

School Ethics Commission Meeting Public Session Minutes

April 30, 2024

Chairperson Bender called the regularly scheduled meeting of the School Ethics Commission (Commission or SEC) to order at 9:37 a.m.

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 | Richard Tomko | Total |
|------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|----------------------|--------------|
| Present | X | X | | | X | X | 4 |
| Absent | | | X | X | | | 2 |

Also, in attendance were Brigid C. Martens, Director, Office of School Ethics, Jeannine Pizzigoni, staff member, and Anna Toor, Deputy Attorney General (DAG).

II. First Public Comment

9:40 a.m. Neal McGrath, Complainant in the matter docketed as C62-23, offered the following statement:

I am here this morning in support of my complaint filed with the Commission. And, to say that the practices I complained about continue and I believe they should be stopped.

By way of background, I watched for several years as various members of the school district offered what were essentially private courses for which students had to pay. I complained to the school district many times and was led to believe by their responses that they agreed with my position, and yet they did nothing to stop it. On the contrary, as I mentioned previously, the practices continue to this day.

And just as a sanity check, when this first came up, I contacted two friends who are public school teachers. The first one is a public school teacher in Virginia. When I explained to her what was going on, her response was along the lines of, “wow, that would be great! I could create a short cram class, using materials that I already have developed through the year, offer it over the summer when I'm otherwise not working, and also charge for it? That would be great!”

When I asked, “well, would you be allowed to do that?” Her response was as fast as it was emphatic: “No (expletiving) way!”

When I asked, “why not?” She just laughed and said, “probably for the same reasons you're calling to ask me about it right now.”

Someone else I know who is a school teacher in the district near here offered the same opinion.

So, it seemed clear to me that my impression about these practices was not off the mark, that it did give an unfair advantage to students whose parents were willing or able to pay for the course, and also allowed school district employees to essentially run a side business from which they profited, using public resources.

And since the school district was apparently unwilling to do anything to stop it despite giving the impression they agreed with me, I looked to see how I could try to stop it outside of complaining to the superintendent, which as mentioned proved fruitless.

I found the School Ethics Board, and when I read what the Board does, and then read the laws that guide the Board, it seemed like the appropriate venue to lodge my complaint. So, that is why the complaint was submitted to you, and why I am sitting in front of you today in support of it.

I would also like to clarify that I am not looking to punish anyone: I just want the practice to stop. Again, because it is my opinion that is unethical, for all of the reasons that are outlined in my complaint.

So, I would like to ask the [C]ommission to please give the complaint due consideration and hopefully issue a ruling that will put a stop to what I believe to be unethical practices that unfairly advantage some students and also allow public school employees to generate personal income and profit using public resources.

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: C62-23; C79-23; C81-23; C82-23; C84-23; C86-23; C89-23; C90-23; C39-18; C60-23; C63-23; C64-23; C68-

23; C69-23; C73-23; C74-23; C75-23; C77-23; A15-23 and A16-23 (Request for Clarification); A06-24; A07-24; A08-24; A09-24; A01-24; A02-24; A03-24; A04-24; A05-24; C02-24; Doctrine of Necessity submitted by the Waterford Township Board of Education; adopt the Resolution of Censure in connection with C87-21; consider request for reconsideration to hold C10-23 in abeyance; provide an update on the status of C06-22; Chairperson to select nominating committee (3 persons) to select a nominee for the position of SEC Chairperson for the term of July 1, 2024, through June 30, 2025; and discuss potential 2025 SEC meeting dates; 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 Carol E. Sabo, 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 | Richard Tomko | Total |
|-------------------|----------------------|------------------------|-------------------------|-----------------------|----------------------|----------------------|--------------|
| Yes | X | X | | | X | X | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

IV. Return to Public

At **12:58 p.m.**, a motion was made by Michael Carucci, 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 | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

V. Complaints to Review

C62-23 Motion was made by Michael Carucci, 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 | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

C79-23 Motion was made by Michael Carucci, 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 | | | | | | | 0 |

C81-23 Motion was made by Michael Carucci, 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 | | | | | | | 0 |

C82-23 Motion was made by Carol E. Sabo, and seconded by Michael Carucci, 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 | | | | | | | 0 |

C84-23 Motion was made by Carol E. Sabo, and seconded by Michael Carucci, 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 | | | | | | | 0 |

C86-23 Motion was made by Richard Tomko, and seconded by Michael Carucci, 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 | | | | | | | 0 |

C89-23 Motion was made by Michael Carucci, 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 | | | | | | | 0 |

C90-23 Motion was made by Michael Carucci, 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 | | | | | | | 0 |

VI. Decisions to Adopt as Written¹

C39-18 Motion was made by Carol E. Sabo, and seconded by Robert Bender, 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 | X | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

¹ Commissioner Carucci and Commissioner Tomko were not present at the meeting on March 26, 2024, and therefore, the Commission did not have the statutorily required number of Commissioners to adopt the decisions. Consequently, Director Martens rediscussed these matters so the Commissioners who were present could vote to adopt.

C60-23 Motion was made by Carol E. Sabo, and seconded by Robert Bender, 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 | X | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

C63-23 Motion was made by Carol E. Sabo, and seconded by Robert Bender, 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 | X | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

C64-23 Motion was made by Carol E. Sabo, and seconded by Robert Bender, 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 | X | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

C68-23 Motion was made by Carol E. Sabo, and seconded by Robert Bender, 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 | X | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

C69-23 Motion was made by Carol E. Sabo, and seconded by Robert Bender, 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 | X | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

C73-23 Motion was made by Carol E. Sabo, and seconded by Robert Bender, 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 | X | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

C74-23 Motion was made by Carol E. Sabo, and seconded by Robert Bender, 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 | X | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

C75-23 Motion was made by Carol E. Sabo, and seconded by Robert Bender, 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 | X | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

C77-23 Motion was made by Carol E. Sabo, and seconded by Robert Bender, 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 | X | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

VII. Advisory Opinions²

A15-23 and A16-23 (Request for Clarification) Motion was made by Carol E. Sabo, and seconded by Richard Tomko, to draft the request for clarification 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 | | | | | | | 0 |

A01-23 This advisory opinion was on the agenda to make public only. 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.

A02-23 This advisory opinion was on the agenda to make public only. 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.

A03-24 This advisory opinion was on the agenda to make public only. 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.

A04-24 This advisory opinion was on the agenda to make public only. 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.

A05-24 This advisory opinion was on the agenda to make public only. 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.

² The Commission did not have the statutorily required number of Commissioners present to make the advisory opinions public.

A06-24 Motion was made by Carol E. Sabo, and seconded by Richard Tomko, to adopt the advisory opinion as written.

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 |

A07-24 Motion was made by Carol E. Sabo, and seconded by Richard Tomko, to table this advisory opinion for further discussion.

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 |

A08-24 Motion was made by Carol E. Sabo, and seconded by Richard Tomko, to adopt the advisory opinion as written.

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 |

A09-24 Motion was made by Carol E. Sabo, and seconded by Richard Tomko, to adopt the advisory opinion as written.

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 |

VIII. Administrative Dismissals

C02-24 This matter was on the agenda for informational purposes only.

IX. Other Business

Doctrine of Necessity submitted by the Waterford Township Board of Education. This matter was on the agenda for informational purposes only.

Adopt Resolution of Censure in connection with C87-21. Motion was made by Richard Tomko, 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 | 4 |
| No | | | | | | | 0 |
| Abstention | | | | | | | 0 |

Consider request to reconsider to hold C10-23 in abeyance. Motion was made by Michael Carucci, and seconded by Carol E. Sabo, to deny reconsideration.

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 |

Provide an update on the status of C06-22. The Commission was briefed on this matter by Director Martens, which was on the agenda for informational purposes only.

Chairperson to select nominating committee (3 persons) to select a nominee for the position of SEC Chairperson for the term of July 1, 2024, through June 30, 2025. Chairperson Bender selected Commissioners Carucci, Sabo and Tomko as the members of the nominating committee.

Discuss potential 2025 SEC meeting dates. This matter was on the agenda for informational purposes only.

X. Minutes

The Commission did not have the statutorily required number of Commissioners to make the minutes from the meeting on March 26, 2024, public, and therefore, the March minutes were not adopted.

XI. Second Public Comment

12:59 p.m. George Burdick, noted his attendance, and offered the following statement:

I have a complaint before the Commission, but I will not disclose my name or the docket number of my complaint unless you ask me at the end of my statement. I am not hear (sic) to discuss the merits of my submission, but to voice concerns about the process.

In a complaint, the bar is set very high for the complainant to establish probable cause. The complainant must evidence a factual nexus that the acts alleged by the respondents in the complaint were violative of a court ruling, and educational statute, or an educational administrative code, consist with N.J.S.A. 18A:12-24.1.

My complaint was served on the respondents on March 28, 2024. Their reply was due 20 days hence, or April 17, 2024. On April 15th, two days prior to the 20th day deadline, counsel for

the respondents requested a 30 day extension WITHOUT seeking my consent. According to NJAC 6AL28-7.4, the respondent is required to seek the consent of the complainant before making a request to the Commission for an extension. You can imagine my chagrin when his request was granted, in spite of the fact that the code was not followed. I would have preferred a situation where the Commission advised the respondents' counsel that his request was timely received, but then obligated the respondents' counsel to seek my consent, consistent with the code, before rendering a decision. All he had to do was ask.

From the web-site of the State of New Jersey, I read that "Rules and regulations adopted by a state agency have the force of law unless changed by the agency or invalidated by court action or a change in statute."

I can find no evidence that NJAC 6A:28-7.4 was changed from it's (sic) current language.

While I am aware that the code permits the Commission full authority to grant an extension, my belief is that the action to grant the extension without my consent, and absent of a showing of "good cause" from the respondent (sic) attorney demonstrated partiality shown to the respondent, and a bias toward myself by the Commission. Failure to follow the code by the Commission would lead a reasonable person to believe that the Commission violated the code. This is a troublesome precedent.

My presence here is to express my deep disappointment with the agency whose purpose is to defend the public trust.

I thank you for the opportunity to voice my opinion.

Director Martens responded and explained: The Commission received the request for an extension from counsel for Respondents, but before the Commission had the opportunity to require that counsel request consent, you responded and indicated that you did not consent. Therefore, I sent an email to the parties, stating: The Commission is in receipt of Respondents' request for an extension of time to file a written statement, as well as Complainant's objection thereto. Given that the Commission will not be able to hear this case during the timeframe requested, the Commission will grant the requested extension.

XII. Adjourment

At 1:13 p.m., a motion was made by Michael Carucci, and seconded by Carol E. Sabo, to adjourn.

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 |

Submitted by:

Jeannine Pizzigoni

Approved by:

Brigid C. Martens, Director
School Ethics Commission