Case No. C103184

COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

ROCKLIN UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent,

ROCKLIN TEACHERS PROFESSIONAL ASSOCIATION

Real Party in Interest

Appeal of Public Employment Relations Board
Decision No. 2939
[Unfair Practice Charge Case No. SA-CE-3136-E]

ROCKLIN UNIFIED SCHOOL DISTRICT'S REPLY BRIEF

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INTRODUCTION

The crux of the matter is whether the underlying dispute is a "*labor law* case." (RTPA Br. 8.) So it is telling that Respondents' briefs—particularly CTA's—instead employ hyperbolic attacks on the underlying policy, rebranding transparency and parental engagement as an illegal threat to student safety. Those arguments only underscore that PERB's underlying decision relied on constitutional analyses beyond its jurisdiction.

PERB has the authority to resolve labor disputes. But PERB does not have the authority to resolve issues of federal or California constitutional law. As Appellant explained in its opening brief, PERB's conclusion that the Parental Notification Policy is unlawful rests on legal analyses wholly outside its competence—such as parental rights, student privacy, and equal access—which are currently winding their way through the proper forums in state and federal courts. Thus, the question before this Court is not whether the Policy is wise or lawful under the Constitution, but whether PERB had the authority to decide those questions. This Court should not permit PERB to exceed its statutory mandate by resolving issues reserved to the judiciary.

I. The District has not waived any arguments.

RTPA's waiver arguments (RTPA Br. 19, 22) are false. In their opening brief before PERB, the District explicitly said "PERB does not have the authority to rule on Constitutional issues. [Citations.] Thus, it is clear that the question . . . requires interpretations of student privacy and parental rights under state and federal law, questions that PERB is not authorized to examine." (AR vol. 1 at PERB-140.) *Contra* RTPA, the

District did in fact argue "that PERB lacks jurisdiction to interpret external law" (RTPA Br. 19) and that the issue implicates the "rights of parents" (*id.* at 22). And RTPA's reliance on the District's decision to not address AB 1955 in supplemental briefing (*id.* at 19 n.3) is disingenuous, since later in RTPA's brief, RTPA says that "AB 1955 did not effect a change in, but was declaratory of, existing law." (RTPA Br. 20 (quote marks, alterations, and citations omitted).)

RTPA also argues that the District has waived its argument that PERB is expected to go through each of the three prongs of the *Anaheim* test. (RTPA Br. 31-32.) In fact, below, the District very plainly stated that "one would expect Charging Party to go through each of the three prongs of the *Anaheim* test to demonstrate how the Parent Notification Policy meets them." (AR vol. 1 at PERB-167.)

Meanwhile, PERB argues that the District has waived its other argument that the Policy is lawful. (PERB Br. 49-50.) This is not true. (RUSD Br. 23-25.) And PERB's implication that the District's only authority is a superior court decision (PERB Br. 49), is belied by the District's citations to *Troxel v. Granville* (2000) 530 U.S. 57, 65; *Parham v. J.R.* (1979) 442 U.S. 584, 602; *Pierce v. Soc'y of Sisters* (1925) 268 U.S. 510, 534; *Meyer v. Nebraska* (1923) 262 U.S. 390, 399; *Keates v. Koile* (9th Cir. 2018) 883 F.3d 1228, 1235-36; *Mann v. Cty. of San Diego* (9th Cir. 2018) 907 F.3d 1154, 1156; and *Pickup v. Brown* (E.D. Cal. 2012) 42 F.Supp.3d 1347, 1368. (RUSD Br. 23-25.)

II. PERB lacks the authority to decide matters of state and constitutional law.

The "judicial power . . . can no more be shared" with another branch "than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto." (*United States v. Nixon* (1974) 418 U.S. 683, 704.) It is "the province and duty" of the courts "to say what the law is." (*Id.* at 705; *Marbury v. Madison* (1903) 5 U.S. 137, 177.)

The State of California agrees: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by th[e] Constitution." (Cal. Const., art. III, § 3.) RTPA's arguments about the "chronological issue" (RTPA Br. 20-22) fail. First, the existence of AB 1955 cannot "compel" any "conclusion" (RTPA Br. 20), as it is currently being challenged as unconstitutional before the Ninth Circuit. Second, the Attorney General's policy pronouncements on the issue of gender-questioning children (*see also* PERB Br. 48) is hardly conclusive evidence of anything other than the Attorney General's own beliefs. Furthermore, the Attorney General has *not* sued the District, despite the allegedly "nearly identical" policies as enacted by another district—a fact that ultimately undermines RTPA's reliance on the Attorney General's opinion a few paragraphs later. (RTPA Br. 23-24.) Moreover, the court considering Chino Valley Unified School District's policy did not disturb the portion of that policy requiring school staff to notify parents when a student requested to change any information contained in the student's official or unofficial records, a policy that broadly

encompassed the same conduct at issue in the underlying policy challenged here. (*See People ex rel. Bonta v. Chino Valley Unified Sch. Dist.,* 2024 Cal. Super. LEXIS 65890, at *2; Order on Mot. for J. on Pleadings/Summ. Adjudication and Mot. for Summ. J./Adjudication at 41, People v. Chino Valley Unified Sch. Dist., No. CIVSB2317301 (Cal. Super. Ct. San Bernardino Cty. Sept. 9, 2024) (available at https://libertyjusticecenter.org/wp-content/uploads/20240909_Court-Order-on-Motions.pdf) ("Chino Order").)

PERB also says that "the Board's lack of jurisdiction does not mean it is powerless even to consider this external law." (PERB Br. 47.) The cases PERB cites (*id.* at 47-48) are reconcilable with PERB's own stance in more recent decisions cited in the District's opening brief (RUSD Br. 21-22). And while "'PERB *may* interpret the provisions of external law as *necessary* to decide questions arising under the collective bargaining statutes' it administers,"[1] Respondents cite no cases expanding this limited license to interpret external law when necessary into a license to determine the constitutionality of state statutes.

RTPA's argument that "PERB did not even need to 'interpret' anything" because AB 1955's existence means that the Policy is "unlawful" (RTPA Br. 20) disregards the fact that AB 1955 is actively being challenged in federal court as unlawful in a case soon to be decided by the Ninth Circuit Court of Appeals. Contrary to RTPA's argument, the District is not saying that PERB is "prohibited even from

[1] (RTPA Br. 20 (quoting *El Dorado County Superior Ct.* (2018) PERB Dec. No. 2589-C, at 4) (emphasis added).)

looking at external law"; the question is whether the Policy violates AB 1955 and, in turn, whether AB 1955 is itself unconstitutional "is a question PERB is not authorized to answer. Therefore, PERB cannot rule that the Policy is unlawful." (RUSD Br. 22.)

RTPA's third argument—that this is a live dispute and would prolong litigation—is belied by the fact that in the two years since the Policy was adopted, it has never been implemented.[2] And if AB 1955's constitutionality is upheld, it will never be implemented.

III. The Policy does not violate state law.

The Policy specifies that parents have a right to be notified if their child requests specified accommodations at school consistent with their gender identity—accommodations that, by their very nature, require updates to the student's records. According to Respondents, this is discriminatory. (PERB Br. 50-51; RTPA Br. 18-20.)

If implemented, Respondents' interpretation of the law would likewise prohibit schools from informing parents if a disabled student requested an additional accommodation to address their disability, or if a religious student asked for a different menu in the lunchroom to help accommodate their religious beliefs. After all, Education Code section 220 prohibits discrimination on the basis of disability and religion as well. But that would be nonsensical. *Of course* policies that address a specific subset of the student body will acknowledge the existence of those protected classes. For example, the District also has a policy that

[2] For the same reason, RTPA's later assertion that the District has "disregard[ed] the Legislature's passage of AB 1955" (RTPA Br. 29) is false.

explicitly protects the rights of non-English-speaking parents to receive information "in a language they can understand." (AR vol. 2 at PERB-873.) This implicates the protected classes of "nationality," "race or ethnicity," and "immigration status." (Cal. Ed. Code § 220.)

But more importantly, Respondents' argument (PERB Br. 52-54) reverses the usual understanding of a school's duties. Schools regularly inform parents when significant issues arise in a child's life, from safety incidents to serious challenges affecting the student's experience at school. The District's policy reflects the same approach—that parents are entitled to know about matters of consequence in their child's development. To cast this as unlawful discrimination mischaracterizes the policy's purpose. And PERB's argument that "a student's decision to be identified as a gender other than their biological sex does not inevitably implicate their health" (PERB Br. 53) beggars belief. (*See, e.g.*, *United States v. Skrmetti* (2025) 145 S. Ct. 1816, 1824 (defining gender dysphoria as "a *medical condition*" which, "[l]eft untreated, . . . may result in severe physical and psychological harms") (emphasis added); *Mirabelli v. Olson* (S.D. Cal. 2023) 691 F. Supp. 3d 1197, 1202-03, 1206 ("Gender dysphoria is a clinically diagnosed incongruence between one's gender identity and assigned gender. If untreated, gender dysphoria may lead to anxiety, depression, eating disorders, substance abuse, self-harm, and suicide. . . . [A] child's gender identification [is] pertinent information that can impact the health and well-being of a student.").) Likewise, PERB's assertion that the District's view that gender dysphoria is a mental health issue is an "outdated social stereotype" (PERB Br. 53 (citation omitted)) is subjective, self-serving,

and immediately undermined by PERB's comparison of gender dysphoria to depression (*id.* at 54).

As to a student's privacy interest, PERB cites several cases for boilerplate observations about a child's privacy (PERB Br. 54-56), but if any of those cases stood for the proposition that a child can keep their transgender identify from their parents, PERB would explicitly say so. For example, *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.* (7th Cir. 2017) 858 F.3d 1034, which PERB cites for the boilerplate assertion that transgender individuals face "discrimination, harassment, and violence" "because of their gender identity" (PERB Br. 54 (quoting 858 F.3d at 1051)) is about transgender bathroom access, not parental notification. The best PERB can muster is a case invalidating a policy requiring minors to obtain parental *consent* for abortion.

The only California court Petitioner is aware of that has specifically addressed student privacy in the context of keeping their transgender identity a secret from their parents has ruled that *no such privacy right exists*. (Chino Order at 35 (available at https://libertyjusticecenter.org/wp-content/uploads/20240909_Court-Order-on-Motions.pdf) ("Under all these circumstances, the minor students do not have a reasonable expectation of privacy against mandated disclosure to parents as to the specific requests and conduct [concerning social transitions] implicated by the Policy.").) Moreover, assuming that gender-nonconforming students are more likely to suffer from psychological, emotional, physical harassment and suicidal ideation, it becomes all the more vital that the parents of students

experiencing gender incongruity are informed of a child's social transition in school. It is not possible to comply with California and federal constitutional law requiring parental involvement in their children's education *and* keep a child's transgender identity from that child's parents.

For instance, under Education Code section 51101, parents "have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school and to participate in the education of their children," by having access to their child's school records. Parents may observe or volunteer in their child's classroom(s), affirmatively receive information about psychological testing and academic performance standards, and be informed about unexcused student absences. among other things. (*Id.*) Education Code section 51101 also gives parents the right to question "anything" in their child's record the parent feels is inaccurate, misleading, or an invasion of privacy.

PERB argues that the District lacks standing to challenge state law on behalf of parents' rights. (PERB Br. 56-59.) That question is directly in front of the Ninth Circuit right now in *Chino Valley Unified School Dist. v. Newsom,* No. 25-3686 (9th Cir.). And PERB's argument might have merit if the District were bringing a case on behalf of parents of the District's students to block AB 1955. It is not. Besides, school districts certainly can sue and be sued as a matter of state and federal law—and can assert federal constitutional law as a defense. As Appellees pointed out, the Attorney General keeps suing California

school districts over their parental notification policies (RTPA Br. 20; PERB Br. 48); the districts have raised constitutional law as a defense. (*See, e.g.*, *California v. Chino Valley Unified Sch. Dist.*, Case No. CIVSB2317301 (Cal. Super. Ct. Cty. of San Bernardino Aug. 28, 2023).)[3] But again, this entire discussion of the balancing of student and parental interests further demonstrates why a labor relations board is the wrong body to decide this issue.

PERB's final argument (PERB Br. 59-61) can be easily brushed aside. PERB acknowledges, as it must, that "parents 'retain a substantial, if not the dominant, role' in children's healthcare decisions." (PERB Br. 60 (quoting *Parham v. J.R.* (1979) 442 U.S. 584, 604).) While *Parham* does go on to say that "parents cannot always have absolute and unreviewable discretion" *(id.*), it is obvious that the discretion *Parham* contemplates is not possible if parents are not informed of their child's well-being.

RTPA tries to argue that FERPA does not supersede AB 1955 because if "a student asked a particular teacher to refer to them by a different pronoun, it would not automatically effect a change in the student's records," and "even if a request *did* result in a change, FERPA would not impose an affirmative duty on educators to report that change to the student's parents." (RTPA Br. 25.) With the first argument, RTPA asks the Court with a straight face to believe that California schools do not record changes to their students' names or

[3] Again, the federal *Chino Valley* case cited by PERB on this point (PERB Br. 59) is currently on appeal. (9th Cir. No. 25-3686.)

pronouns anywhere (likewise, PERB's dodge that "student *nicknames* are not identified in a formal record," PERB Br. 36, is unavailing). In practice, any social transition that is implemented on a school-wide level will require *some* form of record change that would fall under the purview of FERPA. With the second, RTPA dodges the matter of how FERPA supersedes AB 1955; AB 1955 purports to bar parents from asserting a right to any information related to their child's changed gender identity, including records, which is something FERPA does not allow. PERB likewise confuses the issue, stating that "these authorities requiring access to educational records do not require affirmative disclosures of transgender or gender-nonconforming status, as the District's parental notification policy does." (PERB Br. 36.) This is a red herring. The fact is that FERPA guarantees access to this information, and AB 1955 forbids it absent student consent. (*See* RUSD Br. at 15.)

IV. The Board erred in finding the Policy falls within the scope of representation.

A. Teachers have always been required to communicate with parents.

As the District explained in its opening brief, communication with parents is and always has been a part of teachers' job duties, both before and after the September 2023 policy revision, and teachers were already expected to communicate with parents without student consent in certain circumstances prior to that policy revision. Respondents' attempts to distinguish the Parental Notification Policy from these longstanding communication expectations fail.

PERB argues that the Parental Notification Policy "now imposes a specific, affirmative disclosure requirement that is entirely unrelated to 'social progress' or 'educational programs.'" (PERB Br. 35.) But it is hard to imagine a topic more related to "social progress" than a student asking to be called by a different name or pronoun. PERB tries to escape this obvious categorization by claiming that the term "social progress" is "vague." (*Id.*) And PERB doesn't bother offering any examples of what would fall under their definition of the term "social progress," probably because any attempt to define "social progress" in a way that excludes the adoption of a new name or pronoun would be farcical.[4] RTPA's maneuver on this point is to swap out "social progress" for "educational progress" and hope this Court doesn't notice. (RTPA Br. 28-30.) As for RTPA's concern about child abuse and student safety (RTPA Br. 28), look no further than the opening paragraph of *Mirabelli*: "If a school student suffers a life-threatening concussion while playing soccer during a class on physical fitness, and the child expresses his feelings that he does not want his parents to find out, would it be lawful for the school to require its instructor to hide the event from the parents? Of course not." (691 F. Supp. 3d at 1202.) So how then could a school not inform parents if their child is at risk for "significant, adverse, life-long social-emotional health consequences?" (*Id.*) RTPA cannot profess to be concerned about student safety and then turn

[4] For this same reason, RTPA's argument that "a reasonable District educator would not expect forced outing to be 'just part of the job'" (RTPA Br. 28) fails.

around and say that parents cannot be informed of a potential threat to their child's safety.

B. The District's reliance on *Beverly Hills* is not misplaced.

The District's reliance on *Beverly Hills* is not misplaced. PERB tries to argue otherwise first by stating that *Beverly Hills* is "not about the scope of representation." (PERB Br. 35.) But *Beverly Hills* is explicitly about a unilateral charge claim, just as Respondents frame this case. (*Beverly Hills Education Association v. Beverly Hills Unified School District,* PERB Decision No. 1969 at 2.) Next, PERB argues that *Beverly Hills* concerned "whether providing parents with students' examinations impacted work hours," whereas this case requires "teachers to violate state law." (PERB Br. 36.) Again, PERB is not entitled to make that decision given the questionable constitutionality of AB 1955. But even if it was, PERB's own argument here proves the District's point. A mandatory subject for bargaining must have a nexus to wages, hours of employment, or other terms and conditions of employment. As in *Beverly Hills,* the Policy does not impact work hours because teachers already talk to administrators and parents as part of their duties; all "new" duties that the Policy would require take place during the workday.

RTPA's arguments are at least slightly more realistic. But none of those arguments undermine the District's basic contention that "communicating certain information to parents falls outside the scope of bargaining." (RUSD Br. 14.)

C. The second *Anaheim* prong weighs in the District's favor because collective bargaining is an inappropriate vehicle for resolving policy conflicts.

The second *Anaheim* prong requires both that the subject be "of such concern to both management and employees that conflict is likely to occur" and that "the mediatory influence of collective negotiations is *the* appropriate means of resolving the conflict." (*Anaheim Union High School District* (1981), PERB Decision No. 177 at 4 (emphasis added).) PERB points out that "conflict is likely to occur," but again tries to dodge the issue that collective bargaining is an inappropriate vehicle for resolving a policy conflict. (PERB Br. 38-39.) The District does not and has not denied that conflict is likely to occur. (AR vol. 1 at PERB-134.) But the District maintains that that question is best resolved by the Legislature passing constitutionally-sound legislation. (*Id.*)

RTPA says that it is "baffling" why the District would point out that "'balancing a student's right to privacy . . . and a parent's right to direct the upbringing of their child is a policy question best left to the legislature,' not to bargaining" when the District also "asks the Court to ignore the Legislature's decision on this precise issue." (RTPA Br. 32 (quoting RUSD Br. 16).) To spell it out: the Legislature is indeed the body that should decide this question of policy, but it must do so in accordance with the California and federal Constitutions.

D. The Policy cannot be a mandatory bargaining subject because it does not satisfy the third prong of the *Anaheim* test.

A mandatory bargaining subject cannot "significantly abridge" any of the managerial prerogatives that are central to carrying out the

District's mission. PERB argues that the third *Anaheim* prong is satisfied because bargaining with RTPA "would not significantly abridge the District's managerial prerogatives." (PERB Br. 40-42.) This conveniently ignores the fact that, before the District even implemented the Policy, RTPA declared that it would not "engage in the negotiation of any policy that is in violation of student safety and the law" based on its own determination that the Policy violated the law. (AR vol. 2 at PERB-912.) No bargaining occurred or could occur because RTPA refused to bargain at all. PERB's only real response to this is to complain that "the District's managerial prerogative cannot include adopting a policy that violates state law" (PERB Br. 41), but again, that is not a determination that PERB is entitled to make.

Likewise, RTPA's assertion that "collective bargaining would provide a forum for the Association to object to the new forced-outing job duty and to explore alternatives" (RTPA Br. 32) is belied by RTPA's own refusal to bargain on that very issue. As discussed in the District's opening brief, the RTPA's president testified that he was notified five days prior to the September 6, 2023 Board meeting where the Policy was adopted. (RUSD Br. 7, 7 n.2, 19.) Within three days of that notification (or the same day, according to PERB's timeline), RTPA managed to draft, finalize, and send a cease-and-desist letter. (RUSD Br. 19 n.5; AR vol. 1 at PERB-647.) It then marshalled its supporters to attend the September 6 Board meeting, causing such "exponentially high[]" attendance that "the meeting lasted until the early hours of the

morning."[5] (RTPA Br. 12.) Somehow, even though RTPA was able to do this, Respondents argue that RTPA was not given adequate time "to decide whether to request information, demand bargaining, consult its members, and then bargain in good faith." (PERB Br. 43-44; RTPA Br. 11-12.) But as explained in the next section, RTPA decided that it had no interest in bargaining in good faith, and it made that determination in a time frame far shorter than the two to six months contemplated by PERB's slate of examples. (PERB Br. 44.) Neither appellee offers any indication of what sort of information RTPA was prohibited from requesting or how long RTPA needed to consult its members, and no bargaining was demanded or conducted.

V. RTPA, not the District, is the party responsible for any failure to bargain.

As explained above and in its opening brief, the District did not need to bargain prior to the implementation of the Policy, which has not yet occurred. But even if the District was required to bargain prior to its decision to adopt the policy, as Respondents contend (*e.g.*, RTPA Br. 34), there is no reason to believe that RTPA would be any more willing to bargain. RTPA self-servingly states that it "has been unwilling to negotiate on these terms because doing so would presume that the District had the right to impose the forced-outing requirement in the first place." (*Id.*) And PERB replicates this argument, saying that

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[5] The record with respect to this meeting is woefully under-developed. The District submits that the testimony of a single partisan witness (PERB Br. 23, citing AR vol. 2 at PERB-731-32, 735) is not indicative of actual community attitudes for or against the Policy.

"parties cannot have meaningful good faith negotiations after an employer has made a unilateral decision." (PERB Br. 46 (quote and citation omitted).) But RTPA's own president said that RTPA would not "engage in the negotiation of any policy that is in violation of student safety and the law," and "cannot risk student trust and member's credentials through the negotiation or implementation of policy that is in direct violation of [the] Ed Code and student rights." (AR vol. 2 at PERB-912.) In other words, President Mougeotte's stated grounds on which he refused to negotiate were *independent* of the District's alleged failure to bargain prior to adopting the policy. Respondents' argument here is a smokescreen.

CONCLUSION

"The District's primary duty is to educate students" (PERB Br. 57 (emphasis omitted)), not to socially transition them behind their parents' backs. The Policy is lawful (pending resolution of the AB 1955 litigation). The Policy does not fall within the scope of representation. RTPA, not the District, has failed to bargain in good faith. This Court should issue the relief requested in the District's opening brief.

Dated: September 17, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Emily Rae, am counsel in this matter and I certify that the attached Petitioner's Reply Brief has a typeface of 14 points or more and contains 4,122 words, as determined by a computer word count.

/s/ Emily Rae