



**CALIFORNIA  
TEACHERS  
ASSOCIATION**

1705 Murchison Drive, Burlingame, CA 94010  
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phone 650.552.5425 // fax 650.552.5019

**DEPARTMENT OF LEGAL SERVICES**

May 3, 2019

Via U.S. Mail and Efile  
[PERBe-file.SFRO@perb.ca.gov](mailto:PERBe-file.SFRO@perb.ca.gov)

**PUBLIC EMPLOYMENT RELATIONS BOARD**  
San Francisco Regional Office  
1330 Broadway, Suite 1532  
Oakland, CA 94612-2514

RE: *New Haven Teachers Association, CTA/NEA v. New Haven Unified School  
District, New UPC*

Dear Sir/Madame:

Enclosed is an original and one copy of Charging Party's Unfair Practice Charge and Letter Requesting to Expedite the Unfair Practice Charge to be filed in the above-referenced case.

Also enclosed is an additional copy of each cover page for endorsing. Please return the endorsed stamped copy in the postage-paid envelope provided.

Thank you.

Very truly yours,

Rachel A. Quiles  
Legal Assistant to  
Brian Schmidt, CTA Staff Attorney

Enclosure(s)

By E-Filing (PERBe-file.sfro@perb.ca.gov) and Email  
(fdelatorre@perb.ca.gov, wross@perb.ca.gov)

May 3, 2019

J. Felix De La Torre, General Counsel  
Wendi Ross, Deputy General Counsel  
Public Employment Relations Board  
Sacramento Regional Office  
1031 18th Street  
Sacramento, California 95811-4124

Re: *New Haven Teachers Association v. New Haven Unified School District*  
Request for Expedited Processing

Dear General Counsel De La Torre and Deputy General Counsel Ross:

I represent the New Haven Teachers Association in connection with the enclosed unfair practice charge, which is being submitted concurrently with this letter for filing. Pursuant to PERB Regulation 32147, the Association respectfully requests that the General Counsel's office expedite the processing of this charge.

As detailed in the charge itself, the Association alleges that the District violated the Educational Employment Relations Act when it passed a resolution declaring any strike by its certificated employees to be unlawful, threatening discipline up to dismissal against any certificated employee who participates in a strike, and unilaterally changing contractual provisions relating to the use of personal necessity leave, sick leave, and professional development leave during a strike. The parties are currently at impasse over contract negotiations and are about to complete the fact-finding process; the fact-finding report is scheduled for release on May 6, 2019. Having participated in good faith in the statutory impasse procedures, the Association will be privileged to engage in strike activity if, after receiving and considering the fact-finding report, it concludes that the report does not form the basis for a negotiated settlement.

Regulation 32147 provides that expedited processing is appropriate when a case "presents an important question of law or policy ... the early resolution of which is likely to improve labor relations between" the parties. This charge presents an important question of law

and policy, in that it directly addresses the core statutory right to engage in concerted activity. *See, e.g., Santee Elementary School District* (2006) PERB Dec. No. 1822, at 10-12 (holding that a district board policy which similarly threatened to discipline employees for engaging in “strike-related type activities” unlawfully interfered with employee rights under the EERA, and citing numerous cases in support). Additionally, early resolution of the Charge is likely to improve the strained labor relations now prevailing in the District. As the Board has recognized, the right to strike – even if never acted upon – plays a critical role in achieving the balance necessary for the effective and meaningful resolution of industrial disputes and is central to our labor relations regime. *See Fresno County In-Home Supportive Services Public Authority* (2015) PERB Dec. No. 2418-M, at 34-35; *see also County Sanitation District No. 2 v. Los Angeles County Employees Association* (1985) 38 Cal. 3d 564, 583. By unlawfully threatening its employees for exercising their right to engage in lawful concerted activity, the District’s Resolution disrupts this equilibrium and makes it less likely that the current deadlock will be broken. Moreover, only speedy PERB intervention can cure the chilling effect of the District’s unlawful interference, ensuring that the Association and its bargaining unit members are able to exercise their legal right to strike free from the threat of reprisal.

For these reasons, the Association submits that its request for expedited processing should be granted. Please do not hesitate to contact me if you require any additional information to rule on this request.

Sincerely,



Brian Schmidt  
Staff Attorney



**STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD  
UNFAIR PRACTICE CHARGE**

**DO NOT WRITE IN THIS SPACE:**

Case No:

Date Filed:

**INSTRUCTIONS:** File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at [www.perb.ca.gov](http://www.perb.ca.gov). If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES  If so, Case No. NO

1. CHARGING PARTY: EMPLOYEE  EMPLOYEE ORGANIZATION  EMPLOYER  PUBLIC<sup>1</sup>

a. Full name: New Haven Teachers Association, CTA/NEA

b. Mailing address: c/o California Teachers Association, Legal Department  
1705 Murchison Drive, Burlingame, CA 94010

c. Telephone number: 650-552-5425

d. Name and title of person filing charge: Brian Schmidt, Staff Attorney  
E-mail Address: bschmidt@cta.org  
Telephone number: 650-552-5413  
Fax No.: 650-552-5019

e. Bargaining unit(s) involved: Certificated Employees

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION  EMPLOYER

a. Full name: New Haven Unified School District

b. Mailing address: 34200 Alvarado-Niles Rd.  
Union City, CA 94587

c. Telephone number: 415-241-6000

d. Name and title of agent to contact: Arlando Smith, Superintendent  
E-mail Address:  
Telephone number: 510.471.1100  
Fax No.: 510.487.1200

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name:

b. Mailing address:

c. Agent:

<sup>1</sup> An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.  
PERB-61 (7/22/2014)

**5. GRIEVANCE PROCEDURE**

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes  No

**6. STATEMENT OF CHARGE**

- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
  - Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
  - Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
  - Meyers-Milius-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)
  - Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)
  - Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 – 71639.5)
  - Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)
- b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:  
Government Code sections 3543.5(a), (b), and (c)
- c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are **(a copy of the applicable local rule(s) MUST be attached to the charge):**  
\_\_\_\_\_
- d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. *(Use and attach additional sheets of paper if necessary.)*  
See Attachment A.

**DECLARATION**

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on May 3, 2019

at Burlingame, CA  
(City and State)

(Date)

Brian Schmidt  
(Type or Print Name)

Brian Schmidt  
(Signature)

Title, if any: CTA Staff Attorney

Mailing address: 1705 Murchison Drive  
Burlingame, CA 94010

Telephone Number: 650.552.5413 E-Mail Address: bschmidt@cta.org

*New Haven Teachers Association v. New Haven Unified School District*  
Attachment A to Unfair Practice Charge

**SUMMARY OF THIS CHARGE**

On April 30, 2019, the governing board of the New Haven Unified School District passed a resolution declaring any strike by its employees to be unlawful, threatening discipline up to dismissal against any employee who participates in a strike, and abrogating a number of contractual terms. In so doing, the District interfered with rights that are protected under the Educational Employment Relations Act and violated its obligation to bargain in good faith. In support of its claim that the District violated sections 3543.5(a), (b), and (c) of the Government Code, the New Haven Teachers Association alleges the following:

**BACKGROUND INFORMATION**

1. Respondent New Haven Unified School District is a public school employer within the meaning of Government Code section 3540.1(k).
2. Complainant New Haven Teachers Association is an employee organization within the meaning of Government Code section 3540.1(d) and is the exclusive representative, within the meaning of Government Code section 3540.1(e), of the District's certificated employees.
3. The parties are currently at impasse over contract negotiations. The Association has participated in the mediation and fact-finding process in good faith. A fact-finding report is due to be issued on May 6, 2019.

**COUNT I: UNLAWFUL INTERFERENCE**

4. On April 30, 2019, the District's board of trustees passed Resolution No. 043-1819, "Emergency Regulations of the New Haven Unified School District," a true and correct copy of which is attached hereto as **Exhibit 1**.
5. The preamble of the Resolution incorrectly declares that "any strike, walk-out, slowdown or other type-of work stoppage by the employees of the district is unlawful."
6. Paragraph 1 of the Resolution provides that the "emergency operating procedures" described therein "will be put into effect" in "the event of an employee strike, walk-out or other work stoppage."
7. Paragraph 4(a) of the Resolution defines an "unauthorized absence" as "a non-performance of [] duties and responsibilities," including as a result of "collective refusals to provide service."
8. Paragraph 4(b) of the Resolution directs the superintendent to compile a "disciplinary report setting forth the name and relevant information concerning each employee who is believed to have been . . . [a]bsent without authorization on any workday or part thereof"

or “[e]ngaged in a walk-out, slowdown, work stoppage or other strike related activity.” It provides that the Board will consider the disciplinary report and determine “whether or not [to] commence disciplinary action including but not limited to immediate suspension and adoption of a resolution of intention to dismiss the employee.”

9. By expressly identifying a strike-related absence as an “unauthorized absence” that could result in discipline up to dismissal, it is reasonably predictable that the Resolution will tend to inhibit certificated employees from exercising their statutorily-protected rights to engage in strike activity. Accordingly, by adopting the Resolution, the District unlawfully interfered with the protected rights of the Association and the employees it represents to engage in lawful strike activity, in violation of Government Code sections 3543.5(a) and (b).

### COUNT II: UNILATERAL CHANGE

10. Paragraph 3(a) of the Resolution provides that, during a strike, District employees may only use personal necessity leave in the event of: 1) “[d]eath or serious illness of a member of such employee’s immediate family”; or 2) an “[a]ccident involving such employee’s person or property or the person or property of a member of such employee’s immediate family.” Employees who wish to take personal necessity leave for one of these reasons “maybe [sic] required to file with the Board-satisfactory evidence of entitlement to such leave.” These provisions are more restrictive than the provisions governing personal necessity leave in the collective bargaining agreement.

11. Paragraph 3(b) of the Resolution requires that any employee who wishes to use sick leave during a strike must file a physician’s certification with the District. Failure to do so will result in the absence being deemed unauthorized, which could subject the employee to disciplinary action up to dismissal. This provision is more restrictive than the provision governing sick leave in the collective bargaining agreement.

12. Paragraph 3(c) completely suspends all “vacations and professional leaves” during a strike. While the collective bargaining agreement does not provide for “vacation leave,” it does provide for “professional development leave.” The agreement does not provide that the District may categorically suspend professional development leave.

13. At no time before passing the Resolution did the District notify the Association about its proposed changes to the terms of the collective bargaining agreement or offer to bargain with the Association over those changes. Accordingly, the District failed to meet and negotiate in good faith with the Association in violation of section 3543.5(c) of the Government Code. As a consequence, the District also deprived the Association of its right to represent its members in violation of section 3543.5(b) of the Government Code, and deprived the Association’s members of their right to be represented by the Association in violation of section 3543.5(a) of the Government Code.

### REMEDY

As a remedy for the foregoing violations, the Association requests that the Board enter an order:

1. Finding that the District violated Government Code sections 3543.5(a), (b), and (c), and enjoining the District from further such violations;
2. Requiring the District to immediately rescind Board Resolution No. 043-1819 to the extent it: a) purports to declare “any strike” unlawful; b) threatens discipline against employees for engaging in a lawful strike; and c) effects unilateral changes to the collective bargaining agreement;
3. Requiring the District to post an appropriate notice at all places where such notices are regularly placed informing the community of the Board’s determination that the District violated the Educational Employment Relations Act; and
4. Awarding other relief as is just and appropriate.



# Exhibit 1

**NEW HAVEN UNIFIED BOARD OF EDUCATION**  
**Resolution No. 043-1819**

**Emergency Regulations of the New Haven Unified School District**

**WHEREAS**, it is the responsibility of the Board of Trustees of the New Haven Unified School District to provide for the operation of the schools of the district for the purpose of education of the pupils thereof; and

**WHEREAS**, any strike, walk-out, slowdown or other type-of work stoppage by the employees of the district could materially disrupt the operation of the schools of the district; and

**WHEREAS**, any strike, walk-out, slowdown or other type-of work stoppage by the employees of the district is unlawful; and

**WHEREAS**, the Board intends to keep the schools of this district open and operating;

1. **INTERESTS OF PUPILS, EMPLOYEES, COMMUNITY AND PROPERTY.**

In the event of an employee strike, walk-out or other work stoppage, the district intent shall be to keep the schools open and operating. To accomplish this emergency operating procedures will be put into effect in order to:

- a) ensure the welfare and safety of the pupils;
- b) ensure the rights and safety of all employees;
- c) ensure the protection of public school property; and
- d) provide the necessary staffing to fulfill the intent of the Board of Trustees.

2. **ORDER OF AUTHORITY.**

This regulation is an outline of emergency procedures and responsibilities to be put into effect by the superintendent or his designee when he determines that such conditions exist and provides for a sequence of authority, communication and responsibility until the board of Trustees determines the disruption is ended.

3. **LEAVE OF ABSENCE.**

a) *Personal necessity leave or personal leave.* Personal necessity or personal leaves are authorized for district employees only when the same is taken due to:

- 1) Death or serious illness of a member of such employee's immediate family; or
- 2) Accident involving such employee's person or property or the person or property of a member of such employee's immediate family.

District employees who take personal necessity or emergency leaves for one of the above reasons maybe required to file with the Board-satisfactory evidence of entitlement to such leave.

b) *Sick Leave*

- 1) In order to be granted sick leave for any absence claimed to be due to illness or injury (other than pursuant to an industrial accident or illness leave), a district employee must file with the Personnel-Office of the district a statement signed by his or her physician or medical advisory.
- 2) In the event there is a suspected concerted withdrawal of services by employees, it shall be district regulation to require a physician's certification from any employee who is absent on the date of said suspected withdrawal of the services and who files a claim for sick leave benefits for the absence.
- 3) Said certificate must be filed immediately upon return to work. In the event a district employee fails or refuses to furnish said certificate, said absence shall be treated as and be deemed to be unauthorized absence without pay.
- 4) Except as otherwise provided herein, all of the leave policies and regulations of the district shall remain in full force and effect.

c) *Vacations and professional leave.* All vacations and professional leaves are suspended during the period of the emergency except by special authorization of the superintendent or his designee.

4. ABSENCE WITHOUT LEAVE: WALK-OUT, SLOWDOWN, WORK STOPPAGE.
- a) *Unauthorized absence.* This is defined a non-performance of those duties and responsibilities assigned by the district and it representatives including all duties and responsibilities as defined by the Education Code, rules and regulations of the State Board of Education and policies and regulations of the Board of Trustees of the New Haven Unified School District. Such unauthorized absence may include, but is not limited to collective refusals to provide service unauthorized use of leave benefits, non-attendance at required meetings.
  - b) *Disciplinary report.* The superintendent; or such person or persons as he may designate, shall prepare for submission to this Board a disciplinary report setting forth the name and relevant information concerning each employee who is believed to have been:
    - 1) Absent without authorization on any workday or part thereof;
    - 2) Engaged in a walk-out, slowdown, work stoppage or other strike related activity;
    - 3) Engaged in acts of vandalism directed against real or personal property of the school district or the personal property of others located on school property;
    - 4) Suggested, encouraged, intimidated, coerced, or by any other means attempted to initiate or aid in a boycott of school by pupils of the district;
    - 5) Suggested, encouraged, intimidated or coerced, or by any other means, attempted to persuade one or more pupils o the district not to attend school; or
    - 6) Acted or failed to act in a manner, which the superintendent believes warrants disciplinary action by the Board.

Procedures with respect to said disciplinary report shall be as follows:

    - Notice shall first be given to the employee pursuant to Education Code Section 13001.5, and he or she shall be given an opportunity to review the disciplinary report and comment thereon.
    - In the event such employee desires to enter, and have attached to the disciplinary report his or her own comments, such employee shall do so within two (2) working days of receipt of notice, or he or she shall be deemed to have waived such a right.
    - Said disciplinary report shall be submitted to the Board, together with any written comments filed y the employee, for consideration and determination on whether or not the Board will commence disciplinary action including but not limited to immediate suspension and adoption of a resolution of intention to dismiss the employee.
  - c) *Compensation.* No compensation shall be paid to or on behalf of any district employee unless the superintendent or the Assistant Superintendent of Personnel, whose duty is to draw the warrants, is satisfied that the employee has faithfully performed all of his or her prescribed duties (Education Code Section 13527). The term "compensation," as used herein, shall include, but shall not be limited to, employer contribution, if any toward the cost of any health, welfare or group benefits of the employee.
5. DELEGATION OF AUTHORITY TO SUPERINTENDENT.
- a) *Authority to contract*
    - 1) Substitute employees. The superintendent or designee, I hereby authorized to employ additional substitutes as needed. Substitutes may be paid whatever rate is deemed necessary to assure availability of substitutes.
    - 2) Legal services. In the event of emergencies, the superintendent or his designee is authorized to take all legal steps necessary to obtain the requisite legal services and to cause to be instituted or defended in the name of the district, any litigation arising out of, or related to any strike, slowdown, walk-out, etc., of employees of the district.
    - 3) Consultant services. The superintendent or his designee is hereby authorized to contract, pursuant to Government Code Section 53060, for such consultant services as re necessary in order to obtain professional advice for himself and his staff on strike or strike related matters.
  - b) *Assignment of district employees.* The superintendent or his designee is hereby authorized to reassign any and al employees, as needed in order to keep the schools open and operating.

- c) *Organization of personnel and resources.* The superintendent or his designee is authorized to organize the district's personnel and its material resources in any manner necessary in order to keep the schools open and operating.
- d) *District property.* The superintendent or his designee is authorized to secure necessary legal assistance from County Counselor retained counsel to require, that any district property held by district employees be immediately delivered to him or his designated representatives. As used herein, "district property" includes, but is not limited to keys, audio-visual equipment, instructional materials, grade books, attendance records, posting charts, and pupil scholastic data.
- e) *Emergency communications system.* The superintendent or his designee is authorized to establish emergency communications systems.
- f) *Transportation.* The superintendent or his designee is authorized to enter into contract with public or private agencies for pupil transportation services and may assign district busses to the agency until the resolution of the emergency.

6. OFFICIAL BOARD SPOKESMAN.

At the time the superintendent declares an emergency, the superintendent or his designated representative becomes the official spokesman of the Board.

7. CLOSING A SCHOOL.

Only the superintendent and/or the strike coordinator have the authority to close a school. If the principal concludes, at any time, that the school should be closed, this should be reported to the superintendent's office. The report of the situation and recommendation will be studied by the superintendent for a final decision. If the superintendent orders a school closed, the principal:

- a) Will notify the staff that closure is occurring;
- b) Will inform the students at each grade level of any change in dismissal times. If closer is at the end of a regular day, the student should be notified not to come to school until an official announcement is made by the district;
- c) Will take those steps necessary to ensure the safety of students, student records, staff and the property of the district;
- d) Will direct staff not participating in the disruption to continue to report as directed to be available for other services;
- e) Will inform the superintendent if he is unable to report for duty.

8. PUPIL REASSIGNMENT.

In the event that an emergency is declared, the superintendent or his designee is authorized to provide for attendance of any district pupil at a school other than the school to which the pupil is normally assigned. Such attendance shall be for the period of time until the Board of Trustees determines the emergency is ended.

9. PULICATION AND POSTING.

In the event that an emergency is so declared, a copy of these emergency regulations shall be published in a newspaper servicing the district. Copies of these emergency regulations shall be posted in such places as to make them accessible to all employees.

10. NOTICE TO PARENTS AND EMPLOYEES.

When the superintendent or the strike coordinator declares that an emergency exists, the community, parents and employees shall be notified that the emergency regulations are operative by the most efficient and expeditious means available.

11. EFFECTIVE DATES.

These emergency regulations shall become operative immediately upon declaration of an emergency by the superintendent or the strike coordinator, and shall remain in effect until the Board of Trustees determines the emergency is ended.

**NOW THEREFORE, IT IS RESOLVED**, by this Board, if an emergency exists with respect to the operation of the school of the district because of the above-cited reasons, that the following EMERGENCY REGULATIONS shall be in effect.

**IN WITNESS WHEREOF**, we members of the Board of Trustees of the New Haven Unified School District, State of California, have hereunto set our hands this 30<sup>th</sup> day of April, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Dr. Arlando Smith, Superintendent  
New Haven Unified School District  
County of Alameda, State of California

**PROOF OF SERVICE**  
**State of California, County of, San Mateo**

I am employed in County of San Mateo, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1705 Murchison Drive, Burlingame, California, 94010.

On May 3, 2019, I served the foregoing document described as **Unfair Practice Charge and Letter Requesting to Expedite Unfair Practice Charge, (New Haven Teachers Association, /CTA/NEA and New Haven Unified School District)** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Arlando Smith, Superintendent  
New Haven Unified School District  
34200 Alvarado Niles Rd.  
Union City, CA 94587  
Federal Express No. 7751 3481 0641  
Fax 510.487.1200

**BY MAIL**

I am "readily familiar" with practice of collection and processing correspondence for mailing in this office. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Burlingame, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**BY OVERNIGHT**

By overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.

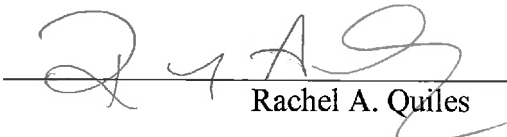
**BY FACSIMILE**

I arranged for the above-entitled document(s) to be sent by facsimile from facsimile number (650) 552-5019 to the above-listed facsimile number(s) prior to 5:00 p.m. The facsimile machine I used complied with the applicable rules of court. Pursuant to the applicable rules, I caused the machine to print a transmission record of the transmission, to the above facsimile number(s) and no error was reported by the machine. A copy of this transmission is attached hereto.

**BY EMAIL**

By electronic mail transmission this date to the email address(es) listed above.

Executed on May 3, 2019 at Burlingame, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
\_\_\_\_\_  
Rachel A. Quiles