

School Ethics Commission Meeting Public Session Minutes

October 17, 2022

Commissioner Dennis Roberts called the special meeting of the School Ethics Commission (Commission or SEC) to order at 9:37 a.m. Commissioner Roberts served as Acting Chairperson for this meeting due to Chairperson Bender's absence.

Notice of the special meeting was provided to the State House Press Corps and the Secretary of State, and filed as required by the Open Public Meetings Act.

I. Roll Call

| Roll Call | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Present | | X | X | X | X | X | | 5 |
| Absent | X | | | | | | X | 2 |

Also, in attendance were Kathryn Whalen, Esquire, Director, Office of Legal Affairs and School Ethics; Jeannine Pizzigoni, staff member; and Carolyn Labin and Laurie Fichera, Deputy Attorneys General (DAsG). Everyone in attendance at the meeting participated via telephone/video.

II. First Public Comment

At the start of the meeting, Commissioner Roberts explained to the public (who also accessed the meeting by telephone/video) how the meeting would be conducted. More specifically, Commissioner Roberts explained that the public would be afforded the opportunity to provide public comment regarding his/her case; the Commission would then adjourn to executive session (on a different conference line); the Commission would return to public at approximately 12:45 p.m.; at that time, members of the public would be afforded another opportunity to provide public comment in connection with his/her case; and then the Commission would vote on matters pertinent to its business.

Director Whalen also advised the public as follows: individuals wishing to provide public comments/statements during First and Second Public Comment must be speaking about matters on the Commission's agenda; anyone wishing to provide public comments/statements about a matter not on the agenda should reserve their public comments/statements for New Business; anyone offering public comments/statements about a matter on the agenda is asked not to relitigate the merits of their case as the Commission's review of matters is limited to the written submissions; and everyone in attendance is asked to exercise an appropriate degree of decorum as this is a public forum.

9:41 a.m. Angela Guerrero, counsel on behalf of Respondents in the matters docketed as C24-22; C58-22, C59-22, C60-22 and C61-22 (Consolidated) and C68-22, noted her attendance, but did not offer any comments/statements.

9:41 a.m. Michael DeOrio, Complainant in the matter docketed as C71-22, noted his attendance and offered a statement summarized as follows:

Good morning, again my name is Michael DeOrio, I'm the Complainant in attendance for docket C71-22. Ohh, I'd like to offer that based on the standard of probable cause, there is reasonable basis in which the complaint is viable for further proceedings. Thank you.

9:41 a.m. Sarah Aziz, Complainant in the matters docketed as C56-22, noted her attendance, but did not offer any public comments/statements.

9:42 a. m. Alyssa Weinstein, counsel on behalf of Respondent in the matter docketed as C71-22, noted her attendance, but did not offer any public comments/statements.

9:42 a.m. Brian Fabiano, interested party in the matter docketed as C56-22, noted his attendance and offered a statement summarized as follows:

Good Morning Commissioner Roberts, fellow members of the School Ethics Commission, as well as Miss Whalen. I thank you for taking my time, or taking the time to allow us a few brief remarks. I'm calling in as a Complainant on complaint for review for probable cause today C37-22. This is a complaint that originates nearly seven months ago. The facts of the case are not looking to litigate here. They're very clear. The comments that I would offer the Commission are in regards to previous advisory decisions, as well as decisions by this Commission as it relates to board members conduct in using social media, the disclaimers that are required and what goes beyond the protections of a disclaimer. No school employee shall be attacked, should be attacked on social media whether a disclaimer exists or not.

Board members, while they have First Amendment rights, like the, like the, the remainder of us, tread a very fine line when speaking in public, especially on social media in groups that may be, in this case, created by the particular member, where members of the community seek information about the going on in, in the, our educational system. Here in Monroe Township, attacking school employees, while putting a disclaimer or not putting a disclaimer, you know, delivers a message to the community about the state of the school and is easily, umm, you can easily be taken in, in ways that you know should not be.

In advisory statement and advisory decision, A03-07 in the past, this Commission, specifically said that members must provide accurate information and the, and any information that is provided board members should not jeopardize or compromise the board and attacking any school employee whether disclaimer exists or not, I don't believe that those criterias are, are satisfied. In addition, attacking a sitting school board member, where claims of abuse are made, even with such disclaimers, should they exist, sends a message to the community, especially folks that are in forms, social media forum, the thousands of members of our community sends a message when delivered by a board member that clearly, clearly would, would jeopardize or compromise, the board where parents and children look for ease of education system and protection of all of our children. I'm a parent here like many other folks that are you know, they call in or involved

in our community and important, you know, accurate information is very important for us. And when school officials are publicly harassed and abused by other board members, you know, we question the secrecy of the district in terms of, you know really what are, what is, you know, anti-bullying and harassment or intimidation all about when the members who are supposed to be overseeing it, uh may likely be the ones carrying out such acts. So, again, I thank you for your time and the importance in reviewing such, such matters.

III. Executive Session

At **9:45 a.m.**, the following **Resolution** was read:

Whereas, the Open Public Meetings Act (*N.J.S.A. 10:4-6 et seq.*) authorizes the Commission, a public body, to meet in Executive Session under certain circumstances; and

Whereas, the Open Public Meetings Act requires that the Commission adopt a Resolution at a public meeting to go into Executive Session; and

Now therefore be it resolved that, consistent with the provisions of *N.J.A.C. 10:4-12(b)*, the Commission will adjourn to executive session to discuss matters which, by statute, are regarded as confidential and also to discuss matters possibly involving litigation, specifically: C02-22; C14-22; C27-22; C37-22; C66-22; C67-22; C71-22; C77-22; C80-22; C82-22; C13-19; C22-22; C24-22; C49-22; C55-22; C56-22; C58-22, C59-22, C60-22, and C61-22 (Consolidated); C64-22; C68-22; T36-21; T02-22; A12-22; A17-21; A02-22; C73-22; consider whether to place C63-22 in abeyance; consider whether to place C76-22 in abeyance; DAG Fichera to present settlement offer in connection with C36-21; DAG Fichera to present settlement offer in connection with C62-21; follow-up on the status of C51-22; discuss the comments received from stakeholders regarding the Commission's proposed Chapter 28 regulations (amendments and readoption) and potential amendments/revisions, if any; and

Now therefore be it further resolved that the Commission will return to open session to conduct business at the conclusion of Executive Session.

Motion was made by Jude A. Tanella, and seconded by Michael Carucci, to adjourn to Executive Session to discuss the matters set forth in the foregoing Resolution.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

IV. Return to Public

At **12:45 p.m.**, a motion was made by Carol E. Sabo, and seconded by Jude A. Tanella, to return to public session for the purpose of receiving public comment/testimony, and to vote on matters discussed in Executive Session (as appropriate).

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

V. Complaints to Review

C02-22 Motion was made by Jude A. Tanella, and seconded by Carol E. Sabo, to draft a decision to table the matter and to draft and send correspondence to Complainant requesting a response to the ALJ's request to appear.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

C14-22 Motion was made by Dennis Roberts, and seconded by Mark Finkelstein, to draft a decision as discussed.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

C27-22 Motion was made by Jude A. Tanella, and seconded by Mark Finkelstein, to draft a decision as discussed.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

C37-22 Motion was made by Jude A. Tanella, and seconded by Michael Carucci, to draft a decision as discussed.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

C66-22 Motion was made by Dennis Roberts, and seconded by Mark Finkelstein, to draft a decision as discussed.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

C67-22 Motion was made by Dennis Roberts, and seconded by Mark Finkelstein, to draft a decision as discussed.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

C71-22 Motion was made by Mark Finkelstein, and seconded by Jude A. Tanella, to draft a decision as discussed.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

C77-22 Motion was made by Mark Finkelstein, and seconded by Carol E. Sabo, to draft a decision as discussed.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

C80-22 Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to draft a decision as discussed.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

C82-22 Motion was made by Jude A. Tanella, and seconded by Carol E. Sabo, to draft a letter decision as discussed.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | | X | X | X | | 4 |
| No | | | | | | | | 0 |
| Abstention | | | X ¹ | | | | | 1 |

VI. Decisions to Adopt as Written²

C13-19 Motion was made by Dennis Roberts, and seconded by Jude A. Tanella, to adopt the decision as written.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | | X | X | X | X | | 4 |
| No | | | | | | | | 0 |
| Abstention | | X | | | | | | 1 |

¹ Commissioner Finkelstein did not participate in the discussion or the vote related to this matter due to a conflict.

² Commissioner Carucci was not present at the special meeting on September 14, 2022, and, therefore, did not participate in the votes related to these matters.

C22-22 Motion was made by Dennis Roberts, and seconded by Jude A. Tanella, to adopt the decision as written.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | | X | X | X | X | | 4 |
| No | | | | | | | | 0 |
| Abstention | | X | | | | | | 1 |

C24-22 Motion was made by Dennis Roberts, and seconded by Jude A. Tanella, to adopt the decision as written.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | | X | X | X | X | | 4 |
| No | | | | | | | | 0 |
| Abstention | | X | | | | | | 1 |

C49-22 Motion was made by Dennis Roberts, and seconded by Jude A. Tanella, to adopt the decision as written.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | | X | X | X | X | | 4 |
| No | | | | | | | | 0 |
| Abstention | | X | | | | | | 1 |

C55-22 Motion was made by Dennis Roberts, and seconded by Jude A. Tanella, to adopt the decision as written.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | | X | X | X | X | | 4 |
| No | | | | | | | | 0 |
| Abstention | | X | | | | | | 1 |

C56-22 Motion was made by Dennis Roberts, and seconded by Jude A. Tanella, to adopt the decision as amended.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | | X | X | X | X | | 4 |
| No | | | | | | | | 0 |
| Abstention | | X | | | | | | 1 |

C58-22, C59-22, C60-22, and C61-22 (Consolidated) Motion was made by Dennis Roberts, and seconded by Jude A. Tanella, to adopt the decision as written.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | | X | X | X | X | | 4 |
| No | | | | | | | | 0 |
| Abstention | | X | | | | | | 1 |

C64-22 Motion was made by Dennis Roberts, and seconded by Jude A. Tanella, to adopt the decision as amended.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | | X | X | X | X | | 4 |
| No | | | | | | | | 0 |
| Abstention | | X | | | | | | 1 |

C68-22 Motion was made by Dennis Roberts, and seconded by Jude A. Tanella, to adopt the decision as written.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | | X | X | X | X | | 4 |
| No | | | | | | | | 0 |
| Abstention | | X | | | | | | 1 |

Orders to Show Cause

T36-21 Motion was made by Jude A. Tanella, and seconded by Mark Finkelstein, to adopt the decision as written.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

T02-22 Motion was made by Jude A. Tanella, and seconded by Mark Finkelstein, to adopt the amended decision as written.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

VII. Advisory Opinions

A12-22 Motion was made by Jude A. Tanella, and seconded by Carol E. Sabo, to table the advisory opinion for further review and discussion.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

A17-21 This matter was on the agenda to make public only, but action could not be taken because the Commission did not have enough Commissioners present to vote.

A02-22 This matter was on the agenda to make public only, but action could not be taken because the Commission did not have enough Commissioners present to vote.

VIII. Administrative Dismissals

C73-22 This matter was on the agenda for informational purposes only.

IX. Other Business

Doctrine of Necessity: Upper Deerfield Township Board of Education. This matter was on the agenda for informational purposes only.

Consider whether to hold C63-22 in abeyance pursuant to N.J.S.A. 18A:12-32 and N.J.A.C. 6A:28-1.5. Motion was made by Dennis Roberts, and seconded by Mark Finkelstein, to draft correspondence to the parties as discussed.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

Consider whether to hold C76-22 in abeyance pursuant to N.J.S.A. 18A:12-32 and N.J.A.C. 6A:28-1.5. Motion was made by Dennis Roberts, and seconded by Mark Finkelstein, to draft correspondence to the parties as discussed.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

DAG Laurie Fichera to present settlement offer in connection with C36-21. This matter was on the agenda for informational purposes only.

DAG Laurie Fichera to present settlement offer in connection with C62-21. This matter was on the agenda for informational purposes only.

Follow-up on the status of C51-22. This matter was on the agenda for informational purposes only.

Discuss the comments received from stakeholders regarding the Commission's proposed Chapter 28 regulations (amendments and readoption) and potential amendments/revisions
This matter was on the agenda for informational purposes only.

X. Minutes

Motion was made by Mark Finkelstein, and seconded by Carol E. Sabo, to adopt the minutes of the special meeting (public and executive) conducted on September 14, 2022.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | | X | X | X | X | | 4 |
| No | | | | | | | | 0 |
| Abstention | | X ³ | | | | | | 1 |

XI. Second Public Comment

Members of the public in attendance at the meeting were again invited to offer public comment/statements regarding any matter on the Commission's Agenda.

12:56 p.m. Michael DeOrio, Complainant in the matter docketed as C71-22, again noted his attendance, but did not offer additional comments/statements.

12:56 p.m. Commissioner Roberts thanked the staff for all their hard work.

³ Commissioner Carucci was not present at the special meeting on September 14, 2022, and, therefore, did not participate in the vote related to this matter.

XII. Adjournment

At 12:57 p.m., a motion was made by Dennis Roberts, and seconded by Mark Finkelstein, to adjourn.

Vote

| Vote | Robert Bender | Michael Carucci | Mark Finkelstein | Dennis Roberts | Carol E. Sabo | Jude A. Tanella | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|------------------------|----------------------|--------------|
| Yes | | X | X | X | X | X | | 5 |
| No | | | | | | | | 0 |
| Abstention | | | | | | | | 0 |

Submitted by:

Jeannine Pizzigoni

Approved by

Kathryn A. Whalen, Esq., Director,
School Ethics Commission