*** * * JUDICIAL APPEAL PENDING * * ***

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ROCKLIN TEACHERS PROFESSIONAL ASSOCIATION, 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

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

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 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.

- “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.

- “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.

- “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.
- “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 nonconforming 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 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

[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/School-Board/index.html>.)

> 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 <u>with the exception of parental notification</u>, 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 <u>to all other persons except the student and their parent(s)</u>. 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:

> "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 must provide CDE's [Education Equity Uniform Complaint

[3] The ALJ granted RTPA's motion to take administrative notice of CDE's February 1, 2024 report, as the report was an official act of the executive department of the State of California. The District did not file exceptions to that determination.

> 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]

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

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

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]

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]

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[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.

[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

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 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.

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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).)

> 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 Leavens-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

[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.

> the pupil's consent, unless otherwise required by state or federal law."

(Ed. Code, § 220.5, subd. (a).)

Under the SAFETY Act:

> "[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. Generalized 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 "probably 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 the District 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 posted by electronic means used by the District to communicate with bargaining unit employees.[8]

[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.

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.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. SA-CE-3136-E, *Rocklin Teachers Professional Association v. Rocklin Unified School District*, in which all parties had the right to participate, the Public Employment Relations Board (PERB) found 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.

As a result of this conduct, we have been ordered to post this Notice, and we will:

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 ACTION TO EFFECTUATE THE POLICIES OF EERA:

1. Rescind the amendments to Administrative Regulations 5020 and 5145.3 adopted on September 6, 2023.

Dated: _____ ROCKLIN UNIFIED SCHOOL DISTRICT

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 30 CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.