



State of New Hampshire  
Public Employee Labor Relations Board

Unfair Labor Practice Complaint

1. **Charging Party:** Keene Education Association, NEA-NH  
**Representative:** Esther Kane Dickinson **Title:** NEA-NH Staff Attorney  
**Address:** 9 South Spring Street, Concord, NH 03301  
**E-Mail Address:** edickinson@nhnea.org **Telephone** 603-224-7751

2. **Respondent:** Keene School District  
**Representative:** Robert Malay **Title:** Superintendent  
**Address:** 193 Maple Avenue, Keene, NH 03431  
**E-Mail Address:** rmalay@sau29.org **Telephone** 603-357-9002

3. **Public Employer:** Keene School District  
**Representative:** Robert Malay **Title:** Superintendent  
**Address:** 193 Maple Avenue, Keene, NH 03431  
**E-Mail Address:** rmalay@sau29.org **Telephone** 603-357-9002

4. **Details of the Charge:** In separately numbered paragraphs in the space below, or in an attachment, specify in detail the specific provisions of RSA 273-A:5 allegedly violated and provide a complete statement of supporting facts, such as names, dates, times, places, and other information required under Pub 201.02 (b).

SEE ATTACHED STATEMENT

5. **Remedy Requested:** SEE ATTACHED STATEMENT

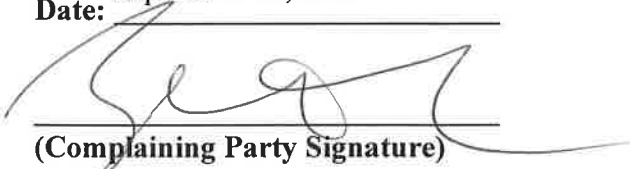
6. **Collective Bargaining Agreement:** The charging party is required to file an electronic copy of the current and other applicable collective bargaining agreement or a statement that such agreement(s) are already on file with the PELRB. Pub 201.02 (d)(1) and (2).
7. **Answer to Complaint:** The respondent shall file its answer at [pelrb@nh.gov](mailto:pelrb@nh.gov) within fifteen days of the date the complaint was filed at the PELRB electronically. In accordance with Pub 201.03 the respondent shall clearly and concisely answer the allegations in the complaint, paragraph by paragraph, and shall specifically deny or admit each allegation in the complaint and explain each allegation about which the respondent has knowledge.
8. **Posting of Complaint:** The public employer shall post and display copies of any complaint filed by it or against it or delivered to it at locations where such employees who might be directly affected by the board's disposition of the complaint work not later than the date on which it files its answer or on which it receives the answer of the charged party, or not later than 15 days after the receipt of the complaint if no answer to the complaint is to be filed.

**Execution of Complaint:**

*State of New Hampshire*  
*County of Merrimack* \_\_\_\_\_

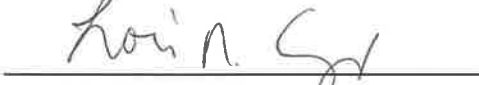
Esther Kane Dickinson \_\_\_\_\_, first being duly sworn, does depose and say that I am the complaining party and the allegations in this complaint are true to the best of my knowledge, information and belief.

**Date:** September 12, 2019 \_\_\_\_\_

  
\_\_\_\_\_  
**(Complaining Party Signature)**

Esther Kane Dickinson \_\_\_\_\_  
**(Print or type name)**

Subscribed and sworn to before me this 12th day of September, 2019.

  
\_\_\_\_\_  
**(Notary Public/Justice of the Peace)**  
**My Commission Expires:**

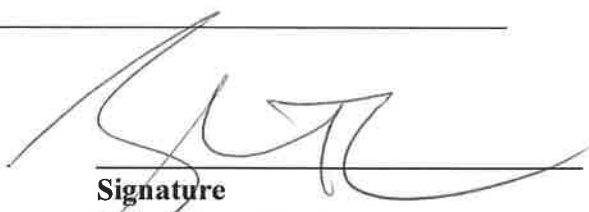
**LORI N. CYR, Notary Public**  
**My Commission Expires August 24, 2021**

**Certificate of Service**

I hereby certify that on September 12, 2019 (date) a copy of this complaint was provided by electronic mail if available and by regular mail or hand delivery to:  
Robert Malay, SAU 29, Superintendent  
\_\_\_\_\_  
**(Name of Representative for Respondent)**

And  
\_\_\_\_\_  
**(Name of Representative for Public Employer)**

**Date:** 9/12/19 \_\_\_\_\_

  
\_\_\_\_\_  
**Signature**  
Esther Kane Dickinson  
\_\_\_\_\_  
**Print or type name**

New Hampshire Public Employee Labor Relations Board  
2 ½ Beacon St., Suite 200, Concord, New Hampshire 03301  
603 271-2587 • [www.nh.gov/pelrb](http://www.nh.gov/pelrb) • [pelrb@nh.gov](mailto:pelrb@nh.gov)

**STATE OF NEW HAMPSHIRE**  
**Before the Public Employee Labor Relations Board**  
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**Keene Education Association,  
NEA-NH**

**v.**

**Keene School District**  
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**SPECIFICATION OF UNFAIR LABOR PRACTICE CHARGE**

1. The Keene Education Association (“KEA”) charges that the Keene School District (“District”), through its administration, continues to engage in a corrosive and illegal course of conduct which seeks to interfere with the union’s role as the exclusive representative and individual employee’s rights conferred by RSA 273-A.

**Background**

2. William Gillard became President of the KEA on May 4, 2018. In short order after being elected he began to hear from union members in one particular school about how their working conditions were detrimentally impacted by ever-increasing incidents of student violence. This violence resulted in injuries to staff including but not limited to, broken bones, lacerations, contusions, concussions, psychological trauma, and other injuries. For context, in 2016, 15 employee injuries were reported district-wide. In 2017, 53 were reported. In 2018, the reported injuries increased to 103 and in the first six months of 2019, 92 employee injuries had been reported.

3. This environment led to fear and anxiety among staff members as the District did not appear to be willing to intervene to assist them. Union members shared with the KEA not

only the litany of injuries they were facing but also their fears about escalating violence and their uneasiness in their work environment.

4. As advocating for safer working conditions for its members is well within a union's purview, Mr. Gillard and the leadership of the KEA responded to these concerns in a variety of ways.

- Mr. Gillard raised these concerns at his monthly meetings with the Superintendent and the Chair of the Board of Education. He also expressed them to the administrative team including the Business Administrator, Director of Human Resources, Assistant Superintendent, and the Director of Student Services.
- Mr. Gillard discussed these concerns with a number of school principals in the District and the School Resource Officer.
- He also addressed the Keene School Board directly on behalf of KEA and in conjunction with the President of the Keene Paraprofessionals Association.
- During bargaining in the 2018-2019 cycle, the KEA attempted to negotiate safer working conditions and presented proposals, with examples of the violence they experienced, to the Board team which included the Superintendent and the District Business Administrator.
- The KEA filed multiple complaints with the NH Department of Labor (DOL) about their unsafe workplaces. One such complaint led to the District being ordered to establish a statutorily required Joint Loss Management Committee which it did not have. The DOL also ordered the District to submit a plan to the DOL to address employee injuries by August 24, 2018. That plan has still not been completed. Subsequent written complaints, by the KEA to the NH DOL, led

to the District being audited for safety compliance in the spring of 2019. More than 35 employees were interviewed and each work location in the District was audited for physical safety compliance. The full report from the DOL is forthcoming.

- Mr. Gillard, as KEA President filed a report of violations by the District of RSA 193-D the “Safe School Zone Law” to the New Hampshire Department of Education alleging that the District was not properly reporting assaults under the law.

In response, the District did very little to assist the employees or to respond to the union’s requests for assistance. In fact, the KEA remains incredibly frustrated at the lack of action by the District. Employees still feel unsafe and scared in their workplaces.

### **The Unfair Labor Practices**

5. These feelings have intensified because the District disciplined both Mr. Gillard and another active union member, Bonney Nadeau LaRocca, in connection with their union activity related to these safety issues in an effort to suppress Mr. Gillard and the rest of the KEA from continuing their tireless and aggressive efforts to improve their working conditions. In doing so they have violated the individual employees rights and the union’s rights conferred by RSA 273-A.

6. Ms. LaRocca was disciplined for communicating to Mr. Gillard her own observation of a child bringing live ammunition to school and also reporting to him a threat the student made that made her feel unsafe and asking for Mr. Gillard to advocate that the District do something to ensure her and her colleagues’ safety. It bears mentioning that Ms. LaRocca is one of the KEA appointed members to the Joint Loss Management Committee which is charged with

discussing health and safety issues in the workplace. She made this communication to him through the KEA “helpdesk” which is a webform only available to union members to communicate with KEA leadership.

7. The District claims this communication was in violation of the Family Education Rights and Privacy Act (FERPA). However, a person sharing their own observation or knowledge is decidedly not an impermissible disclosure of student information from an educational record.<sup>1</sup> Not to mention, the intention of Ms. LaRocca’s communication was to engage in protected concerted activity with the president of her union not to share information for educational purposes.

8. In addition to the restraining, interfering and discriminatory action of the discipline itself, the District has acted in a manner contrary to RSA 273-A from the first investigatory meeting with Ms. LaRocca to the arbitration hearing on August 26, 2019. This includes pressuring Ms. LaRocca during the investigation to disclose her confidential communications with the union; insisting on drawing a “negative inference” from Ms. LaRocca’s refusal to provide the details of those conversations; telling Ms. LaRocca in what turned out to be investigatory and disciplinary meetings that she was not being investigated and would not be disciplined only to have the opposite be true; the District refused to provide a redacted copy of the investigator’s report so the union could have information material to Ms. LaRocca’s grievance; and the District did not disclose until arbitration the true basis for Ms. LaRocca’s discipline thereby frustrating the grievance process unnecessarily.

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<sup>1</sup> “FERPA generally prohibits the improper disclosure of personally identifiable information derived from education records. Thus, information that an official obtained through personal knowledge or observation, or has heard orally from others, is not protected under FERPA. This remains applicable even if education records exist which contain that information, unless the official had an official role in making a determination that generated a protected education record.” [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/for-parents.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/for-parents.pdf)

9. In addition to Ms. LaRocca's unwarranted discipline, the District also disciplined Mr. Gillard using the pretext of a FERPA violation when in fact it was disciplining him for engaging in union activity and executing his responsibilities as union president. The District alleged that Mr. Gillard disclosed information in violation of FERPA by cc'ing NEA-NH Monadnock Region UniServ Director Rachel Hawkinson on a January 19, 2019 email he sent requesting a Safety Evaluation of a student who, among other things, brought live ammunition to school. He was requesting this evaluation on behalf of a KEA member, Ms. LaRocca, who had asked the union to intervene to improve the safety condition of her workplace when her Principal was unresponsive to her requests. Not only did the email not violate FERPA, as Mr. Gillard did not disclose information he learned from an educational record but, moreover, the email concerned a safety threat to members of the KEA. Unions and their staff have every right to be made aware of the unsafe working conditions of the members they represent. They must be made aware of requests made by employees of their employer to improve working conditions so they can advocate for their members. It is common practice to include union staff on such communications and disciplining an employee, and thereby prohibiting such communication, is contrary to RSA 273-A.

10. The District also proports to have disciplined Mr. Gillard for violating FERPA when he sent an email in February 2019 to fellow Fuller Elementary School parents. Mr. Gillard is a parent of two children who attend Fuller Elementary School and who have witnessed some of the violent incidents there firsthand and reported them to their father. Mr. Gillard's email was written as a parent to other parents to try and organize a meeting where they could all discuss the District's inaction about the safety problems at Fuller. While he acknowledges in the email that he is an employee and the union president as well, the email was sent in his capacity as a



concerned parent. The District's complete disregard for this fact led to an absurd result of disciplining a parent for exercising his first amendment rights and advocating for his children.

11. The District suspended Mr. Gillard for a week for these supposed violations and he grieved the discipline. Arbitration as to whether the discipline was with just cause and/or was discriminatory because he is a union member is scheduled for November. However, the arbitrator does not have jurisdiction to determine the ways in which this discipline and its effect on Mr. Gillard and the union violated RSA 273-A.

12. Moreover, after it issued discipline to Mr. Gillard and Ms. LaRocca, the District sent a memo to all staff on April 17, 2019 "reminding" them about FERPA and the protection of student information. However, the memo neglects to inform staff members that FERPA only applies to the disclosure of Personally Identifiable Information *from educational records* maintained by the school. This memo has led to confusion among staff members about what they can talk to the union about and interferes with employee's participation in concerted activity protected by RSA 273-A and the union's representation of its members. This is particularly true because the investigation and discipline of union officials has led to increased uneasiness and confusion on the part of bargaining unit members.

13. Ms. Hawkinson raised concerns with the District's attorney that the policy memo was confusing on this point and that employees felt as though they could not engage in activity protected by RSA 273-A. The memo was not further clarified after that communication.

14. Additionally, the policy specifically attempts to bar certain communications by employees to the exclusive representative stating: "[G]enerally, employees may not disclose Personally Identifiable Information to union employees (employees of NEA), parent groups, or other independent groups." This statement violates RSA 273-A on its face and in its chilling

effect on employees attempting to participate in protected concerted activity such as discussing the conditions of their employment with their union. The District's statement does not clearly state that the Personally Identifiable Information that cannot be disclosed must come from an educational record and because of that error it imposes a purposefully unclear and overly burdensome illegal gag order on employees with respect to their union activity.

15. It also bears mentioning that this policy was sent to all staff of both the Keene School District and SAU 29. NEA-NH is the exclusive representative of a total of 9 bargaining units within SAU 29. Rachel Hawkinson is the union staff person assigned to all of these bargaining units. With this confusing, intentionally overly broad and interfering policy, the District has effectively placed a gag order on union communications about safety and working conditions that have anything to do with students throughout the SAU. Interestingly, while other unions are the exclusive representative for other bargaining unit members within the SAU, they were not specifically mentioned in this policy.

16. The District's actions described above have had a dramatic chilling effect on staff in the District. Employees have shared with the union that the above acts have led them to become fearful of discussing workplace safety incidents with the KEA and Ms. Hawkinson, their assigned union resource. They report that they do not understand what they can and cannot talk with the union about. They report that although they have been reassured by the union that speaking about the terms and conditions of employment is protected activity, that they are too fearful of discipline and reprisal from the District to speak with the union about anything to do with students. They report feeling hopeless because they feel as though the union cannot protect them or effectively advocate for them if the president of the association is disciplined for his

advocacy on their behalf. Employees feel that the discipline faced by Ms. LaRocca means that they can all be disciplined unfairly for simply trying to ask the union for help.

17. Through these acts, the District has violated RSA 273-A:5, I (a),(b),(c), (g),(h), and (i).

**WHEREFORE**, the Keene Education Association requests that the Board find that the

District:

- A. Committed unfair labor practices in violation of RSA 273-A:5, I (a),(b),(c), (g),(h), and (i);
- B. Order the District to cease and desist from these and similar violations;
- C. Order the District to clarify their guidance to employees with regard to FERPA so that it does not interfere with the union and employee's rights under RSA 273-A; and
- D. Provide any other relief that is proper