Give us your thoughts on the following ethical dilemma.

You are an ombuds officer for your state’s department of education. Your job consists of, among other things, determining if there is any merit to claims filed with the department of education. Bullying is a hot issue now, and every school district in your state has been mandated to incorporate its own bullying policy into its current discipline plan by the department of education. Recently you received a complaint initiated by a parent who wants to take action against a school district because his daughter, whose name is Chanel, was being teased by a classmate who called her more than once, “Number 5,” referring to the perfume of the same name. This name calling resulted in laughs from the student in question and several classmates nearby who overheard. When Chanel reported this incident to her teacher, the teacher talked to the boy, but according to Chanel, nothing else was done. During an interview with the father, he informed you that he has been seeing the reports of students committing suicide and crimes because they were teased by peers and has been, as he admits, “worked up” by these reports. The father says he always vowed that he would not sit by idly if he knew one of his children was being bullied.

You have checked the discipline policy for the school district in question, and it specifically states that “students who feel they are the victim of bullying or harassing behavior should tell the nearest school official immediately after the incident occurs, and that school official shall take action immediately after the report.” The school district’s policy clearly says the victimized student’s teacher, in such incidents, should call a meeting between all student parties involved, witnesses, and parents and failure by anyone to adhere to any part of the school district policy is considered a violation of the policy. Additionally, the policy says victims who fail to immediately report bullying or harassing behavior they experience waive the ability to claim negligence on the part of the school to resolve the behavior in any future complaints regarding the incident. All school officials, students, and parents are asked to sign a form stating they have read/understand and agree to the policy. Chanel says she told her teacher that same day, “Camden was picking on me. He called me Number 5, and everyone laughed. My name is not Number 5. It is Chanel.”

Among the things you discover from your interviews with the students: 1-These events between Chanel and Camden happened two days ago. 2-It is currently January, and school will be out in May. 3-Chanel has not had any problems with Camden before or since the incident. 4-The two fifth-graders have been in school together since Kindergarten. 5-Both students are average in behavior but very good academically, when compared to their peers.
After interviewing the teacher, you realize she was following evidence-based conflict resolution practices you suggested to the school when you were a practicing education law attorney. At that time, last year, you gave a few workshops to school officials at the school in question about simple alternative discipline methods they could use to reduce office referrals in various situations. Moreover, the firm you worked for gave money to the school district in question for winning a contest where each competing school district developed and submitted a conflict resolution plan for their district, and you were a judge for the contest. The contest rules did not require school districts to follow their proposed plans as a condition for entering or winning the contest. This contest was in no way endorsed by your state’s department of education.

If the school district is found to be in violation of its policy as a result of the teacher’s actions, state and federal laws, agencies, and implications could come into play. Furthermore, the teacher stands to be reprimanded, which in the worst case scenario, could result in her being fired.

Is there any merit to the parent’s complaint that the school district’s bullying policy was violated in this situation based on your above findings? Would you recommend the state department of education initiate action against the school district based on your findings? As an extension of a state agency, what message could your opinion in this situation send to local and federal agencies, school officials, parents, and students about similar situations? What other, if any, possible concerns would you have as the ombuds officer in this case?

Author’s Response

1. Is there any merit to the parent’s complaint that the school district’s bullying policy was violated in this situation based on your above findings? The answer is “yes.” This question might have seemed a little tricky if you wanted to respond by saying there is no merit to the complaint because the school district did not violate the policy. and here is why… However, whether or not the school district actually violated the policy is a completely different question that is not asked here. The father was concerned because his daughter Chanel had a complaint after her classmate Camden called her a name. Chanel did follow the policy and immediately told the nearest school official after the incident, but the teacher did not call a meeting between all student parties involved, witnesses, or parents as mandated in the policy. According to Chanel, the teacher only “talked” to the boy. So, the father does have a legitimate concern that the teacher did not follow the school bullying policy which gives his claim merit.

If your state’s department of education wants to investigate this parent’s claim, the teacher could argue that the policy did not come into play here because this was an incident of mere teasing, not the type of behavior the bullying policy was meant to police. However, this thinking, while relevant, takes us beyond the question that was asked.

2. Would you recommend the state department of education initiate action against the school district based on your findings? This answer really depends on the ombuds officer. Finding the complaint has merit does not necessarily mean there was a violation, or in this case,
that the bullying policy at issue was in fact violated. The ombuds officer has the power to advocate for change within entities in some situations. In this situation, the ombuds officer might find that the policy was meant to protect from harassing and bullying behavior, not mere teasing. The ombuds officer might find that this was mere teasing, considering that it happened once and the two students have been in each other’s company for prolonged periods of time for the past six years without incident before and since the event at issue. Camden does not seem to have a history of being a bully or show signs of being one. See KidsHealth from Nemours, http://kidshealth.org/parent/emotions/behavior/no_bullying.html#, 2010. The ombuds officer might therefore find the teacher properly used her discretion, and under the circumstances, deemed this situation to not fall within the guidelines of the district’s bullying or harassing policy. Also, unless a student specifically says s/he is being harassed or bullied, one might find that an official “report” has not been filed or placed.

On the other hand, if the ombuds officer decided to recommend the department of education initiate action, there is plenty of reason to see why, especially if you agree that the complaint has merit. However, action against the district does not have to mean to the full extent of the law. As mentioned in the problem, action could range from a simple reprimand to calling for the firing of district employees.

3. As an extension of a state agency, what message could your opinion in this situation send to local and federal agencies, school officials, parents, and students about similar situations? In a time where bullying-related injury and deaths are bombarding us in the media, every decision that is made regarding the issue in public schools sends a message, whether it is to students, parents, the community, or the rest of the country. One thing that should be considered is who should be monitoring and controlling discipline problems in each school district. It is important to have outside state and federal agencies to hold school districts accountable, but making every discipline problem a matter for a state or federal agency could take their limited time, focus, and resources away from larger impact issues. Another thing to consider is the powerless image local school districts would have if they were seen incapable of handling discipline issues on their own. This image could cause discipline problems to get worse if students and parents did not respect and trust local school board authority or ability to handle discipline problems.

Many would argue there IS a difference between mere teasing and bullying or harassing. See OK, Bullying is Bad…But I’m Still Mixed on ED’s Fix, http://blogs.edweek.org/edweek/rick_hess_straight_up/2010/10/ok_bullying_is_badbut_im_still_mixed_on_eds_fix.html, 2010. Maybe advocating for a clearer definition and the use of discretion by school officials when determining what falls under the policy would be the appropriate message to send.

In contrast, recommending action be taken and the severity of that action could send the message of zero-tolerance for bullying and harassing behavior, which some advocates say is needed.
Zero-tolerance on this issue could ignite another firestorm of problems for children and parents in school districts across the country.

4. What other, if any, possible concerns would you have as the ombuds officer in this case? Many people might be concerned with potential conflicts of interest between the ombudsmen’s past and present careers. This is a legitimate concern that should probably be looked at on a case-by-case basis as different cases come to the ombuds officer. As a past education law attorney, having worked throughout the entire state, it is possible that some of the school districts the ombuds officer had cases against will be school districts involved in complaints on which s/he will have to make determinations. It is something we would hope the state’s department of education would have taken into consideration before hiring the ombuds officer. In this situation, the past advice on simple alternative discipline methods given to the staff at the school in question was most likely never meant to go against or in place of school policy. The bullying policy in this situation is specific. Furthermore, the contest in which the ombuds officer was a judge did not legally bind the school district in any way to adopt a particular policy into its discipline plan, and the monetary gift for the contest probably came from the ombuds officer’s former employer. So, the ombuds officer does not appear to have been invested in the outcome of this particular compliant. Maybe the ombuds officer could have made the extra effort to share the connection to the school district with her/his direct manager in this case once it became known to the ombuds officer, but it is not necessarily wrong that s/he did not.