Misleading the State Inspector

The response

In the May 2011 issue of *Young Children*, we presented the first ethical dilemma in this series, “Misleading the State Inspector.” Our thanks to the individuals who offered ideas about how to resolve this dilemma—early childhood education students from Wichita State University, participants in an ethics session at the New York State AEYC conference, and two state licensing specialists, one of whom works with family child care programs. We base our discussion of the case on their suggestions. This is the situation:

Shana is a teacher in a child development center. The center has some great qualities but is out of compliance with numerous state licensing regulations. Shana is aware that the director sometimes gives incomplete or misleading information about these things to state licensing inspectors. She is struggling to know what to do: is she obligated to report the infractions to an inspector or to the licensing agency?

Violations include playground equipment that needs to be repaired, infrequent fire drills, rooms filled beyond their licensed capacity, and failure to maintain required adult:child ratios.

Shana knows it isn’t right to mislead the state inspectors but is afraid to do anything that would jeopardize her employment; she is a single mother who supports her children on her salary.

What do you think a good early childhood educator should do in this situation? How can Shana use the NAECY Code of Ethical Conduct to guide her thinking and decision making?

The process for resolving a dilemma

1. Identify the problem and determine if it involves ethics.

   The first step in addressing a workplace problem is to determine if it involves ethics. Ask yourself whether the terms right and wrong or fair and unfair apply. When we look at Shana’s predicament, it is apparent that she is trying to determine whether it would be right to report the licensing infractions or wrong not to report them. Thus, this situation involves ethics.

   The next step is to decide whether there is an ethical responsibility (with only one acceptable response) or an ethical dilemma, a situation with at least two possible justifiable resolutions. When we look at Shana’s predicament we see two possible resolutions—each of which could be justified using the Code (applicable Principles and Ideals are noted below). The choices are:

   • Report the licensing infractions to the licensing agency.
   • Assume the violations are not serious and ignore the problem.

2. Identify applicable Core Values.

   Having established that an ethical issue is a dilemma, we next look at the Core Values in the NAECY Code that might offer some direction for addressing the situation. When we presented this dilemma in the May 2011 issue, we determined there were no relevant Core Values.

3. Identify the stakeholders affected by the situation.

   The next step in addressing an ethical dilemma is to identify all who are affected by the situation. The question to ask is “What do I ‘owe’ to each of these individuals or groups?” or “What are my responsibilities to each of these people?” We refer to those who are touched by a dilemma as stakeholders to suggest that they have some stake in the outcome.

   In this case, Shana has obligations to the following people who may be affected by her decision to report or not report the violations:

   • the children in the program—to safeguard their health, safety, and well-being
   • the families of the children who attend the program—to provide a safe and healthy environment for their children
   • the director and the agency that operates the center—to follow their policies and to protect the program’s good reputation
   • the community and society—to abide by applicable laws and regulations
   • herself—to do her job with integrity but also to protect her livelihood
   • her own children (We added this stakeholder in response to the comment “According to the scenario, they certainly are going to be affected by the decision and I would definitely include them as part of the equation.”)

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4. Look for guidance in the NAEYC Code. Respondents’ careful review of the Code led them to identify 15 Ideals and Principles that guided their efforts to find a resolution to Shana’s dilemma. They discovered that this situation is addressed by three items related to our responsibilities to children, two related to our responsibilities to families, five involving responsibilities to colleagues, and five that involve our responsibilities to community and society.

Remember, turning to the Code early in your analysis of any dilemma is important. It is helpful to list all applicable items. Respondents to Shana’s dilemma completed that step; we are summarizing it here.

5. Identify the most ethically defensible course of action.

The first thing an early childhood educator can do when faced with an ethical dilemma is to see if it would be possible to use ethical finesse—finding a way to resolve the problem that satisfies all the involved parties and avoids having to make a difficult decision.

The majority of respondents to Shana’s dilemma stated that the first thing she should do is to speak with the director and let her know that she has concerns about how she is handling licensing visits. Speaking to the director directly upholds Shana’s ethical responsibilities to co-workers.

P-3A.2—When we have concerns about the professional behavior of a co-worker, we shall first let that person know of our concern in a way that shows respect for personal dignity and for the diversity to be found among staff members, and then attempt to resolve the matter collegially and in a confidential manner.

and to her agency

P-3B.1—We shall follow all program policies. When we do not agree with the program policies, we shall attempt to effect change through constructive action within the organization.

When Shana takes this step, she is trying ethical finesse. If this strategy is successful in getting the director to be truthful the next time a licensing inspector comes, it will have successfully resolved Shana’s dilemma.

Our respondents also suggested that Shana communicate her concerns confidentially and respectfully to the director and point out relevant items in the Code. Another suggestion was that Shana try to get staff members to present their concerns to the director as a group. This would ensure that she would not be singled out as a troublemaker and protect her job. It was also mentioned that if the program had a board of directors, Shana could consider letting them know of the problem before taking further action.

While it is a good idea for Shana to try ethical finesse, she needs to be prepared for the possibility that it will not be effective. There was complete consensus in the responses we received that if talking to the director did not remedy the situation, Shana had a moral obligation to honor her ethical responsibilities to the children, families, colleagues, and community by reporting the situation to the licensing agency. If children are endangered, the Code provides clear and strong direction that the teacher must report the problem. The obligation to do no harm to children, as expressed in P-1.1 of the NAEYC Code, is the primary consideration guiding this decision. It is also supported by

P-3B.5—When we have a concern about circumstances or conditions that impact the quality of care and education within the program, we shall inform the program’s administration or, when necessary, other appropriate authorities.

Here are some of the responses we received:

“A child care provider and/or teacher who abides by the NAEYC Code would report the violations listed in this scenario to the licensing agency.”

“Since the children are at risk due to several issues, including unsafe playground equipment, infrequent fire drill practices, and overcrowding of rooms, Shana should inform appropriate authorities.”

“If changes are not made report it to the state agency. Rationale: the Code clarifies expectations of the provider about what is best for the children and what she knows to be legally correct.”

“Children’s safety comes first—P-1.1 in all that we do!”
“P-1.11 further supports the necessity for her to report these infractions by stating that we have an ethical responsibility to protect children when we become aware of practices or situations that endanger the health, safety, or the well-being of the children. Other supporting Principles include P-4.9 and P-4.10 and P-4.1.”

“Since child care teachers are mandatory reporters in most if not all states and some of the regulations that are being violated have to do with child health and safety, it seems like the teacher would have no choice but to do the right thing and report what she has observed. To not do so would be to allow the children to continue to be placed in danger.” (This response came from a family child care home licensor.)

“Must think of the family and security of Shana. Her own safety is at risk. However, the health and safety of all those in the care facility (adult and child) are compromised.”

While there was strong consensus that Shana needed to report the problem, there were a variety of opinions about how she might make the report or take other actions:

• Make the report anonymously.
• Be sure to report up the chain of command; talk to the licensing worker first. It is his or her job to communicate the complaint. (This advice was given to us by an administrator in an agency that licenses child care programs.)
• Stop using the playground if children are in danger.
• Walk children through fire drills and other actions to stay safe.
• Document, document, document!
• Work toward whistle-blower protection in an agency or state that does not have it.

If Shana concludes, after extensive reflection and observation, that what the director is doing is not harmful to children, she is not obligated to report, especially if she is convinced that the director would be likely to fire her for intervening in the situation. If this were the case, she would be justified in protecting her job and her own children’s well-being by refraining from reporting while doing everything she can to ameliorate the situation.

Discussion

A teacher facing a situation like this might begin to address it by learning more about her state’s child care licensing laws and regulations and her reporting responsibilities. These provisions vary from state to state.

The next thing the teacher should do is to consider if children’s health and safety are at risk. If children are in danger, she must honor P-1.1 of the Code and applicable laws in her community. If she is sure that children are at risk and all other efforts are unsuccessful, she has a clear moral (and legal) imperative to report the situation.