was a protected employee engaging in a protected activity within the scope of the Acts, and that discrimination as defined and prohibited by the statutes was a factor in the actions that comprised the complaint. The Respondent appealed this finding by telefaxing an appeal, dated June 16, 2000, which was also

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delivered by mail on June 19, 2000 (ALJ 3).¹

On August 1, 2000, the Claimant filed a Motion for Summary Judgment (ALJ 9). On August 11, 2000, the Respondent filed its response, as well as a cross-motion for summary judgment (ALJ 10). I denied both motions, finding that they were untimely, and that there were many genuine issues of fact raised by the parties' pleadings, and thus summary judgment was not appropriate (TR 7-8).

A formal hearing was conducted before me on August 17, 18, and 23, 2000, in Baltimore, Maryland. At the hearing, the Claimant appeared *pro se*; the Respondent was represented by counsel. Both parties presented evidence and examined witnesses. After the close of the hearing, both parties were provided the opportunity to submit post-hearing briefs. The Respondent's brief was received on October 11, 2000; the Claimant's brief was received on October 17, 2000.

The record consists of the hearing transcript (TR); Claimant's Exhibits 1-6, 8-14, 30, 32-34, 82, 84-97, 109-112, 131-141, 150-169, 200-207, 209-238, 240-291, 293, 299, and 301 (CX); Respondent's Exhibits 19, 21, 22, and 31 (RX); and ALJ Exhibits 1 to 10 (ALJX). At the hearing, I reserved a ruling on the admissibility of the entirety of CX 7A and 7B, which are videotapes of, *inter alia*, various news reports, as well as footage taken of the inside of several school buildings. These exhibits are hereby admitted into the record.

I also note that on August 26, 1999, the parties participated in a hearing on the issue of the Claimant's dismissal, before a hearing examiner hired by the Baltimore City Board of School Commissioners, who made a recommendation to the Board. At this hearing, the Claimant and the Respondent presented evidence and examined witnesses. The transcript of this hearing was submitted by the Claimant as CX 281, and testimony from this hearing, referred to as the "dismissal hearing," is cited frequently in this opinion. In addition, the exhibits submitted at this hearing by the Claimant and the Respondent were submitted by the Claimant as CX 278 and CX 279.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

¹ I note that the Respondent's attitude toward these proceedings has been rather cavalier. The Respondent did not participate at all in the investigation by the Department of Labor, electing to wait until the matter was before the Office of Administrative Law Judges. Once the matter was before the Office of Administrative Law Judges, the Respondent did not bother to respond to the Claimant's interrogatories, and proffered no reason at the hearing for its failure to do so. (The Claimant did not file a motion to compel, and elected to go forward with the hearing rather than postpone it for the Respondent to file its answers.) The Respondent ignored the subpoenas that were properly served by the Claimant on Respondent's employees, and only produced witnesses pursuant to my direction at the hearing.

As the Claimant's complaint involves allegations of lead in the drinking water at schools in the Baltimore City Public School System (System), the following history is useful in placing the facts in context. In 1992 and 1993, as required by law, all of the schools in the Baltimore City Public School System were tested for potential lead hazards, by an independent contractor commissioned by the school system. Drinking fountains that showed unacceptable levels of lead were tested a second time, after they were flushed. If they passed on the second test, they were required to be flushed each morning to clear any buildup of lead in the pipes. If they failed, they were to be turned off. As part of this project, Southeast Middle School (Southeast), along with about 35 other schools, including Farimount-Harford (Farimount) were identified as schools with more than 20 parts per billion of lead before the water was flushed. All of the public schools in Baltimore that were so identified complied with the EPA's requirements either to flush the fountains in the morning, or turn them off completely. Until the schools could be renovated, the long-term temporary solution was to provide bottled water at stations in the school. The contractor's report was posted in the schools, identifying what had been done, which fountains had been turned off, and which needed to be flushed (TR 666-674; CX 279).

In the summer of 1996, an extended, phased-in renovation project began at Farimount. The building remained in use during the 1996-1997 school year, with the renovation taking place in phases.

The Claimant's Activities

The Claimant is a former teacher in the System. She has a degree in mathematics, and a certification in secondary education in mathematics from the College of Notre Dame. Additionally, she has a Masters of Administrative Science Degree from Johns Hopkins University, and has taken additional courses there since receiving that degree (TR 526).

For the 1996-1997 school year, the Claimant was assigned to Farimount, where she had taught mathematics since 1981 (TR 572). When the staff returned for the 1996-1997 school year, the principal, Ms. Elaine White, held a meeting at which the staff was informed that the school was undergoing a major eighteen month renovation. Several teachers voiced concerns about the safety of the building while this project was undertaken. According to the Claimant, she inquired whether the building was safe for staff and students while the renovation was going on, as she was concerned about the children who attended a Head Start program housed in the building, as well as pregnant females who were in the building. She also asked that an independent group be hired to assess the safety of the building. Ms. White and the contractor, who was also present, assured her and the other staff members that the building was safe. The Claimant, however, was not convinced (TR 144). According to Mr. Elam, the building safety

and education officer for the System,² Ms. White called him in August 1996 to discuss the Claimant's concerns regarding asbestos hazards. Mr. Elam acknowledged that there was lead-based paint and asbestos at Fairmount, but he did not consider it to be a hazard, because of the way it was being removed (TR 689).

Several days later, as she walked into the building, the Claimant noticed a sign on the door announcing that there was an asbestos abatement project at the school. She was concerned, and called the Occupational Safety and Health Administration when she got home; they referred her to the Maryland Occupational Safety and Health Administration (MOSH). She was provided with a form, and sent in a complaint about the asbestos abatement project (TR 144; CX 30).

On September 19, 1996, the Claimant arrived at school late, and noticed that a custodian was buffing the hallway by her classroom. She detected very strong fumes.³ She saw the assistant principal, and told her that she was concerned about the fumes; the assistant principal told her to report it to Ms. White. The Claimant also told a fellow teacher about the fumes, mentioning that she would try to hold out for the day, and then go to the city clinic. According to the Claimant, her fellow teacher told her that he was breathing the fumes too, and would also go to the clinic. The Claimant taught her class, crying, and holding her head out of the window to get fresh air. Eventually, she informed Ms. White, and an ambulance was called to take her to the Union Memorial emergency room, where she was diagnosed with hyperventilation syndrome, and authorized to return to work the next day (TR 150-152; CX 31, 278). However, according to the Claimant, the following day, she went to her physician; she wanted him to authorize her to be off work because she felt that the school building was unsafe. She remained off work for about ten days.⁴ By that time, MOSH had responded to her complaint, indicating that they would investigate (TR 154-155).

In October 1996 the System engaged an independent contractor to collect lead dust samples at Fairmount. According to Mr. Elam, the earlier System-wide study performed in 1992 and 1993 had shown that there was lead paint on the walls, but no lead dust. The 1996 study was performed by Spotts, Stevens, and McCoy, an independent environmental contractor, on October

² Mr. Elam is a 25 year safety employee with the System; he is certified as a public sector inspector with MOSH, and provides risk assessment and management for all environmental health and safety issues for the System.

³ The Claimant also stated that there were clouds of dust daily from the construction project.

⁴ The record reflects that the Claimant was seen by Dr. Cosmo Jacobs on September 23, 1996, with complaints of headache, nausea, and difficulty breathing four days earlier. Dr. Jacobs noted that the Claimant was taken to the emergency room, and diagnosed with hyperventilation syndrome. He authorized the Claimant to return to work on October 1 (CX 133).

10 and 11, 1996. Forty five lead dust samples were collected, in accordance with HUD

protocols, and analyzed in accordance with EPA methods. Mr. Scott Rifkin, who prepared the report, noted that six of the forty five samples contained levels of lead above HUD lead dust clearance standards for post-abatement reoccupancy (CX 278, 279). Three of these samples were from the basement, which was used only by the contractor, and was not open to students or staff. There were also elevated lead dust levels on the tops of lockers on the first and second floor, and on one third floor window sill. Mr. Rifkin felt that the elevated lead dust levels on the lockers and in the basement could be the result of prior renovation activity that impacted lead paint surfaces. In addition, the contractor performed x-ray analysis, again in accordance with HUD protocols, to establish an inventory of surfaces in the school that contained lead levels in excess of Maryland's definition of lead based paint. This testing showed that building components throughout the school contained lead based paint. Mr. Rifkin made several recommendations, including a cleaning of the entire school by an accredited lead abatement contractor, with dust clearance sampling and analysis.

According to Mr. Elam, the System at that point could have performed more extensive sampling to identify any additional problem areas, but rather than spend additional money on sampling, the System hired a certified lead abatement contractor to clean the entire facility. There had previously been a fire in the basement that had spread paint fumes and lead dust. Most of the cleanup was done in the basement, which was not accessible by the faculty, students, or Head Start children, but was used by the construction workers. Additionally, the contractor cleaned all of the window wells and sills, as well as the outside and tops of the lockers. This cleaning took place in October 1996, and the contractor was required to take clearance samples before the area was released for occupancy (TR 694-695, 717-724).⁵

Meanwhile, in response to the Claimant's complaint, an OSHA inspector conducted an inspection at Fairmount, beginning on September 26, 1996. Nothing was found to substantiate the Claimant's allegation of raw sewage contaminating the drinking fountains. However, the ⁵ On September 18, 1996, Ms. Teresa Pearson, the Center Director, notified the parents of children in the Head Start program that the Center would be closed as of September 18, 1996, until the ceiling area was repaired in satisfaction of the Health Department Licensing requirements (CX 278). The Department of Human Resources, which is required to certify the Head Start area annually, found in its October 1996 inspection that the paint in that area was lead safe, not lead free. Again, in early December 1996, the Head Start program was relocated, because the renovation project resulted in insufficient space to accommodate the students (CX 281, 107-108).

⁶ At the Claimant's dismissal hearing, Mr. Elam testified that the lead abatement was also performed under the protocols established by the Maryland Department of the Environment, which requires that occupants be separated from construction by distance and containment (CX 281, 159-160).

inspectors noticed chipped and peeling paint in the hallways where dropped ceilings had been removed, as well as in some of the classrooms. As the school was scheduled to be repainted, the inspectors conducted a survey for lead based paints. All of the paint contained lead in different concentrations; as this indicated a potential for lead exposure, the System agreed that the repainting would be done in accordance with lead standards. The inspectors noted that a pocket of asbestos in the basement had been identified and removed by the environmental contractor, and that air monitoring results were negative. The inspectors noted that the City Safety Department had done wipe sampling to check the dust at the work site, and that since all of the paint at the school was considered to contain lead by OSHA standards, the City had contacted a lead removal contractor, and had asked for surveillance by the MDE for the paint renovation process. The inspectors noted no violations during the inspection, and thus no citations were recommended (CX 278).

While the renovation project was going on in 1996 and 1997, there was also an asbestos abatement project at Fairmount, performed by an independent contractor, with monitoring by an industrial hygienist. Signs were posted at the entrance to the school informing the occupants about the project. According to Mr. Elam, the policy was to perform this work after school hours, under containment. Once a problem was identified, the occupants were removed from the area, and before the area was released for occupancy, it was cleared by an industrial hygienist. Part of the work done by the abatement contractors was wet scraping in several classrooms to reduce flaking paint, which was done in November 1996; before the rooms were reoccupied, clearance samples were taken. All of the ceilings were scheduled to be encapsulated with suspended ceilings as part of the renovation project (TR 725-736).⁷

By October 31, 1996, concerned that the City Health Department was taking too long to release its findings, the Claimant again wrote to MOSH, asking that they come out to inspect the school and take their own air samples (TR 156-158). She questioned the motives behind the delay, and voiced suspicions about the validity of the findings (CX 33). MOSH responded on November 1, 1996, stating that they had conducted an investigation to verify her complaints, but had found no violations of MOSH standards (CX 34). Ms. Joyce Tapper, of MOSH, stated that a MOSH industrial hygienist had visually inspected the worksite, interviewed management and employees, and reviewed records maintained by the school. The inspector identified no violations of MOSH standards. The Claimant, however, interpreted this letter as confirmation that there was asbestos and lead at Fairmount (TR 159-160).

⁷ At the dismissal hearing, the Claimant specifically asked Mr. Elam why the building had not been shut down during the renovation project. He responded that the renovation was phased, and that the areas where penetrations were made by the contractor were not in occupied space (CX 281, 140).

The day after the election, the Claimant went to work, but the building was very cold.⁸ She told Ms. White that she could not take it, and went home. Later that night, a colleague

phoned her, and told her there had been a staff meeting, and a report concerning lead problems had been handed out. Indeed, the MOSH report reflects that the inspectors reviewed the results of tests conducted by the City Safety Department, and scheduled a meeting with teachers and staff to discuss their concerns. In response to concerns about asbestos abatement, the inspector explained that the abatement was conducted within the applicable guidelines, and provided the teachers with the results of air sample testing. According to the inspection report, the teachers were satisfied, although they were still concerned about the high levels of dust.

The Claimant obtained a copy of the four pages handed out to the teachers at the staff meeting (CX 94), which she felt confirmed all of her suspicions that there was lead almost everywhere in the building (TR 162-170).⁹ The next morning, at 5:30 a.m., she called Ms. White at home to talk about the report, and her concern that there was enough lead dust in the building to poison everyone; according to the Claimant, she talked with Ms. White for several hours (TR 170).¹⁰

The Claimant also went to her physician to have her blood tested. The results were normal, showing that she had less than five micrograms per centiliter.¹¹ Nevertheless, she felt that these results confirmed that the building was not safe, and she was still concerned about the staff and students at the school. On the Friday after she got her blood test results, she went to

⁸ On November 6, 1996, Ms. White wrote a letter to the parents, advising them that part of the school renovation included replacement of the heating system, and that the building was without heat. She noted that the contractors were working to restore the heat, and that it was expected to be back on by Monday, November 11 (CX 278).

⁹ In fact, the memorandum handed out at that meeting indicated that after problems were identified during an evaluation, measures had been taken to comply with dust recommendations. Additionally, it referred to the paint and wipe samples that were analyzed for lead, and the findings that the levels did not exceed guidelines, except for the tops of lockers, one classroom window sill, and the basement. It noted that MOSH had conducted an inspection and determined that the City had followed appropriate regulatory guidelines (CX 278). A second sheet contained a chart listing locations where lead had been found in paint samples collected by the Division of Safety as of September 17, 1996. There were four locations identified in the basement, two areas in a head start room, and two hallway ceilings. The teachers were also provided with the October 10 and 11 lead dust wipe sampling results (CX 294).

¹⁰ Citing her status as an expert, the Claimant claims that the results of these tests support and validate her concerns, and show that there was enough lead to poison everyone at the school.

¹¹ At the Claimant's request, Dr. Jacobs took blood samples on November 8, 1996, and April 14, 1997, both of which were less than 5 mcg/ml (CX 133).

Fairmount, but she did not sign in; she looked for Ms. White, who was in a meeting. The Claimant left her a message that she had had her blood tested, and she had lead in her system; and that the children needed to be tested (TR 185-186).¹² According to the Claimant, a few days later, she called Channel 11, and a reporter came to interview her; this interview was broadcast, as were the four pages handed out at the staff meeting, which she provided to the reporter (TR 186-188).

The Claimant submitted videotapes of a number of news broadcasts reporting on her allegations of lead and asbestos hazards at Fairmount. They include an interview of the Claimant, in which she stated that she had her blood tested five days earlier, and it showed she had lead in her system, proving that there were high levels of lead in the school.¹³ The news reports also included interviews with concerned parents, and reported on a meeting held at the school for parents of students, as well as parents of the Head Start children (CX 7A).

According to Mr. Elam, after receiving the results of the lead dust and paint sampling conducted by Sports Stevens, the System consulted with the Maryland State Department of Environment, and the City Health Department, who were of the opinion that the System did not need to assess the children in the facility. However, Mr. Elam was not comfortable with the contractor's findings, and the System contracted with Johns Hopkins Bayview and the Kennedy Kreeger Institute to screen the occupants of the building. All occupants of the building were offered the opportunity to have their blood tested as part of this project (TR 679).¹⁴ The testing was conducted from November 14 to November 21, 1996, and the physicians submitted their results on November 25, 1996 (CX 279). The System was provided with a summary of the overall results; the results of individual blood testing were given directly to the tested teachers and parents. The report reflects that the physicians who conducted the tests did not find any link between the lead levels found in the children and exposure in the school building, although several of the younger children may have had previous exposure to lead. Additionally, two adults who were tested appeared to have had problems with previous exposure to lead.

The news broadcast footage videotaped by the Claimant includes coverage of the decision

¹² At the Claimant's dismissal hearing, Ms. White testified that although she recalled speaking to the Claimant several times about lead and asbestos issues, she did not recall speaking to her in early November, or receiving a message that the Claimant had lead in her system (CX 281, 104).

¹³ It appears that, in fact, the Claimant did not have the results of her blood test until December 10, 1996, when Dr. Jacobs' records reflect that she Claimant was given the results by telephone.

¹⁴ The newscasts videotaped by the Claimant suggest that the publicity surrounding her allegations may also have been an impetus behind the decision to do the testing.

to offer blood testing, and a statement by school personnel that an environmental contractor had been hired to clean up behind the general contractor, and that areas under construction were contained. There was also a follow-up report, reflecting that the blood testing showed no widespread exposure to lead at the school (CX 7A).

The Claimant did not participate in the testing project conducted by Johns Hopkins. She was aware of the results of the blood sampling, but felt that lead would not necessarily show up in a blood test, as it is heavy, and goes eventually to the bones (CX 279). She felt that they waited too long to take blood tests, and that they should have used x-rays (TR 563).¹⁵

At some point, it appears that the Claimant filed a workers compensation claim in connection with her alleged exposure to lead and asbestos. On December 11, 1996, the Claimant underwent a psychological evaluation by Dr. Alan Peck, at the request of her attorney. Dr. Peck noted, *inter alia*, that the Claimant was obsessed with environmental hazards, but there was no evidence of a major thought disorder, delusions, or hallucinations. He diagnosed an acute stress reaction, and some depression, directly related to her perception of problems at the school. He was not certain if she was psychologically able to teach anywhere, and felt that she needed therapy and medication (CX 109).

After she left in early November 1996, the Claimant did not return to work at Fairmount until March 17, 1997. While she was off of work, she contacted numerous organizations about what she perceived to be continuing health problems at the school. She wrote to the City Council, which prompted Ruth Ann Norton, the Executive Director of the Coalition to End Childhood Lead Poisoning, to write to Dr. Amfrey, the Superintendent, on November 14, 1996 to inquire about the situation at Fairmount. Ms. Norton asked that the System conduct blood lead screening of the children in the Head Start program, and hire a certified lead contractor to perform a cleanup (CX 154). Dr. Amfrey responded in December 1996, explaining the System's protocols for training and prevention. He stated that the appropriate local and state regulatory agencies had reviewed the conditions, and determined that the school was safe for continued occupancy. However, he noted that as a precaution, the System was doing a thorough cleaning with a certified lead abatement contractor, in compliance with HUD guidelines. Additionally, he informed Ms. Norton that the System was screening all students and staff, and had developed

¹⁵ A memorandum from the Acting Chief Physician for the Office of Occupational Medicine for the City of Baltimore to the Law Department, dated August 25, 1997, indicates that Ms. Williams went to the Clinic several months after the blood testing project, complaining that she was suffering from lead exposure, and that she had never had her blood lead level tested. However, she refused to have it tested at that time, stating that she was sure it was low, due to her good eating habits and exercise. The Claimant denied any treatment or diagnostic studies for lead poisoning (CX 136). Of course, this was not true, as she had her blood tested on at least one earlier occasion by Dr. Jacobs. She had also, by her own account, reported to Ms. White that she had lead in her blood.

When the Claimant reported back to school on March 17, 1997, she was called to the office, and told to report to the health clinic to follow the procedures for being out on leave for an extended time period (TR 354-356). The Claimant completed an Incident Report, alleging that an incident occurred on November 7, 1996. She stated that she was tested for lead exposure on November 8, 1996, which showed that she had lead in her system. Additionally, she stated that

The Claimant was not satisfied with this response, and wrote to the Mayor again on February 18, 1997, stating that she had information proving that the Mayor was not completely or accurately informed, and she wished to be allowed to present the facts to him. She repeated that lives were being endangered daily at Fairmount (CX 85). Again, the Mayor responded on March 17, 1997, stating that he had been advised that the Claimant had filed a workers' compensation claim regarding the matters in question, and recommended that she contact the Associate City Solicitor directly (CX 86).

On February 11, 1997, the Mayor again wrote to the Claimant, stating that the Superintendent had directed that Mr. Giles conduct an investigation and assessment of the environmental conditions at Fairmount (CX 84). He cited to the results of the investigation by MOSH in November 1996, noting that the facility was found to be in satisfactory condition for occupancy. He also referred to the report of the Fire Department, which inspected the facility in December and found it to be satisfactory. He noted that blood level assessments had been conducted, and that the results were privileged information for the persons who had been tested. With respect to shared classrooms, he noted that the principal had provided for a common science classroom, with shared team teaching, and that faculty members would experience minor inconveniences during the renovation. Finally, he noted that the Department of Facilities coordinated weekly progress meetings, and continued to monitor the conditions of the facility. He stated that the current action plan provided a safe and healthful work and learning environment.

The Claimant also engaged in a series of correspondence with Mayor Schموke. The Claimant sent two memoranda to the Mayor dated December 3, 1996 (CX 82). The first questioned the reliability of the results of the blood testing conducted by Johns Hopkins, and the second set out additional health and safety concerns relating to the bathrooms, the availability of facilities for washing hands or drinking water on the third floor, the fact that six exits were blocked off due to renovation, the fact that teachers were sharing a classroom and physical education classes were being held in the cafeteria, and the existence of fire code violations due to the encapsulation. She asked that the students and staff be evacuated and relocated. On January 3, 1997, the Mayor responded, indicating that he had referred her memorandum to the Personnel Director, and that the issues she raised were being investigated by the safety and facilities personnel (CX 83).

protocols for impacting lead paint surfaces (CX 155). To the Claimant, however, Dr. Armfey's letter showed that he felt there was in fact a lead based paint hazard at the school during the renovation project (TR 334).

she had lead deposits in her bones and various parts of her body (CX 163).¹⁶ Ms. White indicated on the form that the Claimant had been out of school since November 7, 1997, and that she had no documentation of exposure. She reported that all staff who desired testing were tested by Bayview, and that the school had been cleaned according to protocol. She indicated that the Claimant needed clearance to return to work. The Claimant received clearance as fit for duty, to return to work on March 17, 1997 (CX 164).

According to the Claimant, on her first day back, a senior who was a former student of hers came into her classroom, and told her that she had lead in her system from her food service class. This student is Tiffany Burgess, who did not appear as a witness at the hearing. According to the Claimant, Ms. Burgess told her that she had so much lead in her system, her physician advised her to have an abortion (TR 206). The Claimant videotaped an interview of Ms. Burgess, in which she, with much coaching from the Claimant, described how she fainted during her food service class just before the Christmas break. Ms. Burgess stated that she was taken to Johns Hopkins, where, by her account, she stayed for two nights. According to Ms. Burgess, the principal, Ms. White, knew there was lead in the school, but tried to keep it hushed up. She acknowledged that many of the teachers were tested, but their results were negative. According to Ms. Burgess, she was also tested, and had lead in her blood, which had to be from the school, since her house, as well as the houses of her relatives where she spent time, were tested, and did not have lead. She claimed that after her mother spoke with Ms. White, she received a check from Ms. White in the mail over the Christmas break. Ms. Burgess did not ask what the money was for, but assumed that it was "hush" money. She claimed that she never received any kind of award.

The record does not contain any medical or scientific reports, or indeed documentation of any kind, confirming that Ms. Burgess had lead in her system, much less from any exposure at Fairmount.¹⁷

In contrast, at the Claimant's dismissal hearing, Ms. White testified that Ms. Burgess had fainted during her food service class, possibly because the temperature was too high. She testified that Ms. Burgess was given a \$500 scholarship, which was customarily given to a student in the food service program at their graduation in June, to defray the expenses of attending a culinary school. Dr. Abernathy, at the time the Southeast Area Superintendent, testified that she wrote the check, which was a scholarship, at the request of the food service

¹⁶ In fact, Dr. Jacobs' report of the test results show a normal blood level. Nor is there any documentation in the record to support the Claimant's claim that she has lead in her bones and other body parts.

¹⁷ The Claimant spent quite a bit of time videotaping close-up shots of what was represented to be Ms. Burgess's vomit in a wastecan, suggesting that Ms. Burgess was sick because of her lead exposure.

The Claimant testified that on her return to work in March 1997, she walked around the school, noting that the dust was worse, and the barriers did not appear to enclose the construction properly. Over the next few days, she videotaped the hallways, as well as the bathrooms (TR 206-209). Ms. White learned that she was videotaping, and called her to the office, where she asked the Claimant if she was videotaping. According to the Claimant she did not answer, because she did not want Ms. White to take her tape (TR 209).¹⁸ She then met with parents at Hartford Heights Elementary School, and showed them the tapes. She told them that there was lead paint and dust in the building.

This footage, which is extremely difficult to watch, as it is terribly jerky, shows a hallway, and an inoperable water fountain outside the door of what the Claimant states was her classroom. There are shots of various ceilings, as well as quite a bit of footage of what appears to be a construction trash area outside the building. The video includes shots of what the Claimant characterizes as a construction area that is not properly encapsulated; in fact, a sign on the barrier identifies it as a closed stairwell. There are shots in a bathroom, showing missing ceiling tiles and flaking paint. The Claimant's voice can be heard on the tape, saying that she did not know if it was lead or asbestos, but that it was a health hazard (CX 7A).

The Claimant wrote again to the Mayor on March 22, 1997, stating that she would drop her workers' compensation claim if she could just meet with the Mayor, and get the children out of their unsafe and unhealthy facility at Fairmount (CX 87). She claimed that the school system's own data showed very high levels of lead in the paint, as well as high results on the wipe samples, and that it was urgent to remove the children during the renovation project. She indicated that she had videotapes that she did not want to take to the media, but that she would if she had to (TR 202).

Apparently the Claimant decided that she needed to take her tape public, and she just happened to have it with her when she attended a city council meeting on April 9, 1997, on the subject of lead paint poisoning. The Claimant handed out copies of the reports given to the teachers at the November 6, 1996 meeting, claiming that the lead dust samples that were tested were extremely high in certain areas, particularly in the basement. The Claimant did not mention that the basement was used only by the contractors, and was off limits to staff and students. She claimed that there was enough lead at the school to poison someone in a matter of seconds. She

¹⁸ Ms. White sent the Claimant a memorandum, dated March 19, 1997, indicating that two staff members had informed her that the Claimant was videotaping a renovation area in the building, and that when Ms. White asked the Claimant if she was videotaping, the Claimant stated that she would not answer. Ms. White repeated her verbal order to cease her videotaping, and stated that her failure to comply with that request would be considered an act of insubordination (CX 1).

also claimed that MOSH had written to her, telling her that there were concentrations of lead in areas of the building. She referred to the construction barrier seen on the videotape enclosing the closed stairwell, claiming that it was not properly enclosed; she stated that the contractors were doing something behind the barrier, but she did not know what. In referring to the fact that they were hazardous. In response to a direct question from Councilman Kane, she stated that she did not know if the school had been cleaned since the testing.

In fact, this was not true: the Claimant had been informed by MOSH that the school had been cleaned, and that lead and asbestos protocols were in place. This information was also provided to the teachers and staff. Indeed, the videotapes of the newscasts submitted by the Claimant report that these steps were taken by the System.

The Claimant's allegations again hit the media, which showed clips of her videotape, and an interview in which the Claimant claimed that the stairwell barrier was not properly enclosed, and stated that she would not go back until everyone was tested. The media reports also show that Councilman Kane toured the building, and determined that the construction area was well-maintained, and the occupied areas appeared clean. The Claimant was incredulous at this conclusion (TR 211-213).

The day after the City Council meeting, the Claimant again noticed strong fumes in the hallway near the cafeteria. She went to Ms. White and told her about the fumes, and the constant clouds of dust, and told her that she could not stay at the school in those conditions (TR 216-217). The Claimant left work, determined not to go back until she got some documentation that the school was safe. She felt that she was entitled to a clearance, to show that the lead abatement jobs were properly done (TR 220-221).¹⁹

A memorandum sent by Ms. White to Ms. Wighton, the Southeast Area Assistant Superintendent, dated April 10, 1997, indicates that on that day the Claimant came to her office, highly agitated, crying, flushed, and speaking loudly and rapidly (CX 2). The Claimant told Ms. White that she could not breathe because of the fumes and dust in the building. As she left, the Claimant stated "It is a disgrace what is happening to the students in this building. The building is unsafe. What is being done in the dark will come to light. I'm going to see to it." Ms. White investigated the Claimant's complaint, and found that there indeed was a peculiar odor on the third floor, caused by a commercial art teacher spraying a wicker basket with Krylon paint. According to Ms. White, the room was properly ventilated, but the odor was noticeable. She saw no visible evidence of dust, but noted that before she went up to that floor the contractor had been mounting a floor drain in the bathroom, which caused some noise and vibration. She also checked with other teachers in the immediate area, but no one had experienced any problems.

¹⁹ The Claimant was apparently referring to the HUD requirements for Class 2 dwellings, which provide that before such a dwelling can be reoccupied, it must be inspected and cleared.

Ms. White also reported that later that afternoon, a representative of the Baltimore City Health Department came to inspect the building, but found no evidence of environmental violations. She also received a call from Councilman Kane about the condition of the building. Ms. White noted that she had received several calls from parents over the previous two weeks, asking about the condition of the building, and reporting that a teacher was telling their children the building was unsafe. One of the parents also told a staff member that the Claimant had called and invited her to a parents' meeting. She also was told that the Claimant had appeared on public service television stating that the building was unsafe.

In that same memo, Ms. White also advised Ms. Wighton that she felt that the Claimant's presence in the building was detrimental to the successful operation of the program. She noted that there were many problems as a result of the renovation, but that the staff and student body had borne up well under the circumstances. She asked that the Claimant be immediately relieved of her teaching duties at Fairmount, and reassigned. Ms. White indicated that this would also be in the Claimant's best interest, as she had good teaching skills that could be used in an environment where she felt safe.

On April 17, 1997, Ms. White wrote to the Claimant, advising her that upon her clearance to return to duty, she was to report to the Southeast Area office, because of her concerns over health and safety due to the renovation of the building. She was also advised that she needed to complete an Employee Incident report for her illness, which started on November 7, 1997, in order to be seen at the Occupational Medicine and Safety office. Additionally, Ms. White reminded the Claimant that an absence of five consecutive days required medical verification of her illness, and that her documentation was due on April 18, 1997 (CX 3).

The Mayor again responded to the Claimant on April 24, 1997, although this particular letter is not in the record. However, on May 2, 1997, the Claimant wrote back, expressing her disappointment that the Mayor was not doing what she perceived to be his job with respect to the issue of potential lead and asbestos exposure at Fairmount (CX 88). The Claimant also expressed displeasure at being referred to other parties for her complaints. She set out in detail the actions she would take if she were Mayor, and asked the Mayor to review the videotape of the City Council Hearing on Lead Poisoning that took place on April 9, 1997.

On April 30, 1997, the Claimant appeared at a hearing regarding a cemetery, and brought up her allegations about Fairmount, claiming that it had been proven that there were lead and asbestos violations at the school. She claimed that a teacher had been taken away sick that very day, and she hoped it was not from lead. She also claimed that a third of the school population had upper respiratory infections, possibly from lead exposure. This prompted a flurry of news reports on the subject of sick schools (CX 7A).

The Claimant also heard from the City Solicitor, who wrote to her on May 9, 1997, and told her that the Mayor had asked him to look into the issues she raised in her May 2 letter. He indicated that they would review the Health Department and Department of Public Works

records of any possible contamination at the building, and contact her with their findings (CX 89).

The Claimant again wrote to the Mayor on June 6, 1997, informing him that it was Lead Awareness Week, and asking him to discontinue the demolition of private homes in Baltimore City (CX 90). The Mayor responded on June 13, 1997, indicating that he had forwarded her letter to the Housing Commissioner and asked him to look into the issues she raised, and respond directly to her (CX 91).

The Claimant apparently did not return to work that school year. By the Claimant's account, she was "totally stressed" by what she viewed as a brushoff by the Mayor, whom she tried repeatedly to get to do something about what she perceived as problems with lead at Fairmount. In response to her numerous letters, he cited to the results obtained in the blood sampling study conducted by Bayview. During that time, the Claimant continued to be treated by Dr. Peck for stress and anxiety (TR 194-204).²⁰

The Claimant had been to see the Commissioner of the Health Department and showed him her video, and given him the four pages that were handed out to the staff in November 1996. According to the Claimant, he told her that if an expert said that Fairmount was not safe, he would close the school. Perceiving that her complaints would carry more weight if she became an expert, she took a two-day course on lead abatement while she was on sick leave in April 1997. She also took various courses during the summer, becoming certified as a lead abatement expert in August 1997 (TR 222-228, 526-533).

Ms. Sandra Wighton, who was the Southeast Area Assistant Superintendent for the Baltimore City Schools from 1994, and is currently managing director of the Office of School Improvement, testified that it had come to her attention, and indeed was public knowledge, that the Claimant had raised concerns about the conditions at Fairmount (TR 80). Ms. White, the principal at Fairmount, requested that the Claimant be transferred, as the Claimant had indicated that she was not comfortable there, and Ms. White felt that her presence was detrimental to the functioning of the school. Ms. Wighton felt that it might be better to transfer the Claimant to another area, and she agreed with Ms. White's request (TR 80, 91). According to Ms. Wighton, the Claimant was transferred because the principal requested it, based on the Claimant's repeatedly expressed concerns about the environment, and the fact that she had not reported to work. Ms. Wighton felt that there was a better chance that the Claimant would report to work and do her job if she were transferred to another school. According to Ms. Wighton, the transfer was not a disciplinary action. Thus, in late August 1997, the Claimant received a letter from Ms. Fields, the principal at Southeast Middle School (Southeast), telling her that she would be teaching eighth grade at Southeast the following school year (TR 233).

²⁰ In fact, the record reflects that the Claimant was being seen by Dr. Peck, but that she was resistant to his suggestion of therapy or medication.

However, the Claimant called Ms. Fields on the first day of school, and told her that she was taking sick leave, because she was not able to come to work (TR 241-242). The Claimant felt that Ms. Fields was not concerned about her "condition": Ms. Fields told her that she had a math vacancy to fill, and insisted that she come to school. The Claimant called Dr. Peck, and told him that she could not go back; Dr. Peck in turn wrote a letter to Ms. Fields about the Claimant's condition.²¹

The Claimant's hearing on her workers' compensation claim was scheduled for September 2, 1997. However, the hearing was postponed because she had not attended a psychiatric evaluation as ordered. The Claimant was upset, because she had planned to "reveal the truth" about the health hazards at Fairmount in the hearing. In fact, she had asked her attorney to request an injunction from the hearing judge, closing the school (TR 233-234, 39-40).²² Instead, the Claimant authored a letter to the Mayor, citing her "wealth of expertise in lead hazard control and evaluation," and listing her training and status as an expert. The Claimant stated that she had reviewed the 1993 and 1996 inspection reports, and that they were "terribly unreliable, incomplete, and inaccurate."²³ She requested that an analysis be performed on every painted surface inside and outside the building, as well as dust wipe sampling on every surface in every room, and soil analysis in the play area. Indeed, she offered to do the dust wiping and paint inspection herself. She requested that the facility be shut down until this was completed, and the facility was cleared (CX 8).

The Claimant went to Fairmount with copies of her letter. According to the Claimant, she intended to distribute this letter to Ms. White and other teachers at the school. However, she did not sign in at the office, and when Ms. White saw the Claimant on the third floor of the school, she informed her that she should not be distributing correspondence during school time, and told her to leave (TR 234-235).

The Claimant also put copies of this letter on the cars in the Southeast parking lot (TR

²¹ Although there are many letters from Dr. Peck addressed to the Claimant's attorney, the record does not include any addressed to Ms. Fields. There is a letter dated September 25, 1997, to the sick leave bank, reflecting that the Claimant was overwhelmed with concerns about the environment, and did not understand that she may have psychiatric problems that could be treated with therapy and medication (CX 122).

²² Although both parties apparently agreed that the Claimant suffered from a stress induced condition with respect to her environmental concerns at Fairmount, the Court ultimately found that her condition was not compensable under Maryland law (CX 301).

²³ The Claimant did not offer specifics.

650):²⁴ According to the Claimant, she got neighbors to help her distribute this letter in the Southeast neighborhood, as well as the parking lot of the church attended by Ms. White, the principal at Farmount. She also sent this letter to the Baltimore Times, where it was printed; she wrote to numerous persons, including Oprah, about her concerns. In the Claimant's own words, she was on a crusade: her mind was focused on getting Farmount closed. She could not believe that, even after she had been trained as a lead expert, no one was listening to her or doing anything to close the school (TR 241, 244-245, 340).

Ms. Wighton received a memorandum from Ms. Fields on September 2, 1997, advising her that a school police officer had reported that the Claimant's flier had been found on windshields in the Southeast school parking lot. This memorandum indicates that a school police officer went to Ms. Fields' office at about 11:17 a.m., with a copy of the Claimant's letter, which was on each windshield in the school parking lot. The police officer told Ms. Fields that she had made her most recent round of the parking lot at about 10:30, and that the fliers were not on the cars at that time. Ms. Fields indicated that the content of the document did not upset her, but she was upset that someone would distribute any material on school property without the principal's permission or knowledge. She believed that this was illegal (EX 31). According to Ms. Wighton, Farmount had been certified as safe at that time. The Southeast Area Office also received calls from parents about the flier (TR 112-115).

Ms. Fields wrote to the Claimant on September 4, 1997, indicating that she had received a copy of the Claimant's doctor's certificate, but that it was unclear from the statement when she would return to work, nor did it contain a diagnosis of her illness as required by payroll. She requested that the Claimant contact her so that the appropriate form could be submitted to payroll (CX 165). Attached was the Claimant's "doctor's certificate," which consists of a brief note indicating only that Dr. Peck saw the Claimant on September 3, 1997, and that she was still under his care.

On September 7, 1997, the Claimant responded, asserting that under the teacher's contract, Dr. Peck's note was sufficient, and that she would bring the appropriate documentation, reflecting that she was capable of returning to work, when she did return to work (CX 166). The Claimant expressed her feeling that Ms. Fields was not following the contract, and was harassing her and treating her in an arbitrary and capricious manner.

The Claimant sent a memorandum to Ms. Wighton dated September 10, 1997, enclosing her letter to the Mayor, and setting out her credentials as an expert. She asserted that by law she was entitled to documentation that her new environment (i.e., Southeast) was in compliance with the criteria for lead safe housing, and demanded that she be provided with it before she was

²⁴ Ms. Wighton learned about this, and asked Ms. Fields to verify whether the Claimant had reported for work on that day at Southeast. It does not appear that she did.

coerced to report to Southeast (CX 11).²⁵

Meanwhile, the Claimant continued to write to the Mayor, citing her training. According to the Claimant, she also began to notice the many demolition projects in the city, and wrote to the Mayor about her concerns regarding possible lead hazards in the demolition of old buildings and homes in the city. She took dirt samples at various demolition sites around the City, and sent them for testing, finding levels of lead higher than recommended. In a September 27, 1997 letter to the Mayor, she demanded that steps be taken to address the lead problems at the demolition sites. He referred her letter to the housing department, but she never received a response.

Ms. Wighton testified that the Claimant did not report immediately to Southeast, but indicated that she wanted to be assured that the school was safe before she reported there for work. Ms. Wighton found that to be unusual, as they do not provide such assurances to teachers. As far as Ms. Wighton was aware, the Claimant never provided any justification for her absence at the beginning of the school term, either to her or to the principal, Ms. Fields. The Claimant was transferred to the "996" payroll, which is an inactive payroll for teachers who are absent more than five days without documentation, as of October 10, 1997. This allowed Ms. Fields to show a vacancy in the mathematics department, so that she could hire another teacher (TR 91, 106; CX 12).

On October 24, 1997, the Claimant wrote to Ms. Wighton, informing her that she would return to work in a few weeks. She claimed that she knew and could prove that the environment at Fairmount was unsafe and unhealthy²⁶, but that she wanted to return to teaching in another building until the renovation there was complete. She again asked for documentation that Southeast was lead safe, citing the statutes that require clearance testing before an individual is moved back to a dwelling after lead risk reduction. She indicated that if she had not received such documentation when she returned to work, she would document the health hazards and forward them to others (CX 14).

A memorandum from Ms. Wighton to the Director of Personnel Services, dated November 10, 1997, reflects that Dr. Banks, of the Office of Labor Relations, had reviewed the Claimant's file, and suggested that the Claimant undergo a "fitness for duty" examination before she was reassigned to a school. Ms. Wighton noted that the Claimant taught at Fairmount during the 1996-1997 school year, and was greatly disturbed by the discovery of asbestos during renovation of the school. She indicated that the Claimant initiated a "campaign" of interviews with the media, picketed the school, and placed fliers on faculty cars at numerous Southeast Area schools during the summer and fall, alerting them to alleged dangers at Fairmount, and claiming

²⁵ The Claimant apparently filed a grievance procedure over her transfer to Southeast.

²⁶ The Claimant never provided specifics on her claim; it appears that her only "proof" was the surreptitious videotape footage she made the previous spring.

to be a licensed environmental specialist. Ms. Wighton indicated that the Claimant also placed firefighters on cars at the church that the Fairmount principal attended. Ms. Wighton noted that the Claimant had failed to report to work at Southeast, and as a result of her excessive absence, had been placed on the inactive payroll. Handwritten notations by Ms. Wighton indicate that the Claimant was released by the clinic as fit for duty. However, the only math vacancy, other than at Southeast, was at a school where another teacher had been approved for a transfer. Her note reflected that the Claimant would be assigned to Southeast unless a deal could be worked to put her in another area. Ms. Wighton indicated that she would prefer that the Claimant be transferred to another area, as she had already prejudiced herself by putting her files on staff cars at Southeast (CX 9).

On November 14, 1997, the Claimant returned to work at Southeast. She discovered that she had been assigned to an open classroom, divided by partitions (TR 360-361). According to the Claimant, she had sent Ms. Fields a letter from Dr. Peck, stating that she was not able to function as a teacher unless she was in a classroom, and Ms. Fields knew that she was being treated for stress and depression.²⁷ The Claimant informed Ms. Fields that the open classroom concept was outrageous and disruptive, and requested that she be put in a regular classroom (TR 361). The Claimant felt that Ms. Fields spoke to her in a degrading manner; she could not understand why she was not immediately accommodated, as the noise levels bothered her and caused her headaches and stress, and there were classrooms available. According to the Claimant, after she pushed the issue, she was assigned to a regular classroom (TR 362). Although the Claimant acknowledged that most of the teachers at Southeast worked in open classrooms, she testified that Ms. Field's failure to act immediately on her request constituted retaliation. The Claimant submitted a voluntary transfer request (TR 71, 567).

The Claimant testified that at some point, she heard a rumor from a parent that there were lead problems at Highlandtown Middle School. One day after school was out, she took her video camera to the school, where she was escorted around the building by a member of the custodial staff. According to the Claimant, she had been warned not to videotape at Fairmount, but no one had told her not to videotape at Highlandtown. However, she did not sign in at the office, as she knew the principal there would not have allowed her to videotape. In her view, the health and safety concerns of the students were more important than following the rules. Although the Claimant planned to show this videotape to the school board, she was unable to do so, and did not in fact show it to anyone (TR 345-347).²⁸ The Claimant also filed a report with MOSH.

²⁷ Letters from Dr. Peck to the Claimant's attorney reflect that he considered psychiatric care for the Claimant to be essential, but that she was resistant to medication. They do not mention anything about the Claimant needing her own classroom until August 1998 (CX 122-126).

²⁸ This videotape shows the exterior and interior of Highlandtown, including ceilings with peeling paint, and the boy's bathroom (CX 7B).

which did an investigation, finding no lead based based paint hazards. The Claimant found this to be very suspicious. She knows that the school has lead based paint, because it was built in 1933, and her videotape shows that there is chipping and peeling paint. In her opinion, the school should have been closed.

The Claimant testified that sometime in the spring of 1998, she was driving past James Moshier Elementary School, when she noticed that the exterior of the building appeared to be deteriorating. She returned with her video camera, and took footage of the exterior of the building. She also wrote to MOSH to complain about the conditions (TR 397-399).

The Claimant prepared a flier alleging that there were hazardous conditions at James Moshier, as well as Highland and Farimount, which she handed out to parents as they left James Moshier with their children, and distributed in nearby apartment complexes (TR 652-655). This handwritten flier refers to lead paint hazards at James Moshier, Highlandtown, and Fairmount, and states, *inter alia*,

These 3 schools (and who knows how many more!!) Have been cited for lead-based paint hazards by an expert on lead abatement.²⁹ Your child or the individuals that work in these schools need to be tested for lead and asbestos exposures.

The Claimant identified herself as a "lead expert" at the bottom of the flier, and provided her telephone and telefax number, and e-mail address.

The record reflects that on April 20, 1998, Ms. Wighton forwarded this flier, as well as a hand-written cover letter instructing parents to have their children tested to save them from being potentially lead or asbestos poisoned, which had also been distributed at Highlandtown Middle School on April 8, 1998 to Mr. Giles, the Manager of Facilities (CX 10). Ms. Cascelia Spears, the principal at James Moshier, testified at the Claimant's dismissal hearing that in April 1998, her office heard from numerous parents about a flier that had been distributed about lead and asbestos contamination, with the Claimant's name on it, as well as a letter by the Claimant asking that parents attend an open hearing (CX 281, 121-126). Mr. Giles responded to Ms. Spears in a memorandum dated May 11, 1998, stating that his department was not aware of any citations that had been issued for lead paint or asbestos hazards in any of these three facilities. He noted that every school in the System had been inspected in compliance with the Asbestos Hazard Emergency Response Act, and that copies of the Plan were available for review in the office.

According to Mr. Elam, James Moshier is an older facility, but there was no construction going on in the building. In addition to the testing done by MOSH in response to the Claimant's

²⁹ The "expert" referred to was the Claimant; the specifics of the "hazards," or any supporting documentation, are not in this record.