

# CLIENT NEWS BRIEF

## PERB Upholds Termination of Teacher Despite the Teacher's Proof of a Nexus Between His Legally Protected Activities and His Termination

The Public Employment Relations Board (PERB) recently upheld the termination of a teacher with a history of misconduct despite the fact that the teacher established a causal nexus between his legally protected activities and his termination.

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In *Jurupa Unified School District* (2015) PERB Decision No. 2420, PERB rejected allegations by a teacher that was terminated in retaliation for filing an unfair practice charge. The teacher filed an unfair practice charge on April 30, 2012 alleging that the District violated the Educational Employment Relations Act (EERA) by denying his request for personal necessity leave to attend a court hearing. A week later, on May 7, 2012, the District initiated termination proceedings against the teacher. On May 29, 2012, the teacher amended the initial unfair practice charge to allege that the District violated the EERA by initiating termination proceedings against him in retaliation for filing his initial unfair practice charge.

PERB found that the teacher demonstrated a causal nexus between his protected activity of filing his initial charge and his termination. Specifically, PERB held that the teacher established the four factors necessary to prove a preliminary case of retaliation: (1) he engaged in protected conduct; (2) the relevant decision-makers at the District had knowledge of his activity; (3) the District took adverse action against his employment; and (4) the District's action was motivated, at least in part, by his protected activity.

Despite this holding, PERB rejected the unfair practice charge. PERB held that when the burden shifted to the District to disprove the teacher's claims, the District had other legitimate, non-discriminatory reasons for terminating the teacher. These reasons included the District's receipt of complaints about the teacher's conduct, which pre-dated his protected activities and included disrespectful treatment of his students, and evidence that the teacher had been investigated on three previous occasions by the District for alleged misconduct prior to his filing of the initial charge. PERB concluded that because the teacher had "repeated instances of misconduct, both before and after his protected conduct" the District satisfied its burden of proving that it would have taken the same actions even if the teacher had not filed the initial charge.

This case serves as a reminder of the factors that PERB will consider in determining whether an employment action constitutes an unfair practice. It also demonstrates the importance of timely documenting instances of employee misconduct to establish a legitimate, nonretaliatory basis for any disciplinary action.

If you have any questions regarding this case or employee discipline issues in general, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).



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