

**REPORT OF THE JOINT COMMITTEE OF
THE UNIVERSITY AND STAFF SENATES
ON THE PROPOSED CREATION OF AN OMBUDS' PROGRAM**

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PROPOSAL

The Joint Committee of the University and Staff Senates recommends that the University of Kentucky establish, *on a three-year trial basis*, an Ombuds' program. This program will offer faculty and staff an additional approach to dispute resolution and an informal, off-the-record resource for addressing employee issues. *The Committee recommends that the Ombuds' program be thoroughly assessed after the first two years of operation to ascertain the effectiveness of the services offered. Based on this assessment, a decision can then be made about whether to establish the Ombuds' program on a permanent basis.*

INTRODUCTION

All institutions, whether educational or otherwise, face challenges when managing employee issues. The creation of an Ombuds' program at UK could help solve, or provide the mechanism for solving, some of these challenges. An Ombuds' program would provide a confidential, impartial, and independent resource to faculty and staff who have concerns, conflicts, or disputes arising from or affecting their work. In addition, an Ombuds' program could provide assistance to administration and committees that influence the University culture, as well as offering training in conflict avoidance for supervisors and employees.

An examination of UK's Top 20 benchmark institutions, such as the Universities of California at Berkeley, Davis, Los Angeles and San Diego, the University of Washington, the University of Maryland and the University of Wisconsin, reveals that the majority of these institutions have already created Ombuds' programs that follow the protocols of the International Ombudsman Association (IOA) (<http://www.ombudsassociation.org/>). The IOA provides guidelines and standards of practice for the implementation and functioning of Ombuds' programs, and further facilitates training for, and certification of, ombuds. The IOA also has a Code of Ethics governing Ombuds' program practices, setting forth the profession's basic principles, which include independence, neutrality, impartiality, confidentiality and informality.

As Oregon State University President Ed Ray noted upon creation of an Ombud position at that university, "the ombudsperson initiative is a strong acknowledgement that relationship challenges in a complex organization are inevitable, but we are committed to creating additional mechanisms through which we can address those challenges." The University of Kentucky faces similar challenges, and the creation of an Ombuds' program would provide employees with an avenue for conflict resolution that would represent a valuable supplement to employee services currently found at the University. Given that the majority of our benchmarks have an Ombuds' program to assist with the issues that arise from having a large and diverse work force, it is the recommendation of this joint committee of the University and Staff Senates that UK also should adopt the "best practices" embraced by our benchmark institutions by establishing such a program, thereby providing UK employees with a safe and less pressured environment in which to resolve work-related issues.

RATIONALE FOR AN OMBUDS' PROGRAM

Numerous personnel issues naturally arise in every workplace, but recent surveys of UK employees suggest that both faculty and staff perceive weak institutional support at the University for resolving workplace conflict. Experiences of intimidation and harassment are not uncommon, as are issues of communication, including staff perceptions concerning feeling valued and respected. While less than 1% of the written 2010 UK@Work confidential comments addressed harassment in the workplace,¹ the comments that did so provide important insights into problematic work environments for certain staff and faculty across campus.

Types of perceived harassment reported in the survey include the following practices:²

- retaliation that was demonstrated via
 - unequal treatment of employees within a unit
 - schedule changes without notice
 - progressive reduction of responsibilities
- refusal to listen to staff's perspective
- intimidation
- public humiliation
- demeaning comments that imply lack of employee education or competency, or unimportant status within the organization
- withholding of Information
- intentional violation of university HR policy and procedure

Several employees wrote that they did not feel “valued” as a result of such behavior. One staff member mentioned that her supervisor’s constant “belittling” and “threatening” behavior left her

¹ It should be noted that the figure of 1% may not accurately reflect the number of people in employment at UK who feel harassed or intimidated. Many disaffected employees refuse to fill out the survey, and anecdotal evidence indicates that some of those who do fill out the survey do not feel comfortable with being completely honest about these matters. At least one staff senator has heard people express the opinion that, because the survey is taken using the employee’s UK ID, “if you say negative things, they will be able to trace them back to you.”

² These reports, presented in an anonymous survey, are, of course, unsubstantiated, but the fact that certain faculty and staff perceive themselves as being mistreated in the ways reported means that serious morale issues do exist at the University.

feeling less confident in her abilities. Other employees also stated that it was difficult working in environments in which they did not feel respected or valued. One employee commented that his supervisor's "it's-my-way-or-the-highway attitude" created a hostile work environment. Moreover, several employees perceived that co-workers were subject to intentional negative treatment as a way to "get rid" of them, further heightening their own job insecurity during the economic downturn. Additionally, a few employees described workplace bullying among co-workers, and a supervisor mentioned the difficulty he had addressing the behavior of "toxic" employees who contributed to making a unit intolerable.

Two percent of staff additional comments and one percent of faculty additional comments from the 2010 UK@Work survey focused on the challenges of communication at multiple levels within the organization. Effective communication within units is central to employee engagement and productivity.

Many respondents stated that they wished they could communicate openly with their supervisors without fear of repercussions, but saw few options for doing so. For example, several employees noted that HR Employee Relations is limited in its ability to provide support for individual concerns, particularly if HR policies and procedures are, at least ostensibly, being followed by supervisors. Others pointed out that while Employee Relations and upper management might be aware of hostile work environments, it is not always apparent if the problems are being addressed, and, if so, whether any remedial measures are being communicated to employees. Another employee observed that some employees might not know what behavior could be described as harassment, because it seemed difficult for them to find the right words to describe inappropriate behavior. Others wrote that they did not always feel encouraged or able to voice their complaints, or felt that their complaints would not be fairly addressed.

In addition, four percent of faculty and staff provided additional insights into what helps employees feel valued and respected within the organization. Feeling valued and respected can be linked to productive and conflict-free work environments. Several employees wrote about the departure of many co-workers who felt their work environments had become unbearable. Others, however, perceived that their lack of options prevented them from moving to another position, which generated feelings of being "trapped" or "at the mercy" of their work unit, contributing to high levels of mental anguish and increased physical ailments.

Several employees stated that they did not know where to seek help. One employee expressed a desire for a separate, confidential "Employee Relations" unit through which concerns

could be addressed without fear of retaliation. Others asked if mediation services might be made available to address workplace conflict. Eight employees mentioned the establishment of an ombuds' program as a useful way to help employees with their issues, particularly in environments where open communication is not encouraged or promoted.

The effect of a hostile work environment on staff morale generally has been well-documented by psychologists who study workplace issues. Employees who suffer from workplace harassment or bullying (or who perceive they do) suffer from low morale, health issues, lack of motivation and unwillingness to show initiative. In addition, the University, in common with other employers, is sued multiple times each year by unhappy employees and former employees. While it would be disingenuous or dishonest to claim that the presence of an Ombuds' program at the University would magically solve or prevent these problems, the availability of a safe and unbiased resource would certainly assist some employees with resolving their workplace issues, increasing their productivity and saving on hearing and litigation costs. Based on their research and knowledge of the University and its workplace issues, the members of the Joint Committee believe that the cost of implementing such a program will be easily offset by the gain in morale among the workforce and possible decreased legal costs that will result from establishing an Ombuds' program.

RESEARCH AND PLANNING

To assist with these recommendations, the Joint Committee researched information about the International Ombudsman Association, as well as Ombuds' programs at UK benchmark institutions. In addition, members of the Joint Committee visited the Ombuds' program at the Universities of Louisville and Cincinnati.

The University of Louisville founded an Ombuds' program only recently in the wake of the scandal involving the former Dean of Education. According to Louisville professor Dr. Robert Staat, Chair of the Faculty Senate, the University perceived that the issues involving this dean could perhaps have been detected earlier if faculty in his department had been able to bring their concerns to a neutral and unbiased program which could, in turn, have advised them of a safe means for conveying their concerns to the administration. Dr. Staat urged UK to benefit from the example of the University of Louisville by implementing an Ombuds' program proactively. The Staff Senate Chair, Brent Fryrear, also endorsed the usefulness of the program, and spoke enthusiastically of its effect on the morale of staff.

The Joint Committee also met with the University of Louisville Ombudsman, Tony Belak. An attorney with many years of experience in the area of conflict resolution, Mr. Belak provided the Joint Committee members with information relating to both the University of Louisville program and ombuds programs generally, and expressed an interest in continuing to work with UK to get a similar program implemented here. Mr. Belak reports to the Provost, but he receives his yearly evaluation from the faculty senate, the staff senate and the head of the alumni association. Further information about the University of Louisville Ombuds' program can be found at: <http://louisville.edu/ombuds/about>.

While the situation at the University of Cincinnati is different from that at both UK and the University of Louisville because UC faculty and some staff are unionized, the principles of their program remain the same. The Ombuds' program was founded more than forty years ago, and offers services to faculty, staff and students. The Ombuds' program estimates that 70% of its services are provided to students, and the remaining 30% are utilized mostly by staff, as faculty tend to use their union grievance procedures. The vast majority of the complaints they receive are resolved informally, with only about 5% becoming formal grievances. Moreover, the Ombuds at Cincinnati believes that, by recognizing and reporting observed patterns in complaints, the Ombuds'

program can often highlight problems of which the University administrators were previously unaware. The program operates in accordance with the principles of the International Ombuds Association, which, as already noted, offers national standards of practice and certification. The University Ombuds noted that her reporting structure was through the VP of Student Affairs, although she would prefer to report directly to the President. The program is staffed by the Ombuds, the Associate Ombuds and two graduate assistants, and its website is <http://www.uc.edu/ombuds.html>.

SPECIFIC RECOMMENDATIONS

In order to resolve personnel conflicts at UK in an informal and neutral manner, it is the recommendation of this Joint Committee that the University create an Ombuds' program *on a three-year trial basis*. *Following the first two years of operations, the Ombuds' program will be thoroughly assessed to ascertain the effectiveness of the services offered. Based on this assessment, a determination will be made about whether to make the program permanent.* Assessment of the Ombuds' program will be based on information that is collected regarding the number of persons visiting the program, the nature of concerns, the types of resources provided and outcomes of mediation. Faculty and staff will also be surveyed about their perception of the program and its value to them at the end of the second year. Any assessments of the program shall preserve the confidentiality of information provided by individual University employees and, if applicable, students.

The Ombuds' program will offer faculty and staff an additional approach to dispute resolution and an informal, off-the-record resource for addressing employee issues. It is the further recommendation of the Joint Committee that, to promote fairness and impartiality, the Ombuds' program of the University of Kentucky be delegated the highest level of authority and autonomy available, and that the Ombuds report directly to the President of the University. The Ombuds' program shall provide a confidential, impartial, and independent process for faculty and staff who have concerns, conflicts, complaints, or disputes arising from or affecting their work. The Ombuds shall be an advocate for fairness at the University, with no sides taken as to who is "right" or "wrong," essentially playing the role of a mediator.

The University Ombuds' program should provide the following services to faculty and staff:

- Listen and discuss questions and concerns.
- Help evaluate options and suggest approaches.
- Serve as a neutral third party in conflict resolution.
- Advocate for fair resolution processes.
- Provide information about policies, procedures and services.
- Facilitate communications between employees and their immediate supervisors.
- Advise on informal resolution of problems and about formal and administrative options.
- Recommend institutional review or changes in policies.

- Collaborate with other campus programs on issues of general concern.
- Provide training workshops on conflict resolution and develop a support system.

All services offered by the program shall be provided on an informal basis. The program shall not keep or disclose records of individually identifiable information, nor testify or participate in any internal proceeding. Moreover, no individual shall be disciplined, penalized or suffer retaliation for bringing an issue to the Ombuds' program.

The Ombuds' program shall, when presented with an issue, listen to the complaint or problem, advise the employee of options available to resolve that problem, answer the employee's questions about UK policies and procedures, facilitate an agreement or mediate a resolution, where appropriate, and/or refer the employee to the appropriate UK office or individual. The Ombuds' program will not provide legal assistance, serve as an advocate for an individual, group or cause, conduct investigations into formal complaints or allegations, or participate in formal processes. *The Ombuds shall not act as an agent for the University, but shall be required to report necessary information to the appropriate authorities in cases concerning threat or imminent harm.*

The Ombuds' program should be established and operate in accordance with the International Ombudsman Association Codes of Ethics and Principles of Practice (<http://www.ombudsassociation.org/>). Ideally, the UK Ombuds shall be credentialed by the IOA, and undergo periodic training through that association. As already discussed, the Ombuds shall report directly to the President. *If an issue arises concerning a member of the President's office, and the Ombuds needs to seek advice from a senior staff member, then the Ombuds should, for the purpose of that issue only, report to the Office of General Counsel.*

The Ombuds' yearly review shall be issued from the President's office, and should consist of equal weight being given to the following 5 elements:

1. *The President's assessment of the Ombuds' effectiveness;*
2. *The University Senate's assessment of the Ombuds' effectiveness;*
3. *The Staff Senate's assessment of the Ombuds' effectiveness;*
4. *An annual report of the utilization of the program, types of concerns addressed, resources provided and mediation outcomes; and*
5. *An on-line anonymous survey of the office's effectiveness.*

For the on-line survey, questions regarding perceptions of the Ombuds' mission and services shall be asked to determine if the survey results reflect a realistic knowledge of the program's goals.

Ideally, the Ombuds' office shall be in a neutral and busy part of campus. The Joint Committee recommends that the program should not be in the Main Administration Building, but rather in a location such as the Student Center, which sees a high volume of unobserved foot traffic. No one shall monitor the program to see who is visiting the Ombuds.

In addition, the Ombuds shall be consulted by those administrators and committees that are in a position to influence the University culture. He/she shall offer advice on personnel issues and patterns of behavior on campus that negatively impact University employees.

When hiring an Ombuds, a background in dispute resolution and academic experience should be among the credentials sought. If an Ombuds is not already credentialed by the IOA, he/she shall be certified as soon as possible. The Joint Committee will work with HR on developing a complete and detailed job description for the Ombuds. *The Joint Committee also recommends that, because of her experience and qualifications, the search committee for the Ombuds be chaired by Dr. Judy Jackson, Vice President for Institutional Diversity. The Joint Committee recommends that the search committee should consist of five members, and that two of the members should be elected by the University and Staff Senates from among those who serve on the Joint Committee. In addition, the Joint Committee recommends that a target interview selection process be used while interviewing candidates for this position. The Joint Committee also recommends that the search committee review any candidates for the support staff position.*

In addition, a number of benefits might be achieved by combining the current Student Ombuds position with the new Ombuds' program. First, doing so would address any conflict of interest concerns of students that might be associated with having a faculty member be the Ombuds in cases of student-faculty disagreements or complaints. Second, staffing the Student Ombuds job with a trained professional, rather than a faculty member with little or no special training or expertise in mediation is likely to improve outcomes. Finally, it is likely to be more cost effective for the University to combine all Ombuds' activity in a single program. *However, we recommend that the combining of the student and faculty/staff Ombuds programs should take place after the office has been established rather than initially.*

CONCLUSIONS

After much consideration and research, the Joint Committee of the University and Staff Senates on the creation of an Ombuds' program at the University of Kentucky recommends that such a program be approved and implemented as soon as possible. Among the benefits to the University of such a program are:

1. addressing perceived conflicts of interest embedded in current conflict resolution procedures;
2. cost savings, insofar as cost savings from reduced litigation will exceed the cost of an Ombuds' Program;
3. enhanced morale and productivity of both faculty and staff; and
4. provision of information on processes and procedures that are contributing to employee relations problems, enabling administrators to address such problems earlier and more effectively.