

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

FRANK COSTANZO, : CIVIL ACTION NO.: 3:22-cv-00531 (SALM)
Plaintiff :
 :
vs. :
 :
 :
NORWALK PUBLIC SCHOOLS, :
Defendant. : June 20, 2022

**ANSWER
AND AFFIRMATIVE DEFENSES**

Defendant, NORWALK PUBLIC SCHOOLS (“Defendant”) hereby respectfully files this Answer and Affirmative Defenses to the Amended Complaint (the “Amended Complaint”) filed by Plaintiff, FRANK COSTANZO, on or about June 3, 2022.

NATURE OF THE ACTION

The allegations contained in the unnumbered paragraph under the section titled “Nature of the Action” characterize the lawsuit and the relief sought by Plaintiff, and as such, Defendant makes no answer save to demand strict proof thereof and respectfully refers all questions of law to this Court. To the extent a response is required, Defendant admits that Plaintiff voluntarily resigned from his employment on or about January 7, 2022. As to whether Plaintiff is disabled, Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted and leaves Plaintiff to his proof. Defendant denies the remaining allegations of this paragraph.

PARTIES

1. Defendant denies that Plaintiff’s resignation from his employment with Defendant was involuntary, except admits that Plaintiff was employed by Defendant from September 2015 through the date of his voluntary resignation in January 2022. As to the remaining allegations in

paragraph 1 of the Amended Complaint, Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted and leaves Plaintiff to his proof.

2. Defendant admits the allegations in paragraph 2 of the Amended Complaint.

JURISDICTION, VENUE AND ADMINISTRATIVE HISTORY

3. The allegations in paragraph 3 of the Amended Complaint constitute legal conclusions to which no response is required; to the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted and leaves Plaintiff to his burden of proof.

4. The allegations in paragraph 4 of the Amended Complaint constitute legal conclusions to which no response is required; to the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted and leaves Plaintiff to his burden of proof.

5. The allegations in paragraph 5 of the Amended Complaint constitute legal conclusions to which no response is required; to the extent a response is required, Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted and leaves Plaintiff to his burden of proof.

ALLEGATIONS

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 6 of the Amended Complaint and leaves Plaintiff to his burden of proof, except Defendant admits that in 2015 Plaintiff was hired as the Chief of School Operations by former Superintendent Dr. Steven Adamowski but was reassigned, effective July 1, 2021, to the position of Associate Education Administrator for School Board Instructional Support at Norwalk High School.

7. Defendant admits the allegations in paragraph 7 of the Amended Complaint.

8. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 8 of the Amended Complaint and leaves Plaintiff to his burden of proof.

9. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 9 of the Amended Complaint and leaves Plaintiff to his burden of proof.

10. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 10 of the Amended Complaint and leaves Plaintiff to his burden of proof.

11. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 11 of the Amended Complaint and leaves Plaintiff to his burden of proof, except Defendant admits that Plaintiff oversaw the Human Resources Department for a period of time.

12. Defendant denies that Plaintiff “was not subject to any performance criticism;” admits that Plaintiff received raises and that the numbers alleged are correct; and denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in the remaining allegations in paragraph 12 of the Amended Complaint and leaves Plaintiff to his burden of proof.

13. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 13 of the Amended Complaint and leaves Plaintiff to his burden of proof.

14. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 14 of the Amended Complaint and leaves Plaintiff to his burden of proof.

15. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 15 of the Amended Complaint and leaves Plaintiff to his burden of proof.

16. Defendant admits the allegations in paragraph 16 of the Amended Complaint.

17. Defendant admits the allegations in paragraph 17 of the Amended Complaint.

18. Defendant admits that in June 2020, certain of Defendant's employees had a hybrid work schedule, dividing time between working in person and remotely and that on or about July 2, 2021, the new Superintendent replacing Dr. Adamowski, Dr. Alexandra Estrella, ordered cabinet level employees to resume working in person only, which resulted in in-person meetings. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in the remaining allegations in paragraph 18 of the Amended Complaint and leaves Plaintiff to his burden of proof.

19. Defendant denies that "Plaintiff disclosed in great detail his polycystic kidney disease disability for the first time to Superintendent Estrella in her office in July 2020." Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in the remaining allegations in paragraph 19 of the Amended Complaint and leaves Plaintiff to his burden of proof.

20. Defendant denies the allegations in paragraph 20 of the Amended Complaint.

21. Defendant denies the allegations in paragraph 21 of the Amended Complaint.

22. Defendant denies the allegations in paragraph 22 of the Amended Complaint, except admits that Dr. Estrella "expected chiefs to report to work in-person full time."

23. Defendant denies the allegations in paragraph 23 of the Amended Complaint.

24. Defendant denies the allegations in paragraph 24 of the Amended Complaint, except Defendant admits that Dr. Estrella sent this text message to Plaintiff related to a statement that appeared in the Connecticut Insider on or about August 15, 2020.

25. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 25 of the Amended Complaint and leaves Plaintiff to his burden of proof, except Defendant admits that Plaintiff was asked to appear in Dr. Estrella's office the next day.

26. Defendant admits that Dr. Estrella questioned Plaintiff about the interview. Defendant denies the remaining allegations asserted in paragraph 26 of the Amended Complaint.

27. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 27 of the Amended Complaint and leaves Plaintiff to his burden of proof.

28. Defendant denies the allegations in paragraph 28 of the Amended Complaint.

29. Defendant denies the allegations in paragraph 29 of the Amended Complaint.

30. Defendant denies the allegations in paragraph 30 of the Amended Complaint, except denies knowledge or information sufficient to form a belief as to whether Plaintiff left the meeting to use the restroom and leaves Plaintiff to his burden of proof. Defendant admits that Plaintiff had previously been informed that he was to turn off his camera and audio if he left a meeting for security purposes and that because he left the virtual meeting and did not turn off his camera or audio, he was disconnected.

31. Defendant denies that Dr. Estrella knew that Plaintiff needed "to use the rest room frequently," but admits the remaining allegations in paragraph 31 of the Amended Complaint.

32. Defendant denies the allegations in paragraph 32 of the Amended Complaint.

33. Defendant denies the allegations in paragraph 33 of the Amended Complaint.

34. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 34 of the Amended Complaint and leaves Plaintiff to his burden of proof.

35. Defendant admits the allegations in paragraph 35 of the Amended Complaint.

36. Defendant admits the allegations in paragraph 36 of the Amended Complaint, except denies Plaintiff's characterization of Dr. Estrella's response.

37. Defendant denies the allegations in paragraph 37 of the Amended Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's scheduling of his vaccination appointment and leaves Plaintiff to his burden of proof.

38. Defendant denies the allegations in paragraph 38 of the Amended Complaint, except Defendant admits that Dr. Sandra Kase provided coaching and support to Plaintiff at Dr. Estrella's request.

39. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 39 of the Amended Complaint and leaves Plaintiff to his burden of proof, except admits that at some point in 2021, the position of "Chief of Operations" was changed to "Assistant Superintendent of Operations."

40. Defendant denies the allegations in paragraph 40 of the Amended Complaint.

41. Defendant denies the allegations in paragraph 41 of the Amended Complaint.

42. Defendant denies the allegations in paragraph 42 of the Amended Complaint.

43. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 43 of the Amended Complaint and leaves Plaintiff to his burden of proof.

44. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 44 of the Amended Complaint and leaves Plaintiff to his burden of proof, except Defendant admits that Plaintiff took sick days on April 8 and April 9, 2021.

45. Defendant admits that a letter containing the quoted language was sent by Dr. Estrella to Plaintiff on or about April 9, 2021, and Defendant respectfully refers the Court to the letter as best evidence of its contents; Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in the remaining allegations in paragraph 45 of the Amended Complaint and leaves Plaintiff to his burden of proof.

46. Defendant admits the allegations in paragraph 46 of the Amended Complaint.

47. Defendant denies the allegations in paragraph 47 of the Amended Complaint, except Defendant admits that the reorganization plan had not been approved by the Board at the time of the meeting but that Dr. Estrella would be recommending it for approval shortly.

48. Defendant denies the allegations in paragraph 48 of the Amended Complaint.

49. Defendant denies the allegations in paragraph 49 of the Amended Complaint.

50. Defendant admits the allegations in paragraph 50 of the Amended Complaint.

51. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 51 of the Amended Complaint and leaves Plaintiff to his burden of proof; except that Defendant admits there was a meeting on April 28, 2021.

52. Defendant denies the allegations in paragraph 52 of the Amended Complaint.

53. Defendant admits the allegations in paragraph 53 of the Amended Complaint.

54. Defendant denies the allegations in paragraph 54 of the Amended Complaint, except admits that Plaintiff sent an email to the Human Resources Director on April 28, 2021 alleging that he had experienced discrimination and retaliation and that his attorney sent an email to Defendant requesting an accommodation for his claimed disability.

55. Defendant denies the allegations in paragraph 55 of the Amended Complaint, except admits that Dr. Estrella informed Plaintiff on May 3, 2021 that because Plaintiff could not be assigned as a teacher as a result of his certification expiring, he had been assigned a new administrative position, which happened to fall below the rank of assistant principal.

56. Defendant admits the allegations in paragraph 56 of the Amended Complaint, except that Defendant denies that Plaintiffs' salary was less than the average 10-month teacher salary and that "[i]t was not until June 22, 2021" until Plaintiff was accommodated.

57. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 57 of the Amended Complaint and leaves Plaintiff to his burden of proof.

58. Defendant denies the allegations in paragraph 58 of the Amended Complaint, except admits that Plaintiff's new position would be supervised by Dr. Lynn Moore, who had previously filed grievances and a CHRO complaint against Defendant alleging Plaintiff engaged in wrongful conduct.

59. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 59 of the Amended Complaint and leaves Plaintiff to his burden of proof.

60. Defendant denies the allegations in paragraph 60 of the Amended Complaint.

61. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 16 of the Amended Complaint and leaves Plaintiff to his burden of proof.

62. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 62 of the Amended Complaint and leaves Plaintiff to his burden of proof, except Defendant admits that Plaintiff sent an email to Reginald Roberts on or about September 14, 2021.

63. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 63 of the Amended Complaint and leaves Plaintiff to his burden of proof.

64. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 64 of the Amended Complaint and leaves Plaintiff to his burden of proof, except Defendant admits that Plaintiff complained about not being asked to participate in meetings.

65. Defendant admits that Plaintiff was given a letter of reprimand containing that language alleged. Defendant denies the remaining allegations contained in paragraph 65 of the Amended Complaint.

66. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 66 of the Amended Complaint and leaves Plaintiff to his burden of proof, except Defendant admits that Plaintiff wrote a rebuttal letter that he asked to be placed in his personnel file.

67. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 67 of the Amended Complaint and leaves Plaintiff to his burden of proof.

68. Defendant denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 68 of the Amended Complaint and leaves Plaintiff to his burden of proof.

69. Defendant admits the allegations in paragraph 69 of the Amended Complaint, except Defendant denies that Plaintiff's resignation was involuntary.

70. Paragraph 70 of the Amended Complaint does not allege any facts but states a recitation of the law to which no response is required and Defendant respectfully refers the Court to the statute cited for the best evidence of its contents.

71. Paragraph 71 of the Amended Complaint does not allege any facts but states a recitation of the law to which no response is required and Defendant respectfully refers the Court to the statute cited for the best evidence of its contents.

COUNT I

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

72. In response to paragraph 72 of the Amended Complaint, Defendant repeats and realleges its responses to the allegations contained in paragraphs 1 through 71 as though fully set forth herein.

73. Defendant denies the allegations in paragraph 73 of the Amended Complaint.

74. Defendant denies the allegations in paragraph 74 of the Amended Complaint.

COUNT II

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

75. In response to paragraph 75 of the Amended Complaint, Defendant repeats and realleges its responses to the allegations contained in paragraphs 1 through 74 as though fully set forth herein.

76. Defendant denies the allegations in paragraph 76 of the Amended Complaint.

77. Defendant denies the allegations in paragraph 77 of the Amended Complaint.

COUNT III

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

78. In response to paragraph 78 of the Amended Complaint, Defendant repeats and realleges its responses to the allegations contained in paragraphs 1 through 77 as though fully set forth herein.

79. Defendant denies the allegations in paragraph 79 of the Amended Complaint.

COUNT IV

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

80. In response to paragraph 80 of the Amended Complaint, Defendant repeats and realleges its responses to the allegations contained in paragraphs 1 through 79 as though fully set forth herein.

81. Defendant denies the allegations in paragraph 81 of the Amended Complaint.

82. Defendant denies the allegations in paragraph 82 of the Amended Complaint.

COUNT V

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

83. In response to paragraph 83 of the Amended Complaint, Defendant repeats and realleges its responses to the allegations contained in paragraphs 1 through 82 as though fully set forth herein.

84. Defendant denies the allegations in paragraph 84 of the Amended Complaint.

85. Defendant denies the allegations in paragraph 85 of the Amended Complaint.

86. Defendant denies the allegations in paragraph 86 of the Amended Complaint.

87. Defendant denies the allegations in paragraph 87 of the Amended Complaint.

BY WAY OF AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction over the Amended Complaint, in whole or in part.

SECOND AFFIRMATIVE DEFENSE

Plaintiff failed to exhaust his administrative remedies.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are in whole or in part untimely.

FOURTH AFFIRMATIVE DEFENSE

Defendants are entitled to a *Faragher/Ellerth* defense because: (1) Defendant exercised reasonable care to prevent and correct the alleged harassment; and (2) Plaintiff failed to take advantage of any preventive or corrective opportunities provided by Defendant or to avoid harm otherwise.

FIFTH AFFIRMATIVE DEFENSE

While denying the material allegations of the claim, to the extent the trier of fact concludes that the Defendants were unlawfully motivated, the Defendants claims benefit of the mixed motive defense articulated in *Price Waterhouse v. Hopkins*, 490 U.S. 288 (1989) as it might be applicable.

SIXTH AFFIRMATIVE DEFENSE

Defendant is immune from punitive damages.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate his damages.

RESERVATION OF RIGHTS

Defendant reserves the right to amend or add any additional defenses or counterclaims which may become known during the course of discovery.

DEFENDANT, NORWALK PUBLIC SCHOOLS

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