

Proposal for the Establishment of a University Ombuds

Prepared by the University of San Diego's University Senate Ombuds Committee

Committee Co-chairs: Afsaneh Nahavandi (SOLES), David Shirk (CAS)

Committee members: Esteban Del Rio (Associate Provost, CID; CAS), Diane Maher (Library), Ian Martin (SOLES), Ryan McKeon (Business), Dalrymple Odesma (Engineering), Nicki Schleuser (Title IX), Necla Tschirgi (Peace Studies)

Overview

In recent years, there have been a number of calls for the creation of a university ombuds to assist University of San Diego faculty, student, staff, and administrative personnel in resolving a wide range of complaints and concerns. This proposal calls for a pilot project to create an independent USD Office of Ombuds to serve as a resource and an outlet for assisting in the resolution of complaints and concerns raised by University personnel, students, and affiliates.¹

Current Procedures

The Policy and Procedure Manual of the University of San Diego has clear formal and well-established mechanisms for managing faculty grievances and cases of dismissal with cause through the Provost office. Cases of workplace complaints or faculty misconduct may also be directed to the University's Department of Human Resources, or even to University Legal Counsel. However, short of these often cumbersome and extraordinary measures, there are few confidential sources of information and mechanisms for mediating potentially serious workplace conflicts among faculty, staff, and administrative personnel, such as bullying and other behaviors that create a hostile work environment in order to prevent them from escalating to the formal grievance level.

Rationale for the Creation of University Ombudsman

Despite the existing mechanisms and procedures for managing complaints and concerns on campus, there are a number of ways in which any of these may fall short in the absence of a University Ombudsman. A University Ombudsman can help to address the following needs and help reduce potential, existing, and recurring problems on campus:

- 1) **Need for information and guidance:** In some cases where a complaint or concern exists, administrators, staff, faculty, students, and other affiliates lack adequate information or guidance about how to resolve a problem. For a variety of reasons, university employees may not know where to turn to or may not feel comfortable

¹ The term "affiliate" is used here to refer to unpaid and non-enrolled persons that have a direct and formally recognized affiliation with the University that may wish to raise concerns or direct complaints through the office of the University Ombudsman. This might conceivably include: vendors, independent contractors, invited speakers, guest lecturers, interns, persons auditing a course, and other persons not formally enrolled at the University or on the USD payroll.

discussing a particular matter with their supervisor, the University's Legal Counsel, Human Resources, Public Safety, or other administrators on campus. Likewise, students and affiliates of the University may lack a clear understanding of its administrative structures, procedures, and places to obtain information and guidance to resolve a serious matter. In short, there is often simply a need for a one-stop-shop on where to get direction, resources or help at the University.

- 2) **Need for clear, safe, and effective channels of communication:** In many cases, the lack of insufficient mechanisms for efficient and effective communication can exacerbate problems in the workplace, in the classroom, and/or in student residential life. An aggrieved person may feel that their efforts to communicate concerns will place them in jeopardy, or will not be taken seriously by the existing structures within the university power structure. For example, whether or not it is accurate, employees may perceive Human Resources or the University's Legal Counsel as primarily focused on helping the University minimize its liabilities against litigation, rather than protecting the best interests of the employee.
- 3) **Need for effective mitigation and mediation of disputes:** While the best way to handle a problem is to avoid having one in the first place, complaints and concerns often turn into problems because of a failure to mitigate or mediate them effectively at an early stage. Mitigation of a problem involves careful monitoring, evaluation, and planning to prevent problems from developing in the first place. However, once a problem has been identified, swift and deft intervention can help to mediate and diffuse tensions that would otherwise become much worse.

Designing an Ombuds Office

While there are many different models for establishing an ombuds mechanism, there are basic principles and standards of practice that can help to ensure the individual well-being and productivity of employees and overall institutional functioning. The International Ombuds Association (IOA) has identified several guiding principles for establishing an effective ombuds function:

- **Independence:** The Ombuds should report directly to the highest level of an organization (such as the president, board of directors, etc.) “in a manner independent of ordinary line and staff functions,” should not be considered a subordinate of other senior officials,” and “should hold no other position within the organization which might compromise independence.”
- **Neutrality and Impartiality:** The Ombuds should be unaligned to any particular interest, should strive for fair treatment of people and issues, and will not advocate on behalf of any individual within the organization. The Ombuds “has a responsibility to consider the legitimate concerns and interests of all individuals affected by the matter under consideration,” and helps to identify both formal and informal options to inform, facilitate discussion, and resolve concerns.
- **Confidentiality:** The committee noted that record-keeping and reporting expectations are different for Ombuds offices at most universities because they are not considered agents of the university. The International Ombuds Association takes the position that Ombuds discussions are non-discoverable and encourages ombuds officers to minimize use of

email and other written records that could be discoverable.² There are exceptions. On Title IX issues and student matters, for example, there is a legal burden for mandatory reporting. Also, an Ombuds should have clear, narrow, and specific guidelines for what types of events constitute an “imminent risk of serious harm.” The IOA indicates that visitors to the Ombuds office should be made aware that, within these limits, “No one, including the employing entity, should consider the Ombudsman Office to be agent of notice (that is, an office that receives formal notice on behalf of the organization) and no one, including the entity, should seek information about communications to the Ombudsman Office.”

- **Informality:** An Ombuds functions as “an informal and off-the-record resource” that works alongside existing frameworks of formal rules and mechanisms (e.g., Human Resources, grievance procedures, etc.) and may become involved in the informal resolution of conflict among parties voluntarily seeking the informal assistance of the office (e.g., confidentially registering concerns, interpreting complex workplace situations, explaining rules and policies, facilitating communication, informal mediation, shuttle diplomacy, etc.).³

In practice, peer institutions in the state of California (which operate under the same legal considerations as USD) have a mix of organizational structures ranging from assigning current faculty/administrators to hiring external personnel. For example, Loyola Marymount has a Vice Provost for intercultural affairs who serves in an Ombuds role, while Chapman has a full professor assigned to an Ombuds role. There are a number of different ombuds structures that have been effectively implemented at comparable institutions in California that can provide models for USD.

Recommendations for Pilot Project at USD

Committee members strongly support the creation of an Ombuds office/function and underscore the fact that an Office of Ombuds can provide significant cost-savings that may pay for itself by preventing future legal actions against the university. Furthermore, the committee strongly recommends that a permanent ombudsman be an external hire to ensure the independence and neutrality of the office and that the person have jurisdiction to address not faculty, staff, and administrators.

However, there is uncertainty regarding the nature and volume of cases that the Office of Ombuds would handle, and the specific needs and functions to be played by an Office of Ombuds at the University of San Diego. Also, current fiscal planning at USD makes it essential to put forward a model that will be cost effective and mindful of budget constraints. With this in mind, the committee recommends the establishment of a two-year pilot Ombuds office/function

² In practice, there are differences in the way that ombuds offices are expected to manage record-keeping at nearby institutions. For example, UCSD tracks broad trends, but treats confidentiality as supreme and only uses hand written notes that are discarded when not needed to follow a matter that appears likely to continue for some time. SDSU has a student-only ombuds office and the ombuds is a mandated reporter, keeps detailed records, and has limits on confidentiality.

³ “IOA Best Practices,” International Ombuds Association, October 13, 2009, https://www.ombudsassociation.org/assets/docs/IOA_Best_Practices_Version3_101309_0.pdf

at USD to address faculty issues. Because students are covered by other different processes, they are not included in this recommendation. Because the Senate is focused on faculty, this recommendation does not directly address staff and administration. However, any Ombuds is likely to encounter situations and issues that affect not only faculty, but also students and staff. In such cases, the Ombuds work may cross over from faculty to those groups and may require cooperation with other appropriate individuals and departments at USD.

The Ombuds Committee recommends the following principles as a basis for creating an ombuds mechanism at the University:

- 1) The ombuds mechanism should operate based on the principles outlined by the International Ombuds Association and should be considered an independent office that plays an informational, triage, and mediating role to help address employees' workplace-related concerns;
- 2) In keeping with International Ombuds Association best practices and existing California case law—e.g., *Garstang v. California Institute of Technology* (1995)—the University will not be given notice of individual matters brought to the Ombuds, and all such matters would be treated as confidential and privileged except where mandated by law and when there appears to be imminent risk of serious harm;
- 3) The ombuds mechanism should issue periodic reports to the President and the Senate summarizing activities, problem areas identified, and recommendations for systemic change in a manner that protects the identity of individuals and does not place the University on notice;
- 4) Persons serving in the ombuds function should have the ability to meet with visitors in a private, confidential setting. Office protocols should include formal reporting of aggregate trends, but no record-keeping or written communication regarding individual cases.

Among the possible mechanisms that could be established to help achieve the above noted functions, the committee discussed the possibility of: 1) an outside hire of a full or part time ombudsperson, 2) a designated "Vice Provost for Academic Affairs" position for addressing faculty matters and non-Title IX workplace concerns within the provost's office, and 3) a Human Resources faculty-liaison to provide input on HR handling of faculty matters. The committee recommends that during the two-year pilot the Senate should assign a taskforce to assess the reach and impact of the Ombuds office and make recommendations regarding its future at USD.