

regarding the district's attendance policy. Mr. Hartsough did not respond to the request. On September 26, 2001, prior to a board meeting, Mr. Fenichel approached Mr. Hartsough and requested permission to attend a policy committee meeting to discuss the policy. In response to Mr. Fenichel, Mr. Hartsough stated that Mr. Fenichel was a "cancer" in the community and that he would never allow Mr. Fenichel to speak before any committee that he chaired. Mr. Hartsough further stated that Mr. Fenichel's wife would be permitted to discuss the attendance policy before the committee. At the Commission's December 18, 2001 meeting, Mr. Fenichel testified that he was permitted to address the Board at its September 26, 2001 meeting.

In his answer to the complaint, Mr. Hartsough admitted that he did make the above-referenced statement, but asserts that Mr. Fenichel approached him in a confrontational manner and that Mr. Fenichel has a history of berating Board members during the public comment period of board meetings. Mr. Fenichel denies these allegations. Both parties agree that Mr. Fenichel has previously been given the opportunity to discuss the attendance policy at regular board meetings and a policy committee meeting.

ANALYSIS

Complainant urges the Commission to find that Mr. Hartsough violated N.J.S.A. 18A:12-24(b), which provides in pertinent part:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself...

There are insufficient facts to demonstrate that Mr. Hartsough attempted to use his official position to secure unwarranted privileges or advantages for himself. While the Commission notes that Mr. Hartsough's comments were shocking and offensive, the issue is whether he used his position to secure an unwarranted privilege or advantage for himself. The Commission, however, cannot discern any privileges that inured or could inure to Mr. Hartsough as a result of his referring to Mr. Fenichel as a "cancer" in the community or his comment that he would never allow Mr. Fenichel to speak before any committee he chairs. There is insufficient evidence to show that Mr. Fenichel was ever prohibited from speaking before the Board or any of its committees. Mr. Fenichel testified that he had been given the opportunity to address the Board at its meeting on September 26, 2001 and has previously addressed the Board and the policy committee regarding the districts attendance policy. The Commission, therefore, finds that there is no probable cause to credit the allegation that Mr. Hartsough violated N.J.S.A. 18A:12-24(b).

Complainant next urges the Commission to find that Mr. Hartsough violated section 5(b) of the Code of Ethics, which provides:

I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex or social standing.

There are insufficient facts to demonstrate that Mr. Hartsough's comments give rise to

any conduct that would be in violation of the Code of Ethics section 5(b). Mr. Hartsough's comment that Mr. Fenichel is a "cancer" in the community and his views on Mr. Fenichel's attendance at policy committee meetings were expressed during an informal and private conversation between he and Mr. Fenichel. The Commission does not find that such conduct qualifies as decision making regarding the educational welfare of children or action that would undermine the development or maintenance of public schools that meet the individual needs of children. As mentioned above, the Commission acknowledges the offensive nature of Mr. Hartsough's comments. However, the Commission finds that there is no probable cause to credit the allegation that Mr. Hartsough violated the foregoing provision.

Complainant finally urges the Commission to find that Mr. Hartsough violated section 5(e) of the Code of Ethics, which provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

There are insufficient facts to demonstrate that Mr. Hartsough failed to recognize the authority of the Board and made a personal promise or took private action that would compromise the Board. While Mr. Hartsough did state that he would never allow Mr. Fenichel to speak before any committee he chaired, there are no facts to show that Mr. Hartsough actually took any action toward prohibiting Mr. Fenichel from addressing the Board or any of its committees. In light of these facts, the Commission finds that Mr. Hartsough's comments reflect his personal opinion and do not constitute a promise or action in violation of the Code of Ethics section 5(e). Therefore, the Commission finds that there is no probable cause to credit the allegation that Mr. Hartsough violated the section.

DECISION

For the foregoing reasons, the Commission finds no probable cause that Mr. Hartsough violated the School Ethics Act and dismisses the complaint against him.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision - C33-01

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the information obtained from its investigation; and

Whereas, at its meeting of December 18, 2001, the Commission found no probable cause to credit the allegations that Mr. Hartsough violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against him; and

Whereas, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed the draft decision and agrees with the decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on January 22, 2001.

Jacqueline Richmond
Acting Executive Director

