

U.S. Department of Labor

Occupational Safety and Health Administration
Suite 740 West, 170 S. Independence Mall West
Philadelphia, Pennsylvania 19106-3309

Reply to the Attention of: William D. Segun

June 9, 2000

P-564

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

RE: Baltimore City Public School System/ Diana R. Williams/3-0050-00-002

Dear Sir:

This letter is to notify you of the results of the investigation in the above noted case, in which Diana R. Williams alleged violations under Section 322(a)(1-3) of the Clean Air Act (42 U.S.C. 7622), 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/or Section 23(a)(1-3) of the Toxic Substances Control Act (15 U.S.C. 2622). Our initial efforts to conciliate the matter did not result in a mutually agreeable settlement. A fact finding investigation was then conducted. Based upon our investigation, and the weight of the evidence to date indicates that Diana R. Williams was a protected employee engaging in a protected activity within the scope of the Act, and that discrimination as defined and prohibited by the statute was a factor in the actions which comprise the complaint. The following information is provided in support of this determination:

a. 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 Baltimore City Public School System (BCPSS) schools. The public schools included the James Mosher Elementary School, 2400 Mosher Street, Baltimore, Maryland 21216, Southeast Middle School, 6820 Fair 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. Her environmental complaints involved allegations of 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. These complaints

P-565

caused government agency inspections and investigations pursuant to potential violations of the Environmental Protection Agency's (EPA) regulations and statutes of the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act, and the Solid Waste Disposal Act. Her complaints with the Maryland Occupational Safety and Health (MOSH), Compliance Unit, 1100 North Eutaw Street, Room 611, Baltimore, Maryland 21202, are well documented in the records provided by that agency. The Complainant also furnished substantial evidence of protected activity in the documents she provided. 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 she engaged in protected activity.

b. The Complainant contends that she first reported her environmental complaint to management officials within the BCPSS. Her direct reporting of complaints and Respondent knowledge are also evident in complaints to other city officials. Further, documentation of Respondent knowledge can be presumed based on the nature of the complaint items in MOSH's Respondent notifications letters on the complaints. The Respondent had knowledge of the Complainant's protected activity early in 1996 through extensive media coverage of her environmental complaints concerning the BCPSS from on camera Complainant interviews televised on local news programs and printed in local newspapers in Baltimore, Maryland. She also testified on or about April 9, 1997, before a public hearing on lead paint poisoning in the BCPSS. She has recorded exerts of these activities on videocassettes.

c. The Complainant suffered an adverse action through termination of her employment on December 8, 1999.

d. The Respondent proffered no affirmative defense 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 examiner's recommendation, and information presented at the hearing, there is no evidence to support such a finding. The Respondent upheld the Complainant's employment termination against the hearing examiner's recommendation to the contrary. Evidence to support their affirmative defense that they dismissed the Complainant for inappropriate conduct concerning unauthorized dissemination of information directly to the public and media was not furnished or presented to this agency concerning the discrimination complaint filing. The Respondent failed to

P-566

Baltimore City Public School System/ Diana R. Williams/3-0050-00-002

formally respond to the discrimination complaint, instead expressing their desire to present their defense directly to a federal administrative law judge.

e. The complaint meets all the requirements of a *prima facie* case for violations of the Whistle Blower provisions of the Clean Air Act, 42 U.S.C. § 7622, the Toxic Substance Control Act, 15 U.S.C. § 2622, the Solid Waste Disposal Act (42 U.S.C. § 6971) and the Safe Drinking Water Act, 42 U.S.C. § 300j-9.

This letter is notification to you that the following actions are required to remedy the violation:

Pursuant to Section 322(a)(1-3) of the Clean Air Act (42 U.S.C. 7622), 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/or Section 23(a)(1-3) of the Toxic Substances Control Act (15 U.S.C. 2622), in accordance with the Findings made herein, orders Respondent, Baltimore City Public School System, to immediately offer reinstatement to Diana R. Williams to her former position of employment with accumulated seniority; to compensate her for back pay in the amount of \$35,112.90, other claims involving dental, pharmacy and discrimination complaint filling expenses totaling \$1,957.57 and to expunge from her personnel records of any adverse reference to her discharge or any protected activity.

This letter is also notification to you, that if you wish to appeal the above findings and remedy, you have a right to a formal hearing on the record. To exercise this right you must, within five (5) business days of receipt of this letter, file your request for a hearing by facsimile, overnight/next day mail or telegram to:

Chief Administrative Law Judge
U.S. Department of Labor
Suite 400, Techworld Building
800 K Street
Washington D.C. 20001-8002
Fax: (202) 565-5325

Unless a request for appeal is received by the Chief Administrative Law Judge within the five-day period, this notification of findings and remedial action will become the Final Order of the Secretary of Labor which must be implemented

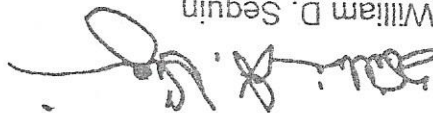
p-567

Baltimore City Public School System/ Diana R. Williams/3-0050-00-002

within 30 days. Diana R. Williams is being advised of the determination and the right to a hearing. A copy of this letter and complaint have been sent to the Chief Administrative Law Judge. If you decide to request a hearing, it will be necessary for you to send copies of the request to Diana R. Williams and to this office at the address noted in the above letter head. After I receive the copy of your request, appropriate preparations can be made. If you have any questions, do not hesitate to call me at (215) 596-0543.

It should be made clear to all parties that the U.S. Department of Labor does not represent any of the parties in a hearing. The hearing is an adversarial proceeding in which the parties will be allowed an opportunity to present their evidence for the record. The Administrative Law Judge who conducts the hearing will issue a recommended decision to the Secretary based on the evidence, testimony, and arguments presented by the parties at the hearing. The Final Order of the Secretary will then be issued after consideration of the Administrative Law Judge's recommended decision and the record developed at the hearing and will either provide for appropriate relief or dismiss the complaint.

Sincerely,



William D. Seguin
Regional Supervisory Investigator