

U.S. Department of Labor

Exhibit 3  
Exhibit  
21

Occupational Safety and Health Administration  
Suite 2100, 3535 Market Street  
Philadelphia, Pennsylvania 19104

P-551



Exhibit 3

DATE: February 29, 2000

MEMORANDUM FOR: William D. Seguin  
Regional Supervisory Investigator

FROM: David L. Hill  
Regional Investigator

SUBJECT: Baltimore City Public School  
System/Williams/3-0050-00-002

Final Investigative Report

Date Filed: December 14, 1999

Complainant: Diana R. Williams, DoH: October 26, 1981  
1311 North Ellwood Avenue  
Baltimore, Maryland 21213  
  
Telephone: (410) 276-7551

Respondent: Baltimore City Public School System  
200 East North Avenue  
Baltimore Maryland 21202  
  
Telephone: (410) 396-8709

Represented by: Brian K. Williams, Attorney  
Office of Legal Counsel  
Baltimore City Public School System  
200 East North Avenue, Room 208  
Baltimore Maryland 21202  
  
Telephone: (410) 396-8771

Exhibit 5

Exhibit 7

Complaint: Baltimore City Public School System/Williams/3-0050-00-002

Timeliness: The Complainant filed her written discrimination complaint pursuant to the Whistle Blower provisions of the Clean Air Act, 42 U.S.C. § 7622, Solid Waste Disposal Act (42 U.S.C. § 6971), Toxic Substance Control Act, 15 U.S.C. § 2622 and Safe Drinking Water Act, 42 U.S.C. § 300j-9 on December 14, 1999. Respondent upheld the termination of her employment on December 8, 1999, and as a result this case has been timely filed.

Charge: Respondent terminated her employment on December 8, 1999, in reprisal for the Complainant having filed numerous safety and health complaints involving environmental hazards between September 13, 1996 and January 8, 1999.

Defense: Respondent proffered no affirmative defense for the suspension and ultimate termination of the Complainant's employment.

Commerce Data: Respondent is primarily engaged in providing public education using materials and equipment acquired through interstate commerce.

Union Status: Union

SIC Code: 8211

List of Witnesses:

For Complainant:

[REDACTED] (Protected Identity)  
[REDACTED]

Telephone: [REDACTED]

[REDACTED] (Protected Identity)  
[REDACTED]

Telephone: [REDACTED]

[REDACTED] Teacher (Refused Interview)

EX 7(d)

Complaint: Baltimore City Public School System/Williams/3-0050-00-002

Telephone: [REDACTED]

[REDACTED] (Not Located)  
Telephone: [REDACTED]

EX 7(d)

Neutral:

Cheryl Kammerman - Compliance Manager  
Maryland Occupational Safety and Health (MOSH)  
1100 North Eutaw Street  
Baltimore, Maryland 21202

Telephone: (410) 767-2190

Laura Seeman - Investigator - MOSH  
1100 North Eutaw Street  
Baltimore, Maryland 21202

Telephone: (410) 767-2381

Joyce K. Tapper - Administrator MOSH  
State of Maryland  
Department of Labor, Licensing and Regulation  
1100 North Eutaw Street, Room 611  
Baltimore, Maryland 21202

Telephone: (410) 333-4100

Laramie Daniel - Air Quality Manager  
Maryland Department of the Environment (MDE)  
2500 Broening Highway  
Baltimore, Maryland 21224

Telephone: (410) 631-3220

For Respondent:

Robert Booker - Chief Executive Officer  
Baltimore City Public School System (BCPSS)  
200 East North Avenue  
Baltimore Maryland 21202

Telephone: (410) 396-8709

Summary of Pertinent Data: The Respondent is an employer engaged in providing public education using materials and equipment acquired through interstate commerce. They employ approximately 2,000 employees in a union environment. The Complainant worked for the Respondent as a Mathematics Teacher, earning \$48,000.00 per year since October 26, 1981. She filed numerous safety and health complaints involving environmental hazards with government agencies involved in the enforcement of public health and safety protection. The Complainant filed a timely written discrimination complaint on December 14, 1999, pursuant to the whistle blower protections afforded in the 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. The complaint meets all the requirements of a *prima facie* case for a violation of the cited Acts. The evidence developed during the investigation does support the allegation of discrimination under the Acts. Therefore, the complaint is recommended for merit findings.

Chronology:

October 26, 1981:	The Complainant started working for the Respondent.
August 29, 1996:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with MOSH.
November 1, 1996:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with the Baltimore City Mayor's Office and the Baltimore City Council.
February 18, 1997:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with the Mayor.
March 22, 1997:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with the Mayor.
May 2, 1997:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with the Mayor.
June 6, 1997:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with the Mayor.
September 27, 1997:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with the Mayor.
March 16, 1998:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with MOSH.

Complaint: Baltimore City Public School System/Williams/3-0050-00-002

March 17, 1998:	The Complainant engaged in the protected activity of filing an amended environmental complaint with MOSH.
March 19, 1998:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with MDE.
April 3, 1997:	The Respondent received notification of the Safety and Health complaint filing with MOSH.
April 9, 1998:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with MOSH.
May 7, 1998:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with MOSH.
October 1, 1998:	MOSH requested the Respondent's records and abatement conformation.
January 1, 1999:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with MOSH.
March 8, 1999:	The Respondent placed the Complainant on indefinite suspension without pay.
March 15, 1999:	The Complainant engaged in the protected activity of filing a discrimination complaint with MOSH.
March 18, 1999:	MOSH deferred the discrimination complaint pending the outcome of the Complainant's union grievance.
March 28, 1999:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with MOSH.
April 17, 1999:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with MOSH.
May 1, 1999:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with MOSH.
May 10, 1999:	The Complainant engaged in the protected activity of filing a discrimination complaint with MOSH.
May 21, 1999:	MOSH continued the deferral of the Complainant's discrimination complaint.
August 6, 1999:	The Complainant engaged in the protected activity of filing an environmental safety and health complaint with the Department of Public Works.
October 13, 1999:	The hearing examiner rejected the dismissal of the Complainant's employment from BCPSS.
December 4, 1999:	The Complainant engaged in the protected activity of filing a discrimination complaint with MOSH.
December 8, 1999:	The Respondent upheld the Complainant's termination of employment against the hearing examiner recommendation.
December 14, 1999:	The Complainant filed a Whistle Blower Acts discrimination complaint.
December 15, 1999:	The Respondent received telephonic notification of the

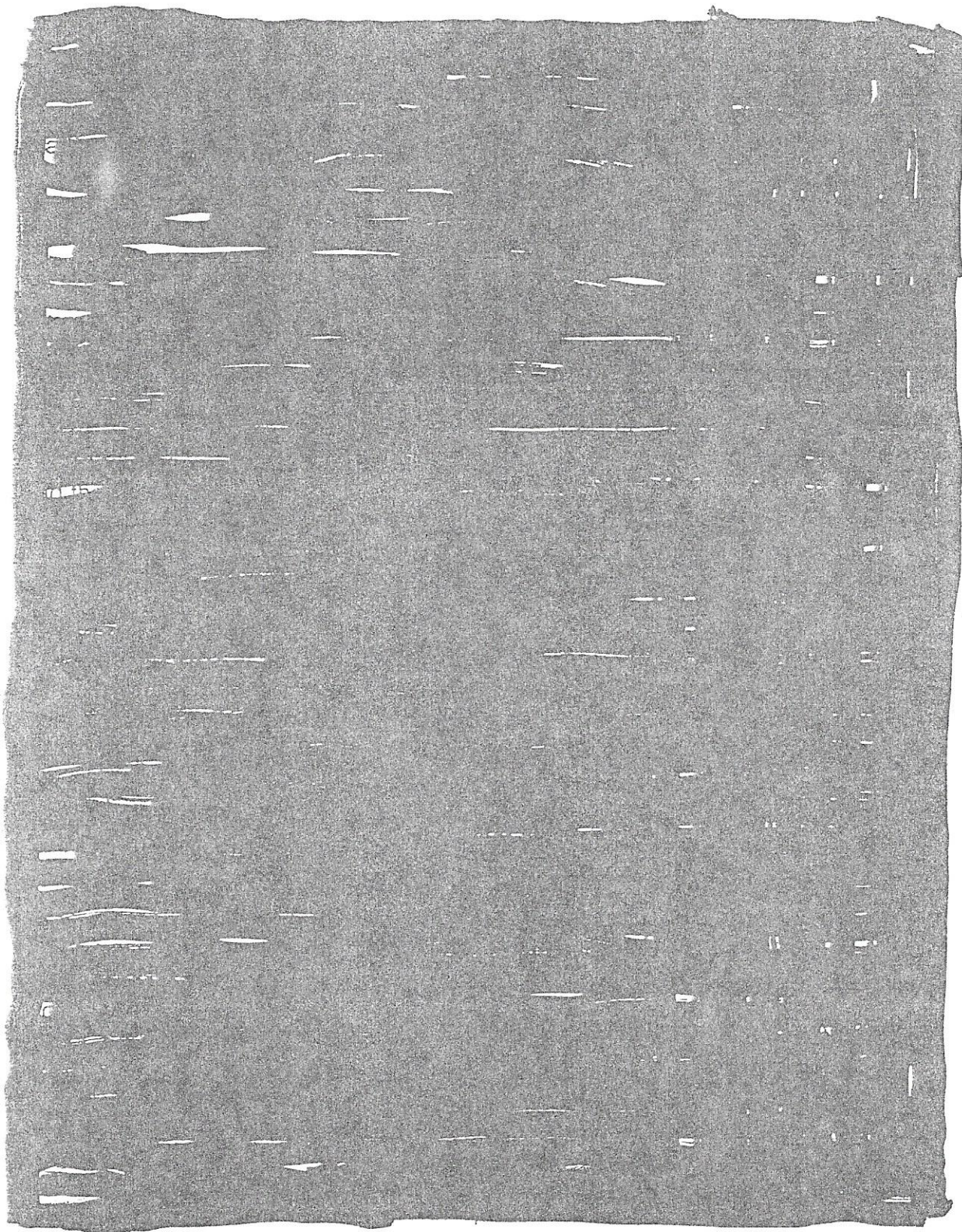
discrimination complaint filing and failed to respond.

Investigative Findings:

1. The Complainant filed her written Whistle Blower Acts discrimination complaint on December 14, 1999. She alleged that on December 8, 1999, the Respondent upheld her termination of employment against a hearing examiner's recommendation to the contrary. The Complainant believed that the Respondent terminated her employment in reprisal for her having filed numerous safety and health complaints involving environmental hazards. (Exhibit 1, 12 & 13)
2. The Respondent received initial telephonic notification of the discrimination complaint filing on December 15, 1999. The Respondent failed to respond and they did not proffer any affirmative defense for the termination of the Complainant. The Respondent received formal notification of the complaint filing on January 5, 2000. They failed to furnish any position for the termination of the Complainant's employment. (Exhibit 2)
3. The Respondent received a written request to furnish supporting records concerning their termination of the Complainant on December 20, 1999. They failed to respond to the request for documentation. (Exhibit 3)
4. Predicated on a request from this agency (Exhibit 4) on December 16, 1999, the MOSH furnished copies of relevant records on December 17, 1999, documenting the Complainant's protected activity with their agency. These records confirm some of the Complainant's filing of safety and health and discrimination complaints with their state agency. (Exhibit 5 & 6) During coordination with Laura Seeman, MOSH discrimination investigator, on December 17, 1999, she admitted that she did not refer the Complainant under federal environmental laws when she filed her initial discrimination complaint because she (Ms. Seeman) did not know about the laws until attending a federal conference on discrimination.
5. The Complainant's allegations of discrimination were formalized in a written statement on January 3, 2000. (See Complainant's Statement and Addendum Exhibit 7, 14 & 15) She received, corrected and returned her signed formalized statement on January 12, 2000, along with her supporting records and other items. (Exhibit 7, 14 & 15, 21 thru 111)
6. [REDACTED], agreed to a telephonic interview under Protected Identity on February 1, 2000. [REDACTED]

P-557  
EX 7 (d)

Complaint: Baltimore City Public School System/Williams/3-0050-00-002



much. She could not stay there and the BCPSS found her another school. She left Fairmount-Hartford High School in 1995 or 1996. Since leaving she has talked to the Complainant now and then on the telephone and has visited her once. From talking with other teachers and employees at the BCPSS she heard that the Complainant got in trouble for speaking out and bringing in proof or evidence that they had lead in the water. This may have resulted in her suspension and later termination. She did not know for sure.

7. [REDACTED], refused a telephonic interview on February 1, 2000. Still employed by the BCPSS [REDACTED] did not want anything to be in the way of [REDACTED] finishing out [REDACTED] years at BCPSS and [REDACTED]. [REDACTED] and said that when you get involved with things like this sometimes it puts you in a bad spot. [REDACTED] indicated that what the Complainant was saying to this agency they all knew was true but [REDACTED] was too far down the line to get caught up in something.

8. [REDACTED] agreed to a telephonic interview under Protected Identity on February 3, 2000. [REDACTED]
- 

EX7C

9. [REDACTED] could not be located for an interview during numerous attempts to telephonically contact [REDACTED] between February 1, 2000 and February 3, 2000.

Analysis:

Protected Activity: 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, 2400 Mosher Street, Baltimore, Maryland 21216, Southeast Middle School, 6820 Fait 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 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 caused government agency inspections and investigations pursuant to potential violations of the EPA's regulations and statutes of the Clean Air Act, Solid Waste Disposal Act (42 U.S.C. § 6971), Toxic Substance Control Act, Safe Drinking Water Act, but not the Solid Waste Disposal Act. Her complaints with MOSH are documented in the records provided by that agency. (Exhibit 5 & 6) The Complainant also furnished substantial evidence of protected activity in the documents she provided. (Exhibit 22 thru 25, 27 thru 29, 30 thru 63, 64 thru 73, 75 thru 78, 82 & 84) The Complainant also engaged in additional protected activity during March 15, 1999 and December 4, 1999, by having filed several

## Complaint: Baltimore City Public School System/Williams/3-0050-00-002

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. (Exhibit 62, 73, & 82)

**Respondent's Knowledge:** The Complainant contends that she first reported her environmental complaint to management officials within the BCPSS and other city officials. (Exhibit 7 & 14) Her direct reporting of complaints and Respondent knowledge are also evident in complaints to city officials. (Exhibit 24 thru 28, 30 thru 36 & 77) Further documentation of Respondent knowledge can be presumed based on the nature of the complaint items in MOSH's Respondent notifications letters of the complaints. (Exhibit 42 & 78) 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 excerpts of these activities on videocassettes. (Exhibit 37, 110 & 111)

**Adverse Action:** The Complainant initially suffered an adverse action through suspension of employment without pay on March 8, 1999. She suffered an additional adverse action through termination of her employment on December 8, 1999. (Exhibit 21, 62, 73, 79 thru 82)

**Affirmative Defense:** 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. The Respondent's Representative, Brian K. Williams, Associate Counsel furnished a Designation of Representative form on February 4, 2000, with an additional follow up copy. (Exhibit 19) However, they furnished no other formal information concerning this discrimination complaint. While their potential defense can be inferred from their exceptions to the hearing examiners, recommendation, and information presented at the hearing, there is not 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 with regard to 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 formally respond to the discrimination complaint, instead expressing their desire to present their defense directly to a federal administrative law judge. (Exhibit 79 thru 81)

Complaint Timeliness: The Complainant 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. Through admission of the MOSH investigator the Complainant was not informed of her EPA Whistle Blower protections under federal law. On March 18, 1999, MOSH deferred the discrimination complaint pending the outcome of the Complainant's union grievance. (Exhibit 6, 62 & 64) On May 10, 1999, she filed a second discrimination complaint with MOSH alleging discrimination under state law. MOSH again deferred her discrimination complaint pending final grievance decision. MOSH allowed the Complainant 15 days from receipt of that grievance decision to reactivate her discrimination complaint. (Exhibit 73 & 75) On December 4, 1999, the Complainant filed her third discrimination complaint with MOSH. (Exhibit 82) The Complainant filed a fourth discrimination complaint on December 11, 1999, followed by a fifth complaint on December 15, 1999. (Exhibit 84 & 85) Review of the MOSH records obtained during the investigation reveal no indication that the Complainant ever received notification of her potential protection under federal law. She filed a timely written EPA Whistle Blower discrimination complaint with the adverse action of the BCPSS upholding her termination on December 8, 1999 and the discrimination complaint filing of December 14, 1999. (Exhibit 13 & 14)

Recommended Findings: 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, Solid Waste Disposal Act (42 U.S.C. § 6971), Toxic Substance Control Act, 15 U.S.C. § 2622 and Safe Drinking Water Act, 42 U.S.C. § 300j-9. (Exhibit 20) Based on the extensive efforts of the Complainant in filing discrimination complaints with MOSH and her not being advised of the Whistle Blower protections under federal law it is recommended that her Whistle Blower discrimination complaint be inclusive of her suspension adverse action of March 8, 1999.

Computation of Damages: The Complainant's damages computed from her suspension of March 8, 1999, through February 29, 2000, would include back pay and additional claims totaling \$42,642.11. For the period of March 8, 1999, through December 31, 1999, they totaled \$31,531.02. For the period of January 1, 2000, through February 29, 2000, they totaled \$9,153.52. Her additional claims totaled \$1,957.57. The Complainant's limited damages computed from her notice that BCPSS upheld her termination on December 8, 1999, through February 29, 2000, adjusted to 30 days before her discrimination complaint filing under federal law totaled \$18,205.06. For the period of November 15, 1999,

P-562

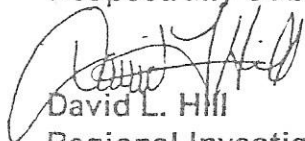
Complaint: Baltimore City Public School System/Williams/3-0050-00-002

though December 31, 1999, they totaled \$7,093.97. For the period of January 1, 2000, through February 29, 2000, they totaled \$9,153.52. Her additional claims totaled \$1,957.57. The Complainant had no Interim Earnings due to here not receiving a final dismissal notice until December 8, 1999, and she had not worked during her suspension and ultimate dismissal. Interest is based on the IRS Tax Underpayment Rate. Complainant remains unemployed and is diligently seeking comparable work. **(Exhibit Damages)**

Closing Conference: The Complainant and Respondent's attorneys received separate closing conferences on February 4, 2000.

Recommendation: Recommend merit findings on the Whistle Blower discrimination complaint and case closure.

Respectfully Submitted,



David L. Hill  
Regional Investigator