

U.S. Department of Labor

Occupational Safety and Health Administration

Image Not Available

Suite 740 West
The Curtis Center
170 S. Independence Mall West
Philadelphia, PA 19106-3309

Reply to the Attention of: William D. Seguin
Telephone: (215) 861-4931

July 11, 2002

Diana R. Williams
1311 North Elwood Avenue
Baltimore, Maryland 21202

RE: Diana R. Williams/Baltimore City Public School System/3-0050-00-007

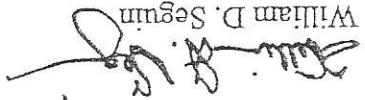
Dear Mr. Williams:

This is in response to your Freedom of Information Act request concerning OSHA's investigation of Diana R. Williams and Baltimore City Public School System. Enclosed are the records you requested. Deletions have been made to protect information exempt from public disclosure as prescribed by the Freedom of Information Act (Title 5, United States Code, Section 552). Where deletions were made, the appropriate FOIA exemptions are indicated, and for your convenience, a general description of these exemptions is enclosed.

No significant expense was incurred while processing your FOIA request, therefore all applicable fees have been waived.

If you have any questions regarding the enclosed records, please contact this office at (215) 861-4931.

Sincerely,



William D. Seguin
Regional Supervisory Investigator

Enclosure

Exhibit 12

Exhibit

Exhibit 26

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Exhibit 13

Telephone: (410) 396-8771

Brian K. Williams, Attorney
Office of Legal Counsel
Baltimore City Public School System
200 East North Avenue, Room 208
Baltimore Maryland 21202

Telephone: (410) 396-8709

Baltimore City Public School System
200 East North Avenue
Baltimore Maryland 21202

Telephone: (410) 276-7551

Diana R. Williams, DOH: October 26, 1981
1311 North Elwood Avenue
Baltimore, Maryland 21213

September 1, 2000

Complaints About State Program Administration

Williams/Baltimore City Public School System/3-0050-00-007

David L. Hill
Regional Investigator

William D. Seguin
Regional Supervisory Investigator

October 19, 2001

Occupational Safety and Health Administration
Division of 11(c)
Suite 740 West, The Curtis Center
170 South Independence Mall West
Philadelphia, Pennsylvania 19106-3309



U.S. Department of Labor

085

Represented by:

Respondent:

Complainant:

Date Filed:

SUBJECT:

FROM:

MEMORANDUM FOR:

DATE:

Complainant Allegation: The Complainant, Diana R. Williams, worked for the Respondent as a Mathematics Teacher since October 26, 1981. The Complainant received approximately \$48,000.00 per year in monetary compensation while working for the Respondent. The Respondent, Baltimore City Public School System (BCPSC), is primarily engaged in providing public education using materials and equipment acquired through interstate commerce. The Respondent employs approximately 2,000 in a union environment.

The Complainant initially filed a Whistleblower discrimination complaint (3-0050-00-002) with OSHA on December 14, 1999, pursuant to the U.S. Environmental Protection Agency (EPA) statutes of the Clean Air Act, 42 U.S.C. § 7622, Toxic Substance Control Act, 15 U.S.C. § 2622, Safe Drinking Water Act, 42 U.S.C. § 300j-9 and Solid Waste Disposal Act (42 U.S.C. § 6971), hereafter referred to as the Whistle Blower Acts. In her Whistleblower Acts discrimination complaint she alleged that on December 8, 1999, the Respondent terminated her employment in reprisal for her having filed numerous safety and health complaints involving environmental hazards with management officials and to the Maryland Occupational Safety and Health (MOSH), Compliance Unit, 1100 North Eutaw Street, Room 611, Baltimore, Maryland 21202. In each occasion of her filing a safety and health complaint with MOSH, the Complainant contends that she first notified management officials who failed to act on her complaints. The Complainant reported safety and health complaints involving lead paint being removed from the interior and exterior of schools with exposure to students and employees, asbestos exposure to students and employees during abatement projects and leads in the school drinking water at the James Mosher Elementary School, 2400 Mosher Street, Baltimore, Maryland 21216, Southeast Middle School, 6820 Fat Avenue, Baltimore, Maryland 21224, Fairmount-Hartford High School, 2555 Hartford Road, Baltimore, Maryland 21218 and Highlandtown Middle School, 101 South Ellwood Avenue, Baltimore, Maryland 21224. The evidence developed during the OSHA investigation did support the allegation of discrimination under the Whistleblower Acts. (Exhibit 1)

The Complainant also filed five discrimination complaints with MOSH pursuant to state law protections. On March 15, 1999, the Complainant filed a timely discrimination complaint with MOSH based on her March 8, 1999, indefinite suspension without pay. On March 18, 1999, MOSH deferred the discrimination complaint pending the outcome of the Complainant's union grievance. On May 10, 1999, she filed a second discrimination complaint with MOSH alleging discrimination under state law. MOSH again deferred her discrimination complaint pending the final grievance decision. MOSH allowed the Complainant 15 days from receipt of that grievance decision to reactivate her discrimination complaint. On December 4, 1999, the Complainant filed her third discrimination complaint with MOSH. The Complainant filed a fourth on discrimination complaint on December 11, 1999, followed by a fifth complaint on

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December 15, 1999. Review of the MOSH records obtained during the Whistleblower investigation reveal no indication that the Complainant ever received notification of her potential protection under federal Whistleblower Acts until December 1999.

MOSH Investigator Laura Seeman investigated the Complainant's final discrimination complaint and on August 29, 2000, rendered a Final Report recommending closure without further action as there was no evidence that indicated a link between her suspension or termination and her previous protected MOSH activities. (Exhibit 2)

The Complainant filed a Complaint About State Program Administration (CASPA) complaint on September 1, 2000, alleging that the MOSH Compliance Unit denied her and did not perform their duties as they should have to expose the unhealthy and unsafe conditions about BCPSC schools. She expressed her desire to file a discrimination complaint against MOSH in regards to their findings. The Complainant expressed total disagreement with their decision of dismissing her discrimination complaint. (Exhibit 4)

Information Reviewed: The information gathered during the CASPA review included the OSHA Final Investigative Report (Exhibit 1), MOSH Final Report (Exhibit 2 & 3), CASPA Complaint (Exhibit 4), Annual Evaluation of Maryland State Plan (Exhibit 7), 29 CFR Part 1952 (Exhibit 8), 29 CFR 1954.2 (Exhibit 9), MOSH Discrimination Complainant Procedures (Exhibit 10), Annotated Code of Maryland Title 5 (Exhibit 11), Documentation of CASPA Investigations (Exhibit 12), Chapter 10 - MOSH Investigative Procedures (Exhibit 13), Complainant CASPA Supporting Records (Exhibit 15 - 27) and MOSH Supporting Documents (Exhibit 28 - 57).

Analysis and Conclusions: The Whistleblower Acts Investigation disclosed that

between the period of August 29, 1996 and December 4, 1999, the Complainant engaged in extensive protected activity by having filed numerous environmental safety and health complaints with multiple government agencies. She filed these complaints concerning environmental concerns for the employees and students at four BCPSS schools. The public schools included the James Mosher Elementary School, Southeast Middle School, Fairmount-Hartford High School, and Highlandtown Middle School. Her environmental complaints involved improper asbestos and lead paint abatement projects within the schools, potential lead and asbestos exposure to employees and students and lead in the school's drinking water system. Her complaints with MOSH are documented in the records provided by that agency under the OSHA investigative file. The Complainant also engaged in additional protected activity during March 15, 1999 and December 4, 1999, by having filed several employee discrimination complaints with MOSH alleging that she had been suspended from her teaching position without pay and ultimately terminated from her employment because of

protected activity.

The initial concern regarding the MOSH handling of the discrimination complaint involves the investigator's failure to advise the Complainants concerning other laws governing discrimination at the federal level. While each case may not warrant such an advisement, all MOSH personnel involved in discrimination investigations should be familiar with and aware of the other protection afforded by federal discrimination laws such as the Safe Drinking Water Act, Clean Air Act, Federal Water Pollution Control Act, Toxic Substance Control Act, Solid Waste Disposal Act, Comprehensive Environmental Response Compensation and Liability Act, Asbestos Hazard Emergency Response Act, Energy Reorganization Act, Surface Transportation Assistance Act, Wendell H. Ford Aviation Investment and Reform Act of the 21st Century and the International Safe Container Act, so that they may inform complainants of these additional rights and refer them to federal OSHA. The Complainant in this CASPA complaint first filed her initial discrimination complaint concerning environmental complaints to MOSH on March 15, 1999, yet she did not receive any advisement of her potential EPA Whistleblower protection under federal laws until December 1999. The effect of this failure resulted in the Complainant not being able to pursue a full remedy under EPA Whistleblower Acts which should have included her suspension without pay period of March 8, 1999, through her ultimate EPA Whistleblower complaint filing of December 14, 1999. Their action further complicated the matter by requiring both OSHA and MOSH to conduct discrimination complaint investigations to afford the Complainant full rights for a potential remedy.

The State Plan received an initial discrimination complaint from the Complainant on March 15, 1999, yet deferred an investigation until their opening of the instant discrimination complaint in December 1999. While MOSH procedures under Chapter 10 - MOSH Investigative Procedures, Obtain from the Complainant, IV. 1 (Exhibit 11), specified that "if another agency, private or public, is currently attempting to resolve the matter for the complainant, and if the successful results of that process would result in the complaint being made while, the Assistant Commissioner may defer or postpone MOSH's investigation pending a final outcome of the other matter," the procedure does not specify any time limitations or the number of processes to which they may defer the investigation. In the instant complaint the process of deferring resulted in an approximate eight-month delay in accepting the complaint for investigation. Long delays in the investigative process could limit the amount of testimonial and documentary evidence available. Such delays appear repugnant to the spirit and intended protection afforded by Section 11 (c) of OSHA Act against discrimination. The federal OSHA protection under the cited Act affords no provision to defer to a private process. The deferral of MOSH discrimination investigations could result in years of delay without limitations of time and the extent of to which processes they may defer.

The MOSH Final Report identifies six witnesses to the investigation which included Dr. Jane Fields, Dr. Patricia Abernathy, Ms. Nancy Reilman, Mr. Terry Phillips, Mr. Lee Haskins and Mr. Jim Duval. Investigator Seeman identified all six individual in her Final Report but failed to identify Ms. Chris Stewart interviewed on August 14, 2000, and the only Complainant witness interview during her investigation. (Exhibit 51) Review of the MOSH records did not establish anywhere that the Complainant had been asked to identify potential witnesses to support her allegation of discrimination. The Complainant interview documented by Investigator Seeman (Exhibit 36) contains a question, "Were There Any Witnesses?" The answer reflected for the question indicates most of the complaints were in the form of written memos. The Final Report and supporting documents do not suggest that the Complainant had ever been asked the simple question of her having witnesses to support the allegation of discrimination. During the OSHA Whistleblower Acts investigation the Complainant identified four witnesses to support her allegation which included in addition to Ms. Chris Stewart, [redacted] (Protected Identity), [redacted] (Protected Identity) and Ms. Dorothy Ervin. Both [redacted] and [redacted] furnished significant information during the OSHA investigation. The ratio of Respondent witnesses interviewed to Complainant witnesses interviewed during the MOSH investigation and the omission of the only Complainant witness interviewed from the final report with failure to identify potential witnesses identified by the Complainant gives the appearance of a biased investigation. While no bias is suggested to have been a factor during the investigation, the appearance of any bias should be avoided. The appearance of a bias could easily have been avoided by obtaining a witness list from the Complainant or having the Complainant identify those potential witnesses.

The Respondent proffered no affirmative defense in the OSHA investigation for the termination of the Complainant's employment. They failed to furnish any evidence to suggest that the Complainant's termination resulted from a lawful nondiscriminatory action. While their potential defense can be inferred from their exceptions to the hearing examiners, recommendation, and information presented at the hearing (Exhibit 64 - 67), there is not evidence to support such a finding as a matter of established BCPSS policy or historical disciplinary actions. The Respondent upheld the Complainant's employment termination against the hearing examiners' recommendation to the contrary. Evidence to support their affirmative defense that they dismissed the Complainant for inappropriate conduct with regard to unauthorized dissemination of information directly to the public and media was not furnished or presented to OSHA during investigation. The Respondent failed to formally respond to the OSHA discrimination complaint, instead expressing their desire to present their defense directly to a federal administrative law judge. Investigator Seeman appears to have obtained the cooperation of the BCPSS during her investigation. However, the investigative file does not contain records to establish what the Respondent's policy is concerning the release of information, access to information on parents and especially

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disciplinary procedures. Without documentation to support the Respondents policy and procedures it is very difficult to determine if the Complainant's termination resulted from a lawful nondiscriminatory action when an independent hearing examiner did not agree with the termination. The MOSH investigation reflects that the Respondent's witnesses verbally said they had no similar disciplinary action to Complainant. However, a review of the type of inappropriate behavior they do terminate employees for would have helped gage to what extent an employee violated established policy to result in a termination of employment and the procedures followed in the disciplinary action. Does the BCPSS terminate an employee for the first offense of improper release of information, access to the parent information and sending unapproved information to the said parents? Without verification of the affirmative defense of the Respondent in their policy, procedures and historical data how can you gage the potential that the protected activity did not play a part in the decision for suspension and termination of the Complainant's employment? While not all discrimination complaints result in the testing or verification of the Respondent's affirmative defense, the more complex or borderline complaints should have such a test or verification. The MOSH investigation reflects that, "There is no dispute that many individuals working for the employer were MOSH and with her employer, Ms. Williams has contacted the Mayor's office and gone directly to the media." Both the OSHA and MOSH investigations establish the Complainant engaged in protected activity, the Respondent had knowledge of the protected activity and that the Complainant received an adverse action. The nexus becomes the crucial missing element of the complaint reaching a recommendation for merit. Verification of the Respondent's affirmative defense and established policy and procedure becomes crucial in these types of cases to determine if the actions were reasonable.

Investigator Seeman indicates in her Final Report that "On no occasion was she disciplined for these actions." Sandra L. Wighton, Area Executive Officer, Southeast Area - Location #573, 2801 St. Lo Drive, prepared a Memo dated November 10, 1997, to Mr. O. Albrine Love, Director, Personnel Services, that reflects a request for a recommendation on "fitness for duty" on the Complainant prior to reassigning her to school. Further that for the school year 1997-98, Ms. Williams was transferred to Southeast Middle School #255 pending her return from sick leave. The information contained in the investigative file does not contain any information to suggest that this transfer had been voluntary on the part of the Complainant and may have been an adverse action or form of disciplinary action by the Respondent. Investigator Seeman's investigative file does not reveal any review of the Complainant's personnel file. The Complainant's transfer occurred subsequent to her engaging in some MOSH protected activity and absent a review of her personnel file at BCPSS concluding that she had not been previously disciplined is erroneous. (Exhibit 21)

Recommendations: It is highly recommended that MOSH be furnished with sufficient documents and information to brief Complainants on the additional protections afforded under federal discrimination laws to include Region-sponsored training if deemed necessary. In any event procedures to refer Complainants to OSHA if they might potentially have protection under other federal protection.

Recommend that MOSH establish a reasonable limitation of time or processes to which they may defer investigating a discrimination complaint under State Plan Programs. Recommend that MOSH establish a procedure for identifying Complainant potential witnesses and accurately report both Respondent and Complainant witnesses in their reports to avoid the appearance of bias.

Recommend that MOSH verify the Respondent's affirmative defense through a review of their established policy and procedures as well as historical disciplinary actions in more complex or borderline discrimination complaints.

Recommend that MOSH full field discrimination investigations include a review of the Complainant's personnel file.

Absent the above listed additional investigation activities, the undersigned cannot agree with the recommendation of the MOSH investigation to close the case without further action. The Complainant has the burden of proof in a discrimination complaint filing and limiting the investigation to an interview of only one potential Complainant witness does not give the appearance of an unbiased investigation unless that is the only witness identified by the complainant. Without additional investigation activity to conduct additional interviews and records review a recommendation of dismissal should not have been made.

The summary results of this CASPA have been discussed with both the assigned MOSH investigator and the Complainant.

Respectfully Submitted,
David L. Hill
Regional Investigator

To: Mr. Oprah Winfrey
From: Ms. Aiana Williams

Re: Lead and Consider

Date: 11-16-06

I'm enclosing the "Petition for a Rehearing" that I said I would send to you in the e-mail that I submitted to you show on 11-15-06.

Again, I hope that you would read this petition, and if you agree that justice has not been served, then please render your support as requested in the e-mail.

Thanks so much for taking the time to read and consider my request.

Sincerely,

