

## **School Ethics Commission Meeting Public Session Minutes**

**December 20, 2022**

Chairperson Robert Bender called the meeting of the School Ethics Commission (Commission or SEC) to order at 9:34 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***

<b>Roll Call</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Present</b>	X		X	X	X			4
<b>Absent</b>		X				X	X	3

Also, in attendance were Kathryn Whalen, Esquire, Director, Office of 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, Chairperson Bender explained to the public (who also accessed the meeting by telephone/video) how the meeting would be conducted. More specifically, Chairperson Bender 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 12:30 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.

**9:37 a.m.** Angela Reading, Respondent in the matters docketed as C75-22 and C81-22, noted her attendance, but did not offer any public statements/comments.

**9:38 a.m.** Brian Reading, interested party in the matters docketed as C75-22 and C81-22, noted his attendance, but did not offer any public statements/comments.

**9:38 a.m.** Judith Bassford, Respondent in the matter docketed as C70-22, noted her attendance, but did not offer any public statements/comments.

**9:38 a.m.** Olivia Lancpot, counsel on behalf of Respondents in the matters docketed as C74-22 and C86-22, noted her attendance, but did not offer any public comments/statements.

**9:39 a.m.** Brian Fabiano, interested party in the matter docketed as C85-22, noted his attendance, and offered a public statement/comment summarized as follows:

I am just listening again, but I wanted to just wish the Commission here a happy holiday season. Happy New Year. Thanks for all you do and although not related to the Commission, I would like to say congratulations to Mr. Finkelstein on his appointment as President to the Middlesex County College. Thanks so much. Have a good, safe holiday season.

### ***III. Executive Session***

At **9:42 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: C25-21; C44-21 (Partial Settlement); C44-21 (Severance); C75-22; C81-22; C87-22; C89-22; C92-22; C97-22; C99-22; C105-22; C57-21; C66-22; C69-22; C70-22; C74-22; C79-22; C83-22; C84-22; C85-22; C86-22; A17-21; A02-22; A12-22; Doctrine of Necessity submitted by the Norwood Board of Education; DAG Fichera to present an update on the status of the settlement offer in connection with C36-21; and update on the status of the Commission's proposed Chapter 28 regulations (amendments and readoption); 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 Carol E. Sabo, to adjourn to Executive Session to discuss the matters set forth in the foregoing Resolution.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

***IV. Return to Public***

At **12:00 p.m.**, a motion was made by Dennis Roberts, and seconded by Mark Finkelstein, 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**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

***V. Complaints to Review***

**C25-21** Motion was made by Carol E. Sabo, and seconded by Mark Finkelstein, to draft a decision as discussed.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C44-21 (Partial Settlement)** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to draft a decision as discussed.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C44-21 (Severance)** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to draft a decision as discussed.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C75-22** Motion was made by Dennis Roberts, and seconded by Mark Finkelstein, to draft a decision as discussed.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C81-22** Motion was made by Dennis Roberts, and seconded by Mark Finkelstein, to draft a decision as discussed.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C87-22** Motion was made by Carol E. Sabo, and seconded by Mark Finkelstein, to draft a decision as discussed.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C89-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to draft a decision as discussed.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C92-22** Motion was made by Mark Finkelstein, and seconded by Dennis Roberts, to draft a decision as discussed.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C97-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to draft a decision as discussed.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C99-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to draft a letter decision as discussed.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C105-22** Motion was made by Carol E. Sabo, and seconded by Mark Finkelstein, to draft a decision as discussed.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**VI. Decisions to Adopt as Written**

**C57-21** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C66-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as amended.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C69-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C70-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C74-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0



**C79-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C83-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C84-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C85-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**C86-22** Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

***VII. Advisory Opinions***

**A17-21** This matter was on the agenda to make public only, but action could not be taken because the Commission did not have the statutorily required number of Commissioners present to make the advisory opinion public.

**A02-22** This matter was on the agenda to make public only, but action could not be taken because the Commission did not have the statutorily required number of Commissioners present to make the advisory opinion public.

**A12-22** This matter was also on the agenda to make public. However, action could not be taken because the Commission did not have the statutorily required number of Commissioners present to make the advisory opinion public.

***VIII. Other Business***

**Doctrine of Necessity:** The Commission reviewed and discussed the Doctrine of Necessity submitted by the Norwood Board of Education; however, this matter was on the agenda for informational purposes only.

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

**Update on the status of the School Ethics Commission's proposed Chapter 28 regulations.**

Director Whalen advised the Commission that the proposed regulations were pending review and approval from senior leadership, and that it was anticipated that the proposed regulations would be presented to the State Board of Education for adoption at its meeting in January 2023.

**IX. New Business**

**The Commission proposed to reschedule the January 24, 2023 meeting.** Motion was made by Carol E. Sabo, and seconded by Dennis Roberts, to reschedule the Commission's January 24, 2023, regularly scheduled meeting to Tuesday, January 31, 2023.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**X. Minutes**

Motion was made by Dennis Roberts, and seconded by Mark Finkelstein, to adopt the minutes of the regularly scheduled meeting (public and executive) conducted on November 22, 2022.

**Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

**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.

**12:11 p.m.** Lawrence McDonald, interested party in the matter docketed as C36-21, noted his attendance and offered a statement as follows:

Well, I, I don't believe that the current approach that you're using and to resolve this case is in accordance with the law and the DAG, may say it is.

Ms. Fichera and Mr. Wenczel, the attorney for the respondents, seemed to believe that they can do a settlement and uh, and wish to delay the hearing and on the matter. But under current regulations, specifically for the Code 28-10.5, while

settlement is allowed for complaints, alleged violations of the Code of Ethics and the School for School Board members, there is no provision for settlement in the case about a prohibited act by a school official. The fact that the regulations provide for a settlement of some ethics cases and not for others, means that this is not permitted only for special types that are mentioned.

Further support of this view that there is no settlement allowed for prohibited acts by a school official, is that in July the School Ethics Commission proposed a new regulation that would permit a settlement in all of its ethics cases. This new regulation has not yet been adopted, and I think it's a mistake, in my view, the current regulations allows a settlement for school board members and is based on the fact that if it's school as a public official, the public does not like a particular settlement for a school board member, it would have the opportunity to eventually vote that member out of office, but no remedy is available to the public in the case of a school official, the proper procedure for this type of case is detailed, and Code 28-10.7(c)(2). This is supposed to be, there is supposed to be a hearing at the Office of Administrative Law. We are now on day 238 since the April 26, 2022, finding of a probable cause by the School Ethics Commission in this matter and yet no discovery has ever been started, rather than following the law which calls for a hearing at the Office of Administrative Law, in this case, your attorney has been attempting to avoid that law by entering into a settlement discussions that avoids discovery and a hearing at the same time. You know, for those new regulations to legalize this ad hoc procedure, this is not right. And it subverts public trust in the school Ethics Commission because it appears that your attorney is representing the interest of the respondent instead of the complaint.

**12:16 p.m.** Chairperson Bender wished everyone a happy holiday and thanked the staff for its service on behalf of the State and particularly the students of our State.

### ***XIII. Adjournment***

At 12:16 p.m., a motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adjourn.

#### **Vote**

<b>Vote</b>	<b>Robert Bender</b>	<b>Michael Carucci</b>	<b>Mark Finkelstein</b>	<b>Dennis Roberts</b>	<b>Carol E. Sabo</b>	<b>Jude A. Tanella</b>	<b>Richard Tomko</b>	<b>Total</b>
<b>Yes</b>	X		X	X	X			4
<b>No</b>								0
<b>Abstention</b>								0

Submitted by:

---

Jeannine Pizzigoni

Approved by

---

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