

Abernathy testified that she has served as the Area Executive Officer for the Southeast Region since November, 1998. She testified that she is responsible for ensuring the safety of the children in the southeast quadrant; that school system policies are enforce and that the process functions smoothly.

Abernathy testified that, on February 25, 1999, she received a telephone call from Jane Fields regarding a letter [CFO Exhibit 1, item 3] that had been sent to parents of Southeast Middle School (hereafter "SMS") students by the Respondent. Abernathy testified that she was advised by Jane Fields that the Respondent's business card was enclosed in the letter. Abernathy testified that the Respondent was a teacher at SMS at the time.

The first witness to testify was Dr. Patricia Abernathy [hereinafter "Abernathy"].

**EVIDENCE**

Witnesses were Patricia Abernathy, Ph. D., Area Executive Officer for Southeast Region; Jane Ellen Fields, Principal - Southeast Middle School #202; Elaine White, Principal - Baltimore Hartford High School; Cassandra Spears, Principal - James Mosher Elementary School; Jack Riam, Building Safety and Education Officer for the Baltimore City Public School System; and the Respondent.

The CFO was represented by Cheryl Y. Haskins, Esquire. The Respondent proceeded pro se. The official record consists of the exhibits offered by the parties and accepted into evidence by the Hearing Examiner and the transcript of the proceedings.

On August 26, 1999, a hearing was held in the matter of the termination of Diana Williams ("Respondent") pursuant to 56-202 (a) of the Education Article of the Annotated Code of Maryland. The Chief Executive Officer of Public Instruction for the City of Baltimore's Department of Education ("CEO") charged the Respondent with misconduct in office. The CEO has recommended to the New Board of School Commissioners for Baltimore City Public Schools that the Respondent be dismissed from her teaching position.

**STATEMENT OF CASE**

IN THE MATTER OF  
 THE DISMISSAL OF  
 DIANA WILLIAMS  
 FOR BALTIMORE CITY  
 OF SCHOOL COMMISSIONERS

Case No.: 99-17

Exhibit 2

Abernathy testified that she ordered the Respondent to the telephone to question the Respondent about the letter. Abernathy testified that, when she asked the Respondent whether she had written the letter, the Respondent replied, "If you can prove it, I will take the charge." Abernathy testified that, when she directed the Respondent to answer her question, the Respondent stated that she would not answer the question until Abernathy talked about what the School System was doing and then hung up the telephone.

Abernathy testified that, after reviewing the information made available to her regarding lead in the water at SMS and talking with Jack Blum, the Building Safety and Education Officer, she recommended that the Respondent be suspended without pay. Abernathy testified that the parents were unduly alarmed, that there was access to all of the files of all of the students in that school unauthorized, because the letters were sent to these children and we (School System) didn't give permission for that." [Transcript p. 20, line 4 et. seq.]

Abernathy testified that the letter cause a serious disruption of the educational process and unduly alarmed school staff and parents of students.

On cross examination, Abernathy testified that, in her brief conversation with the Respondent on the telephone, she did not ask the Respondent whether the information in the letter to the parents was valid. Abernathy testified that she has read a 1992 - 1993 report that recommended certain fountains in Southeast Middle School be turned off because of deteriorated faucets. Abernathy testified that there was a relationship between the deteriorated faucet and lead in the water. [Transcript p. 34, line 5 et. seq.]

The next witness to testify was Jane Ellen Fields [hereinafter "Fields"].

Fields testified that she was the principal of SMS at all times relevant to this matter. Fields testified that the Respondent was assigned to SMS for the 1997 - 1998 school year.

Fields testified that, on February 25, 1999, the educational process at her school was severely disrupted because of the letter the Respondent had sent to parents. Fields testified about the phone calls from parents, people showing up on the school's property and the media coverage. Fields testified that the phone lines were tied up by calls concerning the letter to the extent that the Area Office had to use the fax line to get messages through.

Fields testified that the next day she called the Respondent into her office to discuss the matter and to advise the

Respondent of her suspension without pay. Fields testified that she instructed the Respondent not to return to work on Monday, March 1st. Fields testified that, upon being notified of her suspension, the Respondent went out in the foyer of the school and loudly cursed the "damn water" several times. Fields testified that the Respondent told every student she could that she had been suspended.

Fields testified that the Respondent reported to the school on March 1, 1999. Fields testified that the Respondent advised her that she came to work because she had not received a suspension letter from the CEO. Fields testified that she instructed the Respondent to wait in the inner office while she contacted the Area Office about the suspension letter. Fields testified that the Respondent refused to wait in the inner office and, instead sat in the outer office. Fields testified that she was informed by the school secretary that the Respondent confronted every parent that came in the office about lead in the school's water and that she had been fired.

On cross examination, Fields testified that she did receive a call from the Respondent regarding a report the Respondent had received about lead in the school's water. [Transcript p. 74, Line 18 et. seq.] Fields further testified that she is not an expert on lead and that she does not know the EPA guidelines for safe levels of lead in drinking water. Fields testified that she relied on the Health Department report [CR0 Exhibit 8] in preparing her letter to the parents dated February 26, 1999 [CR0 Exhibit 6].

On redirect, Fields testified that the Respondent held the position of a mathematics teacher. Fields testified that the responsibilities of a mathematics teacher did not include determining whether there is lead in the drinking water. Fields further testified that, even if she believed the Respondent was correct in her allegations regarding lead in the water, she would have still recommended the Respondent's suspension without pay because of the disruption cause at the school.

The next witness to testify was Elaine White [hereinafter "White"].

White testified that she is the principal of Fairmount - Hartford High School (hereafter "FHS"). White testified that the Respondent was a teacher at FHS when she became principal in 1991. White testified that the Respondent, during her tenure at FHS, expressed concerns about the dust that was in the building during a major renovation project.

White testified that the Respondent had advised her several times that the reports that she had received from Kennedy Krieger and Bayview Medical Center regarding students exposure to lead

bearing dust were inaccurate and that she could provide her with accurate information.

On cross examination, White testified that the Respondent mentioned to White her concerns about the health and safety of people in the building during the renovation project. White testified that a report was given to school staff that stated high levels of lead were found in some areas of the building. White testified that the report indicated that there was lead paint through out the building.

White testified further, under cross examination, that there were children under 6 years of age and some pregnant females in the building for a short period of time after the renovations were started. White further testified that she did receive a general report that stated that some of the Morgan Head Start students had a high level of lead; however, there was no evidence of whether the exposure was from the school or from their homes.

The next witness to testify was Casella Spears. [hereinafter "Spears"].

Spears testified that she is the principal of James Mosher Elementary School (hereafter "JMS"). Spears testified that individuals in the JMS community had received a communication concerning lead and asbestos levels at the school [CRO Exhibit 10]. Spears testified that, upon receiving copies of the communication, she forwarded the same to school headquarters for instructions. Spears testified that, as a result of the flyers, parents of students began calling and visiting the school to discuss the matter.

On cross examination, Spears testified that she did not investigate to see whether the allegations in the communications were true.

The next witness to testify was Jack Blam [hereinafter "Blam"].

Blam testified that he is the Building Safety and Education Officer for the school system. Blam testified that SMS and Highlandtown Middle School were on the list of schools identified as having lead in their water that were being provided alternative water (bottled water). Blam testified that JMS was no longer a school with that concern and that JMS was never on the list.

Blam testified that, as a result of the concerns relative to lead exposure at JMS, the school system retained Bayview Medical Clinic and the Kennedy Krieger Institute to assess students in the facility that might be at risk. Blam testified that the report issued by Bayview Medical and Kennedy Krieger indicated

that there was no evidence linking any student's exposure to lead paint to the facility.

On cross examination, Blam testified that he was aware that any pre-1950 facility is presumed to have lead based paint and that lead paint hazards include chipping, peeling, flaking paint and any disturbance of more than three square feet of lead based paint or any major mechanical or plumbing work. Blam testified that the school system had received variances from the Maryland Department of the Environment which allowed the students to stay in the school while the major renovations were being done. Blam testified that lead abatement contractors were hired because a sampling indicated that there was lead dust on three surfaces at the school in excess of HUD guidelines.

Blam further testified that he recalled seeing a 1993 document that indicated that there was lead paint problems in the building. [Transcript 153, line 8 et. seq.] Blam testified that he was not aware of the 1993 document until after the plumbing and electrical work had been started.

On redirect, Blam testified that in October, 1996, the school system hired Sports Stevens (Industrial hygiene company) to do an assessment of the building to discern if there was a problem with lead dust. Blam testified that, as a result of the assessment, the school system decided to clean the entire building according to HUD guidelines to bring the lead levels down to an acceptable range for occupants in the facility. Blam testified that the facility was under full containment during the abatement [Transcript p. 160, line 6 et. seq.]

The next witness to testify was the respondent.

The respondent testified that during a faculty meeting held in August, 1996, she asked the contractor whether it was safe for the staff and students to remain in FMS during such a major renovation. The respondent testified that the contractor assured her that renovation process would not disturb or cause any problems for the staff or students.

The respondent testified that she received a report from the U.S. Department of Labor, Occupational Safety and Health Administration [hereinafter "OSHA"] concerning the lead levels throughout the building [Respondent's Exhibit 6]. The respondent testified that the lead dust sampling done in October, 1996, showed a lead dust level in excess of the HUD guidelines.

The respondent further testified that the parents of students at FMS, including the parents of the Headstart students, were not notified of the lead hazards until she went public with the information [see Respondent's Exhibit 18 - video tape].

The respondent testified that, on or about January 1, 1999, she wrote a letter of complaint to MOSH regarding her suspicion that the drinking water at SMS was contaminated with lead. The respondent testified that, prior to contacting MOSH, she asked fields had there been any testing of the water or was there any documentation showing that there was lead in the water at SMS. The respondent testified that fields told her no.

The respondent testified that, if the 1993 report showed lead in the water and if the cause of the problem has not been corrected, there is most certainly lead in the water now [Transcript 217, Line 9 et. seq.]. The respondent testified that she took a water sampling from Southeast Middle to Martel Laboratories, an EPA certified lab, for testing [Respondent's Exhibit 27]. The respondent testified that fields expressed little concern when the respondent advised her that she could prove "unequivocally" that there was lead in SMS' water.

The respondent testified that she took her concerns to MOSH because she felt that, after the FHS experience, the school system did not want to hear her concerns regarding health hazards at other schools.

The respondent testified that MOSH did inspect JMS and found high levels of lead dust in some areas. The respondent read from the report [Respondent's Exhibit 29] the following comments:

"Inform the summer clean-up crew of the sampling results so they can adequately protect themselves while they perform their duties; perform more extensive sampling to determine the extent of the lead-bearing dust; abate the exterior and interior lead-bearing paint throughout the facility".

The respondent testified that as a teacher she was in the position of loco parentis. The respondent testified that she believe she was acting in the best interest of the children when she made her complaints regarding the health hazards at the schools. The respondent testified that she believe the parents of the students would want to know about the situation.

On cross examination, the respondent testified that she mailed the notice [GEO Exhibit 1] to approximately 500 parents of students at Southeast Middle School. The respondent testified that she did not get permission from the principal to mail out the notice nor did she get permission to obtain the addresses of the students. The respondent testified that she did not express her concerns to the area executive supervisor or any official at school headquarters.

Exam was recalled by the Respondent to testify.

Blam testified that FHS received a normal cleaning in the summer of 1996 before the students returned to school. Blam testified that the lead hearing dust problem was resolved after the concerns raised by the respondent. Blam testified further that the school system had not received any clearance document from any MDR certified agency that the lead dust was at acceptable levels after the cleaning.

Abemathy was recalled by the Respondent to testify.

Abemathy testified that she did not do an independent investigation of the allegations raised in the respondent's communications about FHS, SMS, Highlandtown Middle School, and JMS. Abemathy testified that she made no effort to determine whether the respondent was a lead abatement expert. Abemathy testified that she relied on the reports and information she received from Blam, Fields and a Mr. Giles.

Abemathy testified that she had no evidence from parents, students or teachers to corroborate the statement that the respondent was disruptive. Abemathy testified that it was the manner in which the respondent notified the parents of her concerns that was at issue. Abemathy testified that the respondent could have dealt with the issue without using scare tactics. Abemathy testified that, if she had determined that there was some validity to the respondent's allegations, she may have recommended a different disciplinary action.

In response to questions from the hearing examiner, Abemathy testified that the calls that she received regarding CEO Exhibit 1 were basically inquiries about the information in the communication and not complaints about the communication. Abemathy testified that the parents were counseled over why the information came from someone other than the principal or the school system.

White was recalled to testify by the Respondent. White's testimony offered no additional evidence.

Fields was recalled to testify by the Respondent.

Fields testified that she did not receive any complaints from parents, students or teachers about the respondent being disruptive. Fields testified that she did not feel a need to find out whether the respondent was a certified lead abatement expert or whether she had any proof that there was lead in the water.

Fields further testified that she believe that the communications sent to the parents contained several misstatements and inaccuracies that cause the parents of Southeast Middle School students unnecessary concern. According

In the Statement of Charges, the CRO claims that the respondent circulated erroneous information to parents, students and staff regarding potential health hazards at SMS, FHS and JMS. According to the CRO, the erroneous communications [CRO Exhibit 1 page 3 & Exhibit 10 page 3] caused unnecessary panic amongst parents, students and staff which resulted in the disruption of the educational process at the schools.

The CRO must prove by a preponderance of the evidence that the information contained in the two (2) communications was erroneous. The Hearing Examiner finds that the CRO failed to carry his burden of proof. In fact, based on the substantial documentation presented at the hearing, the Hearing Examiner finds that the information contained in the two (2) communications concerning SMS, FHS and JMS was basically true.

First, the Hearing Examiner finds that the respondent has received substantial training in the field of lead paint assessment and abatement and could validly consider herself an

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. Did the respondent commit misconduct in office by circulating erroneous information to parents, students and staff regarding potential health hazards at SMS, FHS and JMS?
2. If the information circulated by the respondent is basically accurate, did the respondent commit misconduct in office by failing to follow the chain of command by disseminating the information directly to the public and the media?
3. Whether the acts allegedly committed by the respondent would bear upon the respondent's fitness to teach such that it would undermine her future classroom performance and overall impact on her students?

ISSUE

In response to a question from the Hearing Examiner, Fields testified that one of the fountains in House 40 was operable and in use by students [Transcript p. 412, line 18 et. seq.].

On redirect, Fields acknowledged that lead poisoning can be fatal [Transcript p. 389, line 9]. Fields testified that, before the 1998 - 1999 school year, there were four (4) bottle water stations.

to Fields, the communications would lead the parents to believe that their children were in imminent danger of lead poisoning and that the school was attempting to hide the information from them.



Though the Respondent may not have had her dates correct as to when the fountains were turned off, the fountains were indeed turned off after the Health Department's inspection and the parents of the students were not notified of the situation as stated in the correspondence. It would appear prudent to

The report indicates that there is lead in the water at SMS and that at least one (1) fountain that was still in use prior to February 11, 1999 had a lead content in excess of RPA standards for drinking water. RPA testified that SMS was 1 of 32 schools that had been identified with lead in its drinking water [Transcript p. 130, Line 9 et. seq.]

The City Health Department did not occur until March 9, 1999 [CFO Exhibit 16] and the report was not issued until March 15, 1999; two (2) weeks after the Respondent was suspended. The report, moreover, the actual sampling of the school's water by lead content of the school's drinking water in the inspection with SMS drinking water because there was no assessment of the questions how the CRO determined that there was no lead problems water at SMS and placing her on suspension. The Hearing Examiner the Respondent had issued erroneous information regarding the dated February 11, 1999 [CFO Exhibits 8 & 9] in determining that the CRO relied on the report from the City Health Department

standards allowed by RPA. Lab found that the lead content of the water exceeded the testing at a certified laboratory [Respondent's Exhibit 27]. The sample from a fountain that was still being use by students for in the school. The Respondent testified that she took a water had been turned off, students still had access to water fountains line 7 thru p. 394 line 51. Except for the water fountains that due to the locations of the water stations [Transcript p. 391 available to the students, the water was not readily assessable The Hearing Examiner finds that, though bottle water was

In 1993, the State Department of Health and Mental Hygiene sampled the water at SMS [CFO Exhibit 15]. The State Department of Health and Mental Hygiene found that there was lead in the water but only one (1) drinking fountain had a lead content in excess of RPA standards. According to Fields, the high lead content found in the one fountain was due to a deteriorating bubbler or spigot. Fields testified that in response to the report received from the State Department of Health and Mental Hygiene, the fountain was turned off and the school established four (4) bottle water stations.

expert in the field. See Respondent's Exhibits 8 & 9. Secondly, which regards to the correspondence dated February 24, 1999, to parents SMS students regarding lead in the water, the Respondent present sufficient documentation to support the statements made in the correspondence.

recommend that students who may have consumed water with a high lead content be tested as a precaution.

The CBO complains that the actions of the Respondent cause panic amongst the parents, students and staff that disrupted the educational process. According to fields' testimony, the primary disruption to school activities was telephones calls from parents inquiring about the accuracy of the information contained in the communication and about the person who disseminated the information. Fields also testified that she had to call an emergency staff meeting to answer concerns raised by the staff regarding the information in the communication.

However, the facts clearly establish that school system did not fully disclose to the parents that there was an issue with the lead content of the water at SMS before the Respondent issued her communication. Additionally, it appears to the Hearing Examiner that the school system, relying on the February 11th Health Department report, may have issued misinformation regarding the water [CBO Exhibit 6].

The Hearing Examiner also finds that the weight of the evidence supports the Respondent's claim that FHS and JMS had been cited for lead paint hazards [CBO Exhibit 10, p. 3]. The school system hired a certified lead abatement contractor to clean FHS after a sampling reveal lead bearing dust in excess of EPA standards. JMS was cited in a report by MOSH to have a lead base paint problem and was ordered to abate the lead bearing paint through out the facility [Respondent's Exhibit 29, p. 14]. It is also clear from the evidence that it was the complaints filed by the Respondent that spurred the school system into taking corrective action at the two (2) schools.

The Hearing Examiner finds that the Respondent did not follow proper procedure when she disseminated the information regarding the health related issues directly to the public without first providing the school system a fair opportunity to take corrective action. In regards to the principals of SMS, the Respondent did raise her concerns at FHS and the schools, respectively. However, the Respondent acknowledges that she did not present her concerns to the area executive officer or officials at North Avenue before filing a complaint with MOSH or going public.

JMS' principal was not notified of the Respondent's concern regarding lead paint at the school before the Respondent issued her communication to the public.

The Respondent testified that, after her experience at FHS, she did not believe that the school system would take her concerns seriously. The Respondent testified further that, because the health and welfare of the students were at issue, she

It is time of the essence in having the situations investigated.

Though the Hearing Examiner finds that the Respondent did not follow proper procedure in filing a complaint with MOSH or circulating information to the public without following the chain of command, the Hearing Examiner does not find that such actions constitute misconduct in office. Employees have a legal right to file complaints regarding safety and health issues affecting their condition of employment directly to MOSH. The Respondent also has the right as a citizen to file a complaint regarding safety and health issues that generally affect the public to MOSH. Moreover, the concerns raised in the Respondent's complaints were validated by MOSH.

The Hearing Examiner does not find that the acts committed by the Respondent bears upon her fitness to teach such that it would undermine her future classroom performance and overall impact on her students. There was no evidence offered by witnesses for the CEO that any parents, students or other staff members at the three (3) schools complained about the Respondent issuing the two (2) communications. In addition, there was no evidence offered by witnesses for the CEO that the Respondent was not a competent teacher.

The CEO relied on the Abernathy's recommendation in suspending the Respondent without pay and recommending her dismissal. The case for dismissal is based primarily on the premise that the Respondent irresponsibly disseminated erroneous (and unfounded) information to parents and the public. However, even Abernathy stated that if she had determined that there was some validity to the Respondent's allegations, she may have recommended a different disciplinary action.

The Hearing Examiner finds that there was more than some validity to the Respondent's allegations.

**RECOMMENDATION**

MARKSBOROUGH, the undersigned Hearing Examiner respectfully recommends that the CEO's recommendation to dismiss the Respondent be denied.

Respectfully submitted,

*James L. Wiggins*  
James L. Wiggins  
Hearing Examiner

Ms. Williams is still up for dismissal without pay or benefits.