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

Case No. C103184

ROCKLIN UNIFIED SCHOOL DISTRICT,
Petitioner,

v.

CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent, and

ROCKLIN TEACHERS PROFESSIONAL ASSOCIATION, CTA/NEA,
Real Party in Interest.

Petition for Writ of Extraordinary Relief from Decision of the California Public Employment Relations Board, PERB Decision No. 2939 (PERB Case No. SA-CE-3136-E)

REAL PARTY IN INTEREST ROCKLIN TEACHERS PROFESSIONAL ASSOCIATION, CTA/NEA'S RESPONSIVE BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
(California Rule of Court 8.208)

I, Brian Schmidt, certify that the following entities or persons have an interest in the outcome of these proceedings:

1. The Rocklin Unified School District, a local public education agency and political subdivision of the State of California, as Petitioner;

2. The Public Employment Relations Board, a California state agency, as Respondent; and

3. The Rocklin Teachers Professional Association, CTA/NEA, an employee organization recognized and authorized under the California Educational Employment Relations Act (EERA), as Real Party in Interest.

I know of no other entity or person that must be listed under California Rule of Court Rule 8.208(e)(1) or (2).

Dated: August 28, 2025

By: Brian Schmidt
BRIAN SCHMIDT, Staff Attorney
California Teacher Association

Attorney for Real Party in Interest
ROCKLIN TEACHERS
PROFESSIONAL ASSOCIATION,
CTA/NEA

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INTRODUCTION

For nearly two years, the Rocklin Unified School District has been waging war on California's attempts to protect public school students from the harm that can result from disclosing their gender-nonconforming status to unsupportive parents against their will. The Legislature has decided that educators should defer to their students' wishes on this highly personal decision because students understand their own family dynamics better than school district officials do. The District's governing board, however, has a different idea about how to balance the competing interests. It would prefer requiring educators to "out" students to their parents over their objections without exception, even when there is credible evidence that doing so would jeopardize the student's safety. Since adopting a forced-outing policy in September 2023, the District has been recalcitrant in the face of legal challenges, ignoring the California Attorney General's opinion that its policy violates' students' rights, defying the California Department of Education's order that it rescind the policy, and disregarding the California Legislature's express prohibition of forced-outing policies precisely in response to rogue school boards like its own. Caught in the middle are the District's educators, represented by the Rocklin Teachers Professional Association, who challenged the District's adoption of the forced-outing policy as an unfair labor practice.

There are only two questions before the Court: 1) Did the Public Employment Relations Board (PERB) clearly err in concluding that the District violated the Educational Employment Relations Act (EERA) by adopting an unlawful policy affecting the terms and conditions of educators' employment; and 2) In the alternative, is there a plausible evidentiary basis supporting PERB's conclusion that the District violated EERA by unilaterally adopting a policy assigning educators new job duties they would not reasonably comprehend as falling within their existing set

of duties?

There is no doubt that the answer to the first question is no; section 220.5 of the Education Code flatly prohibits the District's forced-outing policy. The District argues that this statute is unconstitutional, but that issue was beyond PERB's authority to decide and is not before the Court. Nor is there any need for the Court to examine the constitutionality of the District's policy to conclude that it is unlawful. The Legislature has clarified that the policy violates (and always has violated) the Education Code, and PERB was required to adhere to the Legislature's decision.

As for the second question, even if the policy *were* lawful, there is ample evidence that the District's educators did not implicitly sign up to forcibly out their students when they took the job. Until the District reversed course two years ago, it specifically prohibited employees from disclosing a student's transgender or gender-nonconforming status to anyone without the student's written consent. No reasonable educator would expect the rules to so thoroughly change just because the District's governing board wanted to pick a political fight with the State. Moreover, educators have never before been required to betray a student's confidence by disclosing a private, non-academic matter to others unless doing so was necessary to preserve the student's safety. The new policy turns educators' reasonable expectations on their heads by requiring them to make this type of disclosure *even when there is credible evidence that doing so would provoke child abuse*.

It is clear that the District's governing board relishes the opportunity to coopt public resources to trigger litigation, advance Board members' political agendas, and open a front in the culture wars—all while using the District's educators as pawns in the process. But the Court need not wade into the fraught issues of students' or parents' constitutional rights in this *labor law* case. EERA does not permit Board members to enlist educators

in their efforts to thumb their noses at the State of California. The Court should recognize this by deferring to PERB's decision and denying the District's writ petition.

STATEMENT OF FACTS

I. Without providing the Association with 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 even if doing so would jeopardize the students' safety

Before the 2023-24 school year, the District had a board policy prohibiting discrimination against transgender and gender-nonconforming students. (AR vol. 2 at PERB-719–20 (H'g Tr.), PERB-875–78 (Jt. Ex. 3).) 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. (*Id.* at PERB-720 (H'g Tr.), PERB-875–78 (Jt. Ex. 3).) It also provided that a student's transgender or gender-nonconforming status was private information and could not be disclosed to others—including the student's parents or guardians—without the student's prior written consent. (*Id.* at PERB-876 (Jt. Ex. 3).) This policy had never been the subject of any particular public controversy. (*Id.* at PERB-720–21 (H'g Tr.).) Moreover, it was consistent with section 221.5(f) of the Education Code[1] and with guidance on this subject issued in 2013 by the California Department of Education.

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

[1] "A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records."

mentioned. (AR vol. 2 at PERB-722–24 (H'g Tr.), PERB-865 (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. (*Id.* at PERB-724–25 (H'g Tr.).) There was no discussion at the August 9 meeting of any issues relating to transgender or gender-nonconforming students. (*Id.* at PERB-725 (H'g Tr.).)

When the agenda for the next Board meeting on September 6, 2023 was posted, it contained a proposed resolution to amend two administrative regulations: Administrative Regulation 5020, "Parent Rights & Responsibilities"; and Administrative Regulation 5145.3, "Nondiscrimination/Harassment." (AR vol. 1 at PERB-105–06 (Stip'd Facts); AR vol. 2 at PERB-725–26 (H'g Tr.), PERB-865 (Jt. Ex. 1).) Administrative Regulation 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.

(AR vol. 1 at PERB-106 (Stip'd Facts); AR vol. 2 at PERB-869 (Jt. Ex. 2).)

The proposed resolution would also amend Administrative Resolution 5145.3 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.

(AR vol. 1 at PERB-106 (Stip'd Facts); AR vol. 2 at PERB-876 (Jt. Ex. 3) (underlined language represents amendments).)

The District never gave the Association, which PERB has certified as the exclusive representative of the District's teachers and counselors, any kind of formal written notice that the Board was considering changing these policies, let alone offered to bargain the changes. (AR vol. 2 at PERB-726–27 (H'g Tr.).) 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 PERB-725–26 (H'g Tr.).)

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. (AR vol. 2 at PERB-730 (H'g Tr.), PERB-880–81 (Jt. Ex. 4).) The Association also demanded that, if the District refused to withdraw the resolution, it meet and negotiate the effects and impacts of the forced-outing policy on bargaining unit members. (*Id.*) On September 5, 2023, the Association followed up with a similar letter from its attorney directly to the District's trustees. (AR vol. 2 at PERB-730 (H'g Tr.), PERB-883–85 (Jt. Ex. 5).) The District did not respond to either letter before the Board met on September 6. (*Id.* at PERB-731 (H'g Tr.).)

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. (AR vol. 2 at PERB-731 (H'g Tr.).) The speakers included teachers, students, parents, counselors, lawyers, and community members—and the vast majority of them spoke out against the policy. (*Id.* at PERB-732–34 (H'g Tr.).) 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. (*Id.*) 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.*)

Notwithstanding the commenters' pleas, the Board passed the resolution shortly after public comment concluded without making any amendments. (AR vol. 2 at PERB-729, 735 (H'g Tr.); AR vol 1 at PERB-

105–06 (Stip'd Facts).) Although the District has held off from actively implementing the forced-outing policy for now, the Board has never taken formal action to suspend the policy. (AR vol. 2 at PERB-735 (H'g Tr.).) Moreover, the policies published on the District's website reflect the amendments without any disclaimer. (*Id.*; https://simbli.eboardsolutions.com/Policy/PolicyListing.aspx?S=36030389).)

On September 8, 2023—two days after the Board adopted the forced-outing policy—the Association filed the unfair practice charge that is at the center of this case. (AR vol. 1 at PERB-007.) A couple of hours later, the District's human resources director, Tony Limoges, emailed the Association's bargaining chair responding for the first time to the Association's demands to bargain. (AR vol. 2 at PERB-726 (H'g Tr.), PERB-887–88 (Jt. Ex. 6).) In the email, Dr. Limoges stated that the District would bargain the impacts and effects of the new forced-outing policy on unit members' employment, and offered several dates to meet for effects bargaining.[2] (*Id.* at PERB-887–88 (Jt. Ex. 6).)

The Association initially responded by letter on September 20, 2023,

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[2] PERB distinguishes between "decisional" bargaining and "effects" bargaining. When a matter falls directly within the scope of representation, "an employer must give notice sufficiently in advance of reaching a firm decision" on the matter "to allow the representative 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.) Even if a decision lies within the scope of the management's prerogative, "if the decision has reasonably foreseeable effects on exclusively represented employees' terms and conditions of employment, then the employer has a bargaining obligation regarding the decision's effects and implementation." (*Trustees of the California State University* (2024) PERB Dec. No. 2915-H, at 14 (judicial appeal on unrelated grounds pending).) In that event, the employer "must afford the exclusive representative notice and a meaningful opportunity to engage in effects negotiations, before implementation begins." (*Id.*)

insisting that the District rescind the policy before it would engage in effects bargaining. (AR vol. 2 at PERB-890–91 (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 the District of its conclusion that *both* the decision to adopt the forced-outing policy *and* the effects of the decision were negotiable. (*Id.* at PERB-738–39 (H'g Tr.), PERB-893–96 (Jt. Exs. 8–9).) This modified 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. (*Id.* at PERB-738 (H'g Tr.).) The Association's current position—which developed through discussions with counsel and has not changed since October 12, 2023—is that the District's decision to adopt the forced-outing policy was itself negotiable because there is no way the policy can be implemented without imposing new (and unlawful) job duties on certificated employees. (*Id.* at PERB-739–40 (H'g Tr.).)

II. Multiple sources of authority, including the plain text of the Education Code, demonstrate that the District's forced-outing policy violates state law

On July 15, 2024, as the PERB proceedings below were underway, the Governor signed AB 1955 into law. (AR vol. 1 at PERB-516–19 (Assn's Fourth RJN Ex. 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.*) 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.*) The Act explicitly states that these provisions do "not constitute a change in, but [are] declaratory of, existing law." (*Id.*)

AB 1955 leaves no doubt that the District's forced-outing policy is unlawful under the Education Code. But even before AB 1955 was enacted, three different authorities had determined that forced-outing policies are unlawful. First, on August 28, 2023—before the District passed its own forced-outing policy—the California Attorney General sued the Chino Valley Unified School District for enacting a policy that is virtually identical to the District's in all relevant respects. (AR vol. 1 at PERB-078–84 (Assn's First RJN Ex. 1), PERB-556–60 (Assn's Fourth RJN Ex. 3).) 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.*; AR vol. 2 at PERB-748 (H'g Tr.).) In doing so, the court concluded the Attorney General would likely prevail on his claim that the policy violates students' constitutional rights. (AR vol. 1 at PERB-078–84 (Assn's First RJN Ex. 1).)

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.

(AR vol. 2 at PERB-086–89 (Assn's First RJN Ex. 2).) 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.*) 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 PERB's evidentiary hearing District Trustee Julie Leavens-Hupp dismissed the Attorney General's Legal Alert as representing just "his opinion." (AR vol. 2 at PERB-815 (H'g Tr.).)

Third, on February 1, 2024, the California Department of Education issued a report following an investigation of the District's own forced-outing policy. (AR vol. 1 at PERB-091–102 (Assn's 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.*) Rather than comply with this order, the Board decided at its February 7, 2024 meeting instead to seek reconsideration. (AR vol. 2 at PERB-750–51 (H'g Tr.).) As with the Attorney General's Legal Alert, at the PERB evidentiary 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. (*Id.* at PERB-816 (H'g Tr.); 5 Cal. Code Regs. § 4670(a).)

The Department denied the District's request for reconsideration on March 27, 2024. (AR vol. 1 at PERB-193–95 (Assn's Third RJN Ex. 1).) On April 10, 2024, having received no response whatsoever to its inquiry concerning the District's compliance with its order, the Department sued the District in Placer County Superior Court, where the case is currently pending. (AR vol. 1 at PERB-521–28 (Assn's Fourth RJN Ex. 2).)

PROCEDURAL HISTORY

On September 8, 2023, the Association filed a charge with PERB alleging that the District had violated EERA by failing to bargain in good faith when it adopted the forced-outing policy. (AR vol. 1 at PERB-007–21.) On October 11, 2025, PERB's Office of General Counsel issued a complaint against the District. (*Id.* at PERB-045–49.)

After a two-day formal evidentiary hearing, on June 24, 2024 a PERB administrative law judge (ALJ) issued a proposed decision finding that the District had failed to bargain in good faith in violation of EERA in two respects: 1) by unilaterally changing the terms and conditions of unit members' employment when it adopted the forced-outing policy without first providing the Association notice and an opportunity to bargain; and 2) by giving unit members a directive that violated external law. (AR vol. 1 at PERB-198–246.)

On July 12, 2024, the District filed exceptions to the PERB ALJ's decision, appealing the matter to the full Board. (AR vol. 1 at PERB-498–511.) On January 28, 2025, the Board issued Decision No. 2939 upholding the ALJ's proposed decision. (*Id.* at PERB-635–76.) In doing so, PERB found that the District "committed an unfair practice when it: (1) amended AR 5020 and AR 5145.3 without first giving RTPA notice and the opportunity to bargain over the policy change; and (2) premised its

agreement to bargain effects and implementation of the policy on changes that violate the California Constitution and state law, thereby engaging in a per se violation of its duty to bargain effects in good faith." (*Id.* at PERB-637.)

STANDARD OF REVIEW

"PERB is 'one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect.'" (*Boling v. Pub. Employment Relations Bd.* (2018) 5 Cal. 5th 898, 911–12 (quoting *Banning Teachers Assn. v. Pub. Employment Relations Bd.* (1988) 44 Cal. 3d 799, 804).) Because "interpretation of a public employee labor relations statute falls squarely within PERB's legislatively designated field of expertise," courts "generally defer to PERB's construction of labor law provisions within its jurisdiction," adhering to PERB's interpretation "unless it is clearly erroneous." (*Id.* (internal quotation marks omitted).)

PERB's findings "with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, are conclusive." (Gov. Code § 3542(c).) "Accordingly, in reviewing PERB's findings, [reviewing courts] do not reweigh the evidence. If there is a plausible basis for the Board's factual decisions, [reviewing courts] are not concerned that contrary findings may seem to [them] equally reasonable, or even more so." (*Boling*, 5 Cal. 5th at 912.)

ARGUMENT

I. It was not "clearly erroneous" for PERB to conclude that the District violated EERA by adopting an unlawful forced-outing policy

A. The District's forced-outing policy has always violated state law

Section 3543.5(c) of the Government Code, part of EERA, makes it

unlawful for a public school employer to "fail to meet and negotiate in good faith with an exclusive representative." PERB has held that 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.) In this sense, if a proposal sought "to violate or in effect violate state law, the proposal would be unlawful and therefore out of [the] scope" of representation. (*Healdsburg Union High School Dist.* (1984) PERB Dec. No. 375 at 13; *see also San Mateo City School Dist. v. Pub. Employment Relations Bd.* (1983) 33 Cal. 3d 850, 864–65 (holding that EERA prohibits negotiating terms and conditions of employment that would replace, set aside, or annul any provision of the Education Code).)

It is beyond reasonable dispute that the District's forced-outing policy violates section 220.5 of the Education Code. In an attempt to sidestep this obstacle, the District argues that PERB lacks jurisdiction to interpret external law. But the District never made this argument—or any kind of jurisdictional argument—below. (AR vol. 1 at PERB-498–511.)[3] Accordingly, it has waived the right to make the argument here. (*Kern County Hospital Authority v. Pub. Employment Relations Bd.* (2024) 100 Cal. App. 5th 860, 883 n.17 ("Parties must exhaust, at each level of the administrative process, the issues and arguments they want to pursue further. To the extent a party fails to do so with respect to one or more

[3] The Legislature passed AB 1955 after the District filed its exceptions to the ALJ decision, but the District had the opportunity to file a reply brief addressing AB 1955 and chose not to.

arguments, it waives judicial consideration of those arguments.").)

In any event, the District's argument conflicts with precedent establishing that "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.) And here, PERB did not even need to "interpret" anything. When the Legislature passed AB 1955, it eliminated any doubt (even if there had been any legitimate doubt) that the District's forced-outing policy is unlawful: section 220.5 of the Education Code now provides that public 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." There is no room for the District to argue that its policy falls outside the ambit of the statute. The District's argument that PERB cannot "interpret" the statute amounts to asserting that PERB is prohibited even from *looking at* external law. This argument would eviscerate PERB's holding that a public school employer may not impose employment terms that conflict with external law, and the Court should decline to adopt it.

The District also raises a chronological issue, noting that the Legislature enacted AB 1955 only after the District adopted its forced-outing policy. On this basis, the District essentially argues that the policy was lawful when it was adopted—even if it no longer is—and therefore the District was not required to bargain before adopting it. (Dist.'s Opening Br. at 20, 22.) This argument fails for at least three reasons.

First, the Legislature expressly stated that AB 1955 did not effect "a change in, but [was] declaratory of, existing law" (Educ. Code. § 220.5(b)). The statute thus compels the conclusion that the District's policy was

unlawful from the outset. The District's opening brief does not attempt to grapple with this statutory provision.

Second, even before the District adopted the forced-outing policy, the Attorney General had sued Chino Valley Unified School District for violating students' legal rights by passing a policy that is nearly identical to Rocklin's. The District was therefore on notice that the State of California—of which the District is a political subdivision[4]—considered forced-outing policies unlawful even before the District adopted its own such policy. Subsequently, three different authorities confirmed that forced-outing policies are unlawful: 1) the San Bernardino Superior Court's January 11, 2024 preliminary injunction; 2) the California Attorney General's January 11, 2024 Legal Alert; and 3) the California Department of Education's February 1, 2024 investigative report. These authorities were consistent with prior Department of Education guidance and rested on interpretations of the California Constitution and the Education Code—all of which predate the District's adoption of its policy and have not changed in any relevant respect since then.

Third, notwithstanding all of these authorities—and even after the Legislature passed AB 1955—the District has insisted at every step of the way that its policy is lawful. Indeed, the District has taken the rare step of seeking an extraordinary writ so that it can require bargaining unit members to forcibly out their students. By consistently reaffirming its position that it may unilaterally impose the unlawful policy on educators, it is persisting in its failure to bargain on an ongoing basis. This is a live dispute, and granting the writ because the forced-outing policy was purportedly *once lawful* would merely prolong litigation by causing the Association to file a new unfair practice charge alleging that the District's continuing embrace

[4] Gov. Code § 8698(a).

of the policy *presently* violates AB 1955. There is little doubt that the Court would again be asked to resolve the matter.

For all of these reasons, PERB correctly found that the District's forced-outing policy violates state law and that EERA therefore prohibits the District from requiring bargaining unit members to carry out its disclosure requirement. This conclusion is not "clearly erroneous," and the Court should defer to PERB's ruling.

B. There is no place for the District's constitutional arguments in this labor law case

It is not possible for the District to credibly argue that its forced-outing policy is consistent with section 220.5 of the Education Code. Instead, as an alternative to its argument that PERB was not entitled even to look at this statute, the District argues that PERB should have disregarded the statute in any event because it "infringe[s] on the substantive due process rights of parents, under the Fourteenth Amendment of the U.S. Constitution, to raise their children and decide how to handle health care issues." (Dist.'s Opening Br. at 23.) Again, the District failed to make this argument to PERB (AR vol. 1 at PERB-498–511) and thereby waived it. Moreover, the District lacks standing to raise a constitutional challenge to a state statute; as noted above, the District is a political subdivision of the State of California and, as such, has "no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator." (*Williams v. Baltimore* (1933) 289 U.S. 36, 40.; *see also City of South Lake Tahoe v. California Tahoe Regional Planning Agency* (9th Cir. 1980) 625 F.2d 231, 233 ("It is well established that political subdivisions of a state may not challenge the validity of a state statute under the Fourteenth Amendment.").) Furthermore, the only court to have considered section 220.5's constitutionality to date has upheld the statute: In *City of Huntington Beach v. Newsom* (Case No. 8:24-cv-02017-CBM-JDE (C.D.

Cal. June 16, 2025) at 30 (appeal pending)),[5] a federal district court dismissed a constitutional challenge to AB 1955 without leave to amend the complaint, holding that "constitutional parental rights are not so broad as to impose an affirmative duty on third parties to inform parents of their children's actions, where those actions are done voluntarily and not initiated by the third party."

In any event, "Article III, section 3.5 of the California Constitution prohibits an administrative agency from declaring a statute unconstitutional." (*Alliance Marc & Eva Stern Math & Science High School* (2021) PERB Dec. No. 2795-E at 43.) The District itself argues elsewhere in its opening brief that constitutional issues "are reserved for courts of competent jurisdiction" and are therefore "beyond the purview of PERB's authority." (Dist.'s Opening Br. at 24–25.) Thus, even according to the District, PERB was not empowered to disregard AB 1955's mandate. Nor are these writ proceedings, which concern issues of state labor law, an appropriate forum for litigating whether AB 1955 violates the Fourteenth Amendment of the U.S. Constitution.

PERB's decision did touch on constitutional issues in another context: not the constitutionality of AB 1955, but the constitutionality of the District's forced-outing policy. But PERB did not conduct any original constitutional analysis of its own. Rather, it explained the Attorney General's opinion that forced-outing policies violate students' rights under the California Constitution (and state statutes). Rather than second-guess this opinion and perform its own constitutional analysis—which, again, the District argues it lacks jurisdiction to do—PERB instead deferred to the Attorney General and cited the January 11, 2024 Legal Alert to support its

[5] Available at https://oag.ca.gov/system/files/attachments/press-docs/ECF%2096%20Order%20on%20Motion%20to%20Dismiss.pdf

conclusion that the District's policy is unlawful. Not only was it appropriate for PERB to consider the Attorney General's opinion (and other external authorities) when evaluating the policy's lawfulness, it would have been remiss of PERB *not to*. Moreover, even setting aside the Attorney General's opinion on the policy's constitutionality, PERB was still required to conclude that the policy violates state law—specifically, section 220.5 of the Education Code—because AB 1955 left it with no other option. That the policy *also* violates students' constitutional rights is superfluous.

In short, no constitutional issues are before the Court. The only question is whether PERB was "clearly erroneous" in finding that the District adopted a policy that violates state law. In answering this question, section 220.5 of the Education Code is conclusive. The other authorities holding that the policy is unlawful—the California Attorney General, the California Department of Education, and the San Bernardino County Superior Court—merely provide additional support for PERB's finding.

C. FERPA does not supersede AB 1955

Finally, the District appears to argue that the Federal Educational Records Privacy Act (FERPA) supersedes AB 1955 under the Supremacy Clause of the U.S. Constitution. Under FERPA, parents have a right to access their children's educational records. (20 U.S.C. § 1232g(a)(1)(A).) For that matter, the Education Code likewise gives parents the right "to access to any and all pupil records related to their children that are maintained by school districts or private schools." (Educ. Code § 49069.7.) But AB 1955 does nothing to diminish these rights. It merely provides that school districts may not require their employees to disclose "information related to a pupil's sexual orientation, gender identity, or gender expression . . . unless otherwise required by state or federal law." (Educ. Code § 220.5.) If students' educational records contain information related to their gender identity, parents will be able to view the information by

requesting the records. There is no conflict between AB 1955 and FERPA (or its counterpart in the Education Code).

In a similar vein, the District argues that because FERPA already gives parents the right to view their children's educational records, requiring unit members to forcibly out students is "not a new duty or obligation" at all. (Dist.'s Opening Br. at 15.) This argument, however, rests on the premise that all of the requests that would trigger forced outing under the District's policy would also cause a change to students' educational records. This premise is false. If, for example, 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. Moreover, 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. It would only provide that the parents have access to the relevant record on request. The forced-outing policy thus imposes a duty on educators that FERPA does not.

II. In the alternative, there is ample evidence that the District violated EERA by materially changing bargaining unit members' job duties without giving the Association an opportunity to bargain

An employer commits un unlawful failure to bargain in violation of EERA when it: 1) unilaterally 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. (*West Contra Costa Unified School District* (2023) PERB Dec. No. 2881, at 9.)

The unilateral change framework does not apply when an employer

imposes an *unlawful* term or condition of employment because—as explained above—unlawful terms and conditions are *outside* the scope of representation. Accordingly, because the District's forced-outing policy is unlawful, the Court need not conduct a separate unilateral change analysis. However, because the District argues that its policy *is* lawful and because litigation over AB 1955's constitutionality is ongoing, the Court *should* conduct a unilateral change analysis to make it clear that *even if the policy were lawful*, the District nonetheless violated EERA by unilaterally adopting it, as PERB correctly held.

The District appears to concede that the first and fourth elements of a unilateral change claim are satisfied here: it does not dispute PERB's conclusion that the forced-outing policy assigns bargaining unit members a new job duty or that the policy has a generalized effect on them. Instead, the District argues that: 1) it was not required to bargain its decision to impose the new job duty because the matter is outside the scope of representation; and 2) PERB "failed to consider the District's good-faith attempts to bargain" effects when it determined that the District violated EERA's "notice and an opportunity to bargain" obligation. The District is incorrect on both counts.

A. The new forced-outing requirement falls within the scope of representation

1. There is ample evidence supporting PERB's finding that bargaining unit members would not reasonably expect having to forcibly out students as within their existing set of duties

EERA defines the scope of representation as extending to "matters relating to wages, hours of employment, and other terms and conditions of employment." (Gov. Code § 3543.2(a)(1).) As a general matter, a subject satisfies this standard if it meets the test set out in *Anaheim Union High School District* (1981) PERB Dec. No. 177-E: (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 essential to the school district's mission, including matters of fundamental policy.

For "recurring topics," PERB "follows subject-specific standards that implement the overall scope of representation test," thereby "obviating the need to 'reinvent the wheel'" and apply the *Anaheim* test anew. (*The Accelerated Schools* (2023) PERB Dec. No. 2855, at 15.) "One such standard, relevant here, is that material changes to job assignments and duties *generally fall within the scope of representation*." (*County of Santa Clara* (2023) PERB Dec. No. 2876-M, at 25 (judicial appeal pending on unrelated grounds) (emphasis added); *County of Santa Clara* (2022) PERB Dec. No. 2820-M at 7.) Whether there has been a "material change" in job duties turns on whether a reasonable member of the bargaining unit, "based on all relevant circumstances, including, but not limited to, past practice, training, and job descriptions" would comprehend being required to perform the duty as part of their existing set of duties. (*County of Santa Clara* (2022) PERB Dec. No. 2820-M, at 6.) The *Anaheim* factors are subsumed in this "reasonable comprehension" test, and there was no need for PERB to evaluate them independently.

As a threshold matter, PERB's determination of what the District's educators would "reasonably comprehend" was a *factual* one, based on evidence in the record concerning their existing job duties, past practice, and other circumstances. The determination is therefore "conclusive" and the Court may not overrule it so long as it is supported by a "plausible" evidentiary basis. (Gov. Code § 3542(c); *Boling*, 5 Cal. 5th at 912.) The

ultimate question for the Court is thus whether there is a plausible basis in the record for the conclusion that the District's teachers and counselors would not reasonably comprehend having to forcibly out their students as within their existing set of duties. Not only is there a *plausible* basis for this conclusion, there is *ample* evidence that a reasonable District educator would not expect forced outing to be "just part of the job."

First, the uncontroverted evidence demonstrates that for years it was District policy that educators should not betray the trust of transgender students who ask not to be outed. Until September 6, 2023, Administrative Regulation 5145.3 prohibited employees from making such a disclosure unless doing so was necessary to preserve the student's safety. The District's new policy now requires educators to disclose a student's transgender or gender-nonconforming status to the student's parents *even when doing so is expected to lead directly to child abuse*, thereby *imperiling* the student's safety. (AR vol. 2 at PERB-743–44 (H'g Tr.).) It is self-evident that no reasonable bargaining unit member would expect to be *required* to do something that until now has been *prohibited*.

Second, for the first time the District is requiring teachers and counselors to violate their students' privacy and betray their confidence by disclosing intensely personal information unrelated to the students' educational progress or classroom behavior against their will. If implemented, the rule would erode the trust that these educators have developed with their students, a core aspect of the job. (AR vol. 2 at PERB-753–54 (H'g Tr.).) The District has not pointed to any comparable forced disclosure requirement within educators' existing duties. And again, the new policy requires teachers and counselors to forcibly out their students even when there is credible evidence that doing so would result in "substantial jeopardy to the child's safety." (*Id.* at PERB-869 (Jt. Ex. 2.), PERB-743–44 (H'g Tr.).) Educators serve to support their students, not to

put them in harm's way, and no reasonable teacher or counselor *in the state* would expect their employer to require them to intentionally place a student's physical or mental well-being in jeopardy. Doing so is antithetical to their basic charge.

Third, section 44421 of the Education Code requires the California Commission on Teacher Credentialing" to "privately admonish, publicly reprove, revoke or suspend [an educator's credential] 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." Although the parties dispute the lawfulness of the District's forced-outing policy, they are not debating in a vacuum. The District's governing board embarked on its crusade to forcibly out District students after the Attorney General had already sued another school district for trying the same thing. It has gone on to defy the Department of Education's order that it rescind the policy and to disregard the Legislature's passage of AB 1955. It continues to insist that bargaining unit members place their teaching credentials in jeopardy by engaging in behavior that the State of California has unequivocally declared unlawful. No reasonable public educator would expect their employer to knowingly endanger their ability to continue teaching just to advance a political agenda.

The District asks the Court to disregard all of this evidence supporting PERB's "conclusive" finding that bargaining unit members would not reasonably comprehend having to forcibly out their students. Instead, the District asks the Court to give conclusive weight to evidence that educators are required to disclose *other, unrelated* information to parents. In particular, it points to 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" (AR vol. 2 at PERB-

900 (Ass'n Ex. 1)) and for counselors, which states that they are expected to "consult[] with parents, school and community resources, and students in helping to develop the best educational programs for children" (*id.* at PERB-904 (Ass'n Ex. 2)). But vague "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 on unrelated grounds) (citing *Rio Hondo Community College District* (1982) PERB Dec. No. 279, at 17–18).) And in any event, PERB did not overlook this evidence. Rather, it considered the job descriptions and determined that they were not persuasive:

> Nothing in the existing job descriptions for teachers or counselors could be reasonably comprehended to indicate that they may be required to divulge confidential student information regarding their transgender or gender nonconforming status, and particularly not in a way that violates state law and guidance.

(AR vol. 1 at PERB-665.)

In evaluating bargaining unit members' reasonable comprehension, PERB recognized that not all types of communication are alike and that forcibly outing students differs fundamentally from other types of communication that District educators are already expected to have with parents. As PERB stated, a "student's gender identity or expression is not a recognized metric of academic progress," and the new parental notification requirements are thus "a significant departure from existing parental communication mandates" concerning "academic performance, behavioral problems, and matters posing a threat to student health or safety." (AR vol. 1 at PERB-665.)[6]

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[6] The District cites *Beverly Hills Unified School District* ((2008) PERB Dec. No. 1969) to argue that "communicating certain information to parents falls outside the scope of bargaining." (Dist.'s Opening Br. at 14.) The

In sum, PERB carefully weighed the evidence and concluded that reasonable District educators would not comprehend having to forcibly out their students as within their existing set of duties. The "plausible basis" standard of review prohibits the Court from dislodging PERB's "conclusive" factual finding even if it would tend to reach a different conclusion on this point.

2. There was no need for PERB to evaluate each element of the *Anaheim* test

The District argues that the forced-outing job duty fails the second and third elements of the *Anaheim* test: that the subject of the policy 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 that negotiation would not significantly abridge managerial prerogatives, including matters of fundamental policy essential to the school district's mission. As noted above, however, PERB did not need to consider these elements at all because it applied the

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"communication" at issue in *Beverly Hills*, however, was teachers' provision "to parents, upon request, [of] a copy of their child's examination(s) for review *outside* of the classroom." (*Beverly Hills*, *supra*, at 2 (emphasis added).) This differed from the previous policy, whereby "examinations could only be reviewed *in* the classroom." (*Id.* (emphasis added).) *Beverly Hills* is unavailing for four reasons. First, the new policy in *Beverly Hills* did not require teachers to communicate anything new to parents—it merely specified a new location for the disclosure of exams. Second, it should go without saying that requiring a teacher to provide a copy of an exam (whether inside or outside of the classroom) falls within a teacher's reasonable expectations and is not akin to requiring a teacher to forcibly out a student to their parents. Third, unlike the policy here, the policy in *Beverly Hills* did not impose new work duties on teachers—they were already required to produce a copy of exams. Fourth, the parties in *Beverly Hills* agreed that the policy fell outside the scope of bargaining. The only question was whether the policy had negotiable effects. (*Id.* at 9-11.) *Beverly Hills* therefore has nothing to say about the issues presented here.

"subject-specific standard" for evaluating changes to job duties, as did the ALJ before it. (AR vol. 1 at PERB-662–65, PERB-227–33.) The District never argued to PERB that the ALJ was required to "reinvent the wheel" and thus erred in applying this subject-specific standard, nor did it argue that the forced-outing policy failed to satisfy these elements of the *Anaheim* test. (*Id.* at PERB-498–511.) In fact, in excepting to the ALJ's decision, the District did not cite *Anaheim* at all, instead arguing solely that it did not "materially change" job duties under the subject-specific test. (*Id.*) The District has thus waived this argument and the Court should not consider it.

Even if the District had not waived its *Anaheim* argument, however, there is a plausible basis for PERB's determination that the second and third elements of the *Anaheim* test are satisfied. As PERB correctly observed, the fact that the parties are engaged in protracted litigation over the forced-outing policy demonstrates that the policy is of such concern to both of them that conflict is likely to occur. As to whether collective bargaining is an appropriate means of resolving the conflict, the District argues that "balancing a student's right to privacy in their gender identity and a parent's right to direct the upbringing of their child is a policy question best left to the legislature," not to bargaining. (Dist.'s Opening Br. at 16.) It is baffling that the District would make this argument, given that elsewhere it asks the Court to ignore the Legislature's decision on this precise issue. But setting aside this paradox, collective bargaining would provide a forum for the Association to object to the new forced-outing job duty and to explore alternatives. If the parties reached an impasse on the matter, they could engage in EERA's factfinding process. And if, following factfinding, the District insisted on imposing the new job duty, the Association would be entitled to strike over the issue. This conflict resolution process is appropriate and works the same way for *any* proposed new job duty.

Regarding the third element, the District has pointed to no evidence supporting its assertion that forcibly outing students is essential to its educational mission. It merely points to state policies requiring school districts to provide instruction on the societal contributions of LGBTQ individuals and to facilitate an inclusive educational environment for all students, including transgender students. It is difficult to see how these policies establish that forced outing is a fundamental District prerogative. To the contrary, the forced-outing policy creates a *hostile* environment for transgender students by signaling that they should keep their preferred gender expression secret unless they want their parents to find out.

In summary, there is no basis for the Court either: 1) to apply the *Anaheim* test instead of the subject-specific test for new job duties; or 2) to conclude that the new job duties fail to satisfy the *Anaheim* test even if it did apply.

B. There is ample evidence supporting PERB's finding that the District did not offer to bargain with the Association over the forced-outing policy before adopting it

The fourth element of a unilateral change claim is that the employer reached its decision without first providing adequate advance notice of the proposed change to the exclusive representative and giving the exclusive representative the opportunity to bargain in good faith. Based on the evidence, PERB concluded that the District adopted the forced-outing policy without providing the Association the required notice and an opportunity to bargain.

The District challenges this conclusion. In support of its argument, the District notes that when an employer's decision is not *itself* negotiable but *does* have negotiable *effects*, the question is "whether the employer provided adequate advance notice to allow meaningful negotiations *before implementation*." (*Oakland Unified School District* (2023) PERB Dec. No.

2975, at 18 (emphasis added).) The District claims that its willingness to bargain the effects of the forced-outing policy (only after the Association filed its unfair practice charge) satisfies EERA's requirements because the policy has not yet been implemented. But this argument rests on the false premise that only the *effects* of the District's decision to adopt the policy are negotiable. The former president of the District's governing board admitted at the evidentiary hearing that the policy directly imposes new job duties on bargaining unit members and that it cannot be meaningfully implemented without their involvement. (AR vol. 2 at PERB-814–15 (H'g Tr.).) As discussed above, the District's decision to adopt the policy was *itself* within the scope of representation because the new job duties are not reasonably comprehended as within unit members' existing set of duties.

It is undisputed that the District did not offer to bargain its decision to adopt the forced-outing policy beforehand. In fact, it *continues* to insist that it does not have to bargain with the Association over imposing the forced-outing requirement on unit members. It has only ever been willing to negotiate the effects of its decision—presumably, the protocols and procedures by which unit members are expected to forcibly out their students. The Association 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.[7]

In short, the District's persistent refusal to bargain over its decision

[7] Because the District violated EERA by unilaterally *adopting* the forced-outing policy—and PERB's decision should be upheld on that basis alone—the Court need not inquire whether the District also violated EERA by failing to bargain the *effects* of that adoption. Nonetheless, PERB correctly held that "the District committed a per se violation of its effects bargaining duty because its offer to bargain effects was predicated on an illegal policy, meaning RTPA was correct that it need not engage in the effects bargaining process unless and until the District rescinded the policy." (AR vol. 2 at PERB-670.)

to require bargaining unit members to forcibly out their students satisfies the fourth element of the unilateral change test.

CONCLUSION

For the foregoing reasons, the Court should deny the District's petition for an extraordinary writ.

DATED: August 28, 2025

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CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA RULES OF COURT RULE 8.204(c)(1) AND RULE 8.728(d)

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I certify that the foregoing brief contains approximately **8,246 words**, including footnotes and excluding the caption, Table of Contents, and Table of Authorities.

DATED: August 28, 2025

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PROOF OF SERVICE
COURT OF APPEAL NO. C103184

State of California, County of San Mateo

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Mateo, State of California. My business address is 1705 Murchison Drive, Burlingame, CA 94010.

On August 28, 2025, I served true copies of the following document(s) described as,

REAL PARTY IN INTEREST ROCKLIN TEACHERS PROFESSIONAL ASSOCIATION, CTA/NEA'S RESPONSIVE BRIEF

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BY TRUEFILING NOTICE OF ELECTRONIC FILING: I electronically filed the document with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 28, 2025, at Burlingame, California.

Maria C. Hernandez

MARIA C. HERNADEZ