



STOLL BERNE REPORT TO THE
PORTLAND PUBLIC SCHOOLS BOARD
OF EDUCATION OF FINDINGS OF
INVESTIGATION

JULY 14, 2016

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I. INTRODUCTION AND SCOPE OF REPORT

This report is prepared in response to a request from the Portland Public Schools Board of Education (the Board) for Stoll Berne to conduct an investigation after elevated levels of lead in drinking water were reported at several schools in late May 2016. The Board charged Stoll Berne with:

- Reviewing current systems, procedures and protocols regarding water testing;
- Evaluating management of information internally relating to lead contamination; and
- Identifying system operational and personnel breakdowns.

The Board instructed Stoll Berne to complete its review and findings within 30 days. The Board announced the investigation on June 2, 2016. Stoll Berne was retained on June 7, 2016. Board Chair Tom Koehler later directed Stoll Berne to deliver this report on July 14, 2016.

II. EXECUTIVE SUMMARY

Testing for elevated levels of lead in drinking water by schools is voluntary, and is not regulated by state or federal law, although the Environmental Protection Agency (EPA) has issued best practices for voluntary testing by schools. For decades Portland Public Schools (PPS) has been under severe budgetary constraints. As a result, the Board and executive leadership have prioritized limited financial resources to matters of education over addressing PPS's decaying buildings and infrastructure. Of the funds devoted to maintenance and infrastructure, only a fraction has been allocated to health and safety issues. With those limited funds, PPS Operations has focused on health and safety issues regulated under state and federal law. Because testing and remediation for lead in water by schools is not regulated, it has gone predominantly unaddressed by PPS.

A. Current Systems, Procedures and Protocols

For the past fifteen years, PPS has had no established procedures or protocols for testing for elevated levels of lead in drinking water. A general set of practices developed after 2002, but those practices have not resulted in any consistently applied procedures or protocols for testing for lead in water. These general practices were not submitted to, and not approved by, executive leadership. Responsibility for overseeing testing of lead in drinking water has been placed with a single individual. No training was provided to the responsible individual.

PPS has, at times, been proactive in its efforts to ensure safe drinking water in its schools:

- In 2001, PPS conducted voluntary, District-wide testing of many drinking water sources, and in 2002 the District took steps to remedy sources that tested for elevated levels of lead;
- The District set a standard for the maximum acceptable lead level of 15 parts per billion (ppb). This standard is less than the EPA maximum recommended acceptable lead level for schools of 20 ppb.
- In 2011-2012, PPS's Facilities and Asset Management (FAM) hired a limited duration, part-time employee to conduct testing for lead in water at some schools. However, it appears that the testing practices implemented by that employee in 2011-2012 were inconsistent with testing practices otherwise used by the District; and
- In March 2016, before the events of May 2016, PPS committed \$450,000 to increased maintenance, which included funds to perform District-wide water quality testing over the summer of 2016.

As a general matter, however, PPS's activities between 2002 and 2016 relating to testing drinking water for lead were primarily reactive and performed in response to inquiries from parents or staff. The information we have reviewed indicates that the District was mostly responsive to those requests for testing. Communication with parents about testing has been inconsistent, however, and execution of the testing and remediation also has been inconsistent.

As detailed in this report, the District's *general* practices regarding lead in drinking water can be summarized as follows: A third-party contractor has been hired each year to replace existing water filters. The District does not test sinks in classrooms and has relied upon notices, posted on the PPS website and periodically published by newsletter to school principals, that classroom sinks should not be used as sources for drinking water unless flushed for 10 minutes or until the water is cold. There is no procedure for routine testing of drinking sources. Testing is conducted only in response to requests or complaints from concerned parents or staff. The Senior Manager of Environmental Health & Safety is responsible for testing. Where testing is performed, a 15 ppb standard is used as the maximum acceptable level of lead. Where a test reveals lead in excess of 15 ppb, a work order is placed to replace the fixture; the new fixture is tested after replacement; and, if testing of the new fixture continues to result in lead levels in excess of 15 ppb, a filter is installed. *However*, also as detailed in this report, there have been deviations from those general practices and errors in implementation. The District's records of remediation cannot be relied upon.

B. Internal Management of Information

For the past fifteen years, PPS has had no consistent procedures or protocols for internal management of information relating to elevated levels of lead in drinking water. Responsibility for testing and recordkeeping has been placed with one individual. There has been no “top down” management and no supervision in this area. Although test results have, in a very few instances, been provided to executive leadership, there is no process in place to inform leadership or to communicate to those affected when issues are identified. The combination of these factors has resulted in a lack of institutional knowledge. The District is largely unable to account for its activities and, in some cases, has reported inaccurate information.

After District-wide testing in 2001 and subsequent remediation efforts in 2002, a database was created to track each drinking water outlet that has been tested. However, that database was not consistently maintained and is not accurate or reliable. At any relevant time, only a very few PPS employees had any familiarity with the database. There was no supervision of the employees responsible for the database, and no ongoing procedure to audit or verify accuracy of the database. The individual with primary knowledge about the maintenance of the database from at least as early as 2009 through 2014 is deceased. As a result, it is unclear what remediation efforts were undertaken, whether those remediation efforts properly were recorded in the database, and whether those remediation efforts resulted in lead levels that were within the 15 ppb standard.

Internal and external communication of information relating to lead in water is important. EPA recommended best practices include “Telling students, parents, staff and the larger community about monitoring programs, potential risks, the results of testing and remediation actions.”¹

Internal communication of testing information at PPS was severely lacking. Although the Superintendent stated in interviews that she expected the Chief Operating Officer to bring these issues to her attention as necessary, and the Chief Operating Officer also stated by interview that he expected to be notified of issues of elevated lead levels in drinking water, there was no system in place for internal communications or reporting of testing information.

External communication of testing information was inconsistent. The expected practice was for the Senior Manager of Environmental Health & Safety to communicate with the initiating parents, without involvement of administration, and for the Office of Communications & Public Affairs to communicate more broadly to the school community jointly with the Senior Manager of Environmental Health & Safety. However, these expected practices were not

¹*Drinking Water Best Management Practices for Schools and Child Care Facilities Served by Municipal Water Systems* at 7.

always followed. For example, some testing activities were communicated to parents and school staff, but many were not. With respect to media communications, in one significant instance, the former Chief of Communications & Public Affairs knowingly provided incomplete excerpts of the water testing database to the *Willamette Week*.

PPS communicates some water quality information through its website. However, the website information is misleading and inaccurate. For example, before the events of May 2016, information about lead in water testing and results available on the website related predominantly to the testing and remediation that occurred in 2001 and 2002. That information, which is still available on the PPS website as of the date of this report, states that “PPS has tested each drinking fountain in the district and replaced those that were found to be contributing lead in water” and that “[t]he school district has tested the sinks and fountains at all schools In some cases, the tests detected lead levels above the acceptable standard. PPS changed out all fixtures and installed filters where needed on drinking fountains, rendering the water in those drinking fountains safe – without flushing.” These statements suggest that all drinking water sources in the District are safe. Moreover, they imply that periodic retesting of water sources is unnecessary, when, in fact, the EPA explicitly recommends periodic water testing. As is now known, recent testing in 2016 has identified elevated lead levels at many PPS facilities, and continued testing is likely to identify more. Beginning in late May of this year, PPS has been providing updates on its website as it obtains additional information, but between 2002 and May 2016, external communications to the community were lacking.

C. System Operational and Personnel Breakdowns

Our investigation was focused on lead in water issues, which are a small portion of the overall job duties of the responsible personnel. It may not be fair to evaluate these personnel based solely on their performance in this area, and we are not in a position to evaluate their overall job performances. During our investigation the individuals employed by PPS that we encountered were well-intentioned, sincere and forthcoming. Each PPS employee we interviewed appeared committed to the safety, welfare and well-being of the students and staff at PPS facilities. We found no indication that anyone intended harm or to neglect his or her job duties. Moreover, as of the date of this Report, Multnomah County’s Public Health Department reports that drinking water has not been identified as the source for elevated lead in the blood of any county resident.

As is set forth in detail below, however, there were a series of operational gaps between 2001 and May of 2016 that reflect systemic breakdowns. Those include:

- Lack of any lead in water testing and remediation protocols from 2001 to the present, including established, approved procedures to take action when elevated levels of lead are detected in drinking water;
- No supervision, training or monitoring of PPS Health & Safety Personnel directly tasked with overseeing the District’s “Lead in Water Program”;
- Failure to maintain an updated or accurate database regarding fixtures and faucets that have tested positive for excessive levels of lead in drinking water;
- Ineffective communication of the District’s policy that classroom sinks are not to be used for drinking water, and a decision by FAM in 2012 to *not* label classroom sinks District-wide as unsafe for drinking;
- Inaccurate or inadequate communication of test results and remedial actions taken at Creston and Rose City Park (RCP) Schools to parents, administration and staff;
- Ineffective or inconsistent measures to restrict access to drinking water sources between the time that testing revealed excessive lead levels and the time that repairs are completed;
- An absence of diligent inquiry by PPS individuals in the upper levels of administration hierarchy regarding PPS’s procedures and protocols for lead in water testing remediation before March 2016; and,
- An absence of diligent inquiry by PPS individuals in upper levels of administration hierarchy regarding PPS’s procedures for lead in water testing and remediation *after* March 2016, when District-wide lead in water testing had been added to the PPS budget and the Chief Operating Officer, the Chief of Staff and the Superintendent were all on notice that lead in water testing was occurring at one or more PPS schools.

III. INFORMATION OBTAINED IN INVESTIGATION

Our investigation included fourteen interviews, meetings with five Board members, and review of thousands of documents.

A. Interviews

Between June 7, 2016 and June 29, 2016, we interviewed:

- **Erin Barnett:** Senior Manager/Family & Staff Communications, PPS
- **Nick Fish:** Commissioner, City of Portland

- **Andy Fridley:** Senior Manager of Environmental Health & Safety, PPS
- **Kathleen Harris:** Field Technician, Environmental Health & Safety, PPS (October 2011- July 2012)
- **David Hobbs:** Senior Director of Facilities & Asset Management, PPS
- **Conrad Hurdle:** Principal, Creston Elementary School, PPS
- **Sarah Jones:** Assistant Principal, Beverly Cleary School at RCP, PPS
- **Kristie Lindholm:** Principal, Rigler School, PPS
- **Tony Magliano:** Chief Operating Officer, PPS
- **Jollee Patterson:** General Counsel, PPS
- **Carole Smith:** Superintendent, PPS
- **Herb Wagner:** Safety and Hazmat Coordinator, PPS
- **Amanda Whalen:** Chief of Staff, PPS
- **David Wood:** Principal, ACCESS Academy at RCP, PPS

For each interview, the witness appeared voluntarily and was cooperative. No witness refused to answer any question. All interviews were conducted in person, with the exception of Ms. Harris, who lives out of state and was interviewed by telephone. Mr. Magliano, Mr. Fridley and Ms. Whalen were interviewed on two separate occasions. Mr. Magliano and Ms. Smith appeared with their personal counsel. Ms. Whalen also appeared with personal counsel at her second interview. Other than Stoll Berne attorneys Steven Berman and Tim DeJong, and paralegal Angelene Falconer, no other person attended any interview.

We offered to meet with each of the seven Board members at the outset of our investigation. On Sunday, June 5, 2016, Tim DeJong and Steven Berman met with Chair Tom Koehler, Vice Chair Amy Kohnstamm and Board Member Mike Rosen. During the week of June 6, we met, individually, with Board members Paul Anthony, Pam Knowles and Amy Kohnstamm; we also spoke by telephone with Board Member Mike Rosen and had a second, short follow-up call from Board Member Paul Anthony. Board members Steve Buel and Julie Esparza Brown did not meet with us. After those initial meetings, we had no further

interaction with any of the Board members, with the exception of Chair Koehler.² Over the course of our investigation, we had periodic check-ins with Chair Koehler (primarily by telephone) to update him on the progress of our investigation and the costs and fees incurred.

Employee interviews were coordinated by Rosanne Powell, Senior Manager, Board of Education, PPS. Board member meetings were coordinated by Chair Koehler and Ms. Powell.

B. Documents

Over the course of our investigation, we requested and obtained approximately 15,000 documents from PPS. These included:

- Emails and documents responsive to 12 targeted keyword searches on the PPS email system/server (including archived emails);
- Fourteen additional document searches encompassing public records request responses to news media outlets, personnel files, employee job descriptions, organizational charts, maintenance records, and Board materials;
- Emails provided by Board members;
- Emails and documents provided by Kathleen Harris; and
- Emails and documents received from PPS parents, teachers and community activists.

PPS human resources and information technology staff diligently helped us obtain the information that we requested and were helpful and responsive to all of our inquiries. We believe that we were provided with all of the documents and information we requested within PPS's possession, custody or control.

PPS's electronic archiving system somewhat restricted the information we could obtain. PPS's email retention policy provides that PPS will archive emails for three years. While PPS did have emails responsive to our requests on its server that are older than three years, by its own policy PPS was under no obligation to retain those emails. Before we began our investigation, we were notified that PPS could not search emails prior to July 2011, because prior to July 2011, PPS used a different email archiving system. Before we began our investigation, we also were notified that PPS did not archive emails for the week of May 16, 2015 through May 25, 2015. PPS also did not archive emails between October 22, 2012 and

²Steven Berman and Board Member Paul Anthony did see each other at a North Portland supermarket on June 11, 2016. They said hello to one another, but did not discuss this investigation or any issues relating to PPS.

October 29, 2012, a fact which was discovered only during our investigation. We do not believe these limitations detrimentally affected our ability to conduct our investigation.

IV. LIMITS ON INVESTIGATION

Our investigation was limited by two significant factors:

A. Time and Budget

The Board provided us with both a limited duration to complete the investigation (30 days) and a limited budget. As a result, we lacked both the time and the resources to delve into all relevant facts and interview in depth all witnesses with knowledge potentially material to our investigation. We do not believe these constraints affected our factual findings; however, had we been provided more time and resources to investigate, we may have uncovered additional facts that would assist the Board in its decision making.

B. Witness Unavailability

Three witnesses with material information were not available to be interviewed.

Patrick Wolfe was the Senior Manager of Environmental Health & Safety at PPS until Andy Fridley took over the position in April 2014. Mr. Wolfe passed away in April 2016.

Jon Isaacs was the Chief of Communications & Public Affairs at PPS. Mr. Isaacs joined PPS in 2013. He left PPS in April 2016 to work for Uber. Mr. Isaacs responded to our first request for an interview by voicemail, indicating that his schedule would not allow for an interview at the times initially requested. Mr. Isaacs did not respond to our offer of additional interview times and further efforts to schedule an interview.

Pam Brown was the Director of Facilities at PPS in 2001 when District-wide lead testing was first conducted and subsequent remediation efforts were undertaken. We repeatedly requested that Ms. Brown meet with us for an interview, but she declined to do so.

The Superintendent's office was helpful in putting us in touch with both Ms. Brown and Mr. Isaacs. There is no indication that PPS should be faulted for the unavailability of those two witnesses. We believe their non-cooperation was of their own choosing.

V. ISSUES NOT WITHIN SCOPE OF OUR CHARGE THAT MAY IMPACT THE BOARD'S ANALYSIS

During the course of our investigation, most of the PPS employees we spoke with raised a number of issues that were not within the scope of our charge. The employees felt these issues should be considered by the Board as part of its analysis. We mention them here to again emphasize that our charge was limited, and that our investigation provides only a snapshot of the much larger challenges facing PPS and, in particular, its Operations, FAM and Health & Safety Departments. We emphasize that these issues are the comments of the employees we interviewed, and it is not within our charge to evaluate them. These issues include:

- Chronic underfunding of PPS facilities, which has resulted in decades of deferred maintenance at those facilities.
- PPS's decision, in 2002, to outsource custodial jobs (a decision PPS was later forced to reverse), which resulted in the loss of historical knowledge about PPS facilities by those tasked with the upkeep of those facilities on a daily basis.
- High turnover and vacancies in PPS administration and, in particular, FAM, which has resulted in both a loss of institutional knowledge and existing employees being tasked with obligations outside of their job descriptions, qualifications and skill sets.
- A Board consisting of a majority of newly elected members who are still in their first terms. As news of the lead in water issues broke in late May, Board members appeared to challenge staff, and to provide sensitive information to the news media, even as staff diligently was working to find answers as to what had transpired and keep both the Board and the public informed. Many employees interviewed believed this significantly interfered with the District's ability to provide a concerned public with swift and accurate information. These employees believe that individual Board member demands and actions may well have delayed a coordinated and effective response to the public.

VI. PPS ORGANIZATIONAL STRUCTURE

Because our charge includes identifying operational and systemic breakdowns, a brief description of PPS's organizational structure is useful. We were provided with an organizational chart for PPS dated November 30, 2015 and informed that a more current organizational chart for the District is not available. Operations, however, did provide us with an organizational chart updated as of February 2016. The first page of the November 30, 2015 PPS organizational chart

and relevant pages of the February 2016 Operations organizational chart are attached to this report as Appendix 1.

At the top of the chart is the Board of Education. The primary purpose of the Board is to serve in an advisory role, and not intervene in the day-to-day matters of the District. The Board's three primary functions are to hire a Superintendent, approve a budget and determine the long-range priorities of the District.

Directly below the Board is the Superintendent. She is the chief administrative officer of the District. As of November 2015, ten administrative employees with departments were directly overseen by the Superintendent. Two that are relevant here are Operations and Communications & Public Affairs.

What is currently Communications & Public Affairs has gone through a series of permutations in the past decade. Robb Cowie was hired and began working as the Director of Communications and Community Engagement effective May 14, 2008. The central office was then reorganized; Mr. Cowie began reporting directly to the Superintendent effective July 1, 2009 and his position title was changed to Executive Director of Community Involvement of Public Affairs. Mr. Cowie held that position until he resigned. His last day of work was February 4, 2014.

Jon Isaacs was hired as a Senior Policy Advisor with a start date of January 14, 2013. He was in the department called "Chief of Staff" (along with Amanda Whalen), and reported directly to the Superintendent. Mr. Isaac's position was reclassified effective February 1, 2014, to Chief of Communications & Public Affairs (replacing Mr. Cowie). Mr. Isaacs resigned effective April 21, 2016.

The Chief of Communications & Public Affairs position has been vacant since Mr. Isaacs resigned. The Superintendent's Chief of Staff, Amanda Whalen, has temporarily assumed responsibility to oversee Communications & Public Affairs until the position is filled.

Operations has five separate departments, one of which is Facilities and Asset Management. Within FAM are three additional departments, one of which is Facilities Operations. Health & Safety is one of five sub-divisions under Facilities Operations.

Tony Magliano has been the Chief Operating Officer at PPS, in charge of Operations, since March 2014. From January 2013 through March 2014, he was Deputy Chief Operating Officer. From July 2012 through January 2013, he was Interim Deputy Chief Operating Officer. From January 2010 through July 2012, he was director of Facilities. Before January 2010, Mr. Magliano was the Assistant Director of Facilities and Maintenance. Mr. Magliano's direct

predecessor as COO was Constance Sylvester. Ms. Sylvester was COO from August 2009 through March 2014.

David Hobbs became Senior Director of FAM in June 2015. According to the information provided to us by PPS, that position did not exist before Mr. Hobbs was hired.

Tom Adams worked in Facilities Operations from July 2010 through April 2015. Mr. Adams initially was hired as Assistant Director of Operations. He became Director of Facilities Operations on January 11, 2012. He held that position until he was placed on leave effective April 30, 2015. He resigned on June 22, 2015.

Patrick Wolfe became the Senior Manager of Health & Safety on August 1, 2009. Although there were title and reporting structure changes in the interim, he remained in that role until he resigned effective April 1, 2014. Andy Fridley became the Senior Manager of Environmental Health & Safety in late April 2014. The Director of Facilities Operations position has been vacant since Mr. Adams' June 2015 resignation, and Mr. Fridley has been filling that role on an interim basis (in addition to his primary job) since October 2015.

VII. TIMELINE OF KEY EVENTS

There are several time periods and events that are significant to this report. They are discussed below and in more detail (as appropriate) in the following sections of this report. We do not address every event that has occurred or that has been mentioned in media stories. Rather, our focus here is on events that are pertinent to the charge given to us by the Board.

2001-2002: Lead in Water Testing and Remediation

In July, 2001, PPS began District-wide testing of water in schools for lead and copper. At that time, PPS reports to have tested all drinking water. During that testing, PPS learned that many schools had at least one drinking fountain that tested over the EPA-recommended action level of 15 ppb. In August 2001, PPS also notified parents of the testing and committed to remediating all drinking fountains, so that they would not exceed the recommended EPA action level for lead. PPS reports that it turned off all drinking water faucets until testing and remediation were concluded. The results of that testing were posted on the PPS website, along with a letter to parents and other information about testing and PPS's remediation plans. That information has remained on the PPS website through the date of this report. We attempted to verify the accuracy of this information through Ms. Brown, but she declined our requests.

2002-2011: No Active Lead in Water Testing or Protocols

Between 2001 and 2011, it is unclear what testing protocols or remediation efforts, if any, were employed by PPS. Our investigation found little information or historical knowledge on the behalf of PPS regarding whether any formal procedures or protocols were in place. We have anecdotal evidence from witness interviews that sporadic testing may have occurred in response to parent or staff requests, and that testing also would occur after construction. At some point before or at the beginning of this time period, a database was created to monitor the lead in water testing and remediation that had occurred in 2001. Data was entered into the database for other time periods.

2011-2012: Health & Safety Undertakes Some Limited Testing

In 2011, Patrick Wolfe, who was then the Senior Manager of Health & Safety, hired Kathleen Harris as a limited term, part-time employee. Ms. Harris' job was to take water samples throughout the District and provide lab results for water quality. Ms. Harris was employed by PPS from October 2011 through July 2012. Ms. Harris conducted tests of fountains, and occasionally sinks, at approximately 90 PPS schools. Ms. Harris' testing procedures did not follow EPA-recommended procedures or the procedures followed by other PPS employees at other times. Ms. Harris recommended that the District take certain remedial actions for certain sinks and fountains after test results were returned. Ms. Harris performed her work under the supervision of Mr. Wolfe. At the end of her employment, Ms. Harris entered data she had obtained from her tests into the database that had been created to track lead in water testing and remediation. It is not clear whether she completed the data entry. It appears that at least some of the remedial actions that Ms. Harris recommended were not taken. None of the PPS personnel that we interviewed was more than vaguely aware of the work that Ms. Harris performed at the time.

October 2012: Stickers for Some Sinks at Rigler School

In October 2012, in response to a parent's concern that students were drinking from sinks, stickers were placed over certain sinks at Rigler School. The stickers stated: "Do not drink the water from this sink. Please use the drinking fountain." The language on the stickers was approved by PPS General Counsel. PPS Communications then designed stickers for District-wide distribution, to be placed on all sinks. A decision eventually was made, apparently by Mr. Wolfe (and possibly Mr. Magliano), not to deploy the stickers District-wide.

April 2014: Andy Fridley Becomes Senior Director of Environmental Health & Safety

In April 2014, Andy Fridley took over Mr. Wolfe's position. He received no guidance or training. Although Mr. Fridley had assisted in the creation of the

database in approximately 2001 or 2002, he did not have any involvement in or responsibility for entering data into the database before April 2014. He also was not involved in water testing before April 2014. When Mr. Fridley took over the position, he continued to use the basic practices that were established by Mr. Wolfe.

March 2015: Willamette Week Receives Incomplete Information

On March 2, 2015, in response to a public records request, Jon Isaacs provided to Beth Slovic of *Willamette Week* a report generated from the database that had been created to track lead in water tests at all Portland Public Schools. As is discussed elsewhere in this report, the database was flawed, and the report Mr. Isaacs provided was incomplete. Mr. Isaacs provided that report to *Willamette Week* without first discussing it with Mr. Fridley or Mr. Magliano, and knowing the report to be incomplete, which led to subsequent confusion about the information in the report. We were not able to locate any communications to PPS from Ms. Slovic about the report after she received it in March 2015 or any story published by *Willamette Week* concerning that report until May 2016.

January and February 2016: Testing at Lewis and Skyline Schools

In January 2016, in response to a request from parents, all of the drinking fountains at Lewis School were tested. None of the tests indicated lead levels in excess of the 15 ppb standard. The principal was notified.

In February 2016, in response to a request from a parent, sinks in classrooms at Skyline School were tested for lead in water. Two sinks in a science room exceeded the District's maximum acceptable lead level of 15 ppb. The parent who requested the testing was notified. Mr. Fridley reports that the principal also was notified. Those sinks were labeled as not appropriate for drinking, and no further remediation actions were taken.

March 2016-May 2016: Testing at Creston and Rose City Park Schools

In March 2016, over spring break, PPS conducted lead in water testing at Creston and Rose City Park (RCP). The testing was undertaken in response to requests from parents at the two schools. Those requests came in late February 2016 (at Creston) and early March 2016 (at RCP).

Creston

Initial testing at Creston involved only spot checks of drinking fountains and sinks. The requesting parents selected the initial ten sinks and fountains that were tested. Test results were received on Thursday, March 31, 2016, and indicated that the water in three sinks and one fountain exceeded the 15 ppb level. On Friday, April 1, Mr. Fridley placed an emergency work order (the highest level of priority)

to have the sink and drinking fountain faucets replaced and a filter added to the drinking faucet. On Sunday, April 3, 2016, Mr. Fridley notified the Creston principal of the results. Those repairs were not completed until April 11, 2016. The water sources were not shut off, and access to those sources was not prevented during that time period. No signs were placed at or over the water sources indicating that they should not be used for drinking water.

On April 16, 2016, after the initial round of testing and remediation at Creston was completed, Mr. Fridley notified the parents at Creston who had requested the testing of the results and the remediation efforts that had occurred. The parents then requested that the entire school be tested. Testing of all drinking fountains and classroom sinks was conducted during the week of April 18, 2016, and results were reported on Friday, May 10, 2016. Those test results showed that all 12 drinking fountains met District standards of less than 15 ppb, but four of 38 sinks tested, including a kitchen sink, exceeded the 15 ppb standard. On Monday, May 16, Mr. Fridley placed a “high” work order (the second highest level of priority) to replace the sink fixtures. The replacements were reported as completed by May 18. However, a miscommunication regarding which kitchen sink required replacement resulted in the sink that had tested over 15 ppb not being replaced as part of that work. The water sources were not shut off and access to those sources was not prevented during testing or remediation. No signs were placed at or over the water sources indicating that they should not be used for drinking water.

Rose City Park

At RCP, all drinking fountains and sinks in classrooms were tested over Spring Break (March 21, 2016 – March 25, 2016). Test results came back on Thursday, March 31, 2016. Those results showed two drinking fountains and six sinks that exceeded the 15 ppb standard. On April 1, Mr. Fridley placed an emergency work order to replace the faucet fixtures on the two sinks and the bubblers for the two drinking fountains. On Sunday, April 3, 2016, Mr. Fridley notified the parent who had requested the testing, the principals at the school (David Wood and Sarah Jones) and his supervisor, David Hobbs, of the test results. Mr. Fridley stated that remediation for the fountains and two of the sinks would begin immediately and that they all would be posted as “out of order” until the drinking sources re-tested at acceptable levels. Mr. Fridley also stated that four of the sinks, which were in science classrooms, would permanently be posted as not suitable for drinking. The repairs were not completed until April 11, 2016. It is unclear whether any or all of those drinking sources or science room sinks were posted as “out of order” or otherwise signaled as not suitable for drinking. Mr. Fridley stated during his interview with us that the sinks were posted (and that he so confirmed with Mr. Wagner). Mr. Wagner confirmed during our interview that the sinks were posted as not suitable for drinking. Mr. Magliano also stated during our interview that he confirmed (through Mr. Fridley) that the sinks had been posted. However, we have also been informed that parents and staff have reported

that some or all of the sinks were not posted. None of those drinking sources was shut off, and access to them was not prevented.

During our interviews with Mr. Fridley, and in a subsequent communication he sent to us, Mr. Fridley stated that in early April, after he received the test results from Creston and RCP, he contacted both Sarah Messier, a water quality program specialist at the Portland Water Bureau, and Perry Cabot, a program specialist with Multnomah County's lead poisoning prevention program. Mr. Fridley stated that neither expressed strong concern over the initial test results. Ms. Messier confirmed that she was contacted by Mr. Fridley, but that she did not state one way or another whether the lead levels reported in the tests at RCP and Creston were hazardous. Mr. Cabot does not recall having any such conversation with Mr. Fridley.

March 2016: Adding District-Wide Testing to the Budget

Almost concurrently with, but independent of, parental requests for testing at Creston and RCP, in mid-March, PPS administration began to consider undertaking District-wide lead in water testing.

Mr. Fridley recalls having a meeting before the Creston and RCP testing at which he discussed with Mr. Hobbs and Mr. Magliano a need for District-wide testing in light of news reports regarding the events in Flint, Michigan. Mr. Magliano denies that Mr. Fridley suggested District-wide testing and, in fact, told us that Mr. Fridley viewed routine follow-up testing as unnecessary. Documents show that, on March 15, 2016, Mr. Fridley requested a meeting with David Hobbs (Mr. Fridley's direct supervisor) and Tony Magliano (Mr. Hobbs' direct supervisor) "to discuss past water testing and plans for the future." This provides some corroboration for Mr. Fridley's version of events.

On March 21, 2016, City Commissioner Nick Fish (who heads the Portland Water Bureau) called Superintendent Carole Smith and encouraged the Superintendent to "get on top of" the lead in water issues. Superintendent Smith then asked Chief of Staff Amanda Whalen to inquire regarding PPS's current practices for sampling for lead in drinking water. Ms. Whalen met with Mr. Fridley and requested a budget for District-wide testing. Mr. Fridley informed Ms. Whalen that testing was scheduled for RCP and he would find out the cost of that testing. In a follow-up email that same day, Mr. Fridley told Ms. Whalen that test results were expected by April 2, 2016. The upcoming testing at Creston was not discussed in the communications between Ms. Whalen and Mr. Fridley. Mr. Magliano and Mr. Hobbs were copied on that email. Ms. Whalen forwarded that email to Superintendent Smith.

During the week of March 21, Commissioner Fish had contacted all school district superintendents in Multnomah County to convey the same message. He reports that Superintendent Smith was very responsive. After his initial call to

Superintendent Smith, Commissioner Fish and Superintendent Smith engaged in a series of conversations over the following week. On March 29, 2016, the Superintendent provided to the Board a proposed budget for 2016-17. The proposed budget included a \$450,000 increase for maintenance, which would include District-wide water quality testing. The Board approved the budget on May 24, 2016.³

May 25-June 2, 2016: Communications to the Public

On May 25, 2016, PPS Communications & Public Affairs sent an email to Creston families and staff regarding the lead in water testing that had occurred at Creston. The email contained erroneous information (discussed below). The erroneous information was drafted by PPS Communications & Public Affairs and was not presented to FAM staff for review prior to distribution. On May 25, 2016, PPS Communications & Public Affairs also sent an email to RCP families and staff regarding the lead in water testing that had occurred at RCP.

On May 26, 2016, the news media reported that water at Creston and RCP had tested for elevated levels of lead. On May 27, 2016, the news media reported that the water sources that tested high for lead in water had not been shut down during remediation and subsequent testing. That afternoon, PPS sent a district-wide email to PPS families and staff, discussing the testing at Creston and RCP and acknowledging that access had not been prevented to the water that tested positive for excessive lead levels during the remediation period. That evening, PPS sent a second District-wide email to families and staff, stating that drinking fountains immediately would be shut down in all District buildings; bottled water would be provided for the remainder of the school year; and all fountains, sinks and fixtures would be tested throughout the District and would be removed from service until lead levels fall within the District's 15 ppb standard.

On May 31, 2016, *Willamette Week* published an article stating that PPS had provided *Willamette Week* with testing results that showed elevated levels of lead in drinking water at 47 district buildings, dating back to 2012. *Willamette Week* wrote that PPS officials were not aware of those test results or what actions were taken in response to the test results.

³Based on our interviews with Commissioner Fish, Superintendent Smith, Amanda Whalen, Tony Magliano, and Andy Fridley, we do not believe there is any correlation between Health & Safety conducting the tests at Creston and RCP over Spring Break in March 2016 and funding for District-wide testing being added to the budget. We note that the funding was added to the budget for lead in water testing on March 29, 2016 and the initial test results from Creston and RCP were not received until March 31, 2016.

VIII. CURRENT PROCEDURES AND PROTOCOLS REGARDING WATER TESTING

Currently PPS has no established procedures or protocols regarding testing drinking water for excessive lead content. Testing is not conducted as a routine, preventative matter. Certain *ad hoc* practices have developed. Testing has been disfavored. Testing generally is conducted only in response to parent or staff requests. In most instances, only the minimum testing necessary to address the request is performed. Where testing is performed, the standard for unacceptable levels of lead in water is set at 15 ppb, which is more conservative than the 20 ppb standard that the EPA recommends that schools employ.

The Senior Manager of Environmental Health & Safety is responsible for monitoring water quality. Since April 2014, Andy Fridley has occupied that position. Mr. Fridley took over that position from Patrick Wolfe. Mr. Wolfe was in that position from 2009 to April 1, 2014. Mr. Wolfe, who is deceased, appears to have established many or all of the *ad hoc* practices.

Among the duties specified in the job description for Senior Manager of Environmental Health & Safety are:

“Assess, revise and oversee the Facilities and Asset Management staff implementation of **the District’s ... Lead in Water Program ...**”

Manage the development, deployment and maintenance of databases to document and index environmental health and safety training issues, including ... **water quality....**”

(Emphasis added).

During their interviews as part of this investigation, Mr. Fridley, Mr. Hobbs and Mr. Magliano all acknowledged that PPS has no formal “Lead in Water Program.” When Mr. Fridley took over as Senior Manager of Environmental Health & Safety, he did not receive any information about monitoring or remediation for excessive lead in water. According to Mr. Fridley, the transition amounted to Mr. Wolfe providing him with a list of filters that had been installed under Mr. Wolfe’s direction but not entered into the database.

Mr. Fridley acknowledges that overseeing the District’s “Lead in Water Program” and maintaining the water quality “database” have been within his job responsibilities since April 2014. Mr. Fridley cannot be faulted for testing conducted before April 2014, or the state of the database before April 2014. There has been only limited testing conducted during Mr. Fridley’s tenure. To the best of our ability to confirm, Mr. Fridley initiated testing at DaVinci (January 2015), Lewis (January 2016), Skyline (February 2016), Creston (March 2016) and RCP

(March 2016). On the other hand, Mr. Fridley did learn of errors in the database and did not alert his superiors as to those errors.

Mr. Fridley has no formal training in the field of lead in water and there was no approved program in place at the time he became Senior Manager of Environmental Health & Safety. Mr. Fridley learned “on the job” by conducting internet research and looking at what PPS had done in the past. Mr. Hobbs and Mr. Magliano also have no training or specific background regarding lead in drinking water. From our investigation, it appears that no one in PPS’s Operations department, from Mr. Magliano down, has any formal training addressing lead in water or water safety issues.

Mr. Fridley’s water quality oversight has been influenced by three criteria. The first is the District’s stated policy that, with the exception of kitchen sinks, only water fountains should be used as sources of drinking water. This policy was put in place before Mr. Fridley assumed the role. The second is that fountains that met EPA standards after the 2001 testing and remediation did not need to be retested. The third is that the District annually installs filters, through a third-party contractor, on drinking fountains, which Mr. Fridley believed should protect against excessive levels of lead in drinking water. This practice was also established prior to Mr. Fridley’s tenure. Mr. Fridley relied on information he had obtained from Patrick Wolfe, the District’s website and EPA guidance documents as the bases for these criteria.⁴ There is no record of Mr. Wolfe’s decision-making rationale.

The District has made some efforts to notify the parents, students and staff not to drink from sinks in classrooms. Since at least 2013, a statement entitled “Water Quality in Schools: Safe Drinking Water Practices in Our Schools” has appeared on the District’s website. That statement provides: “Portland Public Schools asks students and staff not to drink from the sinks in our classrooms.” At various times, at least through 2012, Patrick Wolfe also sent school principals a reminder in an email newsletter that classroom sinks should not be used as sources for drinking water. However, there appears to be widespread agreement that this has not been effective. During the interviews we conducted as part of our investigation, Mr. Fridley and Mr. Magliano acknowledged that this was not an effective means to communicate that people should not drink water from classroom sinks. Moreover, we received multiple emails from parents and staff stating that they were unaware that the District advised that people should not drink water from classroom sinks.

⁴The two EPA guidance documents Mr. Fridley relied on most extensively are *The 3Ts for Reducing Lead in Drinking Water in Schools* and *Drinking Water Best Management Practices for Schools and Child Care Facilities Served by Municipal Systems*.

The District did not require retesting after the District-wide 2001 testing and subsequent remediation. The EPA's *Drinking Water Best Management Practices* guidance document states: "Water quality changes over time and it is important to make sure that the water in your facility remains free of lead. Periodic retesting of fixtures is recommended."⁵ As the recent testing at RCP and Creston (and more recent testing District-wide) reveal, without periodic retesting, it is not possible to detect when fixtures that had been "cleared" 15 years ago may again exceed acceptable levels of lead in water.

Since at least 2011-2012, when Ms. Harris conducted some routine follow-up testing, the District has had no practices for retesting drinking water sources. Testing has occurred only in response to parent or staff requests. Mr. Fridley explained that when he initially received a parent or staff request, he would direct the requesting party to the 2001 test results and advise the requesting party that filters on drinking fountains were replaced annually. If the requesting party continued to request testing, Mr. Fridley would encourage spot testing of select drinking fountains. School-wide testing – such as what occurred at RCP – would happen if the requesting party was persistent.

We have confirmed that the District has a contract to annually replace filters on water fountains. When Mr. Fridley took over as Senior Manager of Health & Safety in April 2014, he re-ordered the same filters that his predecessor had ordered, Pentair CFB-PB10 filters. (The Senior Manager of Health & Safety is responsible for ordering the filters, but they are installed by the third-party contractor). However, as has been reported in the news media, the CFB-PB10 filters are not certified "lead reducing" filters. Mr. Fridley asserts that the filters have, in fact, been effective in reducing lead levels because each fountain that has been remediated under his tenure with a CFB-PB10 filter has retested below 15 ppb. Moreover, the CFB-PB10 filters are substantially more cost effective than "lead reducing filters." In other words, from Mr. Fridley's perspective, the CFB-PB10 filters work, and are within the budget provided to his department. We lack the expertise required to opine regarding the sufficiency of the CFB-PB10 filters. However, in late May 2016, PPS made a decision to replace all existing filters with certified "lead reducing" filters and to use those filters going forward. We have been provided with some evidence – emails from parents, teachers and school administrators – that the existing CFB-PB10 filters clog and are not quickly replaced. Although we lack expertise in this area, clogging does not appear to present a risk for increased lead levels in the water, but rather is a maintenance issue. We also have received reports that the existing filters have not been replaced annually at all fountains. Due to time and budgetary constraints, we have been unable to confirm these reports.

⁵*Drinking Water Best Management Practices* at 11.

As became apparent during our interviews and review of documents, between 2001 and March of 2016, no one in the District hierarchy above the Senior Manager of Health & Safety devoted any substantive attention to “lead in water” issues. It was not an issue that the Board, the Superintendent, the Chief Operating Officer, the Director of FAM or the Facilities Operations Manager considered. The “Lead in the Water Program” apparently was added to the Senior Manager of Health & Safety job description and then not given any further thought.

IX. MANAGEMENT OF INFORMATION INTERNALLY REGARDING WATER TESTING

PPS had no effective internal management of information relating to lead in water. This lack of management over information ultimately led to *Willamette Week* receiving an incomplete printout of an inaccurate database in February 2015, which, in turn, resulted in incomplete and inaccurate communications to the Board, the news media and the public regarding lead in water testing, results and remediation at PPS buildings.

After the 2001 water quality testing, PPS posted the testing results on its website. Andy Fridley, who at that time was a data analyst with PPS and not part of the Health & Safety team, helped create a database to track the testing results and remediation efforts undertaken. However, after the database was created, Mr. Fridley was not responsible for maintaining the database or entering data into the database. Responsibility for maintaining the database eventually fell primarily on Patrick Wolfe. As test results came back and remediation efforts were completed, data may or may not have been entered into the database by Mr. Wolfe. PPS Health & Safety employees Herb Wagner and Joel McCarthy also may have entered information into the database from time to time. However, before 2012, consistent and accurate upkeep of the database did not appear to be a primary concern of the Senior Manager of Health & Safety, or of anyone else within Facilities Operations or higher up in FAM or Operations.

Some inconsistencies in the database seem to have occurred as the result of well-intentioned work performed by Kathleen Harris. Ms. Harris was a limited term part-time employee with PPS in 2011 and 2012. In 2011, she received a Masters of Public Health in Environmental Health Science from the University of California at Berkeley. In July of 2011, Ms. Harris wrote Mr. Magliano, requesting all lead test results for water sources for PPS over the past ten years as part of a research project she was conducting. Mr. Magliano forwarded the request to Mr. Wolfe. Mr. Wolfe provided the database to Ms. Harris. Ms. Harris visited one of the schools listed on the database. She noticed that there were fountains at the school that were not identified on the database, and that it appeared that filters on some of the fountains had not been recently changed. Ms. Harris told us that until that time, Mr. Wolfe had been under the impression that the 2001 database was complete. Mr. Wolfe hired Ms. Harris to conduct lead in water testing at all PPS schools to fill in the missing gaps from the 2001 database.

Ms. Harris adopted a testing plan that covered some, but not all, of the fountains at PPS. During our interview, Ms. Harris told us that she wanted to test all drinking fountains and sink faucets, but that Mr. Wolfe discouraged testing sink faucets. Ms. Harris adopted the following approach.

- If a drinking fountain had not been tested during the 2001-2002 testing, it would be tested.
- If a drinking fountain tested well within acceptable levels (below 15 ppb) during the 2001-2002 testing, it would not be retested.
- If a drinking fountain tested marginally within acceptable limits (below but very close to 15 ppb) on a “first draw” or “second draw” during the 2001-2002 testing, it would be retested.⁶
- If a drinking fountain tested above acceptable levels (above 15 ppb) during the 2001-2002 testing, but appeared to have been replaced, it would not be retested.
- If a drinking fountain tested above acceptable levels (above 15 ppb) on a “first draw” during the 2001-2002 testing, but had not been replaced, it would not be tested. Instead maintenance would be notified to replace the fixture and custodial staff would be notified to run the water for 1 minute in the mornings until the fixture was replaced.
- If a drinking fountain tested above acceptable levels (above 15 ppb) on a “second draw” during the 2001-2002 testing, but now had a filter in place, it would not be retested.
- If a drinking fountain tested above acceptable levels (above 15 ppb) on a “second draw” during the 2001-2002 testing, and did not now have a filter in place, it would not be retested. A filter installation would be requested and custodial staff would be notified to run the water for 1 minute in the mornings until the fixture was replaced.

Ms. Harris’ approach did not require that access be cut off to fountains that required remediation or that those fountains otherwise be shut off pending remediation.

It appears that Ms. Harris conducted testing in some, if not all, PPS schools based on that set of criteria. It also appears, based on emails we received, that Ms. Harris requested that remediation occur (including filter installation and fixture replacement) at some fountains based on the test results she received. It is not clear whether some or all of the remediation actions Ms. Harris recommended were

⁶A “first draw” is an initial sample. A “second draw” is a follow-up sample.

undertaken. Ms. Harris felt that Mr. Wolfe was resistant to testing and remediation because of the costs. In a December 12, 2013 email from Mr. Wolfe to Ms. Harris, Mr. Wolfe wrote: “I need someone to take samples of the fixtures you id’d as needing change outs and a representative sample of those fixtures with new filters. How’s that for closure?” In other words, it is apparent that there was no follow-through on whether remediation was successfully completed on the select fountains Ms. Harris identified as needing remediation.

A complicating factor of Ms. Harris’ testing is that she did not follow EPA protocols for taking “first draws.” The EPA’s *3Ts for Reducing Drinking Water in Schools* recommends that first draws from commonly used water sources should be taken from water that has been sitting for between 8 and 18 hours. The EPA’s *3Ts for Reducing Drinking Water in Schools* specifically advises against waiting too long to take a first draw, because it could skew test results upwards (erroneously showing elevated levels of lead in water). Ms. Harris told us that her practice was to obtain water that had been sitting “for as long as possible,” because she felt an 8 to 18 hour window would not accurately reflect heightened lead levels that could exist in water that sat in a pipe over a weekend or after a vacation. In our interview, Ms. Harris repeatedly emphasized that she tried to test over weekends, which often could have exceeded the EPA’s recommended 8 to 18 hour proposed wait time.

Ms. Harris entered the data she obtained at the end of her employment. Andy Fridley showed her how to access the database, but she received no formal training as to how to use the database. She did not enter any data about any remediation that may have occurred as a result of the data she collected. There is no indication that Mr. Wolfe or anyone else supervised Ms. Harris’ data entry.

When Mr. Fridley became Senior Director of Health & Safety in April 2014, Mr. Fridley was provided with virtually no information about the lead in water database he was tasked with maintaining. No one, including Mr. Wolfe, told Mr. Fridley about the work Ms. Harris had performed, the bases for her criteria for testing (and not testing) certain fountains at some schools, or that her approach to taking “first draws” may result in testing data that would convey heightened lead in water levels.⁷ Mr. Wolfe did tell Mr. Fridley that the database was incomplete in one regard. Specifically, Mr. Wolfe provided Mr. Fridley with a list of fountains where water filters had been added that had not been incorporated into the

⁷Mr. Fridley told us that he was aware that Ms. Harris had been an employee of the Health & Safety Department in 2012. Emails from July 2012 confirm that Mr. Fridley answered questions Ms. Harris had about how to enter information into the database but provide no insight as to whether Mr. Fridley knew Ms. Harris was conducting testing. Mr. Fridley states that he had no knowledge of what her job responsibilities had encompassed. (He was still a data analyst at the time Ms. Harris worked for the District). Indeed, as late as January 2016, Mr. Fridley stated that there had been no sampling conducted at schools since 2001-2002.

database. Mr. Fridley stated in his interview that he got started with that data entry task, but then put it aside. Mr. Fridley also stated that he was confused because some of the filters on Mr. Wolfe's list appeared to have been entered into the database, despite Mr. Wolfe's instruction that the filters on the list had not been entered.

In late February 2015, *Willamette Week* made a public records request for all "lead in water test results at all PPS elementary and K-8 schools." That request went directly to Jon Isaacs. Tony Magliano was copied on the request. At the time, PPS did not have any set protocol for responding to public records requests, and we are informed that such requests did not go through any centralized office. PPS subsequently has adopted a policy where all public records requests are now coordinated through one person.

Mr. Fridley pulled together a report, based on information from the database, which showed only the testing results, but not remedial actions that had been taken. Mr. Fridley acknowledged during his interview with us that when he generated the database report in February 2015, he did not fully understand all the data or information in the report. He believed that the report contained inconsistencies, and that some of the data regarding testing that occurred in 2011 and 2012 seemed difficult to reconcile with other data. It was also the first time that he became aware that the database showed no remediation action for some of the fixtures that had tested for excessive levels of lead in water after 2012. (This was in addition to the list of fountains where filters had been added that Mr. Wolfe had told Mr. Fridley needed to be updated in the database when Mr. Fridley took over as Senior Manager of Health & Safety in April 2014). Mr. Fridley does not believe he discussed these observations regarding the database with Mr. Magliano or anyone else. Simply put, in February 2015, Mr. Fridley observed that the database appeared to show that some fixtures tested above acceptable levels for lead in water that did not appear to have been remediated, but Mr. Fridley did not address this with any of his superiors.

Mr. Fridley informed Mr. Isaacs that the database report was missing some data. Mr. Magliano suggested that the response to *Willamette Week* include "a narrative . . . around what we are required to do and what we do" to "provide helpful context." Mr. Magliano also asked to speak with Mr. Isaacs and "look through" the response to the *Willamette Week* request "before we send it." Mr. Isaacs sent the request to *Willamette Week* without first speaking to Mr. Magliano and did not provide *Willamette Week* with the narrative that Mr. Magliano had suggested. (Rather, he provided *Willamette Week* within only a cursory description of the data in the report). In fact, Mr. Magliano was not aware that Mr. Isaacs had ever sent the report to *Willamette Week*. As was set forth above, Mr. Isaacs did not make himself available for an interview, so we do not know why he: (a) chose to provide *Willamette Week* with an incomplete database report; (b) failed to obtain a narrative with that database to provide to *Willamette Week*; (c) failed to discuss the database with Mr. Magliano (as Mr. Magliano had requested) before the

incomplete database report was sent to *Willamette Week*; or (d) failed to notify Mr. Magliano, Mr. Fridley or anyone else that the incomplete database report had been provided to *Willamette Week*.

In summary, the database itself was flawed and the information provided to *Willamette Week* was both misleading and inaccurate. Inconsistent sampling methods were used, so the testing data in the database cannot be applied against a constant standard. Moreover, the database was incomplete. The report from the database sent to *Willamette Week* did not include remediation efforts that were undertaken, so the report may have understated the number of water sources that had been remediated. Mr. Fridley, who generated the database, did not fully understand the database or all the sources for information in the database. He suspected it was flawed, yet did not discuss this with anyone. Finally, the database was provided without any significant explanatory context. Mr. Isaacs did not inform anyone in Operations (or apparently anyone at PPS) that the database actually had been provided to *Willamette Week*.

Questions about the database did not arise until May 27, 2016, when *Willamette Week* reporter Rachel Monahan wrote PPS Senior Communications Manager/Media Spokesperson Christine Miles asserting that more than 20 schools had tested for elevated levels of lead between 2011 and 2012. Ms. Miles asked Ms. Monahan for her source, and Ms. Monahan forwarded the report generated by Mr. Fridley in February 2015 that she had received from Mr. Isaacs. At that point, Mr. Fridley and Mr. Magliano reviewed the report Mr. Isaacs had provided to *Willamette Week* against the database, and concluded that the report provided to *Willamette Week* failed to include remediation efforts that had been undertaken. However, when Facilities Operations staff subsequently went on site to various PPS buildings to confirm the accuracy of the database, they were unable to confirm, in some instances, that remediation actions listed in the database actually had occurred. By early June 2016, it was apparent that the database was not a reliable source of information. Everyone we interviewed confirmed that the database was not reliable.

Only Mr. Fridley, Mr. Wolfe, Ms. Harris, Mr. Wagner and Mr. McCarthy appear to have actively used or entered data into the database. Before late May of this year, Mr. Magliano appears to have had some general awareness that the database was maintained, because he was copied on the February 2015 correspondence regarding the report generated in response to *Willamette Week's* public records request. However, in our interview with Mr. Magliano, he stated that he had not seen the database. During our interview with Mr. Hobbs (which occurred at PPS), Mr. Hobbs stated that he had not seen the database before late May of this year, and he had difficulty locating the database on the PPS server while we were in his office. Mr. Hobbs stated, as did Mr. Wagner, that PPS Health & Safety staff did not have the proper training to enter data into the database. Not only was the database not accurate or maintained, but many of the employees

responsible for entering data into the database may not have known how to properly do so.

X. SYSTEM OPERATIONAL AND PERSONNEL BREAKDOWNS

A. No “Lead in Water Program”

As discussed above, responsibility for monitoring water quality and the District’s “Lead in Water Program” falls to the Senior Manager of Health & Safety, at least according to the job description for that position. That job description was last modified on March 4, 2014 and, accordingly, pre-dates Mr. Fridley’s tenure in the position. Mr. Fridley does not know who wrote the job description. Both David Hobbs (Mr. Fridley’s immediate supervisor) and Tony Magliano (Mr. Hobbs’ immediate supervisor) also do not know who wrote the job description. Both Mr. Hobbs and Mr. Magliano stated that they had not read or could not recall whether they had read Mr. Fridley’s job description.

Mr. Fridley stated when interviewed during this investigation that he was not aware of any formal “Lead in Water Program” at PPS. David Hobbs and Tony Magliano also stated that they were not aware of any “Lead in Water Program.” In other words, the job description includes a program that apparently did not exist when Mr. Fridley was hired into his position and still does not exist.

When Mr. Fridley took over as Senior Manager of Environmental Health & Safety, he did not receive any information about monitoring or remediation for excessive lead in water. He had no specialized training in addressing or monitoring lead in water. His current immediate supervisor, David Hobbs, similarly has no background. Mr. Magliano also has no background in lead in water issues. Mr. Hobbs acknowledged that “lead in water” at PPS was not an issue to which he devoted any meaningful attention or thought until May of this year, when the news stories regarding the issue first arose.

B. No Viable or Accurate Database Regarding Lead in Water Testing or Remediation

As was discussed above, PPS has had no viable or reliable database regarding testing or remediation efforts for lead for drinking water sources. Although maintaining a water quality database was one of the job duties assigned to the Senior Manager of Environmental Health & Safety, that database was not maintained accurately. The database Mr. Fridley inherited when he became Senior Manager of Environmental Health & Safety was flawed and incomplete. Mr. Fridley was not informed of the work that Ms. Harris had performed, her testing protocols (that were inconsistent with prior testing protocols) or that remediation efforts may or may not have been entered into the database. Mr. Fridley was

informed that *some* information about fountains where filters had been replaced had not yet been entered into the database, but Mr. Fridley did not update that information.

C. No Supervision or Review of Personnel Responsible for Monitoring Water Quality or “Lead in Water Program”

As Senior Manager of Environmental Health & Safety, Mr. Fridley never received a performance evaluation.⁸ He was promoted to the position in April 2014. In June 2015, the Facilities Operations director position, which would have been Mr. Fridley’s direct supervisor, was vacant and David Hobbs had just been appointed the Senior Manager of FAM. Tony Magliano requested permission to postpone Mr. Fridley’s evaluation for a year, when Mr. Fridley’s “future supervisor can more fairly and accurately evaluate [his] performance.” The review was postponed. As of May 2016, Mr. Fridley still had not received a performance evaluation. In other words, the person at PPS currently directly in charge of monitoring water quality and PPS’s “Lead in Water Program” for the past two years has never had a formal performance review by any supervisor.

Mr. Fridley’s predecessor, Patrick Wolfe, did receive annual performance reviews in July 2012 (for the period from July 2011 through June 2012) and in July 2011 (for the period from July 2010 through June 2011). He did not receive a performance review for any period after June 2012. Both reviews were completed by Mr. Wolfe’s then supervisor, Tom Adams. In both reviews, Mr. Wolfe received the highest possible ranking – “A Role Model” – for his “key responsibilities” of: “Develop/Implement Environmental Health & Safety Program” and “Supervise Environmental Health & Safety Program.”⁹ Neither review specifically mentions “water quality” or a “Lead in Water Program.” Accordingly, it is not possible to determine whether Mr. Wolfe’s responsibilities regarding overseeing PPS’s “water quality” or “Lead in Water Program” were reviewed or supervised under his tenure. Regardless, from June 2012 to the present, it appears that no one actively supervised or reviewed the personnel directly responsible for PPS’s “Lead in Water Program” or monitoring water quality at PPS.

⁸Mr. Magliano has received timely performance reviews, his most recent of which was completed in January 2016. Mr. Magliano’s review was conducted by Superintendent Smith. Mr. Magliano received the highest rating – “A Role Model” – in the key responsibility of managing the business operations of the District. Ms. Smith wrote: “Business Operations are effectively supervised and managed . . .” Mr. Magliano received the second highest rating – “Exceeds Standards” – for his “[e]ffective hiring, supervision and development of staff.”

⁹The 2011 review described the latter responsibility as: “Supervise Environmental Health & Safety Staff.”

D. No Labels on Sinks or Faucets

PPS did not test or clear classroom sinks (or other sinks) for drinking. Operations personnel were informed that staff and students drank water from classroom sinks and other sinks. However, Operations did not take adequate steps to inform parents, staff and students that sinks may not be a safe source of drinking water.

PPS District-wide testing in 2001, and remediation efforts in 2001 and 2002, focused on drinking fountains. After PPS conducted district wide testing in 2001, PPS notified parents and school administrators that only drinking fountains should be used as a source for drinking water, not classroom sinks or faucets. PPS provided this notice in three different ways. First, when the District announced the results of its testing in 2001, it advised that only fountains, and not sinks, should be used for drinking water. The message also was shared through a health and safety handbook that was distributed to schools each year through 2008; when the handbook was discontinued, PPS posted a notice on its website that classroom sinks should not be used as drinking water sources. Finally, at least for some period of time beginning in 2012, Mr. Wolfe would notify PPS school administrators through an online publication for principals called “Administrators Connection” that classroom sinks were not authorized drinking water sources. That publication was weekly, although it is unclear how often Mr. Wolfe’s notice would appear in the newsletter. That newsletter was discontinued at some time after October 2012. During our interviews with Mr. Magliano and Mr. Fridley, both acknowledged that these were insufficient methods to communicate to parents, students and staff that classrooms sinks should not be used as sources for drinking water.

Student and staff use of reusable water bottles increased following the 2001 testing and 2002 remediation. In October 2012, a parent at Rigler School became concerned about access to drinking water at the school. At that time, a number of drinking fountains were not working. After contacting the school principal, the District communications office and Health & Safety, the parent learned that students were not supposed to drink water from classroom sinks. Erin Barnett, with others in the District’s Office of Communications & Public Affairs, designed a sticker to place on all classroom sinks to notify students that the water at the sinks should not be used for drinking. The language on the stickers was approved by the District’s General Counsel. FAM agreed to pay for the stickers. Mr. Magliano was informed of the plan to create the stickers, as was Mr. Adams. Ms. Barnett also worked with the school’s principal to send a letter to all families attending the school, stating that students should drink water only from fountains, not sinks. It appears that some, but not all, sinks at Rigler were labeled.

In late October 2012, Ms. Barnett sought approval to distribute a larger message District wide for principals to provide to parents about not drinking from classroom sinks and to provide stickers District wide, to alert students and staff not

to drink water from classroom sinks. She sought approval from Tom Adams and also included Mr. Magliano in the email correspondence as well as her then-direct supervisor, Rob Cowie. On October 24, 2012, the day after the letter went to Rigler School families, Ms. Barnett requested a meeting with Mr. Magliano, Mr. Adams, Mr. Wolfe and Mr. Fridley to address the “next big step” to distribute the sink label stickers District wide. (Mr. Fridley was included in the invitation at Mr. Wolfe’s suggestion, although Mr. Fridley did not have a formal role at that time monitoring water quality for the district). Only Mr. Wolfe attended the meeting.

District-wide stickers advising students and staff that sinks were not safe sources for drinking water never were approved or distributed. Ms. Barnett’s understanding is that eventually Mr. Wolfe and Mr. Magliano determined that labeling the sinks would cause more alarm than benefit. Mr. Magliano does not recall discussing the issue with Ms. Barnett (or with anyone else) in 2012 or considering the issue generally. However, over the course of the following ten months, he was copied on a number of emails concerning District-wide labels. Ms. Barnett does recall discussing the issue with Mr. Magliano. Ms. Barnett stated in our interview that she felt a substantial amount of “frustration” with Operations for not following through on District-wide stickers. She also stated that she did not address the issue with anyone above her on the PPS organizational chart, because she believed it was “not my place.”

E. Communications with Parents, Students, Staff and the Public Regarding Lead in Water at Creston and Rose City Park

Creston

As was set forth above, testing at Creston occurred in two phases. Spot tests were conducted over spring break, and results were received on Thursday, March 31, 2016. On Friday, April 3, Mr. Fridley notified the Creston principal of the results. Mr. Fridley placed an emergency work order to have the sink faucets replaced; and, to have the drinking fountain faucet replaced and a filter added to the drinking faucet. However, those repairs were not completed until April 11, 2016. The water sources were not shut off and access to those sources was not prevented during that time period; no signs were placed at or over the water sources indicating that they should not be used for drinking water. Testing of all drinking fountains and classroom sinks occurred during the week of April 18 and results were reported on Friday, May 10, 2016. Those tests results showed that four of 38 sinks tested, including a kitchen sink, exceeded the 15 ppb standard. The water sources were not shut off and access to those sources was not prevented during testing or remediation. No signs were placed at or over the water sources indicating that they should not be used for drinking water.

On May 23, 2016, the principal of Creston requested that Mr. Fridley write a letter for teachers based on the testing results.¹⁰ Mr. Fridley and/or Mr. Magliano then asked the Office of Community & Public Affairs to draft a statement to send to the Creston community. The notice initially was drafted by Christine Miles, and sent to Andy Fridley for revisions. Mr. Fridley edited the message, and sent his revisions back to Ms. Miles and to Erin Barnett. Ms. Barnett then made final revisions to the message before it was sent out to Creston families. As pertinent here, the message sent out on May 25, 2016 provided:

“Dear Creston Families and Staff,

“Earlier this spring, PPS tested the lead levels in drinking water at our school, a **routine practice** in our schools.”

(Emphasis added). The message was signed by Mr. Fridley and Conrad Hurdle, although neither had seen or approved the final message before it went out.

The statement to parents was incorrect, because testing for lead in drinking water is not a “routine practice” in PPS public schools. The statement also did not inform parents that access to drinking water had not been shut off during the testing and remediation periods.

During our interview of Ms. Barnett, she accepted responsibility for her mistake. She acknowledged that she added the “routine practice” language during the editing process and did not get final approval for her edits from Mr. Fridley, Mr. Hobbs, Mr. Hurdle or anyone else before the message was sent out.

Rose City Park

As was set forth above, Mr. Fridley received the testing results for the school wide tests of drinking fountains and classroom sinks at RCP (RCP) on March 31, 2016 and forwarded those results to David Wood, Sarah Jones, David Hobbs and the parent who had requested the testing on Sunday, April 3.

Chief of Staff Amanda Whalen, Chief Operating Officer Tony Magliano, Superintendent Carole Smith and David Hobbs all had been notified in mid-March that the testing would occur at RCP. Ms. Whalen had been informed by email from Mr. Fridley. Mr. Magliano and Mr. Hobbs were copied on that email and that

¹⁰The principal also called Mr. Magliano to request help drafting a message to teachers and the community about the test results. Mr. Magliano told us during our interview that this was the first time he became aware of the results. However, he did acknowledge that he knew the testing would occur because he previously had approved funding for school wide testing. Although Mr. Magliano was aware of the results at Creston on May 23, he did not bring them to Superintendent Smith’s attention at that time.

email was forwarded to Ms. Smith. Mr. Hobbs was notified of the test results in the April 3 email. Mr. Magliano sent Mr. Fridley an email on May 2, 2016 asking about the test results, and Mr. Fridley responded by sending Mr. Magliano the same email he had sent to Mr. Hobbs and others on April 3.

Ms. Smith and Ms. Whalen both stated during their interviews that they did not follow up on the RCP test results, because they believed that if there was a problem with the tests, they would be notified. Mr. Magliano and Mr. Hobbs believed there was no need to provide a response to parents at RCP in relation to the test results from March 31, 2016. They stated that Mr. Fridley's representation to them that the water sources would be remediated or labeled as out of service was sufficient.

Parents at RCP continued to have questions about water quality at RCP. On May 20, 2016, Sarah Jones asked Mr. Fridley and Mr. Hobbs to prepare a statement for the RCP community. On May 23, a state legislator's office contacted Courtney Westling, Director of Government Relations at PPS, who forwarded that email to Mr. Hobbs, Mr. Magliano and Ms. Whalen. Mr. Hobbs responded to Ms. Westling and Mr. Magliano that Operations was working on a response with Communications. On May 24, Mr. Hobbs responded to Ms. Jones that Mr. Fridley was working with Ms. Miles in Communications to draft a response for the RCP community. On May 25 at 3:40 p.m. an email was sent to RCP Families and Staff regarding the testing and remediation that occurred at RCP. The statement did not inform parents that access to drinking water had not been shut off during the testing and remediation periods. The statement did not contain the incorrect "routine testing" wording sent to Creston families and staff.

The May 25 emails to Creston and RCP Families and Staff were sent within the same hour. At the time the email was sent out to Creston parents, neither Chief of Staff Amanda Whalen (who now has temporary oversight of the Office of Communications & Public Affairs) nor Superintendent Carole Smith was aware that testing had occurred at Creston or that some water sources had tested positive for excessive levels of lead. Ms. Whalen learned of the notice to Creston parents (and the testing results) only by happenstance. She was working with communications personnel to address another issue on the afternoon of May 25 when she overheard a conversation regarding the email to Creston parents. Ms. Whalen had been copied on the May 23 and May 24 emails regarding communications with the community at RCP regarding the testing there; but during our interviews with her, she acknowledged that those emails did not seem significant to her at the time, and she did not address the issue with Ms. Smith.

Neither Ms. Whalen nor Superintendent Smith was notified before the Creston or RCP emails were sent. When Ms. Whalen overheard that an email had been sent to Creston families and staff, she asked that the email be forwarded to her immediately. She also then inquired about the RCP communication. She quickly brought the matter to Ms. Smith's attention. Later that evening, she

forwarded the Creston email to the Board and notified the Board that another email had gone to RCP families and staff. This was the first the Board was notified of the testing results at Creston and RCP. Ms. Whalen’s email to the Board also used the erroneous phrase “routine lead testing.” In our interview, Ms. Whalen acknowledged that the phrase “routine lead testing” is incorrect and that she had lifted the phrase from the email that was sent to Creston families and staff. She also acknowledged that she did not fact check that information (or the Creston email) before she forwarded it to the Board.¹¹

F. Communications With News Media Regarding Lead in Water Procedures, Practices and Protocols

The PPS Office of Communications & Public Affairs and Operations Department were caught off guard by the strong media response to the RCP and Creston announcements. As a result, as news stories escalated from May 27, 2016 through early June, Mr. Fridley and Mr. Magliano were seeking to gather information responsive to media and public inquiries, but were relying on information that was incomplete. The PPS Communications & Public Affairs Office also was struggling to respond to inquiries from media that were based on flawed information that Mr. Isaacs had provided to *Willamette Week* more than a year earlier. And, as was discussed above, Operations (including Tony Magliano, David Hobbs and Andy Fridley) and Communications & Public Affairs initially were unaware that Jon Isaacs, who had left his employment with PPS by this time, had provided the flawed, incomplete database report to *Willamette Week* a year earlier in March 2015.

PPS has no formal, organized “Lead in Water Program” and no adequate means for monitoring the remedial actions that the District has taken. When the District was required to respond quickly to inquiries from the public and news

¹¹Although Ms. Whalen has temporary oversight of the Office of Communications & Public Affairs, over the long weekend of May 27 through May 31, she was tasked primarily with helping to coordinate obtaining drinking water for PPS schools for the last week of school. When we began our investigation, we requested performance evaluations for all the PPS employees we interviewed. At that time, there was no current performance evaluation available for Ms. Whalen, whose most recent evaluation period had run from July 1, 2013 through June 30, 2015. That performance evaluation was completed on June 9, 2016 (almost a year after the evaluation period had ended) and subsequently provided to us. The evaluation was quite positive, and Ms. Whalen’s performance ratings fell into the two highest categories – “Exceeds Standards” or “A Role Model.” We also note that Ms. Whalen’s current job description does not encompass her temporarily assumed role as overseeing the Office of Communications & Public Affairs. Nothing in her job description indicates that she would have direct or indirect oversight over the District’s Health & Safety programs, or, more specifically, its Lead in Water Program.

media, it could not. The District's lack of any established protocols or data made it impossible for the District to provide the information sought.

G. Not Taking Adequate Remedial Action and No Plan for Remedial Action

The District failed to take adequate immediate remedial action in response to the elevated lead level tests at Creston and RCP. The EPA's *3Ts for Reducing Lead in Drinking Water in Schools* specifically advises three short-term control measures when drinking sources test for excessive lead in water. The first is to flush piping in the affected taps every morning. The second is to deny access to the affected taps until they are fixed. The third is to provide bottled water. The EPA's *Drinking Water Best Management Practices* recommends preventing access to drinking water sources that test above acceptable lead in water levels. Mr. Fridley acknowledged in our interviews with him that taking measures to stop people from drinking from affected taps is a best practice. Although the faucets at RCP and Creston were quickly designated to be remediated, none of these actions were taken in the interim.

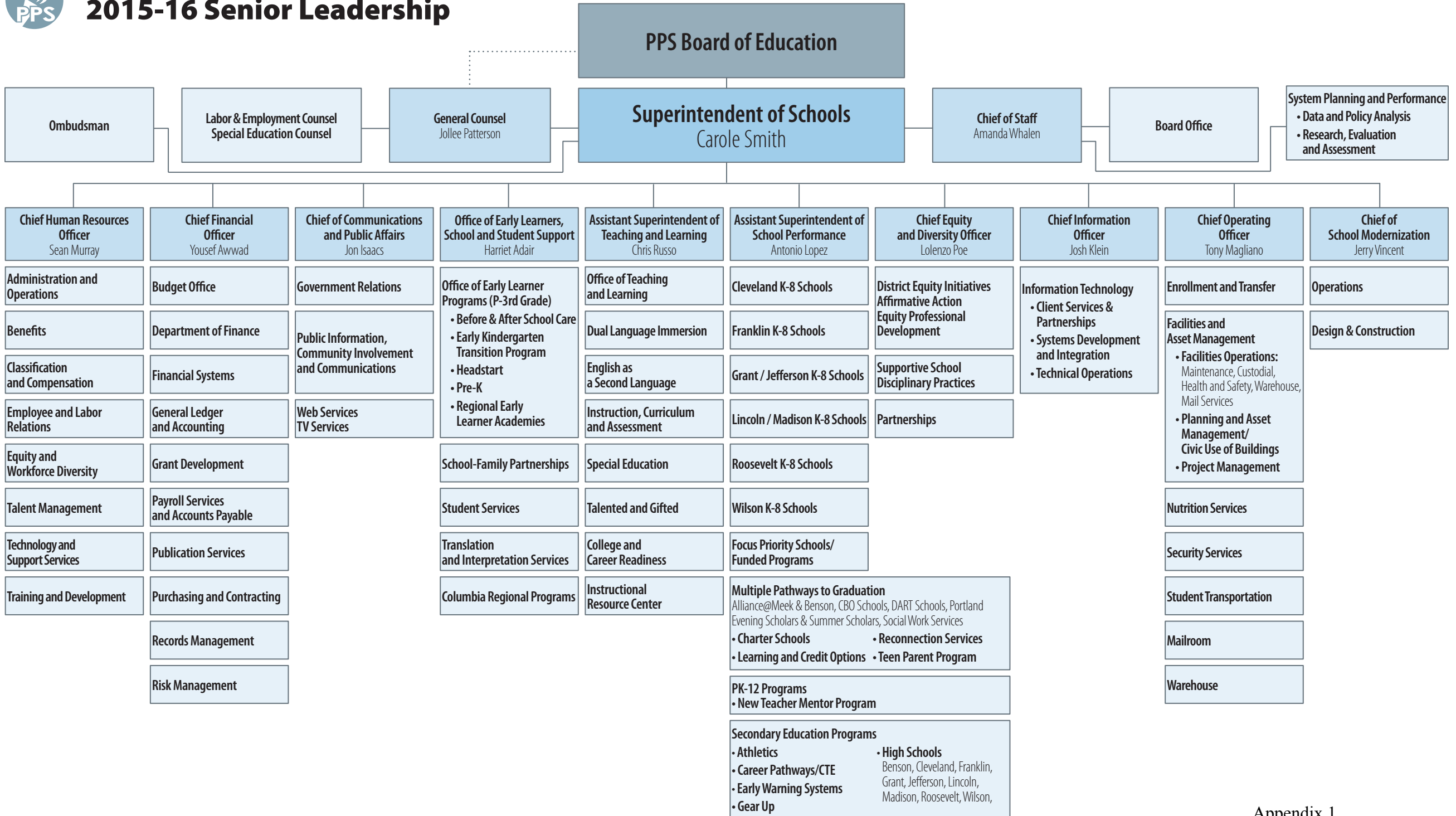
Moreover, the District did not have any plan in place for remediation efforts when it approved District-wide testing for the summer of 2016. As was discussed above, the District set aside \$450,000 in the budget in March 2016 for additional maintenance, which included District-wide lead testing. However, apparently no thought had been given to how to pay for substantial remediation efforts should that testing uncover substantial lead in water problems throughout buildings in the District.

XI. CONCLUSION

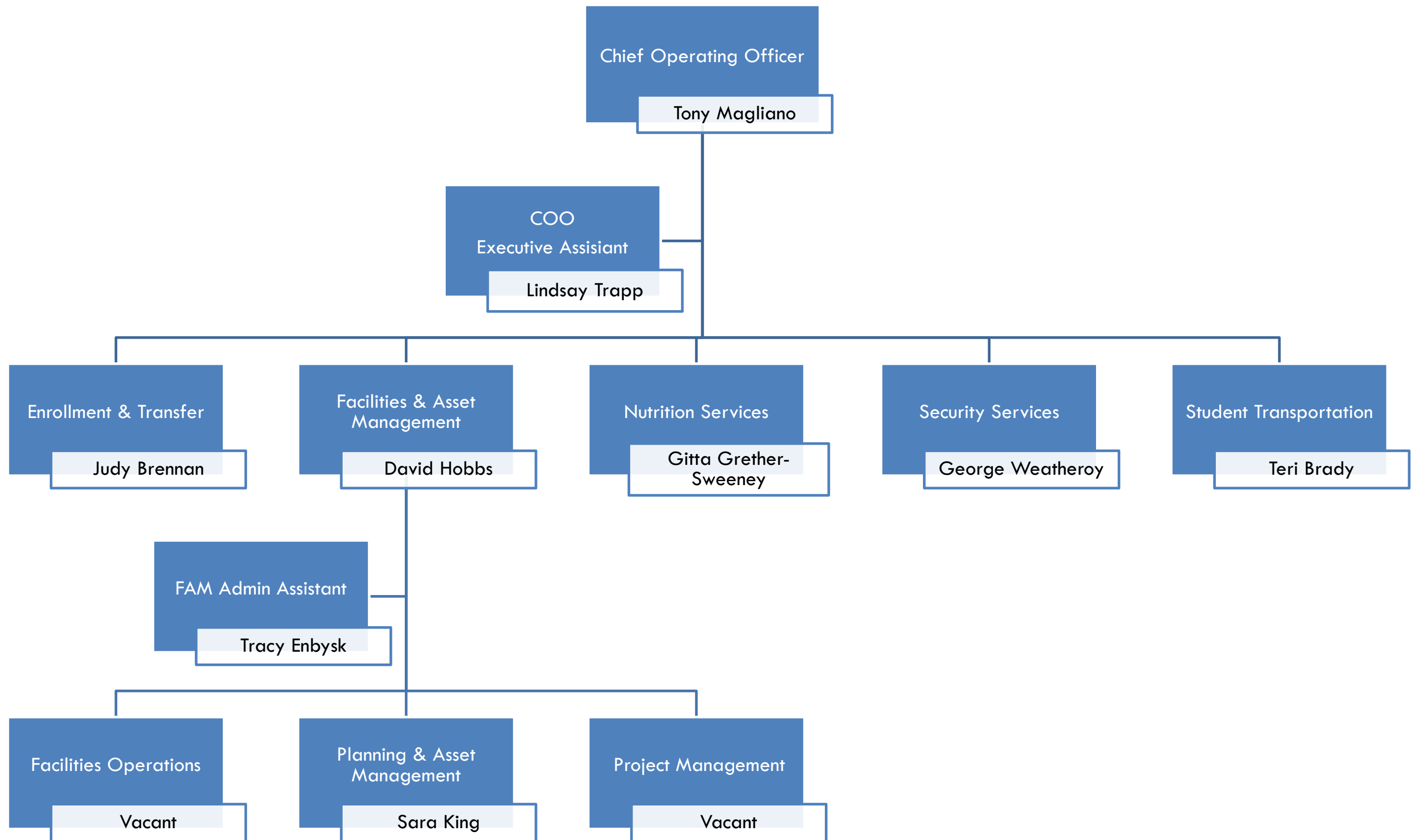
Since testing occurred in 2001 and remediation occurred in 2002, lead in water has not been viewed by the PPS Board or anyone within the PPS administration hierarchy as a significant issue to which resources or attention could, or should, be devoted. To the extent lead in drinking water was viewed as a health and safety issue, PPS has had no procedures or protocols in place for testing for lead in drinking water, for keeping track of which drinking sources had been tested or for remediating sources that had tested in excess of 15 ppb. Although a "Lead in Water Program" existed as part of the Senior Manager of Environmental Health & Safety employee's job description, no one was aware of what the program was and no one supervised the program. Within the PPS administration hierarchy, there has been no reporting mechanism or oversight up the chain of command, and no top down direction provided, regarding lead in water issues. When lead in water issues have arisen, PPS has not had any established systems in place to communicate with parents, the public or the media regarding those issues.



2015-16 Senior Leadership



Portland Public Schools **OPERATIONS** Organizational Structure



Portland Public Schools **FAM: FACILITIES OPERATIONS** Organizational Structure

