

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

FRANK C. COSTANZO,	:	CIVIL ACTION NO.
	:	3:22-CV-00531-SALM
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
NORWALK PUBLIC SCHOOLS,	:	<u>JURY TRIAL DEMANDED</u>
	:	
Defendant.	:	JUNE 2, 2022

**AMENDED COMPLAINT**

Plaintiff Frank C. Costanzo for his Complaint against defendant Norwalk Public Schools (NPS) alleges as follows:

**NATURE OF THE ACTION**

This is an action seeking damages and equitable relief for defendant NPS’s illegal discrimination and retaliation against, and demotion of, Costanzo due to a serious physical disability; specifically, polycystic kidney disease known as PKD. Costanzo is in stage 3 of the disease.

Costanzo alleges that NPS, through its superintendent Alexandra Estrella, repeatedly discriminated against and ultimately demoted Costanzo in violation of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12102, and the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. § 46a-60(b)(1) and (4), that forbid discrimination: (i) on the basis of disability, (ii) being perceived as having a disability, and (iii) having a record of physical impairment substantially limiting the operation of a major bodily function. Costanzo also asserts that he was retaliated against for complaining about conduct that violated the ADA and CFEPa.

In 2021, after a year-long pattern of discrimination and retaliation against Costanzo, NPS ultimately drastically reduced, without economic necessity, his contractually-provided annual compensation by more than \$100,000. This forced Costanzo to submit an involuntary resignation letter on January 7, 2022 to obtain higher paying employment with a third party. He has suffered substantial economic and non-economic damages due to NPS's illegal conduct.

### **PARTIES**

1. Plaintiff Frank C. Costanzo ("Costanzo") is a resident of the State of Connecticut, currently residing in Madison, Connecticut. He was employed by the defendant from September 21, 2015, until the date of his involuntary resignation on January 7, 2022.

2. Defendant NPS is a public entity located at 125 East Avenue, Norwalk, CT 06852-6001. The Defendant is a "federal Fund recipient," as defined by Section 504.

### **JURISDICTION, VENUE AND ADMINISTRATIVE HISTORY**

3. Jurisdiction over the subject matter of the action exists under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12102, *et seq.* and 28 U.S.C. §1343. As to those claims not arising under federal law, they are so closely related to the federal claims as to form one case and controversy under 28 U.S.C. §1367.

4. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b)(1) and (2), as the unlawful conduct complained of herein took place within the District of Connecticut and both parties reside in the District.

5. Plaintiff timely filed administrative charges of discrimination and retaliation with the Connecticut Commission on Human Rights and Opportunities ("CHRO") and the Equal Employment

Opportunity Commission (“EEOC”), received a favorable Merit Assessment Review, and has received a Release to Sue from the CHRO dated and a Notice of Right to Sue from the EEOC dated December 27, 2021.

### **ALLEGATIONS**

6. Costanzo served as a senior cabinet leader of the Norwalk Public Schools since 2015 when he was recruited to apply for the position by former NPS Superintendent, Dr. Steven Adamowski.

7. He obtained tenure in 2017 and held the full-time position of Chief of School Operations from 2015 through June 30, 2021.

8. During that time, the overall NPS student achievement ranking rose from sixth to first in its District Reference Group, making it the top performing urban school district in Connecticut.

9. As Chief of School Operations, he was a major contributor in the district achieving this distinction.

10. During his time in this position, Costanzo evaluated school principals and directors; supported school improvement planning; oversaw federal and state grants; oversaw a leadership pipeline for aspiring and new principals; managed and professionally developed school governance councils; designed and implemented all district policies and procedures; co-chaired the Professional Development and Evaluation Committee; supported contract negotiations; and oversaw facilities master planning, transportation, health services, food services, and school security.

11. He assumed oversight for the Human Resources department after the departure of the Chief Talent Officer in November 2020 and served in this role until relieved of this responsibility on April 19, 2021.

12. He received raises each year of his employment with his salary increasing from \$165,000 in 2015 to more than \$200,000 by 2020. He received favorable evaluations every year and was not subject to any performance criticism. For several weeks in November and December of 2017, he filled in when former Superintendent Adamowski recovered from knee surgery. During this time, Costanzo ran board of education meetings and led executive sessions.

13. Costanzo suffers from complications from autosomal dominant polycystic kidney disease (PKD), which is an inherited disease and is characterized by large kidneys with multiple cysts bilaterally that can cause abdominal discomfort and are at risk for rupture.

14. In July of 2019, he began taking Tolvaptan, the first FDA-approved medication shown to slow the progression of PKD. The drug has significant aquaretic effects causing the need to urinate frequently.

15. In May of 2020, and with the governor's Covid-19 executive orders in effect, his nephrologist provided recommended that he be excused from in-person work due to his complex medical comorbidities and increased risk for infection.

16. His first in-person workday after the commencement of Covid-19 was July 2, 2021.

17. Superintendent Adamowski retired on June 30, 2020.

18. During the month of June 2020, a hybrid schedule of in-person and remote was initiated Adamowski, but Costanzo remained remote throughout the month. His replacement, Alexandra

Estrella, directed all chiefs at the cabinet level to cease remote work soon after her arrival on July 1, 2020. Further, she required that cabinet level meetings and meetings with her happen in-person despite the availability of virtual meeting technology.

19. Costanzo's concern about becoming infected with COVID-19 grew in the wake of Estrella's new in-person policies. He therefore disclosed in great detail his polycystic kidney disease disability for the first time to Superintendent Estrella in her office in July 2020.

20. During this meeting he explained that he was at grave risk if infected with COVID-19 because of his pre-existing PKD condition. He also shared that his mother required dialysis at age 45 and a transplant at 50.

21. Costanzo politely declined an offer of food during the meeting and explained that he was on a protein restricted diet. He also informed her of a medication, Tolvaptan, that he had been taking to slow the progression of the disease. He told her that the medication required him to use the restroom every 45 minutes to 1 hour. He spoke about the progression of the disease, the enlargement of his kidneys and the proliferation of cysts. He shared that his declining kidney function placed him in the stage 3 kidney disease category.

22. Superintendent Estrella listened intently at this meeting but never asked whether he would need simple accommodations, such as remote work given his disability. Costanzo feared expressly asking for ADA accommodations because she had made clear that she expected chiefs to report to work in-person, full-time.

23. Discriminatory and retaliatory behavior against Costanzo began during the summer of 2020 after he shared his disability with the new superintendent Estrella. Fearing for his job, Costanzo attempted to build a relationship with Estrella despite the illegal treatment.

24. For example, on Saturday, August 15, 2020, he received a terse text from Estrella asking “[w]hen did you speak to the press?” regarding a Connecticut Insider article.

25. The article was related to COVID-19 and a student relocation into a vacant building. Costanzo did the interview with the press as he had previously. He was notified that Sunday evening that he would be summoned to the Superintendent’s office for a 7:30 am meeting as if he had violated a policy.

26. At the meeting Estrella stated that she had “grave concerns” about Costanzo and wanted to know his reason and motivation to do the interview with the press without her knowledge.

27. As another example, Estrella allowed for employees to apply for the ability to work remotely but had expressed in advance to the former Chief Talent Officer that nobody would be given the opportunity to work remotely, including Costanzo. He disagreed with the directive but followed it. A cabinet colleague had gone as far as submitting medical documentation of her comorbidity in the hope of working remotely until vaccinations became available, but Estrella ignored the request. That December 2020, the same cabinet member who had submitted medical documentation had her position eliminated in the Board of Education budget proposal for 2021-2022.

28. Costanzo was subjected to this directive despite the disability he had shared with her in detail.

29. In addition, as NPS entered into 2021 Estrella grew more irritated with Costanzo leaving meetings (in-person or remote) to use the restroom. She would disconnect Costanzo from Zoom meetings if her forgot to turn off his camera and harangue him despite being fully aware of his disability. Other administrators frequently stepped away from their running cameras but did not receive the same treatment.

30. On January 12, 2021 for instance, Costanzo left a virtual meeting for the restroom and forgot to turn off his camera. When he returned to his office, he found that Estrella had disconnected from the meeting. Estrella's secretary texted Costanzo, "Per Alex, if you r walking away from your computer turn off your camera." Costanzo's work would be hyper scrutinized like this for the remainder of his time under Estrella.

31. Costanzo received other messages directly from the Superintendent during the year while on virtual meetings with texts stating, "you look unfocused on screen," "are you signing in? We are waiting?" despite knowing of his need to use the rest room frequently.

32. Estrella then began to insist that Costanzo use her restroom which he felt uncomfortable doing. This went on for months. Out of fear for his position he reluctantly went along with her request but respectfully protested the arrangement on more than one occasion.

33. Eventually Costanzo told her that he would prefer to no longer use her restroom and the matter was never brought up again.

34. Throughout 2021, Estrella would often see Costanzo walking to the men's restroom when she would be conversing with an employee in the hallway. On these occasions she would make it a point to comment derisively: "going to el baño?" Estrella emailed Costanzo in the middle of a cabinet meeting about a CT superintendent vacancy at another school system. Costanzo ignored it as the cabinet was in an agenda item discussion. Estrella proceeded to ask Costanzo in front of his colleagues if I saw her email and whether he would be applying.

35. On January 14, 2021, Costanzo received a text message from Estrella stating, "I thought u were at the doctors." Costanzo responded, "I did too. But no it was scheduled for next Wed or Thur. But it's a phone appointment with nephrologist. I don't have to be at Yale NH for it."

36. Estrella replied with a surprised/puzzled “emoji” face. Costanzo replied: “[e]verything is fine so don’t worry. It’s just ongoing monitoring of the disease that’s required. I feel good.”

37. Costanzo initially scheduled his vaccine on Saturday, January 23, 2021 so that it would not interfere with his work week. Many educators had gotten the vaccine that week but the governor enforced an age requirement at the end of the week and Costanzo was turned away at the clinic. Costanzo texted Estrella about his stage 3 kidney disease in frustration of being denied the vaccine.

38. Costanzo experienced further discrimination and retaliation when on January 25, 2021, he began receiving “coaching and support” from Dr. Sandra Kase, at Estrella’s behest.

39. On March 22, 2021, Estrella informed members of the cabinet that the title of Costanzo’s position, Chief of Operations, would be changed to “Assistant Superintendent of Operations.”

40. On March 26, 2021, Estrella informed him that he would be serving in the capacity of “Assistant Superintendent of Operations” for the 2021-2022 school year and that it would oversee the finance/business aspects of the organization ultimately to be called Assistant Superintendent of Business and Operations. Costanzo had been leading a collaboration between operations and finance departments since January of 2021, setting vision and implementing solutions teams. It was described as a title change, and no reduction in job duties or compensation was ever mentioned.

41. On Monday March 29, 2021, the NPS CFO and Costanzo logged into their weekly cabinet meeting remotely who were both quarantined. At one point during the meeting, Estrella sarcastically stated that she would “have to work directly with Human Resources because Frank is on another planet.” Fellow colleagues found the statement belittling.

42. Costanzo’s non-disabled CFO counterpart was not subjected to similar ridicule.



43. After hundreds of texts between Estrella and Costanzo over the course of the year, she stopped texting with him, as an individual recipient, on April 1, 2021. Kase, who had been assigned to “coach” Costanzo, also ceased text communications on that date.

44. On April 6, 2021, Costanzo received the Moderna vaccine. His reaction to the vaccine was significant and he was required to take sick days on Thursday, April 8th and Friday, April 9, 2021.

45. On April 9, 2021, while home sick, he received an email from Estrella with NPS’s attorney copied. The letter stated, “your position may be changed or eliminated.” It went on to explain issues related to his contract of employment which had been in place for three years: “In reviewing your contract of employment, I note reference to its being renewed ‘in accordance with its terms.’ However, I find no provision in the contract specifying when and how the contract is renewed absent action by the Superintendent. Given the pending reorganization, I am notifying you that I am not renewing your contract as written for the coming school year. I will be following up with you with regard to your contract of employment once the Board has approved the reorganization plan.”

46. On April 19, 2021, Costanzo met with Estrella and Kase.

47. While the Board’s purported “reorganization plan” had not been approved, Estrella and Kase informed him that he would not be receiving a new contract and that he had two options: enter into a separation agreement or serve as a classroom teacher for the 2021-2022 school year.

48. Costanzo asked what had changed since their meeting on March 26<sup>th</sup>. Estrella stated, “your vision doesn’t align with my vision for the work going forward and your relationships with the unions is not good.”

49. Estrella had never made these assertions before. Costanzo’s relationship with administrators and teachers, particularly principals who he worked most closely with since 2015, had been strong.

50. She informed him that he would immediately be relieved of his oversight of Human Resources.

51. On April 28, 2021, Costanzo received a meeting cancellation notice at 8:52 am from Estrella's secretary eight minutes before the scheduled meeting. At around 9:15, Costanzo's secretary received a call from Estrella's secretary the meeting was back on. Costanzo went to the restroom before reporting for the meeting Estrella was notified of this through her secretary. Despite this, Estrella had begun the meeting.

52. Costanzo attempted to engage in the conversation but needed clarification about what had been said before entering. Estrella, who had been told by her secretary Costanzo was using the bathroom first, told Costanzo he was late and was being difficult and would be removed from the meeting if he continued.

53. This would be Costanzo's last day in-person as the Chief of School Operations. That evening he received an email from Estrella stating "your lawyer and legal counsel for the school district are talking about your status. Under these circumstances, I ask that you work remotely tomorrow and Friday."

54. Costanzo informed the NPS Human Resources Director that he was a victim of employee discrimination and retaliation on April 28, 2021 and expressly requested accommodations for his disability in writing.

55. On May 3, 2021, Estrella informed him that he should continue to work remotely and that his new position would fall below the rank of assistant principal. He was prevented from returning to the central office for the duration of his tenure as Chief of School Operations through June 30, 2021.

56. On May 6, 2021, Costanzo was notified that the 12-month salary would be set at \$100,000 (approximately \$100,000 less than his existing position), less than the average 10-month Norwalk teacher salary and that the position would be to “support instruction in history, social sciences, and the arts” a role he had not had before in Norwalk. The job description stated that he would work 260 days annually and, “the position will report to the Assistant Principal for Social Studies and the Arts at Norwalk High School.” It was not until June 22, 2021, that Norwalk’s HR Director Lissette Colon and a Benefits Specialist met with Costanzo virtually to discuss his request for accommodations, which was requested in early May 2021.

57. After strong end-of-year evaluations as Chief of School Operations in 2016, 2017, 2018, 2019, Costanzo did not receive an end-of-year evaluation from Estrella; a requirement under state statute. As recently as 2021, Costanzo received strong recommendations from former Superintendent Steve Adamowski, former Norwalk Board member Heidi Keyes and Board Attorney Tom Mooney.

58. Estrella placed Costanzo under the supervision of Norwalk High school Assistant Principal Lynne Moore for the 2021-2022 school year. Moore had pending litigation against the Board of Education in which Costanzo was a named defendant. His evaluation of her performance as a principal in 2017 was a matter that went to arbitration. The arbitrator ruled that Costanzo had not violated any established procedures of the evaluation plan.

59. Moore, working with Estrella and Kase, excluded Costanzo from participating in an 11-day summer administrator professional development series that was focused on instructional leadership and equity. Instead, he was handed the PD binder after the training by Moore and was told to read it.

60. Estrella, Kase and Moore prevented Costanzo from fulfilling the essential functions outlined in the new job description, including preventing him from “contributing and participating in the school’s instructional leadership team and school improvement committee meetings.” He was not allowed to evaluate teachers despite it being an essential function in the job description. Costanzo protested his exclusion from the school instructional leadership team meetings beginning August 16. Several weeks passed before he was asked to participate.

61. Upon Costanzo’s return to in-person work on July 2, 2021, Moore directed him to her office and read aloud the new job description. Costanzo was placed at a secretary’s desk outside Moore’s office for six weeks. There were multiple offices available due to the summer vacation, but the decision to place Costanzo at a secretary’s desk was intended to humiliate him and make him feel uncomfortable. After six weeks and multiple requests including an email from Costanzo to Moore in which he stated he felt uncomfortable at the secretary’s desk, Costanzo was moved to an office like that of the other administrators on staff.

62. Costanzo emailed Principal Reginald Roberts on September 14, 2021 to request a change of supervisor. Roberts met Costanzo on September 20<sup>th</sup>, 2021. Costanzo shared with Roberts his FMLA application for his review. At the meeting, Costanzo confided in Roberts his disability, and referred Roberts to the Yale Nephrology responses on the document including on page 3, which reads, “Frank’s renal function is very sensitive to high blood pressure. Periods of intense stress has repeatedly raised his BP and contributed to elevations in creatinine.”

63. Costanzo explained to Roberts that given this fact, that hypertension and stress, is a factor in advancing kidney disease and that being supervised by Dr. Moore was very stressful, made him feel

uncomfortable and unsupported. At the meeting, Roberts said he would consider a change in supervisor and raised Assistant Principal Dan Sullivan as a possibility.

64. Costanzo exchanged email with Moore on September 24, 2021 concerning his continued exclusion from the school's instructional leadership team and school improvement committee meetings.

65. Roberts, Sullivan, and Costanzo met on September 29, 2021 in Robert's office. There Costanzo reiterated his concerns about Moore as his supervisor and asked to be located closer to Sullivan. Several days later October 4, Roberts wrote and gave Costanzo a reprimand letter through his secretary, which inaccurately stated Costanzo "had requested to have an evaluator other than Dr.

Moore." (Costanzo had requested a different supervisor). The reprimand stated Sullivan was now Costanzo's evaluator, but Moore would remain his supervisor. "Please consider this a letter of reprimand for insisting not to follow the clear dictates of your job. You accepted this position, and you are to follow the directives for duty as outlined in your job description, as you are working at the discretion of your immediate supervisor who issues assignments as appropriate."

66. It was the first and only reprimand Costanzo had ever received for "insubordination" in his career. Costanzo wrote a rebuttal and delivered it to Roberts in person to be added to his personnel file.

67. Costanzo took it upon himself to begin doing instructional rounds with an NHS literacy coach. The two provided feedback to teachers together and exchanged instructional patterns and trends they were seeing. Costanzo was building positive relationships with the NHS teachers as evidenced by numerous emails.

68. Nevertheless, Roberts informed the teacher that central office did not want this to continue and informed Costanzo that this arrangement needed to stop so that teachers would not see the coaches as evaluators.

69. Costanzo submitted notification of his involuntary resignation from the position of Associate Education Administrator for School-Based Instructional Support effective January 7, 2022 to Human Resources.

70. Section 12112 of the ADA states:

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

71. Conn. Gen. Stat. § 46a-60(b)(1) and (4) provide that it shall be illegal:

(1) For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, *physical disability*, including, but not limited to, blindness or status as a veteran;

(4) For any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84;

(emphasis added).

## **COUNT I**

### **VIOLATION OF AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12112(a)**

72. Paragraphs 1 through 71 are incorporated by reference.

73. By its actions, defendant NPS has violated the Americans with Disabilities Act, 42 U.S.C. § 12112(a) ("ADA") by discriminating against plaintiff on the basis of having PKD and being perceived as having a disability, as defined in the ADA, and for having a record of physical impairment substantially limiting major bodily functions, including respiration.

74. Defendant's violations of the ADA have been the proximate cause of substantial economic and non-economic damages to the plaintiff, including lost past and future wages and lost past and future benefits in excess of \$3 million through his normal retirement age.

### **COUNT II**

#### **VIOLATION OF AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12203(a)**

75. Paragraphs 1 through 74 are incorporated by reference.

76. By its actions, defendant NPSe has violated the Americans with Disabilities Act, 42 U.S.C. § 12112(a) ("ADA") by retaliating against plaintiff for opposing acts and practices made unlawful by the ADA.

77. Defendant's violations of the ADA have been the proximate cause of substantial economic and non-economic damages to the plaintiff, including lost past and future wages and lost past and future benefits.

### **COUNT III**

#### **VIOLATION OF CONNECTICUT FAIR EMPLOYMENT PRACTICES ACT, CONN. GEN. STAT. § 46a-60(a)(1)**

78. Paragraphs 1 through 77 are incorporated by reference.

79. By its actions, defendant NPS has violated the Connecticut Fair Employment Practices

Act, Conn. Gen. Stat. § 46a-60(a)(1) by discriminating against plaintiff on the basis of disability. 76. Defendant's violations of the Act have been the proximate cause of substantial economic and non-economic damages to the plaintiff, including lost past and future wages and lost past and future benefit.

**COUNT IV**

**VIOLATION OF CONNECTICUT FAIR EMPLOYMENT PRACTICES ACT, CONN. GEN. STAT. § 46a-60(a)(1)**

80. Paragraphs 1 through 79 are incorporated by reference.

81. By its actions, defendant NPS has violated the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. § 46a-60(a)(1) by retaliating against plaintiff for having opposed discriminatory employment practices.

82. Defendant's violations of the Act have been the proximate cause of substantial economic and non-economic damages to the plaintiff, including lost past and future wages and lost past and future benefits.

**COUNT V**

**Breach of the Implied Covenant of Good Faith and Fair Dealing**

83. Paragraphs 1 through 82 are incorporated by reference.

84. By its actions, the defendant breached the implied covenant of good faith and fair dealing inherent in its employment contract with Costanzo.

85. All elements required for this cause of action exist. Specifically: (i) the parties engaged in a contract in which the plaintiff reasonably expected to benefit; (ii) the benefit was injured by the defendant's actions; and (iii) the actions were in bad faith and the injury was the product of the defendant's bad faith.



86. The defendant drastically reduced the plaintiff's contractually-stipulated annual compensation by approximately \$100,000. But for his medical condition, record of physical impairment, and his complaints about how he was being illegally discriminated against, the defendant would not have engaged in such conduct, which was designed in bad faith to deprive him of the benefit of his contractual bargain, including his annual compensation and livelihood.

87. Defendant's violations of the implied covenant of good faith and fair dealing have been the proximate cause of substantial economic and non-economic damages to the plaintiff, including lost past and future wages and lost past and future benefits.

**PRAYER FOR RELIEF**

***WHEREFORE***, plaintiff prays for the following:

1. Granting damages and judgment to plaintiff for his common law and statutory claims of discrimination and retaliation in violation of state and federal law, as well as actual, liquidated, punitive, compensatory and double damages;
2. Awarding plaintiff his costs and expenses, including expert costs and attorneys' fees; and
3. Granting such further relief as this Court finds just.

The plaintiff demands a trial by jury on all counts.

Respectfully submitted,

PLAINTIFF  
FRANK C. COSTANZO

*/s/ Jeffrey S. Bagnell*

By:

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