

School Ethics Commission Meeting Public Session Minutes

January 23, 2024

Chairperson Bender called the regularly scheduled meeting of the School Ethics Commission (Commission or SEC) to order at 9:36 a.m.

Notice of the regularly scheduled 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	Richard Tomko	Total
Present	X		X	X	X		4
Absent		X				X ¹	2

Also, in attendance were Brigid C. Martens, Director, Office of School Ethics; Jeannine Pizzigoni, staff member; and Amna Toor, and Matthew Lynch,² Deputy Attorneys General (DAsG).

II. First Public Comment

At the start of the meeting, Chairperson Bender explained to the public how the meeting would be conducted. More specifically, Chairperson Bender explained that the public would be afforded the opportunity to provide public comment; the Commission would then adjourn to executive session; the Commission would return to public at approximately 12:00 p.m.; at that time, members of the public would be afforded another opportunity to provide public comment; and then the Commission would vote on matters pertinent to its business.

Director Martens also advised the public as follows: individuals wishing to provide public comments/statements during Public Comment regarding a matter pending before the Commission are asked not to litigate 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.

9:39 a.m. Grace Talarico, Complainant in the matter docketed as C56-23, was present at the meeting and offered the following statement:

Good morning, members of the School Ethics Commission,

¹ Commissioner Tomko arrived at 9:53 a.m.

² DAG Lynch arrived at 10:44 a.m.

I want to thank you all for the invaluable work that you do and for the time and attention you provide on each ethics advisory opinion request and SEC complaint.

My name is GraceAnne Talarico. I am the complainant on Ethics Complaint #56-23, that is on the agenda today for consideration of adding supplemental information by the respondents due to a recent (December 2023) Appellate Division decision.

As per the disclaimer, I am an Ocean Township School board member. I am here of my own accord. I am not speaking for the OT school board, nor am I allowed to do so.

As you are probably aware, this Ethics Complaint covers the time period from December 4, 2022, to June 2, 2023.

The reason I am here today is to **state my objection** to the respondents' attorney request for the following reasons:

1. The alleged violations took place **prior** to the new Appellate Division decision.
2. Although Mr. Rubin is looking to add this Retroactive Application relief to the respondents' responses from July 2023, this new Appellate Division decision did not go into effect until December 2023 which is significantly after the violations occurred, and it has yet to be officially published (i.e., per SEC language on monthly agendas as "Decisions to Adopt as Written" and voted affirmatively).
3. For example, in *Landgraf v. USI Film Products*, the U.S. Supreme Court denied application of a federal statute which directly addressed the issues being litigated because it was passed during the litigation, emphasizing the presumption against retroactive application of statutes. The principle of disfavoring retroactive application of the law is rooted in the Constitution. Put another way, it is not considered fair for an individual to be liable for violating a law that did not exist at the time of the alleged violation, nor is it fair for an individual to **not be liable** for violating a law that **did** exist at the time of the alleged violation.

Although the School Ethics Commission requested on August 1, 2023, that "***at this time, neither party is permitted to submit further filing with the Commission***", Mr. Rubin has sent three additional correspondences, dated December 28, 2023, and December 29, 2023, and January 4, 2024.

Please let it be known that on January 3, 2024, the New Jersey School Boards Association released in their weekly education report an article regarding this *same* Appellate Division decision, in which Mr. Rubin was the attorney that argued it.

According to the article (bold is per NJSBA):

What are the implications to board members of this decision? If all four factors of the “advice of counsel” defense can be met, a board member may be able to avoid the imposition of a penalty for violating the School Ethics Act, ***but*** a violation of the School Ethics Act can still be found. The “advice of counsel” defense is extremely fact-sensitive, and in order for it to apply, all factors must be satisfied.

As a reminder, this decision is **unpublished** and, therefore, **does not** constitute binding legal precedent. Unpublished decisions are not generally cited or relied upon to support arguments in future cases.”

For the legal reasons above, I respectfully request that the SEC denies Mr. Rubin’s request to apply the new Appellate Division decision to this school ethics complaint due to the violations in #C56-23 occurred *prior* to the December 2023 decision. To grant this request, would not only potentially apply to ones pending, but to all prior applicable cases that have already been litigated, hence allowing for appeals and causing undue work, time, and taxpayer money.

It is imperative and *urgently implored* that #C56-23 be reviewed and decided upon as quickly as possible to stop the continual disregard for the School Ethics Code and Prohibited Acts in our district. Even though I have abided by the SEC confidentiality rules, the respondents have not.

9:40 a.m. Director Martens interrupted Ms. Talarico, and thanked her for coming to the meeting and offering a statement.

III. Executive Session

At 9:43 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: C36-19; C24-22; C10-23; C39-23; C41-23; C45-23; C12-23; C40-23; C42-23; C46-23; C51-23; C52-23; A01-24; A02-24; A59-95; A03-24; A15-23; A16-23; T01-23; T05-23; T12-23; C92-23; Doctrine of Necessity submitted by the Morris School District Board of Education; discuss Interlocutory Appeal regarding C82-22; consider whether to grant withdrawal of C10-20; consider Respondent’s request to file an amended Written Statement related to C56-23; consider Respondent’s request to file an amended Written Statement related to C84-23; adopt Resolution of Censure in connection with D01-23; and provide an update on the status of C28-20 regarding the decision of the Appellate Division; 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

Vote	Robert Bender	Michael Carucci	Mark Finkelstein	Dennis Roberts	Carol E. Sabo	Richard Tomko	Total
Yes	X	X		X	X		4
No							0
Abstention							0

IV. Return to Public

At **12:19 p.m.**, a motion was made by Dennis Roberts, and seconded by Carol E. Sabo, 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	Richard Tomko	Total
Yes	X		X	X	X	X	5
No							0
Abstention							0

V. Complaints to Review

C36-19³ 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	Richard Tomko	Total
Yes	X		X	X	X	X	5
No							0
Abstention							0

C24-22 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	Richard Tomko	Total
Yes	X		X	X	X	X	5
No							0
Abstention							0

C10-23 Motion was made by Carol E. Sabo, and seconded by Richard Tomko, to draft a decision as discussed.

Vote

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

³ DAG Toor has a conflict related to this matter, and therefore, did not participate in executive session discussion. Instead, DAG Lynch was present during executive session discussion to advise as necessary.

C39-23 Motion was made by Richard Tomko, and seconded by Dennis Roberts, to draft a decision as discussed.

Vote

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

C41-23 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	Richard Tomko	Total
Yes	X		X	X	X	X	5
No							0
Abstention							0

C45-23 Motion was made by Richard Tomko, 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	Richard Tomko	Total
Yes	X		X	X	X	X	5
No							0
Abstention							0

VI. Decisions to Adopt as Written⁴

C12-23 Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

Vote

Vote	Robert Bender	Michael Carucci	Mark Finkelstein	Dennis Roberts	Carol E. Sabo	Richard Tomko	Total
Yes	X			X	X		3
No							0
Abstention			X			X	2

C40-23 Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as amended.

Vote

Vote	Robert Bender	Michael Carucci	Mark Finkelstein	Dennis Roberts	Carol E. Sabo	Richard Tomko	Total
Yes	X			X	X		3
No							0
Abstention			X			X	2

C42-23 Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

Vote

Vote	Robert Bender	Michael Carucci	Mark Finkelstein	Dennis Roberts	Carol E. Sabo	Richard Tomko	Total
Yes	X			X	X		3
No							0
Abstention			X			X	2

⁴ Commissioners Finkelstein and Tomko were not present at the December 19, 2023, meeting, and therefore, did not participate in the executive session discussions and votes related to these matters.

C46-23⁵ Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

Vote

Vote	Robert Bender	Michael Carucci	Mark Finkelstein	Dennis Roberts	Carol E. Sabo	Richard Tomko	Total
Yes	X			X	X		3
No							0
Abstention			X			X	2

C51-23 Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

Vote

Vote	Robert Bender	Michael Carucci	Mark Finkelstein	Dennis Roberts	Carol E. Sabo	Richard Tomko	Total
Yes	X			X	X		3
No							0
Abstention			X			X	2

C52-23 Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the decision as written.

Vote

Vote	Robert Bender	Michael Carucci	Mark Finkelstein	Dennis Roberts	Carol E. Sabo	Richard Tomko	Total
Yes	X			X	X		3
No							0
Abstention			X			X	2

⁵ In addition to his absence at the December 19, 2023, meeting, Commissioner Tomko has a conflict related to this matter, and therefore, did not participate in the executive session discussion and/or vote.

VII. Advisory Opinions⁶

A01-24 Motion was made by Mark Finkelstein, and seconded by Richard Tomko, to adopt the advisory opinion as written only.

Vote

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

A02-24 Motion was made by Mark Finkelstein, and seconded by Richard Tomko, to adopt the advisory opinion as written only.

Vote

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

A59-95 Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, not to make the advisory opinion public.

Vote

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

⁶ The Commission did not have the statutorily required number of Commissioners present to make the advisory opinions public.

A03-24 Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to draft an advisory opinion as discussed.

Vote

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

A15-23 The Commission could not take any action because it did not have the statutorily required number of Commissioners present to make the advisory opinion public.

A16-23 The Commission could not take any action because it did not have the statutorily required number of Commissioners present to make the advisory opinion public.

VIII. Administrative Dismissals

T01-23 This matter was on the agenda for informational purposes only.

T05-23 This matter was on the agenda for informational purposes only.

T12-23 This matter was on the agenda for informational purposes only.

C92-23 This matter was on the agenda for informational purposes only.

IX. Other Business

Doctrine(s) of Necessity: Morris School District Board of Education. This matter was on the agenda for informational purposes only.

Discuss Interlocutory Appeal related to C82-22.⁷ 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	Richard Tomko	Total
Yes	X		X	X	X		4
No							0
Abstention						X	1

Consider whether to grant withdrawal of C10-20. Motion was made by Mark Finkelstein, and seconded by Richard Tomko, to grant the withdrawal.

Vote

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

Consider Respondent's request to file an amended Written Statement in connection with C56-23. Motion was made by Mark Finkelstein, and seconded by Dennis Roberts, to deny Respondent's request to amend.

Vote

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

⁷ In addition to his absences at the Special meetings on January 11, 2024, and January 16, 2024, when this matter was discussed, Commissioner Tomko also has a conflict, and therefore, he did not participate in executive session discussion and/or the vote related to this matter.

Consider Respondent's request to file an amended Written Statement in connection with C84-23. Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to grant Respondent's request to amend.

Vote

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

Adoption of Resolution of Censure in connection with D01-23. Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the Resolution.

Vote

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

Provide an update on the status of C28-20 regarding a decision of the Appellate Division. This matter was on the agenda for informational purposes only.

X. Minutes

Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the minutes of the regularly scheduled meeting (public and executive) conducted on December 19, 2023.

Vote

Vote	Robert Bender	Michael Carucci	Mark Finkelstein	Dennis Roberts	Carol E. Sabo	Richard Tomko	Total
Yes	X			X	X		3
No							0
Abstention			X ⁸			X ⁹	2

Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the minutes of the special meeting (public and executive) conducted on January 11, 2024.

Vote

Vote	Robert Bender	Michael Carucci	Mark Finkelstein	Dennis Roberts	Carol E. Sabo	Richard Tomko	Total
Yes	X		X	X	X		4
No							0
Abstention						X ¹⁰	1

⁸ Commissioner Finkelstein was not present at the December 19, 2023, meeting, and therefore, did not participate in the vote related to this matter.

⁹ Commissioner Tomko was not present at the December 19, 2023, meeting, and therefore, did not participate in the vote related to this matter.

¹⁰ Commissioner Tomko was not present at the January 11, 2024, special meeting, and therefore, did not participate in the vote related to this matter.

Motion was made by Dennis Roberts, and seconded by Carol E. Sabo, to adopt the minutes of the special meeting (public and executive) conducted on January 16, 2024.

Vote

Vote	Robert Bender	Michael Carucci	Mark Finkelstein	Dennis Roberts	Carol E. Sabo	Richard Tomko	Total
Yes	X		X	X	X		4
No							0
Abstention						X ¹¹	1

XI. Second Public Comment

The were not any members of the public in attendance at the second public session of the meeting.

XII. Adjournment

At 12:27 p.m., a motion was made by Richard Tomko, and seconded by Mark Finkelstein, to adjourn.

Vote

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

¹¹ Commissioner Tomko was not present at the January 16, 2024, special meeting, and therefore, did not participate in the vote related to this matter.

Submitted by:

Jeannine Pizzigoni

Approved by:

Brigid C. Martens, Director
School Ethics Commission