

School Ethics Commission Meeting Public Session Minutes

February 25, 2020

Chairperson Robert Bender called the meeting of the School Ethics Commission (Commission) to order at 9:38 a.m.

Notice of the 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	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Present	X	X	X		X	X	X	6
Absent				X				1

Also in attendance were Kathryn Whalen, Director, Offices of School Ethics and Compliance, staff member Jeannine Pizzigoni, and Deputy Attorneys General (DAsG) Jaclyn Frey and Laurie Fichera.

II. Executive Session

At 9:40 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 C48-18 and C74-17; 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 Dennis Roberts, 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	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

III. Return to Public

At **10:30 a.m.**, a motion was made by Michael Collins, and seconded by Dennis Roberts, to return to public session for the purpose of receiving public comment/testimony.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

Following the return to public session, Chairperson Bender acknowledged the attendance of the Complainant (James Smith), the Respondent (Emmanuel Capers), along with John Whipple, Respondent's counsel, in connection with the matter docketed as C48-18. Chairperson Bender, Commission member Collins and DAG Frey advised the parties as follows: the record was closed; because the record was closed, the Commission would neither be taking nor receiving testimony from either Complainant and/or Respondent; the Commission would not consider any comment(s) made by Complainant or Respondent and/or any document(s) submitted by Complainant or Respondent in its review of the above-captioned matter unless the comment(s) or document(s) was already memorialized in the record; and the Commission compelled Respondent's attendance so that he could avail himself, as Complainant did, of the opportunity to offer public statements about the above-captioned matter. Following these advisements, Respondent (through counsel) was offered the opportunity to provide public comments/statements.

10:32 a.m. In his remarks, Respondent (through counsel) expressed that the ALJ conducted a "fair and balanced" trial. Respondent noted that the ALJ issued a "well-reasoned, clear and concise opinion," after a review of the documents and observance of testimony. Respondent explained that the ALJ's opinion was "one hundred percent on the mark," her findings of fact were "one hundred percent accurate," and the legal analysis was "careful and concise" and Respondent agrees with the ALJ's decision "on all respects."

At the conclusion of Respondent's public comments/testimony, Complainant was offered the opportunity to provide public comments/statements.

10:38 a.m. Complainant disagreed with the ALJ's analysis and reiterated that "accepting an invitation to stay at a luxury resort opens up a Pandora's box." Complainant further reiterated the allegations in his Complaint, including that the Superintendent and the Board President "ordered" him to conduct the investigation; and he conducted the investigation as requested. Complainant concluded by noting that Respondent "had the District drive him down to Trenton," and Complainant had to drive himself to Trenton.

10:40 a.m. Mr. Smith, Mr. Capers and Mr. Whipple depart.

IV. Return to Executive Session

At **10:44 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: C48-18; C61-19; C71-19; C03-20; C14-15 and C08-16 (Consolidated); C45-19; C64-19; C67-19; A01-20; A02-20; A03-20; A04-20; C65-19; C74-17; C54-19; C59-19; C70-17; and proposed revisions to Chapter 28 regulations.

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 Michael Collins, and seconded by Dennis Roberts, to adjourn to Executive Session to discuss the matters set forth in the foregoing Resolution.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

V. Return to Public

At **12:15 p.m.**, a motion was made by Dennis Roberts, and seconded by Richard Tomko, to return to public session.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

VI. Complaints to Review

C48-18 Motion was made by Dennis Roberts, and seconded by Jude Tanella, to draft a decision as discussed.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

C61-19 Motion was made by Jude Tanella, and seconded by Dennis Roberts, to draft a decision as discussed.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

C71-19 Motion was made by Michael Carucci, and seconded by Richard Tomko, to draft a decision as discussed.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

C03-20 Motion was made by Dennis Roberts, and seconded by Richard Tomko, to draft a decision as discussed.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

VII. Decisions to Adopt as Written

C14-15 and C08-16 (Consolidated) Motion was made by Michael Carucci, and seconded by Richard Tomko, to adopt the decision as written.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X			X		X	4
No								0
Abstention			X			X		2

C45-19 Motion was made by Dennis Roberts, and seconded by Richard Tomko, to adopt the decision as written.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X			X		X	4
No								0
Abstention			X			X		2

C64-19 Motion was made by Michael Carucci, and seconded by Dennis Roberts, to adopt the decision imposing a monetary fine as written.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X			X		X	4
No								0
Abstention			X			X		2

C67-19 Motion was made by Richard Tomko, and seconded by Michael Carucci, to adopt the decision as written.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X			X		X	4
No								0
Abstention			X			X		2

VIII. Advisory Opinions to Adopt as Written

A01-20 Motion was made by Dennis Roberts, and seconded by Jude Tanella, to draft the advisory opinion as discussed.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

A02-20 Motion was made by Dennis Roberts, and seconded by Jude Tanella, to draft the advisory opinion as discussed.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

A03-20 Motion was made by Michael Carucci, and seconded by Richard Tomko, to draft the advisory opinion as discussed.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

A04-20 Motion was made by Dennis Roberts, and seconded by Jude Tanella, to draft the advisory opinion as discussed.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

IX. Administrative Dismissals

C65-19 This matter was on the agenda for informational purposes only.

X. Other Business

C74-17 This matter was on the agenda for informational purposes only.

C54-19 Motion was made by Dennis Roberts, and seconded by Jude Tanella, to draft correspondence as discussed.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

C59-19 Motion was made by Dennis Roberts, and seconded by Jude Tanella, to draft correspondence as discussed.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

Adoption of Resolution of Suspension Agency Dkt. No. 334-12/19, SEC Dkt. No. C70-17

Motion was made by Richard Tomko, and seconded by Jude Tanella, to adopt the Resolution as written.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

Discussion Regarding Proposed Revision to Chapter 28 Regulations This matter was on the agenda for informational purposes only.

XI. Minutes

Motion was made by Richard Tomko, and seconded by Dennis Roberts, to adopt the minutes of the meeting (public and executive) conducted on January 21, 2020, as written.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X			X		X	4
No								0
Abstention			X			X		2

XII. Adjournment

At 12:21 p.m., a motion was made by Michael Carucci, and seconded by Dennis Roberts, to adjourn.

Vote

Vote	Robert Bender	Michael Carucci	Michael Collins	Mark Finkelstein	Dennis Roberts	Jude A. Tanella	Richard Tomko	Total
Yes	X	X	X		X	X	X	6
No								0
Abstention								0

Submitted by:

Jeannine Pizzigoni

Approved by:

Kathryn A. Whalen, Director