

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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FUSION LEARNING, INC,	)
Plaintiff,	)
	)
VS.	) C.A. NO. 1:21-cv-11059-PBS
	)
ANDOVER SCHOOL COMMITTEE,	)
TOWN OF ANDOVER D/B/A ANDOVER	)
SCHOOL DEPARTMENT D/B/A ANDOVER	)
PUBLIC SCHOOLS, CLAUDIA BACH,	)
SUPERINTENDANT, SANDRA TRACH,	)
ASST. SUPERINTENDANT, and SHELDON BERMAN,	)
FORMER SUPERINTENDANT,	)
Defendants.	)
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**TOWN OF ANDOVER’S ANSWER TO PLAINTIFF’S FIRST AMENDED COMPLAINT  
AND DEMAND FOR TRIAL BY JURY**

Introduction

1. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint, but denies that the Town of Andover violated plaintiff’s rights under the U.S. Constitution or any federal or state laws.
2. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint.

Jurisdiction

3. The defendant admits this Court has subject matter jurisdiction over the claims made in the Complaint.

Parties

4. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.
5. The defendant admits the truth of the allegations contained in Paragraph 5 of the Complaint; however, the three named Andover School Officials have been dismissed from this Action.

Facts

*Defendants' Background*

6. The defendant admits the allegations contained in Paragraph 6 of the Complaint.
7. The defendant admits the allegations contained in Paragraph 7 of the Complaint.
8. The defendant admits the allegations contained in Paragraph 8 of the Complaint.
9. The defendant admits the allegations contained in Paragraph 9 of the Complaint.

*Fusion Academy Background*

10. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint.
11. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint.
12. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint.
13. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint.

*Public Education in Massachusetts*

14. The defendant admits the allegations contained in Paragraph 14 of the Complaint.
15. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint.
16. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint.

*Non-Public Education in Massachusetts*

17. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint.
18. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint.
19. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint.

20. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint.

21. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint.

22. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint.

23. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint.

24. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint.

25. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint.

26. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint.

27. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Complaint.

28. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint.

29. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint.

30. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint.

31. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the Complaint.

32. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint.

33. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint.

34. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Complaint.

35. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint.

36. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint.

37. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint.

38. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the Complaint.

*ASC Policy Respecting Nonpublic Schools*

39. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint.

40. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40 of the Complaint.

41. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41 of the Complaint.

42. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 of the Complaint.

43. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of the Complaint.

44. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Complaint.

45. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the Complaint.

46. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 of the Complaint.

47. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 of the Complaint.

48. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of the Complaint.

49. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Complaint, but denies that any conduct

of the Town of Andover violated Plaintiff's rights under the Equal Protection Clause or otherwise.

50. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of the Complaint.

51. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint.

*Fusion Academy's First Application*

52. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52 of the Complaint.

53. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of the Complaint.

54. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint.

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56. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint.

57. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint.

58. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint.

59. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 of the Complaint.

60. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint.

61. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint.

62. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 of the Complaint.

63. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint.

64. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 64 of the Complaint.

65. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 65 of the Complaint.

66. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 of the Complaint.

67. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint.

68. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint.

69. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Complaint.

70. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 of the Complaint.

71. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 of the Complaint.

72. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 of the Complaint.

73. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint.

74. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 of the Complaint.

75. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 75 of the Complaint.

76. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint.

77. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint.

78. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint.

79. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 79 of the Complaint.

80. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint.

*Fusion Academy's Second Application*

81. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of the Complaint.

82. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 82 of the Complaint.

83. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint.

84. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Complaint.

85. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Complaint.

86. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of the Complaint, but denies that the Town of Andover (acting through the Board of Selectmen or Town Administrator, for example), participated in the review of Fusion's second application to operate a private school in the Town of Andover.

87. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of the Complaint, but denies that the Town of Andover (acting through the Board of Selectmen or Town Administrator, for example), made any recommendation to the Andover School Committee.

*The Review Process of the Second Application*

88. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 88 of the Complaint.

89. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 89 of the Complaint.

90. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 90 of the Complaint.

91. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 91 of the Complaint.

92. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 92 of the Complaint.

93. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 93 of the Complaint.

94. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 94 of the Complaint.

95. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 95 of the Complaint.

96. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 96 of the Complaint.

97. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 97 of the Complaint.

98. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 98 of the Complaint.

99. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Complaint.

*Denial of the Second Application*

100. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 of the Complaint.

101. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 of the Complaint.

102. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102 of the Complaint.

103. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 of the Complaint.

104. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 of the Complaint.

105. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105 of the Complaint.



106. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 of the Complaint.

107. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107 of the Complaint.

108. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108 of the Complaint.

109. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 109 of the Complaint, but denies that the Town of Andover (acting through the Board of Selectmen or Town Administrator, for example), in any way “misled” the Andover School Committee with respect to Fusion’s application to run a private school in Andover or in any other matter.

110. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110 of the Complaint.

111. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 of the Complaint.

112. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112 of the Complaint.

113. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 113 of the Complaint.

114. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 114 of the Complaint.

115. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 115 of the Complaint.

116. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 116 of the Complaint.

117. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 117 of the Complaint.

118. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118 of the Complaint.

119. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 119 of the Complaint.

120. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 120 of the Complaint.

121. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 121 of the Complaint.

122. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint.

123. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 123 of the Complaint.

124. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 124 of the Complaint.

125. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 125 of the Complaint.

126. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 126 of the Complaint.

127. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 127 of the Complaint.

128. The defendant denies the truth of the allegations contained in Paragraph 128 of the Complaint.

#### COUNT I

129. The defendant hereby repeats and incorporates by reference his response to Paragraphs 1 through 128 as if fully set forth herein.

130. The defendant denies the truth of the allegations contained in Paragraph 130 of the Complaint.

131. The defendant denies the truth of the allegations contained in Paragraph 131 of the Complaint.

#### COUNT II

132. The defendant hereby repeats and incorporates by reference his response to Paragraphs 1 through 131 as if fully set forth herein.

133. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 133 of the Complaint.

134. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 134 of the Complaint.

135. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 135 of the Complaint.

#### AFFIRMATIVE DEFENSES

1. The Complaint fails to state an action as to which relief can be granted.
2. The Complaint fails to state a *Monell*-type claim against the Town of Andover.
3. The actions taken by the Andover School Committee are content neutral and justified by and under governmental interests unrelated to plaintiff's academic freedom or any other First Amendment rights.

#### **JURY DEMAND**

The defendant, Town of Andover, demands a trial by jury on all issues raised in plaintiff's Complaint.

Respectfully submitted,

The Defendant,

TOWN OF ANDOVER,  
By its Attorneys,

**PIERCE DAVIS & PERRITANO LLP**

*/s/ Adam Simms*

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John J. Davis, BBO #115890  
Adam Simms, BBO # 632617  
Colleen M. Howard BBO #710250  
10 Post Office Square, Suite 1100N  
Boston, MA 02109  
(617) 350-0950  
[asimms@piercedavis.com](mailto:asimms@piercedavis.com)

Dated: September 22, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing, filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on September 22, 2022.

*/s/ Adam Simms*

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Adam Simms, Esq.