

**APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI**

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APPENDIX A

SUPREME COURT MINUTES
WEDNESDAY, JANUARY 14, 2026
SAN FRANCISCO, CALIFORNIA

[...]

[p.37]

S293922	C103184 Third Appellate District	ROCKLIN UNI- FIED SCHOOL DISTRICT v. PUBLIC EM- PLOYMENT RELATIONS BOARD (ROCK- LIN TEACH- ERS PROFES- SIONAL ASSO- CIATION)
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Petition for review denied

APPENDIX B

COURT OF APPEAL OF
THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT

ROCKLIN UNIFIED SCHOOL DISTRICT, Petitioner,	
v.	
PUBLIC EMPLOY- MENT RELATIONS BOARD, Respondent;	C103184 PERB No SACE3136E
ROCKLIN TEACHERS PROFESSIONAL AS- SOCIATION, Real Party in Interest	

BY THE COURT:

The petition for writ of review is denied.

/s/ Duarte
Duarte, Acting P.J.

cc: See Mailing List

APPENDIX C

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ROCKLIN TEACHERS
PROFESSIONAL AS-
SOCIATION,

Charging Party,

v.

ROCKLIN UNIFIED
SCHOOL DISTRICT,

Respondent.

Case No. SA-CE-3136-E

PERB Decision No.
2939

January 28, 2025

Appearances: California Teachers Association by Brian Schmidt, Attorney, for Rocklin Teachers Professional Association; Lozano Smith by Michelle Cannon and Sinead McDonough, Attorneys, for Rocklin Unified School District.

Before Banks, Chair; Krantz, Paulson, and Krausse, Members.

DECISION

BANKS, Chair: This case is before the Public Employment Relations Board (PERB) on Respondent Rocklin Unified School District's exceptions to a proposed decision of an administrative law judge (ALJ). The complaint alleged that the District violated the

Educational Employment Relations Act (EERA) by unilaterally changing the District's administrative regulations (AR) without affording Rocklin Teachers Professional Association (RTPA) adequate advance notice and opportunity to bargain.¹ At issue are the District's revisions to AR 5020 (Parents Rights and Responsibilities) and AR 5145.3 (Nondiscrimination/Harassment), which establish a new policy that requires RTPA bargaining unit employees to notify parents and guardians of students' transgender or gender nonconforming status, including their gender identity, non-legal name, and pronoun usage.

For the reasons described herein, we find that the District committed an unfair practice when it: (1) amended AR 5020 and AR 5145.3 without first giving RTPA notice and the opportunity to bargain over the policy change; and (2) premised its agreement to bargain effects and implementation of the policy on changes that violate the California Constitution and state law, thereby engaging in a per se violation of its duty to bargain effects in good faith.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Parties

The District is a public school employer within the meaning of EERA section 3540.1, subdivision (k). RTPA is an employee organization within the meaning of EERA section 3540.1, subdivision (d) and the

¹ EERA is codified at Government Code section 3540 et seq. Undesignated statutory citations are to the Government Code.

exclusive representative of an appropriate unit of certificated employees within the meaning of EERA section 3540.1, subdivision (e). The RTPA bargaining unit includes, among other classifications, classroom teachers, who teach Kindergarten through Grade 12 (classroom teacher or teacher) and guidance counselors.

A. Classroom Teacher Job Duties

Classroom Teachers in the District are expected to perform all the standard duties of educators in California. Per the District's Classroom Teacher K-12 job description, their typical job duties are to:

- “Provide a learning environment that allows for individual differences and respect for the dignity and worth of each student.
- “Identify, prescribe, and select materials; meet the instructional needs of assigned students.
- “Establish standards of student performance which can be quantitatively and qualitatively evaluated.
- “Assist specialists in the identification, assessment, and resolution of special student problems.
- “Administer group tests in accordance with district or school testing programs. Utilize the results of the testing program for identifying student needs and provide appropriate instructional activities.

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- “Develop goals and prepare and implement specific objectives for class according to Board Policies and Administrative Regulations. Goals are to be consistent with the philosophy of goals for the district.
- “Develop and implement lesson plans which are consistent with district policy and guidelines.
- “Develop knowledge and skills essential to effectively teach students in the grade assigned.
- “Participate in the development and implementation of district and school curriculum.
- “Attend district workshops and college classes to keep up-to-date on changing methods and procedures.
- “Attend required meetings called by administrators or grade level chairmen.
- “Maintain a behavioral climate in the classroom conducive to learning.
- “Communicate with students and parents on the educational and social progress of the student; interpret the school program to parents and students.
- “Adhere to the California Education Code, Title V, and carry out Board Policies and Administrative Procedures.

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- “Abide by professional ethics standards established by Board Policy.
- “Demonstrate mutual respect and dignity.
- “Work cooperatively with the entire school staff to promote effective student learning experiences.
- “Plan and coordinate the work of teacher aides, teacher assistants, and para professionals.
- “Maintain punctuality for all prescribed functions.
- “Prepare required forms, maintain accurate pupil academic records, attendance records, and cumulative student progress and achievement records and reports.
- “Maintain functional learning environments, including orderliness of equipment and materials assigned to the classroom.
- “Exercise supervision and care over books, supplies, and equipment; instruct pupils in the proper use and preservation of school property; and maintain records which establish student accountability for assigned school property.
- “Assume the responsibility for the safety and welfare of students.

- “Assume the responsibility for the safety and welfare of students whenever a danger is observed on or about the campus.
- “Be responsible for immediate interior and exterior supervision during passing periods, recess, before and after school.
- “Be accountable for supervision as assigned by the principal/designee.
- “Actively participate in extra curricular activities.
- “Supervise pupils in extra curricular activities as designated by the administrator.
- “Share in sponsorship of student activities.
- “Participate cooperatively in the development of the school and grade level budgets.”

B. Guidance Counselor Job Duties

The District also employs Guidance Counselors, “whose primary objective is the application of scientific principles of learning and behavior to improve school-related problems and to facilitate the learning and development of children” in the District. Per the District job description, a Guidance Counselor:

- “Advises students, parents, and guardians for the purpose of providing information of students’ academic progress.

- “Coordinates with teachers, resource specialists and/or community (e.g., courts, child protective services, etc.) for the purpose of providing requested information, gaining needed information, and/or making recommendations.
- “Counsels students, parents, and guardians for the purpose of enhancing student success in school.
- “Monitors student records for the purpose of developing plans and/or providing information regarding students’ goals.
- “Prepares documentation (e.g., observations, progress, contacts with parents, teachers, outside professionals, etc.) for the purpose of providing written support, developing recommendations and/or conveying information.
- “Presents information on various topics (e.g., behavior management, etc.) for the purpose of providing information to assist in decision making.
- “Schedules student classes for the purpose of securing appropriate placement and meeting their promotion requirements.
- “Consults with parents, school and community resources, and students in helping to develop the best educational programs for children.

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- “Coordinates Student Assistance Program.
- “Chairs/attends Student Study Team meetings.
- “Participates in planning, executing, and assessing programs of education and re-education for pupils.
- “Assists in developing the best possible learning programs for all children and in evaluating the product of the educational effort.
- “Provides appropriate consultive services to assist school staff members to better understand behavior and learning patterns of children and to apply these understandings in promoting an improved climate for learning.
- “Provides and coordinate staff in service training programs.
- “Provides individual and group counseling as needed.
- “Develops a master schedule and completes scheduling of all students.
- “Registers and schedules all incoming new students.
- “Explains to parents the assessments and procedures for placement of a child into special education programs.

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- “Provides career and vocational counseling.
- “Coordinates student assessment programs.
- “Coordinates Peer Helper Program.
- “Administers various proficiency tests for the purpose of assisting in determining student’s placement and/or eligibility for potential course of study.
- “Assists other personnel as may be required for the purpose of supporting them in the completion of their work activities.
- “Participates in various extra curricular school and/or community activities for the purpose of providing supervision and/or representing school at such events.
- “Supervises assigned programs (e.g., peer counseling, special education, Student Assistance Program, etc.) for the purpose of monitoring performance and achieving overall curriculum objectives.
- “[Completes o]ther duties as assigned.”

II. Relevant District Administrative Regulations

The District is governed by policies and regulations established by the District Board of Trustees and the California Education Code. Prior to the 2023-24 school year, the District had a policy prohibiting discrimination against transgender and gender non-conforming students. The policy provided, among

other things, that students must be called by the name and pronoun of their choice, and that they must be given access to sex-segregated facilities consistent with their gender identity. It also provided that a student's transgender or gender nonconforming status was private information and could not be disclosed to others (including students' parents or guardians) without the student's prior written consent.

Specifically, prior to September 6, 2023, the District's "nondiscrimination/ harassment" policy, AR 5145.3, stated:

"Gender identity of a student means the student's gender-related identity, appearance, or behavior as determined from the student's internal sense, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the student's physiology or assigned sex at birth.

"Gender expression means a student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth. (Education Code 210.7)

"Gender transition refers to the process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that corresponds to the student's gender identity.

"Gender [] nonconforming student means a student whose gender expression differs from stereotypical expectations.

“Transgender student means a student whose gender identity is different from the gender assigned at birth.

“The district prohibits acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, or that have the purpose or effect of producing a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment, regardless of whether the acts are sexual in nature. Examples of the types of conduct which are prohibited in the district and which may constitute gender-based harassment include, but are not limited to:

“1. Refusing to address a student by a name and the pronouns consistent with the student's gender identity

“2. Disciplining or disparaging a student or excluding the student from participating in activities, for behavior or appearance that is consistent with the student's gender identity or that does not conform to stereotypical notions of masculinity or femininity, as applicable

“3. Blocking a student's entry to the restroom that corresponds to the student's gender identity

“4. Taunting a student because the student participates in an athletic activity more typically favored by a student of the other sex

“5. Revealing a student’s transgender status to individuals who do not have a legitimate need for the information, without the student’s consent

“6. Using gender-specific slurs

“7. Physically assaulting a student motivated by hostility toward the student because of the student's gender, gender identity, or gender expression[.]”

Under this policy, disclosure of a student’s transgender status was grounds for the student to file a complaint of discrimination and/or harassment. AR 5145.3 also recognized that a “student’s transgender or gender nonconforming status” is “the student’s private information” and prohibited the District from disclosing that information to others without the student’s prior written consent. The only exceptions to receiving the student’s written consent prior to disclosure were “when the disclosure [was] otherwise required by law or when the district ha[d] compelling evidence that disclosure [was] necessary to preserve the student’s physical or mental well-being.”

AR 5145.3 also included a section titled “Enforcement of District Policy.” That section required the Superintendent or their designee to take “appropriate

disciplinary action against . . . employees . . . determined to have engaged in wrongdoing in violation of district policy”

AR 5020 included a section titled “Parent Rights and Responsibilities.” That section described the rights of parents and guardians and outlined the procedures by which they could exercise those rights. AR 5020 gave parents and guardians the right to, among other things, observe instructional activities, meet with their child’s teacher, volunteer their time and resources to benefit schools, be notified of their child’s absences from school, and “have a school environment for their child that is safe and supportive of learning.”

III. Changes to the Administrative Regulations

The District is governed by a five-member Board of Trustees (District Board) elected to represent five geographic areas.² At a meeting on August 9, 2023, a Trustee suggested that the District Board form a subcommittee to investigate the issue of parents’ rights, but did not specifically refer to transgender or gender nonconforming students. Although the matter did not appear on the agenda, and the District Board did not take formal action at the August meeting, the District Board formed a subcommittee consisting of two Trustees, including Trustee Julie Leavens-Hupp. Less

² In resolving whether to take administrative notice of matters not in the record, PERB normally follows the California Evidence Code’s provisions regarding judicial notice. (Santa Clara County Superior Court (2014) PERB Decision No. 2394-C, p. 16.) Here, we take administrative notice of the District Board’s structure pursuant to Evidence Code section 452, subdivision (h). (< <https://www.rocklinusd.org/SchoolBoard/index.html>>.)

than one month later, on September 4, 2023, the District posted the agenda for the next District Board meeting, scheduled for September 6, 2023. That agenda contained a proposed resolution to amend AR 5020 and AR 5145.3.

The subcommittee's proposed amendments constituted a parental notification policy requiring certain District employees to inform parents and guardians of students' transgender or gender nonconforming status. The proposed amendment to AR 5020 added a new paragraph to that section, giving parents and guardians the right:

“To be notified within three (3) school days when their child requests to be identified as a gender other than the child's biological sex or gender; requests to use a name that differs from their legal name (other than a commonly recognized nickname) or to use pronouns that do not align with the child's biological sex or gender; requests access to sex-segregated school programs and activities, or bathrooms or changing facilities that do not align with the child's biological sex or gender. Notification shall be made by the classroom teacher, counselor, or site administrator. Such notification shall only be delayed up to 48 hours to fulfill mandated reporter requirements when a staff member in conjunction with the site administrator determines based on credible evidence that such notification may result in substantial jeopardy to the child's safety.”

The subcommittee's proposed amendment to AR 5145.3 revised that section to qualify students' right to privacy. Specifically, the proposed amendment revised AR 5145.3 to state:

“Right to privacy: A student’s transgender or gender [] nonconforming status is the student’s private information with the exception of parental notification, and the district shall only disclose the information to others with the student’s prior written consent, except when the disclosure is otherwise required by law or when the district has compelling evidence that disclosure is necessary to preserve the student’s physical or mental well-being. In any case, the district shall only allow disclosure of a student’s personally identifiable information to employees with a legitimate educational interest as determined by the district pursuant to 34 CFR 99.31. Any district employee to whom a student’s transgender or gender [] nonconforming status is disclosed shall keep the student’s information confidential to all other persons except the student and their parent(s). When disclosure of a student’s gender identity is made to a district employee by a student, the employee shall seek the student’s permission to notify the compliance officer. If the student refuses to give permission, the employee shall keep the student’s information confidential, unless the employee is required to disclose or report the student’s information pursuant to this administrative regulation, and shall inform the student that honoring the student’s request may limit the district's ability to meet the student’s needs

related to the student's status as a transgender or gender nonconforming student. If the student permits the employee to notify the compliance officer, the employee shall do so within three school days.

“As appropriate given the student's need for support, the compliance officer may discuss with the student any need to disclose the student's transgender or gender nonconformity status or gender identity or gender expression to the student's parents/guardians and/or others, including other students, teacher(s), or other adults on campus. The district shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and desire assistance in doing so.”

(Additions underlined.)

RTPA learned of the proposed amendments when the District publicly posted the District Board meeting agenda on September 4, 2023. That day, Superintendent Roger Stock called RTPA President Travis Mougeotte to tell him he should “probably look at the Board docs when they're made public.”

The same day the agenda was posted, RTPA wrote the District to inform it that the proposed amendments to AR 5020 and 5145.3 were unlawful and to demand the District withdraw the resolution. Alternatively, RTPA demanded to bargain the effects and impacts of the policy change on unit members if the District refused to withdraw the resolution. The next day, on September 5, RTPA reiterated its request and

demand to bargain by sending a letter directly to the District Board members. Neither the District nor the Board members responded prior to the next day's District Board meeting.

Attendance at the September 6, 2023 District Board meeting was "exceptionally higher" than was typical and, because of the large number of public comments about the proposed policy, the meeting lasted until the early hours of the morning on September 7. Teachers and counselors, among others, spoke at the meeting, with the majority of speakers opposing the changes to the policies. Nevertheless, the District Board passed the resolution amending AR 5020 and AR 5145.3.

IV. RTPA's Unfair Practice Charge and Subsequent Communications Between the Parties

On September 8, 2023, RTPA filed an unfair practice charge with PERB alleging that the District violated EERA when it failed to bargain before adopting the parental notification policy.

On September 8, 2023, Associate Superintendent Tony Limoges responded to RTPA's September 4 letter and the unfair practice charge. Limoges stated that the District intended to bargain the impacts and effects of the policy changes and offered dates that the District representatives were available to negotiate.

RTPA's lead negotiator Emily Thomas acknowledged receipt of Limoges' e-mail on September 11, 2023, and RTPA's counsel responded substantively on

September 20, 2023. In the September 20 letter, RTPA asserted that:

“[t]he Association demanded to bargain the effects of this policy before it was adopted, but the District nonetheless rushed to adopt the policy on September 6, 2023 before any bargaining could take place. Now that this policy has been unlawfully passed, the District must restore the status quo by rescinding the policy entirely before the Association will agree to bargain its effects. Bargaining after the fact would put the Association at a disadvantage, would enable the District to benefit from its unlawful unilateral change, and does not comply with the duty to bargain under the Educational Employment Relations Act (EERA).”

The District responded on October 6, 2023, refusing to rescind the policy and stating that only the policy’s effects were negotiable. RTPA responded on October 12, 2023, reiterating its demand that the District rescind the policy and asserting that both the decision to adopt the policy and the effects of the policy were negotiable. In that correspondence, RTPA asserted that “it was not reasonably comprehended that, as part of their official duties, unit members would be required to engage in conduct which the State of California has said violates state law.” RTPA further explained that it would “not acquiesce to the District’s unilateral change by engaging in bargaining over its effects,” and would “not agree to new job duties that would require unit members to violate the law and unreasonably expose them to liability.” Accordingly, RTPA demanded that the District rescind the policy

and “refrain from adopting any similar policy without an agreement with the Association.” The District declined to do so, and the parties therefore never engaged in effects negotiations.

Subsequent to that exchange, the District informed RTPA that it will not actively implement the parental notification policies until the instant unfair practice charge has been resolved; the District Board has not, however, taken formal action to suspend the policies. Indeed, the policies published on the District’s website reflect the amendments without any disclaimer.

V. California Department of Education Investigation and Subsequent Order

As the parties’ dispute over the District notification policy was unfolding, the California Department of Education (CDE) was simultaneously investigating the District’s policy. The CDE investigation was based on the September 7, 2023 complaint filed by a Placer County educator alleging that the District had engaged in unlawful discrimination by enacting an inequitable policy that was discriminatory in nature towards marginalized students. On February 1, 2024, the CDE issued a report following its investigation, concluding that the District’s new parental rights policy was an unlawful breach of Education Code section 220.³ The report stated that the addition of paragraph 21 to AR 5020:

³ The ALJ granted RTPA’s motion to take administrative notice of CDE’s February 1, 2024 report, as the report was an official

“on its face singles out and is directed exclusively toward one group of students based on that group’s legally protected characteristics of identifying with or expressing a gender other than that identified at birth. And the application of that policy adversely impacts those students. Finally, [AR 5020’s amendment] does not expressly or implicitly provide any educational or school administrative purpose justifying either form of discrimination.”

As a result, the CDE ordered the District to take corrective action. The CDE ordered:

“Within 5 school days of receipt of this Investigation Report: “1. The Superintendent or the Superintendent’s designee must inform all school personnel subject to [AR 5020’s amendment to paragraph 21] in writing that the CDE has determined the policy is inconsistent with E[ducation] C[ode] Section 220 and for this reason the mandatory notification requirements set forth in P-21 may not be implemented. “2. The Superintendent or the Superintendent’s designee must provide written notification to all students within the District that the mandatory notification requirements of P-21 will not be implemented. “Within 10 school days of receipt of this Investigation Report: “3. The Superintendent or the Superintendent’s designee

act of the executive department of the State of California. The District did not file exceptions to that determination.

must provide CDE’s [Education Equity Uniform Complaint Procedures Office] with evidence of compliance with these corrective actions, which must include copies of the writings referred to in 1 and 2 above.”

The District refused to comply with this order. Instead, at its February 7, 2024 District Board meeting, the District Board decided to seek reconsideration of the CDE’s order. The CDE issued a decision denying the District’s request for reconsideration on March 27, 2024, finding that the District’s policies unlawfully discriminated against students on the basis of gender identity and expression. The District refused to rescind the policies or to carry out the corrective actions, and in response, the CDE filed a petition for writ of mandate to enforce its order. (Petn. for Writ of Mandate Pursuant to Code Civ. Proc., § 1085, *California Department of Education v. Rocklin Unified School District*, No. S-CV-0052605, Super. Ct. Placer, April 10, 2024.) That case is currently stayed.⁴

⁴ On July 16, 2024, a lawsuit was filed in the United States District Court for the Eastern District of California (*Chino Valley Unified School District et. al. v. Gavin Newsom et. al.*, Case No. 2-24-CV-01941-DJC-JDA) to block the implementation of AB 1955, which was enacted on July 15, 2024 and specifically prohibits school districts from passing policies substantially similar to the District’s policy. (See *post* at p. 22.) Although the CDE reserves the right to proceed with its writ petition on state and or federal legal grounds, the parties jointly stipulated to, and the judge in *California Department of Education v. Rocklin Unified School District* granted, a stay of the hearing on CDE’s writ petition. Order to Stay or Continue Hearing Date for Petition for Writ of Mandate, *California Department of Education v. Rocklin Unified School District*, No. S-CV-0052605, Super. Ct. Placer,

VI. External Law Relevant to the District's New Policies

The District's changes to its parental rights and nondiscrimination/harassment policies, and RTPA's unfair practice charge related to the change in policy, did not take place in a legal vacuum. While it is unnecessary to exhaustively survey all aspects of the law relevant to the District's new policies, we briefly summarize the most pertinent legal developments.

A. Attorney General's Suit Against Chino Valley and January 11, 2024 Legal Alert

In August 2023, Attorney General Rob Bonta opened a civil rights investigation into policy changes at Chino Valley Unified School District (CUSD) that are akin to the District's policy changes. The Attorney General subsequently filed suit against CUSD, and on January 11, 2024, the Superior Court of the County of San Bernardino issued a preliminary injunction blocking CUSD from enforcing its policy changes. That matter is currently on appeal.⁵

April 10, 2024.) As of the issuance of this decision, the CDE matter remains stayed.

⁵ Concurrently with its exceptions, the District asked us to take administrative notice of CUSD's policies, as the District claims those policies are substantively different from its policies. The ALJ had already taken judicial notice of these policies, meaning there is no need for us to do so again. We note the minor policy differences the District points out but do not find them relevant to any issue before us.

Also on January 11, 2024, the Attorney General issued a statewide legal alert to all school boards concerning “forced disclosure policies” in order to:

“remind all school boards that forced gender identity disclosure policies—which target transgender and gender nonconforming students by mandating that school personnel disclose a student’s gender identity or gender nonconformity to a parent or guardian without the student’s express consent—violate state law.”

*(Transgender and Gender Nonconforming Students (2024) California Attorney General Legal Alert OAG-2024-02 (Legal Alert), p. 1.)*⁶

The Attorney General’s alert concerned policies that:

“require schools to inform parents and guardians, with minimal exceptions, whenever a student requests to use a name or pronoun different from that on their birth certificate or official records, even when the student does not consent. Such policies also require notification if a student requests to use facilities or participate in school programs that do not align with their sex or gender on official records, and tracking and recording of requests made by

⁶ The ALJ took administrative notice of the January 11, 2024 Legal Alert and the District filed no exceptions. Therefore, the Legal Alert is part of the record in the instant case. Moreover, administrative notice is appropriate because the Legal Alert is an official act of the executive department of a state. (See Evid. Code, § 452, subd. (c).)

transgender and gender nonconforming youth. Some districts' policies require such disclosures even when revealing the student's gender identity or gender nonconformity to their parents could put them at risk of physical, emotional, or psychological harm."

(Legal Alert, supra, p. 1.)

In that legal alert, the Attorney General informed school boards that these policies are illegal because they violate the Equal Protection Clause of the California Constitution, statutory prohibitions on discrimination, and students' constitutional right to privacy, as follows.

i. Equal Protection

The Attorney General advised that parental notification policies like the District's are unlawful because they violate the state Constitution's Equal Protection Clause by expressly discriminating against students based on gender identity. As the bulletin explained:

"Because gender identity is an aspect of gender, transgender or gender nonconforming individuals constitute a protected class under California's equal protection clause. As a result, any policy that singles out transgender and gender nonconforming students for disfavorable treatment vis-à-vis cisgender students is invalid unless it survives strict scrutiny. (See *Catholic Charities of Sacramento, Inc. v. Super. Ct.* (2004) 32 Cal.4th 527, 564; *Taking Offense v.*

State (2021) 66 Cal.App.5th 696, 722-723, review on other grounds granted Nov. 10, 2021, S270535; see also *O’Connell v. Super. Ct.* (2006) 141 Cal.App.4th 1452, 1465 [fundamental right of equal access to public education, warranting strict scrutiny of legislative and executive action that is alleged to infringe on that right]; Civ. Code, § 51, subd. (e)(5); Gov. Code, § 12926, subd. (r)(2); Ed. Code, § 210.7 [all defining ‘[s]ex’ to include a person’s ‘gender identity and gender expression’].) . . . [P]olicies which by their operative language specifically target transgender and gender nonconforming students, on their face, discriminate on the basis of sex. (See *Sail’er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 17; *Woods v. Horton* (2008) 167 Cal.App.4th 658, 674.)

(*Legal Alert, supra*, pp. 1-2.)

The bulletin further advised that such policies could not survive strict scrutiny because they are not supported by a compelling government interest and are not narrowly tailored or necessary to any non-discriminatory government interest. The bulletin emphasized that:

“local school districts . . . have a duty of care to protect, and a compelling interest in protecting, all students, including transgender and gender nonconforming students, from emotional, psychological, and physical harm, including from a parent.”

(*Legal Alert, supra*, p. 2.)

The bulletin concluded that, “policies that do not create any exception for children who may face emotional, physical, or psychological abuse at home as a result of the school’s disclosure to parents or family cannot satisfy the narrow tailoring prong.” (*Legal Alert, supra*, p. 2, internal citations omitted.)

ii. Statutory Prohibitions on Discrimination Based on Gender, Gender Expression, and Gender Identity

The Attorney General’s bulletin also informed school boards that parental notification policies violate express statutory commands not to discriminate on the basis of gender identity and gender expression found in Education Code section 220 and Government Code section 11135, subdivisions (a) and (c). As the Attorney General explained:

“A law that categorically ‘presum[es]’ the need for forced disclosures for one group but not another ‘reflect[s] . . . unexamined role stereotypes,’ plainly betraying a ‘statute . . . discriminatory on its face.’ (*Arp v. Workers’ Comp. Appeals Bd.* (1977) 19 Cal.3d 395, 406–407.) Forced outing policies target one group, and ‘that group alone’ for discriminatory treatment, which violates state antidiscrimination law. (*Isbister v. Boys’ Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72, 89 [Unruh Act]; see also *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 35 [Unruh Act violation because ‘[sex]-based . . . differential treatment is precisely the type of practice prohibited’]; *Bangerter v. Orem City Corp.* (10th

Cir. 1995) 46 F.3d 1491, 1500 [where policy ‘facially single[s] out’ group and ‘appl[ies] different rules to them,’ it directly reveals ‘discriminatory intent and purpose’].)”

(*Legal Alert, supra*, p. 3.)

The bulletin concluded that, “singling out transgender and gender nonconforming students shows that ‘the decisionmaker . . . selected . . . a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.’” (*Legal Alert, supra*, p. 3, internal citations omitted.)

iii. Right to Privacy

The bulletin also explained that minors, as well as adults, have a right to privacy under the California Constitution that includes a protected privacy interest in their sexual orientation or gender identity. (*Legal Alert, supra*, p. 2, citing e.g., *Pettus v. Cole* (1996) 49 Cal.App.4th 402, 444–445 [describing “sexual orientation and conduct” as legally protected privacy interest]; *Powell v. Schriver* (2d Cir. 1999) 175 F.3d 107, 111–112 [transgender identity is an excruciatingly “private and intimate” detail about oneself protected by the right to privacy].) The Attorney General explained that where, as here, there is:

“an obvious invasion of an interest fundamental to personal autonomy’—such as the most basic expression of gender identity—there must be a compelling government interest ‘to

overcome the vital privacy interest,’ and there must not be less restrictive alternatives.”

(*Legal Alert, supra*, p. 4, internal citations omitted.)

The Attorney General determined that there is no compelling government interest for parental notification policies that “overrides the privacy invasion, and there are a number of less restrictive alternatives to address any parental interest.” (*Legal Alert, supra*, p. 4.) Moreover, the Attorney General clarified, “a student’s disclosure of their gender identity to persons of their choosing at school does not negate their reasonable expectation of privacy in their gender identity generally.” (*Ibid.*)

For these reasons, the bulletin made clear that that parental notification policies violate the state Constitution and multiple state laws “by singling out transgender and gender nonconforming students for different, adverse treatment that puts them at risk of harm.” (*Legal Alert, supra*, p. 4.)

The District Board received the Attorney General’s legal alert, and there is no dispute that the District’s policy falls into the category of requiring “disclosures even when revealing the student’s gender identity or gender nonconformity to their parents could put them at risk of physical, emotional, or psychological harm.” However, at the hearing, District Trustee Levens-Hupp testified that the Attorney General’s legal alert is just “his opinion.”

B. The SAFETY Act

In addition to the California Constitution and preexisting state law, on July 15, 2024, California Governor Gavin Newsom signed into law AB 1955, the Support Academic Futures and Educators for Today’s Youth Act (SAFETY Act).⁷ The SAFETY Act specifically prohibits school districts from passing policies substantially similar to the District’s policy. (Ed. Code, §§ 217, 220.1, 220.3, 220.5) Furthermore, the SAFETY Act explicitly states that although the provisions themselves are new, the central provisions found in Education Code sections 220.3, subdivision (a) and 220.5, subdivision (a) do not constitute a change in, but rather are declaratory of, existing law. (Ed. Code, §§ 220.3, subd. (b), 220.5, subd. (b).)

Pursuant to the SAFETY Act, public school districts are prohibited from enacting or enforcing:

“any policy, rule, or administrative regulation that would require an employee or a contractor to disclose any information related to a pupil’s sexual orientation, gender identity, or gender expression to any other person without the pupil’s consent, unless otherwise required by state or federal law.”

(Ed. Code, § 220.5, subd. (a).)

Under the SAFETY Act:

⁷ Because *Chino Valley Unified School District et. al v. Gavin Newsom et al.*, Case No. 2-24-CV-01941-DJC-JDA, is still pending and AB 1955 has not been enjoined, the SAFETY Act took effect as scheduled on January 1, 2025.

“[a]ny policy, regulation, guidance, directive, or other action of a school district, . . . or a member of the governing board of a school district . . . that is inconsistent with subdivision (a) is invalid and shall not have any force or effect.”

(Ed. Code, § 220.5, subd. (c).)

Furthermore, the SAFETY Act states that school district employees “shall not be required to disclose any information related to a pupil’s sexual orientation, gender identity, or gender expression to any other person without the pupil’s consent unless otherwise required by state or federal law.” (Ed. Code, § 220.3, subd. (a).)

Additionally, the SAFETY Act expressly prohibits local educational agencies from retaliating or taking adverse action against an employee because an employee supported a student in exercising specific rights outlined in the law; performed the employee’s work activities in a manner consistent with the recommendations or employer obligations set forth in the law; or provided instruction to students consistent with current content standards, curriculum framework, and instructional materials adopted by the State Board of Education, including instruction complying with other statutory and legal requirements. (Ed. Code, § 220.1.)

DISCUSSION

When resolving exceptions to a proposed decision, PERB applies a de novo standard of review. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.)

However, PERB need not address issues that the proposed decision has adequately addressed or that would not impact the outcome. (*Ibid.*)

In Parts I and II, we conclude that RTPA established a prima facie case that the District violated its duty to bargain in good faith over its decision to adopt the parental notification policy and the effects of its decision. Part III explains the remedies warranted in these circumstances, given that the District's policy is unlawful under the California Constitution and the Education Code.

I. Decision Bargaining Claim

A unilateral change to a matter within the scope of representation is a per se violation of the respondent's duty to bargain in good faith. (*Stockton Unified School District* (1980) PERB Decision No. 143, p. 22.) Because a unilateral change has an inherently destabilizing and detrimental effect upon the parties' bargaining relationship, it is unlawful irrespective of intent. (*City of Montebello* (2016) PERB Decision No. 2491-M, p. 10; *County of Riverside* (2014) PERB Decision No. 2360-M, p. 18.)

To establish a prima facie case that a respondent employer made an unlawful unilateral change, a charging party union that exclusively represents a bargaining unit must prove: (1) the employer changed or deviated from the status quo; (2) the change or deviation concerned a matter within the scope of representation; (3) the change or deviation had a generalized effect or continuing impact on represented employees' terms or conditions of employment; and (4)

the employer reached its decision without first providing adequate advance notice of the proposed change to the union and bargaining in good faith over the decision, at the union's request, until the parties reached an agreement or a lawful impasse. (*Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 9.)

A. Change in Status Quo

There are three primary means of establishing that an employer changed or deviated from the status quo: (1) a deviation from a written agreement or written policy; (2) a change in established past practice; or (3) a newly created policy or application or enforcement of existing policy in a new way. (*Bellflower Unified School District, supra*, PERB Decision No. 2796, p. 10.) An employer's duty to bargain over change in policy does not turn on whether policy was contained in a collective bargaining agreement. (See, e.g., *Oakland Unified School District* (2023) PERB Decision No. 2875, p. 13 (Oakland); citing *Alameda County Management Employees Assn. v. Superior Court* (2011) 195 Cal.App.4th 325, 345.)

Here, there can be no question that the District's amendments to AR 5020 and AR 5145.3 constitute a newly created policy. Under AR 5020, for the first time, classroom teachers and counselors are required to participate in notifying parents within three school days when their child indicates their transgender or gender nonconforming status at school. This is a quintessential example of a change in policy and/or newly created policy where there was none before.

Similarly, the amendment to AR 5145.3 requires certificated employees to participate in notifying parents of a student's transgender or gender nonconforming status without first obtaining the student's consent. This differs from the District's previous policy, which required the employee to obtain the student's consent to disclose their status to anyone, and to keep the student's information confidential. While there were exceptions to an employee's duty to disclose the student's status—when otherwise required by law or when the District had compelling evidence that disclosure was necessary to preserve the student's physical or mental well-being—the general rule was that employees were required to keep the student's status private, including from the student's parents. The amendments to AR 5020 and AR 5145.3 combine to flip the previous policy on its head, by *mandating* employees participate in disclosure to parents over the student's objections without exception.

The District argues that the transgender parental notification policy has not been implemented—and by implication argues that it has not altered the status quo—because it has not instructed school site administrators to discipline certificated employees who fail to comply with AR 5020's parental notification requirements. However, this argument is without merit.

Under PERB precedent, “[a] change in policy occurs on the date a firm decision is made even if the decision is not scheduled to take effect immediately, or even if it is never implemented.” (*City of Milpitas* (2015) PERB Decision No. 2443-M, pp. 15-16.) Thus, the operative employer action here is not whether the

parental notification policy has been implemented or whether it has been used to discipline employees, but whether the District reached a firm decision to add to or change the District's parental notification policies. (*City of Sacramento* (2013) PERB Decision No. 2351-M, p. 27.)

Here, the District reached a firm decision to change its parental notification policies when the District Board adopted the amendments to AR 5020 and AR 5145.3. As discussed below, this materially changed employee job duties and discipline standards. Therefore, RTPA has established the first element of the test for decisional bargaining.

B. Scope of Representation

Precedent establishes a framework for evaluating whether a topic is a mandatory bargaining subject even when EERA does not specifically list the topic as falling within the scope of representation. (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 857-858 (San Mateo); *Regents of the University of California* (2021) PERB Decision No. 2783-H, pp. 23-25; *Anaheim Union High School District* (1981) PERB Decision No. 177, pp. 4-5 (*Anaheim*)). Under this “*Anaheim* framework,” a non-enumerated issue falls within the scope of representation if: (1) it is logically and reasonably related to wages, hours, or an enumerated term and condition of employment (i.e., it involves the employment relationship); (2) the subject is of such concern to management and employees that conflict is likely to occur, and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict; and (3)

the employer's obligation to negotiate would not significantly abridge its freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the employer's mission. (*San Mateo, supra*, 33 Cal.3d 850, 857-858; *Regents of the University of California, supra*, pp. 23-25; *State of California (Department of Transportation)* (1983) PERB Decision No. 361-S, pp. 10-11; *Anaheim, supra*, pp. 4-5.)

It is appropriate to either apply each element of the *Anaheim* test or to apply subject-specific standards that implement the overall scope of representation test set out in *Anaheim*, thereby "obviating the need to 'reinvent the wheel.'" (*West Valley-Mission Community College District* (2024) PERB Decision No. 2917, p. 16; *The Accelerated Schools* (2023) PERB Decision No. 2855, p. 15.) We first analyze the District's amendments to AR 5020 and AR 5145.3 using the subject-specific standard for employee job duties, a subject that normally falls within the scope of representation. Thereafter, in the alternative, we apply the *Anaheim* standard "from scratch," without reference to any subject-specific standard. Under either of these analyses, the District had a duty to provide notice and an opportunity to bargain.

Changes to job duties, workload, qualifications, or performance standards generally fall within the scope of representation. (*State of California (California Correctional Health Care Services)* (2022) PERB Decision No. 2823-S, pp. 10-12 (Correctional Health Care Services); *County of Santa Clara* (2022) PERB Decision No. 2820-M, p. 7; *County of Sacramento* (2020) PERB Decision No. 2745-M, p. 17.) A charging party can

prove that new job duties or assignments materially deviated from the status quo by showing they are not “reasonably comprehended” within the employees’ prior duties or assignments. (*Correctional Health Care Services, supra*, pp. 10-11; *Cerritos Community College District* (2022) PERB Decision No. 2819, pp. 30-31 (*Cerritos*), pp. 30-31.) “Reasonably comprehended” is an objective standard that refers to what a reasonable employee would comprehend based on all relevant circumstances, including, but not limited to, past practice, training, and job descriptions. (*Correctional Health Care Services, supra*, pp. 10, 17-20; *County of Santa Clara, supra*, PERB Decision No. 2820-M, p. 7.)

Here, prior to the adoption of the new policy, teachers and counselors were permitted to disclose a student’s transgender or gender nonconforming identity without the student’s consent only “when required by law or to preserve the student’s physical or mental well being.” This previous policy was directly in line with employees’ existing understanding of their job duties, which included following state law and guidance. Indeed, per their job descriptions, the District explicitly requires teachers to “adhere to the California Education Code.” Yet, for all the reasons set forth ante at pages 16-23, the District’s parental notification policy forced teachers to violate state law and guidance.

Teachers would reasonably see that as a change in duties, and, indeed, fear consequences from the California Commission on Teacher Credentialing (CTC). The CTC has the authority to revoke or suspend a teacher’s credential, in which case the educator could

not teach and would be unemployable in their profession. Additionally, we credit Mougeotte's testimony that teachers would reasonably see being forced to disclose students' private information to their parents, over their objection, as a significant change in job duties because it forces them to break the trust formed with their students. Previously, teachers would only breach a student's privacy when "required by law" or "to preserve the student's physical or mental well-being." Now, every teacher could be forced to involve themselves in a student's private affairs notwithstanding state law, even in the presence of "credible evidence that such notification may result in substantial jeopardy to the child's safety."

The District's revisions to AR 5020 and AR 5145.3 thus directly conflict with the District's prior policy, with state law and guidance, and with employees' reasonable prior understanding of their job functions. The District is therefore mistaken when it claims there was no significant change because teachers' job description states that they are expected to "[c]ommunicate with students and parents on the educational and social progress of the student," and the reporting requirements in the new policy are allegedly similar to reporting a student's negative behavior or poor academic performance against the student's will. Those parts of the job description do not bear the new meanings the District attempts to ascribe, especially given that "catchall language" in a job description does not obviate the need to examine the specific duty in question. (*County of Santa Clara* (2023) PERB Decision No. 2876-M, p. 22 [judicial appeal pending on unrelated grounds], citing *Rio Hondo Community College District* (1982) PERB Decision No. 279, pp. 17-

18.) Nothing in the existing job descriptions for teachers or counselors could be reasonably comprehended to indicate that they may be required to divulge confidential student information regarding their transgender or gender nonconforming status, and particularly not in a way that violates state law and guidance. Indeed, the parental notification policy directly contradicts the District's previous directive regarding notification of a student's transgender or gender nonconforming status. The change is therefore outside what a reasonable teacher or counselor would have previously expected to fall within their purview.

Although other District policies require certificated employees to communicate with parents or guardians regarding academic performance, behavioral problems, and matters posing a threat to student health or safety, as discussed above, the parental notification requirements in AR 5020 and AR 5145.3 are a significant departure from existing parental communication mandates. A student's gender identity or expression is not a recognized metric of academic progress, and notification of students' choice of nicknames and pronouns, or other gender nonconforming conduct, exceeds reasonable expectations regarding the scope of preexisting parental notification policies.

The District's policy therefore was not "reasonably comprehended" within employees' prior assignments. As such, the change to teachers' and counselors' job duties is within the scope of representation.

In the alternative, even if we were to "reinvent the wheel" by applying the *Anaheim* framework from scratch, we would reach the same conclusion. As to

Anaheim's first prong, for the reasons noted at pages 25-26, *ante*, the parental notification policy is logically and reasonably related to certificated employees' terms and conditions of employment. Second, requiring employees to notify parents regarding students' transgender and gender nonconforming status is of such concern to management and employees that conflict is likely to occur. This is evidenced by the unfair practice charge currently before us (and by others like it that have already been resolved or are currently pending at other PERB divisions), as well as by employees' participation during the District Board's public meeting on the subject.

As to the third prong, there was no exigency that required the District to adopt the parental notification policy without providing notice and an opportunity to bargain to RTPA. Moreover, requiring an employer to bargain is a low burden because an employer need not agree with a union's proposals and has the right to implement lawful proposals after bargaining in good faith and reaching an impasse. (*Oakland, supra*, PERB Decision No. 2875, pp. 15-16.) Nor can the parental notification policy fairly be termed "essential to the achievement of the District's mission" within the meaning of *Anaheim, supra*, PERB Decision No. 177, p. 5. Indeed, not only is the policy illegal, but it relates to a matter that hardly lies at the core educational mission of a school district.

For all these reasons, RTPA has established that the District's changes to AR 5145.3 and AR 5020 concerned matters within the scope of representation, thereby satisfying the second element of its *prima facie* case.

C. Generalizing Effect or Continuing Impact

A charging party satisfies this element of the test for a unilateral change requiring decisional bargaining if the challenged decision or action alters a term or condition of employment on a prospective basis or if the respondent asserts a non-existent right to continue or repeat the action in the future. (*West Contra Costa Unified School District* (2023) PERB Decision No. 2881, pp. 15-16.) Here, because the revisions to AR 5020 and AR 5145.3 alter employees' job duties going forward, the District's decision has a continuing impact on terms and conditions of employment.

D. Notice and Meaningful Opportunity for Negotiations

EERA section 3543.2, subdivision (a)(2), requires a public school employer to "give reasonable written notice to the exclusive representative of the public school employer's intent to make any change to matters within the scope of representation of the employees represented by the exclusive representative . . ." An employer's unexcused failure to provide an exclusive representative with adequate notice and an opportunity to bargain is a per se violation of the duty to bargain in good faith if the decision itself falls within the scope of representation, or if the decision has reasonably foreseeable effects on terms or conditions of employment. (*The Accelerated Schools, supra*, PERB Decision No. 2855, p. 13, citing *Regents of the University of California, supra*, PERB Decision No. 2783-H, p. 18; *Trustees of the California State University* (2012) PERB Decision No. 2287-H, p. 20.) The

form and amount of notice that is “reasonable” necessarily varies under the circumstances of each case. (*City of Sacramento, supra*, PERB Decision No. 2351-M, pp. 29-30.)

Generally, a public meeting agenda for the employer’s governing body does not provide sufficient notice unless the employer provides such documentation to a union official in a manner reasonably calculated to draw attention to a specific item and with adequate time for good faith negotiations. (*Oakland, supra*, PERB Decision No. 2875, p. 21; *Regents of the University of California* (2004) PERB Decision No. 1689-H, adopting proposed decision at p. 45; *Victor Valley Union High School District* (1986) PERB Decision No. 565, pp. 5-6 & fn. 6 (Victor Valley).) Regardless of what form notice takes, the employer must provide notice sufficiently in advance of a firm decision to alter matters within the scope of representation, or before implementation of a non-negotiable decision having negotiable effects, to allow the representative time to decide whether to request information, demand bargaining, consult its members, acquiesce to the change, or take other action. (*City of Sacramento, supra*, PERB Decision No. 2351-M, pp. 29-30; *Victor Valley, supra*, p. 5.)

Here, RTPA learned of the proposed amendments to AR 5020 and AR 5145.3 at the same time as the general public, i.e., when the District posted the draft amendments to its website on September 4, 2023, two business days before the District Board meeting itself. Superintendent Stock called RTPA President Mougeotte on September 4, 2023, to tell him he should “prob-

ably look at the Board docs when they're made public." However, two days' notice could not possibly suffice for RTPA to decide whether to request information, demand bargaining, consult its members, and then bargain in good faith. Accordingly, RTPA established the fourth element.

Moreover, because the District Board failed to provide notice and meaningful opportunity for negotiations prior to adopting the new policy, RTPA had no duty to demand to bargain over the decision. (*West Covina Unified School District* (1993) PERB Decision No. 973, pp. 13-14 (*West Covina*).

For the foregoing reasons, RTPA established a prima facie case that the District failed to afford it adequate notice and opportunity to bargain before adopting the parental notification policy.

Absent a valid defense, the District has committed a per se violation of its duty to meet and negotiate under EERA. In its exceptions, the District argues that it has not yet implemented the policy because it has not yet disciplined teachers or counselors for failing to comply. However, as discussed at page 26, ante, a change in policy occurs on the date a firm decision is made even if the decision is not scheduled to take effect immediately, or even if it is never implemented. (*City of Milpitas, supra*, PERB Decision No. 2443-M, pp. 15-16.) As such, this argument is no defense to the District's adoption of the new policy without providing notice to RTPA.

Finally, while the District has not raised a waiver defense, no such defense is cognizable here. As noted

above, where an employer fails to provide adequate advance notice to allow good faith negotiations, the union has no duty to demand to bargain over the decision and the employer cannot prove that the absence of such a demand constitutes a waiver. (*West Covina, supra*, PERB Decision No. 973, pp. 13-14; *Victor Valley, supra*, PERB Decision No. 565, pp. 5-6.)

II. Effects Bargaining Claim

In the alternative, even if the District had not been obligated to bargain over its decision to adopt the parental notification policy, it was obligated to bargain the effects of its decision with RTPA.

Even when an employer has no obligation to bargain over a particular decision, it nonetheless must provide notice and an opportunity to bargain in good faith over any reasonably foreseeable effects the decision may have on matters within the scope of representation. (*County of Santa Clara* (2019) PERB Decision No. 2680-M, pp. 11-12.) A failure or refusal to bargain over the effects of a non-negotiable change is equally as harmful as a failure to bargain over a negotiable change, as it disrupts and destabilizes employer-employee relations by creating an imbalance in the power between management and employee organizations. (*County of Santa Clara* (2013) PERB Decision No. 2321-M, pp. 22-24.)

Here, no party has asked us to review the ALJ's conclusion that the District was required to bargain effects of its adoption of the parental notification policy. Nor does the District claim that its effects bargaining duty is limited under the partial exception set

forth in *Compton Community College District* (1989) PERB Decision No. 720, pp. 14-15. Rather, the sole issue in dispute is whether the District committed a per se violation of its effects bargaining duty because its offer to bargain effects was predicated on an illegal policy, meaning RTPA was correct that it need not engage in the effects bargaining process unless and until RTPA rescinded the policy. The District, in contrast, argues that RTPA's refusal to bargain unless the District rescinded the policy means that the District no longer has an obligation to bargain effects. For the following reasons, RTPA has the better argument.

As discussed above, the District's parental notification policy violates the California Constitution and multiple state laws, including the SAFETY Act, by singling out transgender and gender nonconforming students for different, adverse treatment that puts them at risk of harm. (See *ante*, at pp. 16-23.) Thus, compliance with the parental notification policy would require certificated employees to engage in conduct that the State of California has said violates state law. (See *ante*, at pp. 16-23.) Because "illegal subjects involve matters prohibited by external law or public policy," they "may not be negotiated or included in a collective bargaining agreement, even if the parties were to agree to do so." (*City of San Jose* (2013) PERB Decision No. 2341-M, p. 44.)

Given that the parental notification policy is illegal, any proposals the District could make regarding implementation would be illegal. Taking such an illegal position is a per se violation of the duty to bargain in good faith. (*City of San Jose, supra*, PERB Decision

No. 2341-M, pp. 43-44; *Berkeley Unified School District* (2012) PERB Decision No. 2268, pp. 9-15.) In these unusual circumstances, therefore, even though the District was willing to bargain effects, it premised its offer to bargain on an illegal position that constituted bad faith bargaining. By the same token, RTPA lawfully refused to bargain unless the District first rescinded its illegal policy. In other words, it is impossible to bargain in good faith over the effects of an unlawful policy. For these reasons, we find in the alternative that the District violated its obligation to bargain in good faith over negotiable effects.

III. Remedy

PERB remedies for failure to bargain in good faith include directing the respondent to cease and desist from further unlawful conduct; post a notice; reimburse increased bargaining costs that the other party more likely than not incurred because of a violation; provide information; rescind unlawfully imposed terms; and make employees whole. (*City of Glendale* (2020) PERB Decision No. 2694-M, pp. 71-78; *City of Palo Alto* (2019) PERB Decision No. 2664, pp. 5-10 & fn. 6; *City of San Ramon, supra*, PERB Decision No. 2571-M, pp. 17-18.)

Typically, PERB remedies also include directing the respondent to begin or resume bargaining in good faith and to return to a prior bargaining position. (*City of Glendale, supra*, PERB Decision No. 2694-M, pp. 71-78; *City of Palo Alto, supra*, PERB Decision No. 2664, pp. 5-10 & fn. 6; *City of San Ramon, supra*, PERB Decision No. 2571-M, pp. 17-18.) Here, as discussed ante, the District Board's September 6, 2023

decision to adopt the amendments to AR 5020 and 5145.3 is non-negotiable because those amendments are unlawful under state law. The District's demand that RTPA bargain over the effects of a non-negotiable decision is similarly unlawful, and we will not order the parties to bargain over the effects of the unlawful decision. Accordingly, the District must rescind its parental notification policy and comply with the additional requirements in PERB's remedial order.

ORDER

Upon the foregoing and the entire record in the case, the Public Employment Relations Board (PERB) finds that Rocklin Unified School District violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq., by unilaterally amending Administrative Regulations 5020 and 5145.3.

Pursuant to section 3541.3, subdivisions (i) and (k) and 3541.5 of the Government Code, it hereby is ORDERED that the District, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with Rocklin Teachers Professional Association (RTPA) regarding matters within the scope of representation.
2. Unilaterally changing policies within the scope of representation without providing

RTPA adequate notice and opportunity to bargain in good faith.

3. Interfering with the rights of bargaining unit employees to be represented by RTPA; and
4. Denying RTPA its right to represent bargaining unit employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS TO EFFECTUATE THE POLICIES OF EERA:

1. Rescind the amendments to Administrative Regulations 5020 and 5145.3 adopted on September 6, 2023.
2. Within 10 workdays after this decision is no longer subject to appeal, post at all work locations where notices to bargaining unit employees are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating that it will comply with the terms of this Order. The District shall maintain such posting for a period of 30 consecutive workdays, and shall take reasonable steps to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material. In addition to the physical posting, the Notice shall also be

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posted by electronic means used by the District to communicate with bargaining unit employees.⁸

3. Notify OGC of the actions the District has taken to follow this Order by providing written reports as directed by OGC and concurrently serving such reports on RTPA.

Members Krantz, Paulson, and Krausse joined in this Decision.

⁸ Either party may ask PERB's Office of the General Counsel (OGC) to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice. Upon receipt of such a request, OGC shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice.

APPENDIX D

[Former counsel contact information omitted]

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

ROCKLIN TEACHERS
PROFESSIONAL AS-
SOCIATION,

Petitioner,

v.

ROCKLIN UNIFIED
SCHOOL DISTRICT,

Respondent.

Case No. SA-CE-3136-E

RESPONDENT'S
OPENING BRIEF

Administrative Law
Judge: Camille K.
Binion

[Table of Contents omitted]

[Table of Authorities omitted]

SUMMARY OF ARGUMENT

This case arises from the Rocklin Teachers Professional Association’s (“RTPA” or “the Association”) Unfair Practice Charge (“Charge”) alleging that the Rocklin Unified School District (“District”) violated the Educational Employment Relations Act (“EERA”) by failing to provide RTPA adequate notice and an opportunity to bargain before voting to adopt revisions to two existing District policies, Board Policy (“BP”) 5020 – Parent Rights and Responsibilities and Administrative Regulation (“AR”) 5145.3 – Nondiscrimination/Harassment. (Charge, ¶ 9-12.) Together, these policy revisions trigger a notification to parents/guardians if their child requests certain accommodations specified in the policy (i.e., “Parent Notification Policy” or the “Policy”.) (See Joint Exhibit [“JX”] 2 and JX 3.)

Based on RTPA’s Charge, the Public Employment Relations Board (“PERB”) issued a Complaint against the District alleging that it unlawfully adopted the Policy without providing notice to RTPA and “without having afforded [RTPA] an opportunity to negotiate the decision to implement the change in policy and/or the effects of the change in policy.” (Complaint, ¶ 5.) The Complaint further alleges that the District’s conduct constituted a failure to bargain in good faith, in violation of Government Code section 3543.5, subdivision (c). (Complaint, ¶ 6.) Finally, the Complaint states that the District’s conduct interfered with the rights of unit members and denied RTPA its right to represent its unit members, in violation of Government Code sections 3543.5, subdivision (a) and

3543.5, subdivision (b), respectively. (Complaint, ¶¶ 7-8.)

While the Complaint frames up this case as a garden variety labor issue, subject to PERB's jurisdiction, PERB precedent does not support this characterization. As undisputed facts and Joint Exhibits demonstrate, the District gave ample notice to RTPA regarding the proposed policy revisions, repeatedly requested to negotiate the Policy's effects and impacts on matters within the scope of representation prior to the Policy's implementation, and refrained from implementing the policy altogether. (See JX 6 and JX 8; District Exhibit ["DX"] 1.) When RTPA initially requested to negotiate the Policy's impacts and effects, the District provided a list of dates to do so. (See JX 6.) RTPA refused to engage. (See JX 7.) From there, RTPA's position "evolved:" in each and every subsequent instance that the District requested to negotiate effects and impacts, RTPA flat out refused to negotiate at all, instead reasoning that the Policy itself was unlawful. (See RT 59: 1-4 [Union President Travis Mougeotte confirming that the Association's "view of [its] legal obligations has evolved over the last several months"]; RT 154: 7-16 [Assistant Superintendent Dr. Tony Limoges recalling the Association's refusal to bargain the effects of the Policy during the Parties' September 29, 2023 bargaining session]; DX 2 [Mr. Mougeotte writing on October 2, 2023 that RTPA would "not engage in the negotiation of any policy that is in violation of student safety and the law"]; JX 9 [Association Counsel writing on October 12, 2023 that the Association would "not acquiesce to the District's unilateral change by engaging in bargaining

over its effects”]; RT 154: 23-155: 18 [Dr. Limoges testifying to the Association’s refusal to bargain the effects of the Policy during the Parties’ October 18 bargaining session].) RTPA has failed to provide any evidence that the District, at any time “failed and refused to bargain in good faith,” as alleged in the Complaint. (Complaint, ¶ 6.) To the contrary, the facts and testimony from RTPA’s single witness shows that RTPA, not the District, refused to negotiate the Policy. (See RT 147: 1-6 [Dr. Limoges noting that this in the first time in his history with the District that the Association has flat out refused to negotiate]; RT 19: 24-20: 3 [RTPA Counsel confirming it was the Association’s “decision not to engage in any sort of bargaining over (an) unlawful policy”].)

Because the facts do not support a prima facie case of any labor violation, the Association attempts to obtain a favorable decision from PERB by alleging that the real issue is that the Policy itself is allegedly unlawful, and that the Board’s adoption of this policy thus “requires” unit members to break the law. (See DX 2; JX 5; JX 9.) However, a determination as to whether the Policy itself is lawful relies on principles of law wholly beyond PERB’s jurisdiction: matters of parent rights, student privacy and equal access guaranteed by the California Constitution. (See Gov. Code, § 3541.3 [generally setting forth the scope of PERB’s jurisdiction as limited to matters of employer-employee relations].) To date, the scope of a student’s privacy rights with respect to their gender identity, when balanced against a parent’s federal constitutional right to direct the upbringing of their child, has not been definitively ruled upon by any legal authority binding on the District. As demonstrated by RTPA’s

admitted Exhibits for judicial notice, this specific issue is currently pending in San Bernardino Superior Court, pursuant to a lawsuit filed by the State Attorney General against the Chino Valley Unified School District (“Chino Valley”). (See Charging Party’s Proposed Exhibit for Judicial Notice [“Proposed Exhibit”] 1.) The Ninth Circuit is also poised to review a case on appeal that examines these very issues. (*Regino v. Staley* (E.D. Cal., Mar. 9, 2023, No. 223CV00032JAMDMC) 2023 WL 2432920 [involving a challenge to the Chico Unified School District’s AR 5145.3].) Additional legal challenges on this issue are pending in other courts as well. Nonetheless, instead of permitting the courts or the Legislature to resolve these open questions of law, RTPA reframes the adoption of the Policy as a labor issue in order to obtain a favorable ruling from PERB.

And, while RTPA may argue that the Policy is properly in front of PERB on the basis that it imposes additional duties on unit members without adequate notice, a would-be labor violation, there is no PERB precedent to support their argument that a teacher’s responsibility to communicate with parents constitutes a mandatory subject of bargaining. RTPA has also offered no evidence that the District failed to provide notice before the decision to adopt the revisions. To the contrary, RTPA presented evidence at hearing that the District provided notice to RTPA the week prior to the Board’s adoption of the Policy. (See RT 43: 20-44: 3.) In any case, as a permissive bargaining topic, the Policy is subject only to *impacts or effects* bargaining, as RTPA originally acknowledged in its request to negotiate on September 4, 2023. (JX 4

["RTPA demands that RUSD bargain with RTPA regarding its *impacts and effects* that are within the scope. . . ."], emphasis added.) Finally, even assuming *arguendo* that the Policy itself is subject to bargaining, RTPA cannot state a prima facie case under this theory of wrongdoing either because the Association concedes that the District provided notice of its decision prior to implementation, as noted above.

STATEMENT OF THE CASE

The vast majority of the facts in this case are uncontradicted and relatively straightforward: the disagreement instead arises from questions of law. On September 6, 2023, the District's governing board of trustees ("Board") voted in favor of adopting revisions to BP 5020 – Parent Rights and Responsibilities to confer a new right upon District parents: the right to be informed by a teacher, counselor or administrator if their child request specified accommodations at school related to their gender identity (e.g., to participate in a sex-segregated athletic team). (JX 1, JX 2, and JX 3.) In order to effectuate these revisions, the Board also voted in favor of adopting revisions to AR 5145.3 – Nondiscrimination/Harassment to carve out an exception that permits disclosure to parents/guardians about information that is otherwise confidential. (See JX 2 and JX 3.) On multiple occasions throughout the fall of 2023, the District requested dates to bargain the impacts of the Policy with RTPA, but each time the Association instead requested that the District rescind the Policy revisions altogether. (JX 6; JX 7; RT 59:1-4; RT 154: 7-16; DX 2; JX 9; RT 154:23—155:18.)

The Association's insistence that the District rescind the Policy arises from its position that the Policy is unlawful because it contradicts the California Department of Education's ("CDE") written guidance as well as the State Attorney General's stated position that a student's trans or gender nonconforming status should not be disclosed to their parents without consent. (See RT 20: 4-7.) However, while the Attorney General filed a lawsuit against the Chino Valley for adopting its own version of a parent notification policy, which differs significantly from that adopted by the District, the matter remains in litigation.¹ In any case, as of today's date, the District has not implemented the Policy because the Parties have not completed their respective bargaining obligations. (RT 99: 11-22; RT 101: 7-25; RT 129: 13-23.)

A. RTPA'S UNFAIR PRACTICE CHARGE

On or about September 8, 2023, RTPA filed an Unfair Practice Charge with PERB, alleging the District violated Government Code section 3543.5, subdivisions (a), (b), and (c) of the EERA when its Board adopted the Parent Notification Policy. The Charge focused on the District's alleged failure to bargain the effects of the Policy on mandatory subjects of bargaining. (Charge, ¶ 9.)

B. THE DISTRICT'S RESPONSE TO THE CHARGE

¹ The Parties in Chino Valley have a trial setting conference on May 3, 2024.

Upon receipt of the Charge and RTPA's written demand to bargain the effects of the Policy, on September 8, 2023, Dr. Limoges contacted RTPA Bargaining Chair Emily Thomas via e-mail. (JX 6.) In his e-mail, Dr. Limoges provided the District's available dates to bargain the effects and impacts of the Policy. (JX 6.) Ms. Thomas replied on behalf of RTPA that she would follow up with available dates as well. (JX 6.) However, that did not occur. (See DX 2.)

C. COMPLAINT AND THE DISTRICT'S ANSWER

On October 11, 2023, PERB issued a Complaint against the District stating that the Association had made a prima facie case for a violation of the EERA for failure to negotiate "the decision to implement the policy." (Complaint, ¶ 5.) In other words, the PERB-issued Complaint characterized the case as a failure to bargain over the District's decision, whereas the Association's underlying Charge characterized the District's alleged wrongdoing as a failure to bargain over the Policy's impacts. (Charge, ¶ ¶ 9-12.) On October 31, 2023, the District filed an Answer denying all substantive allegations against it.

D. THE HEARING

While initially set for two days, the entirety of the hearing took place on February 13, 2024. The Association presented one witness in support of its case in chief, Union President Travis Mougeotte. The District presented three witnesses in support of its rebuttal: Superintendent Roger Stock; Assistant Superintendent Dr. Tony Limoges; and Trustee Julie Hupp.

STATEMENT OF FACTS

A. DEVELOPMENT AND ADOPTION OF THE PARENT NOTIFICATION POLICY

1. A subcommittee of the Board drafts revisions to BP 5020 and AR 5145.3, and the Board votes in favor of the proposed revisions.

On August 9, 2023, during a regularly scheduled public board meeting, Trustee Derek Counter brought forward the idea to form a subcommittee whose purpose would be to “review and revise the current RUSD Board Policy and Administrative Regulations that address parent notification with the goal of increasing communication with families and increasing parent notification.” (JX 1; RT 121: 12- 17.) Then-Board President Julie Hupp volunteered to be a member of the subcommittee, and together the two of them prepared proposed revisions to BP 5020 and 5145.3 with assistance of the Superintendent and legal counsel. (RT 123: 2-126: 2.) Mr. Mougeotte recalled the Board’s discussion to form such a committee and its stated purpose as to strengthen “parents’ rights.” (RT 41: 5-42: 2.)

Prior to the September 6, 2023 Board meeting, the proposed revisions, described in detail below, were attached to the publicly posted online Board Meeting Agenda. (JX 2 and JX 3; RT: 140: 13-25.) At hearing, Mr. Mougeotte testified that the District’s practice is to “post the Board agendas with any [accompanying] documents on a public website” on the “Friday before

a Board meeting.” (RT 44: 6-8.) Thus, “[t]he official notification” of the Board’s intention to vote on the revisions “would have been the Friday prior to the September 6th meeting when the Board docs went public.” (RT 44: 1-5.) And, Mr. Mougeotte confirmed that he viewed the proposed revisions on that date. (RT 44: 1-23.) Mr. Mougeotte further testified that Superintendent Stock also called him to “recommend [he] probably look at the Board docs when they’re made public.” (RT 44: 24-45: 6.) Thus, based on Mr. Mougeotte’s testimony the Association received notice before the Policy’s adoption on September 6, 2023, and far before the Policy’s implementation, which has not yet occurred to this day.

On September 4, 2023, Counsel for RTPA sent a Cease and Desist letter to Superintendent Stock stating that the Board’s proposed policy revisions “violate the law” and demanding that the District withdraw the item from the agenda. (JX 4.) In support of its contention that the policy revisions were unlawful, the Association pointed to a lawsuit filed by the State Attorney General against Chino Valley for adopting its own version of a parent notification policy. (See JX 4.) Even believing the Policy to be unlawful, Counsel for RTPA demanded that the District “bargain with RTPA regarding [the Policy revisions’] impacts and effects that are within the scope. . . .” (JX 4 at 014.) On September 5, 2023, Counsel for RTPA followed up on its concerns, this time contacting the Board directly. (See JX 5.) In its correspondence, RTPA expressed its position that the proposed revisions violate students’ rights and warned that the District could not “implement any such policy until it has given the Association

proper notice and an opportunity to bargain over the policy's negotiable effects." (JX 5 at 015.)

As expected, on September 6, 2023, at a regularly scheduled Board meeting, Trustee Counter and then President Hupp brought forth the proposed policy revisions to the rest of the Board. The Board voted in favor of adopting the proposed revisions. (RT 30: 19-22.)

2. Revisions to BP 5020 and AR 5145.3 effectuate a new parent right to be notified when their child requests specific accommodations related to gender identity at school.

The adopted revisions made two primary changes to existing Board Policy to afford a new right of notification to parents: one change to BP 5020 – Parent Rights and Responsibilities and one change to AR 5145.3. (JX 2 and JX 3.) First, BP 5020 – Parent Rights and Responsibilities, originally adopted in 2005, identifies twenty rights of parents, including items such as “to be notified on a timely basis if their child is absent from school without permission;” “to be informed of their child’s progress in school and of the appropriate school personnel whom they should contact if problems arise with their child;” and “[t]o question anything in their child’s record that the parent/guardian feels is inaccurate or misleading or is an invasion of privacy.” (JX 2 at 002-004 [item no. 4, item no. 9, and item no. 19].) The proposed revisions, as adopted by the Board, added a twenty-*first* item to the list of parent rights and responsibilities:

To be notified within three (3) school days when their child requests to be identified as a gender other than the child's biological sex or gender; requests to use a name that differs from their legal name (other than a commonly recognized nickname) or to use pronouns that do not align with the child's biological sex or gender; requests access to sexsegregated school programs and activities, or bathrooms or changing facilities that do not align with the child's biological sex or gender. Notification shall be made by the classroom teacher, counselor, or site administrator. Such notification shall only be delayed up to 48 hours to fulfill mandated reporter requirements when a staff member in conjunction with the site administrator determines based on credible evidence that such notification may result in substantial jeopardy to the child's safety.

(JX 2.) In other words, the Policy, as revised, specifies an additional right of parents to be notified if their child requests specified accommodations at school consistent with their gender identity.

Second, AR 5145.3 – Nondiscrimination/Harassment sets forth the District's stated commitment to ensuring a campus free from discrimination and harassment. (JX 3.) AR 5145.3 contains a comprehensive section regarding "Transgender and Gender-Nonconforming Students." (JX 5 at 009- 012.) This section sets forth the rights of trans and gender-nonconforming students, such as the rights to access sex-segregated facilities and to participate in sports teams that are consistent with their gender identity. (JX 5 at

011.) AR 5145.3 also provides a statement regarding trans and gender nonconforming students' right to privacy. (JX 5 at 010.) The proposed revisions, as adopted, added language to this portion of AR 5145.3, stating that a student's trans or gender-nonconforming status must remain private and confidential "with the exception of parental notification." (JX 5 at 010.) As revised, the Policy now reads:

Right to privacy: A student's transgender or gender-nonconforming status is the student's private information **with the exception of parental notification**, and the district shall only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the district has compelling evidence that disclosure is necessary to preserve the student's physical or mental wellbeing. In any case, the district shall only allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by the district pursuant to 34 CFR 99.31. Any district employee to whom a student's transgender or gender-nonconforming status is disclosed shall keep the student's information confidential to all **other persons except the student and their parent(s)**. When disclosure of a student's gender identity is made to a district employee by a student, the employee shall seek the student's permission to notify the compliance officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless the employee is required to disclose or

report the student's information pursuant to this administrative regulation, and shall inform the student that honoring the student's request may limit the district's ability to meet the student's needs related to the student's status as a transgender or gender-nonconforming student. If the student permits the employee to notify the compliance officer, the employee shall do so within three school days²

(JX 3.) In other words, the revisions to AR 5145.3 clarify that there is an exception to confidentiality only for notification to parents in order to make its provisions consistent with the language set forth in the newly adopted language from BP 5020. Together, the revisions constitute the “Parent Notification Policy” at issue.

B. THE DISTRICT'S OFFERS TO BARGAIN THE EFFECTS OF THE POLICY AND THE ASSOCIATION'S INSISTENCE ON FULL RETRACTION

On September 8, 2023, Dr. Limoges responded to RTPA's request to bargain impacts and effects via an e-mail to RTPA Bargaining Chair Emily Thomas. (JX 6.) In his correspondence, Dr. Limoges informed Ms. Thomas that the District “fully intends to Bargain the impacts and effects” of the Parent Notification Policy and offered four dates to negotiate. (JX 6.) Instead of responding with available dates, RTPA contacted Superintendent Stock on September 20, 2023, refusing

² Emphasized language represents language added by the Board's proposed and adopted revisions.

to bargain “after the fact” and insisting that the District “rescind” the Policy. (JX 7.) On September 29, 2023, when the Parties met for a contract negotiations session, the District placed the Parent Notification Policy on the agenda. (DX 3 at 000012, ¶ 52.) However, RTPA refused to engage. (RT 154: 7-17.) On October 2, 2023, Mr. Mougeotte contacted Dr. Limoges to reiterate RTPA’s position that RTPA “will not engage in the negotiation of any policy that is in violation of student safety and the law.” (DX 2.)

On October 6, 2023, Counsel for the District responded to RTPA, explaining that, pursuant to well-established PERB precedent, bargaining impacts must occur before implementation of the Policy, not adoption. (JX 8.) The District’s correspondence further informed that the Policy had not yet been implemented and again requested to bargain the impacts with RTPA. (JX 8.) On October 12, 2023, in its final response to the District, RTPA made its position clear: the Association would not agree to bargain the impacts and effects because it now understood that the Policy would require unit members “to engage in conduct which the State of California has said violates state law.”. (JX 9.) Finally, during a subsequent bargaining session on October 18, 2023, the District again placed the Parent Notification Policy on the Contracts Negotiations Agenda, but RTPA refused to engage in bargaining. (See DX 3 at 000011, ¶ 43; RT 154: 23-155: 18.) To date, the Policy has not been implemented. (DX 1; RT 99: 11- 22.)

GOVERNING LAW

According to the Complaint, the District unlawfully adopted the Parent Notification Policy “without having afforded Charging Party an opportunity to negotiate the decision to implement the change in policy and/or the effects of the change in policy” in violation of sections 3543.5(a)—(c) of the EERA.

A. GOVERNMENT CODE SECTION 3543.5,
SUBDIVISION (A).

Government Code section 3543.5, subdivision (a) prohibits public school employers from imposing or threatening to impose reprisals on employees, discriminating or threatening to discriminate against employees, or otherwise interfering with, restraining, or coercing employees because of their exercise of rights guaranteed by the EERA. Under this subdivision, employees have the right to, among other things, “form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer employee relations.” In order to prove a violation of this provision, it is the charging party’s burden to establish, by a preponderance of the evidence, that the alleged conduct tends to, or does result in, some harm to employee rights granted under the EERA. (*Clovis Unified School Dist.* (2002) PERB Dec. No. 1504.) In this case, Charging Party has not set forth a single piece of evidence demonstrating that the Board’s adoption of the Policy has harmed unit members’ rights. Nor *can* the Association demonstrate that its unit members have experienced any such harm because the District has yet to implement the Policy.

B. GOVERNMENT CODE SECTION 3543.5,
SUBDIVISION (B).

Under Government Code section 3543.5, subdivision (b), it is unlawful for a public school employer to “[d]eny to employee organizations rights guaranteed to them by this chapter.” (Gov. Code, § 3543.5, subd. (b).) Employee organizations have the right to, among other things, represent their members in their employment relations with public school employers, enjoy the right of access at reasonable times to areas in which employees work, receive a reasonable period of release time, and to have membership dues deducted from employee salaries. (Gov. Code, § 3543.1.)

In order to prove a violation of Government Code section 3543.5, subdivision (b), the charging party must establish an *actual denial* of the statutory rights guaranteed to the employee organization itself under Government Code section 3543.1 and that such harm is separate and apart from that alleged with respect to any employee’s rights. (*Cal. Franchise Tax Bd.* (1992) PERB Dec. No. 954, p. 4.) A mere theoretical impact is insufficient. (*Id.*)

Here, RTPA’s case tenuously rests on imagined scenarios that, *if* materialized, *might* result in harm to a unit members’ rights *if and only if* a court with binding authority or the State Legislature creates law that would render the Policy unlawful. (RT 24: 9-21 [arguing that the California Commission on Teacher Credentialing is “likely to” take direction from the State Attorney General, that the California Commission on Teacher Credentialing “could” discipline a teacher for violating a student’s constitutional rights

and that the District is “forcing” teachers to risk jeopardizing the maintenance of their credential(s) by adopting the Policy].) Such speculation cannot bolster a finding of unlawful unilateral change under EERA. (*Cal. Franchise Tax Bd.* (1992) PERB Dec. No. 954.)

C. GOVERNMENT CODE SECTION 3543.5,
SUBDIVISION (C).

Government Code section 3543.5, subdivision (c), prohibits a public school employer from doing the following:

Refus[ing] or fail[ing] to meet and negotiate in good faith with an exclusive representative. Knowingly providing an exclusive representative with inaccurate information, whether or not in response to a request for information, regarding the financial resources of the public school employer constitutes a refusal or failure to meet and negotiate in good faith.

In order to prove a violation of this provision, a charging party must establish that the alleged conduct constituted a per se violation or a refusal to bargain under the “totality of the conduct” test. (*Stockton Unified School Dist.* (1980) PERB Dec. No. 143; see also *Santee Elementary School Dist.* (2006) PERB Dec. No. 1822.) As described throughout, RTPA concedes that the District repeatedly requested to bargain. (See e.g., RT 19: 24—20: 3 [Counsel for the Association testifying to the reasons why the Association made “the decision not to engage in any sort of bargaining over [the Policy]”].) Thus, RTPA cannot prove any contention that the District refused to bargain.

D. RTPA BEARS THE BURDEN OF PROOF.

A charging party must prove the allegations of a complaint by a preponderance of the evidence. (*Cal. State University* (1986) PERB Dec. No. 559-H, p. 4; Cal. Code Regs., tit. 8, § 32178.) Proof by a preponderance of the evidence requires a party to convince the trier of fact that the existence of a particular fact is more probable than its nonexistence. (*Los Angeles Unified School Dist.* (2014) PERB Dec. No. 2359, fn. 22, citing Evid. Code, § 500, Law Revision Commission comments.) Here, RTPA carries the burden of proof as to all elements set forth in the Complaint allegations. (*City of Alhambra* (2010) PERB Dec. No. 2139-M, citing *Riverside Sheriffs Assn. v. County of Riverside* (2003) 106 Cal.App.4th 1285, 1291.) As discussed throughout, RTPA has failed to set forth evidence sufficient to show that the District committed an unfair labor practice. Rather, the crux of Association's case relies on their inaccurate contention that the policy is unlawful simply because the CDE believes it to be unlawful and the State Attorney General filed a lawsuit against another school district alleging that their very different version of a parent notification policy is unlawful. (RT 23: 1-24: 8.)

LEGAL ARGUMENT

- I. THE UNDISPUTED FACTS DEMONSTRATE THAT THE DISTRICT MET ITS OBLIGATION UNDER THE EERA TO BARGAIN IMPACTS AND EFFECTS OF THE PARENT NOTIFICATION POLICY.

PERB precedent distinguishes between two types of bargaining: effects bargaining and decision bargaining. (See e.g., *Oakland Unified School District* (2023) PERB Decision No. 2875 [“Oakland Unified School Dist.”].) Acts that involve a mandatory subject of bargaining trigger negotiating over the decision, while acts that involve a nonmandatory subjects of bargaining trigger negotiating over the effects of the decision. (See *The Accelerated Schools* (2023) PERB Decision No. 2855, pp. 13-14.) In other words, an employer’s duty to bargain their decision is triggered “[i]f an employer wishes to change terms or conditions of employment for represented employees.” (*Oakland Unified School Dist.* at 10.) In such instances, “[the employer] must provide the employees’ union with adequate notice and opportunity to bargain before making its decision, and the employer must then bargain in good faith upon request.” (*Id.*) By contrast, “if the decision falls outside the scope of bargaining, the employer must provide adequate notice and opportunity to bargain in good faith over the implementation and effects of that decision, to the extent such implementation and effects are reasonably likely to impact represented employees.” (*Id.*, emphasis added.) While “the effects bargaining obligation is not an inferior duty,” the distinction is important for purposes of determining when an employer’s duty is triggered and the scope of that duty. (*See id.* at 11.)

A. Pursuant to PERB precedent, the Policy concerns nonmandatory subjects of bargaining.

“The ‘scope of representation,’ i.e., the group of mandatory bargaining topics under EERA, is ‘limited to matters relating to wages, hours of employment,

and other terms and conditions of employment.” (*Oxnard High School District* PERB Decision No. 2803-E, p. 41 [citation omitted].) To determine whether a specific issue amounts to a “mandatory bargaining topic” PERB utilizes a threepart test commonly known as the *Anaheim* test. (*Id.* at 43.) Under the *Anaheim* test, “a subject falls within the scope of representation” if: (1) it is logically and reasonable related to hours, wages, or an enumerated term and condition of employment; (2) the topic is “of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict;” and (3) “the employer’s obligation to negotiate would not significantly abridge [its] freedom to exercise those managerial prerogatives . . . essential to the achievement of [its] mission.” (*Oxnard High School District* at 42 citing *San Bernardino Community College District* (2018) PERB Decision No. 2599, p. 8.)

Regarding the first prong of the *Anaheim* test, PERB has found items such as employee workloads, peer review programs, and employee evaluations to be logically and reasonably related to hours, wages, or other terms and conditions of employment. (*Trustees of California State University* (2012) PERB Decision No. 2287-H, pp. 13-14; *Standard School District* (2005) PERB Decision No. 1775, pp. 11-12; and *Jefferson School District* (1980) PERB Decision No. 133.)

Here, RTPA contends that the Policy is logically and reasonably related to terms and conditions of employment because it confers a “new duty” on teachers.

(RT 23: 2-5.) However, unit members are already expected to communicate with parents about the goings on of their children at school. (See Charging Party Exhibit [“CPX”] 1 and CPX 2.) In fact, the Job Description for classroom teachers states as a “typical duty” that teachers will “communicate with students and parent on the . . . social progress of the student.” (CPX 1 at 025.) Similarly, the Job Description for guidance counselors identifies as a “typical duty” that counselors will “consult with parents . . . in helping to develop the best educational programs for children.” (CPX 2 at 028.) Indeed, teachers are already expected to communicate with parents, with or without the consent of the student, if their student is in danger of failing a class or if the student is being disciplined. (RT 82: 14—83: 4.) Moreover, PERB has accepted a union’s concession that communicating certain information to parents falls outside the scope of bargaining. (See *Beverly Hills Unified School District* (2008) PERB Decision No. 1969, overruled in part on unrelated grounds.) In *Beverly Hills Unified School District*, the Beverly Hills Educators Association challenged their employer’s directive to provide parents with their children’s written examinations upon request. (*Id.*) There, the union conceded that “the decision to adopt the test release policy was not negotiable.” (*Id.* at p. 5.) Reviewing the facts *de novo*, PERB did not disagree with the union’s contention. (See generally *id.* (examining the scope of the District’s duty to bargain effects, not whether the decision itself was negotiable.)

Additionally, state and federal law guarantee parents broad rights with respect to information about

their children, including information that may otherwise be confidential. California state law requires that parents be notified of a variety of matters pertaining to their students: Education Code section 51101 provides that “parents and guardians of pupils enrolled in public schools have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children ... to be informed by the school and to participation in the education of their children.” (See Ed. Code, § 51101.) Consistent with Education Code, District teachers regularly communicate with parents to relay sensitive or confidential information about their children, including sudden changes in a student’s behavior, suspected mental health issues, or lack of academic progress. (RT: 104: 20—105: 8- 24.) Likewise, the federal Family Educational Rights and Privacy Act (“FERPA”) provides parents the absolute right to access their child’s education records. (See 34 C.F.R. §§ 99.3-99.4; Ed. Code, § 49069.7.) Thus, to the extent a student’s records contain information related to a request for accommodations under the Policy, such as changing their name or pronouns, federal law entitles parents to that information. (See *id.*) For these reasons the Policy cannot reasonably be characterized as conferring a “new duty” that logically and reasonably relates to the terms and conditions of employment.

Regarding the second prong of the *Anaheim* test, the Association bears the burden to show that the Policy is “of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict.” (*Anaheim Union High School District* (1981) PERB Decision No.

177, p. 4., emphasis added.) While the District does not deny that the Policy is likely to yield conflict, as evidenced by the current dispute, collective negotiations cannot be the appropriate means of resolving this conflict. As the Eastern District recently acknowledged when reviewing a challenge to another school district's AR 5145.3, which prohibited parent notification, the issue as to whether a student's right to privacy in their gender identity may overcome a parent's right to direct the upbringing of their child is a question "better suited for deliberation by the legislature." (*Regino v. Staley* (E.D. Cal, Jul. 11, 2023) WL 4464845, p. 5.)

Finally, to meet the third prong of the *Anaheim* test requires that a mandatory subject cannot "significantly abridge" any of the managerial prerogatives that are central to carrying out the District's mission. Here, permitting the Association to negotiate over the terms of parents' rights to be informed of the goings on of their children would significantly abridge the District's ability to carry out its managerial prerogative as well as its legal obligations. To rule otherwise would invite serious consequences on a public school district's ability to carry out its duties because communication with parents is central to the operation of every school district, including Rocklin Unified. Thus, the Association cannot meet the third prong of the *Anaheim* either. Because the Policy fails to meet any prong of the *Anaheim* test, let alone all three, it constitutes a nonmandatory subject of bargaining. As such, the Policy necessitates effects bargaining. (*Oakland Unified School District* (2023) PERB Decision 2875, p. 10.)

- B. RTPA concedes and the facts demonstrate that the District repeatedly contacted RTPA to bargain the impacts before implementation: thus, the District has met its obligation under EERA.

“In an effects bargaining case, the threshold issue is whether the employer provided adequate advance notice to allow meaningful negotiations before implementation. Absent adequate notice, a union has a valid unfair practice charge irrespective of whether it requests to bargain effects.” (*Oakland Unified School District* (2023) PERB Decision 2875, p.18.) Specifically, “the duty to bargain effects arises ‘when a firm decision is made.’” (*California Faculty Association v. Trustees of the University of California* PERB Decision No. 2287-H p. 10.) One purpose of effects bargaining is to permit the exclusive representative an opportunity to persuade the employer to consider alternatives that may diminish the impact of the decision on employees.” (*Oxnard Union High School District* PERB Decision No. 2803, p. 52.) Further, “[b]ecause bargaining over effects contemplates that negotiations will occur prior to implementation of the non-negotiable decision, the parties must assess the effects of the decision prospectively, without the benefit of hindsight.” (*Trustees of the California State University* (2012) PERB Decision No. 2287H, p. 15.)

Here, the “firm decision” occurred on September 6, 2023, when the Board voted to adopt the revisions to BP 5020 and AR 5145.3. Thus, the duty to bargain effects was triggered on that date, and the District could not lawfully implement the Policy until it fulfilled its duty to do so. Consistent with this duty, Dr. Limoges

contacted Mr. Mougeotte on September 8, 2023 to provide a list of dates to engage in effects bargaining. (JX 6.) After that, representatives for the District requested to bargain effects on multiple occasions: on October 6, 2023 the District's legal counsel requested dates to bargain (JX 8); on September 29, 2023, Dr. Limoges raised the issue for negotiations during a regularly scheduled bargaining session (DX 3 at 000012); and again on October 18, 2023, Dr. Limoges placed the item on the agenda for negotiation during another bargaining session (DX 3 at 000011). Each time the Association refused to engage in negotiations. However, the fact remains that the District met its obligation to provide notice and an opportunity to bargain over the effects of the Policy before implementation, and to date, the Policy has not been implemented. (See e.g., DX 1.)

II. EVEN ASSUMING *ARGUENDO* THAT THE POLICY CONCERNS A MANDATORY SUBJECT OF BARGAINING, RTPA CANNOT MAKE OUT A PRIMA FACIE CASE FOR VIOLATION OF THE DISTRICT'S DUTY TO BARGAIN UNDER THE EERA.

In order to establish a *prima facie* case for a unilateral change claim under Government Code section 3543.5, subdivision (c), the charging party must establish that: (1) the employer breached or altered the parties' written agreement or established past practice concerning a matter within the scope of representation; (2) the change *was implemented* before the employer notified the exclusive representative and gave it an opportunity to bargain; and (3) the change has a generalized effect or continuing impact on terms and

conditions of employment of bargaining unit members. (See *Pajaro Valley Unified School Dist.* (1978) PERB Dec. No. 51; see also *Grant Joint Union High School Dist.* (1982) PERB Dec. No. 196; *Walnut Valley Unified School Dist.* (1981) PERB Dec. No. 160; *Stockton Unified School Dist.* (1980) PERB Dec. No. 143; *Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802, 811-19.) Assuming *arguendo* that the first part of the prima facie case is met here, we turn to the second prong: whether the change was implemented before the employer notified the exclusive representative and gave it an opportunity to bargain. (*Pajaro Valley Unified School Dist.* (1978) PERB Dec. No. 51.)

Here, Mr. Mougeotte unequivocally testified that the Association was “officially” noticed “the Friday prior to the September 6th Board meeting when the Board docs went public.” (RT 43: 20—44: 3.) To date, the Policy has not been implemented. (See DX 1.) Thus, the Association cannot meet its burden to meet the second threshold question for unilateral change: that the District failed to notice RTPA prior to implementation. Consequently, the Association also cannot meet the final threshold question to state a prima facie case for unilateral change because no change has been implemented: therefore, there is no continuing or generalized effect or impact on the terms and conditions of employment.

III. THE POLICY IS CONSISTENT WITH EXISTING LAW.

Because RTPA is aware that the District met its obligations to bargain under the EERA, it alternatively argues that the District violated the EERA by requesting that RTPA bargain over an “unlawful policy.” (RT 26: 1-4.) In support of its argument that the Policy is unlawful, RTPA offers three irrelevant pieces of “evidence,” including a Preliminary Injunction issued by the San Bernardino Superior Court against the Chino Valley Unified School District on a wholly different policy. (Proposed Exhibits 1, 2, and 3.) There, the State Attorney General filed a lawsuit against Chino Valley alleging that the district’s recently adopted parent notification policy violates principles of privacy and equal protection guaranteed by California’s Constitution as well as the Education Code’s general prohibition on discrimination based on gender identity. (See *California v. Chino Valley Unified School District*, Complaint for Declaratory and Injunctive Relief pp. 1-2 and 19, <https://ed-source.org/wpcontent/uploads/2023/08/082723.Complaint.pdf>.) However, the Policy adopted in Chino Valley differs from the Policy adopted by the District, and even if the two policies were identical, a San Bernardino Superior Court ruling would not have any binding effect on the District. (See Proposed Exhibit 1.) Moreover, as described below, *several* federal courts in California have reviewed versions of AR 5145.3, and they have reached different conclusions. Thus, any assertions that the District’s Policy “violates the law” are simply not true. As such, the District urges ALJ Binon to give no weight to the Association’s Proposed Exhibits 1, 2, and 3 for purposes of determining lawfulness of the District’s policy at issue here.

- A. While RTPA may disagree with the Policy that the Board adopted, the Policy is consistent with existing law.

RTPA moved three Exhibits into evidence in support of its argument that the Policy is unlawful over objection by the District: a Preliminary Injunction issued against the Chino Valley Unified School District by the San Bernardino Superior Court; an online “Legal Alert” issued by the State Attorney General; and an Investigation Report issued by the California Department of Education (“CDE”). (Proposed Exhibits 1-3; RT 19: 24—20: 3.) However, the District maintains that none of the Association’s Proposed Exhibits are relevant to the resolution of the instant matter because none of them concerns a single provision of the EERA, and as such, they do not implicate PERB’s expertise. (See Proposed Exhibits 1-3; see also Objections to Rocklin Teachers Professional Association’s Request for Judicial Notice and Proposed Exhibits.) Nevertheless, the District addresses the merits of RTPA’s request that ALJ Binon give these Exhibits weight for the purposes of demonstrating the Association’s “state of mind” and “decision not to engage in any sort of bargaining over this unlawful policy.” (RT 19: 24—20: 3.)

While the “Legal Alert” and the CDE Investigation Report both maintain the position that parent notification policies violate the law, neither is a binding source of law: a “legal alert” posted online by the Attorney General does not constitute a provision of law, and the CDE’s investigation report also does not constitute a provision of law. With regard to the preliminary injunction issued in Chino Valley, the District

concedes that the San Bernardino Superior Court found Chino Valley’s parent notification policy to be discriminatory; however, the superior court’s opinion is not binding on the District. (See generally Proposed Exhibit 1.) Moreover, other courts that have dealt with these issues of student privacy and parental rights in the context of an AR 5145.3 or its functional equivalent, and they have reached differing conclusions. (See e.g., *Regino v. Staley*, Slip Copy [E.D. Cal. 2023] 2023 WL 4464845 [*“Regino v. Staley”*]; *Konen v. Spreckels* [N. D. Cal.] Case No. 5:22-cv-05195-EJD [*“Konen v. Spreckels”*]; *Mirabelli v. Olson* [S.D. Cal.] 2023 WL 5976992 [*“Mirabelli v. Olson”*]; and *Mae M. v. Komrosky* [Riverside Sup. Ct. 2023] Case No. CVSW2306224 [*“Komrosky”*].)³ **Most pertinently, a group of plaintiffs in Temecula Valley recently filed a lawsuit because its governing board adopted a parent notification policy that is identical to that of Chino Valley, but the Riverside Superior Court denied their Motion for a Preliminary Injunction finding the policy constitutional.**⁴

In *Komrosky*, a coalition of students and teachers sued the Temecula Valley Unified School District (“Temecula Valley”) after its board adopted a parent

³ All citations to *Komrosky* refer to the tentative ruling issued by the Riverside Superior Court, which is available online via <https://static1.squarespace.com/static/5460e86be4b058ea427aec94/t/65d8ed8c47073d184f060a82/1708715404427/2024.02.22+Tentative-PI.pdf>.

⁴ Public Counsel, Press Release, *Ruling in Temecula Valley School District Case Indicates Case Will Proceed* (Feb. 16, 2024), <https://publiccounsel.org/press-releases/ruling-in-temecula-valley-school-district-case-indicates-case-will-proceed/>.

notification policy.⁵ Just as the Attorney General motioned for a preliminary injunction to halt enforcement of the parent notification policy in Chino Valley, the plaintiffs in *Komrosky* filed preliminary injunction to halt the policy’s enforcement in Temecula. (*Komrosky*.) The Attorney General even filed an amicus brief in support of the Komrosky plaintiffs, arguing that the policy violates state law, just as his office did with respect to Chino Valley’s policy.⁶ **However, despite the fact that Temecula Valley’s policy is identical to Chino Valley’s policy and despite the backing from the State Attorney General, the Riverside Superior Court denied the plaintiffs’ motion for a preliminary injunction on the basis that the plaintiffs were unlikely to succeed on the merits.** (*Komrosky* at 8-13.) More specifically, in issuing its tentative ruling, the Riverside Superior Court reasoned that Temecula Valley’s parent notification policy “applies equally to cisgender and transgender/gender nonconforming students”

⁵ Compare the parent notification policy (i.e., BP 5020.1) adopted by Chino Valley Unified School District (https://www.chino.k12.ca.us/cms/lib/CA01902308/Centricity/domain/693/series_5000/BP%205020.1.pdf) with the parent notification policy adopted by the Temecula Valley Unified School District (<https://simbli.eboardsolutions.com/Policy/View-Policy.aspx?S=36030186&revid=gAJJfnplus4WHWTqN11QwHslshMA=&ptid=amIgTZiB9plushNjl6WXhfiOQ==&seid=9slshUHzTHxaaYMVf6zKpJz3Q==&PG=6&IRP=0&isPndg=false>).

⁶ Office of the Attorney General, *Attorney General Bonta Files Amicus Brief in Support of Temecula Valley Unified Students’ Constitutional Rights* (Dec. 11, 2023), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-files-amicus-briefsupport-temecula-valley-unified>.

and that the Policy does not violate the plaintiffs constitutional rights. (*Id.* at 13.) Therefore, two California superior courts have reached inconsistent conclusions as to whether the Chino Valley/Temecula Valley policy violates students' rights. (See Proposed Exhibit 1.)

In *Regino v. Staley*, out of the U.S. District Court for the Eastern District of California, parentplaintiffs challenged their school district's AR 5145.3. (*Regino v. Staley* at 1.) Specifically, the plaintiffs alleged that Chico Unified School District's AR 5145.3 amounted to a "Parental Secrecy Policy" because it prohibited disclosure—including to parents—of a student's trans or gendernonconforming status. (See *Regino v. Staley*, Verified Complaint, p. 1 [Case 2:23-cv-00032].) Ultimately, as RTPA pointed out, the Eastern District "ruled that there is no constitutional right" to parent notification. (JX 5 at 016; see *id.*) However, the court also did not rule that parent notification violated students' rights either. (*Regino v. Staley* [E.D. Cal. 2023] 2023 WL 4464845.) Plaintiffs appealed to the Ninth Circuit where it currently awaits review.

Third, in *Konen v. Spreckels Union School District*, out of the U.S. District Court for the Northern District of California, plaintiffs similarly alleged that the Spreckels Union School District maintained an unconstitutional "Parental Secrecy Policy" that permitted teachers and staff to "keep secret from parents that their minor children had articulated confusion about their gender identity. . . ." (See *Konen v. Spreckels Union School District* (5:22-cv-05195-EJD) Complaint, Demand for Jury Trial, p. 4). There, the Parties entered into a settlement agreement, in which the

Court ordered defendants to award plaintiffs \$100,000. (*Konen v. Caldeira*, Slip Copy (July 17, 2023) 2023 WL 4595143.) As such, the court did not rule on the merits of the policy at issue. (*Id.*)

Finally, in *Mirabelli v. Olson* out of the U.S. District Court for the Southern District of California, two teachers challenged the Escondido Unified School District's AR 5145.3 alleging that the Policy's prohibition on parent notification violated their sincerely held religious beliefs. (*Mirabelli v. Olson* at 3-4.) In other words, the policy at issue in *Mirabelli v. Olson*, like Rocklin Unified School District's unrevised AR 5145 in the instant matter, prohibited the disclosure of a student's trans or gender-nonconforming status to parents. (*Id.* at 3 ["Parents were specifically identified (in AR 5145.3) As individuals who do not have a legitimate need for the information (a student's transgender status)."], emphasis in original.) The court granted a preliminary injunction prohibiting the enforcement of the policy against the teachers. (*See id.* At 18.) In so ordering, the Court reasoned that "[a] request to change one's own name and pronouns may be the first visible sign that a child or adolescent may be dealing with issues that could lead to gender dysphoria" and that the school district's prohibition on presenting parents with this information had "little medical or factual connection to actual discrimination or harassment." (*Id.*) Litigation in *Mirabelli* remains ongoing.

Due to the varying conclusions reached by state and federal courts across the state, the question of the lawfulness of parent notification or prohibition

thereof in general remains an open question. The District's policy at issue is legally defensible based upon the court decisions thus far. For this reason, to the extent the Association offers Exhibits 1, 2, and 3 for purposes of demonstrating the unlawfulness of the Policy, they should be given no weight.

- B. PERB cannot make a ruling that the Parent Notification Policy will cause unit members to violate the law, as alleged by RTPA, without also ruling that the Policy itself is unlawful.

RTPA's case rests on the premise that the Policy confers "unlawful" duties on unit members. However, as described above, their assertions are without merit. And, to rule that the District's adoption of the Policy requires unit members to violate the law would effectively require PERB to rule that the Policy itself is unlawful: a conclusion that PERB does not have the authority to reach. PERB is without jurisdiction to direct or interpret compliance with statutory obligations outside of the EERA. (*Lake Elsinore Unified School District* (2018), PERB Dec. No. 2548.) The EERA specifies that mandatory provisions of the Education Code (such as the notification requirements of Education Code section 51101) are outside the purview of the board. (Gov. Code, §3540.) Further, PERB does not have the authority to rule on Constitutional issues. (*Alliance Marc & Eva Stern Math and Science School et. al.* (2021) PERB Decision No. 2795 [judicial appeal pending]; see also *State of California (Department of Consumer Affairs)* (2005) PERB Decision No. 1762-S, p. 10 [noting that PERB lacks jurisdiction to adjudicate gender discrimination claims].) Thus, it is clear that the question of law at the heart of this matter

requires interpretations of student privacy and parental rights under state and federal law, questions that PERB is not authorized to examine. Thus, PERB cannot rule that the Policy is unlawful and, as a direct result, cannot rule that the District imposed “unlawful” duties on certificated unit members.

CONCLUSION

The Association failed to meet its burden to demonstrate that the District committed an unfair labor practice. For the foregoing reasons, the District respectfully requests that the Complaint and Charge against the District be dismissed and that all relief sought by the Association be denied in full and the District be awarded reasonable attorney’s fees.

Dated: March 29, 2024 Respectfully submitted,

Lozano Smith

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