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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

ROCKLIN TEACHERS PROFESSIONAL ASSOCIATION, CTA/NEA Charging Pary, v. ROCKLIN UNIFIED SCHOOL DISTRICT, Respondent.	Case No. SA-CE-3136-E **ROCKLIN TEACHERS PROFESSIONAL ASSOCIATION'S RESPONSE TO ROCKLIN UNIFIED SCHOOL DISTRICT'S EXCEPTIONS TO PROPOSED DECISION**

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INTRODUCTION

Ever since they rose to power, a majority of the governing board of the Rocklin Unified School District has been intent on co-opting public resources to advance their personal political agenda. One of their initiatives is a new policy that requires the District's certificated employees, who are represented by the Rocklin Teachers Professional Association, to forcibly "out" transgender and gender-nonconforming students to their parents or guardians—that is, to report any student request to go by a different name or pronoun, or any request to access sex-segregated facilities or programs that do not align with the student's biological sex, even when the student objects to the disclosure. In pursuit of their goal, the District's trustees have been recalcitrant in the face of adverse legal decisions and have embroiled the District in litigation on two fronts.

The Public Employment Relations Board (PERB) has made it clear that under the Educational Employment Relations Act (EERA), it is a per se violation of the duty to bargain to impose duties on represented employees that would require them to violate external law. And there can no longer be any dispute that this is what the District's governing board has done: On July 15, 2024, the Governor signed into law AB 1955, which explicitly prohibits school districts from adopting forced-outing policies like the District's and declares that this prohibition is a statement of existing law. Even before that, the California Department of Education had investigated the District and concluded that its new policy unlawfully discriminates against transgender and gender-nonconforming students in violation of the Education Code. Rather than abide by the Department's order that the District permanently refrain from implementing the policy, the Governing Board chose instead to ignore the order, causing the Department to sue the District in Superior Court. Even before *that*, the Governing Board had received a legal alert from the California Attorney General informing it that forced-outing policies like the District's violate state law. The Governing Board also knows that the San Bernardino County Superior Court has preliminarily enjoined another school district from enforcing a similar forced-outing policy. Yet none of this has dissuaded the culpable trustees, who appear to relish the opportunity to fight in court. Caught in the middle are the District's

certificated employees, unwilling pawns in the Governing Board's crusade.

The District can no longer credibly contend that its policy complies with state law. But even if the policy were lawful, EERA would still prohibit the District from unilaterally imposing it for a second, independent reason: It requires unit members to perform new job duties that are not reasonably comprehended within their existing set of duties. Before the Governing Board adopted the forced-outing policy, the District specifically prohibited employees from disclosing a student's transgender or gender-nonconforming status to anyone without the student's written consent. In fact, the District's existing nondiscrimination policy had to be amended to create an exception for the new forced-outing policy. No reasonable unit member would have expected the District to completely reverse course when it comes to protecting transgender and gender-nonconforming students. Moreover, unit members have never before been required to betray a student's confidence by disclosing an intensely personal, non-academic decision to others unless doing so was necessary to preserve the student's safety. Under the new policy, unit members are required to make such a disclosure over the student's objection, *even when there is credible evidence that doing so would directly lead to child abuse*. No reasonable educator would expect to be placed in this position.

In addition, while PERB need not reach the issue, the forced-outing policy is also reasonably related to employee discipline, which is a mandatory bargaining subject. Yet the District failed to respond to the Association's multiple demands to bargain the negotiable effects of the policy until after the Association filed this charge, further violating EERA.

PERB should not countenance the Governing Board's lawlessness. The trustees' insistence on imposing their personal ideology on students, staff, and parents has needlessly torn apart the educational community. PERB should order the District to rescind the forced-outing policy so that educators can focus on their jobs without fear of being conscripted as soldiers in the culture wars.

SUMMARY OF THE EVIDENCE

I. Without providing the Association formal notice and an opportunity to bargain, the District adopted a policy requiring certificated employees to disclose students' transgender or gender-nonconforming status to their parents over their objection

Before the 2023-24 school year, the District had a board policy prohibiting discrimination against transgender and gender-nonconforming students. (Tr. at 37:17-38:1; Jt. Ex. 3 at 009-012.) The policy provided, among other things, that students be called by the name and pronoun of their choice, and that they be given access to sex-segregated facilities consistent with their gender identity. (Tr. at 38:2-13; Jt. Ex. 3 at 009-012.) It also provided that a student's transgender or gender-nonconforming status was private information and could not be disclosed to others (including the students' parents or guardians) without the student's prior written consent. (Jt. Ex. 3 at 010.) This policy had never been the subject of any particular public controversy. (Tr. at 38:18-39:10.)

On August 9, 2023, at a public meeting of the District's governing board, a trustee suggested that a subcommittee be formed to look into the issue of "parents' rights," although no specific proposal or subtopic was mentioned. (Tr. at 40:24-42:2; Jt. Ex. 1.) A subcommittee of two trustees was created, even though the matter did not appear on the agenda and no formal Board action was ever taken in this regard. (Tr. at 42:3-7, 43:3-12.) There was no discussion at the August 9 meeting of any issues relating to transgender or gender-nonconforming students. (Tr. at 43:13-16.)

When the agenda for the next Board meeting on September 6, 2023 was posted, it contained a proposed resolution to amend two administrative regulations: AR 5020, "Parent Rights & Responsibilities"; and AR 5145.3, "Nondiscrimination/Harassment." (Stip'd Facts ¶ 4; Tr. at 43:17-44:16; Jt. Ex. 1.) AR 5020 would be amended to give parents a right to be informed if their child demonstrated signs of questioning their gender identity—specifically, parents would be given the right:

> [t]o 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.

(Stip'd Facts ¶ 4; Jt. Ex. 2.)

The proposed resolution would also amend the District's anti-discrimination policy to create an exception to the existing protections against forcibly disclosing a student's transgender or gender-nonconforming status:

> 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.

(Stip'd Facts ¶ 5; Jt. Ex. 3 (underlined language represents amendments).)

The District never gave the Rocklin Teachers Professional Association any kind of formal written notice that the Board was considering changing these policies, let alone offered to bargain the changes. (Tr. at 44:24-45:4.) The District's superintendent merely called the Association's president to advise him that he should "probably look at the Board docs when they're made public." (*Id.*) The president thus learned of the proposed forced-outing policy by

reading the publicly available meeting agenda, which was posted two business days before the September 6, 2023 meeting. (*Id.* at 43:23-44:8.)

On September 4, 2023, the Association hurriedly sent the District a letter informing it that the forced-outing policy was unlawful and demanding that the Board withdraw the resolution. (Tr. at 48:6-12; Jt. Ex. 4.) The Association also demanded, if the District refused to withdraw the resolution, that it meet and negotiate the effects and impacts of the forced-outing policy on unit members. (*Id.*) On September 5, 2023, the Association followed up with a similar letter from its attorney directly to the District's trustees. (Tr. at 48:15-25; Jt. Ex. 5.) The District did not respond to either letter before the Board met on September 6. (Tr. at 49:1-5.)

Attendance at the September 6 Board meeting was "exponentially higher" than typical; the meeting lasted until the early hours of the morning due to the outpouring of public comment about the proposed forced-outing policy. (Tr. at 49:6-12, 49:18.) The speakers included teachers, students, parents, counselors, lawyers, and community members—and the vast majority of them spoke out against the policy. (Tr. at 50:6-9, 50:14-18, 52:25-53:4.) Speakers expressed concerns about the negative consequences of the policy on student safety, on the District's culture of inclusiveness and acceptance, and on the trust that had been established between teachers and students. (Tr. at 51:9-52:1, 52:9-24.) They also repeatedly noted the unlawful nature of the policy and pointed out that teachers would risk action against their credentials if they forcibly outed a student. (*Id.*)

The commenters did not persuade the Board, and it passed the resolution shortly after public comment concluded, without making any amendments. (Tr. at 47:12-14, 53:5-8; Stip'd Facts ¶¶ 4-5.) Although the District has held off from actively implementing the forced-outing policy until this unfair practice charge has been resolved, the Board has never taken formal action to suspend the policy. (Tr. at 53:9-16.) Moreover, the policies published on the District's website reflect the amendments without any disclaimer. (Tr. at 53:17-54:2; Assn's Mar. 29, 2024 Second Req. for Judicial Notice ("RJN") Ex. 1.)

At 3:39 p.m. on September 8, 2024—two days after the Board adopted the forced-

outing policy, but just a couple of hours after the Association filed this unfair practice charge—the District's human resources director, Tony Limoges, emailed the Association's bargaining chair responding for the first time to the Association's demands. (Tr. at 54:17-55:12; Jt. Ex. 6.) In the email, Dr. Limoges stated that the District intended to bargain the impacts and effects of the new forced-outing policy on unit members' employment, and offered several dates to meet for negotiations. (Jt. Ex. 6.) The Association initially responded by letter on September 20, 2023, insisting that the District rescind the policy before it would engage in effects bargaining. (Jt. Ex. 7.) After considering the matter further, and after reviewing an October 6, 2023 letter from the District's attorney, the Association sent the District a letter on October 12, 2023 informing it of its conclusion that both the decision to adopt the forced-outing policy and the effects of the decision were negotiable. (Tr. at 56:11-57:20; Jt. Exs. 8-9.) This represents a modification to the Association's initial position, which was crafted hurriedly after learning about the proposed forced-outing policy just days before the September 6, 2023 Board meeting. (Tr. at 56:11-57:3.) The Association's current position—which evolved through discussions with counsel and has not changed since October 12, 2023—is that the decision itself was negotiable because there is no way it can be implemented without imposing new, unlawful job duties on certificated employees. (Tr. at 57:4-20, 58:22-59:4.)

II. Multiple authorities demonstrate that the District's forced-outing policy violates state law

On July 15, 2024, after the District filed its exceptions to the Proposed Order, the Governor signed AB 1955 into law. (Assn's Aug. 1, 2024 Fourth RJN Ex. 1 at 1.) This act added section 220.3 to the Education Code, which expressly prohibits school district employees from being "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." (*Id.* at 3-4.) It also added section 220.5 to the Education Code, which provides that school districts "shall not enact or enforce 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." (*Id.* at 4.) The Act explicitly states that these provisions do "not constitute a change in, but [are] declaratory of, existing law." (*Id.*)

Even before AB 1955 was enacted, three different authorities had determined that forced-outing policies like the District's are unlawful. First, on August 28, 2023, the California Attorney General sued the Chino Valley Unified School District for enacting a similar policy. (Assn's Feb. 6, 2024 First RJN Ex. 1.) On January 11, 2024, after first issuing a temporary restraining order, the San Bernardino Superior Court issued a preliminary injunction against Chino Valley, enjoining it from enforcing the policy. (*Id.* at 7; Tr. at 66:22-67:11.) In doing so, the court concluded the Attorney General will likely prevail on his claim that the policy violates students' constitutional rights. (Assn's Feb. 6, 2024 First RJN Ex. 1 at 3-4.) The District is aware of the court's ruling, but it insists that the decision is irrelevant because of differences between its policy and Chino Valley's. (*See, e.g.*, Tr. at 20:14-18.)

Second, on January 11, 2024, the Attorney General issued a statewide legal alert to all school boards concerning "forced disclosure policies":

> [These policies] 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.

(Assn's Feb. 6, 2024 First RJN Ex. 2 at 1.) The Attorney General explained to school boards that these policies violate the Equal Protection Clause of the California Constitution, statutory prohibitions on discrimination, and students' constitutional right to privacy. (*Id.* at 1-4.) The Board received this document, and even though its own 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," at the hearing District Trustee Julie Leavens-Hupp dismissed the Attorney General's legal alert as representing just "his opinion." (Tr. at 133:21-25.)

Third, on February 1, 2024, the California Department of Education issued a report following an investigation of the District's new policy. (Assn's Feb. 6, 2024 First RJN Ex. 3.) The Department concluded that the policy unlawfully discriminates against the District's transgender and gender-nonconforming students in violation of section 220 of the Education Code, and it ordered the District not to implement the policy. (*Id.* at 6.) Rather than comply with this order, the Board decided at its February 7, 2024 meeting instead to seek reconsideration. (Tr. at 68:10-69:23.) As with the Attorney General's legal alert, at the hearing Trustee Leavens-Hupp dismissed the Department of Education's report as merely "their opinion," even though "they" are the state agency with jurisdiction over enforcing the antidiscrimination provisions of the Education Code—and even though "they" are empowered to cut off a portion of the District's funding or sue the District in superior court if it does not comply with their order. (Tr. at 134:1-10; 5 Cal. Code Regs. § 4670(a).)

Instead of complying with the Department of Education's order, on February 29, 2024 (after the hearing in this matter), the District asked the Department to reconsider it. (Assn's Apr. 26, 2024 Third RJN Ex. 1 at 1.) The Department denied the request on March 27, 2024. (*Id.*) On April 10, 2024, having received no response whatsoever to its inquiry concerning the District's compliance, the Department sued the District in Placer County Superior Court, where the case is currently pending. (Assn's Aug. 1 Fourth RJN Ex. 2.)

ARGUMENT

I. The District's forced-outing policy violates external law (Exception No. 10)

"It is a per se violation of the duty to bargain . . . to impose terms that include non-mandatory subjects of bargaining. The category 'non-mandatory' subjects includes both 'permissive' subjects and 'illegal' or 'prohibited' subjects." (*City of San* Jose (2013) PERB Dec. No. 2341-M, at 43.) 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." (*Id.* at 44; *see also Healdsburg Union High Sch.*

Dist. (1984) PERB Dec. No. 375, at 13 ("[S]hould a proposal seek to violate or in effect violate state law, the proposal would be unlawful and therefore out of scope.").) Moreover, "PERB may interpret the provisions of external law as necessary to decide questions arising under the collective bargaining statutes" it administers. (*El Dorado County Superior Ct.* (2018) PERB Dec. No. 2589-C, at 4.)

Exception No. 10 challenges the Proposed Decision's conclusion that the forced-outing policy violates external law, claiming that any such assertion is "misleading and false." (Dist.'s Exceptions at 12:5.) The exception, however, offers only a scant paragraph discussing this critical issue. The District does not even bother to mention the three authorities the Proposed Decision cites in support of its conclusion that the forced-outing policy is unlawful, let alone make any attempt to grapple with their significance. As detailed above:

- The California Department of Education investigated the District and concluded that the forced outing policy violates section 220 of the Education Code by discriminating against transgender and gender-nonconforming students. The Department has now sued the District in Placer County Superior Court for failing to comply with its remedial order. (Assn's Feb. 6, 2024 First RJN Ex. 3; Assn's Apr. 26, 2024 Third RJN Ex. 1; Assn's Aug. 1, 2024 Fourth RJN Ex. 2.)

- The California Attorney General issued a statewide legal alert to all school boards informing them that forced-outing policies such as the District's violate the Equal Protection Clause of the California Constitution, statutory prohibitions on discrimination, and students' constitutional right to privacy. (Assn's Feb. 6, 2023 First RJN Ex. 2.)

- The San Bernardino Superior Court issued a preliminary injunction against the Chino Valley Unified School District, enjoining it from enforcing a forced-outing policy that is substantively indistinguishable from the District's. (Assn's Feb. 6. 2024 First RJN Ex. 1 at 7.)

Most significantly, as explained above, AB 1955 now explicitly prohibits school districts from adopting any policy requiring their employees to disclose a student's sexual orientation, gender identity, or gender expression to anyone without the student's consent. (Assn's Aug. 1, 2024 Fourth RJN Ex. 1 at 3-4.) The Act explicitly states that these provisions do "not constitute a change in, but [are] declaratory of, existing law" (*id.*), reinforcing the Proposed Decision's conclusion that the District's forced-outing policy was unlawful even before AB 1955 was enacted.

The District contends that the law in this area is "unsettled" because litigation is still

pending, and that there is "no law currently in effect" addressing the issue. (Dist.'s Exceptions at 12:8-11.) The District cannot be expected to have addressed AB 1955 in its exceptions, in that the bill was enacted after the District filed them. But the passage of AB 1955 puts to rest any notion that there is no law addressing forced-outing policies, and it makes clear that they are unlawful. Moreover, even if the law were still unsettled, the Proposed Decision correctly notes that "[b]ecause allegations that a proposal contains an illegal subject require interpreting statutory, decisional, regulatory, or other authority outside PERB's jurisdiction and special expertise in labor relations, the Board is necessarily cautious about rejecting such claims, *particularly when the area of external law is itself unsettled*." (*City of San Jose, supra*, at 45 n.16 (emphasis added).) "When an unfair practice allegation turns on a matter of external law, the appropriate question is not which of two competing interpretations is the more plausible, but whether the language in dispute is reasonably susceptible of the charging party's interpretation and whether that interpretation supports a viable, i.e., non-frivolous, legal theory of an unfair practice or other violation of a PERB-administered statute." (*Lake Elsinore Unified Sch. Dist.* (2018) PERB Dec. No. 2548, at 15.)

The District also cites section 49067.7 of the Education Code, which gives parents an "absolute right to access to [sic] any and all pupil records related to their children that are maintained by school districts." According to the District, this means that parents have a "right to information regarding accommodations at school based upon their transgender status." (Dist.'s Exceptions at 12:12-13.) The District is correct that if a student were to change their name or gender in the District's official records, their parents would be able to identify the change if they happened to request and review those records. But there is no evidence that the variety of requests falling within the scope of the forced-outing policy—i.e., requesting simply to be *addressed* by a different name or gender, or requesting to access different sex-segregated facilities—would result in a change to any official records that could alert a parent. Section 49067.7 therefore does not conflict with the ample authority demonstrating that the District's policy is unlawful.

In sum, there is no longer any doubt that forcibly outing students is unlawful. The

District therefore violated EERA by adopting its policy requiring certificated employees to forcibly out students.

II. The forced-outing policy materially changes unit members' job duties (Exceptions No. 7, 8, and 9)

PERB precedent holds that an employer may not unilaterally assign employees new job duties that are not "reasonably comprehended" within their existing set of duties or assignment, based on job descriptions, past practice, or otherwise. (*County of Santa Clara* (2023) PERB Dec. No. 2876-M, at 22 (judicial appeal pending); *Davis Joint Unified Sch. Dist.* (1984) PERB Dec. No. 393, at 26 n.11 (overruled on other grounds by *County of Santa Clara* (2022) PERB Dec. No. 2820-M); *Rio Hondo Cmmty. Coll. Dist.* (1982) PERB Dec. No. 279, at 17 (overruled on other grounds by *County of Santa Clara* (2022) PERB Dec. No. 2820-M).)[1]

It should go without saying that no reasonable District employee would expect their employer to force them to violate the law by discriminating against transgender students or by divulging legally protected private student information. In fact, the District's job description

[1] Until the 2022 *County of Santa Clara* case, PERB decisions framed the "reasonably comprehended" inquiry as going to whether assigning new job duties falls within the scope of representation. (*County of Santa Clara* (2022) PERB Dec. No. 2820-M, at 6-7). In *County of Santa Clara*, however, PERB stated that "Board agents should recognize job duties and assignments as generally falling within the scope of representation" and that "the 'reasonably comprehended' question is more integral to determining whether the employer changed the status quo"—a separate prong of the unilateral change test—"than it is to deciding whether a specified topic is a mandatory or permissive subject of bargaining." (*Id.* at 7.) To the extent previous decisions framed the issue differently, *County of Santa Clara* overruled them. *County of Santa Clara*, however, did not overrule their ultimate holding that an employer commits a failure to bargain when, without providing notice and an opportunity to bargain, it assigns new job duties that are not reasonably comprehended as within the existing set of job duties. In *County of Santa Clara* itself, PERB noted that the reframing "is unlikely to change the outcome in a unilateral change case" such as this one. (*Id.* at 7 n.5.) Moreover, in the more recent 2023 *County of Santa Clara* decision, PERB applied the "reasonably comprehended" standard to determine *both* whether new job duties "materially deviated from the status quo" *and* whether those new duties fell within the scope of representation. (*County of Santa Clara* (2023) PERB Dec. No. 2876-M, at 22 ("A charging party can establish that new job duties materially deviated from the status quo by showing that new duties or assignments are not 'reasonably comprehended' within employees' prior duties or assignments.") and 25 ("[M]aterial changes to job assignments and duties generally fall within the scope of representation.") (judicial appeal pending).) Thus, regardless of how the issue is framed, the question here is whether forcibly outing a student is reasonably comprehended as within certificated employees' existing set of duties.

for teachers expressly requires them to comply with the Education Code (Ass'n Ex. 1), section 220 of which prohibits discrimination and sections 220.3 and 220.5 of which now expressly prohibit school districts from adopting forced-outing policies. But even if forcibly outing students *were* legal, past practice in the District demonstrates that no reasonable employee would expect to be required to do so. This is made obvious by the fact that until September 6, 2023, the District *prohibited* employees from making such a disclosure unless doing so was necessary to preserve the student's safety. The District's new policy turns its previous policy on its head by requiring educators to disclose a student's transgender or gender-nonconforming status *even when doing so is expected to lead directly to child abuse*, thereby *imperiling* the student's safety. (Tr. at 61:23-62:5.) More generally, it is difficult to conclude that a reasonable certificated employee of *any* school district in the state would expect their employer to require them to intentionally place a student's physical or mental well-being in jeopardy for *any* reason. Doing so is antithetical to their basic charge as educators.

Exception No. 9 disputes the Proposed Decision's conclusion that the forced-outing policy materially changes unit members' job duties because "teachers have always been required to disclose private information to parents." (Dist.'s Exceptions at 11:15-16.) But not all types of disclosures are alike, and forcibly outing students differs fundamentally from other types of communication that District educators are expected to have with parents. For the first time, the District is requiring certificated employees to betray their students' privacy and confidence by disclosing intensely personal information unrelated to the students' educational progress or classroom behavior. (*See* Tr. at 51:9-14, 52:9-24.) If implemented, the rule would erode the trust that certificated employees have developed with their students, a core aspect of the job. (*Id.* at 71:18-25.) Nor does the job description for teachers, which states that they are expected to "[c]ommunicate with students and parents on the educational and social progress of the student" (Ass'n Ex. 1), change the analysis; PERB has held that "catchall language" like this in a job description does not obviate the need to examine the specific duty in question. (*County of Santa Clara* (2023) PERB Dec. No. 2876-M, at 22 (judicial appeal pending) (citing *Rio Hondo Cmmty. Coll. Dist., supra,* at 17-18).)

Exception No. 9 also notes that parents have the legal right to access their children's pupil records under section 49069.7. From this, the District argues that teachers have always been required "to provide information regarding a student's gender identity *to the extent it was indicated* on the student's records, upon request." (Dist.'s Exceptions at 11:24-26 (emphasis added).) But this statement implicitly acknowledges that, as discussed above, not all student requests that would trigger forced outing would be indicated on pupil records. Moreover, the fact that parents have the right to access pupil records does not mean that individual bargaining unit members previously had any sort of personal obligation to affirmatively reach out and disclose the information in those records to parents.

Exception No. 8 faults the Proposed Decision's failure to note that the former policy prohibiting disclosure of a student's transgender or gender-nonconforming status contained an exception permitting disclosure when doing so was "required by law or to preserve the student's physical or mental well-being." The District asserts that "any characterization of the former policy as a categorical ban on the disclosure of confidential student information is inaccurate and not supported by the record." (Dist.'s Exceptions at 11:2-4.) The Proposed Decision, however, does not characterize the previous policy as a "categorical" ban, and the existence of an exception to the general prohibition does not change the fact that the new policy represents a complete turnabout for the District on the issue of transgender students' rights. Instead of a *general* ban on disclosure, the District now *categorically compels* disclosure with *no exceptions*, even when disclosure jeopardizes students' safety.

Exception No. 7 takes issue with the Proposed Decision's statement that the District's job description for guidance counselors "does not mention board policies or administrative regulations" and therefore does not expressly "incorporate [Board Policy] 5020 and [Administrative Regulation] 5145.3 into Guidance Counselors[']job duties." (Prop'd Dec. at 30.) The Association agrees that counselors have always been required to follow board policies and administrative regulations, but the Proposed Decision does not rely on this comment to support its conclusion that the forced-outing policy materially changes certificated employees' job duties. In the same paragraph, the Proposed Decision notes that the job description for

classroom teachers *does* expressly require them to comply with board policies and administrative regulations. It goes on to correctly state that teachers are now required to do something they were previously prohibited from doing. The same is true of guidance counselors.

In sum, even setting aside the forced-outing policy's illegality, the District independently violated EERA by assigning unit members a new job duty that they would not reasonably have expected to be required to perform given their understanding of their role as an educator and the District's past practice of severely limiting the circumstances in which they were permitted to disclose students' transgender or gender-nonconforming status without consent.

III. The District did not give the Association notice and an opportunity to bargain before adopting the forced-outing policy (Exceptions No. 1, 3, 4, and 11)

An employer commits un unlawful failure to bargain in violation of section 3543.5(c) of the Government Code when it: 1) changes or deviates from the status quo; 2) the change or deviation concerns a matter within the scope of representation; 3) the change or deviation has 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. (*W. Contra Costa Unified Sch. Dist.* (2023) PERB Dec. No. 2881, at 9.) The Proposed Decision concludes that the District adopted the forced-outing policy without providing the Association notice and an opportunity to bargain.

Exceptions No. 1, 3, 4, and 11 challenge this conclusion. In support of its argument, the District notes that the Association president, when asked whether the District formally informed him of the proposed forced-outing policy ahead of the September 6, 2023 meeting, responded, "The only formal contact I got was a call [from the District's superintendent] that recommended I probably look at the Board docs when they're made public." (Tr. at 44:24-45:5.) The president subsequently learned of the proposed policy from reading the publicly available meeting agenda, which was posted just two business days in advance of the meeting.

(Tr. at 43:23-44:3.)

As the Proposed Decision correctly noted, posting a public agenda "generally do[es] not afford a union sufficient notice of a potential change, unless the employer sends such a document to a union official, in a manner reasonably calculated to draw attention to a specific item and with adequate time for good faith negotiations to ensue." (*W. Contra Costa Unified Sch. Dist., supra,* at 16.) There is no admissible evidence that anyone from the District informed the Association specifically that the Board would be considering a forced-outing policy ahead of the September 6, 2023 Board meeting, let alone that anyone provided this information in a more formal manner.[2] And posting the public agenda on the Friday before a three-day holiday weekend did not give the Association sufficient notice to afford it "an opportunity to consult its members and decide whether to request information, demand bargaining, acquiesce to the change, or take other action." (*Regents of the University of California (Berkeley)* (2018) PERB Dec. No. 2610-H, at 45 (emphasis added).)

In any event, the Board need not decide whether the District provided adequate notice of the proposed forced-outing policy because it is beyond dispute that the District did not provide the Association with an opportunity to bargain the decision before the Board adopted it on September 6, 2023. To the contrary, the Board ignored the Association's multiple demands to bargain until after the Association filed this unfair practice charge. (Tr. at 49:1-5, 54:17-20.) The District argues that it should be excused for failing to offer to bargain the decision because the Association's position before the September 6, 2023 Board meeting was that "the *effects* or *impacts* of the policy revisions were bargainable, not the decision to adopt the revisions itself." (Dist.'s Exceptions at 2:27-28.) This argument fails for at least three reasons. First, the two business days between the agenda's posting and the Board meeting did not provide the

[2] At the hearing, when a District assistant superintendent was asked whether "anyone from the District [gave] RTPA notice that the Board would potentially vote on these revisions," he testified that "it could have been I, Superintendent Stock reached out to [the Association's president] just to let him know to be aware of their changes." (Tr. at 147:11-16.) But this testimony that the superintendent informed the Association president about the specific proposed revisions is uncorroborated hearsay, and the assistant superintendent admitted that he could not remember any specific conversation that he had with the Association president about the topic. (*Id.* at 147:22-25.)

Association with a reasonable amount of time to thoroughly analyze the legal framework that governed the forced-outing policy and determine whether the decision itself was negotiable. Second, the District cannot be excused from complying with EERA's requirements simply because it misapprehended the extent of its legal obligation. Third, in response to the District's belated offer to bargain the negotiable effects of the decision, the Association notified the District in an October 12, 2023 letter of its conclusion that the decision itself was negotiable and demanded that the District "rescind the policy and refrain from adopting any similar policy without an agreement with the Association." (Jt. Ex. 9.) The District did not respond to this demand, and to this day it "maintains its position that the policy has only an incidental effect on the rights of unit members and is thus subject only to effects-bargaining." (Dist.'s Exceptions at 3:25-26.) The District therefore cannot credibly claim that it would have been willing to bargain its decision to adopt the policy if the Association had simply been clearer in asserting ahead of time that the decision itself was negotiable.

The District also notes that it has not yet implemented the forced-outing policy and argues that it has complied with the legal standard that applies when an employer's decision *itself* is not negotiable, but *does* have negotiable *effects*. In that situation, the question is "whether the employer provided adequate advance notice to allow meaningful negotiations *before implementation*." (*Oakland Unified Sch. Dist.* (2023) PERB Dec. No. 2975, at 18 (emphasis added).) In Exceptions No. 3 and 4, the District identifies two sentences in the Proposed Decision stating that the District has already implemented the decision:

- "By adopting a policy that created new expectations for bargaining unit members to disclose information to parents, the District changed a written policy, implemented a new written policy, and/or enforced an existing policy in a new way." (Prop'd Dec. at 24.)
- "This also does not overcome the fact that the District failed to provide notice prior to the implementation of the decision, which occurred on September 6, 2023, the date the amendments were approved." (Prop'd Dec. at 27.)

The Association acknowledges that the District has stated it does not expect unit members to comply with the forced-outing policy while this unfair practice charge is pending. Accordingly, the Association agrees that the use of the words "implemented" and

"implementation" in the sentences above is not technically correct. This fact, however, is not relevant, because the Proposed Decision does not purport to apply the standard that governs effects bargaining. Rather, it correctly concludes that the forced-outing policy itself is negotiable because—as Trustee Leavens-Hupp acknowledged at the hearing—it directly imposes new job duties on certificated employees. (Prop'd Dec. at 33; Tr. at 132:5-133:16.) Accordingly, if the words "implemented" and "implementation" were replaced with "adopted" and "adoption," respectively, these sentences would be both factually correct and consistent with the Proposed Decision's overall reasoning.

In sum, because the forced-outing policy is negotiable, the District was required to provide the Association with meaningful notice and an opportunity to bargain before deciding to adopt it. The District provided neither, and it continues to assert incorrectly that it had the prerogative to adopt the policy without first bargaining with the Association.

IV. It is reasonably foreseeable that a unit member could face discipline or action against their credential for failing to comply with the District's forced-outing policy (Exceptions No. 5 and 6)

Exceptions No. 5 and 6 take issue with the Proposed Decision's finding that unit members could potentially be subject to discipline for failing to forcibly out a student in violation of the District's new policy. Because discipline falls within the scope of bargaining, this finding supports the conclusion that the forced-outing policy has negotiable effects on unit members' employment in addition to being itself negotiable. This conclusion, however, is not dispositive to the case, in that the policy does not *merely* have negotiable effects, but rather (as the Proposed Decision correctly holds) was itself negotiable because it *directly* imposes a material change on unit members' job duties. (*See* Tr. at 132:5-133:16.) PERB therefore need not examine whether the policy *also* has reasonably foreseeable effects on employee discipline. And because this issue does not "impact the outcome" of the case, PERB should not consider it. (PERB Reg. 3200(e).)

But even if the potential for discipline *would* impact the outcome of this case, the Proposed Decision reasonably concludes, as the Association's president testified, that a unit member could face discipline for violating a board policy such as this. (Tr. at 73:17-24). The

job description for classroom teachers expressly requires that employees "carry out Board Policies and Administrative Procedures" (Ass'n Ex. 1), and section 44932(a)(8) of the Education Code provides that a certificated employee may even be *dismissed* for "[p]ersistent violation of or refusal to obey . . . reasonable regulations prescribed for the government of the public schools by . . . the governing board of the school district employing him or her." The District offered no evidence to the contrary. It is undisputed that the District failed to offer to engage in effects bargaining until after the Association filed this unfair practice charge. By the time the District made its self-serving, post hoc offer, it had already violated EERA.

Similarly, Exceptions No. 5 and 6 argue that there is no evidence to conclude that unit members could face action against their credentials by the Commission on Teacher Credentialing for complying with the forced-outing policy. Again, this conclusion does not impact the outcome of the case. It merely serves to demonstrate the difficult position in which educators find themselves under the policy: either comply with state law and face potential discipline by the District, or comply with the forced-outing policy and face potential action against their credentials. Because this argument is not dispositive, PERB should not consider it. (*See* PERB Reg. 3200(e).)

Nonetheless, even if the potential for action against unit members' credentials *would* impact the outcome of this case, there is ample evidence that the Commission could take such action if a certificated employee violated the law by complying with the District's policy. Section 44421 of the Education Code requires the Commission to "privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system." Additionally, the Association president testified that he is personally aware of employees who have faced consequences from the CTC for violating state law. (Tr. at 70:12-17.) The District asserts that the president "did not elaborate" on this statement, but it does not explain why this matters, particularly in light of section 44421 of the Education Code. As for the District's argument that unit members would not face action against their credentials because the forced-outing policy does not violate state law, this issue is discussed thoroughly

above. Suffice it to say that AB 1955 leaves no doubt that unit members would be breaking the law if they forcibly outed a student.

Finally, Exceptions No. 5 and No. 6 note that, because the forced-outing policy has not yet been implemented, unit members are not currently expected to comply with it. Because unit members "cannot be disciplined for conduct that they do not engage in," the District argues, "the notion that unit members risk discipline as a result of the adoption of the Parent Notification Policy is illogical and without merit." (Dist.'s Exceptions at 8:6-8.) But the basic premise of *any* case involving effects bargaining—and again, the forced-outing policy does not *merely* have negotiable effects—is that the employer *will implement* its decision and that doing so *could potentially have* effects on negotiable subjects once the decision is implemented. An employer is required to identify those reasonably foreseeable effects—including on discipline—*ahead of time* and to provide notice and an opportunity to bargain over them *before implementation*. (*See, e.g., County of Santa Clara* (2019) PERB Dec. No. 2680-M, at 12.) Allowing an employer to avoid the duty to bargain negotiable effects by stating that the effects have not yet come to pass would eviscerate the duty altogether.

V. The District's forced-outing policy does not substantively differ from Chino Valley USD's forced-outing policy, which the San Bernardino Superior Court preliminarily enjoined (Exception No. 2)

As stated above, on January 11, 2024 the San Bernardino Superior Court issued a preliminary injunction against the Chino Valley Unified School District, enjoining it from enforcing a forced-outing policy similar to the District's because the policy likely violates students' constitutional rights. (Assn's Feb. 6, 2024 First RJN Ex. 1.) The District has repeatedly asserted that the Chino Valley policy is somehow so different from its own as to render the court's decision meaningless. (*See, e.g.*, Dist.'s Post-H'g Br. at 9 (the Chino Valley policy "differs significantly" from Rocklin's), 16 (Chino Valley has a "very different version" of a forced-outing policy), 21 (Chino Valley has "a wholly different policy"); Tr. at 20:14-18 (the Chino Valley policy is "completely different and distinguishable" from Rocklin's policy).) Exception No. 2 disputes the Proposed Decision's contrary conclusion.

First, now that AB 1955 has been enacted, there is no need to consider the preliminary

injunction to conclude that the District's policy is unlawful. The District's argument therefore does not impact the outcome of this case, and PERB should not consider it. (*See* PERB Reg. 3200(e).) Moreover, even if AB 1955 had not been enacted, the Proposed Decision did not rely exclusively on the preliminary injunction to conclude that the District's policy is unlawful; although the section of the Proposed Decision discussing the Association's requests for judicial notice states that the court's decision is "relevant to whether the District's policy is lawful and assists in the analysis of whether these policies are negotiable," the section discussing the policy's lawfulness does not actually discuss the Chino Valley policy at all. (Prop'd Dec. at 23, 33-39.) This reinforces the conclusion that the similarities or lack thereof between the District's policy and the Chino Valley policy are not dispositive to the Proposed Decision's outcome.

Even if PERB does decide to compare the two policies, however, the text of the Chino Valley policy gives lie to the District's assertion that there is any meaningful difference between it and the District's own policy. The Chino Valley policy provides:

> BP 5020.1: Parental Notification
>
> . . .
>
> This parental notification policy requires the following:
>
> 1. Principal/designee, certificated staff, and school counselors, shall notify the parent(s)/guardian(s), in writing, within three days from the date any District employee, administrator, or certificated staff, becomes aware that a student is:
>
> (a) Requesting to be identified or treated, as a gender (as defined in Education Code Section 210.7) other than the student's biological sex or gender listed on the student's birth certificate or any other official records. This includes any request by the student to use a name that differs from their legal name (other than a commonly recognized diminutive of the child's legal name) or to use pronouns that do not align with the student's biological sex or gender listed on the student's birth certificate or other official records.
>
> (b) Accessing sex-segregated school programs and activities, including athletic teams and competitions, or using bathroom or changing facilities that do not align with the student's biological sex or gender listed on the birth certificate or other official records.

> (c) Requesting to change any information contained in the student's official or unofficial records.

(Assn's Mar. 29, 2024 Second RJN Ex. 2.)

A direct comparison of the two policies makes evident that each element of items (1)(a) and (1)(b) of the Chino Valley policy, which the Superior Court preliminarily enjoined, is contained in the District's own policy:

Chino Valley USD's Policy	**Rocklin USD's Policy**
Item (1)(a) of the policy extends to requests "to be identified or treated, as a gender . . . other than the student's biological sex or gender listed on the student's birth certificate or any other official records. This includes any request by the student to use a name that differs from their legal name (other than a commonly recognized diminutive of the child's legal name) or to use pronouns that do not align with the student's biological sex or gender listed on the student's birth certificate or other official records."	The policy extends to "requests to be identified as a gender other than the child's biological sex or gender" and "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."
Item (1)(b) of the policy extends to requests to "access[] sex-segregated school programs and activities, including athletic teams and competitions, or us[e] bathroom or changing facilities that do not align with the student's biological sex or gender listed on the birth certificate or other official records."	The policy extends to requests to "access [] sex-segregated school programs and activities, or bathrooms or changing facilities that do not align with the child's biological sex or gender."

(Jt. Ex. 2; Assn's Mar. 29, 2024 Second RJN Ex. 2.) In fact, the only substantive differences between the two policies are: 1) item 1(c) of the Chino Valley policy, which the court examined separately, further extends to requests "to change any information contained in the student's official or unofficial records"; and 2) unlike the Chino Valley policy, the Rocklin policy specifies that educators must forcibly out students even when there is credible evidence that doing so would result in substantial jeopardy their safety.

The District has finally backtracked and admitted that the two policies "appear to be substantially similar," but it nonetheless claims that there are "two important material differences." (Dist.'s Exceptions at 4:11-13.) First, the District notes that Chino Valley adopted an "entirely new Board Policy" by adding section 5020.1 to its existing policies instead of amending an existing policy as Rocklin did. The District does not explain why this makes

any difference except by noting that it "*already* had a parental notification policy in place, BP/AR 5020—Parent Rights and Responsibilities, that set forth a non-exhaustive list of rights of parent[s]"—and the new forced-outing policy "simply added another parental right to that list." (Dist.'s Exceptions at 4:13-20.) Even if this distinction mattered, however, the District is incorrect in stating that Chino Valley did not already have a policy in place concerning parental rights: Chino Valley's AR 5020 is entitled "Parent Rights and Responsibilities" (just like Rocklin's AR 5020) and contains a list of the same. (*See* Assn's Aug. 1, 2024 Fourth RJN Ex. 3.) And, just as Rocklin's amendments to AR 5020 did, Chino Valley's adoption of AR 5020.1 simply added new parental rights to that list.

The District also notes that Chino Valley revised its existing nondiscrimination policy to completely remove the existing general prohibition on disclosing a student's transgender or gender-nonconforming status to others without the student's consent, whereas Rocklin instead added an exception to its existing general prohibition. The District argues that because its policy "did not altogether eliminate a student's 'right to privacy,'" as Chino Valley's did, "the practical effect of the Chino Valley policy is very different from the District's and is not relevant to the District's actions here." (Dist.'s Exceptions at 5:11-13.) The District does not elaborate on how the practical effect of the two policies differs with respect to forced outing, and it is difficult to discern any such difference. But in any event, the Superior Court's preliminary injunction discussed only the forced-outing requirement of Chino Valley's BP 5020.1. (Assn's Feb. 6, 2023 First RJN Ex. 1.) It did not refer to AR 5143.5 at all. (*Id.*) The District's distinction is therefore inconsequential.

CONCLUSION

For the reasons given above, PERB should find that the District violated section 3543.5 of the Government Code and should order the District to rescind the forced-outing policy it

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adopted on September 6, 2023.

Dated: August 1, 2024

Respectfully submitted,

/s/ Brian Schmidt
Brian Schmidt
Staff Attorney
California Teachers Association

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

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

On August 1, 2024, I served the foregoing document described as **Rocklin Teachers Professional Association's Response to Rocklin Unified School District's Exceptions to Proposed Decision (*Rocklin Teachers Association, v. Rocklin Unified School District, PERB Case No. SA-CE-3136-E)*** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

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

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

☒ **PERB ePORTAL** By transmitting via e-PERB to the electronic service address(es) listed below on the date indicated. (May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)

Executed on August 1, 2024, at Burlingame, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Rachel A. Quiles