PERB
California Public Employment Relations Board

Division of Administrative Law
1031 18th Street
Sacramento, CA, 95811-4124
Telephone: (916) 324-0143

January 30, 2023

Re: *Oakland Education Association v. Oakland Unified School District*
Unfair Practice Case No. SF-CE-3481-E

Dear Parties:

Attached is the Public Employment Relations Board (PERB or Board) agent's Proposed Decision in the above-entitled matter.

Any party to the proceeding may file with the Board itself a statement of exceptions to the Proposed Decision. The statement of exceptions should be electronically filed using the "ePERB portal" accessible from PERB's website (https://eperb-portal.ecourt.com/public-portal/). (PERB Reg. 32110, subd. (a).)[1] Individuals not represented by an attorney or union representative, are encouraged to electronically file their documents using the ePERB portal; however, such individuals may submit their documents to PERB for filing via in-person delivery, US Mail, or other delivery service. (PERB Reg. 32110, subds. (a) and (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

Pursuant to PERB Regulation 32300, the statement of exceptions must be filed with the Board itself within 20 days of service of this proposed decision. A document submitted through ePERB after 11:59 p.m. on a business day, or at any time on a non-business day, will be deemed "**filed**" the next regular PERB business day. (PERB Reg. 32110, subd. (f).) A document submitted via non-electronic means will be 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); see also PERB Reg. 32130.)

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, including footnotes, but excluding the tables of contents and authorities. Requests to exceed the 14,000-word limit must establish good cause for exceeding

[1] PERB's regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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. The statement of exceptions shall: (1) clearly and concisely state why the proposed decision is in error, (2) cite to the relevant exhibit or transcript page in the case record to support factual arguments, and (3) cite to relevant legal authority to support legal arguments. Exceptions shall cite only to evidence in the record of the case and of which administrative notice may properly be taken. (PERB Reg. 32300, subd. (c).) Non-compliance with the requirements of PERB Regulation 32300 will result in the Board not considering such filing, absent good cause. (PERB Reg. 32300, subd. (d).)

Within 20 days following the date of service of a statement of exceptions, any party may file with the Board a response to the statement of exceptions. The response shall be filed with the Board itself in the same manner set forth in this letter for the statement of exceptions (see paragraphs two and three of this letter). The response may contain a statement of any cross-exceptions the responding party wishes to take to the proposed decision. The response shall comply in form with the requirements of PERB Regulation 32300 set forth above, except that a party both responding to exceptions and filing cross-exceptions shall be permitted to submit up to 28,000 words total, including footnotes, without requesting permission. A response (with or without an inclusive statement of cross-exceptions) to such exceptions may be filed within 20 days. Such response shall comply in form with the provisions of PERB Regulation 32310.

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See PERB Regs. 32300, subd. (a) and 32093; see also PERB Reg. 32140 for the required contents.) Proof of service forms are available for download 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.)

Any party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file with the statement of exceptions or the response thereto a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument. (PERB Reg. 32315.) All requests for oral argument shall be filed as a separate document.

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.)

Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final. (PERB Reg. 32305.)

Sincerely,

Shawn Cloughesy
Chief Administrative Law Judge

SPC

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

OAKLAND EDUCATION ASSOCIATION, Charging Party, v. OAKLAND UNIFIED SCHOOL DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. SF-CE-3481-E PROPOSED DECISION (January 30, 2023)

Appearances: California Teachers Association, by Mandy Hu, for Oakland Education Association; Fagen, Friedman & Fulfrost, LLP, by Roy A. Combs, Seth N. Eckstein, and Mary J. Breffle, for Oakland Unified School District.

Before Shawn P. Cloughesy, Chief Administrative Law Judge.

INTRODUCTION

This case involves an exclusive representative alleging that a public school employer violated the Educational Employment Relations Act (EERA)[1] when it unilaterally decided to close and consolidate certain schools or truncate grades, including failing to follow procedures set forth by a prior governing board resolution, and failed to meet and negotiate in good faith over that decision and/or its effects. The public school employer denies any violation of EERA.

[1] EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code, unless otherwise specified. Public Employment Relations Board (PERB) Regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

PROCEDURAL HISTORY

On February 15, 2022, the Oakland Education Association (Association) filed its unfair practice charge (charge) with PERB against Oakland Unified School District (District). The Association also filed a request to expedite the case at the Office of the General Counsel (OGC) and on February 18, 2022, the request was granted.

On March 4, 2022, the OGC issued a complaint alleging that the District violated EERA sections 3543.5, subdivisions (a), (b), and (c), by (1) unilaterally, without providing the exclusive representative notice and an opportunity to meet and negotiate, implementing a decision to close, consolidate, and truncate grades in its schools without following the procedures set forth under Resolution 1819-0178; and (2) failing or refusing to bargain the effects of the decision to close, consolidate, and truncate grades in its schools.

On March 18, 2022, an informal settlement conference was held, but the matter was not resolved.

On March 24, 2022, the District filed its answer to the complaint, denying any violation of EERA, and asserting multiple affirmative defenses.

On March 24, 2022, the Association filed a request for injunctive relief requesting the District be ordered to cease and desist from its plan to close, merge, consolidate, or truncate grades in three District schools at the end of the 2021-2022 school year. The Board denied the request for injunctive relief, however, ordered that the matter be expedited at all divisions.

A prehearing videoconference was held on April 6, 2022, to schedule the expedited formal hearing, determine efficient ways to conduct the proceeding, and

discuss any other prehearing matters. A second prehearing videoconference was held on April 13, 2022, to discuss the progress of the parties in developing a joint stipulation of facts with joint exhibits.

A formal hearing was held on May 20, August 9 and 10, and September 7, 2022. Post-hearing briefs were submitted on November 11, 2022.

FINDINGS OF FACT

The Parties and Jurisdiction

At all relevant times, the District has been a public school employer within the meaning of Government Code § 3540.1, subdivision (k). The Association has been an employee organization within the meaning of Government Code § 3540.1, subdivision (d), and the exclusive representative of an appropriate unit of certificated employees of the District within the meaning of Government Code § 3540.1, subdivision (e).

Successor Collective Bargaining Agreement Negotiations between 2017 and 2019

The parties entered into a collective bargaining agreement (CBA) for the term of 2014 through 2017, which expired on June 30, 2017. Between 2017 and 2018, the parties bargained for a successor contract to the 2014-2017 CBA.

On approximately June 4, 2018, impasse was reached as to these successor CBA negotiations. Before impasse was declared, the Association did not make any proposals during negotiations related to school closures or consolidations. At some point during the negotiations, the District communicated to the Association that school closures were a tradeoff to save money for teacher wages.

In January 2019, the District Board approved Resolution 1819-0143 which, among other actions, approved the closure of Roots International Academy.

Factfinding hearings occurred between the parties on January 31 and February 1, 2019. A Factfinding Report was issued on or around February 15, 2019.

From February 21, 2019 until March 1, 2019, the Association's bargaining unit members participated in a seven-day strike after the parties exhausted impasse procedures on contract negotiations.

During the strike, the parties engaged in a series of meetings where discussions occurred that included multiple stakeholders in the broader community, including local, regional, and statewide elected officials or their representatives. Some of these meetings occurred at the State building in Oakland. Formal bargaining also occurred during the strike between the respective bargaining teams. Some of the bargaining occurred at the State building and some occurred at other locations, outside of these community meetings.

On February 26, 2019, the parties discussed the issue of school closures. The Association presented a draft regarding placing a moratorium on school closures to the District, which the District did not accept or sign. State Superintendent Tony Thurmond (Thurmond) recommended an alternative, such as a Board resolution. Then District Board President, Aimee Eng (Eng), attended one or more meetings at the State building, as one of the District Board members trying to help resolve the strike. Eng was not a member of the District's bargaining team and she was not given authority to bargain on behalf of the District during these meetings. Eng did not attend any bargaining meetings between the parties.

On February 27, 2019, the chair of the District's bargaining team, Director of Labor and Negotiations Jenine Lindsey (Lindsey) told Association bargaining team member Muni Citrin (Citrin) and the Association bargaining team that the District would not negotiate school closures. The Association's co-Executive Director John Green (Green) testified that he knew that the District did not want a provision in the CBA related to school closures as the District objected due to it viewing this subject as a managerial prerogative. Citrin testified that the framework developed in a small meeting with Eng and others regarding the procedures for school closures was rejected by the District. Eng was present when this was conveyed. Since the District would not bargain the closure of schools with the Association, Eng made a commitment to bring a resolution setting forth procedures for the District to adhere to before deciding to close a school. Eng and Citrin, along with other Association members, drafted a resolution which Eng would then take to the District Board to consider concerning setting forth a process for school closures.

On February 28, 2019, California Teachers Association (CTA)[2] staff Doug Appel (Appel) sent a copy of a draft memorandum of understanding regarding school closures to Lindsey via e-mail. Lindsey responded by stating: "President Eng can address both your collaboration on this letter and on her proposed resolution regarding school closures separately with the Board." Lindsey requested Appel confirm that the memorandum would not be part of the CBA. Appel confirmed this via e-mail. Eng also told Citrin that she was only one Board member so there were

[2] The Association is a local union affiliate of CTA.

limitations on what she could do with the draft resolution. Eng did not represent any other Board members when she attended the meetings or engaged in discussions with Citrin.

Tentative Agreement to 2018 to 2021 CBA

On March 1, 2019, the parties reached a tentative agreement, and on March 3, 2019, Association members ratified the tentative agreement which brought an end to the strike. The tentative agreement became the CBA operative for the period between July 1, 2018 and June 30, 2021. The CBA contained Article 12.9, titled "Transfer/Consolidation Due To School Closure/Replacement" and provided:

> "12.9.1 Unit members according to their seniority will have the option of being assigned to schools to which students from the closed school have been placed if positions are created due to the attendance of students from the closed school.
>
> "12.9.2 In the event all unit members cannot follow the students from the school due to changes in enrollment, the process set forth in this Article shall be followed.
>
> "12.9.3 Should the unit member not exercise this option, they will follow the process set forth in this Article.
>
> "12.9.4 If closure is based on inability to use the facility, when the facility is rebuilt, all unit members who were in the original school shall have first opportunity to be assigned to the new facility. If more unit members desire to return than there are positions available, the assignment factors shall be considered.
>
> "12.9.4.1 After the unit members in the original school have had an opportunity to be assigned to the new facility, if vacancies still remain, then procedures for filling a vacancy under this Article shall be followed.

“12.9.5 Unit members assigned to a school prior to grade reconfiguration (grade level changes) shall have the option of remaining at the school after reconfiguration. An exception would be allowed if the unit members do not have the credential required for the new grade level configuration.

“12.9.5.1 In the event that all the unit members cannot remain after the reconfiguration due to enrollment decreases, the consolidation factors will be used to determine who is to be consolidated.

“12.9.5.2 Unit members who wish to follow their students to another school, due to enrollment shifts required by reconfiguration, shall be granted the opportunity to do so, in accordance with the process set forth in this Article.

“12.9.5.3 Unit members who do not want to continue in their assignments, due to reconfiguration, shall have the first opportunity to accept current vacancies for which they are qualified according to the process set forth in this Article.

“12.9.6 Should the unit member not exercise the option to be considered or not be selected for a position in the New School, he/she may select a position from the Position List referenced in Section 12.1, unless such selection conflicts with the assignment factors (contained in Section 12.4). The Position List will be presented to the unit member before the end of the current school year. The unit member shall select in order of preference, up to his or her first five (5) choices from the Position List. If more than one unit member selects the same position, the unit member with the most seniority shall have preference.

“12.9.7 A unit member not selected for a position in the New School under this section may appeal the decision pursuant to the appeal procedures enumerated in Section 12.7.4 above.”

The tentative agreement, which became the 2018-2021 CBA, did not contain any provisions regarding school closures or change the language of Article 12.9.

District Board Resolution 1819-0178

On March 20, 2019, the District's Board approved Resolution 1819-0178 – Improving Community Engagement for Proposed School Changes that includes limitations on mergers, closures, or consolidations of the District's schools:

> "BE IT FURTHER RESOLVED, that no closure, merger, or consolidation would occur without inclusion of a planning period (no less than a school year or 9 months) between the vote to approve the action and its implementation, unless a recommendation has been brought forward by a team representing multiple stakeholders from the impacted school communities to accelerate the implementation; and
>
> "BE IT FURTHER RESOLVED, that prior to the Board's final decision, staff shall present to the Board a preliminary financial analysis of foreseeable impacts of the proposed changes on the district's budget, including student and staff projected attrition or growth, as well as projected costs associated with services, staffing and any facility improvement costs deemed necessary to implement the proposed changes; and
>
> "BE IT FURTHER RESOLVED, to ensure the successful transition of students who are displaced by school closures, students will have access to priority enrollment, individual student and family "case management" will be provided to support the transition to welcoming schools, and student progress will be monitored."

After the District Board adopted Resolution 1819-0178, several schools were closed.

District Board Resolution 2122-0026

On December 9, 2020, the District Board approved Resolution 2021-0128, "Advancing District's Citywide Plan Work" to initiate the process of selecting a cohort of schools to expand, redesign, merge, and/or close.

On November 17, 2021, the parties reached a tentative agreement which, among other conditions, extended the term of the 2018-2021 CBA to October 31, 2022. The Association ratified the extension of the CBA in or around November 2021.

At its meeting on December 15, 2021, the District Board President[3] and a District Board member introduced a draft of Resolution 2122-0026 (Draft Resolution 2122-0026), which proposed to "direct[] the Superintendent to present the [District] Board at the soonest possible opportunity (e.g., a Special Board meeting) a list of school consolidations sufficient to achieve at least an estimated $8 million in ongoing savings."

At its meeting on January 12, 2022, the District Board adopted a final version of Resolution 2122-0026. At a Board meeting on January 31, 2022, the Superintendent presented to the Board Resolution 2122-0030, which included a list of fifteen suggested schools for closure, merger, or grade truncation. The Superintendent proposed that six schools be closed at the end of the current school year (i.e., June 2022), and an additional two be closed at the end of the following school year (June 2023).

[3] Eng was no longer the District Board President at this time.

Demands to Bargain by the Association and Subsequent Responses

On February 3, 2022, the Association sent the District its first demand to bargain the decision to "waive" Resolution 1819-0178. On February 8, 2022, the District responded to the Association's demand to bargain as follows:

> "[The District] disagrees with [the Association]'s position that decision to close schools is subject to negotiations with [the Association]. Moreover, the impact of school closures has been contemplated in the negotiation of successor contract agreements and therefore the impact of school closures on [Association] members is addressed in our collective bargaining agreement."

About an hour after the District's response, the Association made a second demand to bargain.

Approximately a half-hour later, the District Board held a meeting and voted to implement an amended list of the school closures proposed in the Superintendent's January 31, 2022 list. The amended list included: (1) the closure of two schools (Community Day School and Parker Elementary) in June 2022; (2) the truncation of grades six through eight at La Escuelita in June 2022; (3) the closure of five schools in June 2023; (4) the truncation of grades six through eight at Hillcrest in June 2023; and (5) a consolidation of two schools in June 2022.

On February 11, 2022, Superintendent Kyla Johnson-Trammell (Johnson-Trammell) wrote an e-mail to "Oakland Unified Families" that "mapped out a timeline of next steps." Johnson-Trammell noted that the District's goal was to place students by March 10—"the same notification date as all other families who are applying through the enrollment process."

On February 11, 2022, La Escuelita Principal Faris Jabbar held a meeting with La Escuelita middle school teachers, to discuss how teachers "could help students and parents navigate the whole enrollment process." Parents of students in the truncated grades at La Escuelita were given an "Opportunity Ticket" to allow their children to be transferred to schools of their choice. The teachers then "took on helping parents do [the enrollment process]." Specifically, a District teacher at La Escuelita Jennifer Brouhard (Brouhard) helped students with the enrollment process.

On February 18, 2022, the District's human resource department e-mailed Brouhard about the recent closure of La Escuelita middle grades to offer help with finding another job.

On March 22, 2022, the District sent the Association another communication regarding the Association's demand to bargain, as follows:

> "I have not received any response [. . .] regarding our request that [the Association] identify what it believes are the impacts or effects of the [District] Board's decision to close and consolidate schools. Again[,] we do not see any but are asking [the Association] to identify in writing the impacts or effects [the Association] believes exist."

On March 24, 2022, the Association responded to the District's March 22 communication identifying the following effects: hours of work, leaves, assignment, transfer, evaluations, class size, and safety and security conditions.

On April 6, 2022, the District communicated with the Association again about the Association's demand to bargain, requesting more specific impacts or effects and once again indicating the District believed that all effects are covered by the CBA.

ISSUES

1. Did the District fail to bargain in good faith when it unilaterally decided to close several school sites and consolidate or truncate grades without providing the Association with notice and the opportunity to meet and confer?

2. Did the District fail or refuse to bargain in good faith the effects of its decision to close several school sites and consolidate or truncate grades without providing the Association with notice and the opportunity to meet and confer?

CONCLUSIONS OF LAW

A public school employer may not "[r]efuse or fail to meet and negotiate in good faith with an exclusive representative." (EERA, § 3543.5, subd. (c).) A unilateral change to a matter within the scope of representation constitutes a per se violation of the duty to meet and negotiate. (*Lodi Unified School District* (2020) PERB Decision No. 2723, p. 11; *Stockton Unified School District* (1980) PERB Decision No. 143, p. 22.) To establish a prima facie case that a respondent employer made an unlawful unilateral change, a charging party union, that exclusively represents a bargaining unit, must prove: (1) the employer changed or deviated from the status quo; (2) the change or deviation concerned a matter within the scope of representation; (3) the change or deviation had a generalized effect or continuing impact on represented employees' terms or conditions of employment; and (4) the employer reached its decision without first providing adequate advance notice of the proposed change to the union and bargaining in good faith over the decision, at the union's request, until the parties reached an agreement or a lawful impasse. (*County of Merced* (2020) PERB Decision No. 2740-M, pp. 8-9 (*Merced*).)

Negotiability of Closing and Consolidating Schools or Truncating Grades

It is well-settled that the decision to close a facility or to lay off employees is not subject to bargaining, but the effects of that decision on matters within the scope of representation are negotiable. (*Bellflower Unified School District* (2014) PERB Decision No. 2385, p. 6., citing *Mt. Diablo Unified School District* (1983) PERB Decision No. 373 (*Mt. Diablo*).) The decision to restructure schools, including the staff structure at school sites subject to consolidation, is not negotiable because those decisions were entirely within the managerial prerogative. (*Ibid*.)

Under this framework, it is clear that the District's decision to close and consolidate schools or truncate grades is within the managerial prerogative. (*Regents of the University of California* (1987) PERB Decision No. 640-H, p. 20 ["requiring negotiations on the decision itself would seriously intrude upon the [employer's] managerial prerogatives in establishing and maintaining its educational offerings and organizational structure"].) That being said, it must be determined whether, as the Association argues, Resolution 1819-0178 was indeed a bargained for agreement between the parties.

Resolution 1819-0178 was Not a Binding Collective Bargaining Agreement

Collective bargaining agreements are binding on both the employer and the union. A violation of EERA is established when an employer breached or otherwise altered a collective bargaining agreement and that the breach amounted to a change of policy that had a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members. (*Fountain Valley Elementary School District* (1987) PERB Decision No. 625, p. 19.) An agreement on a

non-mandatory subject does not convert the non-mandatory subject into a mandatory subject of bargaining. (*Salinas Valley Memorial Healthcare System* (2012) PERB Decision No. 2298-M, p. 15.)

During successor CBA negotiations in 2019, the District bargaining representatives told the Association that they could not and would not negotiate the District's decision to close certain schools. The discussions surrounding Resolution 1819-0178 were the result of attempting to resolve a strike through creative, outside-the-box solutions, but were separate and distinct from negotiations regarding the contract. Resolution 1819-0178 was not incorporated into the contract between the District and the Association, but rather was part of the legislative process. The parties' tentative agreement for the 2018-2021 successor CBA did not include any of the resolution's provisions regarding school closures. The CBA already contained Article 12.9 regarding Transfer/Consolidation Due To School Closure/Replacement. That provision in the CBA contains agreed upon procedures the District is required to follow when schools are closed and teachers are displaced.

The District specifically rejected a framework developed by Citrin regarding school closures and indicated that it would not bargain that issue during the strike meetings. Then Eng, a District Board member, met with Association members outside of the bargaining table to develop a creative solution to bring an end to the strike and address the Association's concerns regarding school closures. There is no indication that she ever had authority to negotiate on behalf of the District Board or bind the District to a collective bargaining agreement. The District Board approved the resolution and closed several schools following those requirements. Then a few years

later, another resolution was passed by the District Board to close and consolidate or truncate grades at several school sites without the planning period outlined in Resolution 1819-0178. However, nothing in Resolution 1819-0178 states that it would endure in perpetuity. Further, as provided in *City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898:

> "It is a familiar principle of law that no legislative board, by normal legislative enactment, may divest itself or future boards of the power to enact legislation within its competence. [Citations omitted.] Thus, a school board cannot, by resolution, bar itself or future boards from adopting subsequent resolutions which may alter earlier established policies. Yet the portion of the resolution presently at issue purports to effectuate just such a result; it seeks to place all the terms of the present resolution beyond the reach of future board action, except as the certificated employee council agrees to such future action." (*Id*. at 929.)

The legislative resolution process cannot bind future boards by adopting policies that are not capable of change. When the District Board passed Resolution 1819-0178, it did not bind the District from passing a resolution in the future as to following this process to close and consolidate schools or truncate grades. The resolution did not bind the District Board from passing subsequent resolutions. Therefore, the District Board's decision as to Resolution 1819-0178 was within its managerial prerogative.

The Association Failed to Establish a Binding Past Practice

The Association argues that the District deviated from past practice when it decided to "waive" Resolution 1819-0178. A union can prove that an employer changed or deviated from the status quo by showing: (1) deviation from a written

agreement or written policy, (2) a change in established past practice, or (3) a newly created policy or application or enforcement of existing policy in a new way. (*Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 10.) If a union argues that past practice is not merely evidence as to the meaning of a written agreement or policy, but rather independently establishes the status quo that the employer changed, the past practice must have been "regular and consistent" or "historic and accepted." (*Merced*, *supra*, PERB Decision No. 2740-M, p. 13, 11 fn. 9.) "An agreement regarding a non-mandatory subject [does not] become part of the 'status quo' which an employer must maintain while meeting and conferring." (*Salinas Valley Memorial Healthcare System*, *supra*, PERB Decision No. 2298-M, p. 15.)

The Board has recently explained that:

> "Precedent does not establish a bright line rule as to what length of time is relevant in evaluating a claimed "regular and consistent" or "historic and accepted" past practice. The answer depends on context, including whether the employment term at issue is one that employees experience on a weekly or monthly basis, or less regularly such as on an annual or sporadic basis. For an issue that arises only once per year, such as here, precedent does not dictate a precise lower limit of required historical consistency, but the Board has held that seven years of consistency is sufficient where the issue involves annual wages."

(*Pittsburg Unified School District* (2022) PERB Decision No. 2833, p. 12, citing *Region 2 Court Interpreter Employment Relations Committee & California Superior Courts of Region 2* (2020) PERB Decision No. 2701-I, p. 56.)

Just because the Association and Eng agreed upon the language in Resolution 1819-0178, does not convert the decision to close schools into a mandatory subject of

bargaining. Even if it had created the status quo, the Association admits that school closures only occur infrequently, once every year or few years. Resolution 1819-0178 was only in effect for approximately two years. Therefore, there is not a consistent past practice regarding school closures to create a binding past practice. Thus, the Association failed to introduce sufficient evidence of a regular and consistent past practice and therefore failed to establish a unilateral change based on the decision to "waive" Resolution 1819-0178.

Equitable Estoppel Does Not Apply

The Association then argues that the District should be estopped from disavowing the enforceability of Resolution 1819-0178. Equitable estoppel applies only when: (1) the party to be estopped misrepresents or conceals material facts; (2) that party knows the true facts; (3) that party intends for the other party to act on the misrepresentation or concealment; (4) the other party is ignorant of the true facts; and (5) the other party relies on the conduct to his injury. (*Santa Ana Unified School District* (2013) PERB Decision No. 2332, p. 11; *Los Angeles Unified School District* (2012) PERB Decision No. 2299, pp. 6-7.) "Equitable estoppel generally requires an affirmative representation or act" by the party to be estopped. (*J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 657, emphasis in original.) Thus, the alleged misrepresentation or concealment must be proven as a certainty; it cannot be based on inference alone. (*Los Angeles*, *supra*, PERB Decision No. 2299, p. 7.)

The Association's estoppel argument rests solely on an allegation that the District apparently knew it did not intend to honor the terms of Resolution 1819-0178.

However, the District did close several schools pursuant to Resolution 1819-0178, and therefore the District did honor the terms of the resolution. Thus, the alleged misrepresentation or concealment has not been established. The Association also argues that the resolution was created by bargaining, which has been rejected earlier in this proposed decision. As discussed earlier, there was nothing included in the resolution to indicate it would operate in perpetuity. There is also no evidence that could demonstrate intentional concealment by the District. Thus, equitable estoppel does not apply in this case.

Effects of Decision to Close and Consolidate Schools or Truncate Grades

EERA section 3543.5, subdivision (c), makes it unlawful for a public school employer to refuse or fail to meet and negotiate in good faith with an exclusive representative. Once an employer makes a firm decision to act on a matter within its managerial prerogative, a duty arises to provide the exclusive representative with notice and an opportunity to negotiate the effects of that decision. (*Bellflower Unified School District*, *supra*, PERB Decision No. 2385, p. 6., citing *Mt. Diablo*, *supra*, PERB Decision No. 373.) Even when a decision itself is a managerial prerogative, an employer still must bargain negotiable effects of that decision. (*Healdsburg Union High School District and Healdsburg Union School District/San Mateo City School District* (1984) PERB Decision No. 375 (*Healdsburg*).)

The Association Made a Valid Effects Demand

"It is well-settled that a union cannot waive bargaining over a negotiable matter when it had no actual or constructive notice of the issue, until after the employer had already reached a firm decision." (*Regents of the University of California, Berkeley*

(2018) PERB Decision No. 2610-H, p. 47 (*Regents*).) Here, it is undisputed that the District did not give notice sufficiently in advance of reaching a firm decision. (*City of Sacramento* (2013) PERB Decision No. 2351-M, pp. 29-30.) When only the effects of a proposed change are negotiable, the exclusive representative must indicate in its demand that it seeks to negotiate over effects and not the decision itself. (*Ibid*., see also *Newman-Crows Landing Unified School District* (1982) PERB Decision No. 223 [although not essential that a request to negotiate be specific or made in a particular form it is important for the charging party to have signified some desire to negotiate]; *Mt. Diablo, supra*, PERB Decision No. 373 [demand to negotiate "any and all impacts upon members of . . . bargaining unit in any and all mandatory subjects for negotiation" of layoff decision is sufficient].) The Board has held that:

> "Although the request need not be in any particular form nor use a particular verbiage, it must clearly identify negotiable areas of impact, and clearly indicate the employee organization' s desire to bargain over the effects of the decision as opposed to the decision itself."

(*Trustees of the California State University* (2012) PERB Decision No. 2287-H, p. 11.) In balancing the employer's duty to negotiate with the employer's right to be informed of the union's specific bargaining demands, the Board has stated:

> "The resolution we find to be both practical and consistent with the give-and-take of the bargaining process is to *utilize that process itself* to resolve the ambiguities present in bargaining proposals."

(*Healdsburg*, *supra*, PERB Decision No. 375, p. 9, emphasis in original.) Thus, before an employer may refuse to negotiate after receiving an effects bargaining demand, it "must attempt to clarify through discussions with the union any uncertainty as to what

is proposed for bargaining and whether it falls within the scope of representation." (*Rio Hondo Community College District* (2013) PERB Decision No. 2313, p. 5.)

While at first, the Association requested to bargain the decision to "waive" Resolution 1819-0178, in its March 24, 2022 demand, the Association later identified several effects that it requested to bargain: hours of work, leaves, assignment, transfer, evaluations, class size, and safety and security conditions. Even if the District disagreed or was unclear as to whether some or all of the effects were covered under the parties' CBA, it still had a duty to meet with the Association to clarify the matter. The Association was not required to clarify their list of effects. Therefore, the Association made a valid effects bargaining demand.

The District had an Obligation to Explore Alternatives to Closing Schools

The District argues it provided ample notice and a reasonable opportunity to negotiate any effects in advance of school closures. However, PERB has found that exploring alternatives to layoffs is also appropriate for effects bargaining:

> "Although alternatives to layoffs are analyzed as 'effects' of the decision to layoff, PERB has similarly recognized that alternatives to layoffs, such as concessions in wages or benefits, are also appropriate matters for collective bargaining. (*San Mateo City School District* (1984) PERB Decision No. 383, p. 18 [expressly recognizing 'options in lieu of layoff' as one of several negotiable 'effects' of a layoff decision].) Whether in situations where the underlying decision is itself negotiable, such as a transfer of work from one unit to another, or in situations where only the 'effects' of a layoff decision are negotiable, the rationale is essentially the same: because of the exclusive representative's unique ability to offer concessions in employee wages or benefits, such matters are at least as amenable to collective bargaining, and quite likely more amenable, than a 'lack of work' situation involving an

> elimination, reduction or change in the kind of services offered."

(*Anaheim Union High School District* (2016) PERB Decision No. 2504, p. 58, citing *City of Sacramento*, *supra*, PERB Decision No. 2351-M, p. 22.) An employer must also meet and confer over alternatives to the decision to close and consolidate or truncate grades as part of effects bargaining. (See *Oxnard Union High School District* (2022) PERB Decision No. 2803, p. 51.)

"[I]f the notice leaves insufficient time for meaningful negotiations before implementation . . . , then the 'notice' is nothing more than 'notice' of a fait accompli and the question of waiver never arises." (*City of Sacramento*, *supra*, PERB Decision No. 2351-M, p. 40, citing *Ciba-Geigy Pharmaceuticals Div.* (1982) 264 NLRB 1013, 1017, *Lost Hills Union Elementary School District* (2004) PERB Decision No. 1652, *San Francisco Community College District* (1979) PERB Decision No. 105 (*San Francisco*), *Arcohe Union School District* (1983) PERB Decision No. 360, italics omitted.) When an employer does not provide notice prior to implementation of a non-negotiable decision, a union is not required to demand to bargain effects. (*County of Ventura* (2021) PERB Decision No. 2758-M, p. 42.)

The Association was not given advance notice prior to the February 3, 2022 decision of the District Board to shut down/consolidate schools or truncate grades. The Association learned of this decision on February 3, 2022, which did not leave the parties with meaningful time to negotiate before the District implemented its decision. Beginning a week or two after the February 3 meeting, the District began implementation of its decision to close schools and consolidate or truncate grades by beginning the process of transferring teachers at closing schools to new assignments

and having teachers assist parents and students with the new enrollment process. (See *City of Sacramento*, *supra*, PERB Decision No. 2351-M, p. 37.) There was no time to discuss alternatives to closing and consolidating schools or truncating grades. Because the issue of school closures was linked to teacher salaries, alternatives should have been explored with the Association. Therefore, it was reasonable, desirable, and necessary for the District to explore with the Association whether an agreement over concessions in wages and benefits could eliminate the need for the closures.

For all of the above reasons, the District's decision to close and consolidate schools or truncate grades was not within the scope of bargaining, but any foreseeable effects, including potential alternatives, required the District to provide notice and the opportunity to bargain to the Association.

Interference with Bargaining Unit Employees and Organizational Rights

Although the PERB-administered statutes do not specifically mandate derivative theories of liability, since the earliest days of the agency, Board orders and remedies have included derivative violations (sometimes also referred to as concurrent violations) accompanying bargaining violations. (*San Francisco*, *supra*, PERB Decision No. 105, p. 19 (*San Francisco CCD*), overruling in relevant part *Placerville Union School District* (1978) PERB Decision No. 69.) As the terms suggest, an independent violation can be proven without also proving another alleged violation, while a derivative violation depends entirely upon proving up a separate unfair practice. (*Regents*, *supra*, PERB Decision No. 2610-H, p. 68.) Thus, interference can be either an independent violation or derivative of another violation,

depending upon whether the facts at issue establish interference without establishing any other violation. (*County of Santa Clara* (2021) PERB Order No. Ad-485-M, p. 9, fn. 8; *County of Sacramento* (2014) PERB Decision No. 2393-M, p. 33; see also *State of California (Department of Corrections & Rehabilitation)* (2012) PERB Decision No. 2282-S, p. 15.) "[L]ong settled precedent establishes that an employer's unilateral change concurrently or derivatively violates EERA section 3543.5, subdivisions (a) and (b), because it necessarily interferes with employees and their union in the exercise of protected rights. (*San Francisco*, *supra*, PERB Decision No. 105, pp.19- 20.)

Here, the complaint specifically alleges that the same conduct relied on to establish a failure to bargain the effects of the decision also derivatively interfered with employee rights and denial of the Association's right to represent employees, in violation of EERA sections 3543.5, subdivisions (a) and (b). In its post-hearing brief, the Association mentions interference with its right to represent bargaining unit employees only in connection with interference with employee rights. Accordingly, the allegation of interference with this union right will be treated as a derivative allegation. Because the record establishes that a bargaining violation occurred here, the derivative violations alleged in the complaint are also established.

REMEDY

PERB has broad remedial powers to effectuate the purposes of EERA. EERA section 3541.5, subdivision (c), states:

> "The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees

with or without back pay, as will effectuate the policies of this chapter."

The District failed to provide notice and an opportunity to bargain over the foreseeable effects of a non-negotiable decision in violation of EERA section 3543.5, subdivision (c). This conduct also interfered with the rights of bargaining unit employees to be represented by the Association and with the Association's right to represent its bargaining unit employees in violation of EERA section 3543.5, subdivisions (a) and (b). "In effects bargaining cases, the Board does not typically order the employer to rescind a decision that it was not required to bargain over." (*City of Santa Maria* (2020) PERB Decision No. 2736-M, p. 80, citing *Sutter County In-Home Supportive Services Public Authority* (2007) PERB Decision No. 1900-M, pp. 17-18 [regarding the effects of non-negotiable decision to require background checks for caregiver employees]; *Oak Grove School District* (1986) PERB Decision No. 582, pp. 29-31 [regarding the effects of a non-negotiable decision to increase students' instructional time].) The appropriate remedy is to order the employer to cease and desist from violating the duty to meet and confer in good faith, and to negotiate, upon demand, over the effects of the new policy.[4] (*Ibid*.; see also, *Bellflower Unified School District*, *supra*, PERB Decision No. 2385, pp. 12-14.) The standard remedy is to make whole all injured persons or organizations for the full amount of their losses and withhold from the wrongdoer the fruits of its violation.

[4] Obviously, the District is not obligated to meet and negotiate over the effects of the closure and consolidation of schools or truncation of grades in schools which have already been rescinded by the District Board prior to this proposed decision becoming final.

(*County of Ventura*, *supra*, PERB Decision No. 2758-M, p. 52, citing *County of Santa Clara* (2019) PERB Decision No. 2680-M, p. 14; *Pasadena Area Community College District* (2015) PERB Decision No. 2444, pp. 23-24.)

Accordingly, the District is ordered to compensate Association unit members for financial losses suffered arising directly from its failure to provide the Association with adequate notice and the opportunity to fully bargain over the effects of its decision to close and consolidate schools or truncate grades. Because the Association did not present evidence or argument regarding any make-whole relief during the hearing or in its brief, PERB compliance proceedings will most likely be necessary to determine the most effective method to achieve compliance. (*County of Ventura*, *supra*, PERB Decision No. 2758-M, p. 53; *Los Angeles Unified School District* (2021) PERB Decision No. Ad-488, p. 9.)

The Board's remedy when "an employer's violation involved a failure to bargain effects, make-whole relief runs from the date any impacted employee began to experience harm until the earliest of: (1) the date the parties reach an agreement as part of complying with [the] effects bargaining order; (2) the date the parties have reached impasse and exhausted any post-impasse procedures that may be required or agreed upon; or (3) failure by the union to bargain in good faith." (*County of Ventura*, *supra*, PERB Decision No. 2758-M, p. 53, citing *County of Santa Clara*, *supra*, PERB Decision No. 2680-M, p. 14.) "Make-whole relief should expunge the consequences of an unfair practice and restore 'the economic status quo that would have obtained but for the respondent's wrongful act.'" (*Bellflower Unified School District* (2022) PERB Decision No. 2544a, p. 26, citing *County of Kern and Kern*

County Hospital Authority (2019) PERB Decision No. 2659-M, p. 26; *City of Pasadena* (2014) PERB Order No. Ad-406-M, p. 13.) This will require the Association to produce evidence of any net lost wages, medical benefits, retirement benefits, consequential damages, and including search-for-work expenses and interim employment expenses, plus seven percent interest. (See *Bellflower Unified School District*, *supra*, PERB Decision No. 2544a, pp. 33-44.) The Association may also seek to establish that tax neutralization make whole relief is appropriate. (*Id*. at pp. 44-46.)

The Association is not entitled to attorney's fees for litigating this matter before PERB. (*City of Palo Alto* (2019) PERB Decision No. 2664-M, p. 7 ["the moving party must demonstrate that the claim, defense, motion, or other action or tactic was 'without arguable merit' and pursued in 'bad faith'"], citing *Lake Elsinore Unified School District* (2018) PERB Order No. Ad-446a, p. 5.) To determine whether a claim, defense, motion or other action is without arguable merit, it must be "so manifestly erroneous that no prudent representative would have filed or maintained it." (*Ibid*.) Here, while the District violated its duty to bargain the effects of its decision, it prevailed on its position that its decision was outside of the scope of bargaining. Therefore, the District held positions that a prudent representative would have maintained. Accordingly, the Association is not entitled to attorney's fees for litigating the case before PERB.

Additionally, it is appropriate to order that the District post a notice to employees at all work locations where notices to employees in the Association's bargaining unit are customarily posted. In addition to physical postings, the District is ordered to post notice of this decision and remedial order by e-mail, intranet, websites,

or other electronic means by which it regularly communicates with employees. (*City of Sacramento*, *supra*, PERB Decision No. 2351-M.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the Oakland Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivisions (a), (b), and (c), by unilaterally closing and consolidating schools or truncating grades in its schools without providing notice and the opportunity to bargain the effects of that decision and by refusing to negotiate with Oakland Education Association (Association), the exclusive representative. It is found that, by the same conduct outlined above, the District derivatively violated EERA section 3543.5, subdivisions (a) and (b). All other allegations in the complaint are dismissed.

Pursuant to sections 3541.3, subdivision (i), 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. Failing or refusing to meet and negotiate in good faith with the Association.

2. Interfering with the rights of employees to be represented by the Association.

3. Denying the Association its right to represent employees in their employment relations with the District.

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

1. Upon request, meet and negotiate with the Association regarding the negotiable effects of the District's decision to close and consolidate schools or truncate grades, including potential alternatives to the District's decision;

2. Make whole all affected employees for any losses incurred as a result of the District's decision to close and consolidate schools or truncate grades, plus interest at the rate of seven (7) percent per annum;

3. Within 10 workdays of the service of a final decision in this matter, post at all work locations where notices to certificated employees of the District customarily 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 customarily used by the District to communicate with certificated employees of the District. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material;[5]

[5] In light of the ongoing COVID-19 pandemic, the District shall notify PERB's Office of the General Counsel (OGC) in writing if, due to an extraordinary circumstance such as an emergency declaration or shelter-in-place order, a majority of employees at one or more work locations are not physically reporting to their work location as of the time the physical posting would otherwise commence. If the District so notifies OGC, or if the Association requests in writing that OGC alter or extend the posting period, require additional notice methods, or otherwise adjust the manner in which employees receive notice, OGC shall investigate and solicit input from all relevant parties. OGC shall provide amended instructions to the extent appropriate to

4. 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

---

ensure adequate publication of the Notice, such as directing the District to commence posting within 10 workdays after a majority of employees have resumed physically reporting on a regular basis; directing the District to mail the Notice to all employees who are not regularly reporting to any work location due to the extraordinary circumstance, including those who are on a short term or indefinite furlough, are on layoff subject to recall, or are working from home; or directing the District to mail the Notice to those employees with whom it does not customarily communicate through electronic means.

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.)

APPENDIX

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

After a hearing in Unfair Practice Case No. SF-CE-3481-E, *Oakland Education Association v. Oakland Unified School District*, in which all parties had the right to participate, it has been found that the Oakland Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq. by unilaterally closing and consolidating schools or truncating grades in its schools without providing notice and the opportunity to bargain the effects of that decision and by refusing to meet and negotiate with Oakland Education Association (Association).

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

A. CEASE AND DESIST FROM:

1. Failing or refusing to meet and negotiate in good faith with the Association.

2. Interfering with the rights of employees to be represented by the Association.

3. Denying the Association its right to represent employees in their employment relations with the District.

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

1. Upon request, meet and negotiate with the Association regarding the negotiable aspects of the District's decision to close and consolidate schools or truncate grades, including potential alternatives to the District's decision;

2. Make whole all affected employees for any losses incurred as a result of the District's decision to close and consolidate schools or truncate grades, plus interest at the rate of seven (7) percent per annum;

Dated: _____ OAKLAND 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, Sacramento Regional Office, 1031 18th Street, Sacramento, CA, 95811-4124.

On January 30, 2023, I served the Cover Letter and Proposed Decision regarding Case No. SF-CE-3481-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.
_X_Electronic service (e-mail).

Mandy Hu, Attorney
California Teachers Association
1705 Murchison Drive
Burlingame, CA 94010
Email: mhu@cta.org

Roy Combs, Attorney
Fagan, Friedman & Fulfrost
70 Washington Street, Suite 205
Oakland, CA 94607
Email: rcombs@f3law.com

Mary Breffle, Attorney
Fagen Friedman & Fulfrost, LLP
70 Washington Street, Ste. 205
Oakland, CA 94607
Email: mbreffle@f3law.com

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 30, 2023, at Sacramento, California.

Maryna Maltseva
(Type or print name)

Maltseva M.
(Signature)