Michelle L. Cannon, SBN 172680
Sinead M. McDonough, SBN 345576
LOZANO SMITH
One Capitol Mall, Suite 640
Sacramento, CA 95814
Telephone: (916) 329-7433
Facsimile: (916) 329-9050

Attorneys for Respondent
ROCKLIN UNIFIED SCHOOL DISTRICT

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

ROCKLIN TEACHERS PROFESSIONAL ASSOCIATION Petitioner, vs. ROCKLIN UNIFIED SCHOOL DISTRICT Respondent.	Case No. SA-CE-3136-E **RESPONDENT'S REPLY BRIEF** Administrative Law Judge: Camille K. Binon

LOZANO SMITH
One Capitol Mall, Suite 640 Sacramento, California 95814
Tel 916-329-7433 Fax 916-329-9050

The Rocklin Unified School District ("District") hereby submits its Reply Brief to Charging Party Rocklin Teachers Professional Association's ("Charging Party" or "RTPA") Post-Hearing Brief (i.e., Charging Party's Opening Brief).

INTRODUCTION

The crux of Charging Party's case rests on two premises: (1) that the revisions to Administrative Regulations 5020 and 5145.3 (together, "the Policy" or "Parent Notification Policy") concern mandatory subjects of bargaining and (2) that the Policy is illegal. (Charging Party's Opening Brief ["CP OB"], pp. 10-11.) First, despite carrying the burden of proof, Charging Party fails to provide support for its argument that the Policy constitutes a mandatory topic of bargaining, subject to decision-based bargaining. Second, Charging Party's assertions that the Policy is unlawful and thus constitutes a violation of the Educational Employment Relations Act ("EERA") are simply not accurate.

Moreover, if Charging Party sincerely believes that the Policy's provisions "violate students' constitutional rights," then state or federal court—not the Public Employment Relations Board ("PERB")—would be the appropriate venues to seek remedy. (CP OB, p. 12; (*Alliance Marc & Eva Stern Math and Science School* et. al. (2021) PERB Decision No. 2795 [judicial appeal pending]; see also *State of California (Department of Consumer Affairs)* (2005) PERB Decision No. 1762-S, p. 10 [noting that PERB lacks jurisdiction to adjudicate gender discrimination claims]).) Indeed, several cases made up of teacher-plaintiffs that concern parent notification policies, or lack thereof, are currently making their way through the courts. (Respondent's Opening Brief ["Resp. OB"], pp. 22-25.) Finally, Charging Party's requested remedy that the Policy be rescinded is moot, given that the Policy has not been implemented, and thus none of its members are currently required to comply with its provisions. (RT 99: 11-22; RT 101: 7-25; RT 129: 13-23.) For these reasons, the Complaint should be dismissed.

ARGUMENT

I. CHARGING PARTY FAILS TO PROVIDE LEGAL SUPPORT FOR ITS ASSERTION THAT THE PARENT NOTIFICATION POLICY CONSTITUTES A MANDATORY SUBJECT OF BARGAINING.

Charging Party carries the burden "to prove the complaint by a preponderance of the evidence." (Cal. Code Regs. tit. 8, § 32178.) As noted above, because the Complaint states that the District failed to bargain "the decision to implement" a Parent Notification Policy, the allegations assume that the

LOZANO SMITH
One Capitol Mall, Suite 640 Sacramento, California 95814
Tel 916-329-7433 Fax 916-329-9050

Policy constitutes a mandatory subject of bargaining. (Complaint, ¶ 5.) However, Charging Party lacks adequate legal support for this contention. (See CP OB, pp. 9-12.) Moreover, Charging Party makes several illogical leaps to further its unsupported conclusions.

First, in its Opening Brief, Charging Party correctly states that "a subject 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; (2) the subject is of such concern to management and employees that conflict is likely to occur and the mediatory influence of collective bargaining is an appropriate means of resolving the conflict; and (3) negotiation would not significantly abridge managerial prerogatives, including matters of fundamental policy essential to the school district's mission." (CP OB, pp. 9-10.) From there, one would expect Charging Party go through each of the three prongs of the *Anaheim* test to demonstrate how the Parent Notification Policy meets them. (See *Anaheim Union High School Dist.* (1981) PERB Decision No. 177.) Instead, Charging Party alleges that the Policy meets the first prong of the *Anaheim* Test by imposing a "new, unlawful workplace rule," but then Charging Party largely abandons the *Anaheim* Test by failing to meaningfully analyze either of its remaining two elements. (See CP OB, pp. 9-11.) Despite Charging Party's failure to identify how "collective bargaining is an appropriate means of resolving the conflict" or how specifically "negotiation would not significantly abridge managerial prerogatives," as required by the *Anaheim* Test, Charging Party then draws its unsupported conclusion "The policy thus falls within the scope of representation under the *Anaheim* test." (CP OB, p. 11.)

Second, because Charging Party is aware that there is no case law to support its argument that the parent notification policies fall within the scope of bargaining, Charging Party relies on unsupported hypotheses to convince PERB to issue a favorable ruling. Specifically, throughout its briefing, Charging Party falsely claims that bargaining unit members will face discipline for noncompliance with the Policy and will risk the loss of their teaching credentials for compliance with the Policy. (CP OB, p. 4 [alleging that by following the Policy, "teachers would risk action against their credentials"]; CP OB, p. 8 [claiming that unit members would be "forced to choose between complying with state law or facing workplace discipline"]; CP OB, p. 11 [stating that the Policy would "place their credentials in jeopardy"]; CP OB, p. 12 [indicating that imposing the Policy "could cost [unit members] their

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credentials"].) With respect to Charging Party's claims that unit members will face discipline for noncompliance with the Policy, their concern is immaterial because the Policy still has not been implemented; therefore, no unit member is required to comply with the policy, and thus no unit member could be disciplined for noncompliance with the Policy. Moreover, had Charging Party followed through on their initial requests to bargain *impacts*, then any concerns about discipline could have appropriately been resolved through the negotiation process. Regarding Charging Party's claims that the Policy "jeopardizes" unit members' teaching credentials, those claims are purely speculative: despite multiple school districts in California adopting parent notification policies, Charging Party has set forth zero evidence of the CTC taking "action" against a teacher's credentials, much less revoking them, as alleged by Charging Party. (See CP OB, pp. 4, 11, and 12.)

II. THROUGHOUT ITS POST-HEARING BRIEF, CHARGING PARTY REPEATEDLY AND FALSELY ASSERTS THAT THE DISTRICT FAILED TO PROVIDE NOTICE AND THE OPPORTUNITY TO BARGAIN.

Throughout its briefing, Charging Party insists that the District either did not provide RTPA with notice of the Parent Notification Policy or that the notice provided was not "formal" or adequate enough to provide time for negotiations. (See CP OB, pp. 1, 3, 13.) Charging Party's claims might be convincing to someone without access to the Joint Exhibits or Hearing Transcript, but the record—including testimony from RTPA's own witness—demonstrates that the District provided Charging Party with adequate notice. First and foremost, at hearing, when asked whether "the District formally contacted the Union in any way" to "let them know that this policy was going to be considered at meeting," RTPA President Travis Mougeotte testified that Superintendent Roger Stock called him in advance of the posting of the Board Agenda to specifically recommend that he review it. (RT 44: 24—45:7.) Evidently, the Superintendent's call sufficed to put RTPA unit members on notice of the Policy because RTPA subsequently contacted the District and the District's governing board to request to negotiate "the impacts" of the Policy. (Joint Exhibit [JX] 4, p. 14; JX 5 at p. 17.)[1] Thus, RTPA's contentions that the District failed to provide notice are unsupported by the record.

[1] Page numbers to Joint Exhibits refer to the Bates numbering in the bottom right-hand corner of the page, beginning with "RTPA v. RUSD."

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With respect to RTPA's contention that the notice provided was not formal enough because the union did not receive the notice "in a manner reasonably calculated to draw attention to a specific item and with adequate time for good faith negotiations to ensue," this too is unconvincing for two reasons. (CP OB, p. 13.) First, the District's notice sufficed to "draw attention to a specific item," as evidenced by RTPA's September 4, 2023 and September 5, 2023 written correspondence requesting to bargain the "impacts and effects" of the specific policy at issue. (See JX 4 and JX 5.) Second, with respect to the contention that District's notice did not permit time to bargain, both Parties at the time believed the *impacts* of the decision—not the decision itself—to be negotiable. (See JX 4 and JX 5 [RTPA requesting to bargain the impacts and effects of the Policy].) Given that the District has not yet implemented the Policy, its notice in September of 2023 provided more than enough time to bargain impacts. Indeed, the Parties have engaged in several bargaining sessions since September of 2023, but Charging Party has refused to bargain over the Policy each and every time. (Resp. OB, pp. 13-14.) For these reasons, Charging Party's numerous assertions that they did not receive adequate notice are not supported by the record.

III. CHARGING PARTY'S CASE HINGES ON THEIR FALSE ASSERTIONS THAT THE POLICY IS UNLAWFUL.

Throughout its briefing, Charging Party refers to the Policy as "unlawful" or "illegal." (CP OB, pp. 1, 3, 4, 5, 7, 8, 11, 12, and 14.) Based on this assertion, Charging Party concludes "[i]t should go without saying that the District is not at liberty to adopt any workplace rule requiring certificated employees to break the law." (CP OB, p. 1.) In other words, Charging Party's primary argument is that the District violated the EERA by adopting an unlawful policy. (See e.g., CP OB, pp. 10-11 ["[T]he Association is challenging the policy's adoption because it directly imposes a new, unlawful workplace rule requiring certificated employees to forcibly out transgender and gender-nonconforming students to their parents. . . ."].) At the same time, Charging Party also acknowledges that "conclusively establishing the policy's legality depends on the California Supreme Court deciding the matter." (CP OB, p. 12.) Despite Charging Party's apparent acknowledgment that the "three state authorities" that have ruled the Policy unlawful do not bind the District, the majority of Charging Party's briefing relies on the presumption that the Policy is, in fact, unlawful. However, as described in detail in the District's

LOZANO SMITH
One Capitol Mall, Suite 640 Sacramento, California 95814
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Opening Brief, no court with binding authority over the District nor the State Legislature has ruled that parent notification policies are unlawful. (Resp. OB, pp. 21-25.) Moreover, Charging Party conveniently ignores the *Mae v. Komrosky* ((Riverside Sup. Ct. 2023) Case No. CVSW2306224) case out of Temecula, California: there, the Riverside Superior Court ruled over a Policy virtually identical to that adopted by the Chino Valley Unified School District, upon which Charging Party repeatedly points to in support of its argument that the *District's* policy is unlawful. (See CP OB, pp. 5-6.) There, despite the Temecula Valley Unified School District's adoption of a policy modeled off of the Chino Valley Unified School District's policy, the Riverside Superior Court denied plaintiffs' motion for a preliminary injunction to halt enforcement of the Policy. (Resp. OB, pp. 22-23.) In other words, two different state courts in California have come to opposite conclusions as to the legality of parent notification policies, illustrating the lack of consensus or binding precedent on this issue. (Resp. OB, pp. 23-25.) Thus, even if the District's Parent Notification Policy *were* identical to that of Chino Valley Unified School District's policy, it is impossible to decipher how a court with binding authority would rule over the Policy's lawfulness, and Charging Party's allegations that the Policy is unlawful cannot stand. (See Resp. OB, pp. 23-25.) Thus, not only does PERB not have jurisdiction to decide the underlying lawfulness of a parental notification policy vis-à-vis parent rights versus student privacy rights, but the issue is working its way through the courts.

CONCLUSION

The District respectfully requests that the Charge be denied for the reasons stated above and in the Opening Brief.

Dated: April 26, 2024

Respectfully submitted,

LOZANO SMITH

Michelle L. Cannon

MICHELLE L. CANNON
SINEAD M. McDONOUGH
Attorneys for Respondent
ROCKLIN UNIFIED SCHOOL DISTRICT

LOZANO SMITH
One Capitol Mall, Suite 640 Sacramento, California 95814
Tel 916-329-7433 Fax 916-329-9050

PROOF OF SERVICE

I, **Lindsey Soares**, am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is One Capitol Mall, Suite 640, Sacramento, CA, 95814. My e-mail address is lsoares@lozanosmith.com.

On April 26, 2024, I served the attached:

RESPONDENT'S REPLY BRIEF

on the interested parties in said cause, by causing delivery to be made by the mode of service indicated below:

Brian Schmidt, Staff Attorney
California Teachers Association
1705 Murchison Drive
Burlingame, CA 94010
Email: bschmidt@cta.org

Brendan P. White, Senior Regional Attorney
Public Employment Relations Board
Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Email: Brendan.White@perb.ca.gov

[X] (***By Electronic Filing Service Provider***) By transmitting a true and correct copy thereof by electronic filing service provider (EFSP), ePERB, to the interested party(s) or their attorney of record to said action at the e-mail address(es) of record and contained within the relevant EFSP database listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication from the EFSP that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 26, 2024, at Sacramento, California.

Lindsey Soares

LOZANO SMITH
One Capitol Mall, Suite 640 Sacramento, California 95814
Tel 916-329-7433 Fax 916-329-9050