INDEX

K-12 SCHOOL OMBUDS TOOLKIT

Part 1


2. “Ombuds Offices Overview,” by Ellen R. Williams, Sara Thacker, and Jonathan Stier

3. “A Broader View of Dispute Resolution,” by Charles L. Howard

4. Brochure of the DC Office of the Ombudsman for Public Education

5. Comparison of Roles and Responsibilities by the District of Columbia State Board of Education

6. 2015 Annual Report by Joyanna Smith, Ombudsman for Public Education, DC Office of the Ombudsman for Public Education

Part 2

7. District of Columbia statutes creating the Office of the Ombudsman for Public Education

8. Brochure of the Portland (OR) Public Schools Office of the Ombudsman


10. Brochure of the Pasadena (CA) Unified School District Ombuds Office


12. Draft Ombuds Job Description for the Pasadena (CA) Unified School District

13. Howard County (MD) Policy 2030-PR: Implementation Procedures for Ombudsman

Part 3

14. Sample Frequently Asked Questions for K-12 Ombuds Office [To be Finalized]

15. 2004 American Bar Association Resolution: revised Standards for the Establishment and Operation of Ombuds Offices


17. IOA Standards of Practice

18. IOA Frequently Asked Questions

19. Governmental Ombudsman Standards from the United States Ombudsman Association (USOA)

20. Model Ombudsman Act for State Governments from USOA

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STANDARDS¹ FOR THE ESTABLISHMENT AND OPERATION OF
OMBUDS OFFICES

REVISED FEBRUARY, 2004

PREAMBLE

Ombuds receive complaints and questions from individuals concerning people within an entity
or the functioning of an entity. They work for the resolution of particular issues and, where
appropriate, make recommendations for the improvement of the general administration of the entities
they serve. Ombuds protect: the legitimate interests and rights of individuals with respect to each
other; individual rights against the excesses of public and private bureaucracies; and those who are
affected by and those who work within these organizations.

Federal, state and local governments, academic institutions, for profit businesses, non-profit
organizations, and sub-units of these entities have established ombuds offices, but with enormous
variation in their duties and structures. Ombuds offices so established may be placed in several
categories: A Legislative Ombuds is a part of the legislative branch of government and addresses
issues raised by the general public or internally, usually concerning the actions or policies of
government entities, individuals or contractors with respect to holding agencies accountable to the
public. An Executive Ombuds may be located in either the public or private sector and receives
complaints concerning actions and failures to act of the entity, its officials, employees and
contractors; an Executive Ombuds may either work to hold the entity or one of its programs
accountable or work with entity officials to improve the performance of a program. An
Organizational Ombuds may be located in either the public or private sector and ordinarily addresses
problems presented by members, employees, or contractors of an entity concerning its actions or
policies. An Advocate Ombuds may be located in either the public or private sector and like the
others evaluates claims objectively but is authorized or required to advocate on behalf of individuals
or groups found to be aggrieved.

As a result of the various types of offices and the proliferation of different processes by which
the offices operate, individuals who come to the ombuds office for assistance may not know what to
expect, and the offices may be established in ways that compromise their effectiveness. These

¹. The ABA adopted a resolution in August, 2001, that supported “the greater use of ‘ombuds’ to receive,
review, and resolve complaints involving public and private entities” and endorsed Standards for the
Establishment and Operation of Ombuds Offices. These standards modify those Standards in four regards.
First, they clarify the issue of notice in Paragraph F; secondly, they modify the limitations on the ombud’s
authority; third, they provide for a new category of executive ombuds that is described in Paragraph H; and,
fourth, they modify the definition of legislative ombuds and the standards applicable to them to make them
conform to the new category of executive ombuds. The 2001 Standards, in turn, expanded on a 1969 ABA
resolution to address independence, impartiality, and confidentiality as essential characteristics of ombuds
who serve internal constituents, ombuds in the private sector, and ombuds who also serve as advocates for
designated populations.

². The term ombuds in this report is intended to encompass all other forms of the word, such as ombudsperson,
ombuds officer, and ombudsman, a Swedish word meaning agent or representative. The use of ombuds here
is not intended to discourage others from using other terms.
standards were developed to provide advice and guidance on the structure and operation of ombuds offices so that ombuds may better fulfill their functions and so that individuals who avail themselves of their aid may do so with greater confidence in the integrity of the process. Practical and political considerations may require variations from these Standards, but it is urged that such variations be eliminated over time.

The essential characteristics of an ombuds are:

- independence
- impartiality in conducting inquiries and investigations, and
- confidentiality.

**ESTABLISHMENT AND OPERATIONS**

A. An entity undertaking to establish an ombuds should do so pursuant to a legislative enactment or a publicly available written policy (the “charter”) which clearly sets forth the role and jurisdiction of the ombuds and which authorizes the ombuds to:

1. receive complaints and questions about alleged acts, omissions, improprieties, and systemic problems within the ombuds’s jurisdiction as defined in the charter establishing the office
2. exercise discretion to accept or decline to act on a complaint or question
3. act on the ombuds’s own initiative to address issues within the ombuds’s prescribed jurisdiction
4. operate by fair and timely procedures to aid in the just resolution of a complaint or problem
5. gather relevant information and require the full cooperation of the program over which the ombuds has jurisdiction
6. resolve issues at the most appropriate level of the entity
7. function by such means as:
   (a) conducting an inquiry
   (b) investigating and reporting findings
   (c) developing, evaluating, and discussing options available to affected individuals
   (d) facilitating, negotiating, and mediating
(e) making recommendations for the resolution of an individual complaint or a systemic problem to those persons who have the authority to act upon them

(f) identifying complaint patterns and trends

(g) educating

(h) issuing periodic reports, and

(i) advocating on behalf of affected individuals or groups when specifically authorized by the charter

(8) initiate litigation to enforce or protect the authority of the office as defined by the charter, as otherwise provided by these standards, or as required by law.

QUALIFICATIONS

B. An ombuds should be a person of recognized knowledge, judgment, objectivity, and integrity. The establishing entity should provide the ombuds with relevant education and the periodic updating of the ombuds’s qualifications.

INDEPENDENCE, IMPARTIALITY, AND CONFIDENTIALITY

C. To ensure the effective operation of an ombuds, an entity should authorize the ombuds to operate consistently with the following essential characteristics. Entities that have established ombuds offices that lack appropriate safeguards to maintain these characteristics should take prompt steps to remedy any such deficiency.

(1) Independence. The ombuds is and appears to be free from interference in the legitimate performance of duties and independent from control, limitation, or a penalty imposed for retaliatory purposes by an official of the appointing entity or by a person who may be the subject of a complaint or inquiry.

In assessing whether an ombuds is independent in structure, function, and appearance, the following factors are important: whether anyone subject to the ombuds’s jurisdiction or anyone directly responsible for a person under the ombuds’s jurisdiction (a) can control or limit the ombuds’s performance of assigned duties or (b) can, for retaliatory purposes, (1) eliminate the office, (2) remove the ombuds, or (3) reduce the budget or resources of the office.

(2) Impartiality in Conducting Inquiries and Investigations. The ombuds conducts inquiries and investigations in an impartial manner, free from initial bias and conflicts of interest. Impartiality does not preclude the ombuds from developing an interest in securing changes that are deemed necessary as a result of the process, nor from otherwise being an advocate on behalf of a designated constituency. The ombuds may
become an advocate within the entity for change where the process demonstrates a need for it.

(3) **Confidentiality.** An ombuds does not disclose and is not required to disclose any information provided in confidence, except to address an imminent risk of serious harm. Records pertaining to a complaint, inquiry, or investigation are confidential and not subject to disclosure outside the ombuds’s office. An ombuds does not reveal the identity of a complainant without that person’s express consent. An ombuds may, however, at the ombuds’s discretion disclose non-confidential information and may disclose confidential information so long as doing so does not reveal its source. An ombuds should discuss any exceptions to the ombuds’s maintaining confidentiality with the source of the information.3

**LIMITATIONS ON THE OMBUDS’S AUTHORITY**

D. An ombuds should not, nor should an entity expect or authorize an ombuds to:

(1) make, change or set aside a law, policy, or administrative decision

(2) make binding decisions or determine rights

(3) directly compel an entity or any person to implement the ombuds’s recommendations

(4) conduct an investigation that substitutes for administrative or judicial proceedings

(5) accept jurisdiction over an issue that is currently pending in a legal forum unless all parties and the presiding officer in that action explicitly consent

(6) address any issue arising under a collective bargaining agreement or which falls within the purview of any federal, state, or local labor or employment law, rule, or regulation, unless there is no collective bargaining representative and the employer specifically authorizes the ombuds to do so,4 or

(7) act in a manner inconsistent with the grant of and limitations on the jurisdiction of the office when discharging the duties of the office of ombuds.

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3. A legislative ombuds should not be required to discuss confidentiality with government officials and employees when applying this paragraph to the extent that an applicable statute makes clear that such an individual may not withhold information from the ombuds and that such a person has no reasonable expectation of confidentiality with respect to anything that person provides to the ombuds.

4. Under these Standards, the employer may authorize an ombuds to address issues of labor or employment law only if the entity has expressly provided the ombuds with the confidentiality specified in Paragraph C(3). An ombuds program as envisioned by these Standards supplements and does not substitute for other procedures and remedies necessary to meet the duty of employers to protect the legal rights of both employers and employees.
REMOVAL FROM OFFICE

E. The charter that establishes the office of the ombuds should also provide for the discipline or removal of the ombuds from office for good cause by means of a fair procedure.

NOTICE

F. An ombuds is intended to supplement, not replace, formal procedures. Therefore:

(1) An ombuds should provide the following information in a general and publicly available manner and inform people who contact the ombuds for help or advice that—

(a) the ombuds will not voluntarily disclose to anyone outside the ombuds office, including the entity in which the ombuds acts, any information the person provides in confidence or the person’s identity unless necessary to address an imminent risk of serious harm or with the person’s express consent

(b) important rights may be affected by when formal action is initiated and by and when the entity is informed of the allegedly inappropriate or wrongful behavior or conduct

(c) communications to the ombuds may not constitute notice to the entity unless the ombuds communicates with representatives of the entity as described in Paragraph 2

(d) working with the ombuds may address the problem or concern effectively, but may not protect the rights of either the person contacting the office or the entity in which the ombuds operates

(e) the ombuds is not, and is not a substitute for, anyone’s lawyer, representative or counselor, and

(f) the person may wish to consult a lawyer or other appropriate resource with respect to those rights.

(2) If the ombuds communicates with representatives of the entity concerning an allegation of a violation, then —

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5. An ombuds program as envisioned by these Standards supplements and does not substitute for the need of an entity to establish formal procedures that may be necessary to protect legal rights and to address allegedly inappropriate or wrongful behavior or conduct.

6. The notice requirements of Paragraph F do not supercede or change the advocacy responsibilities of an Advocate Ombuds.

7. Under these standards, any such communication is subject to Paragraph C(3).
(a) a communication that reveals the facts of

(i) a specific allegation and the identity of the complainant or

(ii) allegations by multiple complainants that may reflect related behavior or conduct that is either inappropriate or wrongful

should be regarded as providing notice to the entity of the alleged violation and the complainants should be advised that the ombuds communicated their allegations to the entity; but otherwise,

(b) whether or not the communication constitutes notice to the entity is a question that should be determined by the facts of the communication.

(3) If an ombuds functions in accordance with Paragraph C, “Independence, Impartiality, and Confidentiality,” of these standards, then —

(a) no one, including the entity in which the ombuds operates, should deem the ombuds to be an agent of any person or entity, other than the office of the ombuds, for purposes of receiving notice of alleged violations, and

(b) communications made to the ombuds should not be imputed to anyone else, including the entity in which the ombuds acts unless the ombuds communicates with representatives of the entity in which case Paragraph 2 applies.

LEGISLATIVE OMBUDS

G. A legislative ombuds is established by the legislature as part of the legislative branch who receives complaints from the general public or internally and addresses actions and failures to act of a government agency, official, public employee, or contractor. In addition to and in clarification of the standards contained in Paragraphs A-F, a legislative ombuds should:

(1) be appointed by the legislative body or by the executive with confirmation by the legislative body

(2) be authorized to work to hold agencies within the jurisdiction of the office accountable to the public and to assist in legislative oversight of those agencies

8. This restates the 1969 ABA Resolution, which remains ABA policy, that a legislative ombuds should be “appoint[ed] by the legislative body or . . . by the executive with confirmation by the designated proportion of the legislative body, preferably more than a majority, such as two thirds.”
(3) be authorized to conduct independent and impartial investigations into matters within the prescribed jurisdiction of the office

(4) have the power to issue subpoenas for testimony and evidence with respect to investigating allegations within the jurisdiction of the office

(5) be authorized to issue public reports, and

(6) be authorized to advocate for change both within the entity and publicly.

EXECUTIVE OMBUDS

H. An executive ombuds may be located in either the public or private sector and receives complaints from the general public or internally and addresses actions and failures to act of the entity, its officials, employees, and contractors. An executive ombuds may either work to hold the entity or specific programs accountable or work with officials to improve the performance of a program. In addition to and in clarification of the standards contained in Paragraphs A-F, an executive ombuds:

(1) should be authorized to conduct investigations and inquiries

(2) should be authorized to issue reports on the results of the investigations and inquires, and

(3) if located in government, should not have general jurisdiction over more than one agency, but may have jurisdiction over a subject matter that involves multiple agencies.

ORGANIZATIONAL OMBUDS

I. An organizational ombuds facilitates fair and equitable resolutions of concerns that arise within the entity. In addition to and in clarification of the standards contained in Paragraphs A-F, an organizational ombuds should:

(1) be authorized to undertake inquiries and function by informal processes as specified by the charter

(2) be authorized to conduct independent and impartial inquiries into matters within the prescribed jurisdiction of the office

(3) be authorized to issue reports, and

(4) be authorized to advocate for change within the entity.
ADVOCATE OMBUDS

J. An advocate ombuds serves as an advocate on behalf of a population that is designated in the charter. In addition to and in clarification of the standards described in Paragraphs A-F, an advocate ombuds should:

1. have a basic understanding of the nature and role of advocacy
2. provide information, advice, and assistance to members of the constituency
3. evaluate the complainant's claim objectively and advocate for change or relief when the facts support the claim
4. be authorized to represent the interests of the designated population with respect to policies implemented or adopted by the establishing entity, government agencies, or other organizations as defined by the charter
5. be authorized to initiate action in an administrative, judicial, or legislative forum when the facts warrant, and
6. the notice requirements of Paragraph F do not supersede or change the advocacy responsibilities of an Advocate Ombuds.
REPORT

The American Bar Association (ABA) adopted a resolution in 1969 recommending that state and local governments consider establishing ombudsmen who would be authorized to inquire into administrative action and to make public criticism. That policy also recommended that the statute or ordinance creating the ombudsmen contain twelve essential points. The ABA then adopted a resolution in 1971 recommending that the Federal government experiment with the establishment of ombudsmen for certain geographical areas, specific agencies, or for limited phases of Federal activities. In 2001, ABA the adopted a resolution supporting the greater use of “ombuds9” to receive, review, and resolve complaints involving public and private entities. That policy also endorsed Standards for the Establishment and Operations of Ombuds Offices (Standards). The 2001 Resolution and Standards broadened the ABA’s existing policy to address ombuds who are appointed within government, academia, and the private sector, and who respond to complaints from individuals from within and outside the entity. The 2001 Resolution and the Standards also clarified that independence, impartiality in conducting inquiries and investigations, and confidentiality are essential characteristics of all ombuds. Ombuds must operate consistently with these essential characteristics to discharge the duties of the office effectively.

This Resolution recognizes that entities that create ombuds offices should adhere to the Standards for the Establishment and Operations of Ombuds Offices, dated February, 2004. The fundamental underlying premise of this resolution is that all ombuds must operate with certain basic authorities and essential characteristics. The effort here is to provide practical advice and guidance on the structure and operation of ombuds offices so that ombuds may better fulfill their functions and so that individuals who avail themselves of their aid may do so with greater confidence in the integrity of the process. These Standards modify the Standards for the Establishment and Operation of Ombuds Offices that were adopted by the ABA in August, 2001, in four regards. First, they clarify the issue of notice in Paragraph F; secondly, they modify the limitations on the ombud’s authority in Paragraph D; third, they provide for a new category of executive ombuds that is described in Paragraph H; and, fourth, they modify the definition of legislative ombuds and the standards applicable to them to make them conform to the new category of executive ombuds.

INTRODUCTION

Over the past three decades, and particularly recently, an extraordinary growth in the number and type of ombuds has taken place. Congress has established several ombuds in various programs. In addition to specific legislation concerning ombuds, the Administrative Dispute Resolution Act authorizes Federal agencies to use “ombuds.” As a protector of individual rights against the excesses of public and private bureaucracies, an ombuds receives complaints and questions from individuals concerning the functioning of an entity, works for the resolution of particular issues, and where necessary, makes recommendations for the improvement of the general administration of the entity. As an independent, impartial, and confidential complaint handler, an ombuds serves as an alternative means of dispute resolution – a means by which issues may be raised, considered, and resolved.

Federal, state and local governments, academic institutions, for profit businesses, non-profit organizations, and sub-units of these entities have established ombuds offices, but with enormous

9. The term ombuds in this report is intended to encompass all other forms of the word such as ombudsperson, ombuds officers, and ombudsman, a Swedish word meaning agent or representative. The use of ombuds here is not intended to discourage others from using other terms.
variation in their duties and structures. Ombuds offices so established may be placed in several categories. A Legislative Ombuds is established by the legislature as part of the legislative branch and addresses issues raised by the general public or internally, usually concerning the actions or policies of a government agency, official, public employee, or contractor. An Executive Ombuds may be located in either the public or private sector and receives complaints from the general public or internally and addresses actions or failures to act of the entity, its officials, employees, or contractors; an Executive Ombuds may either work to hold the entity or specific programs accountable or work with officials to improve the performance of a program. An Organizational Ombuds may be located in either the public or private sector and ordinarily addresses problems presented by members, employees, or contractors of an entity concerning its actions or policies. An Advocate Ombuds may be located in either the public or private sector, and like the others evaluates claims objectively but is authorized or required to advocate on behalf of individuals or groups found to be aggrieved.

As a result of the various types of offices and the proliferation of different processes by which the offices operate, individuals who come to the ombuds’ office for assistance may not know what to expect, and the offices may be established in ways that compromise their effectiveness. The ABA endorsed Standards that were developed to provide advice and guidance on the structure and operation of ombuds offices to the end that ombuds may better fulfill their functions and so that individuals who avail themselves of their aid may do so with greater confidence in the integrity of the process. The ABA action was based on the collaborative efforts of the Sections of Administrative Law and Regulatory Practice and of Dispute Resolution who worked together and appointed a steering committee consisting of representatives from the Coalition of Federal Ombudsmen, the National Association of State Ombudsman Programs, the International Ombudsman Institute (IOI subsequently withdrew), The Ombudsman Association, the United States Ombudsman Association, and the University and College Ombuds Association, as well as other experts in the field. The committee consulted with numerous ombuds from Federal, state, and local agencies, academic institutions, companies, and non-profit organizations. Further, it solicited, received, and considered comments from the international community of ombuds. Within the ABA, the Commission on Law and Aging, based on its experience with advocate ombuds, was instrumental in distinguishing among the types of ombuds. The Section of Business Law collaborated extensively with the committee to further the understanding and appreciation of the role of the ombuds in the business environment. Consultations with the Section of Labor and Employment Law resulted in refining the limitations on the ombuds’ jurisdiction.

The Standards for the Establishment and Operation of Ombuds Offices dated August 2001 have been widely distributed and utilized by Federal, state and local governments, academic institutions, for profit businesses, non-profit organizations, and sub-units of these entities. For example, Congress is currently considering legislation to reauthorize an ombuds at the U.S. Environmental Protection Agency and has relied upon the ABA’s Standards in defining the position.

To ensure that ombuds can protect individual rights against the excesses of public and private bureaucracies, now, again, the Sections of Administrative Law and Regulatory Practice, Business Law, Dispute Resolution, and Individual Rights and Responsibilities have worked together and with

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10. The United States Ombudsman Association did not endorse the Standards that were adopted in 2001 and was not involved in the subsequent revisions to the Standards.
the ombuds community and other ABA entities to develop a resolution to support amendments to the Standards for the Establishment and Operations of Ombuds Offices.

STANDARDS

Section A. Establishment and Operations

An ombuds is a person who is authorized to receive complaints or questions confidentially about alleged acts, omissions, improprieties, and broader, systemic problems within the ombuds's defined jurisdiction and to address, investigate, or otherwise examine these issues independently and impartially.

Importantly, the ombuds' jurisdiction - who complains and who or what are complained about - needs to be defined in advance, setting out the scope of the duties and authority. The ombuds's jurisdiction must be defined in an official act that establishes the office, which is appropriately called the “charter” in the Standards. The charter may be a legislative enactment or a publicly available written policy. The jurisdiction may be limited to a defined constituency or population. For example, a state ombuds may receive complaints or questions from any person, while a university student ombuds may receive complaints or questions only from students at that university, and a long-term care ombuds has jurisdiction only to resolve complaints initiated by or on behalf of residents receiving long-term care.

The ombuds determines whether to accept or to act on a particular complaint or question. The ombuds also has the discretion to initiate action without receiving a complaint or question. An ombuds may determine that the complaint is without merit. Or, an ombuds may receive a complaint or question on a specific topic and conduct an inquiry on a broader or different scope.

Appropriate subjects for an ombuds to review include allegations of unfairness, maladministration, abuse of power, abuse of discretion, discourteous behavior or incivility, inappropriate application of law or policy, inefficiency, decision unsupported by fact, and illegal or inappropriate behavior. It is essential that the ombuds operate by fair procedures to aid in the just resolution of the matter. Ombuds need access to all information relevant to a complaint or a question so that the review is fair and credible, and the charter should authorize access to all relevant information and require the full cooperation of the program over which the ombuds has jurisdiction. The entity must be responsible for protecting those seeking assistance from or providing information to the ombuds from personal, professional, or economic retaliation, loss of privacy, or loss of relationships.

An ombuds may make a formal or informal report of results and recommendations stemming from a review or investigation. If such a report is issued, the ombuds should generally consult with an individual or group prior to issuing a report critical of that individual or group, and include their comments with the report. Moreover, the ombuds should communicate the outcome, conclusion or resolution of a complaint or an inquiry to the complainant and may also communicate with other concerned entities or individuals.

In addition, to ensure the office's accountability, an ombuds should issue and publish periodic reports summarizing the ombuds's findings and activities. This may include statistical information about the number of contacts with the ombuds, subjects that the ombuds addressed evaluation by complainants, etc. These reports may be done annually, biannually, or more frequently.
In receiving complaints or questions and examining problems, the ombuds may use a variety of dispute resolution and other techniques. These processes include: conducting an inquiry; investigating and reporting findings; developing, evaluating, and discussing the options which may be available for remedies or redress; facilitating, negotiating, and mediating; making recommendations for the resolution of an individual complaint or a systemic problem to those persons who have authority to act on them; identifying complaint patterns and trends; and educating.

As necessary, the ombuds may advocate on behalf of affected individuals or groups when authorized by the charter and the situation warrants that action. An ombuds may initiate litigation to enforce or protect the authority of the office. For example, if an ombuds issues a subpoena and the subpoena is ignored, the ombuds should be able to initiate litigation to compel a response. In addition, an ombuds may initiate litigation as otherwise provided by these standards or as required by law. For example, an advocate ombuds should be authorized to initiate action in an administrative, judicial, or legislative forum when the facts warrant.

An ombuds uses the powers of reason and persuasion to help resolve matters. The goal of the ombuds's efforts is to provide a path to fairness and justice. Therefore, the ombuds' quest is to seek the fair and just resolution of the matter.

**Section B. Qualifications**

An ombuds should be a person of recognized knowledge, judgment, objectivity, and integrity. The establishing entity should provide the ombuds with relevant education and the periodic updating of the ombuds's qualifications.

**Section C. The Essential Characteristics**

The original 1969 resolution contained twelve essentials for the ombuds described in it. These have been distilled and expanded in the Standards. The core qualities are independence, impartiality in conducting inquiries and investigations, and confidentiality. Without them, an ombuds cannot discharge the duties of the office effectively. The Standards therefore provide that an entity should authorize an ombuds it establishes to operate consistently with these essential characteristics to ensure the effective operation of the duties of the office. The Standards also recognize, however, that some entities may have already established offices that lack appropriate safeguards to comply fully with the characteristics. The Standards then provide that such entities should take prompt steps to remedy any such deficiency.

**1. Independence in structure, function, and appearance**

To be credible and effective, the office of the ombuds is independent in its structure, function, and appearance. Independence means that the ombuds is free from interference in the legitimate performance of duties and independent from control, limitation, or a penalty imposed for retaliatory purposes by an official of the appointing entity or by a person who may be the subject of a complaint or inquiry. In assessing whether an ombuds is independent, the following factors are important: whether anyone subject to the ombuds's jurisdiction or anyone directly responsible for a person under the ombuds's jurisdiction (a) can control or limit the ombuds's performance of duties, or (b)
can, for retaliatory purposes, (1) eliminate the office, (2) remove the ombuds, or (3) reduce the office’s budget or resources.

Historically, ombuds were created in parliamentary systems and were established in the constitution or by statute, appointed by the legislative body, and had a guarantee of independence from the control of any other officer, except for responsibility to the legislative body. This structure remains a model for ensuring independence for Legislative Ombuds, and a number of states have followed it. In more recent times, however, Executive Ombuds have been created by public officials without legislation, by regulation or decree, and by private entities. Ensuring the independence of the ombuds is equally important in these instances, but will require other measures.11

Great care has to be exercised in establishing the ombuds structure to ensure that the independence described in the resolution is, in fact, achieved. Choosing which of these approaches are appropriate will depend on the environment. The instrument used to establish independence should be the strongest available and should guarantee the independence of the ombuds from control by any other person.

The twelve essential characteristics of the 1969 ABA Resolution continue to serve as the model for an ombuds reporting to the legislative branch of government who is authorized to investigate administrative action, help provide legislative oversight, and offer criticism of agencies from an external perspective. While there are a number of potential avenues of achieving independence, experience on the state and local level has demonstrated rather consistently that unless there is a structural independence for these ombuds akin to the 1969 ABA Resolution that independence will not be accomplished and the office will not be able to function as envisioned in this resolution and the accompanying standards.

Structuring independence for ombuds who serve inside organizations require similar care. These elements should be in the charter. The ombuds position should be explicitly defined and established as a matter of organizational policy, authorized at the highest levels of the organization; the ombuds should have access to the chief executive officer, senior officers and the oversight body or board of directors of the organization; the ombuds should also have access to all information.

11. In the United States since the late 1960s, a number of other ways have been developed to ensure independence. Examples of approaches that contribute to an ombuds’s independence include: establishment of the office through a formal act of a legislature or official governing body of an organization; establishment outside the entity over which the ombuds has jurisdiction; a direct reporting relationship to a legislative body, the official governing body of an organization or the chief executive; designation as a neutral who is unaligned and objective; a broadly defined jurisdiction not limited to one part of the entity or one subject matter; appointment or removal of the ombuds free of influence from potential subjects of a complaint or inquiry; a set term of office; no reporting relationship to someone with assigned duties that conflict with the ombuds’s role; no assignment of duties other than that of the ombuds function; specifically allocated budget and sufficient resources to perform the function; freedom to appoint, direct, and remove staff; sufficient stature in the organization to be taken seriously by senior officials; placement in an organization at the highest possible level and at least above the heads of units likely to generate the most complaints; discretion to initiate and pursue complaints and inquiries; access to and resources for independent legal advice and counsel; prohibition of disciplinary actions against the ombuds for performing the duties of the office; removal only for cause; provision of an employment contract that the ombuds will receive a significant severance provision if terminated without good cause.
within the organization, except as restricted by law; and the ombuds should have access to resources for independent legal advice and counsel.

The Standards recognize that at this time there are ombuds who have not achieved this goal. The Standards urge and anticipate that these variations will be eliminated over time.

2. Impartiality in conducting inquiries and investigations

The ombuds' structural independence is the foundation upon which the ombuds' impartiality is built. If the ombuds is independent from line management and does not have administrative or other obligations or functions, the ombuds can act in an impartial manner.

Acting in an impartial manner, as a threshold matter, means that the ombuds is free from initial bias and conflicts of interest in conducting inquiries and investigations. Acting in an impartial manner also requires that the ombuds be authorized to gather facts from relevant sources and apply relevant policies, guidelines, and laws, considering the rights and interests of all affected parties within the jurisdiction, to identify appropriate actions to address or resolve the issue.

The ombuds conducts inquiries and investigations in an impartial manner. An ombuds may determine that a complaint is without merit and close the inquiry or investigation without further action. If the ombuds finds that the complaint has merit, the ombuds makes recommendations to the entity and/or seeks resolution for a fair outcome. Impartiality does not, however, preclude the ombuds from developing an interest in securing the changes that are deemed necessary where the process demonstrates a need for change nor from otherwise being an advocate on behalf of a designated constituency. The ombuds therefore has the authority to become an advocate for change where the results of the inquiry or investigation demonstrate the need for such change. For example, when an ombuds identifies a systemic problem, it would be appropriate for the ombuds to advocate for changes to correct the problem. An advocate ombuds may initiate action and therefore serve as an advocate on behalf of a designated population with respect to a broad range of issues and on specific matters when the individual or group is found to be aggrieved. But, when determining the facts, the ombuds must act impartially.

3. Confidentiality

Confidentiality is an essential characteristic of ombuds that permits the process to work effectively. Confidentiality promotes disclosure from reluctant complainants, elicits candid discussions by all parties, and provides an increased level of protection against retaliation to or by any party. Confidentiality is a further factor that distinguishes ombuds from others who receive and consider complaints such as elected officials, human resource personnel, government officials, and ethics officers.

Confidentiality extends to all communications with the ombuds and to all notes and records maintained by the ombuds in the performance of assigned duties. It begins when a communication is initiated with the ombuds to schedule an appointment or make a complaint or inquiry. Confidentiality may apply to the source of the communications and to the content of the communications. Individuals may not want the ombuds to disclose their identity but may want the ombuds to act on the information presented. Therefore, an ombuds does not reveal the identity of a complainant without that person's consent. The ombuds may, however, disclose confidential
information so long as doing so does not compromise the identity of the person who supplied it. It should be emphasized that the decision whether or not to disclose this information belongs to the ombuds, and it would not be appropriate for anyone to demand that the ombuds disclose such information, except as required by statute. To the extent that an ombuds may not maintain confidentiality, the ombuds should discuss those exceptions with individuals who communicate with the office.

The authorizing entity should allow the ombuds to provide confidentiality of the identity of persons who communicate with the ombuds and of information provided in confidence. The authorizing entity should not seek information relating to the identity of complainants nor seek access to the ombuds’s notes and records.

Providing for confidentiality and protection from subpoena in a statute is particularly important because, where statutes have not provided confidentiality, state courts have not consistently recognized an ombuds privilege nor granted protective orders to preserve the confidentiality of communication made to ombuds. One Federal district court, Shabazz v. Scurr, 662 F. Supp. 90 (S.D. Iowa 1987), recognized a limited privilege under Federal law for an ombuds with a state statutory privilege. The only Federal circuit court to have addressed the issue, Carman v. McDonnell Douglas Corp., 114 F. 3d 790 (8th Cir. 1997), failed to recognize an ombuds privilege.

Short of explicit statutory authority, ombuds offices should adopt written policies that provide the fullest confidentiality within the law, and the entities that establish ombuds offices should expressly provide the ombuds with fullest confidentiality specified in the standards. These policies should be publicly available, broadly disseminated, and widely publicized. Several existing model ombuds acts and policies of ombuds organizations address confidentiality.

An ombuds will rarely, if ever, be privy to something that no one else knows. Therefore, providing confidentiality protection to the ombuds allows the ombuds to perform assigned duties while at the same time, society continues to have access to the underlying facts. As evidenced by the statutes and policies that have been developed, there may be instances in which other, competing societal interests dictate that the ombuds must disclose some information. If an individual speaks about intending harm to himself or herself or others, an entity may require an ombuds to disclose this information. Moreover, an ombuds may be compelled by protective service laws or professional reporting requirements to report suspected abuse.

Section D. Limitations on the ombuds’ authority

An ombuds works outside of line management structures and has no direct power to compel any decision. The office is established by the charter with the stature to engender trust and to help resolve complaints at the most appropriate level of the entity. To ensure the ombuds’s independence, impartiality, and confidentiality, it is necessary to establish certain limitations on the ombuds’s authority.

An ombuds should not, nor should an entity expect or authorize an ombuds to make, change, or set aside a law, policy or administrative/managerial decision, nor to directly compel an entity or any person to make those changes. While an ombuds may expedite and facilitate the resolution of a complaint and recommend individual and systemic changes, an ombuds cannot compel an entity to implement the recommendations.
It is essential that an ombuds operate by fair procedures which means that the actions taken will likely vary with the nature of the concern, and that care must be taken to protect the rights of those who may be affected by the actions of an ombuds. Furthermore, since due process rights could well be implicated, it would not be appropriate for the ombuds’s review to serve as the final determination for any disciplinary activity or civil action, nor as a determination of a violation of law or policy. An ombuds’s inquiry or investigation does not substitute for an administrative or judicial proceeding. In an administrative or judicial proceeding, the deciding official should not consider the ombuds’s review or recommendations to be controlling. Rather, the deciding official must conduct a de novo examination of the matter.

Moreover, it would not be appropriate for the ombuds to act as an appellate forum when a complainant is dissatisfied with the results in a formal adjudicatory or administrative proceeding. Thus, an ombuds should not take up a specific issue that is pending in a legal forum without the concurrence of the parties and the presiding officer. It may, however, be fully appropriate for an ombuds to inquire into matters that are related to a controversy that is in litigation so long as they are not the subject of the suit.

Further, an ombuds should not address, nor should an entity expect or authorize an ombuds to address, any issue that is the subject of a collective bargaining agreement or that arises under labor or employment law. Even where an employee is not covered by a collective bargaining agreement, the involvement of an ombuds in matters that fall within the purview of labor or employment laws raises sensitive issues that may implicate the rights and liabilities of the parties under those laws, such as the issue of notice mentioned in Section F of the Standards. Accordingly, the Standards contemplate that an employer, in establishing an ombuds office, should consider its overall policies for maintaining compliance with those laws, and determine in that light whether to authorize the ombuds to address those matters. The entity should do so only if the ombuds office meets the three essential characteristics of Independence, Impartiality, and Confidentiality. This recommendation is in no way intended to suggest, however, that a policy of authorizing an ombuds to address labor or employment-related matters should be a suspect or disfavored practice. Involvement in such matters is a role typically performed by Organizational Ombuds, and the growing reliance on ombuds at institutions across the country is largely attributable to the broad satisfaction with ombuds’ fulfillment of that role on the part of both management and the affected employees. Thus, the language in the Standards indicating that an employer should specifically authorize an ombuds to address labor or employment-related matters does not require any detailed or ponderous recitals. Rather, it should be read as simply a particularized application of the generalized expectation in Section A of the Standards that the jurisdiction of an ombuds office should be identified in its charter.

Finally, an ombuds should not act in a manner inconsistent with the grant and limitations on the jurisdiction of the office when discharging the duties of the office of ombuds.

**Section E. Removal from office**

Entities which establish ombuds offices need to ensure their accountability. Therefore, the charter that establishes the office of ombuds should also provide for the discipline or removal of the ombuds for good cause by means of a fair procedure.

**Section F. Notice**
When meeting with an ombuds, people discuss allegations of unfairness, maladministration, abuse of power, and other sensitive subjects. They may fear personal, professional, or economic retaliation, loss of privacy, and loss of relationships. Faced with sexual or racial harassment, for example, many will quit, get sick, or suffer in silence. People often need help in developing ways to report or act so that these matters will be considered and resolved. Because an ombuds is intended to supplement, not replace, formal procedures, the Standards recognize that the person contacting the ombuds for assistance needs to understand the difference between working with an ombuds and seeking formal redress. It may be that the ombuds informs people coming to the ombuds office of the issues identified in the Standards; it may be that the ombuds office has a brochure or web page that explains the functioning of the office, working with the ombuds office, and the items listed in Section F(1); or, it may be that the entity itself includes similar information in a manual, other information provided to affected people, or as part of the charter for the ombuds office. But the standards recognize that responsibility needs to be allocated in a way that ensures the communication will actually be made in the relevant circumstances, so it places it at the point of contact with the individual: the ombuds office.

Communications must be protected if people are to be willing to visit and speak candidly with the ombuds. As noted above, some ombuds have confidentiality protected by law. Under these Standards, entities that establish an ombuds should authorize the ombuds to operate with confidentiality and independence, and an ombuds should inform anyone who contacts the ombuds offices, that the ombuds will not voluntarily disclose to anyone outside the ombuds office, including the entity in which the ombuds operates, any information the person provides in confidence or the person’s identity, unless necessary to address the imminent risk of serious harm or with the person’s express consent. The standards recognize, however, that in some limited circumstances an ombuds may be compelled by a court to divulge confidential information.

The standards are designed to make sure that a person coming to the ombuds will be aware that legal rights might well be at stake and that the person may have to take action beyond working with the ombuds to protect those rights. This is to ensure that the person approaching the ombuds office to redress some particular problem understands that protecting rights may depend on just when formal action is initiated and whether notice is given to the entity. Working with the ombuds does not change that requirement or the specific time when the action must be started. In addition, the ombuds should advise persons that communications to the ombuds may not constitute notice to the entity unless the ombuds contacts the entity.

Further, the ombuds should describe to visitors that working with the ombuds is an informal process that may well address the person’s concern effectively, but doing so may not protect that person’s legal right or indeed, those of the entity for whom the ombuds functions. Moreover, the ombuds needs to make clear that the ombuds is not serving as anyone’s lawyer, representative or counselor — not for the complainant nor for the entity. Thus, the ombuds is not the person’s lawyer or labor representative nor a human resources or social work counselor. So that the person is not lulled into putting off checking what legal rights may be affected, the Standards provide that the ombuds should inform the person that he or she may wish to consult a lawyer or other appropriate resource with respect to preserving and protecting those rights. The standards do not contemplate the ombuds providing any sort of legal advice as to what the legal rights and procedures are, only that they may exist and that the person coming to the office may wish to consult with a lawyer or other resource to determine them.
If an ombuds functions in accordance with these Standards by operating with confidentiality and independence, the details of what is told to the ombuds will not be told to anyone in the entity itself, and hence it would not be appropriate or accurate to impute it to the entity — that is, holding the entity responsible for knowing something it cannot know. Further, the Standards provide that the ombuds should not be deemed an agent of any person or entity, other than the Office of the Ombuds, for purposes of receiving notice of alleged violations. Rather, the ombuds would be deemed independent of the entity itself for these purposes. Thus, it would not be appropriate for the ombuds to accept notice on the entity's behalf with respect to any alleged grievance.

When an ombuds works to address an issue, he or she may need to work with those in the entity. An ombuds may therefore communicate with representatives of an entity which, under the standards, the ombuds has the discretion but not the requirement to do. Any such communication would be subject to the confidentiality provisions of Paragraph C(3). If the communication reveals the facts of a specific allegation and the identity of the complainant, then the entity should be regarded as having notice of the alleged violation. Similarly, if the ombuds communicates allegations of multiple complainants that may reflect related behavior or conduct that is either inappropriate or wrongful then here too the entity should be regarded as having notice of the alleged violation since the multiple complainants makes up for the lack of specific identity. In these cases, the complainants should be informed that the ombuds has communicated their allegations to the entity so they may decide whether or not to take formal action. In both instances, the information provided would need to be sufficiently detailed that the entity could conduct its own investigation with respect to the allegations. Furthermore, the ombuds may provide enough information — even though confidentiality is maintained — that the entity in fact is on notice that a potential offense has occurred. The Standards provide, therefore, that when an ombuds communicates with representatives of the entity concerning an allegation by an individual, whether or not that communication constitutes “notice” to the entity is a question that should be determined by the facts of the communication.

Thus, the Standards draw a clear distinction between communications to an ombuds when the ombuds makes no further communication to the entity and those situations where the ombuds communicates with agents of the entity. In the former case, the Standards would provide that it is not appropriate to impute the communication to the entity in the form of notice since it has no way of learning what was communicated. But in the second instance, whether or not the entity has notice depends on the facts relayed and the applicable law.

Section G. Legislative Ombuds

A Legislative Ombuds is established by the legislature as part of the legislative branch and receives complaints from the general public or internally and addresses actions and failures to act of a government agency, official, public employee, or contractor. For Federal, state, and local governments that want to create a Legislative ombuds who would be authorized to address, investigate or inquire into administrative action and to criticize agencies, officials, and public
employees, the ABA’s 1969 policy continue to serve as a model.12 A Legislative Ombuds should be appointed by the legislative body or by the executive with confirmation by the legislative body.13 A Legislative Ombuds should be authorized to work to hold agencies within the jurisdiction of the office accountable to the public and to assist in legislative oversight of those agencies. A Legislative Ombuds may conduct inquiries or investigations and suggest modifications in policies or procedures. To ensure access to all pertinent facts, a Legislative Ombuds should be granted subpoena power for testimony and evidence relevant to an investigation. In addition, a Legislative Ombuds should be authorized to issue public reports and to advocate for change both within the entity and publicly.

Section H. Executive Ombuds

An Executive Ombuds may be located in either the public or private sector and receives complaints from the general public or internally and addresses actions and failures to act of the entity, its officials, employees, and contractors. An Executive Ombuds may either work to hold the entity or specific programs accountable or work with officials to improve the performance of a program. In addition, an Executive Ombuds should be authorized to conduct investigations and inquiries. An Executive Ombuds should also be authorized to require the full cooperation of the program over which the ombuds has jurisdiction, including, where appropriate, subpoena power. It may not be appropriate, however, to authorize subpoena power where an Executive Ombuds has been established to receive complaints from regulated entities with regard to an agency’s regulatory or enforcement activities. An Executive Ombuds should be authorized to issue reports on the results of the investigations and inquiries. Finally, if located in government, an Executive Ombuds should not have general jurisdiction over more than one agency, but may have jurisdiction over a subject matter that involves multiple agencies. For example, an Executive Ombuds may oversee a variety of governmental agencies having jurisdiction over child welfare, crime victims, or mental health issues.

Section I. Organizational Ombuds

12. The twelve essential characteristics that were identified in the original ABA resolution continue to have vitality and remain ABA policy. They are: (1) authority of the ombudsman to criticize all agencies, officials, and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff; (2) independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body; (3) appointment by the legislative body or appointment by the executive with confirmation by the designated proportion of the legislative body, preferably more than a majority of the legislative body, such as two thirds; (4) independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body; (5) a high salary equivalent to that of a designated top officer; (6) freedom of the ombudsman to employ his own assistants and to delegate to them, without restrictions of civil service and classifications acts; (7) freedom of the ombudsman to investigate any act or failure to act by any agency, official, or public employee; (8) access of the ombudsman to all public records he finds relevant to an investigation; (9) authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of any action or inaction by any agency, official, or public employee; (10) discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize; (11) opportunity for any agency, official, or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism an answering statement; and, (12) immunity of the ombudsman and his staff from civil liability on account of official action.

13 This restates the 1969 ABA Resolution, which remains ABA policy, that a legislative ombuds should be “appoint[ed] by the legislative body or . . . by the executive with confirmation by the designated proportion of the legislative body, preferably more than a majority, such as two thirds.”
An Organizational Ombuds ordinarily addresses problems presented by members, employees or contractors of an entity concerning its actions or policies. An Organizational Ombuds may undertake inquiries and advocate for modifications in policies or procedures.

Section J. Advocate Ombuds

The Advocate Ombuds may be located in either the public or private sectors, and like the Legislative and Organizational Ombuds, also evaluates claims objectively. However, unlike other ombuds, the Advocate Ombuds is authorized or required to advocate on behalf of individuals or groups found to be aggrieved. Because of the unique role, the Advocate Ombuds must have a basic understanding of the nature and role of advocacy. In addition, the Advocate Ombuds should provide information, advice, and assistance to members of the population identified in the law or publicly available written policy. Further, the Advocate Ombuds represents the interests of a designated population with respect to policies implemented or adopted by the establishing entity and government agencies. The notice requirements of Paragraph F do not supersede or change the advocacy responsibilities of an Advocate Ombuds.

CONCLUSION

Government, academia, and the private sector are answering demands for fairness and responsiveness by establishing ombuds. Ombuds receive complaints and questions concerning the administration of the establishing entity. However, the basic authorities of these persons called ombuds and the independence, impartiality, and confidentiality with which they operate vary markedly. An ombuds works for the resolution of a particular issue, and where necessary, makes recommendations for the improvement of the general administration of the entity. To be credible and effective, the office of the ombuds must be independent in structure, form, and appearance. The ombuds’s structural independence is the foundation upon which the ombuds’s impartiality is built. The ombuds must conduct investigations and inquiries in an impartial manner, free from initial bias and conflicts of interest. Confidentiality is a widely accepted characteristic of ombuds, which helps ombuds perform the functions of the office. Without these Standards, individuals may be reluctant to seek the ombuds’s assistance because of fear of personal, professional, or economic retaliation, loss of privacy, and loss of relationships. This Resolution and the Standards for the Establishment and Operation of Ombuds Offices are appropriate now to ensure that ombuds can protect individual rights against the excesses of public and private bureaucracies. Practical and political considerations may require variations from these Standards, but it is urged that such variations be eliminated over time.

Respectfully submitted,

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PREAMBLE

The IOA is dedicated to excellence in the practice of Ombudsman work. The IOA Code of Ethics provides a common set of professional ethical principles to which members adhere in their organizational Ombudsman practice.

Based on the traditions and values of Ombudsman practice, the Code of Ethics reflects a commitment to promote ethical conduct in the performance of the Ombudsman role and to maintain the integrity of the Ombudsman profession.

The Ombudsman shall be truthful and act with integrity, shall foster respect for all members of the organization he or she serves, and shall promote procedural fairness in the content and administration of those organizations' practices, processes, and policies.

ETHICAL PRINCIPLES

INDEPENDENCE
The Ombudsman is independent in structure, function, and appearance to the highest degree possible within the organization.

NEUTRALITY AND IMPARTIALITY
The Ombudsman, as a designated neutral, remains unaligned and impartial. The Ombudsman does not engage in any situation which could create a conflict of interest.

CONFIDENTIALITY
The Ombudsman holds all communications with those seeking assistance in strict confidence, and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.

INFORMALITY
The Ombudsman, as an informal resource, does not participate in any formal adjudicative or administrative procedure related to concerns brought to his/her attention.
IOA STANDARDS OF PRACTICE

PREAMBLE

The IOA Standards of Practice are based upon and derived from the ethical principles stated in the IOA Code of Ethics.

Each Ombudsman office should have an organizational Charter or Terms of Reference, approved by senior management, articulating the principles of the Ombudsman function in that organization and their consistency with the IOA Standards of Practice.

STANDARDS OF PRACTICE

INDEPENDENCE

1.1 The Ombudsman Office and the Ombudsman are independent from other organizational entities.
1.2 The Ombudsman holds no other position within the organization which might compromise independence.
1.3 The Ombudsman exercises sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time. The Ombudsman may also initiate action on a concern identified through the Ombudsman's direct observation.
1.4 The Ombudsman has access to all information and all individuals in the organization, as permitted by law.
1.5 The Ombudsman has authority to select Ombudsman Office staff and manage Ombudsman Office budgets and operations.

NEUTRALITY AND IMPARTIALITY

2.1 The Ombudsman is neutral, impartial, and unaligned.
2.2 The Ombudsman serves for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.
2.3 The Ombudsman is a designated neutral reporting to the highest possible level of the organization and operating independently of ordinary line and staff structures. The Ombudsman should not report to nor be structurally affiliated with any compliance function of the organization.
2.4 The Ombudsman serves in no additional role within the organization which would compromise the Ombudsman's neutrality. The Ombudsman should not be aligned with any formal or informal associations within the organization in a way that might create actual or perceived conflicts of interest for the Ombudsman. The Ombudsman should have no personal interest or stake in, and incur no gain or loss from, the outcome of an issue.
2.5 The Ombudsman has a responsibility to consider the legitimate concerns and interests of all individuals affected by the matter under consideration.
2.6 The Ombudsman helps develop a range of responsible options to resolve problems and facilitate discussion to identify the best options.

CONFIDENTIALITY

3.1 The Ombudsman holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality, including the following:
   The Ombudsman does not reveal, and must not be required to reveal, the identity of any individual contacting the Ombudsman Office, nor does the Ombudsman reveal information provided in confidence that could lead to the identification of any individual contacting the Ombudsman Office, without that individual's express permission, given in the course of informal discussions with the Ombudsman; the Ombudsman takes specific action related to an individual's issue only with the individual's express permission and only to the extent permitted, and even then at the sole discretion of the Ombudsman, unless such action can be taken in a way that safeguards the identity of the individual contacting the Ombudsman Office. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm, and where there is no other reasonable option. Whether this risk exists is a determination to be made by the Ombudsman.
3.2 Communications between the Ombudsman and others (made while the Ombudsman is serving in that capacity) are considered privileged. The privilege belongs to the Ombudsman and the Ombudsman Office, rather than to any party to an issue. Others cannot waive this privilege.
3.3 The Ombudsman does not entrust any formal process inside the organization and retains existing in any formal process outside of the organization regarding a visitor's contact with the Ombudsman or confidential information communicated to the Ombudsman, even if given permission or requested to do so. The Ombudsman may, however, provide general, non-confidential information about the Ombudsman Office or the Ombudsman profession.
3.4 If the Ombudsman pursues an issue systematically (e.g., provides feedback on trends, issues, policies and practices) the Ombudsman does so in a way that safeguards the identity of individuals.
3.5 The Ombudsman keeps no records containing identifying information on behalf of the organization.
3.6 The Ombudsman maintains information (e.g., notes, phone messages, appointment calendars) in a secure location and manner, protected from inspection by others (including management), and has a consistent and standard practice for the destruction of such information.
3.7 The Ombudsman prepares any data and/or reports in a manner that protects confidentiality.
3.8 Communications made to the ombudsman are not to the organization. The ombudsman neither acts as agent for, nor accepts notice on behalf of, the organization and shall not serve in a position or role that is designated by the organization as a place to receive notice on behalf of the organization. However, the ombudsman may refer individuals to the appropriate place where formal notice can be made.

INFORMALITY AND OTHER STANDARDS

4.1 The Ombudsman functions on an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and — with permission and at Ombudsman discretion — engaging in informal third-party intervention. When possible, the Ombudsman helps people develop new ways to solve problems themselves.
4.2 The Ombudsman as an informal and off-the-record resource pursues resolution of concerns and looks into procedural irregularities and/or broader systemic problems when appropriate.
4.3 The Ombudsman does not make binding decisions, mandate policies, or formally adjudicate issues for the organization.
4.4 The Ombudsman supplements, but does not replace, any formal channels. Use of the Ombudsman Office is voluntary, and is not a required step in any grievance process or organizational policy.
4.5 The Ombudsman does not participate in any formal investigative or adjudicative procedures. Formal investigations should be conducted by others. When a formal investigation is requested, the Ombudsman refers individuals to the appropriate offices or individual.
4.6 The Ombudsman identifies trends, issues and concerns about policies and procedures, including potential future issues and concerns, without breaching confidentiality or anonymity, and provides recommendations for responsibly addressing them.
4.7 The Ombudsman acts in accordance with the IOA Code of Ethics and Standards of Practice, keeps professionally current by pursuing continuing education, and provides opportunities for staff to pursue professional training.
4.8 The Ombudsman endeavors to be worthy of the trust placed in the Ombudsman Office.

www.ombudsassociation.org

Rev. 10/09
Frequently Asked Questions

1. What is an Organizational Ombudsman?

An Organizational Ombudsman is an individual who serves as a designated neutral within a specific organization and provides conflict resolution and problem-solving services to members of the organization (internal ombudsman) and/or for clients or customers of the organization (external ombudsman). There are Organizational Ombudsmen in all sectors (corporate, academic, governmental, non-governmental, and non-profit). Some may serve both internal and external constituencies.

An Organizational Ombudsman provides confidential, informal, independent and impartial assistance to individuals through dispute resolution and problem-solving methods such as conflict coaching, mediation, facilitation, and shuttle diplomacy. The Organizational Ombudsman responds to concerns and disputes brought forward by visitors to the office and may report trends, systemic problems, and organizational issues to high-level leaders and executives in a confidential manner. He or she does not advocate for individuals, groups or entities, but rather for the principles of fairness and equity. The Organizational Ombudsman does not play a role in formal processes, investigate problems brought to the office's attention, or represent any side in a dispute.

2. Why the word "Ombudsman"?

The word "Ombudsman" is Scandinavian and means "representative" or "proxy." The term is gender-neutral in origin and is used by the International Ombudsman Association (IOA) to communicate to the widest possible community. Variations of the term exist (i.e. ombuds, ombudsperson) and are common among those practicing in the ombudsman field.

3. Are there other kinds of Ombudsmen?

Yes.

Classical Ombudsmen

These Ombudsmen receive and investigate complaints and concerns regarding governmental policies and processes. The authority and mandate of Classical Ombudsmen are typically provided by statutory language. These Ombudsmen may be elected by constituents or appointed by a legislature or organization to monitor citizen treatment under the law. Classical Ombudsmen generally have authority to conduct investigations and make recommendations for appropriate redress or policy change.

Advocate Ombudsmen

An Advocate Ombudsman may be located in either the public or private sector. He or she evaluates claims objectively but is authorized or required to advocate on behalf of individuals or groups found to be aggrieved. Advocate Ombudsmen are often found in organizations such as long-term care facilities or agencies, and organizations that work with juvenile offenders.

Hybrid Ombudsmen

Hybrid Ombudsmen are usually established by policy or terms of reference by both private and public sector organizations. They primarily use informal methods to resolve complaints but also have the power to investigate and the authority to publish annual and special reports.

Executive Ombudsmen

An Executive Ombudsman may be located in either the public or private sector and receives complaints concerning actions and failures to act of the organization, its officials, employees and contractors. An Executive Ombudsman may either work to hold the organization or one of its programs accountable or work with the organization's officials to improve the performance of a program.

Legislative Ombudsmen

A Legislative Ombudsman is a part of the legislative branch of a government entity and addresses issues raised by the general public or internally, usually concerning the actions or policies of government entities, individuals or contractors with respect to holding agencies accountable to the public.

Media Ombudsmen

The Media, or News, Ombudsman is familiar to many people. The News Ombudsman's primary objective is to promote transparency within his or her news organization. This Ombudsman can receive and investigate complaints about news reporting on behalf of members of the public and then recommend the most suitable course of action to resolve issues raised in the complaints. The News Ombudsman is an independent officer acting in the best interests of news consumers. He or she explains the roles and obligations of journalism to the public and acts as a mediator between the expectations of the public and the responsibilities of journalists. (For more information, see http://thenewsombudsmen.org/ [http://thenewsombudsmen.org/].)

4. What is "IOA"?

IOA is the International Ombudsman Association. IOA's mission is to "support and advance the global Organizational Ombudsman profession and assure that practitioners work to the highest professional standards." For more information, please go to www.ombudsassociation.org. There are currently more than 500 members in the IOA.

IOA has established a set of ethical principles for Organizational Ombudsman practice. These ethical principles are:

- Independence
- Impartiality
- Confidentiality
- Informality

IOA has also established Standards of Practice, which are based on the ethical principles. For more information on the IOA Code of Ethics or Standards of Practice, please go to: http://www.ombudsassociation.org/standards/About-US/IOA-Standards-of-Practice-IOA-Best-Practices.aspx

5. How does an Ombudsman differ from an Employee Relations/Human Resource professional?

Employee Relations and Human Resource (ER/HR) professionals assist managers and employees of the organization in establishing, following and applying Human Resource-related policies and procedures. They may conduct formal investigations, make or modify policies, and accept formal notice of a claim on behalf of the organization. As a result, the ER/HR professional cannot always extend complete confidentiality to individuals who come forward with issues. The ER/HR professional's role is not completely neutral because they are part of the management structure and they must directly represent and protect the interests of the organization.
An Ombudsman’s function is to provide informal assistance in surface and resolving issues. While they can recommend that an organization consider establishing or revising policy, the Ombudsman plays no formal role in enforcing or deciding to implement policy. The Ombudsman does not conduct formal investigations. However, they do assist in identifying or creating options for resolution, including referrals to formal channels with investigatory powers. Because they are not part of the management structure of the organization, an Ombudsman does not accept notice for the organization and can extend near absolute confidentiality (except in the instance of imminent threat of serious harm, as jointly defined by the organization and the Ombudsman, at the discretion of the Ombudsman). The Ombudsman acts as a neutral party and does not advocate for the individual, groups or the organization. The only advocacy role is for fairness and equity.

The roles of the Ombudsman and the ER/HR professional are not competing roles, they are complementary. When the two functions work together in an effective partnership, they can yield tremendous benefit to an organization by maintaining an environment that encourages the use of multiple options to surface and resolve issues and to improve systemic policies and procedures.

6. How does an Organizational Ombudsman differ from a lawyer?

The Organizational Ombudsman’s role is quite different from that of a lawyer, who is associated with more formal processes and the legal system. An Organizational Ombudsman maintains neutrality and impartiality when working with visitors, while a lawyer must advocate for his or her client and generally uses adversarial approaches to resolve issues. Though some Organizational Ombudsmen may have legal training and experience with issues of the law, Ombudsmen do not provide legal advice.

7. Is an Ombudsman the same as a mediator?

No. An Ombudsman works to manage conflict within an organization, whereas Mediation is a specific process used for conflict resolution. Many Ombudsmen are trained as mediators and often use mediation skills and techniques as one of many approaches to problem solving and conflict management. Some Ombudsmen write agreements after mediation. However, in accordance with IOA Code of Ethics, the Organizational Ombudsman engages informally with visitors and will not retain written records for confidentiality reasons. If a written agreement is reached, others in the organization, such as the HR department, will retain that document in a file.

8. How can an Organizational Ombudsman contribute to an organization?

An Organizational Ombudsman can:

1. "Humanize" an organization by providing constituents with safe and informal opportunities to be heard, assistance in identifying options for managing or resolving concerns; facilitation of communication between or among conflicting parties; conflict resolution skills training; and upward feedback to management about trends in conflicts, hot-button issues or other matters of import to organizational leaders (see Question 9 for more).

2. Help keep management abreast of new and changing trends within the organizational community. (See Question 9 for more).

3. Help executives and managers avoid spending excessive time attempting to resolve conflicts.

4. Refer individuals toward appropriate formal processes and resources within the organization.

9. Why should the leader(s) of an organization listen to an Ombudsman?

The Ombudsman is interested in being helpful to the leader, in the same way that the Ombudsman is helpful to others within the organization. An Ombudsman's orientation is toward "fair process" so he or she is likely to be sensitive to the interests and concerns of a wide range of people. An Ombudsman is likely to have a different perspective than most others to whom organizational leaders listen. He or she is likely to be familiar with multiple points of view regarding any given situation and be able to appropriately articulate the concerns of those whose voices often go unheard. The Ombudsman can also:

- Brief the leader on issues or 'hotspots' of which he or she ought to be aware, and the possible implications of those issues.

- Share what has been done so far to address the issues, taking care to maintain confidentiality.

- Identify serious potential problems that may be unforeseen or downplayed by management or employees.

- Create an opportunity for the executive to talk about things they might not be able to talk to others about.

10. Is the Organizational Ombudsman field growing?

The modern Organizational Ombudsman role began to take shape in the 1960s and 1970s. In the decades that have followed, Organizational Ombudsman offices have been established within hundreds of organizations worldwide and in every sector of society. There are various reasons for that growth, including federal legislation in the United States promoting alternative dispute resolution; legal settlements in the private sector that required the creation of ombudsman offices; and a growing recognition of the need for alternative channels for communication within organizations.

11. Would an Organizational Ombudsman work with a union to help resolve issues?

The extent to which an Ombudsman would work with a union depends in large part upon the nature of the issue. Most Ombudsmen refrain from significant involvement in issues that are specifically covered by a union contract and for which a specific, formal resolution process is mandated by the contract. However, an Ombudsman can often be a very useful informal resource for union leadership or union employees for issues that are not governed by the contract.

12. What is a charter or Terms of Reference?

The charter or Terms of Reference of an Organizational Ombudsman office is the document that generally defines the role of the Ombudsman and scope of his or her duties.

13. How does someone become an Organizational Ombudsman?

There is currently no established path to becoming an Organizational Ombudsman. A specific career background or formal academic degree is less important than one's demonstration of skills, including non-judgmental listening, the ability to communicate successfully with a diverse range of people; courage to speak up; discretion; creativity in
developing options, and problem solving and analytical ability. That is why, within the ranks of IOA, you will find Ombudsmen from all disciplines, ranging from the sciences to academia, management, human resources, law, engineering, accounting, consulting, and everything in between.

Many new Organizational Ombudsman assume their roles after holding other jobs within their organizations. Often, they are tapped to become the Ombudsman because they have established a widely known reputation for integrity, confidentiality, and knowledge of organizational processes across functions. Their specialized experience within their organizations can make them even more effective as Ombudsmen because they have a deeper understanding and awareness of the specific issues that affect people and organizations in these fields.

Ombudsmen also may be hired from outside the organization after having served as an Ombudsman in other organizations.

Occasionally, when an organization does not or cannot appoint an Ombudsman from within, they may turn to Ombudsmen who work independently and contract their services. These Ombudsmen have typically established their professional credibility through prior experience in organizations, success with clients, and formal conflict resolution training.

Formal training can be invaluable in preparing an individual for an Ombudsman role. The IOA offers a series of professional training courses that include skills training as well as practical instruction in establishing and maintaining an Organizational Ombudsman office. Formal training in mediation and/or other conflict resolution processes, such as facilitation and conflict coaching, is also very valuable. For more information on IOA training opportunities, please see: http://www.ombudsassociation.org/conferences-professional-development

14. Do individuals need a license to be an Ombudsman?

There is no licensure requirement at this time. The Organizational Ombudsman field is still relatively new in the U.S. so people are selected for the position from a variety of educational and professional backgrounds (see Question 12). In 2009, the International Ombudsman Association launched a certification credential called the Certified Organizational Ombudsman Practitioner (see http://www.ombudsassociation.org/boc/ for more information). However, certification is currently not required to serve as an Ombudsman.

15. How do I become a member of IOA?

For more information on IOA and how to become a member visit: http://www.ombudsassociation.org/membership/Join-IOA.aspx

16. How can I get involved in IOA?

There are a number of ways in which you can get involved in the International Ombudsman Association. The organization sponsors a number of excellent training sessions and meetings each year in addition to an annual conference. For more information on these professional development events, please visit: http://www.ombudsassociation.org/conferences-professional-development

The work of IOA is largely completed by a number of busy and effective committees made up of volunteers. For a complete listing of the IOA committees and their functions, please visit: The Standing Committees Page

Additional resources:
Mary Rowe, MIT. Selected Ombudsman publications: http://web.mit.edu/ombud/publications/index.html


GOVERNMENTAL OMBUDSMAN STANDARDS

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United States Ombudsman Association
Governmental Ombudsman Standards
October 2003

Drafted by the Standards Committee of the
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Approved October 14, 2003 by the
United States Ombudsman Association’s Board of Directors

For more information on the United States Ombudsman Association,
please visit www.usombudsman.org
At the 2001 annual United States Ombudsman Association (USOA) conference, the creation of standards for the establishment and functioning of an Ombudsman office emerged as a top priority for the membership. USOA representatives had worked on a steering committee of the American Bar Association (ABA) to create what the ABA adopted in August 2001 as Standards for the Establishment and Operation of Ombuds Offices. The 2001 ABA standards modify and expand on the ABA's 1969 Resolution (as amended in 1971) regarding the essential characteristics of an Ombudsman. However, the USOA did not support the ABA standards in their entirety. The USOA then decided to establish its own standards for Governmental Ombudsman offices.

In early 2002, the USOA Board of Directors created a three-member Standards Committee made-up of a long-time "classical" Ombudsman (Angrick), an executive Ombudsman (Adcock), and a municipal Ombudsman located in the city auditor's office (Chiao). The committee was charged with developing standards which could be used as a means to educate and provide advice or guidance to legislators, state officials and the public about the roles and core principles of Governmental Ombudsman offices.

After initial conference calls and a review of relevant materials including "Essential Characteristics of a Classical Ombudsman" by Dean M. Gottehrer and Michael Hostina, the USOA's Model Ombudsman Act, and the General Accounting Office's Government Auditing Standards "Yellow Book," the committee convened in July 2002 in Des Moines, Iowa for two days. The committee balanced the goal of providing a standard measure of what a Governmental Ombudsman should be with practical ideas that would be useful to individuals in offices that are not general jurisdiction in scope or established in the legislative branch.

The result was a first draft of the Standards, submitted to the USOA Board in August and to the USOA membership in October 2002 at the association's annual conference. Participants at the conference and other members made helpful suggestions that were incorporated into a second draft. We also received a comment that Ombudsman offices in government agencies that address solely internal matters along the lines of an Organizational Ombuds model were not included under what we labeled a "Governmental Ombudsman." Footnote 2 was added to the final draft to address this concern.

The second draft of the Standards was presented to the USOA Board and membership at the 2003 annual conference. After incorporating minor changes to the draft presented at the conference, the USOA Board approved the Standards in the present form. We expect that this document may be used as a starting point for other projects, such as a "best practices" manual or a handbook for establishing a Governmental Ombudsman office. We hope that these Standards will be useful to individuals and organizational entities interested in how a Governmental Ombudsman can serve the public and improve administrative efficiency and fairness.
United States Ombudsman Association
Governmental Ombudsman Standards

I. PREAMBLE

The title "Ombudsman" has gained popularity in both the public and private sectors to describe various types of problem-solvers.¹ The United States Ombudsman Association (USOA) promotes a model that defines a Governmental Ombudsman (hereinafter Ombudsman) as:

an independent, impartial public official with authority and responsibility to receive, investigate or informally address complaints about government actions, and, when appropriate, make findings and recommendations, and publish reports.²

The standards in this document, which has been produced by the USOA, lay out basic principles, guidelines, and best practices for Ombudsman offices. Existing Ombudsman offices can evaluate how they conform to these guidelines with the goal of working towards the best practices described below. Government policy makers may use them to establish new Ombudsman offices. The general public can use this document to understand more fully the role of the Ombudsman.

These standards are divided into the following four categories: Independence, Impartiality, Confidentiality, and Credible Review Process.

A. Independence

The Ombudsman’s office, in structure, function and appearance, should be free from outside control or influence. This standard enables the Ombudsman to function as an impartial and critical entity that reports findings and makes recommendations based solely on a review of facts and law, in the light of reason and fairness.

B. Impartiality

The Ombudsman should receive and review each complaint in an objective and fair manner, free from bias, and treat all parties without favor or prejudice. This standard instills confidence in the public and agencies that complaints will receive a fair review, and encourages all parties to accept the Ombudsman’s findings and recommendations.

¹ Ombudsman is a gender-neutral term, used throughout the world by women and men who hold the office. However, some prefer the terms Ombuds or Ombudsperson.

² There are a number of Ombudsman offices, primarily in federal agencies and public universities, that address solely internal matters along the lines of an "Organizational Ombuds" model, and although governmental, may not see themselves as being included in this definition.
C. Confidentiality

The Ombudsman should have the privilege and discretion to keep confidential or release any information related to a complaint or investigation. This standard balances the need to protect sensitive information so that a complainant can come forward, and witnesses and subjects can speak openly, with the need to disclose information as a part of an investigation or public report.

D. Credible Review Process

The Ombudsman should perform his or her responsibilities in a manner that engenders respect and confidence and be accessible to all potential complainants. This standard is necessary for the work of the Ombudsman to have value and to be accepted by all parties to a complaint.

II. STANDARDS

A. Independence

Independence is a core defining principle of an effective and credible Ombudsman. The Ombudsman should be independent to the greatest degree practicable. Authoritativeness and permanency are two criteria by which to measure this standard.

The following are indicators of independence, the absence of any one of which may create functional problems:

1. The Ombudsman’s authority should be established by law.
   a) Establishment of the Ombudsman in an organic legal document such as a constitution or a charter provides the ultimate stature and protection. Creation by legislation through statute or ordinance gives the ombudsman a sturdy, enduring existence.
   b) A legislative resolution would indicate a lesser degree of authority and permanence.
   c) Creation by administrative fiat such as an executive order, administrative rule, or formal policy contains potential temporal limitations subject to changes in the mandating authority’s term or whim.
   d) When established to the greatest degree practicable, the existence, authority, and power of the Ombudsman are less apt to be challenged, compromised, or diminished.

2. The Ombudsman should be appointed by an entity not subject to the Ombudsman’s jurisdiction and which does not have operational or administrative authority over the program(s) or agency(ies) that are subject to the Ombudsman’s jurisdiction.
   a) Appointment by a legislative body is the preferred means to ensure independence.
   b) An Ombudsman who is appointed by an executive should seek operational and administrative independence from the entity over which the Ombudsman has jurisdiction.
   c) The less independent Ombudsman will be suspect as unable to conduct a thorough and critical investigation by various clients from the outset; and vulnerable to retaliation or lasting animosity if aggressive inquiry is, indeed, carried out.
3. Prior to expiration of term, the Ombudsman may be removed from office for cause only.
   a) Appointment of the Ombudsman for a defined term of office helps to insure the
      Ombudsman's ability to conduct investigations and make reports without external
      pressure, internal hesitancy, or timidity.
   b) A fixed-term with the potential for reappointment allows an appointing authority to
      reappoint an effective Ombudsman and replace an ineffective Ombudsman.
   c) Removal from office in retribution for carrying out an unpopular investigation or making a
      candid and critical report is often a real or indirect threat to the Ombudsman's
      independence. Accordingly, both the appointment and removal of the Ombudsman
      should be defined, transparent, and for cause. These indicators reduce the
      Ombudsman's vulnerability to retaliatory or political retribution.

4. The Ombudsman should be afforded sufficient compensation, status, budget, resources,
   and staff.
   a) Affording the Ombudsman sufficient compensation, status, budget, resources, and staff
      gives indication that the office has meaning and importance.
   b) Best practices may link the Ombudsman's compensation to that of other high level public
      positions such as senior judges.
   c) Ideally, the Ombudsman's budget and resources should be sufficient to perform the
      duties prescribed by the establishing authority. Best practice would limit any reduction
      in resources to only general reductions and limitations when the legislative branch or
      chief executive self impose across-the-board limitations on themselves.
   d) When the Ombudsman is not afforded appropriate status and compensation, the
      position may only attract and be filled by less experienced individuals who may not be as
      effective in carrying out the Ombudsman's duties. When the Ombudsman's budget,
      resources, and staff are insufficient to allow the office to meet its responsibilities, the
      office cannot operate in accordance with best practice.

5. The Ombudsman should retain sole authority to select, direct, and discharge staff.
   a) Having the sole authority to select, direct, and discharge staff enhances the
      Ombudsman's independence. Restrictions or expectations placed upon staff hiring,
      assignment, evaluation, discipline, and termination could interfere with the
      Ombudsman's ability to conduct thorough, impartial, and critical investigations.
   b) While it is preferable that the Ombudsman enjoy the general legislative prerogative of
      "employment at will", it is essential the Ombudsman not be required to hire the favorite of
      another governmental official, ignore performance shortcomings of a partisan protected
      staff member, or share supervisory responsibility with someone outside the office.
   c) Some Ombudsman offices allow for employees to belong to unions or protect them
      under civil service or merit employment provisions, but even these protections could
      inhibit the Ombudsman's performance and duties if they inappropriately interfere with
      what an Ombudsman investigates and the findings and conclusions the Ombudsman
      makes.
   d) The Ombudsman should have access to independent legal advice, either in-house or on
      a contract basis. It would compromise the Ombudsman's independence to be forced to
      rely on the attorneys representing the governmental entity in the event of a legal
      controversy.
e) The Ombudsman should be empowered to contract with outside experts, such as physicians, when useful or necessary to conduct a thorough investigation.

6. The Ombudsman should have discretion to accept or reject matters for investigation, including the ability to initiate on the Ombudsman's own motion, subject only to the legally defined limits of jurisdiction.
   a) Legislated policy parameters can give guidance to the Ombudsman in applying this discretion.
   b) However, the specific indicators should be general and flexible in nature so that the Ombudsman has freedom to select, prioritize, and emphasize the complaints accepted and investigations undertaken.

7. The Ombudsman should have discretion to prescribe how complaints are to be made, received, and acted upon, including the scope and manner of investigations.
   a) Independence is enhanced when the Ombudsman has discretion to prescribe how complaints are to be made, received, and acted upon, including the scope and manner of investigations.
   b) The Ombudsman should not have to receive complaints through an intermediary.

8. The Ombudsman should have discretion to determine which conclusions and recommendations are reached, and freedom to determine what to publish.
   a) Inhibiting the Ombudsman by requiring a structured review procedure before speaking weakens the credibility and integrity of the office in both fact and appearance.
   b) The Ombudsman should not be required to submit proposed findings, conclusions, recommendations, and reports to an editorial or review entity, including the appointing authority, which would weaken the force of them. Requiring the Ombudsman to inform a subject agency or official being criticized of his or her findings or expecting the Ombudsman to consult with the subject of a recommendation for comments on accuracy before public release is not the kind of practice being cautioned against. Those are fair and equitable process issues that when properly followed do not detract from the performance of the Ombudsman.
   c) The Ombudsman's office should be physically and organizationally separated from those entities subject to an Ombudsman's jurisdiction.
   d) Space should not be shared because to do so compromises the confidentiality of complainants and witnesses coming into the office. It also diminishes the protection afforded to the Ombudsman's files, and may reduce the confidence complainants, witnesses, and other stakeholders have in the ability of the Ombudsman to fulfill the duties and responsibilities of the office.
   e) Similarly, the Ombudsman's communications and record keeping should be separate from and independent of those services under the Ombudsman's jurisdiction. When absolute independence cannot be achieved, sufficient separation, insulation, or firewalls should be sought and fundamental elements such as locking file cabinets, password protected email systems, keyed doors to enclosed offices, internally controlled surveillance systems, and confidentiality agreements with service providers, vendors and consultants should be ensured.
9. The Ombudsman should be immune from discovery and prosecution for claims arising out of the lawful performance of duty.
   a) This principle, its indicators and best practices are based upon the concept that the Ombudsman represents an alternative to the formal administrative and legal procedures for resolving complaints. It is coupled with the limiting expectation that the Ombudsman should not be able to overturn or modify an action of a subject agency or officer.
   b) Indicators of best practice include statutory based protections and immunities recognized in court and the legal community.
   c) To a much lesser extent, administrative policy and practice may attempt to approximate this ideal protection.
   d) Without this principle and effective indicators of best practice, the Ombudsman cannot effectively and responsibly offer and maintain the core principle of confidentiality.

10. The findings and recommendations of the Ombudsman are not appealable to any other authority.
   a) If the Ombudsman's findings and recommendations can be appealed to another authority, then the Ombudsman's role is reduced to just another step in a series of administrative procedures.
   b) This ideal principle sets the Ombudsman apart from routine administrative process and supports the Ombudsman's role as an impartial critic and opinion giver.
   c) Because the Ombudsman ideally does not affect substantive rights and should not be able to impose binding decisions, the Ombudsman's findings and recommendations should stand alone and not be subject to modification or alteration upon appeal to some other body or authority.
   d) The best practice is for this protection to be stated in the establishing document, ideally constitution, charter, or legislation.
   e) Lesser indicators would find the protection in policy or commonly accepted practice.

B. Impartiality

Impartiality is at the heart of the Ombudsman concept. Both the complainant and the agency are able to place confidence in the Ombudsman knowing that the Ombudsman has no vested interest in the outcome of a complaint investigation. If the Ombudsman is not perceived to be impartial by the complainant, the complainant will not seek the Ombudsman's assistance. If the Ombudsman is not perceived to be impartial by the agency, the agency will be resistant to the investigation and unlikely to accept the Ombudsman's criticism and recommendations. It is not sufficient for the Ombudsman to avoid actual conflict of interest but also to avoid the appearance of such a conflict to instill the utmost confidence. Members of staff acting under delegated power should also be subject to the same high standards.

The following are indicators of impartiality, the absence of any one of which may create problems of credibility and effectiveness:

1. The Ombudsman refrains from partisan and political activities, and employment and business relationships and transactions that may create a conflict of interest, or may create the appearance of a conflict of interest.
a) The Ombudsman as citizen may, of course, exercise his or her right to vote in partisan elections. However, because the Ombudsman works within a political environment, it is essential not to be perceived as favoring one political person or group over another. This limits the ability of the Ombudsman to speak publicly in favor of or against any candidate for elective or appointive office, make or solicit contributions to political candidates or parties, put partisan signs on vehicles or in yards, or other similar political activities.

b) It is equally important that the Ombudsman not enter into any business or employment relationship that might, rightly or wrongly, cause others to question the Ombudsman's ability to be impartial and fair.

2. The Ombudsman holds no other public office that has the potential of creating a conflict of interest or the appearance of a conflict of interest.

a) It may be possible for the Ombudsman to hold a non-partisan public office. But, great care must be taken to assure that there is no potential for a conflict of interest.

b) The Ombudsman must not seek or accept a public office over which the Ombudsman has jurisdiction, or an office that may have a contractual or other relationship with an agency or agencies over which the Ombudsman has jurisdiction.

3. The Ombudsman absents himself or herself from involvement in complaints where a conflict of interest or the appearance of a conflict of interest may exist.

a) If the Ombudsman does receive a complaint with which there is a potential for a conflict of interest or the appearance of a conflict of interest, the Ombudsman must remove himself or herself completely from that complaint and turn it over to a staff member or other party for appropriate action.

b) It must be understood that the Ombudsman will not interfere in any investigation or the production or publication of recommendations.

4. The Ombudsman does not allow personal views regarding the subject matter or the parties involved to affect decisions as to what complaints to accept or how they are investigated.

a) It would be unrealistic to think that an Ombudsman would never have personal values and opinions that may relate to the subject of a complaint. It is imperative, however, that the Ombudsman be able to set aside his or her personal views and approach the complaint in an impartial, unbiased manner.

b) It is important that the Ombudsman be aware of his or her personal views and guard against letting those views influence whether or not a complaint will be accepted and how it will be treated.

5. The Ombudsman is not predisposed as an advocate for the complainant nor an apologist for the government, however the Ombudsman may, based on investigation, support the government's actions or advocate for the recommended changes.

a) The Ombudsman has no client. The Ombudsman is not the complainant's representative, and is not the protector of the public agency.

b) The Ombudsman's primary interest is in assuring that laws, rules, and policies are adhered to, and that the outcome is fair.
c) While the Ombudsman may advocate changes that benefit a complainant, it is the objective of the Ombudsman to improve government performance.

C. Confidentiality

Confidentiality is an Ombudsman's tool. It may be offered, at the Ombudsman's discretion, to complainants, agency employees, and witnesses when such an offer is necessary to elicit needed information or to protect the source of needed information. The Ombudsman must take care, however, that more is not offered than can be delivered. Each Ombudsman must carefully review the legislation establishing his or her office to determine what, if any, confidentiality protections are afforded. These may vary greatly from jurisdiction to jurisdiction. An Ombudsman located in the legislative branch may have more protections than one located in the executive branch. An Ombudsman established by law may have more protections than one established by executive order. An Ombudsman created by state law or local ordinance also needs to determine if the protections the Ombudsman has within his or her political jurisdiction would be honored or sustained by federal courts.

The following are indicators of the appropriate use of the Ombudsman's discretion:

1. The Ombudsman should not reveal information when confidentiality has been promised.
   a) In most situations, it should be the Ombudsman who determines whether or not confidentiality will be offered to a complainant, agency employee, or witness.
   b) The Ombudsman may choose not to raise the issue, but if the Ombudsman, the complainant, or a party from whom information is being sought raises the issue, the Ombudsman has a responsibility to advise that person as to any limitations to confidentiality that may apply.
   c) Once confidentiality has been promised, and its known limits explained, the Ombudsman must honor the promise within those limits.

2. The Ombudsman should not release information where confidentiality is required by law, or where unnecessary harm would result.
   a) During the course of an investigation, the Ombudsman may come into possession of information that federal and/or state law prohibits being made public.
   b) The Ombudsman must treat information with the same degree of confidentiality as would be legally required of the agency being investigated.
   c) Further, if the Ombudsman has reason to believe that release of information, though legal, would result in unnecessary harm to one or more persons, the Ombudsman should protect that information and/or its source.

3. The Ombudsman should not be compelled to testify or to release records.
   a) In the establishment of the Ombudsman’s office, the Ombudsman should seek statutory protection from being compelled to testify in a legal or administrative proceeding, or from having to release information gathered during the course of an investigation.
   b) A promise of confidentiality would be of limited value if the Ombudsman could be required to testify in a proceeding or to release information as a part of a discovery process.
c) The inability of the Ombudsman to maintain control over the information gathered during an investigation may well have the effect of discouraging cooperation and openness on the part of complainants, agency employees, and/or witnesses.

D. Credible Review Process

The concept of a credible review process encompasses the authority granted to the Ombudsman and the Ombudsman's responsibilities towards the complainant, the subject of a complaint, the appointing entity, and the public. If the process the Ombudsman uses to investigate complaints is flawed, the resulting recommendations are more likely to be ignored.

The following are powers and responsibilities inherent in a credible review process:

1. The Ombudsman should be qualified to analyze issues and matters of law, administration, and policy.
   a) Describing what qualities are necessary for an Ombudsman is difficult because there are many intangible factors that go into making an Ombudsman a person whose judgment and recommendations will be respected.
   b) In addition to being independent and impartial, the basic qualification for an Ombudsman is an ability to analyze issues and matters of law, administration, and policy.
   c) In some positions, expertise, knowledge, or experience in a particular subject matter may be useful. This would be more true for a limited jurisdiction office set up to monitor an area like corrections, for example, than for someone who investigates complaints about a wide array of government activities.
   d) Where there are reasons for specialized qualifications, they should be detailed in the authorizing law.
   e) Where the Ombudsman also functions as the manager of others, he or she should also possess adequate managerial skills—the ability to hire and supervise qualified staff.

2. The Ombudsman should have the discretion to act informally to resolve a complaint.
   a) Conducting investigations is the primary function of an Ombudsman, but not all inquiries and complaints are appropriate for formal investigation.
   b) Other options include providing information and referrals, expediting individual matters, coaching people to take action on their own behalf, mediating, or providing other assistance.
   c) The choice of the right approach to use should remain with the Ombudsman.
   d) The number of cases formally investigated is usually a small proportion of the number of contacts. Not all complaints require full investigation to resolve and most likely, there are not enough resources to investigate every complaint. However, if most members of the public are turned away without any assistance, confidence in the value of bringing a matter to the Ombudsman will be lost.

3. The Ombudsman should have the authority to delegate power to a deputy or acting Ombudsman.
   a) The powers and duties of the Ombudsman should be delegable during periods when the Ombudsman is unavailable.
b) The only powers not delegable should be the power to delegate and the reporting responsibilities.

c) This authority to delegate and its limits serves to maintain confidence that someone will always be there to fill the role of Ombudsman and that the Ombudsman still remains ultimately responsible for the office and the reports that are issued.

4. The Ombudsman provides for sufficient access for any person to make a complaint known to the Ombudsman directly without a fee.

   a) An Ombudsman is of little value if not visible and readily accessible.
   b) The Ombudsman is responsible for making public the existence and role of the Ombudsman.
   c) The Ombudsman must assure that complainants have direct and timely access to the Ombudsman and that there be no barriers, such as fees, that may discourage a complainant from making their complaint known.
   d) The Ombudsman should make provisions to accept complaints from those with access difficulties, for example those with disabilities or for whom English is not their first language.

5. The Ombudsman’s jurisdiction should be clearly defined and the Ombudsman should not act outside of that jurisdiction.

   a) The government agency or agencies whose acts are subject to review by the Ombudsman should be described in the authorizing statute (or other document).
   b) Limits on the Ombudsman’s jurisdiction should be made clear to the public.
   c) Legislation or regulations to create an Ombudsman to provide services in a more limited area should also clearly define the entities and individuals covered in the Ombudsman’s jurisdiction and exceptions that apply in the particular situation.
   d) An Ombudsman should not have jurisdiction over those officials who have supervisory or funding authority over the Ombudsman.
   e) Once established, an Ombudsman should not act outside jurisdictional limits.

6. The grounds for Ombudsman review should be stated broadly.

   a) An Ombudsman’s review of administrative acts should not be limited narrowly to whether or not the act was legal or consistent with policy.
   b) The standard list of appropriate subjects of review includes administrative acts which fall into the following categories: contrary to law or regulation, based on mistaken facts or irrelevant considerations, unsupported by an adequate statement of reasons, performed in an inefficient manner, unreasonable, unfair, or otherwise erroneous even though in accordance with law.
   c) The Ombudsman should be granted authority to review an administrative act from the broadest perspective with the goal of improving government.
   d) An Ombudsman should be empowered to act in pending matters, as well as after a final action has been taken by an administrative agency, provided the Ombudsman is not asked to act in anticipation of an action on an assumption that it will be wrong.
e) The Ombudsman should be empowered to investigate complaints from any sources and to initiate an investigation into a matter when there has not been a complaint from the public.

f) The Ombudsman should retain discretion over which complaints to accept or deny within the Ombudsman's jurisdiction.

7. The Ombudsman should have sufficient powers to conduct thorough investigations.
   a) Government entities and individual government employees that are the subjects of complaints may be resistant to cooperating in investigations. Therefore, the Ombudsman's authority to investigate must be clearly established.

b) Agency staff should be required to cooperate with the Ombudsman during the conduct of an investigation. The power to issue subpoenas and to take sworn testimony makes enforcement of such a requirement possible.

c) Supervisors should not interfere with an Ombudsman's ability to talk directly to staff.

d) An Ombudsman can allow a union representative to be present during an interview when an employee requests. But information obtained at such an interview should come from the employee directly.

e) The authority to examine government premises, documents and files, including electronic records, is crucial to the Ombudsman's role as an investigator.

f) The Ombudsman should be authorized to enter agency premises and inspect without notice.

g) The Ombudsman should have unlimited access to records and proceedings held by jurisdictional agencies, including records that are considered confidential or not otherwise open to the public.

8. The Ombudsman should have the authority and responsibility to publish findings, recommendations, and reports.

   a) It can be seen as a duty of the Ombudsman to make the public aware of investigation results to promote accountability.

b) If the results of an investigation and an Ombudsman's recommendations cannot be publicized, the function of the Ombudsman as a watchdog for the public interest is frustrated.

c) Identifying information of complainants and witnesses can be changed to protect confidentiality.

9. The subjects of the Ombudsman's reports should be consulted and afforded the opportunity to respond to the report prior to its being published.

   a) Prior to issuing a public report, the Ombudsman should give the agency and any of its officers or employees about whom the report is critical an opportunity to respond to the findings and recommendations.

   b) It should be made clear that no one is authorized to release or publicize the Ombudsman's preliminary recommendations that have been shared for this purpose on a confidential draft basis.
c) Once the Ombudsman has reviewed the agency's response, it is for the Ombudsman to release the final version.

d) The Ombudsman is sometimes specifically given the responsibility to publish the agency's response along with the Ombudsman's report.

10. The process for how complaints are to be made, received, and acted upon, including the scope and manner of investigations, should be defined and transparent.

- a) The process by which the Ombudsman accepts and acts upon complaints should be clearly defined for the public and the investigated agencies.

- b) If there are specific requirements for the form complaints must be in to be accepted, or other intake rules, they should be made clear.

- c) Guidelines for how the Ombudsman will proceed with investigations or dismiss complaints should be available to interested parties.

- d) Clearly stated standard procedures let parties know what to expect from an Ombudsman's review and establish benchmarks to evaluate whether the office operates as it is intended.

11. The Ombudsman should state the reason a complaint is not accepted for investigation.

- a) The Ombudsman should provide an explanation to a complainant when a case is not accepted for investigation.

- b) Examples of the reasons why cases are not accepted can include the following: the case is outside the Ombudsman's jurisdiction, the complainant has other available remedies, the complaint is made in bad faith or is vexatious, the complaint is trivial, the complainant will not provide information necessary to conduct an investigation, the office lacks sufficient resources, or the issue has been previously investigated.

12. The Ombudsman should keep both complainants and subjects apprised of the status of the investigation.

- a) Status updates should include information about whether a case will be accepted for investigation and the progress of the review.

- b) The Ombudsman should advise the complainant and subject regarding the closing of any complaint and the reasons therefore if the complaint does not result in a published report.

- c) Since many complaints to an Ombudsman will have to do with communication breakdowns between the government and members of the public, the Ombudsman should adhere to and model good communication.

13. The Ombudsman should complete investigations in a timely manner.

- a) Timely completion of investigations is important to the credibility of an Ombudsman's office.

- b) Although an Ombudsman's investigation generally occurs after an administrative decision has been made, at the end of a process, the recommendations may lose their value if there is too long a delay.

- c) Since the Ombudsman seeks to uphold standards of government efficiency, the office should be efficient itself.
14. The Ombudsman should, at least annually, report generally on the activities of the office to the Ombudsman’s appointing authority, other policy makers, and the public.

a) There should be an obligation to inform the appointing authority and the public of the activities of the Ombudsman.

b) Most offices issue a report annually that describes the work of the previous year: the number of inquiries, the number of cases resolved informally, cases investigated and investigations pending, recommendations made, and whether or not they were followed.

15. The Ombudsman should, in practice and appearance, uphold the highest standards of public service.

a) As an advocate for good government, the Ombudsman must exemplify the standards used to measure the government agencies under his or her jurisdiction.

b) Complainants will come forward with complaints and suggestions and agencies will follow recommendations when they see that the Ombudsman can be trusted to behave appropriately.
MODEL OMBUDSMAN ACT
FOR STATE GOVERNMENTS

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United States Ombudsman Association
Model Ombudsman Act for State Governments
February 1997

Drafted by
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Approved on February 11, 1997 by the
United States Ombudsman Association's Board of Directors

Editor's Note:
The February 1997 document was reformatted in April 2004.
No substantive changes were made to the language of the original document.

For more information on the United States Ombudsman Association,
please visit www.usombudsman.org
PREFATORY NOTE

In the Fall of 1994, the board of directors of the United States Ombudsman Association authorized the preparation of an updated model ombudsman act appropriate for state government. There had been renewed interest in the ombudsman concept in a number of states and one, Arizona, was on the verge of enacting an ombudsman bill. It was felt that an updated model act would be a useful document for those states interested in establishing an ombudsman office as well as a useful tool to promote the classical ombudsman institution in other states. Ruth Coopemider, legal counsel in the Iowa ombudsman's office, was asked to chair a committee to draft the model act. She was assisted in this endeavor by Marshall Lux, the Nebraska ombudsman, Mike Hostina, former deputy ombudsman from Alaska, and Yen Lew and Norrie Thompson, the Hawaii ombudsman and first assistant. The accompanying document is the result of our work.

While this model act was designed for use at the state government level, it can also be adapted for local government. Those so interested may contact the USOA for assistance.

In drafting the act, the committee decided to use as our basic reference the American Bar Association model which was completed under the leadership of Bernard Frank in 1974. The ABA model itself was based on earlier models, notably the Gellhorn model and the Harvard model. Thus, we are building on the foundations prepared for us by these worthy predecessors.

The ABA model was (and is) an excellent document, well thought-out, comprehensive in scope and meticulously annotated by Mr. Frank in his law review article presentation. We left it essentially intact, limiting our revisions to the following areas:

1. Updating and clarifying the language and making it gender neutral;
2. Amending those provisions which over the course of more than two decades of practical experience were found to lead to administrative difficulties or were otherwise problematic; and
3. Adding new provisions to accommodate recent changes in technology and public administration.

While the ABA model was our basic reference, we also reviewed the Gellhorn and Harvard models for additional clarification on certain points. The recently enacted Arizona statute was consulted to help us understand current legislative thinking about the ombudsman institution. Being either current or former ombudsman practitioners, we were also able to contribute insights from our experiences with our own respective statutes in Alaska, Hawaii, Iowa and Nebraska. This practical experience gave us an advantage over our predecessors whose frame of reference was more theoretical in nature.

Working drafts of the bill were presented at the October, 1995 USOA annual conference in Plymouth, Minnesota and the First North American Conference of ombudsman organizations held in May, 1996 in St. Louis, Missouri. After each conference, comments on the drafts were solicited from conference delegates and the members of the USOA board. Noted ombudsman scholars were also invited to comment.
We received in return a number of very useful comments and suggestions from all these sources, including scholars such as Gerald C. Caiden, Bernard Frank and Donald C. Rowat. Our thanks to all of them. In particular, we would be remiss if we did not acknowledge Mr. Frank’s careful review of our draft and his detailed commentary. Mr. Frank, the chair of the ABA ombudsman committee which had issued the ABA model act in 1974, further stated it was appropriate, timely, and logical for the USOA to review and update the ABA model and issue a new USOA model to supersede the ABA model. We are grateful for his endorsement.

In considering the comments and suggestions we received, we undertook a section-by-section review of the draft model act. While that process took an additional six months, it is our feeling that the model act was significantly strengthened as a result. Obviously not all suggestions were accepted. In many cases, this was because the suggestion was at variance with the approach taken in another part of the act. Or, the suggestion raised an issue that we had already considered and resolved among ourselves. This final draft represents a document that is acceptable to all members of the committee, where individual differences and preferences were subsumed in a spirit of consensus and where suggestions from other individuals were incorporated as deemed appropriate.

While we believe that the model act as here presented is suitable for all states, we recognize that political circumstances in a given state may mean that some variations may be more appropriate. This model act is not cast in stone. Those who may be interested in possible alternatives to any of the provisions of this model act are invited to contact the USOA.

Although this is a model act for state governments, the USOA believes the ombudsman institution is applicable at all levels of government and encourages its wider establishment. The state ombudsman office created by this model act is not intended to preempt the establishment of any new local ombudsman office. Any local ombudsman office - whether at the county, municipal, township or other level - whose enabling document meets the standards of independence, fairness, confidentiality, and integrity of the review process which characterize a classical ombudsman, should have statutory immunity similar to that granted to the state ombudsman under this model act. Such immunity is necessary to enable local ombudsmen to have confidential communications with complainants and witnesses and to make findings without fear of interference or retaliation through legal proceedings. The USOA will assist any state legislature considering the enactment of such local ombudsman immunity.

This model act is intended to provide for the establishment of an ombudsman who is able to operate effectively in the context of contemporary state government in this, the final years of the twentieth century. The USOA recognizes that future revisions may be necessary to keep this document up-to-date in light of ongoing changes in the law, in standards of government and public administration and in technology. The USOA welcomes suggestions for future consideration.
United States Ombudsman Association
Model Ombudsman Act for State Governments

An Act to establish the office of Ombudsman in ________________________.

COMMENT:
Enactment clause would be in an appropriate form for the state.

Section 1. Legislative Purpose
It is the intent of the legislature to establish, in addition to other remedies or rights of appeal of any person under state law, an independent, impartial, state office, readily available to the public, responsible to the legislature, empowered to investigate the acts of state [(Alternate) and local] administrative agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the administration of state [(Alternate) and local] laws.

COMMENT:
This section provides a concise description of the characteristics of the office and its goals.

If jurisdiction over political subdivisions of the state is included, the phrase “and local” should be included. It must be determined whether the inclusion of the phrase “and local” will be interpreted as pre-empting state jurisdiction over both state and local agencies and preventing local governmental units from establishing their own Ombudsmen.

Section 2. Short Title
This Act may be cited as “The (name of state) Ombudsman Act.”

COMMENT:
The title “Ombudsman” is distinctive from the more usual official titles such as “director” and “commissioner” and has gained recognition in the United States and other countries. The existing state statutes do not all use the title: Hawaii - "Ombudsman"; Nebraska - "Public Counsel"; Iowa - "Citizens' Aide"; Alaska - "Ombudsman"; Arizona - "Ombudsman-Citizens' Aide." But it should be noted the term "Ombudsman" is used in these states by the public, the media, and even by the incumbents, who found other titles could be confused with other offices and concepts.

The term "Ombudsman" should be used only when the legislation provides for an independent official who receives complaints against government agencies and who, after investigation, may, if the complaints are justified, make recommendations to remedy the complaints.

If a term other than "Ombudsman" is selected, appropriate changes must be made throughout this Act.
Section 3. Definitions
As used in this Act,

(a) "Agency" means any department, organization, board, commission, council, bureau, administrative tribunal, facility, institution or other governmental entity of (name of state),

[[Alternate] any person who is providing services to individuals under contract with (name of state) and as a term of that contract is subject to the Ombudsman's jurisdiction], and any official, officer, administrative hearing examiner, employee or member of (name of state), whether elected or appointed, acting or purporting to act by reason of connection with (name of state), except:

1. any judge;

2. the legislature, its members, its committees and its employees;

3. the governor and the governor’s personal staff;

4. any political subdivision of the state;

5. any multi-state governmental entity.

(b) "Administrative act" means any action, decision, adjudication, failure to act, omission, rule or regulation, interpretation, recommendation, policy, practice or procedure of any agency.

(c) "Person" means any individual, aggregate of individuals, corporation, partnership, or unincorporated association.

(d) "Record" means all records, documents, books, papers, files, photographs, microfilms, sound recordings, video recordings, magnetic storage media, computer data and all other materials, regardless of physical form or characteristics, created, generated, recorded, received, possessed or controlled by or on behalf of any agency.

COMMENT:
(a) Rather than specifying by name those agencies under the Ombudsman's jurisdiction, the Act permits jurisdiction over all state-related governmental operations and personnel (in pursuance of public function) with certain limited exceptions which should be minimized. An alternative clause has been added to provide that the Ombudsman's jurisdiction would include businesses, corporations, persons, etc., under contract to provide services to individuals on behalf of the state. With the increasing popularity of "privatizing" government services, policy-makers may feel the need to bring these "private" bureaucracies under the Ombudsman's jurisdiction, in order to insure that the public receives the same level of protection afforded when the services are provided directly by state agencies. If this alternative is adopted, then it would also be necessary to add to the state's statutes relating to procurement a provision to require all agencies entering into a contract for the "privatization" of governmental services to include in that contract a clause obligating the private service provider to submit to the Ombudsman's jurisdiction. By making cooperation with the Ombudsman a condition of the contract, the private contractors will understand from the outset their responsibilities to the Ombudsman and will accept that arrangement as a part of the agreement with the state.

(a)(1) The exclusion of judges is based upon the existence of the long established system of appellate review of judicial decisions and upon the existence of other mechanisms for the sanctioning and/or the removal of judges who act unethically or who are incapacitated. The exclusion is narrow and contemplates that the Ombudsman
would have jurisdiction to investigate administrative or ministerial acts by employees of
the judicial branch, when those acts are peripheral to the adjudication itself. In many
instances, administrative errors affecting a particular adjudication would have to be
challenged and resolved through the established judicial process, but even in those
cases, the Ombudsman could make recommendations for improving administrative
procedures that would have a prospective effect. The Ombudsman would not, of
course, have the jurisdiction to question, criticize or review the substantive content of
any judicial order, decision or opinion. The exclusion of judges would pertain only to
judicial officers of the judicial branch of government and would not exclude
administrative tribunals or administrative law "judges" from the Ombudsman's
jurisdiction.

(a)(2) The Legislature—an independent policy making body, whose actions are
conspicuous and subject to public scrutiny, and whose tenure is subject to periodic
popular review—is excluded. Committees and staff members who assist in policy
formation are, likewise, excluded. Although there may be legislative employees,
agencies, bureaus or divisions that provide direct services to the public, those
employees and entities are also excluded from the Ombudsman's jurisdiction, because
of concerns that the Ombudsman's close relationship with the legislative branch would
compromise the independence of the office in dealing with cases involving those
employees, agencies, etc. If it is determined that it is desirable to include these
legislative service agencies within the Ombudsman's jurisdiction, then as an alternative
the exclusion might read, "(2) the members and committees of the legislature and their
immediate staff."

(a)(3) Elected state officials (e.g., Lt. Governor, Treasurer) who deserve exclusion for the
same reasons as (a)(2) above, may be added to (a)(3) but they must be distinguished
from other elected state officials who should be included and who are less immediately
involved in policy-making and are engaged chiefly in administrative matters
indistinguishable from those performed by non-elected officials generally. Thus,
appropriate officials to be excluded may vary from state to state. Alternatively, this
exclusion might read, "(3) elected constitutional officials and their personal staff;"

(a)(4) Alternate A: Where local jurisdiction is not included, (a)(4) should read, "[(4) any
political subdivision of the state]."

(a)(4) Alternate B: If jurisdiction over a political subdivision is included, Alternate B
should be used to give an exclusion parallel to that for state officials: "[(4) mayors,
council members, judges, and other elected officials of political subdivisions and their
personal staff]." A saving clause for existing municipal Ombudsman offices may be
added if necessary and desirable.

(a)(5) The specific exclusion of multi-state entities, such as regional transportation and
planning authorities, and implicit exclusion of federal agencies (including the local offices
thereof), are based on practical and constitutional limitations on sovereign power of the
state over such agencies.

(b) "Administrative Act" is broadly defined and includes decisions by administrative
boards or tribunals or administrative law "judges" and rule-making activities.

(c) "Person" is defined broadly.

(d) "Record" is broadly defined to make it clear that the Ombudsman is intended to have
access to all recorded information possessed or controlled by agencies, regardless of
the form or manner of storage of that information.
Section 4. Creation of Office  
The office of Ombudsman is established.

Section 5. Nomination and Appointment  
The (insert name of legislative body) shall elect the Ombudsman by a two-thirds vote of the members of each house present and voting.

COMMENT:  
The Ombudsman is an appointed officer of the legislative branch of government. This arrangement helps to guarantee the independence of the Ombudsman, who might be reluctant to criticize the actions of agencies that are responsible to the executive, if he or she were an executive appointee. As part of the legislative branch of government, the Ombudsman is not only providing a direct service to citizens, but is also performing a role in legislative oversight of the agencies under the Ombudsman's jurisdiction. Since the Ombudsman may only make recommendations, and may not compel the executive and judicial agencies to take substantive actions, the Ombudsman's role is consistent with the concept of separation of powers.

Section 6. Qualifications  
(a) The Ombudsman shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems of law, administration, and public policy.

(b) No person while serving as Ombudsman:

   (1) shall be actively involved in political party activities or publicly endorse, solicit funds for or make contributions to political parties or candidates for elective office;

   (2) shall be a candidate for or hold any other elective or appointive public office;

   (3) shall engage in any other occupation, business, or profession likely to detract from the full-time performance of his or her duties as Ombudsman or to result in a conflict of interest or an appearance of impropriety or partiality.

COMMENT:  
The Ombudsman should be a full-time impartial expert in whom the public can have confidence.

(a) This subsection gives the core characteristics and qualifications for an Ombudsman and hence provides more guidance than a mere listing of restrictions on the official.

(b) Paragraph (b)(1) seeks to preserve the Ombudsman's impartiality and the appearance of impartiality in the political arena. The Ombudsman retains the right to participate in the political process as a voter and to express his or her opinion privately.

Paragraph (b)(2) inhibits an Ombudsman from using the office as a political stepping-stone. To further protect the office from politicization, some states (Arizona, Hawaii, and Nebraska) provide that the Ombudsman shall not have served as a member of the Legislature for one or two years prior to his or her appointment. However, this could prevent the appointment of a highly qualified legislator.
Paragraph (b)(3) seeks to assure that the Ombudsman's work is performed on a full-time basis, and that the Ombudsman remains impartial.

Section 7. Term of Office
The Ombudsman shall serve for a term of _____ years and until his or her successor is appointed and qualified. He or she may be reappointed for additional terms.

COMMENT:
A long term is desirable: to permit the Ombudsman sufficient time to become proficient at his or her duties; to provide a measure of independence from politics; and to provide prestige and security to attract qualified persons to the position. An excessively long term (e.g., 15 years) prevents the desired periodic accountability to the Legislature. The term should not be less than five years. The same points that argue for a long term of office for the Ombudsman also support the concept that the incumbent should be eligible for reappointment at the end of his or her term.

Section 8. Removal and Vacancy
(a) The Legislature by a vote of two-thirds of the members of each house present and voting may remove the Ombudsman from office, but only for mental or physical incapacity to perform the duties of the office, or other grounds sufficient for removal of a judge from state court.

(b) If the position of Ombudsman becomes vacant for any reason, the Deputy Ombudsman shall serve as Acting Ombudsman until an Ombudsman has been appointed for a full term.

COMMENT:
(a) The Ombudsman should be secure in the position, so removal is made difficult and must be for cause. This protects the Ombudsman from groundless attacks or political threats. As an alternative, this subsection might provide that the Ombudsman could be removed from office according to state constitutional provisions for removal of judges or other public officials.

(b) In filling vacancies, full term appointment is preferable to remainder-of-term appointment as it provides the desirable longer term of office.

Section 9. Compensation
The Ombudsman shall receive the same salary and benefits as [(Alternate A) a state judge at the general trial court or higher level.] [(Alternate B) a state department head.] [(Alternate C) a legislative agency head.] The salary of the Ombudsman shall not be diminished during the Ombudsman's term of office, unless by general law applying to all salaried officers of the state.

COMMENT:
The Ombudsman is a high-level official who should receive a salary that reflects the importance, responsibility and prestige of the office. Also, a high salary is warranted if the Ombudsman is prohibited by law from engaging in any other occupation, business, or profession.

Three alternative salary proposals are offered for consideration. The first sets the salary at least equal to that of a general trial court judge. The comparison between the two offices is apt in terms of recognizing the Ombudsman's stature as well as reinforcing the
concept of the Ombudsman's independence and neutrality. The second ties the Ombudsman's salary to that of the state department heads. This also provides appropriate stature to the office and emphasizes the point that the Ombudsman deals with department heads as an equal rather than as a lower level official. The third equates the Ombudsman with other legislative agency heads. This approach may be a more familiar frame of reference to legislators and it would help assure consistency within any existing legislative branch salary system. Practically speaking, any of the three alternatives should result in fairly similar salary amounts.

Section 10. Organization of Office
(a) The Ombudsman shall select, appoint and fix the compensation of a person as Deputy Ombudsman and may select, appoint and fix the compensation of such other officers and employees as the Ombudsman may deem necessary to discharge the Ombudsman's responsibilities under this Act. Compensation shall be fixed within the amount available by appropriation. All officers and employees shall serve at the Ombudsman's pleasure.

(b) The Ombudsman may delegate to staff members any authority, power or duty except this power of delegation and the Ombudsman's duty to make any report under this Act. However, the Ombudsman may authorize the Deputy Ombudsman to act in the Ombudsman's stead in the event of illness, absence, leave or disability, or when, in the Ombudsman's sole discretion, an appearance of impropriety or partiality or a conflict of interest prevents the Ombudsman from discharging his or her duty in a particular matter.

(c) The Ombudsman and his or her staff shall be entitled to participate in any employee benefit or retirement plan available to state employees.

COMMENT:
(a) The sensitive nature of the work and the high degree of delegation to and confidence in staff that will be required dictate that the Ombudsman be free of civil service and political constraints in staff selection and retention. The Ombudsman, however, should refer to civil service salary schedules in setting comparable salaries for staff, and would naturally use state accounting facilities for payment of such [cf., section 11 U]. The appointment of a Deputy Ombudsman is compulsory while selection of other officials, including an Assistant Ombudsman or Ombudsmen, is optional.

(b) This same desire for flexibility should permit a broad delegation of powers. The Ombudsman, however, remains responsible for the organization of the office and for whatever reports leave the office [section 16] – unless the Deputy Ombudsman has assumed the Ombudsman's duties under this sub-section or when the office is vacant [section 8(b)]. The Ombudsman has complete discretion with respect to recusal for "cause" in order to avoid procedural smoke screens and because the Ombudsman can be expected to diligently maintain his or her limited authority through appropriate recusal. The Ombudsman has discretion to require, by regulation [section 11(b)] or otherwise, that a delegation be in writing or that staff members take an oath of office.

Section 11. Powers
The Ombudsman's powers and duties include but are not limited to the following:

(a) to investigate, on complaint or on the Ombudsman's own initiative, any administrative act of an agency, without regard to the finality of the administrative act;
(b) to undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings, or studies which might improve the functioning of agencies or lessen the risks that objectionable administrative acts will occur;

(c) to make such inquiries and obtain such assistance and information from any agency or person as the Ombudsman shall require for the discharge of the Ombudsman's duties. Agencies shall not restrict the Ombudsman's access to agency personnel;

(d) notwithstanding any other provision of state law, to have access to and to examine and copy, without payment of a fee, any agency records, including records which are confidential by state law. The Ombudsman shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure;

(e) to enter and inspect without prior notice the premises of any agency;

(f) to subpoena any person to appear, to give sworn testimony or to produce documentary or other evidence that is reasonably relevant to the matters under investigation;

(g) to maintain confidential any matter related to complaints and investigations, including the identities of the complainants and witnesses, except as the Ombudsman deems necessary to discharge the Ombudsman's duties;

(h) to bring suit in (name of court) to enforce the provisions of this Act;

(i) to adopt, promulgate, amend and rescind rules and regulations required for the discharge of the Ombudsman's duties, including procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations. However, the Ombudsman may not levy any fees for the submission or investigation of complaints;

(j) to prepare and administer a budget for the office of the Ombudsman;

COMMENT:
The general powers and duties of the Ombudsman are enumerated for clarity; however, this section is not an exhaustive listing of all the powers and duties delegated to the Ombudsman. Additional provisions related to staffing, delegation of powers and duties, recommendations, and reports are contained in sections 10, 15, and 16.

(a) The Ombudsman's investigatory power is limited to administrative acts of agencies [section 3(b)]. The Ombudsman may receive and consider complaints from any source. The Ombudsman can initiate an investigation when others are unwilling to come forward with a complaint or when the Ombudsman discovers a matter warranting investigation.

(b) Although most of the Ombudsman's time will be occupied with individual complaints, the Ombudsman can conduct studies of a general nature to improve agency efficiency or service to the public, either independently or jointly with other governmental bodies or non-governmental research enterprises.

(c) The Ombudsman has broad access to any type of information from an agency or person, and an agency may not restrict agency personnel from assisting or providing information to the Ombudsman. There is no requirement to conduct formal evidentiary hearings of an adversary nature, although the Ombudsman can take statements from persons under oath. If testimony is taken, it should be perceived purely as an investigatory proceeding, and the procedure need not comport with what is normally required in a formal adjudication hearing.
(d) The Ombudsman can examine and copy or obtain a copy of any agency record, including records which are confidential under state law, without the payment of any fee. However, the Ombudsman and the Ombudsman’s staff are obligated to maintain the confidentiality of any confidential records provided by an agency to the same extent as the legal custodian of the records.

(e) The Ombudsman has the power to inspect any agency without notice, as advance notice might negate the value of such a visit. Information gathered on site visits may provide subjects for investigation on the Ombudsman’s own motion.

(f) The Ombudsman can compel any person to provide testimonial, documentary, or other evidence through issuance of a subpoena. Implicitly, the Ombudsman and his or her staff are empowered to administer oaths to such witnesses. Protections and privileges for witnesses, regardless of whether or not they have been subpoenaed, are provided in section 18. If a person refuses to comply with the subpoena, the Ombudsman can seek enforcement under section 11(h).

(g) To facilitate the gathering of information, the Ombudsman has discretion to keep confidential any complaint or investigative information. The Ombudsman may disclose such information as the Ombudsman deems necessary or appropriate in carrying out the Ombudsman’s duties.

(h) The Ombudsman may bring suit regarding the exercise of his or her powers, including actions: for a declaratory judgment to obtain jurisdiction [under sections 3(a) and 11(a)]; to enter and inspect agencies [section 11(e)]; to show cause for not appearing after being subpoenaed [section 11(f)]; and to enforce confidentiality provisions [sections 13(d) and 13(e)].

(i) The Ombudsman is given broad regulatory discretion to determine the procedures for carrying out the office’s functions. The Ombudsman may through rules or regulations specify the means by which complaints may be submitted (which may include fax or electronic mail) and require for good reason that certain types of complaints be in writing. To insure accessibility (and avoid discrimination against the poor), a fee may not be imposed for the Ombudsman’s services.

(j) A provision for budgetary powers may be necessary in some states and useful in others, to insure that the Ombudsman’s budget is independent of outside (agency) administration.

Section 12. Investigation of Complaints
(a) The Ombudsman shall conduct a suitable investigation of a complaint that is an appropriate subject for investigation. An appropriate subject for investigation by the Ombudsman includes any administrative act which the Ombudsman believes might be:

1. Contrary to law or regulation;
2. Based on mistaken facts or irrelevant considerations;
3. Unsupported by an adequate statement of reasons;
4. Performed in an inefficient manner;
5. Unreasonable, unfair, or otherwise objectionable, even though in accordance with law; or
(6) Otherwise erroneous.

(b) The Ombudsman in the Ombudsman's discretion may decide not to investigate because:

(1) The complainant could reasonably be expected to use another remedy or channel;
(2) The complaint is trivial, frivolous, vexatious, or not made in good faith;
(3) The complaint has been too long delayed to justify present examination;
(4) The complainant is not personally aggrieved by the subject matter of the complaint;
(5) Resources are insufficient for adequate investigation; or
(6) Other complaints are more worthy of attention.

(c) The Ombudsman's declining to investigate a complaint shall not bar the Ombudsman from proceeding on his or her own initiative to investigate an administrative act whether or not included in the complaint.

COMMENT:

(a) The Ombudsman has a duty to investigate the complaints described in subsection (a), although he or she may decline to investigate for the reasons given in subsection (b). The enumerated complaints indicate the kinds of administrative acts that generate complaints to the Ombudsman's office. As shown by paragraph (a)(6), which is a catchall, and subsection (c), the statute is intended as a guide to and not a limitation on the complaints which the Ombudsman can investigate.

(b) The Ombudsman may choose to investigate a complaint even though the statute permits him or her to refuse. For instance, under paragraph (b)(1), if the Ombudsman believes that recourse to an administrative or legal remedy would be futile or overly burdensome to the complainant, the Ombudsman may investigate the complaint. Similarly, the Ombudsman may decide to investigate a complaint of public concern even though the complainant was not personally aggrieved.

(c) Complaints which are inappropriate for investigation may nevertheless reveal administrative acts which the Ombudsman may decide to investigate on his or her own initiative [section 11(a)].

Section 13. Rights of Complainant--Communication With Complainant

(a) After the Ombudsman has decided whether or not to investigate a complaint, the Ombudsman shall suitably inform the complainant.

(b) The Ombudsman shall, if requested by the complainant, suitably report the status of his or her investigation to the complainant.

(c) After investigation of a complaint, the Ombudsman shall suitably inform the complainant of his or her conclusion or recommendation and, if appropriate, any action taken or to be taken by the agency involved.

(d) A letter to the Ombudsman from a person held in custody--including by detention, incarceration and hospitalization--by an agency shall be forwarded immediately, unopened, to the Ombudsman. A letter from the Ombudsman to such person shall be immediately delivered, unopened, to the person. Telephone and personal contacts between the Ombudsman and a person in custody shall not be prohibited or monitored.
COMMENT:
Subsections (a), (b) and (c) give the Ombudsman a general duty to inform the complainant of the status of his complaint. The experience and judgment of the Ombudsman will determine the suitable response to be made.

Section 14. Rights of Agency
Before formally issuing a conclusion or recommendation that is significantly critical or adverse to an agency, the Ombudsman shall have consulted with that agency and permitted the agency reasonable opportunity to reply. If the Ombudsman makes a conclusion or recommendation available to the agency to facilitate a reply, the conclusion or recommendation is confidential and may not be disclosed to the public by the agency unless the Ombudsman releases it.

COMMENT:
This section protects agencies, their officers and employees by requiring consultation and giving them reasonable time to reply to significant criticism before the Ombudsman issues critical findings. The Ombudsman has the discretion to make all or part of his or her findings available to facilitate a reply. Because the Ombudsman may modify findings, which may include removal of confidential information and incorporation of the agency’s response [section 14(b)], after reviewing the agency’s reply, disclosure of findings not released by the Ombudsman is a violation of law, which may be dealt with under existing records confidentiality provisions.

Notice of the Ombudsman’s decision to investigate is not required because such formalities: are inconsistent with the role of the Ombudsman as an alternative to procedure-bound remedies and the limited resources of the office; are largely ceremonial in that the Ombudsman will inevitably contact the agency during an investigation; and are not required by due process given the absence of Ombudsman power to enforce recommendations and the fact that an opportunity to be heard is required before publication.

If an advance notice provision is nonetheless desired, it should provide for: informal or preliminary inquiries without notice, since experience shows that the vast majority of complaints are handled expeditiously and informally; withholding notice when notice would hinder investigation; and flexibility of form to avoid legalistic procedural wrangling, e.g. “If after making preliminary inquiries the Ombudsman decides to investigate, the Ombudsman shall suitably inform the agency involved unless the Ombudsman reasonably believes that advance notice will unduly hinder the investigation or make it ineffectual. The Ombudsman may inform the agency verbally or in writing.”

Section 15. Procedure after Investigation
(a) If, after investigation, the Ombudsman is of the opinion that an agency should:
   (1) consider the matter further,
   (2) modify or cancel an act,
   (3) alter a regulation, practice or ruling,
   (4) explain more fully the act in question,
   (5) rectify an omission, or
   (6) take any other action,
the Ombudsman shall state any conclusions, recommendations and reasons therefore to the agency. If the Ombudsman so requests, the agency shall, within the time specified, inform the Ombudsman about the action taken on recommendations or the reasons for not complying with them.

(b) After a reasonable period of time has elapsed, the Ombudsman may issue his or her conclusions or recommendations to the legislature, the governor, a grand jury, the public, or any other appropriate authority. The Ombudsman shall include any brief statement the agency may provide if an opportunity to reply is required by this Act.

(c) If the Ombudsman believes that an action has been dictated by laws whose results are unfair or otherwise objectionable, and could be revised by legislative action, the Ombudsman shall notify the (insert name of legislative body) and the agency of desirable statutory change.

(d) If the Ombudsman believes that any agency official or employee has acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman shall refer the matter to the appropriate authorities without notice to that person.

COMMENT:
(a) Though the Ombudsman will rarely have reason to make a recommendation if there is no error in what the agency has done or neglected to do, the Ombudsman should remain free to suggest improvements in method or policy even when the existing practice may be legally permissible. Thus the Ombudsman may facilitate one agency's learning about and taking advantage of the experience of another. This subsection contemplates no entry of judgment, as it were, but simply the expression of opinion by the Ombudsman. The Ombudsman is not a superior official, in a position of command, and cannot compel a change in an administrative act. The Ombudsman's recommendation may, however, induce an agency to exercise whatever power it may possess to right what the Ombudsman points out as a past mistake.

(b) If the Ombudsman is required to provide an opportunity to reply under section 14 and a reply is forthcoming, the Ombudsman must include it when issuing findings. Rather than permitting the Ombudsman to summarize replies, replies are limited to a "brief" statement which shall be printed unedited; regulations as to what is "brief" might be promulgated under section 11(i).

(c) There may be instances where an agency acted in accordance with existing law, but the law itself produces unjust results. The Ombudsman has the duty to bring these situations to the attention of the legislature and appropriate agency officials; if appropriate, the Ombudsman may comment on or recommend changes in legislation.

(d) The Ombudsman's duty to report wrongdoing pertains to miscreant officials. This subsection makes it clear that the Ombudsman may report allegations of wrongdoing without having to first notify the person involved (who may otherwise flee the state or destroy pertinent evidence if tipped off prematurely). This avoids any ambiguity which may arise if this subsection is read in conjunction with section 14.

If the person has testified before the Ombudsman, such testimony would bear the same privileges as testimony in court [section 18].
Section 16. Reports
The Ombudsman may from time to time and shall annually report on his or her activities to the Governor, to the Legislature, or any of its committees, to the public and, in the Ombudsman’s discretion, to agencies.

COMMENT:
The Ombudsman’s sole means of correcting flawed practices when agencies refuse to do so is to publish criticism and recommendations.

The annual report, whose release date would be set by the Ombudsman [section 11(i)], is mandatory. Special [section 15(b)] or general interim reports are discretionary with the Ombudsman.

Section 17. Ombudsman’s Immunities
(a) The substantive content of any finding, conclusion, recommendation, or report of the Ombudsman or member of the Ombudsman’s staff shall not be reviewable in any court.

(b) The Ombudsman and the Ombudsman’s staff have the same immunities from civil and criminal liabilities as a judge of this state.

(c) The Ombudsman and the Ombudsman’s staff shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this Act.

COMMENT:
(a) & (b) As a public watchdog, the Ombudsman should be able to state his or her position freely and candidly without fear of pressure or reprisal. The judicial immunities afforded the Ombudsman are intended to protect against harassment when the Ombudsman deals with controversial issues or makes an unpopular decision. While the Ombudsman’s findings are presented only after due consideration, no claim of infallibility is made and the Ombudsman’s findings, conclusions and recommendations are always subject to criticism by government officials as well as members of the public. Since the Ombudsman has no enforcement power and any findings and recommendations are only advisory in nature, the courts should have no authority to order that an expression of opinion be changed.

(c) Certain dealings that the Ombudsman has with complainants and witnesses may be confidential in nature. This subsection is meant to protect these confidential relationships so as to encourage complainants to avail themselves of the Ombudsman’s services and witnesses to cooperate with the Ombudsman, where they may be otherwise reluctant to do so.

Section 18. Witnesses’ Privileges
Any person who provides information under this Act may be accompanied and advised by counsel of his or her choice and shall be paid the same fees and travel allowances and accorded the same privileges and immunities as witnesses whose attendance has been required in the [name of court]. However, a representative of an agency providing information under this Act during business hours shall not be entitled to receive such fees and allowances.
COMMENT:
Although investigations conducted by the Ombudsman are not contested cases or adjudications of rights or interests, and although nearly all testimony will be private and confidential, witnesses who testify (whether or not by subpoena) are given judicial privileges and immunities. Witness fees and travel allowances are also required for persons who provide information to the Ombudsman under the Act. A provision that a representative of an agency during business hours shall not be entitled to such fees and allowances is included to avoid possible double payment of public servants during working hours.

Section 19. Obstruction
Any person who willfully obstructs or hinders the proper and lawful exercise of the Ombudsman’s powers, or willfully misleads or attempts to mislead the Ombudsman in the Ombudsman’s inquiries, shall be guilty of a (specify the level of offense).

COMMENT:
It must be determined in each state whether necessity exists for indicating the court in which proceedings are to be brought and upon whose initiative. Since fines for offenses vary from state to state and may be subject to periodic changes, it is preferable to specify the offense rather than a set amount of fine for a violation.

Section 20. Reprisals Prohibited
(a) No person who files a complaint or participates in any investigation or proceeding pursuant to this chapter shall be subject to any penalties, sanctions or restrictions in connection with his or her employment or be denied any right, privilege, or benefit because of such action.

(b) A person who alleges a violation of this part may bring a civil action for appropriate injunctive relief, actual damages, and punitive damages. Punitive damages shall not exceed $10,000.

COMMENT:
This section provides protection to complainants and witnesses from reprisals at their place of employment or the deprivation of other rights or privileges because of their participation in Ombudsman investigations.

Section 21. Relation to Other Laws
The provisions of this Act are in addition to and do not in any manner limit or affect any other provisions of law under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Ombudsman may be exercised notwithstanding any provision of law to the effect that any administrative action shall be final or unappealable.

COMMENT:
This section clearly sets forth that the Ombudsman office is a supplemental remedy and is in addition to other remedies or rights of appeal—a principle also covered in section 1 with respect to legislative purpose. This section also establishes the principle that the Ombudsman powers are not inhibited by statutory enactments providing that any administrative action shall be final or unappealable.
Section 22. Appropriation
There is appropriated out of the general revenues of the state the sum of $______, or so much thereof as may be necessary for fiscal year ___, to the office of the Ombudsman to carry out the purposes of this Act.

COMMENT:
Before an Ombudsman statute can be implemented, funding needs to be made available to pay for the expense of the office. This section provides the mechanism to do this. This section should be included where required by the fiscal regulations or practice of the state. If inclusion of such section is not necessary, it can be omitted.

Section 23. Effective Date
This Act shall take effect upon its approval.

COMMENT:
This is standard enactment language. The Act actually becomes effective only after appropriation has been made and an Ombudsman has taken office.

Section 24. Severability
The provisions of this Act are declared severable, and if any provision thereof is held to be invalid for any reason, the validity of the remainder of the Act shall not be affected.

COMMENT:
The inclusion of this section is optional. It is not in any of the existing state Ombudsman statutes. The need for a severability clause is unclear, but it may be helpful to assuage any legal concerns that may be raised when the bill is being voted on in the legislature.
REFERENCES

Our proposed model ombudsman act is based primarily on the American Bar Association Model Ombudsman Statute for State Governments. The annotated ABA model, together with Bernard Frank's extensive commentary, may be found in Bernard Frank, "State Ombudsman Legislation in the United States," *University of Miami Law Review* 29, no. 3 (Spring 1975), 379-445. This is an extremely comprehensive source of information about the history of the ombudsman institution in the United States as well as on the principles behind ombudsman legislation.


One of the sources that Professor Gellhorn used for his model was the Harvard model prepared by the Harvard Student Legislative Reference Bureau. See "A State Statute to Create the Office of Ombudsman," *Harvard Journal on Legislation* 2, no. 2 (June 1965), 213-238.

We also consulted the current state ombudsman statutes to compare the differences and similarities among them. Interested readers are directed to those sources for further information about possible statutory variations and alternatives. The Alaska ombudsman is authorized under Title 24, Chapter 55 of the Alaska Statutes. In Arizona, Title 41, Chapter 8, Article 5 of the Arizona Revised Statutes Annotated establishes the office of the ombudsman-citizens aide. Chapter 96, Hawaii Revised Statutes, is the ombudsman statute for Hawaii. In Iowa, the ombudsman is known as the citizens' aide pursuant to Chapter 2C, Iowa Code Annotated. Public Counsel is the title used in Nebraska in accordance with Sections 81-8,240 to 81-8,254, Revised Statutes of Nebraska.
INDEX

K-12 SCHOOL OMBUDS TOOLKIT

Part 1


2. “Ombuds Offices Overview,” by Ellen R. Williams, Sara Thacker, and Jonathan Stier

3. “A Broader View of Dispute Resolution,” by Charles L. Howard

4. Brochure of the DC Office of the Ombudsman for Public Education

5. Comparison of Roles and Responsibilities by the District of Columbia State Board of Education

6. 2015 Annual Report by Joyanna Smith, Ombudsman for Public Education, DC Office of the Ombudsman for Public Education

Part 2

7. District of Columbia statutes creating the Office of the Ombudsman for Public Education

8. Brochure of the Portland (OR) Public Schools Office of the Ombudsman


10. Brochure of the Pasadena (CA) Unified School District Ombuds Office


12. Draft Ombuds Job Description for the Pasadena (CA) Unified School District

13. Howard County (MD) Policy 2030-PR: Implementation Procedures for Ombudsman

Part 3

14. Sample Frequently Asked Questions for K-12 Ombuds Office [To be Finalized]

15. 2004 American Bar Association Resolution: revised Standards for the Establishment and Operation of Ombuds Offices


17. IOA Standards of Practice

18. IOA Frequently Asked Questions

19. Governmental Ombudsman Standards from the United States Ombudsman Association (USOA)

20. Model Ombudsman Act for State Governments from USOA

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§ 38-351. Office of Ombudsman for Public Education; establishment; term.

Effective: February 22, 2014

(a) There is established within the State Board of Education an Office of Ombudsman for Public Education, which shall be headed by an ombudsman appointed by the State Board of Education.

(b)(1) The Ombudsman shall be a District resident within 180 days of appointment.

(2) The Ombudsman shall serve for a term of 5 years, and may be reappointed.

(3) After notice and an opportunity to be heard, the Ombudsman may be removed only for cause that relates to the Ombudsman’s character or efficiency by a majority vote of the State Board of Education.

(c) If a vacancy in the position of ombudsman occurs as a consequence of resignation, disability, death, or other reasons other than the expiration of the term, the State Board of Education shall appoint an ombudsman to fill the unexpired term within 75 days of the occurrence of the vacancy.

(d) The purpose of the Ombudsman is to serve as a neutral resource for current and prospective public school students and their parents or guardians in the resolution of complaints and concerns regarding public education.

(e) For the purposes of this chapter, the term “public school” means District of Columbia Public Schools and public charter schools in the District of Columbia.
§ 38-352. Qualifications.

The Ombudsman shall:

(1) Be appointed without regard to party affiliation;

(2) Be appointed on the basis of integrity;

(3) Possess a demonstrated ability to analyze issues and matters of law, administration, and policy;

(4) Possess experience in the field of social work, counseling, mediation, law, policy, or public administration or auditing, accounting, or other investigative field; and

(5) Have management experience that demonstrates an ability to hire and supervise qualified staff.

Credits

(June 12, 2007, D.C. Law 17-9, § 603, 54 DCR 4102.)
The Ombudsman shall:

1. Provide outreach to current and prospective public school students and their parents or guardians, and to further this purpose, have the cooperation of all individuals within the public school system;

2. Encourage communication between public schools and current and prospective public school students and their parents or guardians regarding public education;

3. Serve as a vehicle for current and prospective public school students and their parents or guardians to communicate their complaints and concerns regarding public education through a single office;

4. Respond to complaints and concerns in a timely fashion with accurate and helpful information;

5. Receive complaints from current and prospective public school students and their parents or guardians concerning public education, including personnel actions, policies, and procedures;

6. Determine the validity of any complaint quickly and professionally;

7. Examine and address valid complaints and concerns;
§ 38-353. Duties, DC CODE § 38-353

(8) Generate options for a response, and offer a recommendation among the options;

(9) Refer complainants to a public school official, agency, department, or resource, when appropriate;

(10) Except when the parties are involved in legal or administrative proceedings, resolve complaints presented by current and prospective public school students and their parents or guardians, either through complaint resolution services as established pursuant to § 38-356 or through other informal measures;

(11) Develop and maintain a database that tracks complaints and concerns, identified by grade level and by the public school, and the resolution of complaints and concerns;

(12) Repealed.

(13) Identify systemic concerns and recommend to the State Board of Education policy changes, staff training, and strategies to improve public education;

(14) Repealed.

(15) Within 120 days after the end of each school year, submit to the State Board of Education, and make publicly available, a report summarizing the work of the Office of Ombudsman during the previous school year, which shall, at minimum, include an analysis of the types and number of:

(A) Complaints received;

(B) Complaints examined and resolved informally;

(C) Complaints examined and resolved through a formal process;

(D) Repealed.
(E) Complaints pending; and

(F) Recommendations made; and

(G) Repealed.

(16) Identify school-level concerns based upon a pattern of complaints or concerns and recommend changes to improve the delivery of public education services.

Credits

The Ombudsman shall:

(1) Have access to books, records, files, reports, findings, and all other papers, items, or property ("documents") belonging to or in use by all departments, agencies, instrumentalities, and employees of public schools necessary to facilitate the purpose of this chapter, excluding the Executive Office of the Mayor, the Council, and the District of Columbia courts; provided, that such access is limited to documents related to the student or parent or guardian that the Office of Ombudsman is assisting;

(2) Have full access to student educational records as allowed by federal and local law;

(3) Speak in regard to educational issues under the purview of the Office of Ombudsman with any official or employee within the public school system without the permission of the individual’s supervisor;

(3A) Have the authority to observe instruction at any District of Columbia public school ("DCPS") or public charter school; provided, that DCPS or the public charter school may require advance notice before an observation may take place, but shall impose no other conditions or restrictions on such observations except those necessary to:

(A) Ensure the safety of children in a program; or

(B) To protect children in the program from disclosure by an observer of confidential and personally identifiable information if such information is obtained in the course of an observation;
§ 38-354. Authority., DC CODE § 38-354

(4) Examine an act or failure to act of any official or employee within the public school system;

(5) Determine which complaints and concerns warrant further examination;

(5A) Bring persons together to resolve conflicts that are not in formal legal or administrative proceedings.

(6) Examine any matter under the purview of the Office of Ombudsman, whether initiated by a complaint or another means;

(7) Forward to the Office of the Inspector General all complaints and concerns that require an audit or investigation of a school or a program, agency, or department within DCPS that falls within the purview of the Office of the Inspector General; and

(8) Forward to the Deputy Mayor for Education any policy recommendations that the Ombudsman determines would be helpful to prevent and detect corruption, mismanagement, waste, fraud, and abuse within DCPS.

Credits

§ 38-355. Limitations; protections., DC CODE § 38-355

(a) The Ombudsman shall not:

(1) Disclose personally identifiable information regarding a student without the specific written consent of the student or parent, as required by federal and local law;

(2) Disclose the substance of a conversation with any teacher or other official or employee within the public school system without consent;

(3) Disclose the identity of any person who brings a complaint or provides information to the Ombudsman without the person's consent, unless the Ombudsman determines that disclosure is unavoidable or necessary to further the ends of an investigation;

(4) Have the authority to take any personnel action;

(4A) Examine or investigate any matter that would be under the jurisdiction of the Office of the Inspector General or the Office of District of Columbia Auditor.

(5) Examine the Executive Office of the Mayor, the Council or its personnel, the District of Columbia courts or its personnel, other elected officials, private schools, or private organizations or businesses; or
§ 38-355. Limitations; protections., DC CODE § 38-355

(6) Provide legal advice or legal representation.

(b) The Ombudsman shall not:

(1) Be compelled to testify in a legal or administrative proceeding regarding an Office of Ombudsman examination or to release information gathered during the course of an examination or investigation;

(2) Be held personally liable for the good faith performance of his or her responsibilities under this chapter, except that no immunity shall extend to criminal acts, or other acts that violate District or federal law; or

(3) Be subject to retaliatory action for the good faith performance of his or her responsibilities under this chapter.

Credits

§ 38-356. Complaint resolution services.

Effective: February 22, 2014

(a) The Office of Ombudsman shall provide complaint resolution services, which shall be available to current and prospective public school students and their parents or guardians.

(b) Participation in complaint resolution services provided by the Office of Ombudsman shall be voluntary.

(c) Before submitting a complaint to the Office of Ombudsman, the complainant shall make reasonable efforts to resolve the issue at the school level.

(d) Complainants may submit complaints by phone, in writing, or electronically.

(e) The Office of Ombudsman shall review and investigate each complaint and shall do one or more of the following:

(1) Resolve the complaint;

(2) Refer the complainant to another agency or department;

(3) Require the complainant to submit documentation to support the complaint;
§ 38-356. Complaint resolution services., DC CODE § 38-356

(4) Provide an opportunity for the complainant to meet with the subject of the complaint;

(5) Conduct mediation proceedings;

(6) Dismiss the complaint as unfounded; or

(7) Take any other action determined necessary and appropriate by the Ombudsman.

Credits

(June 12, 2007, D.C. Law 17-9, § 606a, as added Feb. 22, 2014, D.C. Law 20-76, § 102(e), 61 DCR 39.)
PORTLAND PUBLIC SCHOOLS

Resolving school-based concerns

PPS Office of the Ombudsman

An ombudsman is a liaison who serves as an independent, neutral and confidential resource, assisting parents and community members in resolving complaints, conflicts and other school-related issues.

Judi Martin District Ombudsman
503-916-3045 • ombudsman@pps.net
www.pps.net/departments/ombudsman
The district ombudsman will:

- Listen to families' concerns.
- Provide a confidential place to explore options in order to make an informed decision.
- Serve as a neutral fact finder to assist families in solving problems.
- Assist families in navigating administrative processes.
- Facilitate communication between parties.
- Accept confidential requests for information and provide referrals.
- Conduct informal interventions and mediations.
- Recommend policy/practice change to make PPS more responsive to families.

The district ombudsman does not:

- Address employee grievances.
- Make, set or change policy.
- Act as an advocate, as the ombudsman is a neutral party.

Resolving school-based concerns

Where possible, first discuss your concern with the teacher, staff person or administrator involved. Most concerns can be resolved at the source. If you are unable to resolve your concern, or you need guidance at any point in the process, the ombudsman is available to assist you.

You can view the complaint policy and the complaint resolution process at www.pps.net/departments/ombudsman.

Portland Public Schools is an affirmative action and equal opportunity employer.
Administrative Directive 4.50.031-AD

Complaint Resolution Process

In accordance with Board Policy 4.50.030-P, this administrative directive sets forth the specific procedure for resolution of complaints by students, parents/guardians and people who reside in the district ("complainant"). As directed by the Board of Education in that policy, the District is committed to resolving complaints in a fair and timely manner through a process in which all parties, including families of color and other underrepresented communities, will have an opportunity to present their perspective and be treated with respect and dignity.

The District is committed to making the complaint process accessible for our diverse population. Translation and interpretation services will be made available to complainants. The District will also ensure that resources are provided for complainants who request assistance in preparing a written complaint.

The District has an independent Ombudsman, whose job is to help families, community members, schools and the district resolve issues satisfactorily. The Ombudsman is available to assist all parties through the informal complaint process. The district encourages parties to meet to reach resolution at the school or department level whenever possible.

I. SCHOOL/DEPARTMENT-BASED PROBLEM SOLVING

In classrooms, schools and departments, our staff, parents and students work together frequently to problem solve issues and improve our processes with the goal of creating the best possible educational experience for students. This type of collaboration is the best way to resolve concerns. While not part of the complaint process, the following procedure applies to this type of problem-solving work.

A. If the concern is related to a classroom/school:
   1. The complainant is encouraged to first speak to the teacher or staff person involved.
   2. If the concern is not resolved through direct communication, the complainant is encouraged to speak with the principal of the school. Principals have 10
Administrative Directive  4.50.031-AD

Complaint Resolution Process

calendar days to respond to concerns, which may include an in-person conference if requested by any involved party. If the concern is not resolved to the complainant’s satisfaction, the principal shall inform the complainant of the complaint process.

B. If the concern is related to a district department:
   1. The complainant is encouraged to first speak to the staff person involved.
   2. If the concern is not resolved through direct communication, the complainant is encouraged to speak with the staff person’s supervisor. Supervisors have 10 calendar days to respond to concerns, which may include an in-person conference if requested by any involved party. If a complainant is not sure who the appropriate supervisor is, the complainant may contact the Ombudsman for assistance. If the concern is not resolved to the complainant’s satisfaction, the supervisor shall inform the complainant of the complaint process.

II. COMPLAINT PROCESS

Informal complaints

If complainants are not able to resolve the concern at the school or department level through the problem-solving process, they may utilize the complaint process. The goal is to reach a mutually-agreed upon resolution of the complaint. The ombudsman can assist with informal complaint resolution. Upon receipt of the complaint via email, phone, or the Ombudsman’s complaint intake form, the Ombudsman or his/her designee shall review the complaint confidentially with the complainant and suggest options for next steps. Ombudsman may gather information from involved parties in order to understand multiple perspectives regarding the concern. After gathering information, the Ombudsman will work with all involved parties to identify possible solutions. In certain situations, the Ombudsman may set up a meeting to discuss options and work toward a mutually acceptable outcome.
Formal complaints

Complainants can file a formal complaint at any time; they are encouraged, but not required, to engage in problem-solving and the informal complaint process. If complainants are not able to resolve the concern at the school or departmental level through the problem-solving process, they may file a formal written complaint. The receipt of the written complaint starts the 90 day completion timeline for the purposes of state law. The complaint process concludes with the issuance of a written decision by the Superintendent at Step 2. As further outlined below, the complainant at that point can either accept the Superintendent's decision, request an appeal to the Board or appeal to the Oregon Department of Education.

Step 1:

A. The written complaint must be filed with the Ombudsman or the Office of the Superintendent via letter, email or the written complaint form. The written complaint should include the name and contact information for the complainant, a description of the concern, and the student's name, if applicable. In order to facilitate the resolution process, it would be helpful if the written complaint also included the names of any other parties involved, including witnesses, a description of efforts to resolve the concern, and suggestions for resolution. The complainant shall receive a written acknowledgement of receipt of the complaint within 5 days of submitting the written complaint.

B. In most situations, the Senior Director of Schools for the involved school, or the appropriate department supervisor, will be responsible for investigating and responding to the complaint at Step 1. The Superintendent may assign a different decision maker at Step 1 as appropriate.

C. When applicable, the Senior Director or department supervisor will consult with district legal counsel regarding pertinent district policy, and relevant state and federal laws.

D. All formal complaints will receive a resolution in writing within 30 days of receipt of the complaint. The resolution will include information about the next steps in the complaint process.
Step 2:
If the issue is not resolved to the complainant's satisfaction, the complainant may request a review in writing by the Office of the Superintendent. The Step 2 review will include the written complaint from Step 1, the written resolution from Step 1, any available documentation from the Step 1 process, and the request for Level 2 review.

A. The request for review shall be submitted in writing within 10 days of the complainant receiving notice of resolution from Step 1.

B. The Superintendent or designee will review the record, and may choose to meet with involved parties.

C. If significant new evidence is introduced at Step 2, the complainant will be referred back to Step 1 so as to ensure there is an opportunity for meaningful dispute resolution and investigation that includes the new evidence. "Significant, new evidence" is evidence that could have changed the outcome or investigation at Step 1.

D. If a new, additional concern is raised at Step 2, the new concern will be referred back to Step 1. The concerns that were already addressed at Step 1 will continue to proceed through the appeal process.

E. Following the review, the Superintendent shall decide that:
   1. No substantial evidence exists and no further action will be taken; or
   2. Specific remedial action will be taken.

F. The Superintendent or designee shall provide copies of the written decision to the complainant. The written decision shall include findings of fact, conclusions of law and legal basis for the decision as required by OAR 581-022-1941. The Oregon Department of Education has explained that "legal basis" and "conclusions of law" mean applying the statute, Oregon Administrative Rule or district policy applicable to the facts. All complaints appealed to the Superintendent will receive a resolution in writing within 30 days of receipt of the request for review. The superintendent or designee will include information on the next steps in the complaint process.

G. The decision of the Superintendent is the final decision. Upon receiving the Superintendent's decision, if the complainant wants to continue to appeal, the complainant may choose to either request an appeal to the Board or appeal directly
Step 3:
If the complainant is not satisfied with the final decision of the Superintendent, the complainant may request an appeal in writing to the Board of Education. The appeal will include the concerns and information included in the original written complaint. Any new concerns or substantive information not previously submitted will be referred back to Step 1.

A. The request for a Board level appeal shall be submitted to the Board Office within 20 days of the Superintendent’s decision. The Board will vote on whether to consider the appeal within 20 days following the receipt of the request for appeal. The Board will be provided with the written record of appeal, including documents submitted at Steps 1 and 2, and the decision of the Superintendent.

B. The complainant will be informed within two days after the Board vote as to whether the Board decided to consider the appeal.

C. If the Board votes to consider the appeal, the Board will vote on the substance of the appeal within 30 days of the Board’s decision to consider the appeal. The Board will have the full written record of the appeal. The complainant may submit additional written information to the Board, and may provide testimony during public comment.

D. If the Board does not consider the appeal, the complainant may still choose to file an appeal with the Oregon Department of Education (ODE). If the Board considers the appeal, but does not vote to overturn the Superintendent’s decision, the complainant can file an appeal with the ODE. Portland Public Schools does not determine which complaints the ODE will review. If a complainant appeals to the ODE, the ODE will determine if the complaint will be accepted for review.

III. ADDITIONAL PROVISIONS

A. Complainants may file formal complaints on their own behalf, or on behalf of their enrolled student, or about district policies or practices. Complainants cannot file complaints on behalf of another person or student. This does not restrict the ability of complainants to bring an advocate to any meeting or
Administrative Directive 4.50.031-AD

Complaint Resolution Process

B. The goal of the complaint process is to bring timely resolution to issues of concern to complainants. Complaints become more difficult to investigate and resolve if they are not brought forward promptly. At the same time, the District recognizes that there can be legitimate reasons for delay in filing complaints. In order to both promote timely resolution of complaints and ensure the complaint process remains accessible, complaints must be brought within one year of the incident leading to the complaint, or within one year of the complainant learning of the incident leading to the complaint, whichever is later. This one-year limitation does not bar the consideration of relevant evidence that is older than one year.

C. In some cases, District policies or administrative directive provide a specific complaint resolution and/or appeal process. For instance, the Administrative Directive regarding Student Transfers 4.10.054-AD establishes the process by which student transfer decisions may be appealed. In such instances, the specific procedure shall apply rather than the general complaint procedure.

D. If, during the course of the complaint process, concerns are raised that a specific employee has engaged in misconduct, the Ombudsman will ensure that those complaints are referred to the Chief Human Resources Officer for resolution through the appropriate personnel process. These personnel processes will include provisions in collective bargaining agreements if applicable to the employee. Allegations of employee misconduct are taken seriously and will be investigated.

E. If a complainant does not feel safe addressing a concern directly with an employee, such as in cases of harassment, the complainant may go directly to that employee’s supervisor or contact the Chief Human Resources Officer. The Ombudsman is also available to assist.

F. No District employee, student or Board member may engage in retaliation against any person who files or participates in the complaint process. Any employee or student who engages in any form of retaliation against a person(s) for filing a complaint and/or for participation in an investigation or inquiry will be subject to disciplinary action. As defined in 4.30.061-AD Anti-Harassment, “retaliation” is generally understood to mean: “experiencing an
adverse impact after making or supporting a claim of harassment if the impact would deter a reasonable person from making such a claim."

G. The timelines set forth above may be extended by the mutual consent of the complainant and the district. In particular, if complainants seek to submit appeals after the time periods set forth in the process, the district may choose to accept those appeals if the complainants agrees to extend the overall time period for resolution for the same number of days as the extension granted to the complainant. If complaints are submitted during a school break, such as Winter Break or summer, during which relevant staff and witnesses may not be available, the District will work with the complainant on the timeline. If the time limit for a written resolution falls on a non-work day, the limit may be extended to the next business day. In all cases, the district will seek to resolve complaints as expeditiously as possible.

H. As used in this administrative directive, “days” will be counted as “calendar days.”

I. The Ombudsman is available to answer questions and concerns about the process. The Ombudsman will be responsible for providing information and training to staff on the implementation of the complaint process.

IV. FURTHER APPEAL

Oregon state law (OAR 581-022-1940) allows complainants to appeal a final decision by a school district to the State Superintendent of Public Instruction if the complaint alleges (1) a violation of the standards of the Oregon Administrative Rules, Chapter 581, Division 22, or (2) a violation of other statutory or administrative requirements for which the State Superintendent has appeal responsibilities. Complainants will receive written notice of this right when the decision of the school district is final.

Adopted: 11/2014; Amended 5/2016
Guiding Principles

CONFIDENTIAL
The Ombuds Office does not disclose any information without permission of the individual who has confided in this office. The only exceptions are threats of imminent risk of serious harm, or as required by law.

INDEPENDENT
The Ombuds Office operates independently from other entities within the district; does not represent the district; reports directly to the Superintendent and Board of Education; makes recommendations on policy and process.

IMPARTIAL
The Ombuds Office advocates for fair and equitable processes; will not take sides; will consider the rights and interests of all parties; has no personal stake in the outcome.

INFORMAL
The Ombuds Office is an “off-the-record” resource. It is a place to explore options and work towards resolution in an informal way, without participation in formal procedures. The Ombuds Office has no authority to make binding decisions, mandate policies, or conduct formal investigations and does not receive formal notice.

Contact Us

Hours: 8:00 a.m. – 4:30 p.m.

Phone: 626.396.3680 (direct line)
626.396.3600 x 88009
If you reach voicemail, please leave your name (optional), preferred phone number, and whether a message may be left in the event you are unavailable.

Location:
351 S. Hudson Ave., Room 221*
Pasadena, CA 91109
*This is a temporary office until our new location is ready. Visit the Ombuds Office Website for updated information.

Appointments are recommended to ensure privacy of all visitors. Walk-in visitors will be accommodated when possible. Appointments may be scheduled outside normal office hours.

Email: ombuds@pusd.us
Please limit email communication to requesting a confidential meeting and refrain from sending sensitive personal information. Email is not a secure form of communication.

Website: gopusd.com/ombuds

Communications with the Ombuds Office are privileged. The Ombuds Officer will not testify or participate in any formal or legal proceedings. This fosters confidentiality and provides a neutral place for discussing concerns.
What is an Ombuds?

Ombuds (pronounced "om-budz") comes from the Swedish term that means "representative."

The Ombuds Officer serves as an independent, confidential, neutral and informal resource for all PUSD employees, students, families, volunteers, and community partners. The Ombuds Office seeks to ensure fairness, promote respect for all PUSD constituents, and support systemic changes to achieve this goal.

PUSD is a complex organization and it can sometimes feel overwhelming to find a way to make your voice heard. The Ombuds Office helps you express concerns, resolve disputes, manage conflicts, and learn more productive ways of communicating. It is a place for you to be heard and receive impartial attention without fearing loss of privacy. The Ombuds Office will assist you in achieving fair, equitable outcomes consistent with district policies and statutory regulations.

The PUSD Ombuds Officer is a member of the International Ombudsman Association (IOA) and practices according to the IOA Standards of Practice and Code of Ethics.

Reasons To Visit The Ombuds Office

Contact the Ombuds Office as a first step, as a last resort, or anywhere along the way

- When you need someone to listen
- When you are uncertain where to take a problem involving PUSD
- When you are unclear about a PUSD policy, process, procedure or regulation
- When you wish to work through a neutral third party
- When you need help in clarifying or resolving a conflict
- When you think you have been unfairly treated, or that a policy has been unfairly applied
- When you think someone has engaged in misconduct or believe there has been an ethical violation

About the Ombuds Office

The Ombuds Office will:

- Provide a confidential place to share concerns, questions, and complaints
- Listen attentively to understand the issue
- Provide or clarify information on policies, procedures, services and programs
- Explore a range of formal and informal solution options
- Guide or coach individuals to prepare for difficult conversations
- Open channels of communication
- Refer individuals to appropriate resolution resources
- Facilitate informal dispute resolution processes
- Identify problematic issues and trends
- Make recommendations for review or changes in policy or practice

The Ombuds Office will NOT:

- Make decisions for you
- Advocate for any individual or entity
- Take sides in a dispute or concern
- Create or maintain records on behalf of the visitor
- Conduct formal investigations
- Replace formal investigations
- Receive formal notice to the district of a conflict, dispute or complaint
- Participate in grievances or other formal resolution processes
- Provide legal advice or psychological counseling
Pasadena Unified School District  
OMBUDS OFFICE CHARTER

I. Introduction  
The Pasadena Unified School District ("PUSD" or the "District") established the Ombuds Office (the "Office") and the position of Ombuds Officer ("Ombuds") in 2016, to provide an alternate channel of communication and an independent, impartial, confidential, and informal conflict-resolution resource for all members of the PUSD community who have a District-related conflict, question, issue, concern or recommendation.

II. Purpose  
The primary purpose of the Office is to provide assistance in a manner that contributes to an improvement in the overall function and environment of the District, thus promoting improved management of and relationships between District constituents and greater organizational and operational efficiency. The Ombuds represents an objective voice and a safe place where District constituents, including parents, guardians, students, community members, teachers, administrators, and staff of all levels, can seek guidance regarding disputes or concerns at any informal stage in the resolution process free of charge and without fear of retaliation. In this way, the Office helps foster the kind of educational and professional environment in which individuals in the District community can thrive.

In the spirit of this important function, this Charter defines the role and responsibilities of the Ombuds and the Ombuds Office at PUSD. Because this is a resource made available on a voluntary basis to all District constituents in accordance with the principles outlined below, use of the Office will be considered to be an agreement to abide by the terms of this Charter, including not calling the Ombuds to testify with respect to confidential communications in any formal or legal proceedings.

III. Scope of Services  
Any District-related conflict, issue, complaint, or recommendation may be brought to the Office. The Ombuds provides informal dispute resolution services by confidentially receiving disagreements, concerns or questions and thereafter serving as a neutral information and communication resource, consultant, dispute resolution expert, and source of recommendation for institutional change.

With the primary objective of ensuring a fair process for surfacing and resolving disputes and other issues, the Ombuds will always first listen with an unbiased ear. Thereafter, the Ombuds will exercise discretion in seeking to facilitate the resolution of conflicts. Depending on the circumstances, the Ombuds may identify and reframe issues and patterns, make informal inquiries or otherwise review matters received, suggest approaches and coach parties regarding addressing or managing conflicts, help ascertain, develop, and evaluate a range of alternatives for resolution, provide options and counseling, make referrals, assist in finding resources (internal and external), facilitate shuttle diplomacy, mediate, and provide feedback to those in authority when trends, patterns, policies, or procedures generate conflicts or concerns.
While working to improve relationships and address issues in a neutral environment, the Ombuds seeks to protect the ethical standards of the Office, as well as the principles of fairness, equity, and respect for all. Although responses are tailored to the dynamics of the situation and the concerns of the individual, the Ombuds consistently endeavors to help visitors find, select, and work towards a resolution which suits the specific circumstances and the individual needs of the person as he or she interprets them. As detailed below, the Ombuds does not replace any existing formal channels and does not advocate for any side in a dispute, offer personal opinions, give legal, medical, or psychological advice or attempt to dictate a visitor’s course of action.

Additionally, the Ombuds assists the District by identifying trends and emerging issues observed by or communicated to the Ombuds, while maintaining the confidentiality of individual communications. The Office maintains contact with formal channels and offers consultative services to offer suggestions to improve existing or create new policies when appropriate. To the extent possible, the Ombuds serves as an early warning system by attempting to identify and discuss with appropriate management representatives, changes that may prevent issues from becoming significant or recurring.

IV. Operation of the Office
The Ombuds shall take action to inform District constituents about the role, function, and limitations of the Office and position. This includes the fact that the District’s intention is for the Office to be a neutral, safe, confidential, and comfortable environment in which individuals can seek guidance without fear of retaliation. The Ombuds shall take care to ensure that information about the Office and the position is available to District constituents in appropriate forms, including electronic means.

All District constituents shall have access to the services of the Ombuds. The Ombuds shall ensure that the Office location is easily accessible and that alternative arrangements can be made for individuals requiring assistance who are unwilling or unable to visit the physical office. Visitors shall not be required to have pursued other avenues for the resolution of a problem before bringing it to the Office.

The Ombuds shall have direct access to all District constituents and shall be entitled to informally inquire about any issue concerning the District or affecting any member of the community. District employees are expected to cooperate with the Ombuds and to make available all information pertinent to matters being reviewed.

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1 The term “visitor” includes all District constituents who seek assistance from the Office, whether in person, over the phone, or in any other capacity.
V. Standards of Practice and Code of Ethics

PUSD’s Ombuds operates in accordance with the “Standards of Practice” and “Code of Ethics” of the International Ombudsman Association (IOA) and strives to operate in accordance with IOA’s “Best Practices” to serve the interests of the District and its constituents. Copies of the IOA Code of Ethics, Standards of Practice, and Best Practices are available in the Ombuds Office and links to the IOA website, where these documents may also be found, are provided below. These documents identify four principles that are fundamental to the operation of the Ombuds Office—Independence, Informality, Impartiality, and Confidentiality. As a general practice, the Ombuds will explain to all visitors these four principles, also referred to as the four tenets of the Office, including the limited exceptions to confidentiality. The Ombuds will ensure that these standards are publicized and readily available to District constituents.

A. Independence

The Ombuds Office operates independently of ordinary staff structures and follows the reporting framework detailed in this document. The Ombuds should be in fact and in appearance free from interference in the performance of his or her duties. The Ombuds does not serve any management or compliance function and does not hold any other position that might compromise independence. The Office is a department and entity separate from every other, but may choose to contact any Department or level within the District in the course of handling a case. Subject to the limitations on confidentiality described below, The Ombuds exercises sole discretion over whether and how to act regarding individual matters and systemic concerns, including those shared with the Ombuds and those observed directly.

To fulfill functions and meet the operating needs of the Office, the Ombuds will have adequate space and sufficient resources. This includes budgetary elements such as technology (software, computer, cell phone, etc.) and access to District files and records. The Ombuds shall have access to any organizational records needed, subject only to the limitations imposed by any privacy legislation.

B. Informality

The Ombuds Office is an informal District resource which supplements, but does not replace formal channels and existing departments or resources, including but not limited to the District Superintendent, the Cabinet, Assistant Superintendents, Directors, Supervisors, Principals, Advisors, Counselors, Unions, Human Resources, Employee Assistance Programs, and Legal Representation.

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2 The term “Ombudsman” is of Scandinavian origin and means “representative” or “proxy.” The term is gender-neutral and is used by men and women of the International Ombudsman Association referring to the office and function rather than a particular gender. While variations of the term exist, Pasadena Unified School District has chosen to use the shortened term, “Ombuds.”
The Ombuds Office has not been authorized to receive notice of claims against the District by District constituents. The Ombuds does not maintain records for the benefit of the District, serve any compliance functions, or conduct formal investigations, including those involving allegations of misconduct. Further, the Ombuds has no authority to impose remedies, sanctions or corrective action, make or overturn management decisions, mandate, enforce, or change any policy, procedure, or rule, or report specific occurrences to the District, including but not limited to incidences of sexual harassment or past violence. The Ombuds will refer visitors who have complaints requiring legal intervention or involving alleged illegal activity, as well as those who express a desire to make any kind of formal report, to the appropriate office within the District.

The Ombuds is not a required step or a participant in any formal process, inside or outside of the District, but may participate in informal aspects of District processes to the extent that this can be done without compromising the Office. For example, the Ombuds may act as a facilitator for the District’s Special Education Informal Dispute Resolution (IDR) alternative, as this is an informal, voluntary, and optional process that District constituents can choose to pursue instead of or before entering into a formal and official process such as State Mediation or Due Process. In much the same way, the Ombuds may facilitate conversations or conduct mediations as an informal, voluntary, and confidential supplement to other formal District procedures, such as the employee grievance process.

The Ombuds’ review of a conflict or concern and contacts with those involved may take place at any informal stage in the process through which that issue is being addressed. If a person who has raised a matter with the Ombuds thereafter decides to initiate a formal procedure, such as a grievance or lawsuit, the Ombuds may discuss the process of such a procedure prior to the formal initiation. However, the Ombuds shall then refrain from involvement while the process is ongoing, except to the extent that the Ombuds may be able to do so consistent with the tenets of the position as detailed above. This is a case by case determination to be made by the Ombuds.

The Ombuds does not testify with respect to confidential communications in any formal process inside the organization and resists any such testimony in any formal process outside the organization, even if given permission or requested to do so. The Ombuds may testify only about the general functions of the Office or systemic patterns or trends but only to the extent that such information can be discussed without breaking confidentiality or revealing individual identifying information.

The Ombuds may assist in mediating the settlement of a case, but may not be called as a witness or otherwise required to provide information outside of the general duties of the position in any proceeding, inside or outside of PUSD. Party participation in mediations performed by the District Ombuds is voluntary and may or may not produce a written agreement. In the event the parties ask the Ombuds to write the terms of an agreement stemming from mediation, the
Ombuds will act as scrivener only and will not maintain any documents or written agreements within the Office.

Use of the Office is voluntary and terminable at the will of the visitor and/or the Ombuds. The Ombuds may in his or her discretion withdraw from or decline to look into a matter.

C. Impartiality
The Ombuds shall be neutral, impartial, objective, and unaligned. The Ombuds advocates only for fairness and equity, and not on behalf of any individual or group within the District or for the District itself. The Ombuds may help to develop a range of available options to resolve problems and facilitate discussions to identify those most suited to meet the interests specified by the visitor, but will not provide legal, medical, or psychological advice, offer personal opinions, command or direct a visitor to take a specific course of action, or take sides in any conflict, issue, or dispute.

The Ombuds shall consider the legitimate interests and concerns of all parties involved in or affected by matters under consideration, and will do so impartially with the aim of facilitating communication and assisting the parties in reaching mutually acceptable resolutions that are fair, equitable, and consistent with the mission and policies of the District.

The Ombuds will make every effort to avoid involvement in matters where there may be a conflict of interest which would hinder neutrality and will take the steps necessary to disclose and/or avoid such a conflict where it exists. For these purposes, conflict of interest is to be defined as when private interests, real or perceived, affect or compete with the neutrality and independence inherent in the Ombuds role.

D. Confidentiality
The effective functioning of the Office requires that communications be kept confidential to the greatest extent feasible and legally permissible. The Ombuds holds all communications with those seeking assistance in strict confidence and will refuse access to any confidential information, except when, in the course of confidential communications, the visitor consents to the disclosure for the purpose of performing the services of the Office.

The Ombuds takes reasonable steps to safeguard confidentiality, including the practice of not keeping permanent or formal records of confidential communications. The Ombuds prepares reports and statistics in a manner that preserves confidentiality, and destroys any notes taken and/or confidential information tied to a case once the Office’s involvement ends and/or at regular intervals throughout the year. Additionally, the Ombuds maintains a calendar to which only the Office has access where appointments are not tied to identifying or contact information.
The Office asserts that the Ombuds holds a privilege that cannot be waived by others with respect to the identity of visitors and confidential communications. The Ombuds will not confirm communicating with a party who contacts the Office for help or disclose confidential information without that party’s express permission. The Ombuds takes specific action related to a visitor’s issue only with that individual’s express permission and only to the extent permitted, and even then at the sole discretion of the Ombuds. This is of special consideration in cases where third-party intervention is prudent.

It is not appropriate for a visitor or other District constituent to attempt to compel the Ombuds to reveal confidential communications, including as part of an official proceeding. In cases where a challenge to these practices arises, the Ombuds will pursue the legal avenues necessary to resist such disclosure, including seeking a protective order in legal proceedings.

1. Exceptions to Confidentiality
The only two exceptions to confidentiality are when the Ombuds determines that there is suspected child abuse or an imminent threat of serious harm, as required by law and IOA Standards of Practice. In such cases, the Ombuds will follow the procedures detailed below.

a. Suspected Child Abuse
As an employee of the District, the Ombuds is a mandated reporter of suspected child abuse. To comply with this legal requirement, where signs of child abuse are present in the judgment of the Ombuds, the Ombuds will report the necessary details to Child Protective Services and document the fact that this report was made per District policy. This is the only exception to the Office’s policy against maintaining records for the benefit of the District.

b. Imminent Threat of Serious Harm
When the Ombuds determines that there is an imminent threat of serious harm, the Ombuds may breach confidentiality to try to avoid such harm. For this purpose, “imminent threat of serious harm” will be defined as narrowly as possible to mean imminent risk to human life or serious bodily injury, which is a determination to be made by the Ombuds. The Ombuds may, where appropriate, take the appropriate action even in the presence of the visitor in question.

VI. Reporting Relationship

A. Superintendent
PUSD’s Ombuds reports directly to the Superintendent and will meet periodically throughout the year to maintain this reporting relationship, which may include information such as the number and basic category of cases, visitor demographics, and disclosure of trends and observations witnessed or brought to the attention of the Ombuds. Where possible, the Ombuds will assist the
Superintendent in the early identification of issues, development of resolution options, and recommendation of enhancements or alterations to District policies or procedures to respond to or prevent the recurrence of such issues.

B. Board of Education
PUSD’s Ombuds will also provide periodic reports to the Board of Education and will meet periodically throughout the year to maintain this reporting relationship, which may include general information such as the number and basic category of cases, visitor demographics, and disclosure of trends and observations witnessed or brought to the attention of the Ombuds. Where possible, the Ombuds will assist the Board of Education in the early identification of issues, development of resolution options, and recommendation of enhancements or alterations to District policies or procedures to respond to or prevent the recurrence of such issues.

C. Written Reports
The Ombuds will issue periodic written reports, specifying the number and overall nature of the cases brought to the Office. In general, non-identifying terms, the reports may include the category and demographics of the visitor, the number and form of contacts made, the way(s) in which issue(s) were addressed, the services provided, and the extent to which problems were or were not resolved. If, in the view of the Ombuds, certain cases have revealed broad issues that it would be appropriate to discuss in such a forum, the report may explore such issues. Upon publication, written reports may be circulated and made widely available.

VII. Miscellaneous Provisions

A. Legal Counsel
On occasion, the Ombuds may require legal advice or representation in the course of performing the duties of the position. This includes but is not limited to instances in which the Ombuds is asked for documents or testimony related to a formal process arising out of the Office’s activities. In such cases, the Office shall have access to legal counsel at the expense of the District. Where warranted, the Ombuds reserves the right to request separate and independent legal counsel.

B. Professional Development
In the interest of protecting the District and the Office, and maintaining the standards of this evolving field, the District will Ombuds will maintain membership in IOA and attend trainings, professional development opportunities, and annual conferences when possible and engage in continuing education to increase knowledge and skills related to the Ombuds Office.

C. Expansion of the Office
In the event the Office expands to include any other personnel, including but not limited to one or more additional Ombuds or any support staff, this Charter and the standards and policies within it shall apply equally to every such person.
D. Protection from Retaliation
The District shall not tolerate retaliation against individuals for use of the Office. Similarly, the Ombuds shall be protected from retaliation as a result of his/her role. The Ombuds shall serve a set and renewable term.

E. Amendment/Revocation of the Charter
This Charter Agreement remains in effect unless revoked. It may only be amended at the agreement of the Ombuds Officer and the Superintendent.

VIII. References

Best Practices. The international Ombudsman Association.

Code of Ethics. The international Ombudsman Association.
http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/Code_Ethics_1-07.pdf

Standards of Practice. The international Ombudsman Association.

IX. Signatures

In signing this Charter Agreement, the parties accept and agree to abide by the terms herein.

Esther Salinas, Ed.D. Date
Ombuds Officer, Pasadena Unified School District
On Behalf of the Ombuds Office

Brian McDonald, Ed.D. Date
Superintendent, Pasadena Unified School District
On Behalf of the District
POSITION SUMMARY

- The Pasadena Unified School District (PUSD) ombuds is a designated neutral or impartial dispute resolution practitioner whose major function is to provide confidential and informal assistance to constituents of the district community, including students, employees, parents and community members in response to inquiries submitted to the Ombuds Office concerning actions and policies.

- The ombuds role has a long and honorable tradition of protecting against abuse, bias, and other improper treatment, or unethical and unfair practices. Serving as a designated neutral, the ombudsman is neither an advocate for any individual or for the district as a whole but, rather, advocates for ethical practices and equitable processes who acts as a source of information and referral, and aids in answering individuals' questions, and assists in the resolution of concerns and critical situations. In considering any given instance or concern, the rights of all parties that might be involved are taken into account. This office supplements but does not replace, the district’s existing resources for conflict resolution.

REPORTING

- The ombuds function is independent of existing administrative structures and reports directly to the Superintendent of Schools. The ombuds does not accept notice on behalf of the district.

- While maintaining confidentiality of communications, the ombuds may prepare a periodic report to the Superintendent. Based on anonymous aggregate data, this report may discuss trends in reporting concerns, identifies patterns or problem areas in district policies and practices, may recommend revisions and improvements, and may assess the climate of the district.

CRITICAL SKILLS AND CHARACTERISTICS

- Communication and Problem-Solving Skills
  - Outstanding communication skills.
  - Able to effectively communicate with individuals at all levels and across the district community.
  - Excellent problem solving skills.
  - Able to gather information, analyze it and as necessary, help the inquirer develop appropriate options and actions.

- Decision Making/Strategic Thinking Skills
  - Awareness of how all decisions might impact the inquirer, as well as other stakeholders and the district.
Knowledge about how to proceed with issues, and help the inquirer assess who should be involved and when, endeavoring to do no harm.

- **Conflict Resolution Skills**
  - Able to facilitate the resolution of conflict between parties.
  - Understand what leads to conflict, the nature of conflict and methods of resolution.
  - Assist inquirers to resolve their conflicts.
  - Ability to help the inquirer determine which conflict resolution method would be appropriate for the specific situations.

- **Organizational Knowledge and Networking Skills**
  - Knowledgeable about the Pasadena Unified School District, its structure, culture, policies and practices.
  - Excellent networking skills.
  - Engage in collaboration with others; able to establish and maintain broad contacts throughout the PUSD.

- **Sensitivity to Diversity Issues**
  - Embrace the PUSD’s expectation to create an environment that values human differences.
  - Sensitive to dealing with individuals from a wide variety of backgrounds, cultures, and special needs.
  - Must be open, objective, and seek to understand issues from different perspectives.
  - Should be innovative in developing options that are responsive to differing needs.

- **Composure and Presentation Skills**
  - Maintain a professional demeanor.
  - Strong presentation skills.
  - Able to organize and communicate information to a variety of groups of people.

- **Integrity**
  - Reputation for integrity and for dealing fairly, effectively, and in a timely fashion with all constituents.
  - Sensitive to cultural issues within the PUSD.
  - Keeps information confidential.
  - Uses good judgment about when and how information can be shared.
  - Maintains professional standards that are consistent with the code of ethics and standards of practice of the International Ombudsman Association.
  - Should not be risk-aversive, and should understand that this position may, on occasion, challenge even the highest levels of the administration in an effort to foster fair and just practices.
ACCOUNTABILITIES/RESPONSIBILITIES

• Dispute resolution/consultation and referral
  o Provide impartial and confidential consultation to members of the PUSD community who are aggravated or concerned about an issue.
  o Remain independent, neutral and impartial, and exercise good judgment
  o Assist inquirers in interpreting PUSD policies and procedures.
  o Provide assistance to inquirers by clarifying issues and generating options for resolution.
  o Facilitate the inquirer’s assessment of the pros and cons of possible options.
  o If direct action by the ombuds may be an appropriate option, obtain the inquirer’s agreement and permission before proceeding.
  o If necessary, and while maintaining confidentiality, conduct appropriate informal fact-finding in order to better understand an issue from all perspectives.
  o Consult with managers/faculty/staff to develop cooperative strategies for complaint resolution.
  o When appropriate, facilitate group meetings, use shuttle diplomacy, or negotiation skills to facilitate communication among parties in conflict.
  o Encourage flexible administrative practices to maximize the PUSD’s ability to meet the needs of all members of the district community equitably.
  o Whenever possible and appropriate, provide referrals to other resources.

• Policy Analysis and Feedback
  o Serve as a resource for district officials in formulating or modifying policy and procedures, raising issues that may surface as a result of discrepancies between the stated goals of the district and actual practice.
  o Review periodically, the pattern of grievances. Make appropriate recommendations for policies or practices that would reduce or eliminate recurring grievances.
  o Act as a liaison between individuals or groups and the district administrative structure, serving as a communicator or informal facilitator, as appropriate.
  o Function as a sensor within the district community to identify problems or trends that affect the entire district or significant parts of the community; if appropriate, recommend creative ways to address these concerns.
  o Provide early warning of new areas of organizational concern, upward feedback, critical analysis of systemic need for improvement, and make systems change recommendations.

• Community Outreach and Education
  o Responsible for on-going education and communication about the office’s role to all potential inquirers as well as to district leadership.
  o Design and conduct training programs for the district community in dispute/conflict resolution, negotiation skills and theory, civility, and related topics.
• **Establish/Maintain Office of Ombuds Services**
  o Supervise office staff, as necessary. Formulate, manage and monitor the overall goals, direction, programs, and budget of the office.
  o Ensure that the integrity of the office is maintained by all ombudsman office staff through independence, fair process, neutrality, impartiality, confidentiality and timely attention to the resolution of issues while treating people with dignity and respect.

**QUALIFICATIONS**
• The ombuds should be a person of recognized knowledge, judgment, objectivity, and integrity.
• Bachelors Degree is required. Master’s Degree (or equivalent) is preferred.
• Mediation or alternative dispute resolution experience is strongly desired.
• Understanding of diverse cultures and backgrounds is essential.
• Must be willing and able to obtain relevant education and periodic updating of the ombuds’ qualifications.
• Must be an active member of professional associations related to ombuds and alternative dispute resolution in order to stay on the leading edge of critical ombuds’ issues.
There are no implementation procedures for policy 2030.
I. Policy Statement

The Board of Education of Howard County believes that an Ombudsman can facilitate positive relationships among the Board of Education, school system employees, and the public. The Ombudsman reports directly to the Board, and will serve as a neutral party collaborating with Howard County Department of Education staff and the community to ensure a fair process that equitably and reasonably resolves concerns received from parents, employees, and community members.

II. Purpose

The purpose of this policy is to describe the core role, responsibilities, and authority of the position of Ombudsman. At the discretion of the Board, the Ombudsman may perform other tasks that foster the goal of school-related problem resolution and/or assist the Board in its functioning.

III. Definitions

A. Confidential – For purposes of this policy, information that is private, not intended to be shared with others unless they have a legitimate educational interest.

B. Confidentiality – For purposes of this policy, the obligation of a school system official not to disclose or transmit information to unauthorized parties.

C. Neutral – Not serving as an advocate for any party to a dispute; advocating for fair process and fair administration only.

D. Parent – Any one of the following, recognized as the adult(s) legally responsible for the student:

1. Biological parent – A natural parent whose parental rights have not been terminated
2. Adoptive parent – A person who has legally adopted the student and whose parental rights have not been terminated
3. Custodian – A person or agency appointed by the court as the legal custodian of the student and granted parental rights and privileges
4. Guardian – A person who has been placed by the court in charge of the affairs of the student and granted parental rights and privileges
5. Caregiver – An adult resident of Howard County who exercises care, custody, or control over the student, but who is neither the biological parent nor legal guardian
6. Foster parent – An adult approved to care for a child who has been placed in their home by a State agency or a licensed child placement agency as provided by section 5-507 of the Family Law Article.

IV. Standards

A. General Authority

1. The Ombudsman will provide assistance to parents, employees, and community members who are unfamiliar with system policies and procedures or who are uncomfortable with addressing issues and concerns by themselves.
2. Communications made to the Ombudsman are not official notice to the school system for any legal purpose. The Ombudsman neither acts as agent for, nor accepts notice on behalf of, the school system and does not serve in a role that is designated as a place to receive notice on behalf of the system. However, the Ombudsman may refer individuals to the appropriate place where formal notice can be made by the individual.
3. The Ombudsman will review and recommend changes and updates to Board policies, regulations, and procedures as appropriate during the course of his or her work. The Ombudsman will participate as directed in policy development and review activities.
4. The Ombudsman will have full access to all files, records, data, reference and research materials, and sources of information within the school system that the Ombudsman deems relevant to the task on which he or she is working, subject to confidentiality policies.
   a. Access to confidential material in a personnel file requires consent in accordance with Policy 7010, Confidentiality of Personnel Records.
   b. Access to confidential material in a student record requires consent in accordance with Policy 9050, Student Records and Confidentiality.
5. The Ombudsman will exercise discretion regarding the appropriate response to concerns of individuals contacting the office. This includes referring individuals to appropriate channels of information and support or offering problem resolution services.
6. The Ombudsman may proactively offer his or her services to address a problem he or she perceives.
7. The Ombudsman will maintain confidentiality, consistent with law.

B. Information and Community Outreach

1. The Ombudsman will direct persons with questions, concerns, information, or suggestions to the appropriate channels of communication and support.
2. The Ombudsman has the authority to communicate with school system staff and outside agencies, when necessary and appropriate, in order to respond to requests, assist in resolving disputes, or assist the Board.
3. The Ombudsman will facilitate and participate in activities and presentations to various groups. The Ombudsman will promote positive school-community
relationships and champion Board policies and systemwide goals, procedures, and initiatives.

C. Problem Resolution

1. The Ombudsman will seek to resolve problems brought forth by parents, employees, or community members in a timely fashion within the context of Board policy and procedures.

2. The Ombudsman has a responsibility to remain neutral and consider the concerns of all parties known to be involved in the dispute.

3. The Ombudsman may facilitate discussion to identify the best resolution options available and, when appropriate, help develop new ways to solve problems.

4. The Ombudsman may assist parties in reaching a mutually satisfactory resolution of disputes or problems through informal mechanisms.

5. The Ombudsman is an advocate for meaningful and fair administration of school system problem resolution mechanisms and will assist individuals to access the appropriate formal process.

V. Compliance

A. The Ombudsman will notify those seeking assistance that communication with the Ombudsman office does not constitute official notice to the school system for any legal purpose.

B. The Ombudsman will not undertake any duties or assignments which contravene the authority of the superintendent of schools, as set forth in the Public School Laws of Maryland or any other laws, bylaws, rules, or policies of the Maryland State Board of Education.

C. The Ombudsman will not interfere with contractual grievance procedures.

D. The Ombudsman will not violate any of the constitutional or statutory rights of complainants or persons against whom complaints may be brought.

E. The Ombudsman must take all reasonable steps necessary to protect records and files pertaining to confidential discussions and shall resist testifying in any judicial or administrative hearing concerning a matter in which he/she was involved.

F. The Ombudsman will maintain confidential records, keep databases of relevant information, monitor outcomes, and provide reports upon request.

G. The Ombudsman will develop and provide quarterly and annual reports summarizing issues, concerns, and inquiries to the Board.
VI. Delegation of Authority

A. The Board will designate representation from its membership to oversee the function of the Ombudsman.

B. The overall effectiveness of this function will be reviewed annually by the Board and the Superintendent.

VII. References

A. Legal
The Annotated Code of Maryland, Education Article, §4-101(b)
The Annotated Code of Maryland, Education Article, §4-108(4)

B. Board Policies
Policy 1000 Civility
Policy 7010 Confidentiality of Personnel Records
Policy 9050 Student Records and Confidentiality

C. Other
A Parents’ Guide to Resolving School Concerns and Complaints

VIII. History

ADOPTED: January 13, 2005
REVIEWED: July 1, 2014
MODIFIED:
REVISED: November 29, 2007
EFFECTIVE: November 29, 2007
INDEX
K-12 SCHOOL OMBUDS TOOLKIT

Part 1
2. "Ombuds Offices Overview," by Ellen R. Williams, Sara Thacker, and Jonathan Stier
4. Brochure of the DC Office of the Ombudsman for Public Education
5. Comparison of Roles and Responsibilities by the District of Columbia State Board of Education
6. 2015 Annual Report by Joyanna Smith, Ombudsman for Public Education, DC Office of the Ombudsman for Public Education

Part 2
7. District of Columbia statutes creating the Office of the Ombudsman for Public Education
8. Brochure of the Portland (OR) Public Schools Office of the Ombudsman
10. Brochure of the Pasadena (CA) Unified School District Ombuds Office
12. Draft Ombuds Job Description for the Pasadena (CA) Unified School District
13. Howard County (MD) Policy 2030-PR: Implementation Procedures for Ombudsman

Part 3
14. Sample Frequently Asked Questions for K-12 Ombuds Office [To be Finalized]
15. 2004 American Bar Association Resolution: revised Standards for the Establishment and Operation of Ombuds Offices
17. IOA Standards of Practice
18. IOA Frequently Asked Questions
19. Governmental Ombudsman Standards from the United States Ombudsman Association (USOA)
20. Model Ombudsman Act for State Governments from USOA
Understanding the Types of Ombudsman: A Starter Guide

By Julie C. Smith and Charles L. Howard

Whether you are building an ombuds program, talking with an ombudsman as his or her constituent, or standing outside an ombuds office during discovery stymied by the program’s confidentiality, it helps to know what type of ombudsman you are dealing with. Arm yourself with a basic knowledge of the blueprints and architecture of an ombuds office.

BACKGROUND

Hard to pronounce, harder to pin down

Ombudsman. An internet search can identify how to pronounce ombudsman (om-buds-muhn), or at least the Americanized version of the word. That is pretty much the limit of how helpful a quick search can be – the general definitions offered fall short of capturing the variation in roles the title can play. The seemingly mercurial nature of the term muddles understanding for laymen and lawyers alike. Although an ombuds might offer insight or clarity as part of the job, the term ombudsman is not so helpful in illuminating its meaning, which can change significantly depending on the situation. (For this article, note that ombuds and ombudsman are used interchangeably, with a nod to interests in both terms ranging from historical value to practitioner preference to gender neutrality to brevity.)

A Swedish word that appeared in the 1700s, ombudsman means agent or representative; however, the idea of a complaint officer goes back even farther into history, reaching back to Ancient Egypt, the Roman Republic, and the Han Dynasty. According to the American Bar Association’s (ABA) 2004 Resolution updating and setting standards for ombuds programs, ombudsman means “an independent, impartial, and confidential complaint handler” who “serves as an alternative means of dispute resolution – a means by which issues may be raised, considered, and resolved.” Very roughly, an ombuds is a neutral party present to examine or help resolve issues that arise, generally in a context with a significant power imbalance or fear of retribution. A key issue, however, is that there are different types of ombudsmen. In fact, the ABA has also adopted three other Resolutions, beginning as far back as 1969, that help define the most common types of ombuds. Accurately identifying what type of ombudsman serves in a particular context is easier with an understanding of the specific ombuds program; these programs have evolved in the U.S. over the past fifty years.

History of U.S. ombuds in a nutshell

In the 1960s, a minor explosion of works extolled the virtues of using an ombudsman; literature included law review articles, books, and a Time magazine article, all illustrating as one professor termed it, “ombudsmania.” An early U.S. reference to ombudsman comes from a scholarly world traveler searching for innovations to bring home to the U.S. He describes an ombudsman’s duties as an independent complaint handler for the public with the access and mandate to raise issues; he added, “this is what happens in such places as Utopia and Scandinavia. The institution of the Ombudsman works exceedingly well, especially in Denmark...The idea, coupled with American ingenuity to adapt it to our institutions, may have considerable potentiality.” Sure enough, the ombuds concept caught on and flourished: in 1969, Hawaii produced the first U.S. governmental ombudsman, just ten years after it joined the union; in 1996, the Administrative Dispute Resolution Act broadly authorized federal agencies’ use of ombuds; and across the decades, Congress has specifically provided for ombuds in various capacities.

Over the years, the ABA has adopted four resolutions supporting increased use and delineating the essential characteristics of ombudsman. The drafters consulted with many ombuds entities and the
resolutions have heavily influenced the field, but as the ABA’s Section for Dispute Resolution’s Ombuds Committee noted, it was “not without controversy, due to the divergent interests represented in the wide range of ombudsman types.” The ombuds community accepted and adopted these resolutions to varying degrees, while some rejected them altogether. Ombuds have many and varied roles throughout the private and public sectors, but for those operating according to the blueprints of the ABA ombuds resolutions, there are a few unifying factors.

**ESSENTIAL CHARACTERISTICS OF AN OMBUDSMAN**

**How to build an ombuds program**

Nuances in the term ombuds developed over decades of varied uses, but as defined under the several ABA resolutions, there are three necessary commonalities. Only with independence, impartiality in conducting inquiries and investigations, and confidentiality can an ombuds work effectively.

**Independence**

“To be credible and effective, the office of the ombuds is independent in its structure, function, and appearance.” Part of the rationale for establishing and supporting an ombudsman is to counter constituents’ fears of retaliation for bringing forward issues; similarly, ombuds have to be able to carry out their duties without fear that as a result of their work, their office, position, or resources would suffer. Independence is the foundation for constructing an ombuds office.

**Impartiality**

Once an ombuds has that crucial independence, genuine impartiality is possible. If independence is the foundation of an ombuds office, impartiality is the architectural entrance that allows individuals to visit the ombudsman. In investigations or inquiries, the ombuds acts without initial bias or conflicts of interests; impartiality does not, however, mean that an ombuds cannot develop an interest in policy change or act in an advocacy role as appropriate.

**Confidentiality**

With the independent foundation and impartial entryway in place, the final vital element is the ability to close the door on the rest of the world. Confidentiality is the door that shields sources’ identities and communications with the ombudsman, a barrier that separates the ombudsman from other offices receiving complaints but maintaining closer ties with the policy or practice of the entity. Confidentiality “promotes disclosure from reluctant complainants, elicits candid discussions by all parties, and provides an increased level of protection against retaliation to or by any party.” An ombuds does not disclose confidential information unless there is an imminent risk of serious harm; exceptions exist at the ombudsman’s discretion for disclosing non-confidential information or confidential information that cannot trace back to and identify the source.

When the principles of independence, impartiality, and confidentiality are set up, ombuds can operate effectively for their constituents. While some legislation exists that explicitly outlines these elements for certain legislatively-created programs, many ombuds offices do not have the luxury of regulations protecting their operational standards; these essential characteristics are the best insurance for such offices against intrusion. When the principles fail, it is as if someone is listening behind the door, directing traffic away from the entrance, or even shutting down the office of the ombudsman entirely.

**TYPES OF OMBUDS DEFINED BY THE ABA RESOLUTIONS**

Ombuds have adapted over the years to address a range of opportunities in alternative dispute resolution. They stretch from universities to corporations to the Federal Government; they extend across the public and private sectors, including prisons, nursing homes, and newspapers. Under the delineations of the 2001 and 2004 ABA Resolutions, five types of ombuds are categorized: Classical, Legislative, Executive, Organizational, and Advocate.
A Classical/Traditional ombuds works to address problems for the general public or within an entity, generally regarding “actions or policies of government entities or individuals.” In the 2004 Resolution, the more particularized legislative and executive ombuds replace the classical category, but the broader term is still widely used by ombuds groups, including the ABA Ombuds Committee, and used more often than the legislative/executive delineation. The ombudsman is either appointed by the legislative body or by the executive with confirmation from the legislative body. Traditional ombuds can:

- Hold agencies accountable to the public and assist in legislative oversight of those agencies.
- Conduct investigations and use subpoena power.
- Issue public reports.
- Advocate for change within the entity and publicly.

A Legislative ombuds works in the government’s legislative branch to address internal issues or problems brought by the public, generally regarding accountability to the public for “the actions or policies of government entities, individuals or contractors.” Legislative ombuds are appointed by the legislative body or the executive with confirmation by the legislative body and adhere to the twelve characteristics outlined in the 1969 ABA Resolution. An example of this type of ombuds is the corrections ombudsman. Legislative ombuds can:

- Hold agencies accountable to the public and assist in legislative oversight of those agencies.
- Conduct investigations and use its subpoena power during investigations.
- Issue public reports.
- Advocate for change within the entity and publicly.

An Executive ombudsman can work in private or public sector entities and can hear “complaints concerning actions and failures to act of the entity, its officials, employees and contractors.” Unlike the legislative ombudsman, the executive ombuds is not created by or with the confirmation of a legislative body, but rather are often appointed by the head of an entity. An example of this type of ombuds is the municipal government ombudsman. Executive ombuds can:

- Conduct investigations.
- Issue reports.
- Hold the entity accountable or collaborate with the entity to make programs better.
- Have jurisdiction over a subject matter that involves multiple agencies, but should not have general jurisdiction over more than one agency if located in government.

An Organizational ombuds can work in private or public sectors and usually addresses issues brought by an entity’s members, employees, or contractors of an entity regarding its practice or policy. These ombuds often work to help resolve conflicts on an informal level for the organization, using a range of methods from conflict coaching to informal mediation. In addition to the three principles of confidentiality, impartiality, and independence, the leading organizational ombuds association recognizes informality as a vital component in the standards of an organizational ombuds practice, declaring in its code of ethics, “The Ombudsman, as an informal resource, does not participate in any formal adjudicative or administrative procedure related to concerns brought to his/her attention.” With the program arising from the entity, even with structural independence it is especially important for the constituent to clearly differentiate the ombuds program from other agency mechanisms. An example of this type of ombuds is the university ombudsman. Organizational ombuds can:

- Make inquiries and operate according to informal processes as specified in an office charter.
- Conduct inquiries impartially and independently.
- Issue reports.
• Advocate for change within the entity.\textsuperscript{29}

An Advocate ombudsman can work in private or public sectors. While remaining objective, an advocate ombudsman “is authorized or required to advocate on behalf of individuals or groups found to be aggrieved.”\textsuperscript{30} This ombuds is thus not always a neutral party, but at the fact determination stage, even the advocate ombuds must be impartial. If there is a basis for a complaint, the ombuds advocates for change or relief. This ombuds must understand the nature and role of advocacy and provide constituents information, advice, and assistance. An example of this type of ombuds is long-term care ombudsman.\textsuperscript{31} Advocate ombuds can:

• Represent constituents’ interests regarding policies implemented by the establishing entity, government agencies, or other defined organizations.

• Initiate action when merited in an administrative, judicial, or legislative forum.\textsuperscript{32}

A handful of types, but the list goes on

In addition to these five types, all kinds of other entities use the term ombudsman, perhaps hoping to gain the status or name recognition associated with “ombudsman,” but some do so without actually adhering to the operating standards set forth by the ABA or the ombuds organizations. This ends up being confusing and problematic not only for their office but also—and perhaps even more so—for other ombuds programs that do adhere to the standards.

Several ombuds groups exist that are geared towards a particular type of ombudsman, including the United States Ombudsman Association (centered on traditional ombudsman), the International Ombudsman Association (focused on organizational ombudsman), and the Coalition of Federal Ombudsman (concentrated on federal sector ombuds). These groups emphasize standards and principles for their membership, and are a good source to consult to get a detailed understanding of the values of a specific type of ombuds.

Other specific kinds of ombudsman include media ombuds, whistleblower ombuds, analytic ombuds, and a hybrid of ABA types. There are variations even within the ABA-defined categories. For instance, the Coalition of Federal Ombudsman and the International Ombudsman Association categorize types of ombuds in their groups as internally-facing or externally-facing, with the potential for overlap. The internal ombuds focus on issues within their organization, while the external ombuds focus on issues outside stakeholders have with their entity.

Resolving: the future

A widely used term to refer to different types of offices, ombudsman can be a tricky term to nail down. The program blueprints and structures are in place, but given American ingenuity and the inherent creativity of the alternative dispute resolution field, “ombudsman” may yet take on new and complex meanings.

For more information, visit the Dispute Resolution Section Ombuds Committee’s website: http://apps.americanbar.org/dch/committee.cfm?com=DR589600.

Charles L. Howard is a partner and the General Counsel of Shipman & Goodwin LLP. He has represented organizational ombuds programs for twenty-five years and is the author of The Organizational Ombudsman: Origins, Roles, and Operations-A Legal Guide, published by the American Bar Association in 2010. He is also the Chair of the Ombuds Committee of the Dispute Resolution Section. He can be reached at choward@goodwin.com. Julie C. Smith is a mediator and Attorney-Adviser at the U.S. Department of State. A member of the Maryland Bar, she earned her J.D. from William and Mary Law School. She can be reached at juliesmithADR@gmail.com.
5 Howard, supra note 1, at 7, 8 fn. 25, 24.
8 Caiden, supra note 3, at 3, 9.
9 2004 ABA Resolution, supra note 4, at 9.
10 Id. at 10.
11 American Bar Association, Dispute Resolution Section's Ombuds Committee, Who We Are, How We Got Here, and What We Will Do, http://apps.americanbar.org/dch/committee.cfm?com=DR589600 (last visited Dec. 21, 2014).
12 Id.
13 2004 ABA Resolution, supra note 4, at 13.
14 Id. at 14.
15 Id.
16 Id. at 4.
17 Howard, supra note 1, 9-10, 15, 21.
18 2001 ABA Resolution, supra note 2 at 1.
19 American Bar Association, Dispute Resolution Section, Ombuds Committee, Who We Are, How We Got Here, and What We Will Do, http://apps.americanbar.org/dch/committee.cfm?com=DR589600 (last visited Dec. 21, 2014).
20 Howard, supra note 1, at 26.
21 2001 ABA Resolution, supra note 2, at 5.
22 2004 ABA Resolution, supra note 4, at 1.
23 Id. at 19, fn. 12.
24 Id. at 6 - 7.
25 2004 ABA Resolution, supra note 4, at 1.
26 Id. at 7.
27 Id. at 1.
29 2004 ABA Resolution, supra note 4, at 7.
30 Id. at 1.
31 For more information, visit www.ltcombudsman.org.
32 2004 ABA Resolution, supra note 4, at 8.
OMBUDS OFFICES

OVERVIEW

Ombuds is a shortened form of the name “ombudsman,” which comes from Swedish and means “representative.” At a fundamental level, an ombuds is one who independently assists individuals and groups in the resolution of conflicts or concerns within an organization and helps the organization make changes to prevent the issues from recurring. Ombuds work in all types of organizations, including governments, colleges and universities, corporations, non-profits, hospitals and news organizations.

There are different types of ombuds with different roles, functional responsibilities and standards of practice, including: organizational ombuds, classical ombuds and advocate ombuds. As a critical components of its conflict management system, an organization selects the type of ombuds program depending on its specific situation and needs.

The organizational ombuds is a designated neutral who is appointed by an organization to facilitate informal resolution of concerns within the organization with internal constituents or customers, or both. There are organizational ombuds in the public, private, and non-profit sectors. The organizational ombuds does not play a role in formal process, does not accept notice of claims against the organization, does not investigate problems brought to the office on behalf of the organization, does not make policy, and does not represent any side in a dispute.

The classical ombuds may receive and investigate complaints and concerns regarding the administrative acts of the government, and can also help address issues informally. The authority and mandate of classical ombuds are typically provided by statutory language. They are usually appointed by a legislative body. They advocate for fair and efficient processes and policies, not for individuals.

An advocate ombuds may be located in either the public or private sector and is authorized to advocate on behalf of individuals or groups found to be aggrieved. Advocate ombuds are often found in organizations such as long-term care facilities.

The following chart summarizes ombuds roles and characteristics; and shows similarities and differences among the three types. Each organization determines which type of ombuds is most appropriate for the resolution of its conflicts or concerns.
## Comparing Three Types of Ombuds

<table>
<thead>
<tr>
<th>Roles &amp; Characteristics</th>
<th>Organizational Ombuds</th>
<th>Classical Ombuds</th>
<th>Advocate Ombuds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designated neutral/impartial</td>
<td>Yes/ No</td>
<td>Yes/ No</td>
<td>Yes/ No</td>
</tr>
<tr>
<td>Independent</td>
<td>Yes/ No</td>
<td>Yes/ No</td>
<td>Yes/ No</td>
</tr>
<tr>
<td>Operates outside ordinary hierarchy; may report to top management and board</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Informal channel</td>
<td>Yes/ No</td>
<td>No adjudicative authority</td>
<td>No adjudicative authority</td>
</tr>
<tr>
<td>Not an office of notice for the entity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confidentiality</td>
<td>Yes/ No</td>
<td>Yes/ No</td>
<td>Yes/ No</td>
</tr>
<tr>
<td>Protected by Federal Rule of Evidence 501 and terms of office creation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offers guidance, coaching or options counseling for all levels of hierarchy</td>
<td>Yes/ No</td>
<td>Emphasis varies depending on other office mandates</td>
<td>May vary depending on enabling legislation</td>
</tr>
<tr>
<td>Typically is a main emphasis of practice</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recommends changes to prevent problems from reoccurring</td>
<td>Yes/ No</td>
<td>Recommendations often publicly available</td>
<td>May vary depending on enabling legislation</td>
</tr>
<tr>
<td>Distribution may be limited to senior decisionmakers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wide discretion to determine approach to issues or complaints</td>
<td>Yes/ No</td>
<td>As determined by enabling legislation and stated adherence to professional standards</td>
<td>May vary depending on enabling legislation</td>
</tr>
<tr>
<td>As determined by terms of office creation, including stated adherence to professional standards</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provides early warning to decisionmakers and acts as a proactive change catalyst regarding systemic issues</td>
<td>Yes/ No</td>
<td>May engage in training</td>
<td></td>
</tr>
<tr>
<td>Typically has a significant role in developing and conducting training</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spots and communicates trends</td>
<td>Yes/ No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Focus on trends not readily identified via formal channels</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>May handle matters only from employees, external customers/complainants, or both</td>
<td>Yes/ No</td>
<td>Depending on enabling legislation</td>
<td>Usually only external</td>
</tr>
<tr>
<td>Depending on terms of office creation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Has formal investigative authority</td>
<td>Yes/ No</td>
<td>Typically has subpoena power; employs discretion</td>
<td>Degree of access dependent on enabling legislation</td>
</tr>
<tr>
<td>Emphasizes lack of investigative authority in</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **Yes**
- **No**
- **Δ** Usually only external
- Degree of access dependent on enabling legislation
<table>
<thead>
<tr>
<th></th>
<th>order to build trust among all constituencies</th>
<th>whether to formally investigate or attempt informal resolution</th>
<th>May vary depending on enabling legislation</th>
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<tr>
<td>Keeps records of individual cases</td>
<td>△ Keeps and may report non-identifying statistical data</td>
<td>●</td>
<td></td>
</tr>
<tr>
<td>May issue public findings</td>
<td>△ May issue an annual report discussing general issues and trends if provided by terms of office creation</td>
<td>● Typically issues annual reports and may issue reports of findings in individual cases at ombuds discretion</td>
<td>● May vary depending on enabling legislation</td>
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<tr>
<td>Mandates changes/makes decisions for the entity</td>
<td>△</td>
<td>△</td>
<td>△</td>
</tr>
<tr>
<td>Advocates for individuals</td>
<td>△</td>
<td>△</td>
<td></td>
</tr>
<tr>
<td>Advocates for fair process</td>
<td>●</td>
<td>●</td>
<td></td>
</tr>
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**Representative Standards of Practice**


A Broader View of Dispute Resolution
In the Private Sector, Ombuds Office Is Based on Core Values
Reflections of A Federal Agency Ombuds
We are delighted to present this issue of Dispute Resolution Magazine on the work of the ombuds. This area of practice, though rich in history, has exploded in recent years and now provides important opportunities for collaboration, education, and employment. Our first theme article, by Chuck Howard, the Co-chair of our Section's Ombuds Committee, serves as a primer on the topic and examines the premise that gave rise to the ombuds, one that is very different from those that led to mediation, arbitration, and other similar forms of alternative dispute resolution. Other articles describe the current landscape of ombuds activity, suggest best practices, and highlight the difference between internal ombuds, who serve an organization's employees, and those who are external-facing and work with the public.

Presenting the three theme articles posed some of its own challenges. First, terminology. Labels vary from office to office and country to country: some people prefer the original term "ombudsman," some use "ombudswoman," "ombudsman," and "ombudsperson," and some have adopted the gender-neutral "ombuds." For the sake of consistency and clarity, in the three main articles we use the term "ombuds" throughout—a decision that not all our authors applauded. To acknowledge this difference of opinion, we have included this endnote in each article:

The term "ombudsman" derives from a Scandinavian word that is not gender-specific. In modern usage, different organizations have adopted variations of the word, including "ombuds" and "ombudsperson," to avoid any perceived gender association. In this issue of Dispute Resolution Magazine, we use "ombuds" unless the text refers to an office or organization that uses a different version of the word.

Second, context matters. Each article gives us a glimpse into one organizational culture and reminds us that such cultures—including the law—often use language that can be opaque or sound odd to the ears of those outside them. For example, in their article about ombuds work in the private sector, three authors who make up the ombuds office at McKinsey & Company refer to their fellow employees as "people" or "colleagues," not "employees." In contrast, our author from the federal Consumer Financial Protection Bureau, the CFPB, has "inquirers" and "stakeholders" instead of "complainants" or "constituents."

Finally, confidentiality. As many of us know from trying to communicate about the joys of ADR, our vow of confidentiality almost always prohibits us from providing telling (and often intriguing) details about particular cases or initiatives. In this issue, the authors describe complicated processes and systems, but the details of the actual disputes they have encountered are often confidential. The irony is inescapable: descriptions of the actual work and the particular personalities that we find challenging and fascinating cannot be included.

Despite all these challenges, we think these articles are engaging and valuable, providing rare insiders' views of the work of the ombuds. We thank the authors for sharing their expertise and insights.

One more thing: The careful reader will note a new format for our regular feature "On Professional Practice." We have invited Ty Holt, Judith Meyer, Susan Podziba, and Sharon Press, all distinguished practitioners and thought leaders, to use different presentations—such as interviews and conversations—to analyze practice issues that sustain professional integrity, examine practices that apply across multiple sectors, or crystallize how professional responsibility principles differ from one practice area to another. In this first issue, they discuss, quite appropriately, the ethics of getting started. We hope that this new format will prompt—not end—conversations on these important topics.

— The Dispute Resolution Magazine Editorial Board
In English common law, which forms the foundation for much of the US legal system, tradition and precedent are paramount. Because common law was built on the principles of lawyers, lawsuits, and the adversarial process, it’s no surprise that many people today assume that resolving a dispute means hiring an attorney and going to court. Even more modern approaches to resolving differences such as mediation, arbitration, and conciliation are seen through this traditional lens. They’re all alternatives to having your day in court.

But the concept of the “ombudsman,” a role that first appeared in Scandinavia about 300 years ago and has been implemented in the United States for only about half a century, springs from a very different idea. This broader view of dispute resolution comes from a separate tradition and premise: that organizations, including governments, should function effectively and that an independent, skilled agent within an organization can help make that happen. Resolving conflicts is part of that effective functioning, but it isn’t the only part. Understanding this view — and how the ombuds’ role has evolved to include ever more governmental functions and many other complex systems — helps us see why and how ombuds can provide crucial help both to individuals and organizations.

A Brief History of Ombuds
The first ombuds in a role that would be recognized as such today was created in 1713 by a Swedish king. When King Charles XII fled to Turkey after being defeated by Russia, the king appointed an “ombudsman” to ensure that his governmental officials “followed the law and fulfilled their obligations.” A century later, in 1809, Sweden adopted a parliamentary form of government with a constitution that provided for an ombuds to guarantee that the government complied with the law. As the concept spread throughout Scandinavia in the twentieth century, an ombuds was a lawyer — an investigator and sometimes a prosecutor — whose mandate was to ensure that the government complied with the law.

Kenneth Culp Davis, a longtime professor at the University of San Diego and an authority on administrative law, helped popularize the ombuds concept in the United States through an article he wrote in 1961 for the University of Pennsylvania Law Review in which he described his observations of the workings of the Scandinavian ombuds. He believed the ombuds function filled two important roles: a “check” on the activities of governmental officials and a means of helping ensure fundamental fairness to concerns that could be as petty as

[w]hen a bureaucrat irritates you, or delays too long, or requires too much red tape, or denies what you want. . . . If the bureaucrat is wrong, the Ombudsman may publically reprimand him. If the government system is out of gear, the Ombudsman may recommend that it be set right, and his view is likely to prevail.

The Work of the Ombuds
These types of disputes — in which disagreements can be against or within an organization — are quite different from those in which the other forms of ADR are often used. Disputes in the ombuds’ area often are about process (in addition to or sometimes instead of substance), and they may not even be at a level that would typically prompt someone to take formal action. Perhaps, for example, a medical technician believes that she is being belittled or insulted by her coworkers, supervisors, or hospital physicians — but not necessarily subjected to the kind of sexual harassment that would merit lodging a formal complaint. Whom can she talk to about her concerns and her options? If the clinic or hospital has
an ombuds, the technician can contact that office in complete confidence and set up a meeting, perhaps in an office located away from the workplace, to talk things over. Maybe that conversation steers her to other resources, helps her articulate her concerns, or assists her in understanding exactly how the organization defines harassment and what she could do to register a complaint. Perhaps the technician takes action; perhaps she doesn’t. Regardless of how this particular issue is resolved, the ombuds often uses aggregate data on the types of issues presented to the office (without identifying the inquirers or disclosing confidential information about them) to alert the organization’s management about systemic issues that may be of concern.

In all his or her work, the ombuds focuses not only on helping resolve a particular complaint but also on promoting the effective functioning of the organization or system to help set things right, in this case reporting aggregate information about employee complaints. This work pays big dividends, and over the past 50 years, colleges, universities, private organizations, and even prisons and nursing homes have all appointed their own ombuds.

As the ombuds’ role has moved beyond its original governmental moorings, which through statute, regulation, or governmental directive provided legal protection for its investigative function and the attendant need for confidentiality, it has been able to adapt to non-governmental contexts by developing and adhering to principles such as independence, impartiality, and confidentiality in the absence of any enabling legislation.

In this evolutionary process, various types of ombuds have emerged. As described in two resolutions adopted by the American Bar Association in 2001 and 2004, ombuds programs have evolved to include “organizational” and “advocate” ombuds in addition to the original “classical” or governmental (whether “executive” or “legislative”) programs. Despite such distinctions, the role’s dual micro/macro focus endures: ombuds of all types seek to help
resolve particular concerns presented to them — and at the same time identify trends and systemic issues that their organizations should recognize.

In today’s world, we all have to deal with government or other organizations every day, whether attending school, going to work, or dealing with a government agency or an insurance company. And whenever people are involved (i.e., always), mistakes, failures, or disregard of the law or proper process are sure to follow. Because most people have never been involved in a lawsuit, arbitration, or other formal conflict or adjudicatory process, they may not even know about traditional forms of ADR. And even if they have heard of mediation, arbitration, or case conciliation, they may not know how or where to find them. Or they may think these processes are intimidating, expensive, or ill-suited to their concern. And for those working inside an organization, even if a wrong seems indisputable, who wants to bring it to light and risk condemnation and perhaps retribution from bosses or coworkers or both?

Because ombuds are usually retained or employed by an organization or governmental agency and operate as an independent and impartial resource available to all the organization’s constituents, the ombuds services are typically free for the individuals using them. Ombuds can help resolve conflicts, but because of their deep knowledge about the organizations they serve, they can also provide information and a safe, confidential space where people can discuss options for reporting and addressing their concerns. While the means for dealing with systemic issues may vary depending on the type of ombuds, virtually all ombuds consider identifying and addressing systemic problems within their organization to be among their main responsibilities.

The growth of ombuds programs bears witness to the increasing understanding of just how much this broader type of dispute resolution is needed. Forward-looking colleges and universities, as well as many large corporations and other organizations and institutions, have been surprised by both the variety
and cumulative significance of the issues brought to their ombuds, and each year numerous legislative proposals include calls for the appointment of new ombuds to address specific concerns. Ombuds themselves, their professional associations, and the Dispute Resolution Section's Ombuds Committee all agree: most large organizations and governmental programs would benefit greatly from having or using some kind of ombuds program.

The Broader View in Public School Systems

To this end, the Section's Ombuds Committee aims to sponsor education and outreach about such programs by working with the major ombuds organizations, including the International Ombudsman Association (IOA), the United States Ombudsman Association (USOA), and the Coalition of Federal Ombudsmen (COFO), and encouraging articles and programs to promote better understanding and increased use of appropriately designed, supported, and implemented ombuds programs. One of the Ombuds Committee's big initiatives for the coming year will be spotlighting the potential for ombuds programs in public school systems.

Our public K-12 school systems are a great example of both the need for and the possible opportunities provided by an effective ombuds program. As most of us know all too well, conflicts between parents and school administrators abound, but the traditional means of resolving these disputes, whether through litigation or administrative complaint processes, can be expensive, time-consuming, adversarial, and inflexible for everyone involved. Many disputes take months, or even years, to resolve through formal channels.

But such systems may not always serve the larger good — or even the needs of the families and administrators involved. While almost all school disputes involve distinct facts, many also raise systemic issues that could be addressed through revisions to policy or practices. And some parents and officials really just need to sit down, talk, listen, and start to understand the other person's perspective.

By providing a cost-effective, efficient opportunity for parties to talk and for the larger system to learn and change, an ombuds program can serve as a check on systemic mistakes and promote public perception that educational decision-making is fundamentally fair.

School systems are just one arena where ombuds programs are a valuable resource, and in our increasingly complex and frequently global society, there are many more. Other articles in this issue of Dispute Resolution Magazine describe how ombuds help address those issues in certain organizations — an internal ombuds program at a consulting firm and an external-facing ombuds at a federal government agency. In all these contexts, what is needed is an appreciation of a dispute resolution method that goes beyond the common-law alternatives, one in which a trained, skilled ombuds works to help with an individual concern — and improve the system that gave rise to it.

Endnotes

1 The term "ombudsman" derives from a Scandinavian word that is not gender-specific. In modern usage, different organizations have adopted variations of the word, including "ombuds" and "ombudsperson," to avoid any perceived gender association. In this issue of Dispute Resolution Magazine, we use "ombuds" unless the text refers to an office or organization that uses a different version of the word.


3 Id. at 45 n.6.


5 Id.

6 See generally HOWARD, supra note 2, at 468-524. For copies of the 2001 and 2004 Resolutions, see id. at 470, 494 (Appendices 6 and 7), http://apps.americanbar.org/dch/committee.cfm?com=DR589600.
Joyanna Smith was appointed as the Ombudsman for Public Education in February 2014. The oldest of eight children, she grew up with a deep appreciation for the importance of education. She previously worked in the education sector as a school leader at a DC public charter school and as an attorney fellow with the Educational Opportunities Project of the Lawyers' Committee for Civil Rights Under Law. She also worked as a Labor Relations Advisor at the DC Department of Public Works, a policy analyst at the DC Department of Disability Services, and a real estate attorney at a law firm in Maryland. She received a B.A. from Brown University and a J.D. from The George Washington University Law School.

What is an Ombudsman?
The word Ombudsman comes from a Swedish word that means “trusted representative.” The word has come to mean someone who assists consumers or citizens who are experiencing problems with corporations or government organizations.

Our office is a member of the US Ombudsman Association and the International Ombudsman Association.
Our Goals

- Reduce systemic change through education-focused initiatives
- Prevent mediation by facilitating informal resolution of education-related conflicts
- Contribute to creating policy solutions by identifying and encouraging school system-wide issues
- Act as a source of early detection for emerging trends
- Encourage effective communication between parents and schools
- Respond to concerns in a timely, caring, and productive manner

How We Work

- Mediate improvements, action, or school systems
- Make recommendations for conversations, Feasibility of mediation, or solving
- Support effective participation in meetings
- Seek additional information and records from the school
- Seek best practices for communication and school staff
- Seek parent and school student safety
- Respond to all complaints within 48 hours
- Respond to all complaints within

Issues We Handle

- Attendance
- Transportation
- Safety
- Assessment
- Academic Progress
- Early Warning
- Expulsions
- Suspensions
- Special Education

Who We Serve

- Families
- Students
- School and DC Public Charter School officials
- All current and prospective DC Public School best interests

Our Role

- Mediation and resolution on all student issues, including academic and behavioral concerns about school
- Use our services for trouble spots
- Some issues are more serious concerns about school
- We keep what you tell us confidential
- 48 hours response to all complaints
- Respond to all complaints within
### Stages of Conflict

- **Prevention**: Effective processes and good communication reduce the number of conflicts.
- **Disagreement**: There is a disagreement however the conflict has not escalated.
- **Conflict**: Conflict has escalated beyond the ability of the parties to work toward resolution without assistance.
- **Legal**: Formal and legal processes are necessary for resolving the issue and protecting rights.

### Roles and Responsibilities

#### The Office of the Chief Student Advocate:
Empowers students and families through outreach, information and assistance.

#### The Office of the Ombudsman for Public Education:
Assists families and schools to resolve education conflicts fairly and effectively.

### Systemic Improvements to Processes and Procedures Prevent Future Conflicts.

#### Systemic

#### Prevention

<table>
<thead>
<tr>
<th>Interventions</th>
<th>Resources &amp; Referrals</th>
<th>Parent &amp; Student Workshops &amp; Leadership Trainings</th>
<th>Coaching on school options</th>
<th>General Coaching</th>
<th>Self-Advocacy Tools</th>
<th>Community Outreach</th>
</tr>
</thead>
</table>

#### Disagreement

| Third party intervention is focused on providing information and advice to families and individuals to help them address specific issues. |

#### Conflict

| Third party intervention involves informal and formal processes for facilitating communication and problem-solving among involved parties when there is an active conflict. |
| Those interventions are required by law. Many involve decision-making by a third party based on rights under law or policy. |
| State Complaint |
| Due Process Hearing |
| Resolution Session |
| Formal investigations |

#### Legal

| Conflict that is caused by inadequate policies and procedures. |
| Advocates for change by identifying systemic issues and making recommendations. Provides opportunities for engagement and problem-solving on improved policies and processes. |
| Annual report to elevate community voice |
| Bring community voice in stakeholder engagements |
| Provide assistance to schools and parents to improve family engagement |
| Convene issue-specific parent and student groups |

#### Early Warning System

- Early warning system for generating problems to prevent further escalation
- Confidential feedback to schools on problematic policies
- Case specific coaching
- Case management
- Technical assistance to schools
- School-related conflict resolution through mediation techniques to reduce need for formal legal proceedings
- Neutral source of confidential problem-solving assistance
- Place of last resort when other means of resolution have failed

#### Annual report informed by case-specific trends
#### Technical assistance to schools to improve policies and procedures
#### Address case-informed systemic issues in stakeholder engagements
Executive Summary

More than Doubled Caseload in School Year 2014-15

Due to a successful first year in office, the Ombudsman's Office has now more than doubled our caseload from our first Annual Report issued in September 2014. The Ombudsman's office received 469 complaints in School Year 2014-2015, an increase of 319 cases over the previous school year's 150 complaints.

Successes in the School Year 2014-2015

Most (88%) of the complaints the Ombudsman received were resolved in the 2014-2015 school year. Notable successes included:

- Facilitating enrollment of numerous homeless children after multiple schools erroneously informed parents that the children were not allowed to enroll because the school in question was "not their in-boundary school." In these cases, school personnel misunderstood the federal and local requirements of the McKinney-Vento Act and thus failed to direct families to the designated McKinney-Vento Coordinator.

- Preventing the removal of two rising 8th graders with intellectual disabilities, allowing them to continue at the DCPS middle school where they had been flourishing rather than experiencing a disruptive transition to another school.

- Ensuring that a charter school provided tutoring support to a 7th grader removed from school through a long-term suspension in an effort to prevent further academic failure.

The Ombudsman went above and beyond the call of duty. She was endlessly patient.

- Mother of high school student seeking special education placement.
Overview of complaints during School Year 2014-15

As in 2014, the office received complaints from all eight wards, and nearly half of the complaints came from families living in Wards 7 and 8. Similar to School Year 2013-14, the majority of complaints were from parents of DCPS students. Nearly one third of the 469 complaints came from parents of students in the DC public charter schools, which represents a small increase over last year’s 25%.

Student discipline (16%) and special education (15%) continue to be the most common complaint issues, followed by student safety/abuse (9%), enrollment (8%), bullying (8%), and truancy/attendance (7%).

Top Recommendations for Improving DC’s Public Education Systems

- Disciplinary responses should focus on keeping students in school.
- Students’ due process rights must be fully protected in the discipline process. In particular, DCPS should suspend its practice of asking parents to waive their right to a disciplinary hearing.
- DCPS and MPD should clarify, align, and make publicly accessible policies regarding investigating allegations of corporal punishment.
- Schools and school districts should include parents in policy development as much as possible.
- All DC schools should work with the Citywide Youth Bullying Prevention Program to implement appropriate curricula to prevent bullying and improve school climate.
- School staff should treat parents with respect and communicate with them regularly and openly.

"The Ombudsman is a good example of how the city has adapted in its responses to PERAA."
Letter from the Ombudsman for Public Education

September 16, 2015

To: District of Columbia State Board of Education

We are delighted to have completed our fall 2015 school year in the re-established Office of the Ombudsman for Public Education. This year was marked by growth: an increasing caseload, greater outreach, more involvement in policy discussions, and stronger partnerships with government agencies and community groups.

The Office of the Ombudsman for Public Education was re-established in order to help parents, students, and families with questions, concerns, or complaints in any area that affects student learning. Our jurisdiction includes both District of Columbia Public Schools and District of Columbia Public Charter Schools. By assisting parents outside of the judicial system, we aim to equalize inequities in power distribution, reduce litigation, and achieve quick resolutions that serve students’ best interests. We also act as an early warning system for schools, alerting them to emerging problems before they become systemic issues.

As Education Ombudsmen, we resolve issues through informal and formal conflict resolution practices. We offer confidential services because we recognize that confidentiality is essential to gaining the trust of families and encouraging openness both from the complainant and the public school system.

During the 2014-2015 school year, we expanded our caseload significantly. To handle that increased caseload, we added an Associate Ombudsman in August 2014 and recruited a cadre of skilled Fellows. In the coming year, we will continue expanding our outreach. We plan to hire an Intake Specialist in fall 2015 to ensure that we have the capacity to meet the increasing demand for our services. We are also committed to reaching limited and non-English speaking residents. Thus we plan to translate our core materials and website language into Spanish by early fall and to engage in additional outreach in this area.

I am pleased to present the data and recommendations in the following pages. As we embark on the 2015-2016 school year, I look forward to working in partnership with the District of Columbia State Board of Education, the District of Columbia Public Schools, the Public Charter School Board, and charter LEAs to improve educational outcomes for DC students.

Warmly,

Joyanne Smith

Joyanne Smith

DC Office of the Ombudsman for Public Education
Section I. The Office of the Ombudsman for Public Education

Staff

Joyanna Smith, **Ombudsman for Public Education**
Elizabeth Tassell, **Associate Ombudsman for Public Education**

2014-2015 Fellows
Jason Amirhadji, Caroline Cragin, Yasmin Fletcher, Holland Rainey, Katelyn Sedelmyer, Beryl Trauth-Jurman, Khadijah Williams

Interns
Marianna Abraham, Michael Schwartz

What Is an Ombudsman?

The word “ombudsman” is derived from a Swedish word meaning an "entrusted person" or "grievance representative." The word has come to denote a trusted agent who looks after the interests of a particular group. In the United States, numerous public ombudsman offices have been created—through legislative, executive, or judicial authorization—as independent agencies that monitor the delivery of services for certain populations. However, very few jurisdictions have independent Ombudsman's offices for public education.

Legislative History of the Office of the Ombudsman

In 2007, PERAA (the “Public Education Reform Amendment Act of 2007”) initiated landmark education reform in the District of Columbia. The Office of Ombudsman for Public Education was established as a central venue for parents to register concerns and resolve disputes. The office was also intended to provide transparency and accountability as the new educational system for DC evolved. PERAA focused on five agencies that would govern and operate the public schools: 1) D.C. Public Schools (DCPS), 2) the new Public Charter School Board (PCSB) created to oversee charter schools, 3) a new State Education Agency, the Office of the State Superintendent for Education (OSSE) to fulfill federal monitoring and supervision requirements, 4) a new State Board of Education (SBOE) to replace the policy functions of the former Board of Education, and, finally, 5) a new Deputy Mayor for Education (DME) to coordinate across all city agencies responsible for education, health, mental health, social services, and juvenile justice.

The PERAA law laid out responsibilities for the Office of the Ombudsman that included reaching out to parents and residents; serving as a vehicle for communication; receiving complaints and concerns, determining their validity, developing a response to complaints; identifying systemic problems; making recommendations based on observed patterns; and issuing annual reports.

Despite its essential role, the office was defunded for several years. In 2012, the Council of the District of Columbia recognized the continuing great need and strong community desire for such an entity, and re-established the Ombudsman's office within the State Board of Education through the "State Board of Education Personnel Authority Amendment Act of 2012." Accordingly, the office was re-established and with the appointment of the current Ombudsman for Public Education, Joyanna Smith, the office formally re-opened its doors to District of Columbia families on February 26, 2014.

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1 D.C. Act 17-38.
3 D.C. Act 19-651.
"The ombudsman was intended to be the primary channel through which public school parents could communicate with school officials and seek redress for complaints..."\textsuperscript{4}

Role of the Ombudsman

The Office of the Ombudsman for Public Education is an independent, neutral office that helps parents and students resolve school complaints. We transform problems into solutions for improving educational access for students.

Transparency and Accountability

PERAA also addressed the issue of accountability to the public, in part, by calling for an ombudsman. According to the recently issued PERAA report, the ombudsman was intended to fill a role previously played by the former Board of Education which used to be a venue for DC residents and parents to voice their concerns. With just two full-time employees, the Office of the Ombudsman has been able to more than double its case load from SY 2014-15 to SY 2015-16. Such growth demonstrates the continuing need for an independent voice and neutral channel to help parents navigate through the complex education systems in Washington, DC.

Our Mission

To provide equal access to education for all students within District of Columbia public and charter schools, and to support student engagement and achievement.

Our Vision

We envision an educational system where all parents, families, educators, and students are fully engaged with the public schools and are empowered to make informed decisions that improve student achievement.

Our Goals

We have achieved a great deal since our reauthorization in 2014. Our first annual report was released just six months after we re-opened our doors. Last school year, we were able to expand our outreach to more than double the families served because of the continued support of the Council of the District of Columbia and the State Board of Education.

What We Do

- Provide conflict resolution for issues that affect individual students.
- Inform families about the educational opportunities and resources available in DC.
- Encourage effective communication between parents and schools.
- Act as a source of early detection for emerging school system-wide issues.
- Prevent recurring problems and improve existing processes by collaborating with families and stakeholders to effect systemic change.
- Contribute creative policy solutions by identifying and sharing trends we observe.
- Reduce the need for administrative hearings and litigation by facilitating informal resolution of education-related conflicts.

Once we have completed an intake with a family, we may take a number of steps depending on the situation. We typically begin by researching applicable education laws, policies, and best practices. We also communicate with the parties involved, which may include teachers, principals, other school staff members, and witnesses to the situation in question. We review student records in order to have a full understanding of the issue. In many cases, our staff facilitates conversations between parents and school officials. Our goal is to guide all parties toward resolution of the problem with a primary focus on the best interests of the student.

explain school processes to the parents and families, and 5) determine the most expedient way of getting the student back in school.

**What We Do Not Do**

Because of the informal, neutral, confidential, and independent positioning of an ombudsman office, we do not undertake the following roles or activities:

- Participate in formal investigations or play any role in a formal judicial proceeding.
- Serve in any other organizational role that would compromise the neutrality of the ombudsman role.
- Make binding decisions or mandate policies. We cannot force a school or a Local Education Agency (LEA) to take a specific action.
- Provide legal advice or legal services.
- Intervene in school personnel decisions. We have no authority to hire or fire anyone based on the merits of a complaint.

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**Our Case Process — How We Get Results**

The Ombudsman’s case management process has four (4) steps, though some may repeat:

1. **Intake**
2. **Consultation**
3. **Intervention**
4. **Resolution/Referral**

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Section II. Stakeholder Engagement and Outreach Efforts

We more than doubled our community outreach events during the 2014-2015 school year. Some of our events included:

EdFest
Office for Human Rights Bullying Prevention Forum
DC National Pan-Hellenic Council Fair
OSSE Secondary Transition Fair
Ward 4 Education Alliance
DC Action for Children
DC Fiscal Policy Institute
Quality Trust for Individuals with Disabilities
Family Voices of DC
Every Student Every Day Coalition
Advocates for Justice and Education
SchoolTalk
Homeless Children’s Playtime Project
Washington Legal Clinic for the Homeless
Critical Exposure
DC Special Education Cooperative
District of Columbia Association for Special Education (DCASE)

Public Charter School Board
DC Public Schools (DCPS) Instructional Superintendents
DCPS Office of Specialized Instruction
DCPS Office of the General Counsel
Office of the State Superintendent of Education (OSSE) Office of Dispute Resolution
OSSE Re-Engagement Center
DC Department of Human Services
DC Department of Behavioral Health
DC Department of Youth Rehabilitation Services
DC Child and Family Services Agency
Metropolitan Police Department School Safety Division
Council for Court Excellence
DC Superior Court Family Division
DC Alliance for Restorative Practice

We post regularly on Twitter with the handle @DCOmbuds. We post useful information for parents and schools related to education policies and conflict resolution best practices.

We MORE THAN DOUBLED our twitter presence in 2015, increasing from 160 to 385 FOLLOWERS.

We also GREATLY INCREASED OUR POSTING RATE, increasing our overall tweets from 19 tweets in 2014 to 216 tweets so far in 2015.
Section III. 2015 Ombudsman's Office Data

Who We Serve

The majority of our intakes begin with a phone call to our intake line. 24% of our families found out about our office from another DC government agency and 17% of our families found out about our services from our Ombudsman website. Other common referral sources included community organizations, schools, parents, and DC Council offices.

Contact Method:

<table>
<thead>
<tr>
<th>Method</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Phone</td>
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<tr>
<td>Email</td>
<td>6%</td>
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<tr>
<td>Referral</td>
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</tr>
<tr>
<td>Walk-In</td>
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<tr>
<td>Online</td>
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Referral Source:

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<td>Website</td>
<td>17%</td>
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<tr>
<td>Other</td>
<td>23%</td>
</tr>
<tr>
<td>Governor</td>
<td>8%</td>
</tr>
<tr>
<td>DC Council</td>
<td>6%</td>
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<tr>
<td>Councilmember's office</td>
<td>3%</td>
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<tr>
<td>Mayor's office</td>
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<tr>
<td>Community meeting</td>
<td>1%</td>
</tr>
<tr>
<td>PTO or community org</td>
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</tr>
</tbody>
</table>

Complaints by School Year:

In school year 2014-2015, we received 469 complaints, more than doubling our caseload from last school year.

*We included cases in last year’s annual Ombudsman report from February 2014 to August 15, 2014. For this and future annual reports, we use a school year of August 1 - July 31. If we had used that timeframe for the school year in last year’s annual report, we would have reported 134 cases for school year 2013-2014.*
Number of Complaints by Ward:

We received complaints from all eight wards. Wards 8, 7, and 5 were the most highly represented.

![Bar chart showing number of complaints by ward.]

Caller Type:

The vast majority of our intake calls came from parents. We also received a substantial number of calls from grandparents, legal guardians, attorneys, and students.

The majority of parents calling our office identified their race as African-American or Black, which is to be expected given that 73% of students in the DC public schools identify as African-American. Note that since we do not require callers to identify their race, 19% of parents chose not to provide that information.

"Before the Ombudsman started talking to the school, they didn’t want to do what my son needed. Because she talked to him, they sent teachers to my house so he could finish the year."

-Mother of a middle school student given a long-term suspension from a charter school.

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As we consider our reach into non-English speaking populations, our data revealed that eight callers to our office required Spanish translation. In future school years, we plan to expand our outreach in the Spanish-speaking community, as well as with other non- or limited-English speakers.

**Parent Race:**

![Parent Race Chart]

The majority of complaints received involved DCPS schools. We received the most complaints regarding elementary school students followed by high school students.

**School Type:**

![School Type Chart]

**Grade Level:**

![Grade Level Chart]

**Number of Complaints by Grade:**

![Number of Complaints by Grade Chart]

*During FY15, we did not distinguish between Pre-K3 and Pre-K4 in our data reporting. In the future, we will break them out separately.*
The majority of complaints were about discipline, special education, student safety, enrollment, bullying, and truancy/attendance issues.

**Top Complaint Types:**

- Discipline: 73
- Special Education: 71
- Student Safety/Abuse: 42
- Enrollment: 38
- Bullying: 37
- Truancy/Attendance: 34

**Other Common (n>5) Complaint Types:**

- School Safety
- School Placement
- Parent Involvement
- School Choice/Transfer
- Credits/Transcript
- High School Graduation
- Grade Appeal
- Communication
- Barring Notice
- Curriculum
Top Complaints by School Type:

Charter schools were somewhat overrepresented among discipline complaints. DCPS schools were significantly overrepresented among special education, enrollment, and student safety/abuse complaints.

Top Complaints by Grade:

- High (9-12)
- Middle (6-8)
- Elementary (PreK-5)
Section IV. Common Complaint Resolution Outcomes

We successfully resolved 88% of our cases, most typically through providing information or intervening with a solution to the problem. Of the cases we could not resolve, the most common reason was because the client ceased contact with our office.\(^9\)

Time to Resolve Case by Issue Type:

Our average time to reach a resolution was 22 calendar days. We typically resolved enrollment, school choice/transfer, and school placement cases within one week. In discipline cases, we typically reached resolution within about two weeks. Bullying and special education cases typically took about one month to reach resolution, with a variance from several days to several months. We often perform on-site facilitation in these cases which is partly the reason for the variance. While we aim to resolve all complaints as quickly as possible, we will keep cases open as long as required to reach a resolution that furthers the student’s best interest.

\(^{9}\) In these cases, after our office makes repeated attempts to contact the client through email, phone calls, and/or by letter, it is our standard practice to close the case. Such an instance will be logged as a case with no resolution.
Section V. Representative Accomplishments

Accomplishments During the 2014-2015 School Year

- Prevented the transfer of two rising 8th graders with intellectual disabilities out of the DCPS middle school where they had been flourishing to a new and completely unfamiliar DCPS middle school. For one of the students, the transfer would have been his third school change in three years.
- Ensured that a charter school provided tutoring support for a 7th grader serving a long-term suspension.
- Assisted parent of an 8th grader with high-functioning autism in the transfer to a new DCPS school where he now has a peer group and a rigorous academic program.
- Assisted parent of a first grader with an emotional disability in having her son evaluated, found eligible for special education, and placed in an appropriate classroom at his charter school.
- Assisted multiple homeless parents with enrolling their children after various schools had wrongly told the parents that the children were not allowed to enroll.
- Identified a community organization willing to provide transportation to school for a kindergarten student whose disabled mother could not transport him to school.
- Convinced a school to evaluate a middle school student for possible disabilities after the school failed to respond to multiple requests from the parent.
- Ensured that a DCPS middle school student given a 20-day suspension was able to continue attending school until his hearing and helped his mother secure legal representation.
- Ensured that a high school student was able to continue attending his nonpublic school until a natural transition point rather than being moved in the middle of the year, which DCPS had originally proposed.
- Coached mother of a high school student with sickle cell disease on how to enroll him in DCPS school and request home instruction.
- Expedited placement process for an elementary school student enrolling in a DCPS school after expulsion from a charter school.
- Facilitated informal mediation between parent and DCPS elementary school principal to resolve parent's concerns about bullying and communication.

Examples of Ombudsman Systemic Work:

- Testified at DC Council hearing on pre-kindergarten discipline. Supported law banning suspension and expulsion for pre-kindergarten students. Advocated for increased positive behavior supports in schools.
- Testified at DC Council hearing on truancy interventions. Testified that truancy is not the problem itself but instead is a symptom of an unmet need. We must address the root of the problem, such as lack of safe housing, lack of mental health treatment, or unsafe neighborhoods.
- Guest panelist at Council for Court Excellence roundtable on DC school discipline. Raised concerns about DCPS's use of parent waivers of the right to disciplinary hearings for long-term suspensions.
- Testified at DC Council regarding the recent PERAA report. Discussed the role of the ombudsman from a systemic perspective.
- Guest panelist on "Creating a Culture of Excellence-Parenting for High Performance" forum held on Capitol Hill. Shared recommendations for more effective and relevant parent engagement as a strategy for improving school and student achievement in K-12.
Section VI. Observations

A. Special Education

Students with disabilities were disproportionately represented in the complaints we received. 35% of the complaints to our office involved children with disabilities; 28% of the complaints involved students who had Individualized Education Plans (IEPs). Given that students with IEPs represent only 13% of DC public school students, this shows that students with IEPs were disproportionately likely to need assistance from our office. Moreover, our data may be an underrepresentation of the complaints with IEPs, as a significant number of callers did not know whether the child had a disability or an IEP. Instead, parents were usually calling our office because their students were failing school, missing a lot of days of school, or exhibiting behavioral problems which led to suspensions and expulsions.

The primary complaint topic for students with IEPs was special education. Other common complaint subject areas included discipline, enrollment, school placement, truancy, and abuse.

Many of the parents who called us believed that their schools did not engage them as equal partners in making decisions about their children's special education needs. They reached out to our office because they felt that the school was not listening to their requests or providing them with the information needed to meet the needs of their children. Specific complaints that came up repeatedly included:

- Parents were given very little advance notice of new school location assignments;
- Parents felt that the IEP team made decisions without explaining their rationale or considering the parents' input;
- Parents did not understand enough about the diagnosed disability to determine whether the proposed IEP services would actually help their child achieve academically;
- Parents received no response or a delayed response from school leaders regarding their request that their child be evaluated for special education; and

Special education status:

[Diagram showing distribution of students with special education status: 31% unknown, 29% has IEP, 3% has 504 Plan, 3% evaluation in progress, 1% has no special education plan]

Parents reported schools informing them that their child could not be evaluated for special education because the child was performing too well academically or only appeared to have behavior problems.\textsuperscript{11}

The recently-passed Special Education Student Rights Act of 2014\textsuperscript{12} takes some steps to address these concerns. It requires that schools give parents written notices of proposed changes of location of services that include a description of the reason for the change.\textsuperscript{13} The law also makes clear that parents have the right to observe proposed special education programs.\textsuperscript{14} In addition, the new law requires schools to provide parents with copies of draft IEPs and other relevant documents at least five business days before the meeting at which they will be discussed.\textsuperscript{15} This is intended to help parents prepare their questions and feedback.

A common theme in calls to our office was that schools had not acted upon oral requests for evaluation. The recently-passed Enhanced Special Education Services Act of 2014 requires schools to accept and document oral requests.\textsuperscript{16} We therefore expect that in the upcoming school year, schools will begin the special education evaluation process promptly upon the parent's request even if that request is not made in writing. This will require training on the new special education law for school staff.

Disability type:

We also found that a number of students with disabilities were not given full access to the educational opportunities available to their non-disabled peers. In particular, we noticed two troubling trends:

- Several charter schools required students to attend school for shortened schedules or required parents to provide supervision in the classroom rather than taking more appropriate steps to address the students' behavioral needs; and
- DCPS required some students with IEPs who were transferring in during the school year to wait several weeks for a placement meeting with the Office of Student Placement before they could begin school.

In addition, we found that some LEAs used eligibility criteria, whether for special education generally or for specific services, that were stricter than local and federal law allows. For example, DCPS is currently using a checklist for eligibility for speech therapy that we have seen prevent students who require the service from qualifying for it. To qualify for speech therapy – or any other related service – the only Individuals with Disabilities Education Act (IDEA) requirement is that the student must need the related service in order to benefit from their special education.\textsuperscript{17} DCPS's checklist introduces a number of additional considerations. OSSE policy affirms that there should not be any additional criteria required to qualify

\textsuperscript{11} The IDEA mandates that "as soon as a student is identified as a potential candidate for special education services, DCPS has a duty to locate that student and complete the evaluation process." N.G. v. D.C., 556 F. Supp. 2d 11, 25 (D.D.C. 2008). Recent DC cases affirm this principle. Long v. D.C., 780 F. Supp. 2d 49, 56 (D.D.C. 2011); G.G. ex rel. Gersten v. D.C., 924 F. Supp. 2d 273, 279 (D.D.C. 2013). There are no exceptions to this responsibility to locate and evaluate students. Furthermore, the mandate explicitly includes students who are advancing from grade to grade. 34 C.F.R. § 300.111(c)(1).

\textsuperscript{12} D.C. Act 20-486.

\textsuperscript{13} D.C. Act 20-486 § 103(1), codified at DC Code § 38-2571.03(1).

\textsuperscript{14} D.C. Act 20-486 § 103(3), codified at DC Code § 38-2571.03(3).

\textsuperscript{15} D.C. Act 20-486 § 103(3), codified at DC Code § 38-2571.03(3).

\textsuperscript{16} D.C. Act 20-487 § 202(b)(a)(3), codified at DC Code § 38-2561.02(a)(3).

\textsuperscript{17} 30 C.F.R. § 300.34(a).
for speech therapy. While we understand from the DCPS central office that the checklist is not intended as a policy for determining eligibility, in our experience that is how it has been applied by schools.

We also found that at least one charter school still uses the outdated discrepancy model for determining whether a student qualifies as a student with a learning disability. That model requires a student to show a discrepancy of two years or two standard deviations between a student's ability and achievement scores. Since the IDEA was reauthorized in 2004, LEAs have been encouraged to use, instead, a response to research-based instruction model for determining eligibility as a student with a learning disability. That model asks whether the child is achieving adequately when provided with appropriate instruction, a more flexible approach that is also endorsed by OSSE.

Some of OSSE's policies regarding eligibility for special education are also stricter than federal and local law. In particular, OSSE limits eligibility as a student with an emotional disturbance to students who have not made progress after receiving two scientific research-based interventions. While we do understand the intention to make sure that students are not over-identified as emotionally disturbed, in practice we have seen this requirement delay some students in mental health crisis from receiving the support they desperately need.

### B. Discipline

Discipline cases represented our second-largest complaint category. The majority of callers with discipline complaints identified the student's race as African-American. None of the discipline complaints we received self-identified the student's race as white. This data accords with OSSE's data showing that African-American students in DC are nearly six times more likely to be disciplined than white students. (13% of callers with discipline complaints did not identify the race of their students).

Nearly half of the students with discipline complaints were either identified as having a disability (27%) or suspected of having a disability (19%). This corresponds with city-level data showing that students with disabilities are more likely to receive discipline than their non-disabled peers. Moreover, although Chapter 25 requires that hearings for long-term suspensions and expulsions shall occur no more than four school days after a written notice regarding disciplinary action is provided to the parent or adult student, parents have reported administrative hearings.

#### Discipline cases by student race:

#### Discipline cases by disability status:

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that occur well after four school days for DCPS students. This is important to note for the students who have not yet been identified as having a disability and may be out of school through long-term suspensions for longer periods of time.

**Suspended students out of school at time of intake:**

In the majority of the calls we received about suspensions, the student was out of school at the time of the call. Suspended DCPS students were somewhat more likely to be out of school than suspended charter school students. While some of the students who were out of school already had a hearing or other appropriate due process, in a number of cases the students had been put out of school before a hearing even though they did not present a danger to the school environment.

DCPS's discipline code, outlined in Chapter 25 of the DCMR, allows schools to put students out of school before a hearing only if they are contributing to an emergency situation at the school. The goal of this exception is to protect the safety of other students and school staff. In our experience, the exception is very broadly applied by deans of students and school principals, which results in students who do not present a danger to the school community being forced to stay home from school for days or weeks at a time. Because DC has one of the lowest performing school systems in the nation, it is an unacceptable practice to broadly apply the "emergency situation" exception under Chapter 25.

Throughout the year, we have had serious concerns about students and parents not being provided full due process protections when students are proposed for suspension. We received many calls from parents at both charter and DCPS schools who did not receive written notice of proposed discipline. In some cases, our inquiries showed that parents had been told to keep their children home from school without formal suspension paperwork ever being issued. Other DCPS parents reported that they were asked to waive their right to a disciplinary hearing. We have grave concerns about the parent waiver, as in the cases we are aware of school staff did not fully inform parents of the rights they were giving up in signing the waiver. Moreover, some parents who waived their rights to a hearing would have likely obtained a better outcome for their student through the hearing process.

**Suspended students out of school, charter vs. DCPS:**

In our work, we found that some DCPS schools were distributing outdated lists of legal services providers to parents. When our staff called the contacts on the list, we found that the providers no longer existed or did not provide discipline representation. We developed an updated list of local legal services providers who are willing to provide free representation in disciplinary matters. We provided that list to DCPS in February 2014. We understand that DCPS will begin distributing the list to schools in early September for inclusion with long-term suspension and involuntary transfer paperwork. We look forward to this new practice going into effect.

We also observed that many students home on suspension were not given the support they needed to keep up with schoolwork. For both DCPS and charter school students, it often took several days or even a week before a student

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23 5-B DCMR § 2506.2.
24 5-B DCMR § 2504.4.
received work packets. We were told by a DCPS school that work packets had to be mailed through the DCPS central processing center, which caused a delay of up to a week. To avoid that delay, schools typically ask parents to come to the school to pick up the work packet, but that presents a hardship for many parents who may have issues with transportation or demanding work schedules.

We also found that some students with long-term suspensions did not receive alternative instruction. CHOICE Academy, the DCPS alternative school, does not accept students until they have received a final decision from the Office of Administrative Hearings. This means that students who are put out of their DCPS school before a suspension under emergency situations typically do not receive instruction for a week or more while awaiting a hearing.

Parents are often surprised to learn that even amongst the District's highest-performing charter schools, alternative instruction is not typically provided for students unless mandated by local and federal laws for students in special education programs. While charter schools do not have a legal obligation to offer such services, their choice not to offer such services results in missed learning opportunities.

A number of charter schools overuse school exclusion in the following ways:

- Some charter schools suspend students for uniform violations and for repeated tardiness, both practices that have been forbidden by DCPS. Parents are often surprised by this practice. It is our position that schools should not suspend students for these reasons. Uniform violations and tardiness often result from poverty and family circumstances. Students should not be penalized because their parents cannot afford to buy new uniforms or they must travel a very long distance from their home to attend an out-of-boundary school. Furthermore, uniform violations and tardiness do not present a danger to fellow students or staff and thus suspending students for these reasons unnecessarily deprives students of critical instructional time.

- Some charter schools have zero-tolerance policies that require automatic expulsion for certain behaviors, such as possession of marijuana. These policies run counter to national research and federal school discipline guidance discouraging the use of zero-tolerance policies.26

Charter schools use expulsion significantly more often than DCPS. In the most recent year for which we have available city-wide data, charter schools expelled 139 students while DCPS expelled only one student.27 We appreciate that PCSB is in the process of revising its policy on charter school discipline plans to prevent schools from expelling students for "minor offenses such as possession of tobacco or insubordination."28 Enacting this policy would be a positive step toward limiting charter school push-out. However, it will still leave charters with the latitude to suspend students for relatively minor violations and impose zero-tolerance policies.

Overall, we find that many schools rely too much on exclusionary discipline and offer too few in-school interventions to encourage positive behavior. In the most recent year for which we have data, 12% of DC public school students were suspended at least once.29 School exclusion must always be a last resort. As the U.S. Department of Education states, "the widespread overuse of suspensions and expulsions has tremendous costs. Students who are suspended or expelled from school may be unsupervised during daytime hours and cannot benefit from great teaching, positive peer interactions, and adult mentorship offered in class and in school. Suspending students also often fails to help them develop the skills and strategies they need to improve their behavior and avoid future problems. Suspended students are less likely to graduate on time and more likely to be suspended again, repeat a grade, drop out of school, and become involved in the juvenile justice system."30

Some DC schools are implementing promising alternative strategies to encourage positive behavior. This coming year, Ballou High School plans to implement a school-wide restorative justice program. Unlike traditional discipline, restorative justice focuses on repairing the harm done by misbehavior rather than simply punishing a student. DC International School has trained all school staff on the use of restorative practices and uses suspensions as a last resort for discipline, instead focusing on restorative circles and conferences with all affected parties. As a result, DC

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International School met its goal of a low suspension rate and no expulsions. Next Step Public Charter School was also able to significantly reduce its suspension rate when it implemented restorative justice as a school-wide model, and several other DC public and charter schools have also embraced the model with the support of OSSE's Restorative Justice Community of Practice. Other schools have adopted trauma-informed practices, including DCPS's implementation of two evidence-based mental health treatments for children who have experienced trauma. These approaches are important steps toward moving the focus from remedying misbehavior to teaching positive behavior. These kind of initiatives help contribute to a positive school climate, which can decrease the likelihood of suspensions and boost academic success. A positive school climate, according to Arne Duncan, U.S. Secretary of Education, "not only minimize unnecessary suspensions and expulsions, but also reduce disorder in the classroom and bolster learning.”

C. Safety/Abuse

Student safety/abuse was the third most common complaint category. Most of the complaints included under this category alleged physical abuse; a smaller number alleged verbal abuse or lack of supervision. Some of the physical abuse allegations were quite serious, including a student allegedly thrown down stairs and a student allegedly picked up and slammed against a wall. In some cases, the alleged physical abuse occurred when a staff member was attempting to restrain a student during a fight.

Our role in safety/abuse cases focused on 1) ensuring that the school had a plan to keep the student safe going forward; and 2) ensuring that the school followed its LEA's procedures for investigating such incidents. Because we did not conduct the investigations ourselves, we were not able to track how many of the allegations were supported by evidence.

We did, however, observe that the lack of transparency about how schools investigate abuse allegations often inflamed parents' fears and led to a breakdown in their trust in the school. In abuse cases, schools must balance privacy about personnel matters with accountability to parents. Nearly all parents who called our office wanted to know how the staff member in question had been disciplined, information that cannot be given to parents. However, parents could be provided with other information to allay their concerns, most importantly 1) a written summary of the actions they can expect the school and the police to take to investigate an incident and 2) a report of the outcome of the investigation. Through our work, we learned that DCPS's and MPD's policies on investigating allegations of physical abuse (which they term corporal punishment as per DC regulations) are difficult to understand and many years out of date. There is no user-friendly summary of the steps that the two agencies take to address corporal punishment allegations. We strongly recommend that DCPS and MPD collaborate to develop a short and clear summary of what parents should expect. In particular, many parents wanted more information about whether their children would be interviewed by MPD and/or DCPS, whether parents would be informed before interviews or allowed to participate in them, and what steps DCPS would take if MPD decided not to bring criminal charges in a given case.

We also received complaints about corporal punishment from charter school families, though not as commonly as from DCPS families. In our work, we found a similar need for some charter schools to clarify their policies for investigating corporal punishment allegations.

D. Bullying

Bullying was another top complaint topic, comprising 8% of the complaints we received. We received bullying complaints from both DCPS and charter school parents, though DCPS students were slightly overrepresented. We received bullying complaints for all grades from 1st through 12th, with the highest representation at 3rd, 4th, and 8th grades.

Typically, our role in bullying cases focused on facilitating problem-solving discussions between parents and schools. In many cases, we worked in partnership with the Office for Human Rights' (OHR) Director of the Citywide Youth Bullying

36 5-E DCMR § 2403.1 defines "corporal punishment" as "the use, or attempted use, of physical force upon, or against, a student, either intentionally or with reckless disregard for the student's safety as a punishment, or discipline." Prohibited conduct includes "(a) Shoving; (b) Striking; (c) Grabbing; (d) Shaking; (e) Hitting; (f) Throwing of objects; and (g) Unreasonable restraint [and] (h) Directing others to inflict any of the above on a student." 5-E DCMR § 2403.3.
Prevention Program to address parents' complaints before the situation escalated to a point where the parents filed a formal complaint with OHR.

In many cases, we found that schools had not documented alleged bullying incidents even though the Youth Bullying Prevention Act\(^37\) requires them to do so. At times, this was the result of a difference of perspective about whether a particular incident truly met the definition of bullying.\(^38\) It is understandable that schools may struggle to complete required paperwork in all instances, but it is imperative that they do so. When incidents are not documented, parents lose faith in the school’s investigative process. Even more importantly, schools may miss the opportunity to intervene in truly problematic situations simply because one staffer made an incorrect assumption that the allegation was not justified. Finally, the lack of documentation may prevent schools from identifying a pattern of bullying at their schools.

We found that few schools were implementing, with fidelity, school-wide curricula to prevent bullying and improve school climate. While compliance with the Youth Bullying Prevention Act is an unfunded mandate, prevention-focused interventions are essential to ensure that all students feel safe and valued at school.

**E. Enrollment**

Parents' complaints about enrollment typically centered on either lack of information about their school options or misinformation from school staff about enrollment requirements. MySchoolDC’s user-friendly website and informative hotline resolved many parents' concerns. The newly created Office of the Student Advocate, housed within the DC State Board of Education, is also an important resource for families in identifying school options for their children. However, we found that parents still need a centralized resource that provides more information about schools' specific programs such as special education offerings, class sizes, teacher-student ratios, and instructional methods than can be found on MySchoolDC, LearnDC, or the other available websites.

Homeless parents often called us with complaints that school registrars had wrongly told them they had to provide proof of address and other documents that are not required for homeless students. When our office intervened, we were able to enlist the help of other DC government agencies such as the OSSE and DCPS homeless youth programs. These offices were able to resolve most of these problems quickly. Nonetheless, the continuing complaints point to a need for additional training on the school level on how to handle homeless students and overall enrollment requirements.

**F. Family Engagement**

A recurring theme in the complaints we received was that parents did not feel that school officials respected them or communicated openly with them. We understand that school staff have many responsibilities and may not have as much time as they would like to cultivate relationships with each parent. Nevertheless, we found that parents often develop much more meaningful relationships with school staff when staff take the time to listen to parents' concerns in detail, answer their questions, and make sure to follow through on any promises made.

Another hurdle parents described to our office was a lack of awareness about policy differences between charter schools and DCPS. It is our position that simply putting the policies in the school’s handbook is not enough to ensure that parents understand school expectations and requirements. For example, we found that some charter schools provided fewer due process protections when barring parents than DCPS. Such limited due process protections for barred parents are troubling and should, at the very least, be clearly communicated to prospective parents so that parents can make informed decisions in selecting schools.

It can be difficult for parents to get involved if they do not know how. In a 2013 study by MDRC, a nonprofit, nonpartisan education and social policy research organization, researchers recommended that “schools and teachers need to take an active role in engaging all families….and be intentional about including families as an integral part of their school, because parents may not know exactly how or when to engage.”\(^39\)

However, in our experience, schools sometimes struggle to integrate families into discussions about their child's

\(^{37}\) D.C. Act 19-384, codified at DC Code § 2.1535.01 et seq.

\(^{38}\) For an incident to be considered bullying under the Bullying Prevention Act’s definition, the student must have a reasonable fear of physical harm to his or her person or property, experience a substantial detriment to his or her physical or mental health, or experience substantial interference with his or her academic performance or attendance as a result of the alleged bullying.

education and on issues of discipline or truancy. For instance, parents often receive a call from CFSA after their school has reported that their child has had multiple absences but do not recall having any conversations about their child’s attendance with the school prior to this call. Parents in these cases feel as though the school does not respect them. Effective family engagement can head off many of the complaints we receive by incorporating parents early in the process, before issues arise.

Margaret Caspe in her 2015 article, Lessons from Blended Professional Learning, citing 2011 research from Harris Interactive, stressed the importance of professional development incorporating family engagement skills for children’s academic success, families’ well-being, schools’ performance, and teachers’ job satisfaction. Initiatives in DC Public Schools and OSSE demonstrated the positive impact of focusing on parent engagement, supporting results of recent studies. For example, the Flamboyan Foundation’s descriptive 2014 DCPS study found a correlation between participation in the Flamboyan initiative, which included structured parent-teacher conferences and home visits, and higher average DC CAS scores in Flamboyan classrooms than in the non-Flamboyan classrooms.

Effective family engagement should also happen beyond the school level. We heard from a number of parents that they would like to be more involved in developing policies at the LEA-level. DC agencies often struggle to have meaningful parent engagement in policy development, yet there is clearly a desire on the part of many parents to contribute to policy discussions. While some avenues are already available to parents, including the DCPS Chancellor’s Parent Cabinet, PCSB’s Community Advisory Group, and OSSE’s State Advisory Panel for special education, each of these groups only includes a relatively small number of parents and requires participants to commit to regular participation. Additional opportunities are needed for more parents to contribute to policy-making in more flexible ways. We are hopeful that the new Office of the Student Advocate will also be helpful in connecting interested parents to policymakers.

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Section VII. 2015 Annual Recommendations

Discipline

Discipline responses should focus on keeping students in school.

- Schools should implement evidence-based school-wide interventions that include promising models such as restorative justice and trauma-informed strategies to keep students in school.
- Charter schools should not use zero-tolerance policies or suspend students for uniform violations or tardiness.
- Charter schools should review their expulsion policies and use expulsions as a last resort, after all other interventions have been exhausted.
- DCPS should minimize the use of the “emergency situation” exception in Chapter 25.

If students have to be removed from school, they should be given support to keep up with their classes.

- Schools should provide work packets in a timely manner for short suspensions.
- All charter schools should provide alternative settings for students with suspensions over 10 days.

Students' due process rights should be fully protected.

- Schools should provide timely written notice for all forms of out of school placement, and DCPS should take steps to make sure that schools are providing written notice to parents.
- DCPS schools should discontinue the practice of asking parents to waive their right to a disciplinary hearing.
- Schools should provide parents with a current list of legal services providers when they suspend or expel students.
- OSSE should publish state-level discipline regulations that provide a basic floor of due process protections.

Special Education

Parents should be engaged as equal partners in making decisions about their children's education.

- Parents and students must always be given the opportunity to visit proposed new classrooms or school locations.
- When parents make oral requests for evaluation, the schools must treat those as formal requests that trigger the evaluation timeline.
- Parents must receive copies of all relevant documentation before any IEP meetings.43

Students in special education should be able to fully access their education.

- DCPS should shorten the time the Student Placement Office takes for new students with IEPs to get placed in school.
- Charter schools should not force students to have shortened school days when they have behavior problems.
- LEAs must not use eligibility policies, whether for special education generally or for specific services, that are stricter than what local and federal law allows.
- OSSE and the LEAs must train their staff on common mistakes in special education such as assuming that a student who is academically gifted cannot be eligible for special education.

Student Safety

- DCPS and MPD should clarify their policies about investigating allegations of corporal punishment and make those policies easily accessible.
- All schools should implement curricula designed to prevent bullying and improve school climate.
- Schools should document and investigate all allegations of bullying.

43As provided by recently-passed legislation, the Special Education Student Rights Act of 2014.
Homeless Students

All schools should train their front office staff to avoid common mistakes in enrolling homeless families such as requiring them to provide proof of address or records from past schools. These common mistakes violate the federal McKinney-Vento Act and deprive homeless students of access to education.

Engagement

Parents should be able to easily access a wide range of information about DC schools.

- Charter schools’ unique policies should be highlighted for parents, as we often see parents who did not know that charter schools’ discipline and other policies can vary widely from DCPS’ policies.
- Detailed information about all public schools should be made available in a centralized and easy to use website, possibly through an expansion of MySchoolDC or LearnDC. The information should include schools’ policies, academic programs, and special education offerings.
- School staff should treat parents with respect and communicate with them regularly and openly.
- Schools should continue to identify opportunities for parents to be involved in meaningful policy development.
- Parents should be barred from schools as sparingly as possible.
- PCSB should give charter schools guidance about appropriate barring policies and review those policies in their charter approval process and 5 and 10 year reviews.

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44 44 U.S.C. § 11431 et seq.
Section VIII. Conclusion – Looking Ahead

In our second year of operation, we have been honored to help nearly 500 families reach resolution in their individual cases. We have also had the opportunity to help parent groups and schools solve problems and resolve conflicts. We have increased our outreach steadily, and plan to continue that effort in the coming year. Our goal is for all DC public school parents to be aware of our services should they require them. At the Office of the Ombudsman for Public Education, we welcome your input and hope to meet you in the coming year!
The Ombudsman was magnificent. It took a long time and she kept following up. She did follow up on calls. She connected me with people who could help me. She gave me a call back just as promised. I meant to give her a thank you card.

- Grandmother of an elementary school student seeking to enroll her grandson in school.
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