**STATE OF CALIFORNIA**
**DECISION OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| ASSOCIATED CHINO TEACHERS,<br><br>Charging Party,<br><br>v.<br><br>CHINO VALLEY UNIFIED SCHOOL DISTRICT,<br><br>Respondent. | Case No. LA-CE-6828-E<br><br>PERB Decision No. 3017<br><br>April 20, 2026 |

Appearances: California Teachers Association by Stephanie J. Joseph and Megan Degeneffe, Attorneys, for Associated Chino Teachers; Atkinson, Andelson, Loya, Ruud & Romo by William A. Diedrich and David E. Robinett, Attorneys, for Chino Valley Unified School District.

Before Krantz, Paulson, and Krausse, Members.

DECISION

PAULSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Chino Valley Unified School District to the proposed decision of an administrative law judge (ALJ). The complaint alleged that the District violated the Educational Employment Relations Act (EERA) by: (1) maintaining a regulation that prohibits most displays of flags in a manner that can reasonably be interpreted to prohibit EERA-protected activities; (2) unilaterally adopting that regulation without affording Associated Chino Teachers (ACT) adequate advance notice and opportunity to bargain; (3) unilaterally adopting and implementing a policy requiring employees to notify parents or guardians of student requests to change their gender identity; and (4) unilaterally replacing that policy with a revised policy and

regulation.[1] The proposed decision found that the flag display policy could reasonably be interpreted to infringe on EERA-protected rights, and that the District violated EERA when it unilaterally adopted that policy. The proposed decision further found that the District violated EERA when it unilaterally adopted the student gender identity parental notification policy, and when it adopted portions of the revised policy and regulation.

The exceptions in this matter implicate a narrower range of issues. The District excepted to the proposed decision's finding that the flag display policy tended to interfere with EERA-protected rights, but not to the finding that it violated EERA when it unilaterally adopted that policy. The District also excepted to the finding that it violated EERA when it unilaterally adopted the student gender identity parental notification policy, but no party excepted to any of the proposed decision's findings concerning the District's unilateral adoption of the replacement policy. Those findings not excepted to are not before us and remain binding on the parties. This includes the proposed decision's rescission remedy as to the flag display policy, which remedied both the interference violation and the unilateral change allegations.

For the reasons we describe, we deny the District's exceptions to the proposed decision.

[1] EERA is codified at Government Code section 3540 et seq. Further statutory references are to the Government Code unless noted otherwise.

## FACTUAL AND PROCEDURAL BACKGROUND[2]

### I. The Parties

The District is a public school employer within the meaning of EERA section 3540.1(k). The District's governing board is its five-member Board of Education (BOE). Norm Enfield was the District's Superintendent at all times relevant to this dispute.

ACT is an "employee organization" and an "exclusive representative" within the meaning of EERA sections 3540.1(d) and (e). ACT exclusively represents the District's certificated bargaining unit, which includes classroom teachers, behavioral health and behavioral intervention counselors, nurses, psychologists, and librarians. Some coaches for the District's athletics programs are also certificated employees. Brenda Walker was President of ACT until, on July 1, 2024, Steven Frazer was elected as her successor.

ACT and the District were parties to a Collective Bargaining Agreement (CBA) effective from July 1, 2022 through June 30, 2025.

### II. District Policies and Regulations

The District BOE adopts written policies and administrative regulations defining the District's mission and setting forth rules and standards for implementing that mission.

BOE Bylaw 9310 governs the review, development, adoption, and revision of policies. Proposed policies are presented for a first reading "for information" at a public

[2] We recite only the facts relevant to the issues remaining in dispute.

BOE meeting. After this, the proposed policy may be submitted to a second reading at a subsequent BOE meeting, where it is identified as an “action” item. However, each member of the BOE has the right to raise an “action” item on a first reading and thereby waive the second reading.

Bylaw 9310(a) includes language making any policy, bylaw, or administrative regulation, or any portion thereof, inoperative “if it is found to be in conflict with applicable federal or state law or regulations or court decisions.” This bylaw also includes a severance and savings provision whereby the remainder of a policy will remain in effect if any portion is found to be invalid.

Bylaw 9310(c) provides that either the Superintendent or the BOE may also develop administrative regulations for the District’s operations. Administrative regulations “may describe specific actions to be taken, roles and responsibilities of staff, timelines, and/or other provisions,” and must be consistent with law and BOE policies.

A. Display of Flags on District Property

BOE Policy (BP) 6115 governing Ceremonies and Observances provides:

> “The Board of Education recognizes the importance of having students observe holidays, celebrate events of cultural or historical significance, and acknowledge the contributions of outstanding individuals in society. On days designated by the Board, staff shall provide students with appropriate commemorative exercises so that they may acquire the knowledge, skills, and principles essential for informed, responsible citizenship in a democratic society.”

District Administrative Regulation (AR) 6115 implementing this policy prescribes the time, location, and manner for displaying the flags of the United States and

California. It is undisputed that, prior to the events of this case, District employees displayed various other flags on District property, including in classrooms during instructional time.

1. The District Revises AR 6115

On or about June 9, 2023, the District posted on its website the agenda for its June 15, 2023 BOE meeting. The agenda included an action item proposing revisions to AR 6115 prohibiting the display of flags other than those of the United States and California. The proposed revision added the following to AR 6115:

> "No flag other than the United States of America and State of California may be displayed unless it is a country, state, or United States military flag used for educational purposes within adopted curriculum. Any other flag must be approved by the Superintendent or designee prior to displaying if and only if it is used for purposes of education and only during the related instructional period.
>
> "Flags of higher education institutions shall be permitted as part of the college and career program."

The proposed revisions defined a flag as "a display of distinct color and design used as a symbol, standard, signal, or emblem." The agenda item also included a memorandum from BOE President Sonja Shaw explaining that the revisions were needed "to clearly define expectations related to patriotic exercises, and further ensure that District-owned or leased property, including but not limited to classrooms, [is] not being used as a platform for the display or promotion of political or social policy matters, religious, or personal viewpoints, which are more often than not, deeply rooted individual perspectives/opinions."

There is no dispute that, apart from publicly posting the agenda on June 9, 2023, the District did not provide ACT notice of the proposed revisions to AR 6115. On June 14, 2023, ACT President Walker sent a letter to members of the BOE asserting that the proposed revisions infringed on employee rights under EERA, and that if the BOE adopted the revisions without first giving ACT notice and an opportunity to bargain over their impacts and effects on employees, the District would be violating its duty to bargain in good faith. Superintendent Enfield, who was copied on Walker's letter, responded the same day. Enfield stated that the District was sensitive to ACT's concerns and offered to meet on dates after the June 15, 2023 BOE meeting.

On June 15, 2023, the District BOE approved the proposed revisions to AR 6115 by a 4-to-1 vote.

2. The Parties' Post-adoption Meetings Concerning AR 6115

On June 27, 2023, counsel for ACT, Stephanie Joseph, sent a letter to Enfield reiterating and expanding on the points made by Walker in her June 14, 2023 letter. Counsel asserted that employees could reasonably interpret the AR 6115 revisions as prohibiting the display of union-related insignia and messages. Counsel also asserted that because the revisions set out a prohibition on conduct in the workplace, violation of which could lead to discipline, the District could not unilaterally implement the policy without first meeting and conferring with ACT.

The parties met on June 28, 2023 for a little over one hour. ACT representatives asked about discipline for violating the ban on displaying flags, and counsel for the District, William Diedrich, responded that violations would be addressed according to progressive discipline and the CBA. ACT also asked when the

District would begin enforcing the revised AR 6115. The District gave no firm date but stated that it needed time to train administrators and staff before enforcement. Diedrich also stated that the ban on flags did not implicate union speech or other EERA-protected rights. The meeting ended without agreement on any issues.

On July 3, 2023, Diedrich sent the District's response to ACT's June 27, 2023 letter. According to Diedrich, the District believed that the revised AR 6115 did not infringe on employees' rights under EERA. Diedrich further asserted that the policy did not prohibit union clothing or union buttons and allowed for flags with prior administrative approval. With regard to ACT's unilateral change allegations, Diedrich asserted that notice had been given on June 14, 2023, and that enough time remained for the parties to meet before the District completed training for administrators later in July.

3. District Training on AR 6115

On August 4, 2023, one business day before the beginning of the District's fall semester, the District held an all-day mandatory training for staff regarding District policy changes, including the revisions to AR 6115. Site administrators displayed slides regarding AR 6115 prepared by a law firm representing the District. One slide stated that AR 6115 did not apply to "[p]rotected union speech (i.e. EERA protected communications, such as buttons)," protected student speech such as *Tinker* armbands,[3] or "colorful items that are not flags (such as floor mats, picture frames,

[3] As the proposed decision notes, this was likely a reference to *Tinker v. Des Moines Independent Community School Dist*. (1969) 393 U.S. 503, in which the United States Supreme Court held that armbands worn by students in school to protest the United States' war against Vietnam were constitutionally protected speech, even if

etc.).” The same slide stated that the policy applied to duplications or facsimiles of flags, such as a large photograph of a flag.

Steven Frazer, who was a biology teacher at Ruben S. Ayala High School at the time, attended the training. In his testimony, Frazer recalled confusion and uncertainty among educators over what constitutes a flag, what consequences would ensue for violating the policy, and how the ban on certain materials would impact student perceptions and expectations of the classroom as a safe place to explore ideas. He testified that during the training, after teachers were presented with the text of the revised AR 6115, District administrators instructed teachers to come up with questions and find answers in small groups. Apart from the slides prepared by the District’s attorneys, administrators did not answer teachers’ questions or address their concerns.

Andrea McFarland is a high school English teacher who, at the time of her testimony in this case, had worked 13 years as an English teacher including 10 years with the District at Chino High School. She attended the training on August 4, 2023, and also recalled confusion among teachers about what constituted a flag under AR 6115. District administrators told staff that any flags or symbolism or representation of any kind were now prohibited. McFarland’s impression was that “It just sounded like everything needed to be taken down. And if it just symbolized anything like, for example, a Dodgers flag or just anything [it] needed to be taken

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school officials were concerned they might cause a disturbance on campus. (*Id*. at pp. 505–514.)

down."[4] Teachers attending the August 4, 2023 training were required to sign a document acknowledging that they had been made aware of their obligations under AR 6115.

4. District Enforcement of AR 6115

Witnesses testified about a variety of flags, posters, photos, and other depictions of flags that they were directed to remove pursuant to AR 6115 during the 2023-2024 school year. These included flags of countries other than the United States, professional sports teams, and at least two items that included a rainbow motif. One of the rainbow items was a poster displayed in a high school physics classroom depicting the electromagnetic spectrum with the corresponding wavelengths for the different colors.

Another was a "safe space card" that ACT provided to bargaining unit employees. The card includes a header identifying its sponsor as the Lesbian Gay Bisexual Transgender Queer+ Caucus of the California Teachers Association (CTA), over a background image of color blocks arranged in typical rainbow order (red, orange, yellow, green, blue, violet). On the other side of the card are the words "Safe Space" and the same six colors arranged in horizontal bars. Beneath this, the card states: "This is a safe and inclusive space for lesbian, gay, bisexual, transgender, questioning, intersex, queer[+] students and their allies."

[4] While the District asserts that McFarland was only testifying about AR 6115's impact on flag displays in the classroom, as opposed to other areas on District premises, this distinction is largely irrelevant, as we discuss in sections I and II below.

On November 7, 2023, ACT President Walker sent an e-mail to Associate Superintendent of Human Resources Lea Fellows to "follow up" about a member being instructed to remove the safe space card. Fellows confirmed on November 9, 2023 that "employee(s) have been asked to take down the card," implying more than one instance where this had happened. Walker asked on November 13, 2023 when District administration had told site administrators that employees were not allowed to display the safe space cards "in their rooms or work locations." Fellows responded the next day that the instruction had been given at the principals' meeting on October 16, 2023. Superintendent Enfield also testified that a CTA safe space card with horizontal lines in rainbow colors was a "flag" that would be prohibited by AR 6115.

B. Parental Notification Policies

No party excepted to the proposed decision's finding that, before July 2023, certificated employees were not required to notify parents or guardians of transgender or gender non-conforming conduct, such as student requests to use gender non-conforming nicknames, student disclosures to teachers that they were considering a name or gender change, or other requests that do not implicate changing a student's permanent records. Furthermore, no party excepted to the proposed decision's finding that regardless of whether certificated employees were expected or required to inform District administrators about student requests to change information in official or unofficial records, before July 2023 they were not expected to notify parents or guardians about such requests.

1. Adoption of BP 5020.1

At the same June 15, 2023 meeting during which the District adopted revisions to AR 6115, the BOE considered for first public reading BP 5020.1, proposed to be a new parental notification policy. BP 5020.1 required certificated employees to contact a student's parents or guardians in a variety of circumstances, only some of which are at issue in this case.[5]

BP 5020.1, section 1 required certificated staff, including school counselors, to notify parents or guardians, in writing, within three days if they become aware that a student is requesting to be identified or treated as a gender other than that listed on their birth certificate or in other official records. The policy specified that this would include student requests to use a name that differs from their legal name, except commonly recognized nicknames, or to use pronouns that do not align with the student's gender listed in official records. A student's request to access sex-segregated school programs or activities, including athletic teams and competitions or bathrooms and changing facilities, that do not align with the student's gender listed on official records would also require parental notification.

More broadly, BP 5020.1, section 1 required parental notification for student requests to change any information contained in their official or unofficial records.

BP 5020.1, section 4 required certificated staff to notify parents or guardians within three days of "any incident or complaint of a verbal or physical altercation

[5] ACT did not challenge BP 5020.1 sections 2 and 3, requiring parental notification regarding student injuries and known or suspected suicidal intent or behavior.

involving their child, including bullying by or against their child." Unlike the provisions for parental notification of gender nonconforming conduct, section 4 allowed notification by telephone, mail, e-mail, or conference.

Because the BOE agendized BP 5020.1 "for information" at the June 15, 2023 meeting, no action was taken and no date for future action was specified.

On July 14, Walker discovered the agenda for the upcoming July 20, 2023 BOE meeting on the District's website. The agenda indicated that the BOE intended to vote on BP 5020.1. There is no dispute that, apart from placing the item on the public meeting agenda, the District did not provide notice to ACT that it proposed to create new parental notification policies.

On July 20, 2023, the BOE adopted BP 5020.1 without amendment.

That same day, California Attorney General Rob Bonta sent a letter to Enfield and BOE members advising them that BP 5020.1's provisions requiring disclosure of students' transgender status, gender nonconforming conduct, and/or requests to change information in their official or unofficial school records would, if enacted, likely violate state and federal law, including constitutional rights of privacy and equal protection. Bonta's letter closed by indicating that the Attorney General's Office "will not hesitate to take action as appropriate to vigorously protect students' civil rights."

On July 28, 2023, Walker sent an e-mail to Enfield asserting that in light of Bonta's letter, BP 5020.1 was unlawful and demanding that the District withdraw it and cease implementation. In the alternative, Walker's e-mail to Enfield asserted that BP 5020.1 affected several negotiable matters and demanded that if not withdrawn, the District must meet and negotiate with ACT regarding its impacts and effects on

employee evaluations, discipline, and other subjects ostensibly covered by the CBA, including Article 3.11 (Consultation), Article 4 (District Rights), Article 9 (Personnel File Contents and Inspection), Article 10 (Public Charges), Article 12.18 (Working Conditions), and Article 20 (Miscellaneous).

At some point thereafter not reflected in the record, the Attorney General filed suit on behalf of the State of California against the District in San Bernardino Superior Court. On September 6, 2023, the superior court granted the State's request for a temporary restraining order (TRO) regarding BP 5020.1. The TRO restrained and enjoined the District from "adopting, implementing, enforcing, or otherwise giving effect" to certain portions of BP 5020.1.

Also on September 6, 2023, Enfield sent a message informing District employees of the superior court's decision to grant the requested TRO and place a "short-term hold" on some but not all of BP 5020.1's parental notification provisions. Enfield's message did not identify the sections of BP 5020.1 that had been enjoined. Instead, it advised employees that while awaiting the court's final order, "we anticipate [that] only the parental notifications related to name and pronoun changes, and access to sex-segregated facilities, programs and athletics will be put in abeyance." Enfield's message speculated that all other provisions of the policy were "likely to remain in place."

On October 19, 2023, the superior court issued a preliminary injunction against BP 5020.1 sections 1(a) and 1(b). The court's order left in place BP 5020.1's

provisions requiring parental notification for student requests to change information in official or unofficial records and for all physical or verbal student altercations.[6]

On February 27, 2024, the District's Human Resources Department provided ACT with a "Consult Notification" form indicating that the District was considering adopting BP and AR 5010, a new board policy and associated regulation regarding parental notification. The form referenced CBA sections 3.11.1 and 3.12.1 and stated that consultation includes an opportunity for input, proposals, and recommendations before the District acts.

BP 5010 repeats verbatim provisions of BP 5020.1 requiring parental notification for student requests to change information contained in their official or unofficial records, and of any "verbal or physical altercation" involving a student. However, unlike BP 5020.1, BP 5010 omits any reference to gender identity or gender expression as triggering a parental notification requirement. BP 5010 also includes a new requirement for parental notification of a student's participation in "school-sponsored extracurricular and cocurricular activities or team(s)."

Implementing this policy, AR 5010 creates a two-step process where certificated staff must notify a designated District administrator "immediately" of a student's request to change official or unofficial records; that administrator is then responsible for further steps in the parental notification process. On the other hand, AR 5010 maintained AR 5020.1's one-step direct parental notification process for student altercations.

[6] On October 3, 2024, the superior court issued a final judgment and permanent injunction against BP 5020.1 sections 1(a) and 1(b). The District did not appeal.

On March 3, 2024, ACT sent a letter to Enfield which asserted that the proposed BP and AR 5010 affected unit members' job duties, discipline, evaluations and other conditions of employment; demanded to bargain "the policies and/or their impacts and effects"; asked for information about the proposed policy and regulation; and requested that the District refrain from implementation until the parties had completed negotiations over the proposed changes and their effects. Among the information ACT requested was the District's position regarding whether BP and AR 5010 were intended to replace BP 5020.1, whether BP 5020.1 would be rescinded, and proposed dates of implementation. ACT's information request asked the District to provide responses by the close of business on March 6, 2024. However, the District did not respond before it took up the proposed policy and regulation at its next BOE meeting.

On March 7, 2024, BOE voted 4-1 to adopt BP and AR 5010. As a separate "consent" item on its agenda, BOE decided to "delete" BP 5020.1.

## III. The Proposed Decision

The proposed decision found violations as to ACT's unilateral change allegations and interference allegations pertaining to AR 6115. Relying primarily on our decision in *Rocklin Unified School District* (2025) PERB Decision No. 2939 (*Rocklin*), the proposed decision also sustained the unilateral change allegation regarding the District's adoption of BP 5020.1. The proposed decision partially sustained the unilateral change allegations with respect to the District's passage of BP 5010, finding only some challenged portions of that policy were negotiable. To remedy these violations, the proposed decision ordered the District to cease and desist the

unlawful conduct, make employees whole for any losses caused by the violations, and post a notice. Because rescission of unlawfully adopted policies is generally the appropriate remedy to restore the status quo and ensure a level playing field for future negotiations, the proposed decision ordered the District to rescind the revisions to AR 6115 as well as the offending provisions of BP 5010. However, because the BP 5020.1 was no longer in effect, no rescission was needed to fully remedy the District's unlawful adoption of that policy.

No party filed exceptions to the proposed decision's treatment of BP 5010, and so those issues are not before us. Although the District filed exceptions to the proposed decision's findings related to the AR 6115 interference allegation, it did not contest the unilateral change violation concerning that policy, nor did it object to the proposed rescission remedy.

The District's exceptions concerning BP 5020.1 do not challenge any of the specific findings in the proposed decision supporting the elements of the violation. Instead, the District asserts simply that the proposed decision erred by relying on *Rocklin*, *supra*, PERB Decision No. 2939, because that decision was not final and still subject to judicial review.

## DISCUSSION

When resolving exceptions to a proposed decision, the Board applies a de novo standard of review. (*County of Santa Clara* (2019) PERB Decision No. 2629-M, p. 6.) However, to the extent that a proposed decision has adequately addressed issues raised by certain exceptions, the Board need not further analyze those exceptions.

(*Ibid*.) The Board also need not address alleged errors that would not affect the outcome. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.)

I. EERA Grants Public School Employees the Right to Display Union Insignia

To establish a prima facie interference case, a charging party must show that an employer's conduct tends to or does result in some harm to protected union and/or employee rights. (*City of San Diego* (2020) PERB Decision No. 2747-M, p. 36 (*San Diego*).) A charging party need not establish that the employer acted because of an unlawful motive. (*Claremont Unified School District* (2019) PERB Decision No. 2654, p. 20.)

If a charging party establishes a prima facie case, the burden shifts to the employer. (*San Diego*, *supra*, PERB Decision No. 2747-M, p. 36.) The degree of harm dictates the employer's burden. (*Ibid*.) If the harm is "inherently destructive" of protected rights, the employer must show that the interference results from circumstances beyond its control and that no alternative course of action was available. (*Ibid*.) For conduct that is not inherently destructive, the respondent may attempt to justify its actions based on operational necessity. (*Ibid*.) In such cases, PERB balances the asserted business need against the tendency to harm protected rights; if the tendency to harm outweighs the necessity, PERB finds a violation. (*Ibid*.) Within the category of actions or rules that are not inherently destructive, the stronger the tendency to harm, the greater is the respondent's burden to show its business need was important and that it narrowly tailored its actions or rules to attain that purpose while limiting harm to protected rights as much as possible. (*Id*. at pp. 36-37, fn. 19.) In cases involving employer speech, the accuracy

of the communication is relevant to whether the employer can establish an affirmative defense. (*Id*. at p. 37.)

California's public sector employees, like private sector employees, have a right to display union insignia in the workplace, absent an employer's proof of "special circumstances" justifying a prohibition. (*State of California (Department of Parks and Recreation)* (1993) PERB Decision No. 1026-S, p. 5.) PERB has applied this rule in a wide range of employment contexts. (See, e.g., *East Whittier School District* (2004) PERB Decision No. 1727 [classroom teachers] (*East Whittier*); *County of Sacramento* (2014) PERB Decision No. 2393-M [firefighters]; *Fresno County Superior Court* (2017) PERB Decision No. 2517-C, vacated in part on other grounds by *Fresno County Superior Court* (2019) PERB Decision No. 2517a-C [trial court employees]; *Regents of the University of California* (2018) PERB Decision No. 2616-H [hospital workers in patient care areas] (*Regents*); *Regents of the University of California* (2023) PERB Decision No. 2880-H [skilled trades employees affixing magnets to work trucks].)

Precedent distinguishes employees' right to engage in solicitation and distribution of literature from the "far less disruptive" protected display of union insignia. In the case of solicitation and distribution of literature, "restrictions on employee solicitation, including the distribution of union literature, during *non-work time* and in *non-work areas* are invalid, unless the employer shows that special circumstances make such rules necessary to maintain production or discipline." (*Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, p. 46, emphasis added.) Thus, employer rules prohibiting

such conduct on the employer's property are presumptively unlawful, because they apply when employees are off-duty or are in non-working areas. (*Id.* at p. 45.)

However, employees' presumptive right to display union insignia is not limited to non-working time or to non-work areas. (*Regents*, *supra*, PERB Decision No. 2616-H, pp. 13-14.) Unlike solicitation and distribution of literature, a display of union insignia does not inherently involve an interruption from work. (*Ibid.*) PERB has specifically held that "as a general rule the right to wear union buttons attaches in instructional settings as it does elsewhere." (*East Whittier*, *supra*, PERB Decision No. 1727, p. 11.)

The employer's burden to prove special circumstances is resolved on a case-by-case basis, and requires a concrete, fact-based evidentiary showing justifying a narrowly tailored restriction. (*State of California (Department of Corrections and Rehabilitation)* (2024) PERB Decision No. 2926-S, p. 21.) Typically, relevant factors include whether an insignia or message is likely to negatively affect operations, such as by posing a safety risk, disrupting employee discipline, distracting from work demanding great concentration, or damaging employer property. (*Ibid.*) The specific context of the restriction is also relevant, including industry practices and the parties' past practice. (*Ibid.*) "Thus, a history of insignia or messages in the workplace without resulting incidents can undercut an employer's argument." (*Ibid.*)

The Board has also recognized that a school district has an interest in educating its students in classrooms free from undue distraction and disruption. (*East Whittier*, *supra*, PERB Decision No. 1727, p. 11.) However, the mere possibility of disruption is not sufficient to establish a special circumstance justifying a prohibition

on displaying union insignia in a classroom. Instead, we compare the distraction caused by the display of union insignia "with other distractions permitted or fostered by [a school district] to enhance the sense of community among the students." (*Id.* at pp. 11-12.) As part of this inquiry, we must consider the actual nature of the insignia at issue. (*Id.* at p. 12.) Because some union insignia are more controversial than others, the fact-intensive special circumstances test disfavors one-size-fits-all rules. (*Id.* at pp. 11-12; see also *Regents*, *supra*, PERB Decision No. 2616-H, pp. 14-15.)

II. AR 6115 Tends to Restrict Employees' Protected Right to Display Union Insignia

The District's exceptions are largely devoted to establishing that the proposed decision erred by finding that AR 6115 applied during non-work time or in non-work areas, such as break rooms, teachers' lounges, or parking lots. For the reasons we have just explained, this issue is largely a red herring. Unlike solicitation and distribution of literature, there is no presumption of validity for rules restricting the display of union insignia in the classroom. (*East Whittier*, *supra*, PERB Decision No. 1727, p. 11.) The employer must make a concrete, fact-based showing of special circumstances justifying a narrowly tailored restriction on any display of union insignia. (*Ibid*.) Although the employer's interest in minimizing disruptions to instruction can potentially form the basis for such a showing, the outcome depends on the actual evidence of a display's tendency to distract from education, compared to other permitted displays in the classroom. (*Id.* at pp. 11-12.)

Even so, the proposed decision did not err by concluding that AR 6115 also applies during non-work time and in non-work areas. Attempting to show otherwise, the District downplays the significance of BOE President Shaw's memorandum,

written on District letterhead and sent in her capacity as BOE President to her fellow BOE members in advance of their vote. Although acknowledging that Shaw's memorandum stated that the policy would apply "on District property," and thus not merely in classrooms, the District contends that Shaw was not speaking on behalf of the District as a whole.

We reject the District's argument because it ignores basic statutory interpretation principles. To determine intent, courts first look to the words of the statute because they are the most reliable indicator of legislative intent. (*People v. Lopez* (2003) 31 Cal.4th 1051, 1056.) If the statutory language is clear and unambiguous, the plain meaning of the statute governs. (*Ibid.*) Here, AR 6115 contains no language limiting its scope to classrooms alone. Indeed, its provisions for the display of the flags of the United States and California apply expressly to non-classroom locations on District property.

To the extent that AR 6115's text leaves any ambiguity that it was intended to apply to District property generally, the proposed decision did not err by relying on Shaw's memorandum for further evidence. If a statute's text is susceptible to more than one reasonable construction, courts look to "a variety of extrinsic aids." (*People v. Lopez*, *supra*, 31 Cal.4th 1051, 1056.) This includes the explanatory materials, like committee reports, that are presented to legislators when voting on a bill. As the California Supreme Court has explained, "it is reasonable to infer that those who actually voted on the proposed measure read and considered the materials presented in explanation of it, and that the materials therefore provide some indication of how the measure was understood at the time by those who voted to enact it." (*Hutnick v. U.S.*

*Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7.) While Shaw's memorandum is not strictly a "committee report," it serves a similar function and is the only explanatory material provided in the June 15, 2023 agenda that would aid BOE members in understanding the meaning of the revisions to AR 6115. Shaw's memorandum is clear that the revised policy applied on "District-owned or leased property, including but not limited to classrooms."

Furthermore, the proposed decision did not err when it found that the revised AR 6115's ban on all flags, depictions of flags, symbols, or insignia included union insignia. Again, we look first to AR 6115's text to determine its intended function. Here, there is no doubt that union insignia are included within the policy's extremely broad definition of flags: "A flag is defined as a display of distinct color and design used as a symbol, standard, signal, or emblem." Plainly, this language encompasses union insignia.

The District's exceptions urge us to disregard AR 6115's broad text in favor of the training materials its attorneys prepared after the revisions went into effect. Those materials asserted that the restriction on flags did not apply to "[p]rotected union speech (i.e. EERA protected communications, such as buttons)." Because the text of AR 6115 is clear, by virtue of its extremely broad definitions, there is no cause to resort to extrinsic evidence of its meaning. (*People v. Lopez*, *supra*, 31 Cal.4th 1051, 1056.) Further, the District's training materials were developed post-enactment, and therefore would not constitute controlling evidence of the BOE's intent in voting to approve the revisions to AR 6115. (See *Metropolitan Water Dist. of Southern California v. Imperial Irr. Dist.* (2000) 80 Cal.App.4th 1403, 1437, fn. 17

[post-enrollment materials are not legislative history to be considered by reviewing courts].) But even so, the District enforced AR 6115 against union insignia when it required teachers to remove "safe space" placards that contained union logos.

"In the area of employer rules and directives, PERB does not look favorably on broad, vague directives that might chill lawful speech or other protected conduct." (*Los Angeles Community College District* (2014) PERB Decision No. 2404, p. 6.) We cannot say that AR 6115 is "vague," but only because it is so startlingly broad that it could reasonably encompass any symbolic representation of anything. Irrespective of enforcement, a rule that bans a category of conduct that could include protected activity as well as unprotected activity is unlawful because of this tendency to chill protected activity. (*Santee Elementary School District* (2006) PERB Decision No. 1822, pp. 11-13.) This is the case with the revisions to AR 6115.

The proposed decision found that there was no evidence that the revisions to AR 6115 were intended to ensure safe operations, maintain discipline, protect District property, or prevent disruptive, obscene, violent, or otherwise unprotected speech or unauthorized concerted activity. Nor was there any evidence that the new policy was responsive to any parent, student, employee, or management complaint. The District did not except to these conclusions, only that it was required to show them for the reasons we have already discussed and rejected. Absent a concrete, fact-based evidentiary showing, we cannot find that special circumstances justify AR 6115's restriction on the display of union insignia, whether on District property inside or outside of the classroom.

For these reasons, the District violated EERA section 3543.5(a) by adopting and maintaining revisions to AR 6115 that ban employee displays of union insignia.

III. AR 6115 Unreasonably Restricts Union Access Rights

AR 6115's broad restriction on insignia, including union insignia, also interferes with ACT's organizational rights. As we have repeatedly noted, "harm to employees' protected rights and the harm to employee organizations' protected rights are inseparable in this factual setting." (*County of Sacramento*, *supra*, PERB Decision No. 2393-M, p. 33; accord *State of California (Department of Corrections and Rehabilitation)*, *supra*, PERB Decision No. 2926-S, pp. 20-23.)

A union's right to display insignia in the workplace is rooted, in part, in its right to communicate with the employees it represents. (*County of Sacramento*, *supra*, PERB Decision No. 2393-M, p. 33.) An employer must allow an exclusive representative reasonable access to employer property and other means of communication with bargaining unit employees. (EERA, § 3543.1(b); see generally *County of San Joaquin* (2021) PERB Decision No. 2775-M, pp. 26-39.) An employer bears the burden of proving that a restriction on such rights is: (1) necessary for safe or efficient operations; and (2) narrowly drawn to avoid overbroad, unnecessary interference with protected rights. (*Id*. at pp. 26-27.)

As the proposed decision explained, to the extent ACT wishes to communicate with employees with posters, fliers, newsletters, or other graphic or printed materials containing a "flag," depiction of a flag, or other recognizable symbol or insignia, AR 6115 prohibits it from doing so on bulletin boards, in mailboxes, and by any other means of communication, contrary to EERA section 3543.1(b). For the same reasons

we affirm the proposed decision's reasoning that AR 6115 restricts the display of union insignia, including in non-working areas and during non-working time, we affirm that its maintenance also violates ACT's right of reasonable access to District facilities and to represent employees, thereby violating EERA sections 3543.1(b) and 3543.5(b).

## IV. *Rocklin* is Binding Authority Unless and Until it is Overturned and the Proposed Decision was Correct to Rely on it.

As noted above, the proposed decision relied heavily on the Board's decision in *Rocklin*, *supra*, PERB Decision No. 2939 in its discussion of the negotiability of BP 5020.1. In *Rocklin* we found a parental notification policy that was "substantially similar" to BP 5020.1 was within the scope of negotiation under EERA because it required a change in teachers' job duties, workload, qualifications, or performance standards. (*Id.* at p. 28.) There, teachers were previously permitted to disclose a student's transgender or gender nonconforming identity without the student's consent only when required by law or to preserve the student's physical or mental well-being. (*Ibid.*) The *Rocklin* school district's new policy created new duties that were not "reasonably comprehended" within the teachers' prior assignments, and were thus negotiable. (*Id.* at p. 30.)[7]

Even when an employer has no obligation to bargain over a particular decision, it nonetheless must provide notice and an opportunity to bargain in good faith over any

[7] We also found that the *Rocklin* parental notification policy was negotiable under the Board's longstanding test for unenumerated subjects of bargaining established by *Anaheim Union High School District* (1981) PERB Decision No. 177 (the "*Anaheim* framework"). (*Rocklin*, *supra*, PERB Decision No. 2939, p. 31.)

reasonably foreseeable effects the decision may have on matters within the scope of representation. (*County of Santa Clara* (2019) PERB Decision No. 2680-M, pp. 11-12.) However, matters prohibited by external law or public policy may not be negotiated or included in a collective bargaining agreement, even if the parties were to agree to do so. (*City of San* Jose (2013) PERB Decision No. 2341-M, p. 44.) The school district in *Rocklin* sought to negotiate with its teachers' union over the implementation of its policy, but the union refused unless the district first rescinded the policy. (*Rocklin*, *supra*, PERB Decision No. 2939, p. 35.) We found that because the parental notification policy "violate[d] the California Constitution and multiple state laws, including the SAFETY Act,[8] by singling out transgender and gender nonconforming students for different, adverse treatment that puts them at risk of harm," any proposals the school district could make regarding implementation would be illegal. (*Id.* at pp. 35, 36.) Thus, under the unusual circumstances of the case, even though the school district was willing to negotiate over implementation, it would have been impossible to bargain in good faith. (*Ibid.*)

The District's exceptions challenge the proposed decision's reliance on these holdings because *Rocklin* was pending judicial review before the California Court of Appeal, Third Appellate District at the time. However, since then, on October 31, 2025, the Court of Appeal summarily denied the school district's petition for writ of extraordinary relief. Then, on January 14, 2026, the California Supreme Court denied the school district's petition for review.

[8] Statutes 2024, chapter 95.

In fact, "*all* decisions and orders issued by the Board itself are precedential and may be cited in any matter pending before a Board agent or the Board itself," unless they are expressly designated otherwise. (PERB Reg. 32320(c) [emphasis added].)[9] That a recent decision is subject to judicial review is of no consequence to this rule. PERB's practice of identifying decisions that have been appealed on its website is a service to its constituents and legal researchers and does not constitute a determination that the decision is non-precedential under PERB Regulation 32320.

The only authority the District cites in support of its claim that decisions pending judicial review may not be cited as precedent are two proposed decisions by administrative law judges. These proposed decisions, which were never adopted by the Board itself, are not precedential, unlike *Rocklin*. (PERB Reg. 32215.)

The District also points to unsettled litigation surrounding parental notifications more generally. These issues are not before us. We note, however, that even if parental notification policies like the District's are eventually found lawful, that would not affect the outcome of this case. Here, the proposed decision found that BP 5020.1 imposed new duties on certificated employees that were not reasonably comprehended within existing job duties. Thus, the District was not privileged to adopt those policies without first bargaining with ACT in good faith to agreement or an overall impasse in negotiations and all applicable impasse resolution procedures. (*Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 9.) The District filed no exceptions to these findings; in any event, for the same reasons the ALJ

[9] PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.

explained, we would find that the District failed to bargain in good faith even if BP 5020.1 had been otherwise lawful. Further, because the District unilaterally replaced BP 5020.1 with a new policy that is no longer in dispute, no party seeks negotiations over its implementation.

For these reasons, we deny the District's exceptions objecting to the proposed decision's reliance on *Rocklin*, *supra*, PERB Decision No. 2939. The proposed decision correctly applied the Board's precedent.

V. Remedy

PERB has broad powers to remedy unfair practices, including the power to direct an offending party to cease and desist its unlawful conduct and to take such affirmative action, including but not limited to reinstatement of employees with or without back pay, as the Board deems necessary to effectuate the policies and purposes of EERA. (Gov. Code, §§ 3541.3, 3541.5(c); *Bellflower Unified School District* (2022) PERB Decision No. 2544a, pp. 25-26, 44; *City of Pasadena* (2014) PERB Order No. Ad-406-M, p. 12.) In addition to a cease-and-desist order and notice posting, an appropriate remedy for employer interference with protected rights may include restoration of the prior status quo, including reinstatement of employees with or without back pay, as PERB deems necessary to effectuate the policies of EERA. (EERA, § 3541.5(c); *Santa Monica Community College District v. Public Employment Relations Bd.* (1980) 112 Cal.App.3d 684, 691–692; *Contra Costa County Fire Protection District* (2019) PERB Decision No. 2632-M, pp. 57-58.) A return to the prior status quo and make-whole relief are also necessary to remedy unlawful unilateral changes and ensure that future negotiations proceed on a level playing field. (*City of*

*San Diego* (2015) PERB Decision No. 2464-M, p. 40; *County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 24.)

As we have already noted, much of the ALJ's proposed remedy is not before us. Perhaps most significantly, the ALJ's proposed order directed the District to rescind AR 6115 based on both the conclusion that it interfered with employee and employee organization rights, and that its unilateral enactment violated the District's duty to bargain in good faith to impasse or agreement with ACT. Although the District did not except to the unilateral change finding, our discussion in section II above further illustrates why the matter was appropriate for bargaining. Under the "*Anaheim* framework," a non-enumerated issue falls within the scope of representation if: (1) it is logically and reasonably related to wages, hours, or an enumerated term and condition of employment (i.e., it involves the employment relationship); (2) the subject is of such concern to management and employees that conflict is likely to occur, and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict; and (3) the employer's obligation to negotiate would not significantly abridge its freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the employer's mission. (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 857-858.) In certain applications, AR 6115 amounts to a dress code, which is a mandatory subject of bargaining. (*Trustees of the California State University* (2001) PERB Decision No. 1451-H, adopting proposed decision at pp. 7-8.) AR 6115 is also negotiable because it affects ACT's ability to communicate with bargaining unit members during non-working time and in non-work areas. (*Regents of the University*

*of California* (2012) PERB Decision No. 2300-H, pp. 20-27.) Furthermore, the uncontested evidence showed widespread confusion over AR 6115's breadth, and that employees could face discipline for violations. If the District's position is that it never intended to penalize protected activity, negotiations could have proven it.

Having denied the District's exceptions, we affirm the ALJ's proposed remedial order.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, the Public Employment Relations Board finds that Chino Valley Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code sections 3543.5(a) and (b) by adopting and maintaining revisions to Administrative Regulation (AR) 6115, "Ceremonies and Observances," which interfere with employee and employee organization rights. The District also violated its duty to meet and negotiate in good faith and derivatively interfered with protected rights, in violation of EERA sections 3543.5(c), (a) and (b), by: (1) adopting the above-referenced revisions to AR 6115 without providing reasonable notice and meaningful opportunity for bargaining to Associated Chino Teachers, CTA/NEA (ACT), which is the exclusive representative of the District's certificated employees; (2) adopting Board Policy (BP) 5020.1 containing parental notification provisions without providing reasonable notice and meaningful opportunity for bargaining to ACT; and (3) adopting BP 5010(c) section 5 and AR 5010(e), without providing reasonable notice and meaningful opportunity for bargaining to ACT.

Pursuant to sections 3541.3 and 3541.5 of EERA, it is hereby ORDERED that the District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Adopting, revising, and/or maintaining governing board policies and/or administrative regulations that employees and ACT could reasonably interpret as prohibiting protected activities under EERA.

2. Adopting or revising governing board policies and/or administrative regulations affecting certificated employees' terms and conditions of employment without providing ACT with reasonable notice and meaningful opportunity for bargaining.

3. Interfering with employees' right to be represented by ACT.

4. Denying ACT the right to represent its bargaining unit employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS TO EFFECTUATE THE POLICIES OF EERA:

1. Rescind all revisions to AR 6115 adopted by the District on June 15, 2023 and the provisions in BP 5010(c) section 5 and AR 5010(e) requiring certificated employees to notify parents and guardians "of any incident or complaint of a verbal or physical altercation involving their child . . . within three days of the occurrence."

2. Upon ACT's request, meet and negotiate in good faith with ACT concerning the adoption or revision of board policies and/or administrative regulations affecting certificated employees' terms and conditions of employment.

3. Within 10 workdays after this decision is no longer subject to appeal, post at all work locations where notices to certificated employees of the

District are posted, copies of the Notice attached hereto as an Appendix. An authorized agent of the District must sign the Notice, indicating that the District will comply with the terms of this Order. The District shall maintain the posting for a period of 30 consecutive workdays. The District shall take reasonable steps to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material. In addition to physically posting this Notice, the District shall communicate it by electronic message, intranet, internet site, and other electronic means the District uses to communicate with certificated employees.[10]

4. Notify OGC of the actions the District has taken to follow this Order by providing written reports as directed by OGC and serving such reports on ACT.

Members Krantz and Krausse joined in this Decision.

[10] Either party may ask PERB's Office of the General Counsel (OGC) to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice. Upon receipt of such a request, OGC shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice.

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CE-6828-E, *Associated Chino Teachers v. Chino Valley Unified School District*, in which all parties had the right to participate, the Public Employment Relations Board has found that the Chino Valley Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq. when it adopted revisions to Administrative Regulation (AR) 6115, "Ceremonies and Observances," that interfere with protected employee and employee organization activities. The District further violated EERA when it failed and refused to negotiate in good faith with Associated Chino Teachers, CTA/NEA (ACT) to agreement or impasse before (1) adopting the above-referenced revisions to AR 6115; (2) adopting Board Policy (BP) 5020.1, containing parental notification provisions; and (3) adopting BP 5010(c) section 5 and AR 5010(e).

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

A. CEASE AND DESIST FROM:

1. Adopting, revising, and/or maintaining governing board policies and/or administrative regulations that employees and ACT could reasonably interpret as prohibiting protected activities under EERA.

2. Adopting or revising governing board policies and/or administrative regulations affecting certificated employees' terms and conditions of employment without providing ACT with reasonable notice and meaningful opportunity for bargaining.

3. Interfering with ACT's right to represent employees.

4. Denying ACT the right to represent bargaining unit members.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS TO EFFECTUATE THE POLICIES OF EERA:

1. Rescind all revisions to AR 6115 adopted by the District on June 15, 2023 and the provisions in BP 5010(c) section 5 and AR 5010(e) requiring certificated employees to notify parents and guardians "of any incident or complaint of

a verbal or physical altercation involving their child . . . within three days of the occurrence."

2. Upon ACT's request, meet and negotiate in good faith with ACT concerning the adoption or revision of board policies and/or administrative regulations affecting certificated employees' terms and conditions of employment.

Dated: _____ CHINO VALLEY UNIFIED SCHOOL DISTRICT

By: _____
Authorized Agent

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