



PERB
California Public Employment
Relations Board

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PERB Decision No. HO-U-1876

July 1, 2026

Re: *Torrance Teachers Association v. Torrance Unified School District*
Case No. LA-CE-6941-E

Dear Parties:

No exceptions have been filed in the above-referenced matter pursuant to California Code of Regulations, title 8, section 32300. As provided in section 32305, the proposed decision of the Board agent is HEREBY DECLARED FINAL, effective July 1, 2026.

This decision is binding on the parties to this case. However, since the decision was not expressly adopted by the Board itself, it may not be cited in other cases as precedent.

Public Employment Relations Board

By

A handwritten signature in cursive script, appearing to read "J. Seisa".

Joseph Seisa
Appeals Assistant



**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD**

TORRANCE TEACHERS ASSOCIATION,
CTA/NEA,

Charging Party,

v.

TORRANCE UNIFIED SCHOOL DISTRICT,

Respondent.

UNFAIR PRACTICE
CASE NO. LA-CE-6941-E

PROPOSED DECISION
(June 10, 2026)

**PERB Decision No. HO-U-1876
July 1, 2026**

Appearances: California Teachers Association, CTA/NEA by Stephanie J. Joseph, Staff Counsel, for Torrance Teachers Association, CTA/NEA; Fagen, Friedman & Fulfroost by Joshua Stevens, Attorney, for Torrance Unified School District.

Before Scott Miller, Administrative Law Judge.

INTRODUCTION

A complaint issued by the Public Employment Relations Board (PERB or Board) on behalf of Charging Party Torrance Teachers Association, CTA/NEA (Association), alleges in relevant part that Respondent Torrance Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by: (1) prohibiting Association-represented employee Ronald Ambro from contacting employees, students, and/or their parents regarding the District's investigation of Ambro; (2) preventing the Association from effectively representing Ambro and/or interfering with Ambro's right to union representation by, *inter alia*, delaying or refusing to disclose the scope or subject of the investigation before questioning Ambro; (3) failing and refusing to meet and negotiate in good faith by not timely responding to an

¹ EERA is codified at Government Code section 3540 et seq.

Association request for information about the subject and scope of the District's investigation; and (4) imposing reprisals and/or discriminating against Ambro because of protected activity and/or denying the Association's right to represent employees by: (a) issuing a notice of unprofessional conduct accusing Ambro of insubordination for exercising his right to effective representation at an investigative meeting; (b) issuing a notice of intent to terminate Ambro; (c) issuing a notice of intent to suspend Ambro for 15 days; (d) involuntarily transferring Ambro to a new school site; and (e) limiting Ambro's ability to remove his personal effects from his former classroom and disposing of his lesson plans, curricula, and other personal property. The District admits some material facts, denies others, denies liability, and asserts affirmative defenses.

For reasons explained below, the above allegations are sustained. Also sustained is an unalleged but closely related theory of liability raised in the Association's opening statement that the District imposed a reprisal against Ambro by issuing a June 14, 2024 investigative report that accused Ambro of refusing to attend or cooperate with investigative meetings that the District had cancelled. All other allegations in the Complaint and underlying unfair practice charge are dismissed.

PROCEDURAL HISTORY

On October 1, 2024, the Association filed an unfair practice charge, and on November 14, 2024, the District filed a position statement. On February 21, 2025,

PERB's Office of the General Counsel issued a Complaint whose relevant allegations are described above.² On March 13, 2025, the District filed an Answer to Complaint.

Following notice, a formal evidentiary hearing was held by videoconference on June 5, 6 and 17, 2025. Both parties were represented by counsel and had the opportunity to examine and cross-examine witnesses, to present documentary and other evidence, and to be heard on the issues. Without objection, I took administrative notice of the contents of PERB's case file in this matter.

On September 2, 2025, the parties filed post-hearing briefs, and the matter was deemed fully submitted for proposed decision.

FINDINGS OF FACT

A. Parties and Personal Jurisdiction

The District is a public school employer within the meaning of EERA section 3540.1, subdivision (k). At all times relevant, Dr. Timothy Stowe was the District's Superintendent, and Carrie Skoll was the Human Resources Director. Since January 8, 2024, Julio Hernandez has been the District's Chief Personnel Officer. District operations include J.H. Hull Middle School (Hull) and West High School. Jacquelyn Ryan and Kim Lee were Hull's Principal and Assistant Principal, respectively, and Jena Murata was the Principal at West High School.

The Association is an exclusive representative within the meaning of EERA section 3540.1, subdivision (e). The Association represents a bargaining unit

² The Association's UPC and PERB's Complaint alleged several unfair practices involving other employees besides Ambro. The Association withdrew these allegations at or before the hearing, and they are not at issue.

comprised of regular classroom teachers and other certificated employees of the District. At all times relevant, Julie Shankle was the Association's Executive Director and a Regional UniServ Staff Person. The District and the Association are parties to a collective bargaining agreement (CBA) containing terms and conditions of employment for certificated employees for the period from July 1, 2023 through June 30, 2026.

B. Causes and Procedures for Discipline and/or Dismissal

The causes and procedures for discipline and dismissal of certificated employees are governed by the Education Code, District policies and regulations,³ and the CBA. CBA Article XVIII, section A authorizes "intermediate discipline," including suspensions without pay and other actions "short of disciplinary suspension to correct or respond to an employee's conduct," but "only upon a showing of just cause." Section B specifies that "[p]rogressive discipline may include but need not be limited to verbal warnings, written warnings and letters of reprimand." Shankle testified that because this and other provisions of the CBA governing "progressive discipline" do not specifically mention Notices of Unprofessional Conduct (NUCs),⁴ they are "outside of the contract."

CBA Article XVIII, section E reserves to the District the rights specified above to pursue dismissal proceedings and/or an immediate suspension pending dismissal under

³ The District has board policies (BPs) and administrative regulations (ARs) containing professional standards and other substantive rules of conduct that are enforceable through discipline, up to and including termination.

⁴ "Unprofessional conduct" is a statutory term encompassing a wide variety of offenses. Before pursuing discipline or dismissal of a permanent employee for unprofessional conduct, the Education Code generally requires 45 days' written notice "specifying the nature thereof with such specific instances of behavior and with such

the Education Code, while section G includes the notice, appeal rights, and other procedures for suspension without pay for up to 15 days. Section G requires that such suspensions must be “for just cause” and states that “[t]he principles of progressive discipline shall be applicable unless the circumstances, as determined by the District, make prior warnings unnecessary.”

Section G requires the District to provide concurrent notice to the unit member and the Association of a proposed suspension containing “a specific statement of the act(s), infraction(s), or omission(s) upon which the disciplinary action is based, the proposed length of the unpaid suspension, and a statement of any rules, regulations, or statutes the unit member is alleged to have violated.” It also specifies the timelines and procedures for appeals.

C. Other “Administrative” and Discipline-Adjacent Measures

The CBA also provides for “administrative” actions, including paid leave and involuntary transfer, that may precede or supplement disciplinary actions.

1. Paid Administrative Leave Pending Investigation

Article XVIII, section H provides that the “intermediate discipline” provisions of the CBA “shall in no way interfere with the right of the District to remove a unit member from the work location to which he/she is assigned, to reassign a unit member and/or place the unit member on paid leave.” Otherwise, the CBA does not mention this right nor specify its scope, though it appears that the District may, in appropriate

particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge.” (Ed. Code, § 44938, subd. (a).)

circumstances, place an employee on paid administrative leave while investigating allegations of serious wrongdoing.

Hernandez is primarily responsible for investigating employees suspected of wrongdoing. Skoll, other administrators, and legal counsel may also assist Hernandez. During a workplace investigation, Hernandez interviews witnesses, gathers evidence from documents or video footage, and if necessary, resolves conflicting accounts. Hernandez testified that he avoids reaching any conclusions about employee guilt until all the relevant evidence has been gathered and vetted. Hernandez testified, and the Association appears to agree, that the appropriate standard of proof for an investigation resulting in disciplinary action is generally the preponderance of the evidence or “more likely than not.” Article VIII of the CBA governing employee personnel files requires the District to “make a reasonable effort to verify the accuracy of negative or derogatory information or material received” and a “reasonable effort to resolve the issues raised by such material” before placing it in a unit member’s personnel file.

Upon concluding an investigation, Hernandez issues an investigative report and letter of finding, which outlines the allegations and the evidence considered and advises the employee of potential consequences. Hernandez testified that such reports identify all relevant facts discovered during the investigation, including any exculpatory evidence, and any allegations that are unsubstantiated. Hernandez testified that to protect employee rights, he considers it important to revise the finding(s) and reissue an investigative report to reflect any new information that would affect the outcome.

Hernandez had a role in recommending or deciding each disciplinary action in this case. The District's Superintendent or governing board had ultimate authority for Ambro's dismissal but relied on Hernandez's investigation and Letter of Finding.

2. Involuntary or "Administrative" Transfer

CBA Article IX, section A.3 defines a "transfer" as "any District action which results in the movement of unit members from one site to another." Article IX, Section G allows for involuntary or "administrative" transfer of a unit member from one site to another "when it is determined by the site administrator(s) and the Human Resources Department and approved by the Superintendent that such a change will benefit and improve the educational program." The District must provide a unit member with notice "that such a transfer is being initiated," the reasons for the proposed transfer, and, upon request, "an opportunity to meet with the recommending administrator(s) to discuss the proposed transfer."

D. Ambro's Employment History with the District

Ambro is a certificated employee of the District and a public school employee within the meaning of EERA section 3540.1, subdivision (j). From September 1999 until August 2024, Ambro taught in the Industrial Arts Department (which at some point was renamed Career Technical Education) at Hull. Since his involuntary transfer in August 2024 and continuing to the time of the PERB hearing, he has taught woodworking, vocational cabinetry, and millwork at West High School. Ambro described himself as a "member in good standing" and has been represented by the Association in various workplace matters but has never served as an Association officer or representative.

E. Ambro's Classroom, Storeroom, and Use of District Equipment at Hull

1. Applicable Safety Standards

Until the events in question, Ambro taught in a classroom at Hull equipped with various fixed and hand-held drills, saws, lathes, and other power tools used by Ambro and students as part of the curriculum. To obtain his degree and teaching credential, Ambro was required to complete safety courses and to adhere to District safety standards. He also required his students to pass safety tests at the beginning of every semester. Although Ambro's courses required middle school students to use sharp handheld tools, including a needle for carving and detailing ceramics, Ambro testified that during his tenure with the District he has "never had an incident in any of [his] classrooms [requiring] anything more than a little bit of salve and a Band-Aid."

Ambro's classes also regularly use plastic syringes to apply glue, glaze, and epoxies in woodworking and to illustrate basic principles of hydraulics and pneumatics. Although similar to those used in medical settings, the syringes used in Ambro's classes contained no hypodermic needles. Ambro testified without contradiction that he has never used or kept hypodermic needles in his classroom.

2. Ambro's Use and Replacement of Expendable Classroom Supplies

Another item used in Ambro's classes was a Dremel 3000 tool kit, which includes a handheld motor with various attachments for drilling, cutting, and polishing materials. The handheld motor generally lasts for several years, while the attachments are considered "expendable," meaning they must be replaced more frequently due to normal wear-and-tear. During his tenure at Hull, Ambro used a District-issued credit card to purchase drill bits, saw blades, sandpaper, and other

“expendable” items. When Ambro needed classroom supplies, he retrieved the credit card from Assistant Principal Lee, purchased the items at a local store, and then returned the credit card to Lee along with a receipt. Before the events in question, there was no evidence that Ambro had ever been audited, investigated, or disciplined for neglect or misappropriation of District property or for misusing the credit card.

3. Ownership and Use of the Electronic Device in Ambro’s Classroom

Among the disputed factual issues in this case is whether an electronic device in Ambro’s classroom belonged to Ambro or the District. Ambro’s classroom was equipped with District-owned computers used by students for researching and designing projects. Ryan testified that at one time, the District had used “tower”-style computers, which required a separate monitor, but that it had since replaced this design with Surface Pros, a laptop-style computer.

Ambro did not use a District-owned computer for work. Ambro testified that he used his own computer, which he described as an ASUS brand “all-in-one unit,” meaning that the computer hard drive is encased within the monitor. He explained that he prefers this design because its larger screen facilitates sharing information with students, and because the larger, ergonomically designed keyboard makes typing easier than using a laptop computer. Because the District presented no competent and reliable contrary evidence, I credit Ambro’s testimony that he owned the ASUS “all-in-one” device and used it for both personal use and his teaching duties.⁵

⁵ As detailed below, Ryan admitted that she did not know whether Ambro ever had a District-owned computer. Hernandez similarly testified that the District’s Purchasing Department had no consistent practice of tagging computers to identify them as District property. Hernandez testified that Gil Mara, the District’s Chief Technology Officer, informed him that the District had purchased “those types of

4. Adjacent Storeroom and Refrigerator

In the back of Ambro's classroom were double doors leading to a storeroom. In addition to supplies, the storeroom had a refrigerator, where Ambro kept his lunch, snacks, and beverages. The refrigerator door has no lock or other security device, though the double doors leading to the storeroom were equipped with a lock. Ambro testified that he did not allow students to enter the supply room without permission and that the double doors were locked when he was not present.

F. Ambro's Prior Discipline and Coaching Memoranda

Ambro's most recent evaluation, dated January 29, 2020, described him as a "great" and "outstanding" teacher. However, Ambro has since received discipline and coaching for: (1) unprofessional and/or disrespectful conduct toward students, and (2) failure to attend staff and Professional Learning Committee or PLC meetings.⁶

1. Prior Discipline Regarding Ambro's Interactions with Students

On September 28, 2023, Ambro received a NUC for failing to demonstrate a positive and professional attitude when interacting with students. According to the

computers" at some point. However, neither Mara nor any other witness with personal knowledge testified on the subject, and no documentation or other reliable evidence was offered to corroborate the truth of Hernandez's hearsay testimony. Accordingly, there was insufficient evidence to find that the ASUS device in Ambro's classroom was District property. (PERB Reg. 32176.) PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

⁶ Per Ryan, staff meetings provide information applicable to all employees, while PLC meetings are limited to teachers. Although the Association contends that the CBA limits when such meetings can occur, it does not dispute that Ambro was required to attend both staff and PLC meetings.

NUC, Ambro compared a student to a monkey and joked that two students looked like they were conducting a drug deal.

On December 21, 2023, Ambro received a NUC and Notice of Proposed 5-Day Suspension Without Pay for grabbing and pulling a student's arm from a vise. When the student protested that Ambro had no right to touch him, Ambro asserted that he was trying to prevent the student from damaging the equipment. Following an appeal, the proposed five-day suspension was rescinded, and Ambro was required instead to complete a 60-day "Support Plan" with training on classroom management and de-escalation techniques. On January 19, 2024, Ambro, with Shankle as his representative, met with Ryan and Hernandez regarding the Support Plan. At this meeting, Hernandez advised Ambro and Shankle that Ambro needed to "stay off [Hernandez's] radar the rest of the year and everything would be okay."

2. Failure to Attend or Timely Attend Staff or PLC Meetings

Before the events giving rise to this dispute, Ambro also received two memos for failure to attend or timely attend staff or PLC meetings. On September 13, 2023, Ryan issued Ambro a coaching memo for missing a staff meeting earlier that day, despite repeated notice of the meeting through various means.

On February 28, 2024, Lee issued Ambro a conference summary memorandum for his "unprofessional behavior" of arriving approximately one hour late to a PLC meeting the previous day after receiving notice of these meetings "multiple times." Lee's memo directed Ambro to attend all PLC meetings on time and for the entire meeting. Ambro admitted that he knew of the PLC meeting schedule. Lee's memo was not placed in Ambro's personnel file but stated that his failure to comply with Lee's

directions would result in a written warning that would be placed in his personnel file. Ryan testified that she knew of Lee's memo and agreed with its contents. Ryan also testified that the purpose of progressive discipline is to ensure that employees understand the District's expectations and have an opportunity to correct their behavior before receiving more serious discipline.

G. The District Initiates its Investigation of Ambro

1. Ambro Misses a PLC Meeting Scheduled for April 16, 2024

Hull administration had scheduled a staff meeting for April 16, 2024 from 7:45 a.m. to 8:10 a.m., followed immediately by a PLC meeting. Ambro missed the staff meeting but attended the PLC meeting. Ambro admitted that he had received notice of both meetings and that he was in his classroom on that date before 7:45 a.m. Ambro testified that he missed the staff meeting because he was in his classroom waiting for an electrician to repair the switch on a table saw. The previous day, Ambro had submitted a repair request to Sheila Stafford, the staff person at Hull responsible for scheduling such visits. According to Ambro, Stafford told him that an electrician would come to Ambro's classroom the following morning. Ambro testified, without contradiction, that an electrician came on the morning of April 16 for the repair.⁷

2. The District Places Ambro on Paid Administrative Leave

Shortly after the meeting, Ryan contacted Hernandez about Ambro's absence from the staff meeting and to get "clarification on next steps." Hernandez decided to

⁷ District disciplinary documents alleged that there was no work order for an electrician on that date. However, no independent evidence corroborated this contention, and the District does not urge it in its post-hearing brief. Ambro testified without contradiction that he is not responsible for creating work orders.

put Ambro on administrative leave. Ryan testified that Hernandez agreed that disciplinary action was needed to address an “accumulation of a bunch of events.” Hernandez testified that because Ambro “had been written up at least three times for direct insubordination” for not attending meetings, administrative leave was “needed,” so that administrators “could have a conversation with him again” about his obligations to students and the District.⁸

At about 11:00 a.m., Ryan and Lee instructed Ambro to report to Human Resources immediately. When Ambro arrived at Human Resources, Hernandez informed him that he was being placed on paid administrative leave pending an investigation. Hernandez instructed Ambro not to discuss the investigation with anyone other than his Association representative. Hernandez testified that Ambro became “argumentative” and “quite agitated” and commented that this was “bullshit” or “fucking bullshit.”⁹ Ambro asked about the subject of the investigation. It is unclear how or whether Hernandez answered this question, though it is undisputed that in a text message sent later that day, he informed Shankle that Ambro was being investigated “for persistent violation” of unspecified policies and regulations.¹⁰

⁸ It is unknown whether Ryan advised Hernandez of Lee’s conference summary memo during this conversation. Ryan and Hernandez also gave conflicting testimony on whether the administrative leave was itself disciplinary. I consider it unnecessary to resolve this conflict.

⁹ Ambro did not deny cursing at this meeting.

¹⁰ Although not disclosed to Shankle, as detailed below, by this time, Hernandez had expanded the investigation to encompass theft of a computer allegedly missing from Ambro’s classroom.

3. The District's Notice of Paid Administrative Leave

During the April 16 meeting, Hernandez handed Ambro a one-page Notice of Paid Administrative Leave (PAL Notice) that directed Ambro to turn in all keys and other District property immediately; to “stay away from District property, including all campuses, and school sponsored events” without express written consent from Hernandez; and to provide Hernandez with a telephone number and a personal e-mail address where the District could contact Ambro while on leave. Several aspects of this document are at issue in this case.

a. No-Contact Provisions

The PAL Notice included two provisions regarding Ambro's communications with others and what topics could be discussed during his administrative leave. Paragraph 3 provided that except for communications with Hernandez or his union representative, Ambro was “not to telephone, text, email or otherwise contact employees, students, and/or parents of the District.” (Underlining in original.) Paragraph 5 similarly stated: “You are directed not to discuss any aspects of why you are on paid administrative leave with anyone other than your union representative.” The PAL Notice advised Ambro that failure to comply with any of its directives may be considered insubordination and could result in discipline, including dismissal. Hernandez testified that Paragraph 3 was necessary “to ensure the integrity of the investigation” and for protecting the District and Ambro in “what becomes public.” It was undisputed that the District issued identical or similar no-contact directives to other employees placed on administrative leave pending an investigation. The record includes no justification regarding the separate no-contact provision in Paragraph 5.

b. Dispute over Ambro's Computer

The provisions in the PAL Notice denying Ambro access to his classroom were also a source of controversy. The document stated that Hernandez would arrange a mutually agreeable time and place for Ambro to pick up any personal possessions that may be on District property. During the April 16 meeting, Ambro advised Hernandez that he had a computer and other items in the classroom and repeatedly asked when he would be allowed to retrieve these items. According to Hernandez, Ambro "made a very adamant point that he wanted to get his computer from his classroom."¹¹ Hernandez denied this request and reiterated that he would allow Ambro to access his classroom later but gave no specific date. Ambro then left Hernandez's office.

Ryan and Hernandez testified that the reason for placing Ambro on administrative leave was his repeated tardiness or non-attendance at staff or PLC meetings. At that time, Ambro was not suspected of theft or any other wrongdoing involving his own or any other computer. Hernandez admitted that he had no knowledge of whether the District had ever issued a computer to Ambro, nor any information to rebut Ambro's claim that a computer in the classroom belonged to Ambro. Nevertheless, Hernandez testified that he became concerned about allowing Ambro into the classroom precisely *because* Ambro seemed so intent on retrieving his computer after being placed on administrative leave for an unspecified duration. As

¹¹ Hernandez testified at length regarding Ambro's demeanor and other details of this conversation. Aside from Ambro's use of profanity, none of these details appeared in the District's Investigative Report/Letter of Findings nor in subsequent disciplinary documents. I do not credit Hernandez's testimony here because the District did not rely on these allegations at the time of its actions. (*Palo Verde Unified School District* (2013) PERB Decision No. 2337, pp. 13, 22-23, 31-33 (*Palo Verde*).)

soon as Ambro left his office, Hernandez called Ryan to ask if she could secure what Hernandez described as “the District’s computer” in Ambro’s classroom.

According to Hernandez, during his telephone call with Ryan, Ambro returned unannounced and again demanded that he be allowed to retrieve his computer from the classroom. Hernandez flatly denied asking Ambro to come back to his office and testified that his administrative assistant, Elyse Imperial, asked Ambro to leave and then attempted to calm him down in the parking lot.

Hernandez’s account conflicts with a May 23, 2024 statement signed by Imperial that was later relied on by the District to support Ambro’s termination. Imperial’s statement asserted *inter alia* that after Ambro left Hernandez’s office, *Hernandez asked Imperial* to “call Mr. Ambro back to [Hernandez’s] office” so that he could ask Ambro to turn in his District-issued computer; that when Imperial caught up with Ambro to relay Hernandez’s instruction, Ambro denied that he had a District-issued computer; that when Imperial asked for clarification, Ambro repeated that the computer in the classroom was his own; and that at some point during this discussion, Hernandez arrived and ended the conversation. Imperial did not testify, and I make no findings on the truth of any matters asserted therein. However, the District’s reliance on its contents to support Ambro’s termination is probative evidence of the District’s contemporaneous knowledge or state of mind and is sufficient to call into question Hernandez’s contrary account of how his meeting with Ambro ended.

Ryan testified that at Hernandez’s request, she went to Ambro’s classroom in the late morning of April 16 to secure what she believed was *the District’s computer*. Ryan did not contact the IT Department or otherwise attempt to determine whether the

District had ever issued Ambro a computer and, if so, the make, model, serial number, or other identifying characteristics of such device. Ryan found a Surface Pro in Ambro's classroom, which she described as "the newest device" there. Ryan took this device to the IT Department. She did not ask whether it belonged to the District.

Ryan testified that based on her past observations of Ambro's classroom, she believed a tower computer was also missing as of April 16, 2024. Ryan acknowledged that as of 2024, tower computers were generally no longer in use, as most District employees had traded in these or other older models for Surface Pros. However, she testified that she could not be sure that the presence of the Surface Pro in Ambro's classroom explained the absence of a tower model because, even though she spoke with IT when she turned in the Surface Pro from Ambro's classroom, it did not occur to her to ask whether Ambro had ever used or returned a tower computer. According to Ryan, she just "figured IT would look through their records" and sort it out.

Nonetheless, Ryan advised Hernandez that a tower computer was "missing" from Ambro's classroom. Although Hernandez never revised the PAL Notice, it is undisputed that shortly after placing Ambro on administrative leave, Hernandez expanded the investigation to include allegations of "theft of District property."

c. Suspension of Ambro's E-Mail Access

On or about April 16, 2024, and pursuant to District practice at that time, Hernandez contacted IT to suspend Ambro's access to the District's server and District e-mail account as a condition of his administrative leave. At Hernandez's request, IT

restored Ambro's server and work e-mail access in late August 2024, shortly before the start of the 2024-2025 School Year.

Despite its instructions in the PAL Notice, the District did not consistently use Ambro's non-work account for e-mail communications during his administrative leave. Hernandez offered no explanation for this inconsistency, claiming that Imperial was responsible for serving employees with disciplinary and other documents from his office. Ambro denied receiving some disciplinary documents and other District correspondence during his administrative leave. Ambro testified that he was also unable to access his non-work account from April 16, 2024 until June 14, 2024, because he did not have his computer and does not use his phone for e-mail.¹²

H. Hernandez's Initial Conversation with Shankle about the Investigation

Late morning of April 16, 2024, Hernandez called Shankle to inform her that Ambro had been placed on administrative leave pending investigation. When Shankle asked why, Hernandez stated that Ambro had missed a staff meeting that morning. Shankle considered administrative leave excessive under the circumstances. She stated that in her experience, administrative leave was appropriate when an employee's presence on campus posed a threat of harm or might disrupt the investigation, which according to Shankle, did not apply to Ambro missing a staff meeting. Hernandez stated that Ambro was under investigation for consistent

¹² The District sent some documents to both Ambro and the Association, so that he ultimately received notice through his representative. Exceptions are noted below.

disregard of District policy without further details. He reiterated that all Ambro had needed to do was stay off Hernandez's radar.

Ambro asked Shankle about retrieving perishable items and his other personal property from the classroom. Shankle contacted Hernandez again to explain that Ambro wanted to get his personal property from the classroom. Hernandez said he would make such arrangements but again would not commit to any date or time.

I. Ambro Asks Brown to Retrieve Items from the Supply Room

On the afternoon of April 16, 2024, Ambro contacted Evan Brown, who is the Band Director at Hull. Ambro explained to Brown that he was on administrative leave but did not disclose that he was under investigation or that he had been instructed not to contact anyone about the investigation. Ambro asked Brown to clean out the refrigerator, which included bottles of water and coffee and various perishable items, and to bring other foodstuff from a nearby shelf.

Also in the refrigerator was a brown plastic envelope with a phone number on the outside for Ambro to renew a prescription. The envelope contained an unknown number of syringes. Ambro claimed that he had obtained these syringes for taking a prescription medication, but that he had since "decommissioned" them by removing the hypodermic needles, and that he intended to use them for instructional purposes, as described above. Otherwise, the parties dispute the contents of the plastic envelope, and specifically, whether it contained prescription medication.

Brown did not testify before PERB. However, it is undisputed that the same day, he obtained access to Ambro's classroom from a custodian, collected and removed the

contents of the refrigerator and other food items from the storeroom, carried these items from the classroom in brown paper bags, and delivered them the same day to Ambro.

J. Expansion of the District's Investigation

Shortly after Ambro went on administrative leave, the District expanded its investigation to determine whether Brown, either alone or in combination with Ambro, had removed a tower computer or other District property from Ambro's classroom. The precise date is not in the record, and other details of this decision are unclear.

Contrary to Hernandez's account, Ryan testified that somewhere between two days and two weeks after Ambro had been placed on administrative leave, she was in Ambro's classroom on a routine visit with the substitute teacher when she noticed that "things seemed off in certain spots of the room" and "didn't look how they had looked before." According to this portion of Ryan's testimony, she informed Hernandez that a tower computer "and other pieces from a computer" appeared to be missing.¹³

Hernandez asked Ryan to determine whether anyone had been in the classroom during Ambro's administrative leave. It was undisputed that Ryan, students, custodians, three substitute teachers, and an unknown number of other

¹³ The timing and other details of Ryan's testimony conflict with Hernandez's account, including (1) his claim that Ryan reported the missing computer on the morning of April 16, not several days or weeks after Ambro began his administrative leave, and (2) that Ryan made this discovery after Hernandez asked her to secure the District's computer on April 16, not during a later visit with a substitute teacher. Hernandez's account is generally more consistent with the District's Dismissal Notice and is therefore marginally more reliable than Ryan's.

persons had access to the classroom.¹⁴ Ryan contacted IT to review video surveillance footage of the classroom, which allegedly showed Brown entering and then leaving the classroom on April 16, 2024 with “a lot of things in [grocery] bags.” After Ryan informed Hernandez of what she had observed on the video, Hernandez also placed Brown on administrative leave, pending investigation.

At some point “[p]robably a few days” after reviewing the video of Brown, Ryan decided to determine whether *other* items were also missing from the classroom. Ryan obtained receipts of Ambro’s purchases on the District’s credit card. Ryan and Custodian Jesus Sanchez then attempted to locate recently purchased supplies in the classroom. Based on the receipts and her asserted “knowledge of the space,” Ryan prepared a list of 11 “missing” items and their estimated cost. The list included a “Desk Top Computer” with an estimated value of \$740 and other items of lesser value.

K. April 22, 2024 Initial Investigative Meeting with Ambro and Shankle

On April 22, 2024, Ambro, with Shankle as his representative, met with Hernandez and Skoll in Hernandez’s office. Based on her April 16, 2024 telephone conversation with Hernandez, Shankle understood that the purpose of the meeting was to discuss Ambro’s tardiness for a faculty meeting. However, at the outset of the meeting, Hernandez asked Ambro to sign a one-page document with the heading “*Lybarger/Spielbauer* Warning.”¹⁵ The document explained, *inter alia*, that Ambro would

¹⁴ In May 2021, Hernandez and Ryan questioned Association Site Representative Shawna Leader about her access to the classroom, after she allegedly provided Ambro with a photo showing that his ASUS computer was still there.

¹⁵ Pursuant to *Garrity v. State of N.J.* (1967) 385 U.S. 493, public employers may compel their employees to answer questions truthfully about matters relating to their job performance as part of an internal, administrative investigation, so long as the

be required to provide information for an investigation related to his employment; that the matter under investigation “could relate to criminal liability”; that Ambro was required to provide complete and honest responses and to fully cooperate with the investigation or that he would face disciplinary action for insubordination; and that if he signed the document, his responses would only be used in disciplinary or administrative proceedings regarding his employment but not in criminal proceedings. The document did not specify any subject(s) of the investigation.

Shankle asked Hernandez to explain how the *Lybarger* admonition related to the investigation, which she understood was concerned only with Ambro’s tardiness for a meeting. Witnesses gave conflicting accounts of Hernandez’s response.

According to Shankle, when Hernandez refused to identify any criminal activity at issue, Shankle and Ambro caucused. When Shankle returned, Ambro remained outside in the lobby. Shankle again attempted unsuccessfully to get Hernandez to identify any criminal activity at issue or to postpone the meeting until Shankle could get an attorney. Hernandez refused these requests and asked Shankle if Ambro was going to sign the *Lybarger* warning. Shankle said that she could not in good conscience advise him to do so without knowing what criminal activity was at issue. Hernandez insisted that Ambro needed to sign the document or he would face additional charges for insubordination. Shankle asked to postpone the meeting until

employee is advised that any truthful but incriminating statements will not be used against the employee in subsequent criminal prosecution regarding the same subject as the employer’s investigation. (*Id.* at p. 500.); see also *Gardner v. Broderick* (1968) 392 U.S. 273, 278.) California courts adopted this principle for California public employees in *Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, 829 and *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 725.

she could learn the full scope of charges. According to Shanke, Hernandez also refused this request and commented that Ambro was insubordinate and had failed to stay off Hernandez's radar. Hernandez directed Skoll to sign the document and indicate that Ambro had refused to do so. Shankle understood the meeting was over and said she would send an information request regarding the investigation later that day.¹⁶

According to Hernandez, after he introduced the *Lybarger* document, Shankle asked for an explanation of its purpose but never asked Hernandez to identify the allegations that had prompted it. Hernandez explained his understanding of a *Lybarger* admonition and mentioned that Ambro was suspected of "theft."¹⁷ Hernandez again asked Ambro to sign the document and stated that refusing to do so was insubordinate. Ambro became angry, denounced the meeting as "fucking bullshit," and stormed out of the room.¹⁸ Shankle followed Ambro but did not ask for a caucus. Shankle later returned to Hernandez's office without Ambro, informed Hernandez that she had advised Ambro not to submit to questioning under the circumstances and asked to

¹⁶ Shankle's e-mail message to Hernandez is not in the record, though based on his response and witness testimony, there appears to be no dispute that Shankle asked Hernandez to specify *inter alia* what items Ambro was alleged to have stolen.

¹⁷ At this time, Hernandez only knew of Ryan's concern about a computer.

¹⁸ Hernandez testified that, in addition to using profanity, Ambro also engaged in aggressive, intimidating, and unprofessional behavior, which Hernandez claimed was unlike anything he had ever experienced in his almost 19 years in human resources. However, none of these allegations appeared in the District's April 25, 2024 Investigative Report/Letter of Finding, nor in any other disciplinary documents issued to Ambro. In the absence of credible evidence that the District relied on these allegations for its actions, I do not credit Hernandez's testimony on this point but consider it irrelevant to divining the District's true motive. (*Palo Verde, supra*, PERB Decision No. 2337, pp. 13, 22-23, 31-33.)

continue the meeting. Hernandez claimed he had no choice but to reschedule the meeting because Ambro was not coming back to answer questions. However, he advised Shankle that, in his view, the District had met its obligations under EERA to conduct the interview and that Ambro had refused to cooperate.

It is unnecessary to resolve every discrepancy in the two accounts. The material facts in dispute are whether Shankle asked Hernandez to specify the scope of the investigation and if so, whether Hernandez advised Shankle of each subject under investigation and the relevant facts. On the first issue, I find that Shankle's request for an explanation was not (or was not only) a request for Hernandez to explain the *Lybarger* doctrine or the legal effect of issuing the *Lybarger* warning. It was a request to identify the specific allegations of the investigation. As noted above, Shankle had already expressed concern that administrative leave was inappropriate for allegations that Ambro was late to a meeting, and it is not surprising that she would reiterate this concern at the April 22, 2024 meeting. In response, Hernandez mentioned "theft" and possibly "a computer" but otherwise disclosed no details. Hernandez explained *why* he was issuing the *Lybarger* but did not provide specific facts regarding any potential criminal charge(s) against Ambro.

There is no dispute that Shankle sent a written request for information on April 22, 2024. In response, Hernandez sent a message at 4:46 p.m. to Shankle and Ambro (albeit to Ambro's inaccessible work e-mail address) summoning Ambro to an investigatory interview on April 25, 2024, warning him that failure to attend and cooperate would be deemed insubordinate, and stating that *inter alia* "allegations of

property theft are under scrutiny.” This description is consistent with the nature and level of detail that Hernandez had disclosed to Shankle and Ambro earlier that day.

L. Dispute Over Information and Scheduling Investigative Meetings

On April 22, 2024, Shankle learned that Brown had also been placed on paid administrative leave and was also accused of theft. Shankle testified that despite the lack of detail from Hernandez regarding either employee, she surmised that the two employees’ investigations for “allegations of property theft” were related.

On the morning of April 23, 2024, Shankle advised Hernandez that Attorney Carlos Perez would represent Ambro in the investigation. In the following week, Hernandez and Perez exchanged several e-mails in which Hernandez repeatedly threatened Ambro with insubordination charges if he and Perez failed to attend and cooperate in follow-up investigative meetings, while Perez repeatedly insisted that Hernandez had not complied with the District’s obligation to disclose sufficient information about the investigation to permit “meaningful representation” and that he and Ambro would attend and participate in an investigative meeting as soon as Hernandez supplied this information.

On April 26, 2024, Hernandez responded to Perez’s April 24, 2024 renewed request for information. Hernandez’s letter included a chronology of events from April 16, 2024, when Ambro and Shankle learned of the investigation, through April 26, 2024. Hernandez’s letter asserted that he had already advised Ambro, Shankle, and/or Perez of the scope of the investigation “at least six times” but reiterated the following three grounds: (1) Ambro’s alleged violation of Board Policies and Administrative Regulations and alleged insubordination “for failure to attend

required meetings as directed in a previous coaching memorandum and direction”;
(2) Ambro’s alleged insubordination by not cooperating with the District’s investigation;
and (3) Ambro’s alleged “involvement in the potential theft of District property by
Mr. Brown from Mr. Ambro’s classroom.”

The parties’ dispute over information and scheduling investigative meetings continued until April 29, 2024, when District counsel Joshua Stevens and Perez spoke by telephone. The next day, Perez wrote to thank Stevens for taking time “to explain to [Perez] the various allegations . . . of the pending investigations” of Ambro and Brown. Perez’s message also asked Stevens for more “specific information about the charges,” including the District property or items that Brown and/or Ambro were accused of stealing and “the nature of any District policies or administrative regulations they allegedly violated by their conduct.” It is unclear whether the District provided additional information at that time, but the parties agreed to convene investigative meetings for Ambro and Brown on May 9, 2024.

M. April 25, 2024 Notice of Unprofessional Conduct

Hernandez deemed Ambro’s conduct at the April 22, 2024 meeting additional grounds for discipline. On April 25, 2024, Ambro received a NUC for “poor judgment and insubordination by refusing to answer questions and fully corroborate [sic] in the District’s investigation.” The NUC stated that Ambro’s continued failure to cooperate would subject him to further discipline for insubordination.¹⁹

¹⁹ Hernandez claimed that the NUC was for Ambro’s refusal to obey directives by not attending staff or PLC meetings. Because these charges are not in the NUC, I disregard this testimony. (PERB Reg. 32176; Evid. Code, §§ 780, 1521, 1523.)

N. The May 9, 2024 Investigative Meetings with Brown and Ambro

In late April and early May 2024, Hernandez or his assistant sent several invitations for investigatory meetings. Some set dates and times without asking Ambro's representatives for their availability and stated that Ambro faced insubordination charges if he failed to attend. On May 2, 2024, Stevens notified Perez that all previous meeting invitations had been withdrawn. He and Perez then agreed to hold investigative meetings for Ambro and Brown on May 9, 2024.

1. Interview of Brown

On the morning of May 9, 2024, the District questioned Brown about his role in removing items from Ambro's classroom. Stevens conducted the questioning. Hernandez and Skoll were also present for the District. Skoll took notes.²⁰ Brown was represented by Perez. Shankle attended as a witness. After signing a *Lybarger* warning, Brown told the District's representatives that Ambro had contacted him on April 16, 2024, explained that he was on administrative leave, and asked Brown to retrieve items from Ambro's classroom, including an envelope for medication from the refrigerator in the storeroom and some perishable food items.

According to Skoll's notes, Stevens asked Brown whether Ambro identified any of the requested items as District property. It is unclear whether Brown understood the question or whether Skoll's notes fully or accurately reflect his response. Brown said

²⁰ Skoll was a public employee who took the notes within the scope of her duties; she did so at the time of the investigative meetings; and the District relied on her notes for disciplinary actions. Ambro and Shankle also testified to the general accuracy of Skoll's notes. As such, they provide a partial but generally reliable, non-hearsay account of the investigative meetings. (Evid. Code, § 1280.)

that he agreed to help Ambro because he was “an older man” asking for help with his medication. Shankle also recalled Brown stating his belief that the items retrieved from the refrigerator included Ambro’s medication. However, Brown insisted that he never opened the envelope to inspect its contents.²¹ Brown told the District’s representatives that he did not have a key to Ambro’s classroom but found a custodian who let him into the room and unlocked the storeroom. Brown said that the custodian was present while Brown cleaned out the refrigerator, and that she saw what items Brown took with him.²²

The District’s representatives also questioned Brown about computers, electronic devices, and other school supplies. According to Skoll’s notes, Brown said that Ambro did not ask him to retrieve any of these items. Stevens advised Brown that a computer was in the classroom before Brown was there, but that Ryan noticed it was missing after Brown’s visit. Brown recalled seeing Ambro’s monitor but said that he “did not touch it” and denied taking any electronic devices or school supplies.

2. Interview of Ambro

On the afternoon of May 9, 2024, the District convened an investigative meeting with Ambro. In attendance for the District were Hernandez; Skoll, who again took notes;

²¹ Brown apparently inferred, correctly or otherwise, that the envelope contained medicine based on the pharmacy label on the outside or perhaps from Ambro’s description of it as containing a telephone number for refilling his prescription. However, by his own account, Brown lacked personal knowledge of the envelope’s contents. Despite District assertions, I make no finding that it contained medication.

²² Ryan testified that she also interviewed the custodian, who denied being present when Brown removed items from the refrigerator. Because the custodian did not testify before PERB, and because Ryan’s testimony was dubious on other points, I disregard it here as uncorroborated and unreliable hearsay. (PERB Reg. 32178; *Santa Ana Unified School District* (2017) PERB Decision No. 2514, p. 31.)

and Stevens, who conducted the interrogation. Shankle and Perez were present as Ambro's representatives. When asked why he had missed the April 16 staff meeting, Ambro said that he was waiting in his classroom for an electrician, who was scheduled to repair a switch on a table saw. Ambro admitted that he knew of the meeting.

When asked about a computer in his classroom, Ambro acknowledged that there were several District-issued computers in the classroom but explained that he uses his own computer, an ASUS All-in-One, because he does not like using small keyboards. Later in the meeting, Stevens asked Ambro whether he knew that a computer was missing. Ambro responded: "I am not aware, are you telling me that my personal computer is no longer there[?]" When Stevens attempted to move on to another topic, Ambro repeatedly asked for clarification about his computer and stated that Brown had not taken it. Shankle asked which computer was allegedly missing, the Surface Pro or Ambro's All-in-One? There is no indication in the record that the District ever identified the make or model of any allegedly missing computer.

Ambro admitted asking Brown to go to the classroom to retrieve food and other items from the refrigerator.²³ When asked if this conduct violated the District's PAL Notice, Ambro deflected. He said that he contacted Brown "because it was food"; the classroom "has a tendency to draw ants"; in Ambro's experience, the District "does not do things in a timely manner"; and Ambro "didn't want food left out or to spoil."

²³ Although Brown recalled that Ambro had initially contacted him by text message but thereafter they spoke by phone, Ambro recalled no text communication and claimed that they only spoke by phone. No party contends that how the two communicated is material, but the District contends that this discrepancy demonstrated Ambro's dishonesty during the investigation.

Regarding the plastic envelope in the refrigerator, Ambro explained that he had placed it there to remind him during his lunch break to call the pharmacy for a refill. He admitted that Brown had retrieved this envelope with the other items from the refrigerator but denied having medication in the envelope or elsewhere in the classroom. According to Skoll's notes, Ambro volunteered that there were syringes in the envelope. At the PERB hearing, Ambro testified that he had "decommissioned" syringes he had obtained for prescription medication by removing the hypodermic needles. At the investigative meeting, Stevens asked Ambro how many syringes were in the envelope, but Skoll's notes give no indication that he asked Ambro whether they contained hypodermic needles or had any legitimate instructional purpose.

Ambro was asked about student access to the refrigerator, and his incongruent responses, as reflected in Skoll's notes, became the source of controversy. According to Skoll's notes, Ambro responded that "sometimes" it was "kept locked when students are in classroom" but that "robotics students go in there during 6th period." Skoll's notes also attribute the following statements to Ambro: "They could presumably open the fridge"; "there is a lock on the fridge, needs a key"; and "no one can go in and open the fridge." At the PERB hearing, Ambro admitted that during the interview, he had mistakenly characterized the refrigerator as having a lock on its door.

Stevens also asked Ambro about items purchased on the District's credit card, including: a Rigid Filter 2-pack, a Diablo Universal Variety Set 5-pack, a Clearweldpro J-B Weld, an indeterminate number of Diablo sanding discs, a Diablo hole saw, a High Performance carbide cutter, a Shockwave multi-material bit, a Diablo flash trim bit, and a Dremel 3000 tool kit. Ambro said most of these items were "expendable" supplies

that he had purchased, but he was unsure of their whereabouts because he had not been in the classroom for more than three weeks. Stevens never specifically advised Ambro that he was being investigated for theft of these items, though Ambro testified that he eventually surmised this to be the case. Shankle similarly testified that no District representative ever identified what items Ambro was accused of stealing until it became apparent from Stevens's questions at the May 9, 2024 investigative meeting.

O. The Parties' Dispute Over Rescission of the No-Contact Directives

On June 3, 2024, counsel for the Association sent a "cease and desist" letter to Stowe asserting that the District's no-contact directives violated EERA and demanding *inter alia* the directives be rescinded and that Ambro and other employees be sent written notice of the rescission. On June 11, 2024, counsel for the District responded by denying that the no-contact directives were unlawful. However, the District's correspondence stated that it was "willing to rescind [the no-contact] directives as a gesture of good faith" and that "written notification to each impacted employee will be sent out today." Stevens's letter was addressed to counsel for the Association. Copies went to Stowe and Hernandez but not to Ambro or any other affected employees, and Ambro testified that no District or Association representative ever informed him that any portion of the PAL Notice had been rescinded.

Hernandez admitted that no separate correspondence was ever sent notifying Ambro or other employees that the no-contact directives had been rescinded. He testified that he considered the June 11, 2024 communication between the parties' attorneys sufficient, because he assumed an Association attorney or representative would communicate this decision to Ambro and other employees. Hernandez testified

that Ambro has not been disciplined for violating the no-contact directive. However, Ryan testified that the no-contact directive remained enforceable. When asked to clarify, Ryan stated that Ambro's discipline was warranted: "If the head of HR says to not contact anybody, then you should not contact anybody is my view."

P. Conclusion of the Investigation and Hernandez's Report/Letter of Finding

Following the May 9 investigative meetings, the District initially intended to continue its investigation of Ambro. On June 3, 2024, Hernandez's administrative assistant sent Ambro and Association representatives invitations for additional investigative meetings to be held on June 6, June 10, and June 12, 2024. These messages made no mention of theft but now described the investigation as concerning Ambro's "consistent non-compliance with Board Policy, Administrative Regulations, dishonesty, and acts of insubordination." These meeting invitations included no explanation regarding the new charges of "dishonesty." For reasons not in the record, the District cancelled these meetings and concluded its investigation.

On or about June 13, 2024, the District served Ambro with a document captioned "Investigative Report Letter of Finding" (Letter of Finding). Hernandez was its primary author with assistance from Ryan. It advised Ambro that the District intended to terminate his employment based on his past disciplinary history and on the findings of the District's investigation, namely, that Ambro conducted himself unprofessionally by committing theft of District property, that he was insubordinate by failing to attend the April 16, 2024 PLC meeting and insubordinate and untruthful during the District's investigation, and that he compromised the safety of District students by failing to secure syringes. Although the Letter of Finding was not itself

disciplinary and is not alleged as an adverse action, it served as the basis for subsequent discipline, and its “findings” are central to the issues in this case.

1. Issue No. 1: Insubordination

The insubordination charge relied, in part, on the District’s allegation that “Ambro did not attend the staff meeting that was scheduled in the multipurpose room that started at 7:45 a.m.” The Letter of Finding does not specify that Ambro did eventually attend the meeting in question, albeit some thirty minutes after it started. The Letter of Finding concludes that because Ambro was disciplined for failure to attend staff meetings on September 13, 2023 and February 28, 2024, his failure to (timely) attend the April 16, 2024 PLC meeting was “insubordinate.”

The insubordination charge also claimed that Ambro was “insubordinate in his refusal to answer questions and fully cooperate in the District’s investigation.” In support of this charge, the Letter of Finding relied on the April 25, 2024 NUC issued to Ambro for his alleged “refusal to answer questions and fully cooperate with the District’s investigation” after being issued a *Lybarger* warning.

The Letter of Finding also asserted that Ambro had refused to participate in investigative interviews on April 25, 2024, April 26, 2024, June 6, 2024, June 10, 2024, and June 12, 2024, thereby “defying clear directives.” However, as noted above, *the District* cancelled these meetings.²⁴

²⁴ Although Hernandez denied that Ambro had been disciplined for failing to attend investigative meetings between April 22 and May 9, 2024, the District never rescinded or revised this allegation in the Letter of Finding.

2. Issue No. 2: Dishonesty

The Letter of Finding recounted several purported discrepancies in Ambro's and Brown's accounts, such as whether the two had communicated on April 16, 2024 by telephone, text message, or both; whether the fruit retrieved from Ambro's classroom was in the refrigerator or on a shelf near the refrigerator; and whether Ambro asked Brown to bring all items from the refrigerator or provided an itemized list of things to retrieve from the classroom. Although these points were immaterial to the charges, the Letter of Finding claimed that they suggested dishonesty by one or both employees."²⁵

The Letter of Finding also relied on *Brown's* alleged dishonesty regarding what items he had removed from the classroom to conclude that *Ambro* was dishonest. It asserted: "Brown insisted he did not take any District property or electronics, which contradicts Principal Jackie Ryan's statement that a CPU was missing after Brown's entry into Ambro's classroom." As discussed elsewhere, the District presented no credible evidence that Brown removed either Ambro's computer or a District-owned computer from Ambro's classroom.

The Letter of Finding also claimed that Brown and the custodian had offered conflicting details on whether or how long she had remained in the classroom after unlocking the door for Brown. The Letter of Finding offered no specifics of these alleged discrepancies but concluded: "These conflicting accounts create a complex web

²⁵ According to the Letter of Finding, Brown offered inconsistent accounts of whether he retrieved "medication" and "syringes" for Ambro. The District's opening statement repeated allegations that Ambro had endangered students by leaving "medication and syringes" in an unlocked refrigerator that was accessible to students.

of contradictions, raising questions about the accuracy, completeness and credibility of the statements given during the investigation *by Ambro.*” (Emphasis added.)

3. Issue 3: Theft of District Property

At the investigative meeting, Ambro was asked about several purportedly missing items. Ambro confirmed that the items were District property and that to his knowledge, they were in his classroom when he was placed on administrative leave. Because these items were allegedly not in the classroom after April 16, 2024, and because Ambro was unaware of their whereabouts, the Letter of Finding considered it “more likely than not that he took these items belonging to the District.”

4. Issue 4: Security of Syringes

The Letter of Finding noted that the refrigerator where Ambro kept syringes had no lock on the door and that the storeroom was “frequented often [sic] by students to retrieve materials for class unsupervised.” It concluded that Ambro had violated professional standards by “maintain[ing] unsecured medical syringes that were accessible to students, creating a significant safety hazard.”

Q. Ambro’s June 14, 2024 Visit to the Classroom

On June 14, 2024, Ambro and Shankle were allowed access to Hull to retrieve Ambro’s personal items. They were met at the front gate by Ryan, Skoll, and Senior Director of Secondary Education Ben Egan. Ambro’s refrigerator, microwave, and a few boxes containing other items were sitting on the ground just inside the gate. Shankle testified that initially the District’s administrators would not allow her and Ambro access to the classroom, contrary to what she and Hernandez had agreed on.

Ambro uttered profanity, though witnesses offered conflicting interpretations on whether it was directed at administrators, as was later alleged by the District. Ryan testified that Ambro “was saying like this is bullshit,” that “[t]here was a lot of ‘goddammit’s’, ‘where the hell is my stuff’, ‘what did you do to my stuff’, [and] a lot of ‘you people.’” Ambro testified that he was upset that the District had “haphazard[ly]” gathered and stacked his belongings at the front gate. Ambro denied yelling *at administrators* but did not deny saying “fucking bullshit” in a raised voice.

After some discussion, Egan allowed Ambro and Shankle to access the classroom briefly. Ambro and Shankle had agreed to use this limited time in the room to locate the allegedly missing items identified at the May 9, 2024 investigative meeting and in the District’s Letter of Finding issued the previous day, since Ambro was being accused of stealing these items. Shankle took photos and checked off items from a list as Ambro located each ostensibly “missing” item and placed it on a table in the front of the room. Ryan, Egan, and Skoll were present throughout this process. According to Shankle, Skoll also took photos and checked off items from her own list. They were able to locate all but one of the “missing” items: a Diablo 4.5 inch, 80 grit speed hub flap disc. Ambro testified, without contradiction, that this was an expendable item that had likely been used and discarded by students or a substitute teacher during his absence from the classroom.

In their remaining time in the classroom, Ambro and Shankle collected a few of Ambro’s items, including a stereo amplifier, speakers, and some sample projects. Despite what Ambro had been led to believe at the investigative meeting, his All-in-

One computer was in the room.²⁶ Ryan, Egan, and Skoll, allowed Ambro to take it with him, without objection. They also advised Ambro that he would be allowed to return to the classroom at some future time to retrieve his remaining property.

Witnesses offered varying estimates of how long Ambro and Shankle had been in the classroom, but by all accounts, the total time elapsed was less than 30 minutes.

R. Notice of Intent to Dismiss Ambro

On June 17, 2024, the District sent Ambro a Notice of Intent to Dismiss (Dismissal Notice), which listed five causes for Ambro's dismissal, along with citations to provisions of the Education Code. These were: (1) Immoral Conduct, including but not limited to, egregious misconduct; (2) Unprofessional Conduct; (3) Dishonesty; (4) Evident Unfitness for Service; and (5) Persistent violation of or refusal to obey the school policies or regulations.²⁷ According to the Dismissal Notice, the "persistent violation" cause was also based on Ambro's alleged violation of several BPs and ARs regarding "professional standards," "civility," "positive school climate," and "safety."

Section III of the Dismissal Notice included a "Statement of Charges" consisting of 29 paragraphs of "facts and circumstances" regarding the following:

1. Unrelated Prior Discipline

Paragraphs 1-11 of the Dismissal Notice recycled allegations and conclusions from prior disciplinary actions against Ambro, including Ambro's inappropriate and/or

²⁶ As discussed below, the District later acknowledged that the All-in-One computer had remained in the classroom from April 16 until June 14, 2024.

²⁷ Hernandez testified extensively about misconduct allegedly supporting Ambro's dismissal. I do not credit this testimony to the extent it adds to or deviates from the Dismissal Notice. (PERB Reg. 32176; Evid. Code, §§ 780, 1521, 1523.)

racially discriminatory or harassing comments and interactions with students that were the subjects of the September 28, 2023 and December 21, 2023 NUCs. Paragraphs 12 and 13 concerned Ambro's failure to attend a meeting on April 16, 2024 and referenced the two prior instances, which the District characterized as "acts of insubordination," i.e., deliberate or willful misconduct.

2. Conspiring with Brown to Remove Items from Ambro's Classroom

Paragraph 14 of the Dismissal Notice alleged that Ambro had violated the PAL Notice by conspiring with Brown to retrieve items from Ambro's classroom, including a computer that Ambro was allegedly "using for academic purposes." The evidence that Brown had removed a computer from Ambro's classroom consisted of *Ryan's belief* that a computer was missing from the classroom after April 16, 2024, when Brown visited the classroom, and video surveillance footage showing Brown entering the classroom and then "walking into the Hull parking lot with two grocery bags full of supplies from [the] classroom," which "he then load[ed] . . . into his pickup truck." According to the Dismissal Notice, the video footage showed "the outline of *what appears to be* a square CPU unit in the bag Mr. Brown [was] holding in his left hand." (Emphasis added.) The Dismissal Notice did not specify the make, model, serial or inventory number, or any other identifying features of any District computer allegedly "missing" from the classroom, nor acknowledge that Ambro's ASUS all-in-one computer *was found in the classroom*, where Ambro had left it, when Ambro and Shankle were allowed access to the room on June 14, 2024.

In a footnote, the Dismissal Notice conceded that it was "unclear" whether the allegedly "missing" computer, food, bottled water, and other items allegedly retrieved

from the classroom were District property or Ambro's personal property. However, according to the Dismissal Notice, "it [was] clear" that Ambro had "conspired with" Brown to retrieve these items "in clear violation of the terms of [the PAL Notice]."

3. Refusing to Participate in April 22, 2024 Investigative Meeting

Paragraphs 15-17 of the Dismissal Notice realleged the gist of the previous NUC, i.e., that on Shankle's advice, Ambro had refused to respond to questions at the April 22, 2024 investigative meeting. The Dismissal Notice asserted that Ambro had been issued a *Lybarger* admonition and informed of the charges against him.

4. Alleged "Dishonesty" During May 9, 2024 Investigative Meeting

Paragraph 19 realleged matters from the June 13, 2024 Letter of Finding. Among other things, it alleged that Ambro was "dishonest" when claiming that he missed the April 16, 2024 staff meeting while waiting for an electrician in his classroom because there was "no submitted work orders for such work" on that date. Like the Letter of Finding, the Dismissal Notice also relied on minor discrepancies in the accounts of Ambro and Brown, such as whether fruit was located in the refrigerator or on a nearby shelf, to conclude that one or both employees must have been *intentionally* dishonest, as opposed to forgetful, nervous, or otherwise unable to recall minute and non-material details under the circumstances.

5. Unsupervised Presence of Syringes in Ambro's Classroom

Paragraph 22 of the Dismissal Notice asserted: "To the extent syringes were inside [Ambro's] classroom," as he contended at the May 9, 2024 investigative meeting, "the District has determined that [Ambro] failed to protect the safety of [his] students by properly securing these syringes." The Dismissal Notice made no

mention of Ambro's explanation that plastic syringes are routinely used in his classes to apply adhesives, nor made any "finding" on whether any syringes were equipped with hypodermic needles, nor explained how the decommissioned syringes endangered student safety or violated any law, District policy or regulation, professional standard, or CBA provision.

6. Alleged Theft of Classroom Equipment and Supplies

Paragraph 24 of the Dismissal Notice recited a list of items allegedly "missing" from Ambro's classroom. It noted that at the May 9 investigative meeting, Ambro had denied asking Brown to remove any of these items from the classroom, that Ambro was unable to identify the whereabouts of these items, and that Ambro confirmed that these items were District property purchased with District funds. Paragraph 24 listed four items that were "not currently in [Ambro's] classroom, which has led to the conclusion that [Ambro] took these items belonging to the District."

7. New Allegations Regarding Profanity and Ambro's Keys to a Storage Unit

Paragraph 26 alleged that when Ambro arrived at Hull on June 14, 2024 and observed his belongings boxed up and left at the school's front office, he responded by repeatedly yelling: "You had no right to touch my things!" and "This is fucking bullshit." Paragraph 26 also alleged that Ambro appeared to have keys to District property in violation of the terms of the PAL Notice. The District never questioned Ambro about these allegations. At the PERB hearing, Ambro testified that the keys were to a storage unit that he had built for his own wood samples. Ambro claimed that another District employee also had keys to the storage unit.

8. New Allegation of “Dishonesty” Regarding Ambro’s Computer

Although the Dismissal Notice conceded that the District could not prove that Ambro and/or Brown had stolen a District-owned computer, it raised a new allegation: that Ambro had been “dishonest” about conspiring with Brown to remove his computer from the classroom. The Dismissal Notice reasoned as follows: (1) Ryan saw Ambro’s personal computer in the classroom after Ambro was placed on leave; (2) This computer was allegedly missing after Brown’s visit to Ambro’s classroom on April 16; (3) there was a supposed outline of a computer in one of the bags Brown carried when he left the classroom; and (4) Ambro hesitated during the May 9 interview when asked if he was aware that his computer was no longer in his classroom. Other than Ryan’s assertion that the surveillance video *appeared to show* “the outline of . . . a square CPU unit [sic] in the bag” that Brown was carrying, the Dismissal Notice cited no evidence that *any* computer or electronic device had been removed from the classroom between April 16 and June 14, 2024.²⁸

Ambro appealed the Dismissal Notice.

S. Notice of Intent to Suspend in Lieu of Dismissal

On July 17, 2024, Hernandez sent Ambro notice that after further consideration, the District would not proceed with his dismissal, and in correspondence dated August 21, 2024, Board of Education President Jasmine Park stated that the charges in the Dismissal Notice “were rescinded by the Board on July 8, 2024.” Instead, the District proposed suspending Ambro for 15 days without pay based on the following

²⁸ At the PERB hearing, Hernandez admitted that Ambro’s computer had remained in the room from April 16 until June 14, 2024.

charges: (1) inappropriate and unprofessional conduct towards students and staff; (2) creating a “negative school environment”; and (3) failing to comply with directives.

The Suspension Notice omitted formal charges of “theft” and “dishonesty” and some of the factual allegations previously supporting these charges, but otherwise it mostly reiterated allegations from the Dismissal Notice. For example, it alleged that during his administrative leave, Ambro remained responsible for District-issued items in his classroom; that at the May 9 investigative meeting, Ambro was unable to explain the whereabouts of several items allegedly “missing” from the classroom; and that he was “only able to locate a few of the missing items” when permitted to reenter the classroom on June 14, 2024. The parties continue to dispute whether any items were truly “missing.” In appeal proceedings before the District and again at the PERB hearing, Shankle asserted that the ostensibly “missing” items recited in the Dismissal and Suspension Notices had either been located or were expendable items. At the PERB hearing, Hernandez denied that all items were accounted for but admitted that the District could not prove that Ambro engaged in “theft” and testified that suspension was therefore appropriate for the remaining charges.

The Suspension Notice similarly did not charge Ambro with “dishonesty,” but accused him of “exhibit[ing] no remorse” and “provid[ing] multiple false justifications” when confronted by administrators about his conduct. According to the Suspension Notice, Ambro claimed to have locked the refrigerator to justify storing syringes in an area accessible to students, when there was no lock on the refrigerator door; claimed to

have only asked Brown to remove perishable items²⁹ from the classroom to avoid attracting pests; and claimed to have missed the April 16, 2024 staff meeting while waiting in his classroom for an electrician.

T. Involuntary Transfer of Ambro from Hull to West High School

1. Hernandez's Decision to Transfer Ambro

On or before June 23, 2024, the District decided to transfer Ambro from Hull to West High School. Hernandez testified that one or more of Ambro's former students and their families "were actively engaged in litigation" against the District regarding Ambro's actions and that Hernandez decided to prevent Ambro from returning to Hull for the 2024-2025 School Year to avoid "more potential litigation." When pressed for details, Hernandez claimed he could not recall the name(s) of the plaintiff(s), the nature of their allegations, or the court where the action was filed, and no pleadings or other litigation documents were offered into evidence. Ryan and Murata were also unable to corroborate Hernandez's account of the decision to transfer Ambro. Both testified that they had no knowledge of Ambro's transfer until after it had been decided.

2. The District's Notice of Reassignment

The record includes a one-page letter from Hernandez ostensibly informing Ambro of his involuntary reassignment to West High School. Other than asserting that Ambro's transfer was "in the interest of the educational program of the District," the

²⁹ Although not entirely clear, this passage appears to reallege that Ambro conspired with Brown to retrieve syringes and his own computer from the classroom. At the hearing, Hernandez admitted that contrary to Ryan's assertion, Ambro's all-in-one computer had remained in the classroom between April 16 until June 14, 2024.

letter included no explanation for the decision, and Ambro testified that as of the time of his testimony before PERB, he had not been provided an explanation.

Hernandez's letter is dated June 23, 2024 and indicates that it was sent to Ambro via electronic and certified mail. However, the letter does not indicate whether it was sent to Ambro's work or non-work e-mail account, the record includes no certified receipt nor other proof of service, and Ambro denied learning about his transfer until mid-August 2024, shortly before the start of the school year.³⁰ Copies of the notice were apparently sent to Ryan and Murata, the principals of Hull and West High School, respectively, but not to Shankle, Perez, or any other Association representative, and Shankle testified that she also did not learn of the reassignment until sometime in August 2024 while discussing an unrelated matter with Hernandez. Hernandez testified that sometime in August 2024, he told Shankle that there was *potential* litigation against Ambro but that the District had not informed Ambro about it because administrators "were trying to protect Mr. Ambro from the potential litigation." Shankle recalled this discussion but testified that Hernandez never specifically connected Ambro's transfer to the "potential litigation." According to Shankle, when she asked about meeting to discuss the transfer, Hernandez said he would agree to meet but that he would not reconsider the decision to transfer Ambro.

U. Ambro's August 19, 2024 Visit to His Classroom

Also in mid-August 2024, Ambro contacted Hernandez about retrieving his remaining property from his former classroom at Hull. On August 16, 2024,

³⁰ As noted above, Hernandez did not ask IT to restore Ambro's access to the District's server until late August 2024.

Hernandez responded by electronic and certified mail³¹ that Ambro was authorized to access his former classroom at Hull on August 19, 2024 to remove any remaining personal property. August 19, 2024 was the day before the start of the 2024-2025 school year and therefore not a regular day of work. However, Hernandez's letter advised Ambro that he should submit a timesheet to Ryan when he was finished and that the District would compensate him for up to six hours at his daily rate for time spent removing his personal property from Hull.

Per Hernandez's letter, on August 19, 2024, Ambro returned to Hull to retrieve the remainder of his personal property. Ambro had rented a truck and hired three men to help him move "heavy stuff" from the shop to the truck. Ambro estimated that from arrival to departure, the task had taken about 5.5 hours.

Ambro testified that despite Hernandez's letter, the District was only willing to pay him for 4.5 hours of his time. Ambro did not know or could not recall the reason for this discrepancy, and the District presented no evidence on the matter. Ambro could not recall if he ever submitted a timesheet but testified that he never accepted or received any compensation from the District for August 19, 2024.

More controversial was the fate of Ambro's belongings. Ryan denied that she or her staff had removed any items from the classroom between June 14, 2024 and August 19, 2024. However, Ambro testified that he was dismayed to learn that some items were no longer in the classroom. Among the materials missing from file

³¹ Hernandez's correspondence responded to Ambro's request to access his former classroom on August 16, 2024. Although not indicated in Hernandez's message, from other evidence in the record, it appears this correspondence was conducted using Ambro's non-work account.

cabinets were lesson plans, worksheets, project sheets, shop manuals, and curricula for several courses he had developed over the years, including safety, drafting, ceramics, and measurement curricula. By way of example, Ambro explained that taking accurate measurements is fundamental to all CTE projects and that his measurement curriculum was part of nearly every course he taught. Also missing were salvaged wood samples which Ambro used for instructional purposes.

Ambro complained in a raised voice that years' worth of work had been thrown away. He admitted that he may have used profanity.³² Ambro testified that someone—possibly Skoll—called Ryan to ask about the missing items and then informed Ambro that any items not in the file cabinets or elsewhere in the classroom had been thrown away. Ryan denied any communication with Skoll about Ambro's lesson plans, though as noted above, she knew that "all of Ambro's things were still in the room" and that she had communicated with him "in order for him to come back to

³² Counsel for the District examined Ambro on whether he had developed the curricula and other materials as part of his duties for the District, had used District facilities, or while on work time paid by the District and challenged Ambro to explain why he believed that materials developed during the course of his employment were his personal property rather than the District's. Ambro testified that the District never supplied any curriculum for fine arts or ceramics, that he used his own personal computer to develop these materials, and that other than possibly photocopying or using District paper, he had not used District equipment or materials. The District's brief does not contend that it owns the intellectual property rights to curricula or other materials developed by certificated staff during employment, and in the absence of any provision in the parties' CBA on the issue, I presume that Ambro was entitled to the curricula and other materials he had developed. Since this point of law relies on external law and has not been briefed, it is subject to rebuttal by the District in compliance proceedings. (PERB Reg. 32980; *Lake Elsinore Unified School District* (2018) PERB Decision No. 2548, pp. 11-12, 15.)

the site.”³³ To the extent there is a conflict, I find that someone removed Ambro’s lesson plans and other documents from his former classroom between June 14 and August 19, 2024, when Ambro had no access to the classroom and while it was under the exclusive custody of the District.

V. Ambro’s Working Conditions at West High School

After learning in mid-August of his transfer, Ambro planned to use the same curriculum for the high-school level shop class at West High School that he had used for middle school classes at Hull. Ambro explained that his classes rely on common concepts and skills, such as taking and recording accurate measurements or following safety rules, regardless of the subject or level of the course. However, Ambro did not know until August 19, 2024, the day before classes started, that he would not be able to use lesson plans and other teaching materials that he had kept in his former classroom at Hull. Ambro testified that during the 2024-2025 School Year, he had to reinvent from memory 24 years’ worth of work.

Ambro also complained that the shop facilities at West High School were unclean, unsafe, and inadequate for most instruction until late February or early March

³³ Ryan also testified that Ambro never asked about his lesson plans or other materials when the two spoke on August 19, 2024. According to Ryan, Ambro also told Ryan and the school custodian that he was finished and had “everything” before leaving the Hull campus on that date. Ambro was not recalled as a rebuttal witness to dispute this testimony or Ryan’s interpretation of the conversation. However, because Ryan’s testimony on other matters was inconsistent and unreliable, I do not credit this self-serving testimony. (*Palo Verde, supra*, PERB Decision No. 2337, pp. 12, 15, 18; *Morgan Hill Unified School District* (1985) PERB Decision No. 554, pp. 13-14.)

2025. Ambro testified that during the first 26 weeks, he spent most of his time cleaning and organizing, while students were assigned bookwork to keep them busy.

Murata testified that before Ambro's arrival, West High School's shop facilities were "very disorderly" and "in pretty bad shape." The District's Chief Business Officer had identified various safety concerns, including "a lot of extra wood and dust around the room." According to Murata, in spring 2024, District maintenance and operations workers removed excess lumber and reorganized and cleaned until the room was "spotless." The record includes before and after photos of this transformation.

Apart from its cleanliness, the parties also dispute whether the shop was functionally inadequate or unsafe. At the hearing, Murata reasserted the District's position that as of August 2024, the classroom had sufficient working equipment to allow Ambro to teach his assigned woodworking classes. However, the record suggests otherwise. During the school year, Ambro brought various safety and other concerns to Murata's attention, including a lack of safety devices for power saws and an inoperable central dust collector. In response, the District made some repairs. For example, Murata admitted that the central dust collector did not work and that the District provided portable dust collectors in September 2024.

On February 5, 2025, more than five months after he had begun teaching at West High School, Ambro filed a *Williams* complaint.³⁴ Murata could not recall specifics but admitted that some issues in the complaint had merit, and that the District had a list of saws and other equipment that needed repairs or replacement.

³⁴ See Education Code section 35186.

ISSUES

1. Whether the District's April 16, 2024 PAL Notice, which directed Ambro "not to telephone, text, email or otherwise contact employees, students, and/or parents of the District" (emphasis omitted) about the District's investigation of Ambro, except for communications with his union representative, interfered with and denied representational rights in violation of EERA section 3543.5, subdivisions (a) and (b)?
2. Whether the District interfered with Ambro's right to meaningful representation and denied the Association's right to represent employees in violation of EERA section 3543.5, subdivisions (a) and (b) by:
 - (a) refusing to disclose sufficiently detailed information about its investigation of Ambro; and/or
 - (b) unilaterally setting dates and times for investigative or disciplinary meetings and/or refusing to reschedule such meetings?
3. Whether the District refused to provide the Association with necessary and relevant information for representing Ambro and thereby interfered with and denied representational rights of Ambro and the Association, in violation of EERA section 3543.5, subdivisions (a), (b) and (c)?
4. Whether the District imposed reprisals against Ambro because of EERA-protected activity, and thereby interfered with the Association's right to represent employees in violation of EERA section 3543.5, subdivisions (a) and (b), by:
 - (a) unilaterally setting dates and times for investigative meetings or threatening Ambro with discipline for not attending or cooperating with investigative meetings that had been cancelled;
 - (b) issuing a notice of unprofessional conduct accusing Ambro of insubordination;

- (c) issuing a notice of intent to terminate Ambro's employment;
- (d) issuing a notice to suspend Ambro without pay for 15 days;
- (e) issuing a notice of reassignment that involuntarily transferred Ambro to a new school site; and/or,
- (f) limiting Ambro's ability to remove his personal effects from his former classroom and disposing of his lesson plans, curricula, and other personal property?

CONCLUSIONS OF LAW

A. No Contact Directives in the April 16, 2024 PAL Notice

1. Legal Standard for Employer No-Contact Directives

EERA guarantees public school employees the right to “form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations” and corollary rights of employee organizations to represent their members in their employment relations with public school employers and to communicate with their members at the work site. (EERA, § 3543, subds. (a), (b); *Capistrano Unified School District* (2015) PERB Decision No. 2440, p. 14, fn. 8 (*Capistrano*); *County of Sacramento* (2014) PERB Decision No. 2393-M, pp. 32-34 (*Sacramento*).) The right to “form, join, and participate” under EERA includes the right of employees to engage in concerted action for mutual aid and protection analogous to the Section 7 rights of private-sector employees under federal law. (*Modesto City Schools* (1983) PERB Decision No. 291, pp. 61-62; 29 U.S.C., § 157.) PERB has held that “there is no more fundamental right afforded employees under the statutory scheme than the right to communicate with others about working conditions.” (*Claremont Unified School District* (2019) PERB

Decision No. 2654, p. 18, fn. 15 (*Claremont USD*); *Los Angeles Community College District* (2014) PERB Decision No. 2404, p. 11, fn. 5 (*LACCD*).)

Under *Carlsbad Unified School District* (1979) PERB Decision No. 89 (*Carlsbad*), a prima facie case of interference is established if the employer's promulgation, maintenance, or enforcement of a rule or directive reasonably tends to or does harm or chill the exercise of statutory rights. (*Id.* at pp. 10-11; see also *Jurupa Unified School District* (2012) PERB Decision No. 2283, p. 29 (*Jurupa*); *County of Riverside* (2010) PERB Decision No. 2119-M, pp. 16-23.) PERB does not look favorably on broad or vaguely worded employer rules or directives that might chill lawful speech or other protected conduct. (*LACCD, supra*, PERB Decision No. 2404, pp. 6-7.) An employer rule or directive banning a general category of conduct that includes both protected and unprotected activity is presumptively unlawful because its ambiguity is likely to chill protected conduct. (*Ibid.*; *Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, pp. 46-47 (*Petaluma*); *Sacramento, supra*, PERB Decision No. 2393-M, p. 20.)

An employer directive prohibiting employees from communicating with other employees about wages, hours, or working conditions, including grievances and past or prospective disciplinary actions prima facie interferes with employees' rights to engage in concerted activity for mutual aid or protection. (*San Diego Unified School District* (2019) PERB Decision No. 2634, p. 17 (*San Diego USD*); *County of Santa Clara* (2018) PERB Decision No. 2613-M, p. 9; *Trustees of the California State University* (2017) PERB Decision No. 2522-H, pp. 20-21 (*Trustees of CSU*), and private-sector cases cited therein; *LACCD, supra*, PERB Decision No. 2404, p. 9; see

also *State of California (California Correctional Health Care Services)* (2015) PERB Decision No. 2465-S, pp. 2-4 and fns. 3 and 5 [adopting in relevant part proposed decision's finding of subdivision (a) violation].) A directive not to contact students' parents or community members about these subjects similarly tends to chill the right of employees to publicize grievances or other workplace concerns. (*California Teachers Assn. v. Public Employment Relations Bd.* (2009) 169 Cal.App.4th 1076, 1091-92; *Alameda Health System* (2023) PERB Decision No. 2856-M, p. 34 (*Alameda*).)

PERB uses the *Carlsbad* test (described above) for allegations that an employer's rules or conduct have denied an employee organization's right to represent employees, to communicate with employees in the workplace, or to advertise its grievances and attempt to garner community support for labor's concerns. (*Alameda, supra*, PERB Decision No. 2856-M, p. 34; *Contra Costa County Fire Protection District* (2019) PERB Decision No. 2632-M, p. 18, fn. 12 (*Contra Costa Fire*); *Regents of the University of California* (2012) PERB Decision No. 2300-H, p. 16.) Whether an employer's restriction on employee speech also violates the rights of an employee organization depends on the facts of each case. (*Alameda, supra*, at p. 26; *Sacramento, supra*, PERB Decision No. 2393-M, p. 33, fn. 36; *County of Santa Clara* (2021) PERB Order No. Ad-485-M, pp. 9-10 & fn. 8.) However, PERB has held that even where an employer's no contact directive expressly allows for communications with a union representative, a prohibition on communications *between* employees may prevent them from gathering information or providing effective assistance to their representative *in the discharge of its duties* or may erode employee support *for the organization* and thereby deny *the organization's* rights. (*County of Santa Clara*,

supra, PERB Decision No. 2613-M, p. 9; see also *Delano Union Elementary School District* (2007) PERB Decision No. 1908, p. 17.)

Once it is established that an employer's prohibition on discussing wages, hours, or working conditions with others reasonably tends to or does adversely affect protected rights, the employer bears the burden of proving the existence of an operational necessity for its directive. (*Claremont USD, supra*, PERB Decision No. 2654, pp. 20-21; *San Diego USD, supra*, PERB Decision No. 2634, p. 18; *County of Santa Clara, supra*, PERB Decision No. 2613-M, p. 12; *LACCD, supra*, PERB Decision No. 2404, p. 13.) The employer must prove it had a "legitimate and substantial business justification" for the prohibition as to that specific employee and under the circumstances. (*Claremont USD, supra*, at p. 22; *LACCD, supra*, at p. 6; *Jeannette Corp. v. NLRB* (3d Cir. 1976) 532 F.2d 916, 918.)³⁵

2. The PAL Notice Prima Facie Violates Protected Rights

Paragraph 3 of the PAL Notice prohibited Ambro from contacting employees, students, and/or parents of the District for any reason with exceptions only for communications with Hernandez and Ambro's union representative. Paragraph 5 similarly prohibited Ambro from discussing "any aspects" of his administrative leave with anyone other than his union representative. Although the District expressly allowed Ambro to communicate with his union representative, such communications

³⁵ Under *Carlsbad*, if the resulting harm is inherently destructive of protected rights, it will be excused only on proof that it was caused by circumstances beyond the employer's control and that no alternative was available. (*Carlsbad, supra*, PERB Decision No. 89, pp. 10-11; see also *City & County of San Francisco* (2017) PERB Decision No. 2536-M, p. 30 (*CCSF*)). Because the Association does not argue that the PAL Notice was inherently destructive, it is unnecessary to consider the issue.

are only one of the rights protected by EERA section 3543. In *County of Santa Clara, supra*, PERB Decision No. 2613-M, PERB found unlawful an employer's no-contact directive that similarly carved out an exception for communications with a union representative but otherwise prohibited the employee from discussing the employer's investigation with others. (*Id.* at pp. 3, 9-10; *Trustees of CSU, supra*, PERB Decision No. 2522-H, pp. 20-22.) The District's no-contact directives are facially overbroad in that they limit the rights of employees to communicate *with one another* for mutual aid or protection. (EERA, § 3543, subd. (a); *Claremont USD, supra*, PERB Decision No. 2654, pp. 20-21; *Trustees of the CSU, supra*, at pp. 20-21.) By prohibiting communications with students and their parents "for any reason," the PAL Notice also limits protected rights to advertise employees' or the Association's grievances or other workplace concerns *to the public*. (*Alameda, supra*, PERB Decision No. 2856-M, p. 34; *Regents, supra*, PERB Decision No. 2300-H, p. 16.) To the extent they prohibited Ambro from gathering information or otherwise assisting the Association in its representation of Ambro, the District's no contact directives also presumptively denied the Association's right to represent employees. (EERA, § 3543, subd. (b); *County of Santa Clara, supra*, PERB Decision No. 2613-M, p. 9.)

The District raises several arguments aimed at negating the prima facie case. Citing *Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*), it claims there is no evidence that the PAL Notice was improperly motivated. It also claims that Paragraph 3 was rescinded on June 11, 2024 after the Association "took issue with it"; that it "never attempted to enforce the directive"; and that Ambro was not *effectively*

discouraged from contacting other employees, as evidenced by his request that Brown retrieve items from the classroom. These and other arguments are unavailing.³⁶

The District's professed good or lawful intentions are irrelevant here. Since publication of *Carlsbad* in 1979, PERB has held that a violation of employee rights is not "invariably dependent upon an affirmative finding of an intentional infringement." (*Carlsbad, supra*, PERB Decision No. 89, pp. 7-8.) In the ensuing decades, PERB has repeatedly analyzed no-contact rules, like those in the PAL Notice, as *interference* claims that, unlike discrimination or reprisal, requires *no showing* of improper motive, intent, or purpose. (*Claremont USD, supra*, PERB Decision No. 2654, pp. 20-21; *San Diego USD, supra*, PERB Decision No. 2634, p. 17; *County of Santa Clara, supra*, PERB Decision No. 2613-M, p. 9; *LACCD, supra*, PERB Decision No. 2404, pp. 5-9; cf. *Novato, supra*, PERB Decision No. 210, p. 6.) Because the prima facie analysis under *Carlsbad* is not concerned with *why* an employer issued its no-contact directives, the District's asserted lack of an improper motive, even if credited, provides no assistance here. (*LACCD, supra*, pp. 7, 14-15; see also *Community Learning Center Schools, Inc.* (2017) PERB Order No. Ad-448, p. 9.)

The District also contends that it did not enforce the no-contact directives and that no "actual" harm occurred because Ambro contacted Brown anyway, thereby demonstrating that he was not *effectively* discouraged from even arguable protected activity. These contentions are not only unpersuasive; they are contrary to decades of

³⁶ The District also argues that Paragraph 3 "was intended to preserve the integrity of the investigation." Because this assertion involves matters not in the Complaint or necessary for a prima facie case, it is discussed below with other defenses. (PERB Reg. 32644, subd. (a)(6); Code Civ. Proc., § 431.30, subd. (b)(2).)

PERB precedent. Under *Carlsbad*, the test for “harm” to protected rights is an objective one: whether the employer’s conduct “tends to or does result in some harm” to protected rights. (*Carlsbad, supra*, PERB Decision No. 89, p. 10; see also *Contra Costa Fire, supra*, PERB Decision No. 2632-M, pp. 18-19 & fn. 12; *Hartnell Community College District* (2015) PERB Decision No. 2452, p. 24 (*Hartnell I*); *Clovis Unified School District* (1984) PERB Decision No. 389, pp. 14-15 (*Clovis*).) The prima facie case does not turn on whether employees or employee organization representatives felt subjectively threatened or intimidated or were *actually* discouraged from protected activity. (*Claremont USD, supra*, PERB Decision No. 2654, pp. 20-22; *Petaluma, supra*, PERB Decision No. 2485, p. 42; *County of Riverside, supra*, PERB Decision No. 2119-M, pp. 20-21, 23; *Clovis, supra*.) Because employees should not be required to risk discipline to “test” the lawfulness of a broadly worded or otherwise ambiguous employer rule or directive, PERB precedent regards promulgation or even mere maintenance of an overly broad rule or directive as sufficient to establish a prima facie case of interference. (*San Bernardino Community College District* (2018) PERB Decision No. 2599, p. 6 (*San Bernardino CCD*); *LACCD, supra*, PERB 2404, pp. 6-8; see also *CCSF, supra*, PERB Decision No. 2536-M, pp. 14-15.) Thus, even if the District’s no-contact directives were never enforced nor “actually discourage[d]” Ambro from contacting Brown, this would not negate their coercive effect or preclude finding that they would *tend to discourage* a reasonable employee from exercising protected rights under the circumstances. (*Claremont USD, supra*, at p. 22.)

The record supports a prima facie case that the PAL Notice violated protected rights. Absent a valid defense, the District has committed unfair practices as alleged in Paragraphs 8 and 9 of the Complaint.

3. Affirmative Defenses

a. The District's Purported Retraction

The District argues that it should avoid liability because it rescinded the no-contact rule. Following private-sector precedent, PERB treats such contentions as an affirmative defense, variously referred to as “disavowal,” “repudiation,” or “retraction.” (*Alliance Environmental Science and Technology High School, et al.* (2020) PERB Decision No. 2717, p. 26; *Jurupa Unified School District* (2015) PERB Decision No. 2458, pp. 12-13 (*Jurupa USD*), citing *Passavant Memorial Area Hospital* (1978) 237 NLRB 138 (*Passavant*).) An employer may only escape liability under *Passavant* and similar cases, if certain conditions are met:

“To be effective, [the employer’s] repudiation must be ‘timely,’ ‘unambiguous,’ ‘specific in nature to the coercive conduct,’ and ‘free from other proscribed illegal conduct.’ [Citations.] Furthermore, there must be adequate publication of the repudiation to the employees involved and there must be no proscribed conduct on the employer’s part after the publication. [Citation.] And, finally, . . . such repudiation or disavowal of coercive conduct should give assurances to employees that in the future their employer will not interfere with the exercise of their . . . rights.”

(*Id.* at pp. 138-139; accord, *Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2018) 23 Cal.App.5th 1129, 1174; *J.R. Norton Co. v. Agricultural Labor Relations Bd.* (1984) 162 Cal.App.3d 692, 697.)

The fundamental remedial purpose served by *Passavant* and similar cases is “to protect employees from the potential lingering effects of an unfair labor practice, even though that practice has been halted.” (*Boch Imports, Inc. v. NLRB* (1st Cir. 2016) 826 F.3d 558, 565, citing *Webco Industries, Inc.* (1988) 327 NLRB 172.) An employer’s repudiation must unambiguously inform employees that the employer “recognizes that it has acted wrongfully, that it respects their [statutory] rights, and that it will not interfere with those rights again.” (*Ibid.*) Otherwise, “there is no assurance that the coercive effects of the initial wrongful conduct will not linger in the workplace.” (*Id.* at pp. 566-567.) An employer cannot prevail on a retraction defense while still maintaining that its conduct was lawful. (*Jurupa USD, supra*, PERB Decision No. 2458, pp. 13-14; *Ark Las Vegas Restaurant Corp. v. NLRB* (D.C. Cir. 2003) 334 F.3d 99, 108.)

Here, the parties focus on whether the District adequately publicized its rescission to Ambro and other affected employees. Stevens’ June 11, 2024 letter advised counsel for the Association that “written notification” of the District’s retraction “will be sent out today . . . to each impacted employee.” Hernandez admitted that no such correspondence on the subject was ever sent to impacted employees, but he considered this communication between counsel both appropriate, to avoid impermissibly communicating directly with represented employees, and sufficient, since he assumed the Association would convey the District’s decision to Ambro and other affected employees. This testimony is dubious at best. The Association’s cease-and-desist letter authorized such communications by demanding that the District’s rescission “must be done in writing *to each employee directly.*” (Emphasis added.)

However, I need not decide whether an employer may adequately publicize a retraction by communicating with the employees' representative because here the purported rescission fails to satisfy other *Passavant* criteria. Notably, the defense must fail because the District continues to deny any wrongdoing, which is inconsistent with disavowal. (*Jurupa USD, supra*, PERB Decision No. 2458, pp. 13-14.)

Additionally, the purported retraction was neither "unambiguous," nor free from subsequent unlawful conduct. Given the District's representation that "written notification to each impacted employee will be sent out today," the absence of any subsequent communication to employees created ambiguity and rendered any retraction ineffective. Notwithstanding Hernandez's testimony, Ryan believed that the District *had in fact relied* on the no-contact directives to discipline Ambro, and even as late as the PERB hearing, she testified that the no-contract directives remained enforceable. Ryan's testimony undermines any claim that the District effectively retracted its unlawful conduct. Because the District has not met the *Passavant* criteria, its rescission/retraction defense fails.

b. The District Has Identified No Business Necessity nor Particularized Facts to Justify Its No-Contact Directives in this Case

The District's contention that Paragraph 3 "was intended to preserve the integrity of the investigation" also fails to constitute a "legitimate and substantial" operational or business interest. To justify a no-contact directive that limits employee rights as a "business necessity," the employer must do more than assert a generalized concern with protecting the integrity of its investigation. (*County of Santa Clara, supra*, PERB Decision No. 2613-M, pp. 9-10.) A routine practice of imposing a no-

contact rule as part of an investigation, without reference to particularized facts or the circumstances of each case, is not a “legitimate and substantial” reason. (*Ibid.*)

Here, as in *County of Santa Clara, supra*, PERB Decision No. 2613-M, the District routinely issued no contact directives to employees on investigative leave, and there is no evidence that it did so based on any *particularized* facts or circumstances. Neither the PAL Notice nor Hernandez’s testimony includes any credible explanation for prohibiting Ambro from speaking with other employees, students, or parents, nor is any justification for this limitation on employee rights apparent from the circumstances. When it issued the no-contact directives, the District’s investigation concerned Ambro’s failure to attend a staff meeting. Even accepting the District’s contention that Ambro did so in deliberate defiance of District rules and prior directives, this allegation did not rely on the accounts by other witnesses, nor on material evidence that could be altered or affected by Ambro retaining access to his classroom.

For all these reasons, the Complaint’s allegations that the District interfered with employee rights and denied the Association its right to represent employees in violation of EERA section 3543.5, subdivisions (a) and (b), are **SUSTAINED**.

B. Alleged Denial of Representational Rights in the District’s Investigation

1. Operative Pleadings and the Parties’ Positions

Paragraphs 20 and 21 of the Complaint alleged one count each that the District violated employee and employee organization rights by the acts and omissions alleged in Paragraphs 14, 16, 17, 18, and 19. The acts and omissions at issue included: that at the April 22, 2024 investigative meeting, Hernandez refused to answer Shankle’s questions about the allegations against Ambro and refused to

reschedule the meeting; that in response to Shankle's request for information made later that day, Hernandez disclosed that Ambro was accused of "persistent non-compliance with Board Policy, Administrative Regulations, and acts of insubordination" and that "allegations of property theft [were] under scrutiny"; that the District "did not inform Ambro what he was accused of stealing until June 13, 2024"; that the District "unilaterally scheduled a second investigatory meeting for April 25, 2024," and refused a request by Ambro's representative to reschedule that meeting; and that in April and May 2024, Hernandez "sent multiple meeting invitations for a subsequent investigatory meeting with incorrect dates and times."

The Association makes several assertions related to these allegations in the "Facts" section of its brief. Among other things, the Association contends that by "merely identifying an allegation as 'theft,'" Hernandez provided insufficient information "to allow for meaningful representation or to adequately inform Ambro and the Association of the purpose and scope of the [investigative] interviews." The Association also argues in the "Facts" section of its brief, that "[i]n April, May, and June of 2024, Hernandez repeatedly and unilaterally set investigatory meeting dates without any regard for the schedules of Ambro's representatives" and "threaten[ed] Ambro with insubordination for violating directives if his representatives were unable to appear on the dates and time Hernandez selected." Thus, it does not appear that the Association intends to abandon the unfair practice claims alleged in Paragraphs 20 and 21 of the Complaint. (See *City of Glendale* (2021) PERB Decision No. 2773-M, p. 29, fn. 15.)

However, the Association does not return to these issues in the "Argument" section of its brief. Nor does it anywhere identify the applicable test(s) for these

allegations or cite legal authority supporting a cognizable theory of interference or any other unfair practice. It remains unclear whether the Association intends to litigate these claims and their supporting factual allegations in Paragraphs 14, 16, 17, 18, and 19 as garden variety interference under *Carlsbad*; as violations of so-called *Weingarten* or similar representational rights under PERB precedent (see *Capistrano*, *supra*, PERB Decision No. 2440, pp. 10-16; *NLRB v. J. Weingarten, Inc.* (1975) 420 U.S. 251 (*Weingarten*); as meetings involving “highly unusual” or other circumstances involving representational rights under PERB precedent (*State of California (California Correctional Health Care Services)* (2024) PERB Decision No. 2888-S, pp. 18-20; *Sonoma County Superior Court* (2015) PERB Decision No. 2409-C, pp. 8-15 (*Sonoma I*)), or under some other unspecified legal theory (cf. *City of Pinole* (2012) PERB Decision No. 2288-M, p. 12; *El Dorado County Office of Education* (1989) PERB Decision No. 759, adopting dismissal letter at pp. 4-5).

The District construes these allegations as alleging a violation of so-called *Weingarten* rights and asserts that it has satisfied its legal obligations under *Weingarten* and similar PERB precedent. The District urges *inter alia* that at the initial investigative meeting on April 22, 2024, Hernandez “attempted to explain to Ambro and Shankle why he was issuing the *Lybarger* Warning” after “becoming aware earlier that day of a possible theft of District property from Ambro’s classroom” and that Hernandez “further explained Ambro’s affirmative obligation to participate in the District’s investigation”; that Hernandez accommodated Shankle’s request to continue this investigative meeting after Ambro “stormed out of Hernandez’s office”; that Ambro and his representatives knew that he was being investigated for potential theft of a

computer before the subsequent investigative meeting on May 9, 2024 based on Hernandez's April 22, 2024 e-mail response to Shankle and an April 29, 2024 telephone conversation in which Stevens explained to Perez what allegations were being investigated. The District also asserts that Ambro and his representatives were allowed to caucus during the May 9 meeting to discuss any subjects that emerged during the District's questioning of Ambro.

Under PERB's pleading practice, "the essential facts for each theory of liability should be stated in the complaint and identified as separate unfair practices." (*City of Roseville* (2015) PERB Decision No. 2505-M, pp. 15-16 (*Roseville*).) Here, Paragraphs 20 and 21 identify only *two* unfair practice theories: violations of the representational rights of employees and the Association under subdivisions (a) and (b) of EERA section 3543.5. Consistent with this interpretation is the Complaint's use of the conjunctive *and* in Paragraphs 20 and 21, which suggests that the predicate facts alleged in Paragraphs 14, 16, 17, 18, *and* 19 were intended to constitute *a single course of conduct* rather than several independent unfair practices.

Additionally, neither party has briefed the allegations in Paragraphs 14, 16, 17, 18, and 19 separately as constituting discreet unfair practices. I have therefore considered these paragraphs as alleging *one count each* of violating employee and organization rights. However, for convenience, I have grouped these factual allegations thematically under two subheadings: (i) the adequacy of Hernandez's explanations about the scope of the investigation; and (ii) the District's conduct in scheduling, rescheduling, and cancelling investigative meetings.

2. Hernandez's Explanations About the Scope of the Investigation

a. Legal Standard for Meaningful Representation in Investigations

The representational rights of employees and employee organizations quoted above apply in employer-initiated investigative proceedings. (*State of California (Department of Corrections and Rehabilitation)* (2018) PERB Decision No. 2598-S, pp. 7-8; *Sonoma I, supra*, PERB Decision No. 2409-C, pp. 13-14.) These rights are similar to, and potentially broader than, those affirmed by the U.S. Supreme Court in *Weingarten*. (*Capistrano, supra*, PERB Decision No. 2440, pp. 10-16; *Rio Hondo Community College District* (1982) PERB Decision No. 260, pp. 15-19.) They include a right to sufficient information about the alleged wrongdoing to enable the union to provide “effective” or “meaningful” representation in the interview. (*Contra Costa Community College District* (2019) PERB Decision No. 2652, pp. 7, 26-30; (*Contra Costa CCD*); *Jurupa, supra*, PERB Decision No. 2283, p. 30; see also *County of San Bernardino (Office of the Public Defender)* (2015) PERB Decision No. 2423-M, pp. 25, 38, 46 (*Public Defender's Office*).) The employer must provide more than a summary statement referencing an incident without identifying the potential charges, or a recitation of charges, such as “insubordination and/or sabotaging of the [employer’s] mission,” but without reference to the specific factual context. (*State of California (State Water Resources Control Board)* (2022) PERB Decision No. 2830-S, pp. 8-9 & fn. 8 (*Water Resources Control Board*) [distinguishing private-sector precedent]; *Contra Costa, supra*, at p. 27 [same].) Generally, this information must be disclosed sufficiently in advance to allow the union and the employee to consult before the interview. (*Water Resources Control Board, supra*, at p. 9; *Contra Costa CCD, supra*,

PERB Decision No. 2652, pp. 26-30.) After receiving sufficient information, the union and employee may consult privately before the interview for a “reasonable” time, as determined by the timing of the employer’s disclosure, the number and nature of the charges, and other relevant circumstances. (*Water Resources Control Board, supra*, at p. 9; *Contra Costa, supra*, at pp. 29-30; *Jurupa, supra*, at pp. 29-30.)

b. April 22, 2024 Meeting with Ambro and Shankle

The interview began, as planned, with Shankle as Ambro’s representative. Based on her prior conversation with Hernandez, Shankle understood that it concerned Ambro’s failure to attend a staff meeting. However, the meeting ended abruptly after Hernandez introduced the *Lybarger* admonition and, on Shankle’s advice, Ambro refused to sign the document or submit to questioning until Hernandez specified the allegations at issue, including any potential criminal conduct that had prompted the *Lybarger* admonition. It is undisputed that Hernandez presented the *Lybarger* admonition based on recently obtained information *and previously undisclosed concerns* that Ambro had stolen District property, an explanation reiterated in the District’s post-hearing brief.

Initially, the *Lybarger* admonition is not at issue here. Without question, public employers may require their employees—on pain of dismissal—to answer questions “specifically, directly, and narrowly relating to the performance of [their] official duties” by first immunizing them from criminal liability for their responses (*Spielbauer v. County of Santa Clara, supra*, 45 Cal.4th at p. 725; *Lybarger v. City of Los Angeles, supra*, 40 Cal.3d at p. 829), and the Association does not challenge the validity of the document presented to Ambro. However, the District cites no appellate or other

pertinent authority suggesting that its presentation of the *Lybarger* admonition in any way limited Ambro's or the Association's representational rights under EERA. I am therefore required to harmonize PERB precedent with external law. (Cal. Const., art. III, § 3.5; *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1094-1095; *City of San Diego* (2015) PERB Decision No. 2464-M, pp. 29-30, affirmed in relevant part *sub nom.* by *Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898.) Assuming the *Lybarger* document eliminated any Fifth Amendment objections Ambro may have had, it did not speak to other rights or obligations, including rights to meaningful representation under EERA.

The District's brief also focuses on Hernandez's explanation, in response to Shankle's written request for information, that in addition to previously disclosed charges of persistent failure to follow directions and insubordination, "allegations of property theft" were now also "under scrutiny." However, Shankle's written information request and Hernandez's response thereto are also immaterial here. As noted above, these written communications occurred *after* the investigative meeting and did little more than repeat what the parties had already stated at the meeting: Shankle asked Hernandez to specify the charges against Ambro, and Hernandez recited some version of failure to follow directions, insubordination, and theft of District property.

Resolution of this claim therefore turns on whether the District adequately responded to Shankle's request *at the meeting* for sufficient information to permit meaningful representation. If so, the District could proceed along one of two paths. It could either: (1) lawfully question Ambro, including on any matters covered by the *Lybarger* admonition, and then discipline Ambro, up to and including termination, if he

refused to answer such questions; or (2) discontinue the interview and decide whether discipline was appropriate based on information already known or available through other sources. (*Weingarten, supra*, 420 U.S. at p. 259; *San Bernardino CCD, supra*, PERB Decision No. 2599, p. 3; *Capistrano, supra*, PERB Decision No. 2440, p. 12; *Public Defender's Office, supra*, PERB Decision No. 2423-M, p. 23; *San Bernardino City Unified School District* (1998) PERB Decision No. 1270, pp. 62-63.) However, if the District had not met its preconditions for questioning Ambro under *Weingarten* and PERB precedent, its insistence on continuing the interview was unlawful, regardless of the rights or obligations of any person or party under *Lybarger*. (*County of San Joaquin (Sheriff's Department)* (2018) PERB Decision No. 2619-M, pp. 13-14 & fn. 13; *Capistrano, supra*, at pp. 43, 45-46.)

On the available record, I agree with the Association that Hernandez's response was insufficiently specific to satisfy the above requirements for "meaningful representation." Hernandez reiterated the general nature of the charge, i.e., "allegations of property theft," but without reference to *the specific factual context*. (*Water Resources Control Board, supra*, PERB Decision No. 2830-S, pp. 8-9 & fn. 8.) There is no credible evidence that on April 22, 2024 Hernandez identified any specific items or provided even a general description of any District property allegedly stolen by Ambro. By their own admission, Hernandez and Ryan never identified any District-issued computer to support the theft charges. Under the circumstances, Ambro was authorized to refuse to proceed with the interrogation on April 22, 2024 (*Capistrano, supra*, PERB Decision No. 2440, pp. 12-13), and the District has presented no evidence of operational necessity or any other affirmative defense. The record

supports the Complaint allegations that by insisting that Ambro submit to questioning on April 22, 2024 without sufficiently specifying the allegations against him, the District interfered with and denied representational rights, in violation of EERA section 3543.5, subdivisions (a) and (b). On that basis, the unfair practices alleged in Paragraphs 20 and 21 of the Complaint are **SUSTAINED**.

c. May 9, 2024 Meeting with Ambro, Perez, and Shankle

In further support of the claims in Paragraphs 20 and 21 of the Complaint, Paragraph 17 alleges that the District “did not inform Ambro what he was accused of stealing until June 13, 2024.” It is undisputed that by May 9, 2024, Hernandez had informed Association representatives that Ambro was being investigated for “theft of District property,” and while this bare assertion was insufficiently specific to permit meaningful representation, the record also includes April 30, 2024 correspondence from Perez thanking Stevens for taking the time to explain “the various allegations that are the subject of the pending investigations.” The Association contends that Ambro and his representatives only learned of *the specific items* that Ambro was accused of stealing at the May 9 investigative meeting, and even then, only by inference and only after the interrogation had already begun. The District has presented no contrary evidence but claims that it did not prevent Ambro and the Association from caucusing during the May 9 investigative meeting to discuss any ostensibly “missing” items about which Ambro was questioned. Neither party has discussed Perez’s April 30, 2024 correspondence, in which he thanked Stevens for explaining “the various allegations that are the subject of the pending investigations” in a telephone conversation occurring the previous day, and specifically whether this correspondence constitutes

an admission that the District had satisfied any obligation it may have had to identify the specific items of District property that Ambro was suspected of stealing.

In the absence of any citation to authority and briefing, the Association has failed to meet its burden of showing that the District's alleged failure to inform Ambro what he was accused of stealing until June 13, 2024, as alleged in Paragraph 17 of the Complaint, harmed or tended to harm protected rights, failed to provide Ambro's representative a reasonable opportunity to ask about the nature of any alleged wrongdoing sufficiently in advance of the investigative interview, or otherwise interfered with or denied representational rights in investigative meetings. (PERB Reg. 32178.) Accordingly, the allegations in Paragraph 17 fail to support the unfair practices alleged in Paragraphs 20 and 21 of the Complaint and/or to the extent they are alleged as independent unfair practices, they are **DISMISSED**.

4. Unilaterally Scheduling and Refusing to Reschedule Meetings

Paragraphs 18 and 19 of the Complaint alleged various facts regarding the District's scheduling of investigative meetings. Like the above allegations regarding the right to "meaningful" representation, the Association has made several assertions in the "Facts" section of its brief but has cited no relevant authority nor briefed the issues raised by these allegations. I again follow the District's suggestion and consider these allegations under *Weingarten* and similar PERB precedent.

a. Legal Standard: To the Extent PERB Has Considered the Issue, It Regards Investigative Meetings as a Managerial Prerogative

In *Weingarten*, *supra*, 420 U.S. 251, the U.S. Supreme Court agreed with the National Labor Relations Board that the right of employees to engage in concerted activity "for mutual aid or protection" includes the right of an employee, upon request,

to the advice and assistance of a union representative in an investigative interview by the employer. (*Weingarten, supra*, at pp. 257, 263; see also *International Ladies' Garment Workers Union, Upper South Department, AFL-CIO v. Quality Manufacturing Co.* (1975) 420 U.S. 276, 281 (*Quality Manufacturing*).) In delineating the scope of this right, the *Weingarten* Court observed that an employee's "exercise of [this] right may not interfere with legitimate employer prerogatives," and the union cannot "transform the interview into an adversary contest." (*Weingarten, supra*, at pp. 258, 263.) Thus, *unlike* negotiations, grievance meetings, or other proceedings subject to the duty to bargain and scheduled by mutual agreement between equal partners to the collective bargaining relationship, an employer has no obligation to conduct an investigative interview, nor to justify its refusal to do so. (*Id.* at pp. 258–260.)

PERB and California Courts have repeatedly held that the representational rights of employees and employee organizations under the PERB statutes, which are expressly "for the purpose of representation *on all matters of employer-employee relations*," may be broader than under federal law. (EERA, § 3543, subd. (a) (emphasis added); *State of California (Office of the Inspector General)* (2019) PERB Decision No. 2660-S, pp. 24-25 (*OIG*); *Sonoma County Superior Court* (2017) PERB Decision No. 2532-C, 10-13 (*Sonoma II*); *Capistrano, supra*, PERB Decision No. 2440, p. 10-16.) However, they have never challenged the premise of the *Weingarten* Court that the decision to convene an investigative interview is, fundamentally, *a managerial prerogative*. Because an employer may convene an investigative interview without undue delay, PERB has recognized that such meetings are "often scheduled with minimal lead time." (*Hartnell Community College District* (2018) PERB Decision

No. 2567, pp. 5, 7-8 (*Hartnell II*); *Contra Costa CCD*, *supra*, PERB Decision No. 2652, p. 31, fn. 19.) While the employer may not interfere with the union's choice of a representative (*Public Defender's Office*, *supra*, PERB Decision No. 2423-M, pp. 38, 44-46), PERB follows *Weingarten* in holding that an employer is not required to postpone an investigative interview because a specific union representative requested by the employee is absent, so long as another union representative is available. (*State of California (Department of Transportation)* (1994) PERB Decision No. 1049-S, adopting warning letter at p. 2, fn. 1, citing *The Developing Labor Law*, ABA Section of Labor and Employment Law, 3d ed. 1992 at p. 156.) Thus, to the extent PERB has addressed the issue, it appears to follow *Weingarten* in allowing considerable employer discretion in scheduling investigative meetings. (*Ibid.*; *Hartnell II*, *supra*, at pp. 5, 7-8; see also *Sonoma I*, *supra*, PERB Decision No. 2409-C, pp. 13-15.)

b. Paragraph 18: Unilaterally Scheduling an Investigative Meeting

Paragraph 18 alleged that Hernandez "unilaterally scheduled a second investigatory meeting for April 25, 2024" and refused the Association's request to reschedule this meeting. The record shows that between April 22 and April 25, 2024, Hernandez or his assistant sent several e-mails or meeting invitations directing Ambro and his representatives to attend investigative meetings on various dates in late April and early May 2024. Some of these messages expressly or impliedly threatened discipline if Ambro failed to attend. For example, Hernandez's message of April 22, 2024 at 4:46 p.m. stated, in part: "Failure to attend and actively participate in the District's investigation on Thursday, April 25, 2024, will be deemed as further insubordination." Hernandez sent another message the following day threatening that

Ambro's failure to appear for the April 25, 2024 meeting would result in "additional charges of insubordination" and additional discipline "up to and including termination." There is also no evidence that Ambro's representatives agreed to these dates and times, and in fact, there is correspondence from Perez in which he refused to attend these meetings, claiming either that he was unavailable or that Hernandez had not yet provided sufficient information about the scope of the investigation.

However, none of these meetings ever occurred, and as conceded by the Association in its opening statement, on May 2, 2024, Stevens notified Perez that all prior calendar invitations for investigative meetings had been withdrawn. In the same May 2, 2024 correspondence, Stevens suggested rescheduling Ambro's investigative meeting for May 9, 2024, and there is no dispute that Perez agreed to this suggestion, nor that Ambro, Perez, and Shankle attended this meeting on May 9, 2024.

The record fails to support Paragraph 18's allegations that the District "unilaterally scheduled a second investigatory meeting for April 25, 2024" and "refused to reschedule" the April 25, 2024 meeting at the Association's request. Alternatively, to the extent the record supports these allegations, it fails to show that this conduct caused or tended to cause any harm to protected rights. Accordingly, the allegations in Paragraphs 18 fail to support the claims alleged in Paragraphs 20 and 21 of the Complaint or if alleged as independent unfair practices, they are **DISMISSED**

c. Paragraph 19: Incorrect Meeting Invitations in April and May 2024

Paragraph 19 alleged that in or around April and May 2024, Hernandez "sent multiple meeting invitations for a subsequent investigatory meeting with incorrect dates and times." In addition to the allegations discussed in the previous section, on

June 3, 2024, Imperial sent Ambro and his representatives invitations for investigative meetings to be held on June 6, June 10, and June 12, 2024. Like the previous meeting invitations, these were also “unilaterally” scheduled to the extent no one from the District asked Ambro’s representatives about their availability before setting the dates and times of these meetings. However, like the previously scheduled meetings, it is undisputed that all meetings scheduled for June 2024 were also cancelled.

To the extent the record supports the allegations in Paragraph 19 of the Complaint, any resulting harm or tendency to harm protected rights was either unsubstantiated or de minimis. None of these meetings were held, all the meeting invitations were withdrawn, and the only investigative meetings concerning Ambro that were held—those on April 22 and May 9, 2024—were scheduled by *mutual agreement* of the parties’ representatives. (PERB Reg. 32178; *Carlsbad Unified School District* (1989) PERB Decision No. 778, p. 28.) Accordingly, the allegations in Paragraph 19 fail to support the unfair practices alleged in Paragraphs 20 and 21 of the Complaint and/or to the extent they are alleged as independent unfair practices, they are **DISMISSED** for lack of proof.

d. Invitation to April 25, 2024 Disciplinary Meeting

Although not presented in the Argument section of its brief, the Association apparently contends that a message sent by Imperial on April 23, 2024 directing Ambro to attend a meeting on April 25, 2024 at 12:35 p.m. “to receive discipline” also violated protected rights. This allegation was not in the Complaint, was not urged as an unalleged violation, and was not raised in the Association’s opening statement. It is therefore inappropriate for consideration as an unalleged violation.

Nor does it provide evidence in support of the interference claims in Paragraphs 20 and/or 21 or other claims in the Complaint. Generally, no right of representation attaches if the sole purpose of an employer-initiated meeting is to present a final disciplinary memo. (*Regents of University of the California (Los Alamos National Laboratory)* (2003) PERB Decision No. 1519-H, p. 3, adopting warning letter at pp. 2, 3-4, citing *Baton Rouge Water Works Company* (1979) 246 NLRB 995.)³⁷ Because the sole purpose of the meeting was for Ambro to “receive discipline,” there was no presumptive right to representation, and the District’s conduct in scheduling the meeting therefore had no discernible tendency to harm protected rights. (*Hartnell I, supra*, PERB Decision No. 2452, pp. 36-38.)

It was also undisputed that Perez agreed to accept electronic service of the disciplinary document that Ambro was to receive at the April 25, 2024 meeting and that the meeting was therefore cancelled. Thus, even assuming Imperial’s meeting invitation somehow stated a prima facie case of interference, Perez’s conduct would likely establish a complete defense of consent or waiver by conduct. (*State of California (Department of Corrections and Rehabilitation)* (2024) PERB Decision No. 2926-S, pp. 22-23.) For all these reasons, Imperial’s April 23, 2024 invitation for Ambro to attend a purely disciplinary meeting fails to support the claims alleged in Paragraphs 20 and/or 21 of the Complaint or any unalleged violations.

³⁷ There are two circumstances in which a right of representation may attach to an otherwise purely disciplinary meeting: when the employer clearly goes beyond merely informing the employee of the discipline (*Rio Hondo Community College District, supra*, PERB Decision No. 260, pp. 18-19), or when the meeting occurs under “highly unusual circumstances.” (*OIG, supra*, PERB Decision No. 2660-S, pp. 27-30.) However, neither of these exceptions were alleged or proven here.

C. Failure or Unreasonable Delay in Providing Information

An employer must, upon request, provide an exclusive representative with all information necessary and relevant for representing bargaining unit employees. (*City and County of San Francisco* (2024) PERB Decision No. 2891-M, pp. 7-8; *Butte-Glenn Community College District* (2022) PERB Decision No. 2834, p. 9 (*Butte-Glenn*).)

PERB uses a liberal, discovery-type standard akin to the standard used by courts to determine relevance; the terms “necessary” and “relevant” are interchangeable in this context. (*Butte-Glenn, supra*, at p. 9.) Information pertaining to unit members’ wages, hours, or working conditions, including potential discipline, is presumptively relevant and must be disclosed unless the employer can show that the information is plainly irrelevant or provides an adequate reason why it cannot furnish the information.

(*Petaluma, supra*, PERB Decision No. 2485, pp. 17-18; *Stockton Unified School District* (1980) PERB Decision No. 143, p. 13.)

Upon receiving a request for relevant information, the responding party must exercise the same diligence and thoroughness as it would in other business affairs of importance. (*Butte-Glenn, supra*, PERB Decision No. 2834, p. 10.) A responding party violates its duty to meet and negotiate in good faith if it unreasonably delays in responding to the request, even if the delay caused no discernible prejudice to the requesting party. (*Ibid.*) The responding party must promptly raise any defense or limitation on disclosure, or the issue is waived. (*Id.* at p. 10; *County of Tulare* (2020) PERB Decision No. 2697-M, p. 14; *State of California (Department of State Hospitals)* (2018) PERB Decision No. 2568-S, p. 16.) If the responding party believes that a request is unduly burdensome, seeks confidential information, requires clarification, or

is overbroad, the responding party is not permitted to deny the request outright and must instead promptly and affirmatively assert its concerns and offer to bargain in good faith over appropriate accommodations. (*Butte-Glenn, supra*, at p. 10.) Upon receiving a partial or otherwise inadequate response, the requesting party must reassert and/or clarify its request, unless circumstances make clear that the response did not fully satisfy the request. (*Id.* at p. 14; *Klamath-Trinity Joint Unified School District* (2005) PERB Decision No. 1778, p. 5.)

This claim requires no extended analysis because the essential components have been addressed above. The right to information depends on the circumstances of each case, including the scope of the union's statutory rights and duties to represent employees. (*Petaluma, supra*, PERB Decision No. 2485, p. 19.) As discussed above, the Association had a right to information that was necessary and relevant to providing "meaningful representation" to Ambro in the April 22, 2024 investigative meeting. Although Hernandez had previously informed Shankle that the investigation concerned Ambro's failure to attend a PLC meeting, once the meeting began, Hernandez produced the *Lybarger* document and asked Ambro to sign it. Shankle, understandably, asked Hernandez to specify the allegations that had prompted the *Lybarger* document, which under the circumstances was necessary and relevant information for providing Ambro with meaningful representation.

Contrary to the District's brief, Shankle made this request *in response to* Hernandez's introduction of the *Lybarger* document, not at the end of the meeting. Nor was it a request for Hernandez to explain his understanding of the *Garrity/Lybarger* doctrine or for a statement of charges void of any particularized facts.

Hernandez's introduction of the *Lybarger* document indicated the scope of the investigation had changed or expanded from Ambro's failure to attend a PLC meeting to some as yet undisclosed charge(s) carrying potential criminal liability. The requested information was also readily available. Had Hernandez not been prepared to disclose it, he would not have asked Ambro to sign a *Lybarger* statement in preparation for questioning on the matters that were the subject of Shankle's request.

Even crediting Hernandez's testimony that he advised Shankle at the meeting that the investigation concerned "persistent non-compliance" with District policies and regulations, "acts of insubordination," and "allegations of property theft," under PERB precedent, this statement contained insufficient factual detail to enable the Association to provide Ambro with meaningful representation under the circumstances. (*Water Resources Control Board, supra*, PERB Decision No. 2830-S, pp. 8-9 and fn. 8.) By questioning Ambro before responding to the Association's request for information with sufficient detail to permit meaningful representation, the District failed and refused to meet and negotiate in violation of EERA section 3543.5, subdivision (c), and interfered with and denied representational rights, in violation of EERA section 3543.5, subdivisions (a) and (b), as alleged in Paragraphs 39, 40, and 41 of the Complaint.

D. Reprisal and Derivative Interference Claims

1. Legal Standard

EERA makes it unlawful for a public school employer to "[i]mpose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of [protected] rights." (EERA, § 3543.5, subd. (a).) To prove a prima

facie case of discrimination or reprisal, a charging party must show that: (1) the employee exercised rights under EERA; (2) the employer knew of the exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action because of the exercise of those rights. (*Novato, supra*, PERB Decision No. 210, pp. 6-7.)

If the charging party meets its burden to establish a prima facie case, the respondent may seek to prove, as an affirmative defense, that it would have taken the same action even absent protected activity and employer animus. (*Carpinteria Unified School District* (2020) PERB Decision No. 2797, pp. 18-19 (*Carpinteria*).) When the employer proffers a non-discriminatory business justification, it bears the burden of proving its assertions by competent, independent (i.e., non-hearsay), and persuasive evidence. (*Palo Verde, supra*, PERB Decision No. 2337, pp. 12-13, 31.) It is not enough to show that a legitimate business reason for an adverse action *existed*; the employer must also prove that any reasons proffered were *in fact the reasons relied on* for its decision to take adverse action. (*Ibid.*) If the employer fails to prove either aspect of this defense, then the proffered reason(s) may be rejected as pretextual, and the charging party prevails. (*Novato, supra*, PERB Decision No. 210, p. 16, fn. 12; *Wright Line, supra*, 251 NLRB at p. 1084; *TexCal Land Management, Inc. v. Agricultural Labor Relations Bd.* (1979) 24 Cal.3d 335, 352–353.)

Alternatively, if the evidence shows that the employer acted for *both* legitimate and improper reasons, then a true “mixed” or “dual motive” situation exists. In such cases, the question is whether the adverse action would not have occurred “but for” the protected activity, and the respondent has the burden to prove that it would have

taken *the same* adverse action notwithstanding any protected activity and the employer's animus. (*City of San Diego, supra*, PERB Decision No. 2747-M, p. 28; *Claremont USD, supra*, PERB Decision No. 2654, p. 16; *Palo Verde, supra*, PERB Decision No. 2337, pp. 12-13, adopting proposed decision at p. 20; see also *Wright Line, supra*, 251 NLRB at p. 1091, fn. 5; *Martori Bros. Distributors v. Agricultural Labor Relations Bd.* (1981) 29 Cal.3d 721, 729-730.) If the employer puts on independent, competent, and persuasive evidence that it both had and acted in good faith for a legitimate non-discriminatory reason, then PERB weighs the evidence supporting the employer's justification for its adverse action against the evidence of improper motive. (*Los Angeles Unified School District* (2019) PERB Decision No. 2647, p. 22; *San Diego USD, supra*, PERB Decision No. 2634, p. 13, fn. 7; *Palo Verde, supra*, pp. 12-13, 23, 33.) The outcome in a "mixed motive" case is determined by "the sufficiency of the proof proffered by the various parties." (*Novato, supra*, PERB Decision No. 210, p. 14.)

2. Protected Activity

The Complaint alleges that Ambro engaged in protected activity in or around April and May 2024 by, among other things, "demanding to know the nature of the allegations against him"; "insisting on union representation at his investigative interviews"; and "engaging his union representative for assistance regarding the investigation against him." The District concedes that under *Weingarten* and PERB precedent, employees have a right to union representation, advice, and assistance in investigative meetings with management and that Ambro exercised these rights for the investigative meetings in this case. Meaningful representation in this context includes,

upon request, the right to a statement of the charges under investigation, particularized facts for each charge, and an opportunity for the employee and union representative to consult before the interview. (*Water Resources Control Board, supra*, PERB Decision No. 2830-S, pp. 8-9 & fn. 8; *Contra Costa CCD, supra*, PERB Decision No. 2652, pp. 26-30; *Capistrano, supra*, PERB Decision No. 2440, p. 12.) Ambro and the Association exercised these rights under EERA section 3543, subdivisions (a), and (b), during and after the April 22, 2024 meeting, when Shankle asked Hernandez to specify the charge(s) that prompted a *Lybarger* warning.

The Complaint also alleges that Ambro engaged in protected activity by, “in Hernandez’s own words, failing to stay off [Hernandez’s] radar.” There was considerable testimony that on one or more occasions, Hernandez told Ambro that he needed to stay off Hernandez’s radar, or words to that effect. Considered in context, the phrase warned Ambro to stay out of trouble. It is undisputed that Ambro appeared on Hernandez’s radar because he missed a PLC meeting and not for any protected activity. Accordingly, I do not find that Ambro’s failure to stay off Hernandez’s radar or Hernandez’s advisement to stay off his radar involved EERA-protected activity.

3. Employer Knowledge

Employer knowledge is also not in dispute. Hernandez was the relevant decision maker for placing Ambro on administrative leave, for scheduling interviews and otherwise conducting the investigation, for issuing each of the intermediate disciplinary measures, and for the decision to transfer Ambro to West High School. He also had effective power to recommend Ambro’s dismissal to the District’s governing board. His role regarding disposal of Ambro’s property at Hull is less clear,

but it is undisputed that he was responsible for dictating and enforcing the terms of Ambro's administrative leave, including responsibility for deciding whether, when, and under what circumstances to allow Ambro to enter District property. He is therefore a relevant decisionmaker for each of the reprisal claims. Because Hernandez was present when Ambro and the Association exercised the rights discussed in the preceding section, employer knowledge is established.

4. Adverse Actions

a. Unilaterally Scheduling Investigative Meetings

1. Complaint Allegations

The Complaint alleged that the District took adverse actions against Ambro by, among other things, "unilaterally setting dates and times for investigative meetings" and/or refusing to reschedule meetings when Ambro's representatives objected to the date(s) and/or time(s). Although the record includes numerous e-mails and meeting invitations from Hernandez's office ostensibly scheduling meetings in late April, May, and June 2024, as discussed above, the record ultimately fails to support these allegations. To the extent Hernandez's messages and meeting invitations "unilaterally" set meeting dates and times, all these meeting invitations were withdrawn, and the only two meetings that occurred were held on dates and at times agreed to by both parties. Accordingly, this allegation is **DISMISSED** for lack of proof under PERB Regulation 32178 and/or based on the District's affirmative defense.

b. Unalleged Theory: The Letter of Finding's Threat of Reprisal for Ambro Not Attending Cancelled Investigative Meetings

PERB may consider an unalleged violation when: (1) the respondent has adequate notice of the issue and opportunity to defend itself; (2) the acts making up

the unalleged theory are intimately related to the subject matter of the complaint and are part of the same course of conduct; (3) the unalleged theory has been fully litigated; and (4) the parties have had the opportunity to examine and be cross-examined on the issue. (*Fresno County Superior Court* (2017) PERB Decision No. 2517-C, p.13, aff'd. in relevant part *Superior Court v. Public Employment Relations Bd.* (2018) 30 Cal.App.5th 158, 192–195, review denied Mar. 27, 2019.) An unalleged violation must also have occurred within the applicable limitations period, and the supporting evidence should be expressly identified, so that all parties are aware of the basis for finding any unalleged violation. (*Tahoe-Truckee Unified School District* (1988) PERB Decision No. 668, pp. 6-9, 12 (*Tahoe-Truckee*).)

i. Application of the Unalleged Violations Criteria

In its opening statement, the Association asserted that after unilaterally scheduling and cancelling investigative meetings, “Hernandez stated in a later investigative report that Mr. Ambro was insubordinate for having failed to attend those cancelled meetings.” The parties submitted as a joint exhibit the District’s June 13, 2024 Letter of Finding, which stated: “Ambro was directed to attend investigative interviews on . . . April 25, 2024, April 26, 2024, June 6, 2024, June 10, 2024 and June 12, 2024 and he did not participate, defying clear directives. Ambro was insubordinate in his refusal to answer questions and fully cooperate in the District’s investigation.” The Letter of Finding advised Ambro that the District would pursue his dismissal based on these and other “substantiated” charges discussed therein.

At the hearing, Hernandez denied that Ambro was ever *disciplined* for failing to attend investigative meetings, and no such charge appears in the District’s Dismissal

Notice or in any other disciplinary documents issued to Ambro. However, the District does not claim to have ever rescinded or revised the Letter of Finding, including the above quoted finding that Ambro was insubordinate for failing to attend investigative meetings that the District itself had cancelled. As part of an appropriate remedy, the Association requested that PERB order that “all documents relating to the District’s unlawful investigation and all resulting discipline be expunged from the personnel files of Mr. Ambro,” including *inter alia* “the notice of finding [sic] that was issued in June.”

The Letter of Finding is not mentioned in the Complaint, and the Association did not move to amend the Complaint to conform to the above evidence regarding the Letter of Finding. The Association’s post-hearing brief referenced the Letter of Finding’s charge that Ambro was insubordinate for not attending investigative meetings, but rather than argue that this “finding” in the investigative report constituted an independent unfair practice, the Association cited it as evidence that the District’s disciplinary actions were improperly motivated. The question is whether it is appropriate here to consider as an unalleged theory of liability the following issue: By issuing an investigative report finding that Ambro had defied directives and was insubordinate when he failed to attend several investigative meetings that the District had already cancelled, did the District impose or threaten to impose a reprisal because of Ambro’s protected activity in violation of EERA section 3543.5, subdivision (a)?

The District had adequate notice and opportunity to defend itself because the Association explicitly raised the issue in its opening statement. Immediately after presenting its opening statement, the Association also requested expungement of the Letter of Finding as part of an appropriate remedy. The District responded in its

opening statement by acknowledging that between April 22 and May 9, 2024, “a series of meeting invitations . . . went out,” which included “a statement regarding the District’s expectations of Mr. Ambro and the potential consequences should he again choose not to participate” in these meetings. Rather than directly address the Association’s allegation that the *pre-disciplinary* investigative report accused Ambro of insubordination for not attending cancelled meetings, the District asserted that Ambro was never *disciplined* for not attending these meetings. The District’s opening statement demonstrates that it had notice of the issue and opportunity to respond, even if the counterargument it raised was non-responsive.

The unalleged matter is also intimately related to the subject matter of the Complaint and part of the same general course of conduct. The Letter of Finding advised Ambro that based on its findings, the District would terminate his employment, and three days later, the District issued its Dismissal Notice. The Dismissal Notice did not include the specific “finding” that Ambro was insubordinate for not attending cancelled investigative meetings. However, it did include the closely related allegation that that Ambro was insubordinate because he refused to answer questions at the April 25, 2024 meeting, which was one of several meetings in April and June 2024 where, according to the Letter of Finding, Ambro “was insubordinate in his refusal to answer questions and fully cooperate in the District’s investigation.”

For PERB’s unalleged violations test, an issue has been fully litigated when both parties have presented evidence on the issue. (*Roseville, supra*, PERB Decision No. 2505-M, p. 29.) This requirement is met here because several invitations from Hernandez for investigative meetings in late April and in May 2024 and the Letter of

Finding were offered and admitted into the record as joint exhibits. (*Ibid.*) The fully litigated requirement, and the separate requirement that parties be afforded an opportunity to examine and be cross-examined on the unalleged conduct, are also satisfied by Hernandez's testimony on both direct and cross examination regarding the meeting invitations, the District's cancellation of these meetings, and the purpose and findings of the Letter of Finding.

The issue is also timely as the Letter of Finding was issued on June 13, 2024, two months after Ambro was placed on administrative leave and three days before the District notified him of its intent to terminate his employment. Because these and other events alleged in the Complaint occurred both before and after June 13, 2024, the Letter of Finding occurred within the same limitations period applicable to events alleged in the Complaint, none of which was untimely.

Considering the unalleged conduct and unalleged theory of liability here is also consistent with due process and PERB precedent. (*Superior Court v. Public Employment Relations Bd.*, *supra*, 30 Cal.App.5th at pp. 192–193; *Tahoe-Truckee*, *supra*, PERB Decision No. 668, pp. 9-10, citing *J. R. Norton Co. v. ALRB* (1987) 192 Cal.App.3d 874; see also *City of Santa Monica* (2020) PERB Decision No. 2635a-M, pp. 52-53.) While only obliquely discussed in the Association's post-hearing brief, the District's "finding" that Ambro was insubordinate by not attending cancelled investigative meetings was squarely raised in the Association's opening statement, and its expungement was specifically requested as part of a remedy. It is therefore appropriate for PERB to consider the merits of the unalleged issue.

ii. The Merits of the Unalleged Theory

Turning to the merits of this claim, the facts are undisputed and the legal analysis is straightforward. For reasons explained above, Ambro's refusal to answer questions at the April 22, 2024 investigative meeting was protected, and his alleged refusal to cooperate at subsequent investigative meetings was likewise protected until *at least* April 29, 2024, when Stevens explained the nature and scope of the allegations under investigation to Ambro's representative. The fact that these meetings were cancelled or that Ambro did not refuse to attend them does not affect the analysis, as it is well settled that an employer's factually mistaken belief regarding protected activity does not negate the prima facie case. (*Simi Valley Unified School District* (2004) PERB Decision No. 1714, p. 15; *NLRB v. Burnup & Sims, Inc.* (1964) 379 U.S. 21, 23–24.)

The Letter of Finding was also objectively adverse to Ambro's employment. EERA expressly protects employees not only from reprisals but also from threats of reprisal because of protected activity, regardless of whether such threats are operationalized. (EERA, § 3543.5, subd. (a); *Monterey Peninsula Unified School District* (2014) PERB Decision No. 2381, pp. 34-35.) Although the Letter of Finding did not impose discipline or dismissal, it advised Ambro that the District was "pursuing [his] dismissal" based on the findings discussed therein, including the finding that Ambro had defied clear directives by not attending investigative meetings and was "insubordinate in his refusal to answer questions and fully cooperate in the District's investigation."

Employer knowledge and nexus are also established. As explained above, Ambro's refusal to respond to questions on April 25, 2024 was protected, and he had no obligation to answer such questions until the District disclosed the particularized facts

about the charges that the Association requested. Such disclosure did not occur until April 29, 2024 at the soonest. The Letter of Finding threatened Ambro with dismissal because he refused to answer questions or attend investigative meetings on April 25 and 26, 2024. Because the Letter of Finding threatened Ambro with dismissal for his non-cooperation at a time when he had a protected right not to respond to questions, employer knowledge and nexus are established by direct evidence, and no discussion of nexus factors or other circumstantial evidence is required. (*Carpinteria, supra*, PERB Decision No. 2797, p. 18; *Berkeley Unified School District* (2003) PERB Decision No. 1538, p. 4.) The record therefore supports a prima facie case that the Letter of Finding threatened Ambro with dismissal because of protected activity.

c. Disciplinary Actions Alleged as Reprisals

The District took three disciplinary actions against Ambro: the April 25, 2024 NUC, the June 17, 2024 Dismissal Notice, and the July 17, 2024 Suspension Notice. There is no dispute that discipline and dismissal, including notices of unprofessional conduct, are objectively adverse to employment conditions (*Carpinteria, supra*, PERB Decision No. 2797, pp. 2, 18), and the District cites no reason to find otherwise here. The adverse action element is therefore met for the above disciplinary actions.³⁸

d. Involuntary Transfer from Hull to West High School

The Association contends that Ambro's transfer to West High School was objectively adverse because it entailed inadequate facilities, increased Ambro's workload, and subjected Ambro to lower enrollments and parent complaints. The

³⁸ The parties dispute whether the District rescinded and thereby mooted the Dismissal Notice. These defenses are discussed below.

District admits that “there were issues with the overall state of the woodshop classroom at West High School before transferring Ambro.” Even crediting Murata’s testimony that the District cleaned and refurbished facilities before the 2024-2025 school year, Murata either admitted or failed to rebut evidence of continuing deficiencies in West High School’s shop facilities. Murata could not recall specifics, but she admitted that some allegations in Ambro’s *Williams* complaint were sustained. Because the District’s involuntary reassignment had an objectively adverse effect on Ambro’s working conditions, the record is sufficient for this element of the prima facie case. (*Fresno County Office of Education* (2004) PERB Decision No. 1674, p. 13.)³⁹

e. Denial of Access and Disposal of Ambro’s Personal Property

Restricting employee access to the employer’s premises is objectively adverse to employment conditions. (*Woodland Joint Unified School* (1987) PERB Decision No. 628, p. 3 (*Woodland*), adopting proposed decision at pp. 37-39.) Withholding the property of a current or former employee is also an adverse employment action for discrimination/reprisal purposes. (*Hartnell I, supra*, PERB Decision No. 2452, pp. 31-32; see also *Downey Unified School District* (2026) PERB Decision No. 3018, pp. 3-4.) Ambro testified that lesson plans and curricula that he had developed from years of teaching were missing when he returned to his former classroom on August 19, 2024. The loss of such materials is objectively adverse to a teacher’s employment. The time spent recreating this previously accumulated knowledge would either reduce

³⁹ To the extent necessary, the District’s contentions that Ambro was transferred to avoid further litigation or that West High School was the only Industrial Arts teaching position available are addressed below as affirmative defenses.

productivity during working hours or amount to unpaid work if done on the teacher's own time. Either result is adverse.

The District does not contest the "adverse" nature of these actions but apparently denies that it removed Ambro's personal effects from the classroom or disclaims responsibility for any missing items. These contentions are affirmative defenses and will be considered below, where necessary.

5. Nexus

Unlawful motive, intent, or purpose is required for a prima facie case of reprisal. (*Novato, supra*, PERB Decision No. 210, p. 6.) To ascertain the true reason for an employer's action, PERB considers all relevant evidence, including direct or circumstantial evidence of nexus or a combination thereof. (*Ibid.*; see also *Contra Costa Fire, supra*, PERB Decision No. 2632-M, pp. 19, 42; *County of Santa Clara* (2019) PERB Decision No. 2629-M, p. 9.) The charging party must show that protected activity was a motivating factor in the decision to take adverse action. (PERB Reg. 32178; *City of Santa Monica, supra*, PERB Decision No. 2635a-M, p. 40; *California State University, Sacramento* (1982) PERB Decision No. 211-H, pp. 13-14.)

a. Direct Evidence of Nexus

A statement in an employer's investigative or disciplinary document indicating that an adverse action was taken in response to protected activity provides direct evidence of nexus. (*Carpinteria, supra*, PERB Decision No. 2797, p. 18.) Such statements, either alone or in conjunction with other evidence, are usually sufficient to establish nexus. (*Ibid.*; see also *Regents of the University of California* (2012) PERB Decision No. 2302-H, p. 4, adopting proposed decision, p. 19 [notice of intent to

suspend for employee's "continued argumentative, insolent, and insubordinate behavior" during protected communications]; *Omnitrans* (2010) PERB Decision No. 2121-M, p. 10 [dismissal notice for absences on dates when employee requested union leave]; *Los Angeles County Superior Court* (2008) PERB Decision No. 1979-C, p. 19 [suspension notice describing union-related e-mail as "inappropriate"]; *Alisal Union Elementary School District* (1998) PERB Decision No. 1248, pp. 5-6 [additional discipline in reprisal for employee's rebuttal of prior discipline].)

The District's June 13, 2024 Letter of Finding, its June 17, 2024 Dismissal Notice, and its July 17, 2024 Suspension Notice referenced the April 25, 2024 NUC and expressly incorporated its finding that Ambro's refusal to answer questions at the April 22, 2024 investigative meeting was insubordinate. As discussed above, Ambro's refusal to answer questions on this date was based on: (1) Hernandez's failure to respond to Shankle's request for particularized charges warranting the *Lybarger* Warning, and (2) Shankle's advice that Ambro not submit to questioning absent such information. Because the conduct identified as insubordinate in the NUC was protected by EERA, the NUC provides direct evidence of nexus. (*Carpinteria, supra*, PERB Decision No. 2797, p. 18.) Because the District's Letter of Finding and subsequent disciplinary measures incorporate the NUC's finding of insubordination based on protected conduct, these documents provide direct and undisputed evidence of nexus. (*Ibid.*; *Regents of the University of California, supra*, PERB Decision No. 2302-H, p. 4, adopting proposed decision at p. 19.)

Like the April 25, 2024 NUC, the Letter of Finding similarly accused Ambro of "defying clear directives" and "insubordination" for refusing to attend and answer

questions at investigative meetings scheduled for April 25 and 26, and June 6, 10, and 12, 2024.⁴⁰ At least two of these meetings were scheduled to occur before the April 29, 2024 telephone conversation in which Stevens, arguably, explained to Perez “the various allegations that are the subject of the pending investigations” in sufficient detail to allow for meaningful representation. Because it accused Ambro of insubordination and “refusal to answer questions and fully cooperate in the District’s investigation” in late April when his representatives conditioned scheduling another interview upon receiving sufficient information about the investigation, the District’s Letter of Finding was based in part on protected activity and therefore provides direct evidence of nexus. (*Carpinteria, supra*, PERB Decision No. 2797, p. 18.)

b. Circumstantial Evidence of Nexus

The above direct evidence makes it unnecessary to discuss the timing of Ambro’s protected activity relative to the adverse actions. (*Regents of the University of California (Davis)* (2004) PERB Decision No. 1590-H, pp. 7-8; *San Marcos Unified School District* (2003) PERB Decision No. 1508, p. 45, fn. 26.) As other circumstantial evidence of nexus, the Association contends that the District’s investigation of Ambro was cursory and procedurally deficient, that the resulting discipline was factually unsupported and disproportionate, and that Hernandez’s testimony on these subjects contains inconsistent, contradictory, and exaggerated justifications.

⁴⁰ As noted above, the District cancelled these meetings, and Hernandez testified that Ambro was never disciplined for refusing to attend these meetings. Nevertheless, the Letter of Finding speaks for itself, has never been corrected or rescinded, and therefore provides direct evidence of nexus. To the extent the District’s subsequent explanations deviate from the text of the Letter of Finding that fact provides additional circumstantial evidence of nexus, as discussed below.

i. Departure from Established Standards and Procedures

The Association contends that the District departed from established standards and procedures for conducting impartial investigations and offered inconsistent, shifting and exaggerated justifications for its actions by predetermining that Ambro had stolen allegedly missing District property; denying Ambro access to the classroom to locate the allegedly missing items; ignoring exculpatory evidence when allegedly missing items were located in the classroom on June 14, 2024⁴¹; failing to correct or rescind disciplinary documents accusing Ambro of stealing items that were not in fact “missing”; disciplining Ambro for endangering student safety, even after Ambro explained that the syringes routinely used in his classroom to apply adhesives contained no hypodermic needles; and failing to inform Ambro that some charges against him had been abandoned for lack of proof. As discussed in the factual findings above, these allegations are generally supported by the record, and the District has cited no competent evidence to the contrary.

The Association contends that the District also failed to follow its own investigative procedures by never asking Ambro about some allegations before imposing discipline. These include his use of profanity on June 14, 2024, when he found his property had been removed from the classroom, and his possession of a key to a storage unit containing his property. The Association is correct that conducting a

⁴¹ Although the District claimed otherwise, the only allegedly missing item not located in Ambro’s classroom on June 14, 2024 was a Diablo 4.5” 80 grade sanding disc with an estimated cost of \$12. The District failed to rebut Ambro’s testimony that as an “expendable” item, it had likely been used and discarded by a student or substitute teacher during Ambro’s absence from the classroom.

cursory investigation and refusing to disclose the source or nature of allegations against an employee may support an inference of nexus (*Woodland, supra*, PERB Decision No. 628, pp. 42-43, citing *Baldwin Park Unified School District* (1982) PERB Decision No. 221, pp. 16-17; cf. *South Orange County Community College District* (2022) PERB Decision No. 2804, p. 14.), and the District has cited no evidence or authority to conclude otherwise.

The Association also argues that the District's reliance on the two 2023 NUCs regarding Ambro's interactions with students as support for later discipline on unrelated grounds contravenes the CBA's "progressive discipline" requirement. According to the Association, recycling prior discipline to support dissimilar charges defeats the purpose of progressive discipline, which is to provide employees with notice and an opportunity to correct course and not to "create a climate of fear that closed matters could be arbitrarily reopened for harsher punishment." Although this is certainly one reasonable interpretation of the CBA's "progressive discipline" clause, it is apparently at odds with the District's interpretation, and neither party has cited any contract language, past practice, or other authority to support its interpretation. I therefore draw no inference of nexus from these facts. (PERB Reg. 32178.)

However, the record demonstrates that the District failed to follow the terms of its own PAL Notice, which directed Ambro to provide Hernandez with a non-work e-mail address for communications during Ambro's administrative leave. Although Ambro complied with this directive, and although Hernandez knew that Ambro could not access his work e-mail account, for reasons that remain unclear, Hernandez and his staff repeatedly failed to use the non-work e-mail account provided by Ambro. In

some instances, the District's inexplicable failure to follow its own e-mail protocol effectively denied Ambro notice of District decisions. For example, the District's Notice of Reassignment dated June 23, 2024 states that it was sent "via electronic and certified mail." However, the record includes no receipt of delivery, proof of service, or other indication that it was sent to Ambro's *non-work* e-mail address, and Ambro testified, without contradiction, that he did not receive the document or learn of his transfer until mid-August 2024. Shankle was also not sent a copy of the document until she learned of the transfer from Hernandez in August 2024. These undisputed facts further support an inference of nexus.

ii. Offering Inconsistent, Shifting, and Exaggerated Justifications

The Association contends that the District offered shifting, inconsistent, and exaggerated justifications for disciplining Ambro, particularly where Hernandez's testimony diverged from the reasons stated in the disciplinary documents themselves. Some discrepancies may be disregarded as memory lapses or Hernandez's failure to recall all details of each disciplinary document. For example, the Dismissal Notice alleged that Ambro had endangered student safety by keeping syringes in his classroom, and Hernandez testified that this charge also supported Ambro's suspension. However, the Suspension Notice included no such allegation.⁴²

Other discrepancies between Hernandez's testimony and the disciplinary documents or their supporting materials are more problematic. Among these is

⁴² Although the Association also disputes Hernandez's testimony that Ambro was never *disciplined* for failing to attend investigative meetings, the Letter of Finding *supported* subsequent discipline but was not itself a *disciplinary action*. Other problematic aspects of the Letter of Finding are discussed below.

Hernandez's recurring and extended testimony regarding Ambro's allegedly physically threatening behavior on April 16, 2024. As noted in the Association's brief, Hernandez's testimony is contradicted by information relied on by the District to support Ambro's dismissal. Hernandez testified that after Ambro stormed out of Hernandez's office, he returned unannounced, confronted Hernandez in a physically threatening manner, and demanded that he be allowed to retrieve his computer from the classroom. By contrast, the Imperial Statement, which was attached to the Dismissal Notice, offered a significantly different account. It asserted that *Hernandez* "asked [Imperial] to call Mr. Ambro back to his office so that Mr. Hernandez could ask Mr. Ambro to turn in his computer device"; that Ambro "became agitated" *after he had already left Hernandez's office* and in response to Imperial twice asking Ambro to clarify that the computer in the classroom was his own and not the District's; and that Hernandez terminated this conversation without incident. Notably, the Imperial Statement made no mention of any profanity or threatening conduct by Ambro. When confronted with the Imperial Statement at the PERB hearing, Hernandez categorically denied ever calling Ambro back to his office. He suggested that he was unfamiliar with details in the Imperial Statement, but Hernandez had prepared the Dismissal Notice, including its reference to and reliance on the Imperial Statement. Although the District denies any improper motivation, the above discrepancies, which are readily apparent by comparing the District's investigative and disciplinary documents with Hernandez's post hoc testimony about those documents, support an inference of nexus.

The District's investigative and disciplinary documents also contain curious internal inconsistencies that were either known or readily discoverable at the time. For

example, the Letter of Finding accused Ambro of insubordination and “defying clear directives” by not attending and answering questions at investigative meetings on April 26 and June 6, 10, and 12, 2024. However, it is undisputed that the District cancelled each of these meetings, as memorialized in the May 2, 2024 correspondence from Stevens to Perez. The Letter of Finding thus relied on incorrect or outdated information, which was known or reasonably discoverable with minimal effort, and whose inclusion in the Letter of Finding greatly exaggerated the insubordination charges against Ambro. Hernandez offered no explanation for this obviously erroneous “finding,” and the District has never since corrected or retracted it. The fact that the Letter of Finding was not itself disciplinary or that the Dismissal Notice did not specifically reallege this exaggerated insubordination charge does not “cure” the error or defeat the inference of nexus. Based on Shankle’s uncontradicted testimony, the Letter of Finding remained in Ambro’s personnel file.

The “theft” and “dishonesty” charges in the Dismissal Notice present similar problems. Notwithstanding “progressive discipline” requirements, such charges, if proven, are sufficiently serious to warrant dismissal, even without a prior warning or other intermediate discipline because, by their very nature, these and other serious offenses may render an employee unfit for continued service. (Elkouri & Elkouri, *How Arbitration Works*, Seventh Edition (Arlington, VA: Bloomberg BNA, 2012) at 15-40–15-42.) However, because such charges involve criminal conduct or moral turpitude and may result in permanently stigmatizing reputational harm for the accused employee, arbitrators often require a higher quantum of proof than a mere preponderance of the evidence to satisfy “just cause” or similar language in a

collective bargaining agreement. (*Id.*, at 15-25.) Some arbitrators require “clear and convincing” evidence to find “just” or sufficient cause to sustain charges of “theft” or “dishonesty.” (*Ibid.*) Others require something approaching the criminal standard of “beyond reasonable doubt” to sustain such charges. (*Id.*, at 15-26 ff.)

Here, Hernandez acknowledged that Ambro’s proposed dismissal was largely based on “serious” allegations of “theft” and “dishonesty.” Yet, he also acknowledged that, ultimately, these charges against Ambro could not be substantiated. The Dismissal Notice was therefore withdrawn and replaced with the proposed 15-day suspension in lieu of dismissal, which did not include these charges. Although one might commend the District for acknowledging and correcting its errors,⁴³ the record shows that neither of these charges should have been brought in the first place.

To sustain its charge of theft of District property, the District would need to prove by *at least* a preponderance of the evidence that any allegedly “missing” items were in fact *District property*. However, Hernandez admitted that he could never establish whether the allegedly missing computer, computer component, or “external device” located in Ambro’s classroom belonged to the District.⁴⁴ The item had no

⁴³ However, even on this point, Hernandez’s attempt to explain the contents of disciplinary documents was equivocal and unconvincing. The Suspension Notice did not expressly accuse Ambro of “theft,” but neither did it clearly exonerate him of this charge. Instead, it asserted, inaccurately, that the District was unable to recover *several* items allegedly “missing” from Ambro’s classroom when, in fact, only *one* item identified by the District—a Diablo 4.5 inch 80 grade sanding disc—was not located. The Suspension Notice also inexplicably suggested that Ambro was responsible for any missing items, despite his 8-week absence from the classroom, during which students, substitute teachers, and others continued to have regular access.

⁴⁴ Hernandez testified that Shankle eventually convinced him that the device in Ambro’s former classroom was an all-in-one computer, as Ambro claimed, and not

seal, inventory tag, serial number, or other marker specifically identifying it as District property, and no information was presented in the Dismissal Notice, in other contemporaneous investigative and disciplinary documents, or in Hernandez's testimony before PERB that would make it *even more likely than not* that the device belonged to the District.⁴⁵ Because the District never had *any* evidence, let alone clear and convincing evidence, to establish District ownership of the computer device located in Ambro's classroom, its Dismissal Notice was fatally flawed *ab initio*.

The evidence supporting the District's "dishonesty" charge was similarly suspect. It consisted primarily of minor or even manufactured discrepancies between Brown's and Ambro's explanations regarding non-material details, such as the precise location of fruit in the storeroom, which neither employee had any particular reason to know or recall exactly under the circumstances.

simply a video monitor. While this revelation tended to corroborate Ambro's account and arguably increased the likelihood that the device belonged to him, it does not directly address *the persistent absence* of any evidence, throughout the District's investigation, that the computer belonged to the District, which was a necessary element for substantiating the charge of theft *of District property*.

⁴⁵ Hernandez's flippant explanation that "possession is nine-tenths of the law" is disregarded as both self-serving and irrelevant, given the circumstances. Hernandez summoned Ambro to Human Resources on April 16, 2024 without notice, placed him on administrative leave *effective immediately*, and then denied Ambro access to the classroom to retrieve what Ambro insisted was his personal property. The District's "possession" of Ambro's property under these circumstances was not a neutral fact or independent data point weighing in favor of District ownership but an exercise of the employer's unequal control over the workplace. (See, e.g., *City of Oakland* (2014) PERB Decision No. 2387-M, p. 25, fn. 5.)

The above evidence of the District's departure from established standards and procedures; its cursory and biased investigation; and its inconsistent, shifting, and exaggerated justifications for its actions support an inference of nexus.

iii. Related Unfair Practices and Other Circumstantial Evidence

Nexus may also be shown by “any other facts that might demonstrate the employer’s unlawful motive.” (*Hartnell I, supra*, PERB Decision No. 2452, p. 22.) Citing *City of Santa Monica, supra*, PERB Decision No. 2635a-M and other cases, the Association contends that an employer’s expression of views or opinions against union or other protected activity, its separate but related unfair practices, or its conduct that would constitute an unfair practice, even if the issue was never previously decided by PERB, may also serve as circumstantial evidence of nexus. (*Id.* at p. 42; see also *County of Orange* (2018) PERB Decision No. 2611-M, pp. 17-18; *City of Oakland, supra*, PERB Decision No. 2387-M, p. 26-29 and fn. 9; *Golden Plains Unified School District* (2002) PERB Decision No. 1489, p. 9, fns. 11 and 12.) The other unfair practices allegations sustained in this case include the District’s imposition of no-contact directives during Ambro’s investigation, its refusal to provide the Association with necessary and relevant information regarding the investigation, and its interference with and denial of employee and organization rights to meaningful representation in investigative proceedings. These unlawful acts also involved Hernandez and are otherwise factually and legally related to the Complaint’s reprisal claims. Accordingly, to

the extent it is necessary to do so, the District's separate but related unfair practices in this case further support an inference of nexus.⁴⁶

6. Affirmative Defenses to the Complaint's Reprisal Claims

Regarding its disciplinary actions, the District urges that Ambro's allegedly insubordinate conduct at the April 22, 2024 investigative meeting justified the resulting NUC; that the District effectively rescinded its Dismissal Notice; and that it would have issued the three disciplinary actions, even absent any protected activity and improper motive. Where applicable, these defenses are also discussed with respect to the unalleged theory regarding the Letter of Finding.

a. Loss of Protection (Unclean Hands) Regarding the NUC

The April 25, 2024 NUC asserts that Ambro was directed to attend an investigative interview regarding insubordination and "participat[ion] in theft of property"

⁴⁶ The Association alleges that its proposed exhibits 17-20 include evidence that Hernandez, in his individual capacity, threatened to file a defamation lawsuit in retaliation for the Association's threat to publish a vote of no confidence by its members regarding Hernandez; that Hernandez through his personal legal counsel demanded settlement of that dispute on terms that the Association found unacceptable; that the District later ratified Hernandez's conduct; and that these documents provide additional evidence of nexus relevant to this dispute. In a bench ruling, these proposed exhibits were excluded as irrelevant, cumulative, improperly disclosing an offer of settlement, and possibly premature in the absence of a judicial decision dismissing the threatened lawsuit as lacking any reasonable basis under *Bill Johnson's Restaurants, Inc. v. NLRB* (1983) 461 U.S. 731 and similar PERB precedent. In its post-hearing brief, the Association argues that the *Bill Johnson's Restaurants* line of cases was improperly applied. Assuming without deciding the Association is correct on this point, it has not addressed the other grounds for my ruling, and given the extended discussion above, I decline to address what purports to be additional evidence of nexus when it would only further lengthen this proposed decision without affecting the result or remedy. (PERB Reg. 32176; *City of Davis* (2018) PERB Decision No. 2582-M, p. 17, fn. 9.)

and that after being asked to sign a *Lybarger* Warning, on the advice of his Association Representative, Ambro “refused to answer questions or fully collaborate in the interview and the investigation.” The record demonstrates that Shankle asked Hernandez to particularize any allegations under investigation that had necessitated a *Lybarger* Warning, since her understanding, based on Hernandez’s prior explanation, was that the investigation concerned only Ambro’s failure to timely attend a staff or PLC meeting. According to the NUC, “the District determined that [Ambro’s] actions demonstrated poor judgment and insubordination by refusing to answer questions and fully corroborate [sic] in the District’s investigation.”

The District does not dispute Ambro’s rights to seek the Association’s advice and assistance at the April 22, 2024 investigative meeting. However, it contends that Ambro was not authorized by EERA to condition his participation and cooperation on the District first specifying the nature and scope of the investigation. Although not properly pled and specifically argued as such, the essence of the District’s justification for issuing the NUC is that Ambro’s refusal to cooperate in the investigation exceeded his rights under EERA or should result in the loss of any statutory protection because of the “insubordinate” or otherwise unauthorized way that he exercised those rights.

To be protected, employee activity must be in pursuit of lawful objectives and carried out in a proper manner. (*Konocti Unified School District* (1982) PERB Decision No. 217, p. 6 (*Konocti*).) Even where concerted employee activity is in pursuit of legitimate *objectives* under EERA, employees may nonetheless lose any statutory protection because of the “indefensible” or improper *manner* in which they exercise

such rights. (*Id.* at pp. 6-7.)⁴⁷ However, “protected conduct does not cease to be protected, simply because the employer regards the employee as ‘insubordinate’” for refusing to cooperate with an unlawful investigation. (*Capistrano, supra*, PERB Decision No. 2440, pp. 12-13, 54-55.)

Here, the District has not pled “loss of protection” though its Answer does at least assert that the Association and Ambro “are barred . . . from any form of recovery or relief” for the allegations in the Complaint under the equitable doctrine of “unclean hands.” Assuming, without deciding, that this boilerplate assertion was sufficiently pleaded to consider the issue, for the following reasons, I conclude that the District has not shown that Ambro should lose his statutory protection under EERA, notwithstanding his allegedly “insubordinate” refusal to participate in the April 22, 2024 meeting.

First, there can be no serious contention that Shankle’s request for Hernandez to particularize the potentially criminal charges under investigation was protected by EERA. As discussed above, *Contra Costa CCD, supra*, PERB Decision No. 2652 and subsequent decisions have stated as much. (*Id.* at p. 26.; see also *Water Resources Control Board, supra*, PERB Decision No. 2830-S, pp. 8-9 & fn. 8.) The Board’s discussion in *Water Resources Control Board* expressly contemplates that, upon request, represented employees and their representatives must be provided with

⁴⁷ In recent years, the Board has designated two tests for deciding when employee speech may lose its statutory protection. (*SunLine Transit Agency* (2024) PERB Decision No. 2928-M, p. 19.) Neither test seems applicable here, since what is at issue is not Ambro’s speech but his *refusal to speak* in an investigative interview held under unlawful conditions. *Konocti* is therefore apt for the present circumstances. (See *Konocti, supra*, at p. 7 [concluding that employee’s *actions* “were conducted in an indefensible manner and are, consequently, unprotected”].)

particularized facts and specific charges “*sufficiently in advance of the investigative interview* to allow for consultation before, and thus meaningful representation during, the interview.” (*Id.* at pp. 8-9, emphasis added.) Thus, Ambro was clearly pursuing a lawful *objective*, the vindication of his right to meaningful representation under EERA, by refusing to answer questions in the absence of any meaningful response from Hernandez to Shankle’s request.

Likewise, *Capistrano, supra*, PERB Decision No. 2440 stands for the proposition that where an employer’s refusal to provide meaningful representation during an investigative interview contributes in whole or in part to an employee’s alleged misconduct at the interview, the employee does not automatically lose all statutory protection, even if the misconduct would otherwise constitute “insubordination.” (*Id.* at pp. 54-55.) Thus, the mere refusal to answer questions or otherwise cooperate in an employer’s unlawful interrogation is not an improper means of vindicating representational rights under EERA. (*Ibid.*)

Ambro’s only alleged misconduct during the April 22, 2024 meeting was his refusal, on the advice of his Association representative, to answer questions or cooperate with the investigation, in the absence of sufficient particularized information to enable meaningful representation. Under the circumstances, it would not further the purposes of EERA to allow the District to subvert Ambro’s and the Association’s representational rights by insisting that Ambro participate in the investigation and then attempt to cure the District’s violation after the fact, since by then, the District would have already obtained potentially incriminating information without the full advice and assistance of the Association, as contemplated by EERA. (*Capistrano, supra*, PERB

Decision No. 2440, pp. 12-13, and cases cited therein.) In this respect, this case is fundamentally no different from the U.S. Supreme Court’s seminal *Weingarten* and *Quality Manufacturing* decisions that enshrined the *Weingarten* doctrine. (*Weingarten*, *supra*, 420 U.S. at p. 263; *Quality Manufacturing*, *supra*, 420 U.S. at pp. 279-281; see also *Capistrano*, *supra*, at pp. 12, 41-42 [employee refusal to cooperate with unlawful investigative meeting found protected].) Accordingly, the District has not met its burden of showing that Ambro had “unclean hands” or engaged in any “indefensible” conduct to deprive him of his statutory protections by refusing to answer questions or cooperate in the unlawful interrogation on April 22, 2024.

b. Purported Rescission of the Dismissal Notice

The relevant facts for this defense are undisputed. On July 17, 2024, the District sent Ambro notice that “after further consideration, the District has elected not to proceed with the Dismissal Charges” and instead intended to suspend Ambro without pay for 15 days under the CBA’s Intermediate Discipline Article. On August 21, 2024, Board of Education President Jasmine Park sent Ambro a letter “confirming that the charges for [his] dismissal served on or about June 17, 2024, were rescinded by the Board on July 8, 2024.”

The Association argues that the purported rescission was ineffective because the District’s governing board took this decision in executive session but did not publicly report it, allegedly in violation of the Ralph M. Brown Open Meetings Act (Gov. Code, § 54950 et seq.), which generally requires that all meetings of a local legislative body be open and public. (*Id.* § 54953, subd. (a).) It is unnecessary to decide whether the

Brown Act's open meetings requirements are implicated here because the effectiveness of the purported rescission is evaluated under *Passavant* and similar PERB precedent.

As noted above, continuing to deny liability undermines the remedial purpose of a retraction under *Passavant* and similar cases. (*Jurupa USD, supra*, PERB Decision No. 2458, pp. 13-14; *Webco Industries, supra*, 327 NLRB at pp. 172–173.) In *Webco Industries, supra*, 327 NLRB 172, the employer suspended an employee pending an investigation on the mistaken belief that she had violated a workplace rule while soliciting another employee for a union organizing drive. (*Id.* at p. 185.) After investigating and determining that the employee had not in fact violated any workplace rules, the employer reinstated the employee with full backpay. (*Ibid.*) Responding to charges that the suspension interfered with employee rights and discriminated against union activity, the employer claimed there had been no injury because the employee had been reinstated and fully compensated for the period of her suspension. (*Id.* at p. 180.) Applying *Passavant*, the NLRB concluded that the employer had not fully and effectively repudiated its unlawful conduct because *inter alia* it had not admitted wrongdoing, had not adequately published its repudiation to all affected employees, and had not assured employees that it would no longer interfere with the exercise of their rights. (*Webco Industries, supra*, 327 NLRB at pp. 172–173.)

Here, the District informed Ambro that based on “further consideration,” it had “rescinded” the Dismissal Notice and proposed instead to suspend Ambro for 15 days. It did not specify what criteria had been further considered, and neither the Suspension Notice nor the subsequent correspondence from the School Board President “confirming” this rescission admitted any wrongdoing. In fact, the District continues to

deny any liability for the purportedly rescinded Dismissal Notice. The District's purported rescission is necessarily ineffective because it contained no admission of wrongdoing. (*Webco Industries, supra*, 327 NLRB at pp. 172–173.)

The proposed suspension that replaced the Dismissal Notice also contained no assurances that the District would refrain from violating employee rights in the future, and it was not free from other unlawful conduct because it was based on some of the same protected activity as the proposed dismissal. (cf. *Passavant, supra*, 237 NLRB at pp. 138-139.) Because the District's purported rescission of the Dismissal Notice failed to satisfy multiple *Passavant* criteria, this defense fails.

c. But For Defense to the Disciplinary Actions

The District asserts that it had legitimate, non-retaliatory reasons for each of the three disciplinary measures taken against Ambro. It claims that Ambro had a long history of discipline, including two prior NUCs, a letter of reprimand, and a coaching memo that predated the events and disciplinary actions at issue in this case.

The Association disputes these claims as pretextual. It contends that the NUCs regarding Ambro's interactions with students in 2023 were improperly recycled to support unrelated disciplinary actions at issue in this case. The Association argues that the District's disciplinary actions also violate progressive discipline. The February 28, 2024 conference summary memo, which concerned the same kind of conduct that prompted the April 16, 2024 investigation and subsequent disciplinary actions against Ambro, advised Ambro that his continued failure to timely attend staff or PLC meetings "will result in the issuance of a written warning placed in [his] personnel file." However, on the next arguable occurrence of the same category of

offense, the District instead escalated to dismissal and later a 15-day suspension in lieu of dismissal. I need not decide whether the concept of “progressive discipline” generally requires that the offenses prompting an escalation on the disciplinary ladder be logically or thematically related to prior offenses because, as the Association correctly notes, the District’s own conference summary memo indicated that a written warning would be appropriate for another occurrence in this category of offenses.

There are other problems with each of the challenged disciplinary actions.

i. April 25, 2024 NUC

The District contends that the NUC is “completely void of any reference to Ambro’s contact with Brown or [Ambro’s] failure to appear at subsequently scheduled meetings” and, consequently, that “[the Association’s] insistence that the NUC was issued in retaliation for engaging in protected activity is simply speculative.” According to the District’s brief, the NUC was based instead on Ambro’s “fail[ure] to answer questions on April 22 after being issued a *Lybarger* Warning (a possible outcome that he was previously notified of) and because of his unprofessional conduct, including his profane behavior towards Hernandez.”

As explained above, the first of these asserted justifications is an admission that Ambro was disciplined for protected activity, which is not a valid defense. The second justification, Ambro’s alleged “profane behavior towards Hernandez” is not mentioned in the NUC and therefore cannot be considered a legitimate reason that was *relied on* by the District at the time. (*Palo Verde, supra*, PERB Decision No. 2337, pp. 12-13, 31.)

ii. June 17, 2024 Notice of Intent to Dismiss

According to the District, Hernandez testified about the legitimate, non-retaliatory reasons for issuing the Dismissal Notice, which included Ambro's prior discipline for serious misconduct and Hernandez's belief at that time that Ambro had stolen a District computer. The District asserts that like the NUC, the dismissal charges were also "completely void of any reference to Ambro's protected activity." However, the Dismissal Notice and its attachments incorporated the allegations from the April 25, 2024 NUC that Ambro was insubordinate by refusing, on the advice of his Association representative, to respond to questions in the absence of particularized facts regarding the charges under investigation. As discussed above, Ambro did not lose his statutory protection by doing so, and thus discipline based on this reason was impermissible.

Hernandez's belief that Ambro had stolen a computer or other District property was also not based on credible information *even at the time* and must therefore be rejected as pretextual. Hernandez never established by a preponderance of the evidence that any computer was ever missing, nor that any allegedly missing computer was District-owned. Footnote 5 of the Dismissal Notice admitted that it was "unclear whether the items retrieved" from Ambro's classroom, including the allegedly "missing" computer, "were District property or [Ambro's] own personal property." Despite Hernandez's professed belief at the time, this footnote effectively admits that the "theft" charges regarding items allegedly taken from Ambro's classroom were not established even by a preponderance of the evidence, let alone the higher burden of proof often required by arbitrators for offenses involving moral turpitude.

Finally, footnote 5 also admits that, contrary to the District's brief, Ambro's proposed dismissal was based in part on the unlawful no-contact directives in the PAL Notice. According to footnote 5: It was "clear" that Ambro "conspired with Mr. Brown to retrieve items in [Ambro's] classroom in clear violation of the terms of [the] Paid Administrative Leave." Thus, the District's assertion that its Dismissal Notice was not based on protected activity is betrayed by the document itself.

Accordingly, the District's but for defense also fails for the Dismissal Notice.

iii. July 17, 2024 Suspension Notice

Although purged of some of the Dismissal Notice's excesses, the Suspension Notice still suffered from some of the same evidentiary and logical problems as the District's prior disciplinary actions. Most notably, it incorporated the insubordination charge from the prior NUC, which was based on EERA-protected conduct. While no longer explicitly accusing Ambro of theft, the Suspension Notice misstated basic facts and exaggerated others⁴⁸ to conclude that Ambro was still "responsible" for knowing the whereabouts of items that had allegedly gone missing during his eight-week absence from the classroom. Given the Suspension Notice's explicit reliance on Ambro's protected activity and other problems, the District's "but for" defense fails.

d. Business Necessity Defenses to Involuntary Transfer

The Education Code authorizes involuntary transfers of certificated staff when the transfer is "in the best interest of the school district." (Ed. Code, § 35035,

⁴⁸ The Suspension Notice claimed that four items remained missing after Ambro's visit to the classroom on June 14, 2024. In fact, photographic evidence and undisputed witness testimony established that one item, an expendable sanding disc with an estimated cost of \$12, was the only ostensibly "missing" item not located.

subd. (e).) However, “the basis for deciding what is in the best interest of the district cannot be an employee’s involvement in protected activity under EERA.” (*San Leandro Unified School District* (1983) PERB Decision No. 288, p. 13 (*San Leandro USD*).) Some more specific reason must be advanced for the District to exercise this discretion. (*Ibid.*) The parties’ CBA similarly allows involuntary transfers for the “benefit and improve[ment of] the educational program,” but requires notice of the proposed transfer, “the reasons for it,” and an opportunity for the affected employee “to meet with the recommending administrator(s) to discuss the proposed transfer.”

The District asserts that it transferred Ambro for the legitimate, non-retaliatory reason of avoiding “more potential litigation” against the District by Ambro’s former students or their parents. While acknowledging deficiencies with the woodshop facilities at West High School, the District also claims that the location for Ambro’s reassignment was based on operational necessity, i.e., that West High School was the only available Industrial Arts teaching position in the District at the time.

The Association argues⁴⁹ that the District effectively denied Ambro’s rights under the CBA to notice and opportunity to discuss the decision before implementation. The District’s Notice of Reassignment included no reasons for the transfer, and although it was dated June 23, 2024, Ambro denied receiving it until late August 2024, because he could not access his work e-mail account per District policy at that time.⁵⁰

⁴⁹ Although presented only in the “Statement of Facts” section of the Association’s brief, with no designated heading or corresponding discussion in the “Argument” section of the brief, I have considered the Association’s arguments here as directed at refuting the District’s proffered reasons for Ambro’s transfer.

⁵⁰ The Notice of Reassignment indicated that it was sent by certified mail to what was presumably Ambro’s home address. Assuming this information was correct, it

I decline to consider the merits of the District's defenses, including whether avoiding potential litigation qualifies as benefitting and improving the District's *educational* program. The lack of notice and of any contemporaneous reasons for Ambro's transfer subverted the possibility that the parties may have resolved any disagreements over the transfer decision, its rationale, and/or the location.

e. Defenses to Denial of Classroom Access and Loss of Property Claim

The District denies that it retaliated against Ambro by limiting his access to his former classroom or his ability to gather his personal effects, but it has articulated no legitimate, non-retaliatory reason for doing so. As alluded to above, the event that prompted Ambro's administrative leave was his failure to attend a meeting, not an offense that posed a threat to himself or others or to District property, or one that risked spoilation of any potentially relevant evidence. Although Hernandez soon expanded the investigation to include suspected theft of a District computer, by his own admission, Hernandez never had a reasonable basis to believe that any computer ostensibly missing from Ambro's classroom belonged to the District. Moreover, to the extent the District had a legitimate, good-faith suspicion that Ambro had stolen any District property, it has articulated no legitimate, nonretaliatory reason to continue denying Ambro access to the classroom and to his personal property for more than a month *after July 17, 2024*, when the District abandoned those allegations. Accordingly, to the

arguably creates a rebuttable presumption that Ambro received the correspondence. (See *Petaluma City Elementary School District/Joint Union High School District* (2018) PERB Decision No. 2590, p. 8.) However, Ambro denied receiving a paper copy, thereby rebutting this presumption, and the District offered no certified letter receipt, proof of service, or testimony by anyone responsible sending this document.

extent the District asserts a *but for* defense to allegations that Ambro was denied access to his personal property as a reprisal for protected activity, this defense fails.

The District also claims that Ambro *was* granted access his former classroom on June 14, 2024 to collect his personal belongings but that instead of doing so, he and Shankle “were busy taking pictures of items he believed he was being accused of stealing.” Although not identified as such, the District apparently asserts contributory negligence, i.e., that Ambro was partly responsible for any loss he suffered because he failed to use the time allotted for collecting his belongings. This defense fails because it is undisputed that Ambro ultimately required more than five hours to remove his property from the classroom and that he was only allotted, at most, 30 minutes in the classroom on June 14, 2024. Ryan admitted that even after Ambro’s June 14, 2024 visit, she understood that he would need to return to retrieve the rest of his belongings. To the extent the District asserts that Ambro was at fault for any losses he suffered by not using the less than 30 minutes allotted to him on June 14, 2024 for that purpose, this defense not only fails; it is so frivolous as to supply additional evidence of nexus, if any additional evidence were needed on that point.

Citing Ryan’s testimony, the District apparently denies that Ambro’s personal effects were removed from the classroom between June 14 and August 19, 2024 and disclaims any responsibility for their removal, loss, or destruction. Neither argument is persuasive. Ryan’s testimony cannot be credited here because there was insufficient foundation to find that she maintained constant custody or surveillance over the classroom. It was undisputed that students, substitute teachers, custodians, District administrators, and other individuals had access to the classroom during Ambro’s

absence. Brown, for example, obtained access by simply asking a custodian to unlock the door, while Association Site Leader Shawna Leader was questioned about the circumstances in which she gained access to the classroom. Although Ryan testified that she reviewed the surveillance video for April 16, 2024, there was no evidence that she (or any other person acting on behalf of the District) reviewed video footage for every day between June 14 and August 19, 2024. The District's claim that nothing was removed from the classroom therefore fails for lack of proof.

The District's attempt to deny responsibility for any missing items also fails. In appropriate circumstances, an employer has a duty to protect employee property stored on its premises. For example, California law requires a private-sector employer to indemnify its employees for all necessary expenditures *or losses* incurred by employees in direct consequence of discharging their duties or *obeying the directions of the employer*. (Lab. Code, § 2802, subd. (a), emphasis added; *Tan v. GrubHub, Inc.* (N.D. Cal. 2016) 171 F.Supp.3d 998, 1005–1006.) Thus, a private-sector employer has a duty to protect the tools of an employee against theft, loss, or destruction by third parties when it is impractical or unreasonable for the employee to remove the tools at the end of every shift. (*Machinists Automotive Trades Dist. Lodge v. Utility Trailers Sales Co.* (1983) 141 Cal.App.3d 80, 83–86.) While Labor Code section 2802 does not apply to government employers and public-sector employees (*Krug v. Board of Trustees of California State University* (2025) 110 Cal.App.5th 234, 247, 258-259, review denied (June 11, 2025)), an employer's duty may arise not only by statute but also by contract. Nothing precludes PERB from finding that in the peculiar circumstances of this case that the District assumed a similar duty as an implied term of

its PAL Notice. (See *Restatement (Second) of Torts* § 222A (1965), Reporter's Notes, Illustrations 3, 7, and 16 [duty to prevent loss or destruction of A's personal property while in possession or control of B]; see also *El Dorado County Superior Court* (2018) PERB Decision No. 2589-C, p. 4 [PERB may interpret and decide issues of external law where necessary to decide unfair practice issues].)

Here, there is no dispute that the District placed Ambro on administrative leave without notice or opportunity to remove his personal property from the classroom. Absent prior, express, and written approval from Hernandez, Ambro was prohibited from entering the classroom or retrieving his personal property. By operation of the PAL Notice, the District denied or severely limited Ambro's access to his personal property for an extended period. Under these circumstances, it would be impracticable and contrary to the District's own directives for Ambro to attempt to remove his property from file cabinets in his former classroom at Hull, as evidenced by the fact that his dismissal and proposed suspension in lieu of dismissal were based, in part, on Ambro asking Brown to retrieve several items for the classroom in violation of this term of the PAL Notice. By placing Ambro on paid administrative leave without notice or opportunity to obtain his personal property, the District assumed a duty to take reasonable steps to protect Ambro's property against loss, theft, or damage. The District's attempt to shift the burden to Ambro to prevent loss or removal of his property from District premises while simultaneously denying Ambro reasonable access to his retrieve the property therefore fails.

7. Summary of Reprisal Claims and Derivative Violations

The record supports a prima facie case of reprisal for the Complaint allegations regarding each of the three disciplinary measures against Ambro (the April 25, 2024 NUC, the June 17, 2024 Dismissal Notice, and the July 17, 2024 Suspension Notice); the District's involuntary transfer of Ambro; and its denial of Ambro's access to the classroom and resulting loss of his personal property. It also supports a prima facie case for an unalleged theory that the June 13, 2024 Letter of Finding threatened reprisal for Ambro's protected activity. Because the District has not raised or proved any responsive persuasive defenses, the reprisal allegations in Paragraph 43, subparagraphs b, c, d, e, and f, and 44, and the unalleged theory described above that the District violated EERA section 3543.5, subdivision (a), are **SUSTAINED**.

For each of the sustained reprisal claims alleged in Paragraphs 43 and 44 of the Complaint, Paragraph 45 alleges that the same conduct also denied the Association's right to represent employees in violation of EERA section 3543.5, subdivision (b). Neither party has briefed this issue. However, under PERB precedent, when a complaint alleges both reprisal and interference claims based on the same facts, and PERB sustains the reprisal claim, it must also at least find a derivative interference violation. (*Alameda, supra*, PERB Decision No. 2856-M, p. 24; *County of San Joaquin* (2021) PERB Decision No. 2761-M, p. 18; *City of Santa Maria* (2020) PERB Decision No. 2736-M, adopting proposed decision at p. 47.) Accordingly, the District is also found to have denied the Association's rights to represent employees in violation of

EERA section 3543.5, subdivision (b), for the conduct alleged in Paragraph 43, subparagraphs b, c, d, e, and f.

The Board does not appear to have ever addressed whether sustaining an unalleged violation obligates a Board agent to find a derivative violation, even if the charging party has not argued any unalleged derivative theory. Although *State of California (Department of Corrections & Rehabilitation)* (2012) PERB Decision No. 2282-S obligates a Board agent to find more than one violation “[w]here the same employer conduct concurrently violates more than one unfair practice provision” of the applicable statute (*id.* at p. 15), I read this duty as subject to the general rules of pleading and procedure, including due process and notice requirements that unfair practice violations may only be sustained if they are properly alleged in a PERB complaint or if they meet all criteria for unalleged violations. (*Superior Court v. Public Employment Relations Bd.*, *supra*, 30 Cal.App.5th at pp. 192–195.) Because neither circumstance applies to a subdivision (b) violation regarding the District’s Letter of Finding, I decline to find an unalleged and unargued derivative violation here.

E. Conclusion

Based on the record and the parties’ briefs, the following Complain allegations are sustained: the interference claims concerning the no-contact provisions of the District’s PAL Notice in Paragraphs 8 and 9 (insofar as they pertain to Ambro); the interference allegations in Paragraphs 20 and 21 (regarding allegations in Paragraph 14 that the District failed to disclose sufficient information to permit meaningful representation at an April 22, 2024 investigative meeting); the refusal to provide information and related interference claims in Paragraphs 39, 40, and 41; and the

reprisal and derivative interference claims in Paragraphs 44 and 45 (as they pertain to the adverse actions alleged in Paragraph 43, subparagraphs b, c, d, e, and f); and an unalleged reprisal claim regarding the District's April 14, 2024 Letter of Finding. All other allegations in the Complaint and unfair practice charge are **DISMISSED**.

REMEDY

PERB has broad authority to remedy unfair practices and may take any action and make any determinations regarding such charges or alleged violations as it deems necessary to effectuate the policies of EERA. (EERA, § 3541.3, subds. (i), (n); *San Diego Teachers Assn. v. Superior Court* (1979) 24 Cal.3d 1, 13; *Santa Monica Community College Dist. v. PERB* (1980) 112 Cal.App.3d 684, 691–692.)

As an appropriate remedy, the Association requests that the PAL Notice issued to Ambro be rescinded; that “all documents relating to the District’s unlawful investigation and all resulting discipline be expunged from [Ambro’s] personnel files,” including the April 25, 2024 NUC, the Letter of Finding and the Dismissal and Suspension Notices; that the District rescind Ambro’s involuntary transfer to West High School; that it be ordered to cease and desist from committing the various categories of unfair practices sustained in this case; that it be ordered to post notice to employees; and that PERB award other unspecified relief as may be appropriate.

The above measures are appropriate for returning the parties and Ambro to their former positions; for restoring the conditions and relationships as near as possible to those that existed or would have existed, but for commission of the District’s unfair practices; and for deterring future violations. (*County of San Joaquin v. Public Employment Relations Bd.* (2022) 82 Cal.App.5th 1053, 1068; *City of*

Pasadena (2014) PERB Order No. Ad-406-M, p. 13; *Modesto City Schools, supra*, PERB Decision No. 291, pp. 67-68.) Rescission and expungement of overbroad directives affecting protected activity and investigative and disciplinary documents, based in whole or in part on protected activity are necessary to restore injured parties and affected employees to their prior conditions and for deterring future violations. (*State of California (State Water Resources Control Board)* (2023) PERB Decision No. 2830a-S, p. 5; *County of San Joaquin (Sheriff's Department), supra*, PERB Decision No. 2619-M, pp. 13-14; *Capistrano, supra*, PERB Decision No. 2440, p. 55; *Rancho Santiago Community College District* (1986) PERB Decision No. 602, pp. 15-16.) Nothing bars the District from attempting to reinstitute investigative and/or disciplinary proceedings for matters unrelated to protected activity in accordance with law and this proposed decision. (*Capistrano, supra*, at pp. 45-46.)

Reinstatement and make-whole relief are appropriate for remedying an employer's retaliatory transfer of employees. (*City & County of San Francisco* (2021) PERB Decision No. 2757-M p. 15; *Santa Monica Community College District* (1979) PERB Decision No. 103, pp. 27-29, *aff'd.* (1980) 112 Cal.App.3d 684.) To avoid disruption of instruction, Ambro's reinstatement to his former position at Hull or to a substantially equivalent position (if his former position no longer exists) shall begin at the start of the 2026-2027 School Year or at the start of the first school year following a final decision in this matter, unless otherwise agreed by the parties. (*San Leandro USD, supra*, PERB Decision No. 288, p. 14; *Novato, supra*, PERB Decision No. 210, p. 22; see also *Pasadena Area Community College District* (2015) PERB Decision No. 2444, p. 24.)

While often described as “backpay,” PERB’s authority to order make-whole relief is not limited to lost wages. It may include backpay, front pay or any “other forms of compensation” that PERB deems necessary “to make injured parties and/or affected employees whole.” (EERA, §§ 3541.3, subds. (i), (n), 3541.5, subd. (c); *Bellflower Unified School District* (2022) PERB Decision No. 2544a, pp. 48-50; *Sonoma II*, *supra*, PERB Decision No. 2532-C, p. 40; *Omnitrans* (2009) PERB Decision No. 2030-M, pp. 29-30.) Commission of an unfair practice creates a presumption that affected employees have suffered some financial loss because of the employer’s unlawful conduct. (*Bellflower Unified School District* (2019) PERB Order No. Ad-475, p. 10; *Desert Sands Unified School District* (2010) PERB Decision No. 2092, pp. 31-32.) Consistent with this presumption and EERA section 3541.3, it is appropriate to give the Association and Ambro an opportunity to establish in compliance proceedings the amount(s) of any foreseeable losses directly attributable to the District’s unfair practices. (*El Centro Regional Medical Center* (2024) PERB Decision No. 2890-M, pp. 22-23 (*El Centro*).) Thereafter, the Association and Ambro shall be made whole for losses suffered as a direct and foreseeable result of the District’s unfair practices, including but not limited to lost time needed for Ambro to recreate curricula, lesson plans, and other instructional materials that were lost, stolen, or destroyed during Ambro’s administrative leave and while in the District’s exclusive custody and control at Hull between April 16 and August 19, 2024. (*Ibid.*; *Bellflower Unified School District*, *supra*, PERB Decision No. 2544a, pp. 39-40 (*Bellflower USD*).) For this category of losses, Ambro shall be compensated according to proof at his regular hourly rate. As is customary in PERB remedies, all

monetary amounts owed shall be augmented until the date of payment at an annual rate of seven percent, compounded daily. (*El Centro, supra*, at pp. 22-25.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that Torrance Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivisions (a), (b), and (c), by: (1) issuing a notice of paid administrative leave that prohibited certificated employee Ron Ambro from contacting employees, students, and/or their parents regarding the District's investigation of Ambro; (2) preventing Charging Party Torrance Teachers Association CTA/NEA (Association) from effectively representing Ambro and interfering with Ambro's right to union representation by *inter alia* delaying or refusing to disclose the scope or subject of the investigation before questioning Ambro; (3) failing and refusing to meet and negotiate in good faith with the Association by not timely responding to an information request regarding the subject and scope of the District's investigation of Ambro; and (4) imposing reprisals and/or discriminating against Ambro because of protected activity and/or denying the Association's right to represent Ambro by: (a) issuing a notice of unprofessional conduct accusing Ambro of insubordination for exercising his right to effective representation at an investigative meeting; (b) issuing an Investigative Report/Letter of Finding accusing Ambro of insubordination for refusing to attend investigative meetings that the District had cancelled; (c) issuing a notice of intent to terminate Ambro's employment; (d) issuing a notice to suspend Ambro without pay for 15 days; (e) involuntarily transferring Ambro to a new assignment and new school site;

and (f) limiting Ambro's ability to remove his personal effects from his former classroom and disposing of and/or causing the loss of his lesson plans, curricula, and other personal property while it was within the exclusive custody and control of the District.

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

A. CEASE AND DESIST FROM:

1. Directing employees not to contact other employees, students, and/or their parents regarding the District investigations absent special circumstances;
2. Interfering with/and or denying the representational rights of the Association and of employees in investigative meetings by *inter alia* refusing to disclose, upon request, the scope and/or subject of an investigation;
3. Failing and/or refusing to meet and negotiate in good faith with the Association by not timely furnishing readily available information regarding the subject and/or scope of investigative interviews;
4. Imposing reprisals against employees because of protected activity and/or denying the Association's right to represent employees by: (a) issuing investigative reports and/or proposed or final disciplinary documents accusing employees of insubordination for exercising rights to effective representation in investigative meetings; (b) involuntarily transferring employees in reprisal for protected activity; and (c) denying employees reasonable access to their personal property and/or failing to exercise reasonable care to prevent the loss of employee property while it was within the exclusive custody and control of the District.

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

1. Rescind and expunge from Ambro's personnel file(s) the April 16, 2024 Notice of Paid Administrative Leave, the April 25, 2024 Notice of Unprofessional Conduct; the June 13, 2024 Investigation Report/Letter of Finding; the June 17, 2024 Notice of Intent to Terminate; the June 23, 2024 Notice of Reassignment; and the July 17, 2024 Notice of Intent to Suspend 15 Days.

2. Offer Ambro unconditional reinstatement without loss of pay or benefits to his former position as an Industrial Arts Instructor at J.H. Hull Middle School, or if that position no longer exists, appointment to the next available substantially equivalent opening, starting with the District's 2026-2027 School Year or as soon as administratively practicable following final resolution of this matter, unless otherwise agreed by the Association and the District.

3. According to proof in PERB compliance proceedings, make the Association and Ambro whole for any and all compensable losses incurred as a direct and foreseeable result of any unfair practice allegations sustained in this case.

4. Within 10 workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the District are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. The Notice shall also be posted by electronic message, intranet, internet site, and other electronic means used by the District to communicate with District employees.

Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.⁵¹

5. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on the Association.

RIGHT OF APPEAL

A party may appeal this proposed decision by filing with the Board itself a statement of exceptions within 20 days after the proposed decision is served. (PERB Reg. 32300.) If a timely statement of exceptions is not filed, the proposed decision will become final. (PERB Reg. 32305, subd. (a).)

The statement of exceptions must be a single, integrated document that may be in the form of a brief and may contain tables of contents and authorities, but may not exceed 14,000 words, excluding tables of contents and authorities. Requests to exceed the 14,000-word limit must establish good cause for exceeding the limit and be filed with the Board itself and served on all parties no later than five days before the statement of exceptions is due. PERB Regulation 32300, subdivision (a), is specific as to what the statement of exceptions must contain. Non-compliance with the

⁵¹ 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.

requirements of PERB Regulation 32300 will result in the Board not considering such filing, absent good cause. (PERB Reg. 32300, subd. (d).)

The text of PERB's regulations may be found at PERB's website:

www.perb.ca.gov/laws-and-regulations/.

A. Electronic Filing Requirements

Unless otherwise specified, electronic filings are mandatory when filing appeal documents with PERB. (PERB Reg. 32110, subd. (a).) Appeal documents may be electronically filed by registering with and uploading documents to the "ePERB Portal" that is found on PERB's website: <https://eperb-portal.ecourt.com/public-portal/>. To the extent possible, all documents that are electronically filed must be in a PDF format and text searchable. (PERB Reg. 32110, subd. (d).) A filing party must adhere to electronic service requirements described below.

B. Filing Requirements for Unrepresented Individuals

Individuals not represented by an attorney or union representative, are encouraged to electronically file their documents as specified above; however, such individuals may also submit their documents to PERB for filing via in-person delivery, US Mail, or other delivery service. (PERB Reg. 32110, subds. (a) and (b).) All paper documents are considered "filed" when the originals, including proof of service (see below), are actually received by PERB's Headquarters during a regular PERB business day. (PERB Reg. 32135, subd. (a).) Documents may be double-sided, but must not be stapled or otherwise bound. (PERB Reg. 32135, subd. (b).)

The Board's mailing address and contact information is as follows:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95811-4124
Telephone: (916) 322-8231

C. Service and Proof of Service

Concurrent service of documents on the other party and proof of service are required. (PERB Regs. 32300, subd. (a), 32140, subd. (c), and 32093.) A proof of service form is located on PERB's website: www.perb.ca.gov/about/forms/. Electronic service of documents through ePERB or e-mail is authorized only when the party being served has agreed to accept electronic service in this matter. (See PERB Regs. 32140, subd. (b), and 32093.)

D. Extension of Time

An extension of time to file a statement of exceptions can be requested only in some cases. (PERB Reg. 32305, subds. (b) and (c).) A request for an extension of time in which to file a statement of exceptions with the Board itself must be in writing and filed with the Board at least three calendar days before the expiration of the time required to file the statement of exceptions. The request must indicate good cause and, if known, the position of each of the other parties regarding the request. The request shall be accompanied by proof of service of the request upon each party. (PERB Reg. 32132.)

**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-6941-E, *Torrance Teachers Association CTA/NEA v. Torrance Unified School District*, in which all parties had the right to participate, it has been found that the Torrance Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq. As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Directing employees not to contact other employees, students, and/or their parents regarding the District investigations, absent special circumstances;
2. Interfering with and/or denying the representational rights of the Association and of employees in investigative proceedings;
3. Failing and/or refusing to meet and negotiate in good faith with the Association by not timely furnishing information regarding investigative interviews;
4. Imposing reprisals against employees because of protected activity and/or denying the Association's right to represent employees by: (a) issuing investigative reports and/or proposed or final disciplinary documents accusing employees of insubordination for exercising rights to effective representation in investigative meetings; (b) involuntarily transferring employees in reprisal for protected activity; and (c) denying employees reasonable access to their personal property and/or failing to exercise reasonable care to prevent the loss of employee property while it was within the exclusive custody and control of the District.

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

1. Rescind and expunge from Ambro's personnel file(s) the April 16, 2024 Notice of Paid Administrative Leave; the April 25, 2024 Notice of Unprofessional Conduct; the June 13, 2024 Investigation Report/Letter of Finding; the June 17, 2024 Notice of Intent to Terminate; the June 23, 2024 Notice of Reassignment; and the July 17, 2024 Notice of Intent to Suspend 15 Days;

2. Offer Ambro unconditional reinstatement without loss of pay or benefits to his former position as an Industrial Arts Instructor at J.H. Hull Middle School, or if that position no longer exists, appointment to the next available substantially equivalent opening, starting with the District's 2026-2027 School Year or as soon as administratively practicable following final resolution of this matter, unless otherwise agreed by the Association and the District;

3. Make the Association and Ambro whole for compensable losses incurred as a direct and foreseeable result of the District's unfair practices.

Dated: _____

Torrance 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.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, Appeals Office, 1031 18th Street, Suite 223, Sacramento, CA, 95811-4124.

On July 1, 2026, I served PERB Decision No. HO-U-1876 regarding *Torrance Teachers Association v. Torrance Unified School District*, Case No. LA-CE-6941-E on the parties listed below by

☐ I am personally and readily familiar with the business practice of the Public Employment Relations Board for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Sacramento, California.

☐ Personal delivery.

☒ Electronic service (e-mail).

Stephanie J. Joseph, Staff Counsel
California Teachers Association
11745 E. Telegraph Road
Santa Fe Springs, CA 90670
Email: sjoseph@cta.org

Joshua Stevens, Attorney
Fagen, Friedman & Fulfroft, LLP
70 Washington Street, Suite 205
Oakland, CA 94607-3795
Email: jstevens@f3law.com

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 1, 2026, at Sacramento, California.

Joseph Seisa
(Type or print name)


(Signature)