

INDEX
K-12 SCHOOL OMBUDS TOOLKIT

[Compiled by the ABA Dispute Resolution Section Ombuds Committee]

Part 1

1. “Understanding the Types of Ombudsman: A Starter Guide,” by Julie A. Smith and Charles L. Howard
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
9. Administrative Directive 4.5.031-AD: Complaint Resolution Process for the Portland (OR) Public Schools
10. Brochure of the Pasadena (CA) Unified School District Ombuds Office
11. Draft Ombuds Charter for the Pasadena (CA) Unified School District
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
15. 2004 American Bar Association Resolution: revised Standards for the Establishment and Operation of Ombuds Offices
16. Code of Ethics of the International Ombudsman Association (IOA)
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,¹ ombudsman means agent or representative²; 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.³ 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."⁴ 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.⁵ 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."⁶ 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."⁷ 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;⁸ 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.⁹

Over the years, the ABA has adopted four resolutions supporting increased use and delineating the essential characteristics of ombudsman. The drafters consulted¹⁰ 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."¹¹ The ombuds community accepted and adopted these resolutions to varying degrees, while some rejected them altogether.¹² 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."¹³ 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.¹⁴

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."¹⁵ 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.¹⁶

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.¹⁷ 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.”¹⁸ In the 2004 Resolution, the more particularized legislative and executive ombuds replace the classical category,¹⁹ 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.²⁰ 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.²¹

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.”²² Legislative ombuds are appointed by the legislative body or the executive with confirmation by the legislative body and adhere to the twelve characteristics²³ 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.²⁴

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.”²⁵ 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.²⁶

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.²⁷ 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.”²⁸ 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.²⁹

An **Advocate** ombudsman can work in private or public sectors. While remaining objective, an advocate ombuds “is authorized or required to advocate on behalf of individuals or groups found to be aggrieved.”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.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.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.

¹ Charles L. Howard, *The Organizational Ombudsman: Origins, Roles, and Operations - A Legal Guide*, 1 (2010).

² American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices*, 1 fn. 2 (2001) [hereinafter 2001 ABA Resolution] available at www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/attach.authcheckdam.pdf (last visited Dec. 21, 2014).

³ Gerald E. Caiden, *The Institution of Ombudsman*, in *International Handbook of the Ombudsman: Evolution and Function* 9 (1983).

⁴ American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices*, 9 (revised Feb. 2004) [hereinafter 2004 ABA Resolution] available at www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/attach.authcheckdam.pdf (last visited Dec. 21, 2014).

⁵ Howard, *supra* note 1, at 7, 8 fn. 25, 24.

⁶ Donald C. Rowat, *Preface to the Second Edition of The Ombudsman – Citizen Defender*, xii (2d ed. 1968).

⁷ Kenneth Culp Davis, *Ombudsmen in America: Officers to Criticize Administrative Action*, 109 *U. Penn. L. Rev.* 1057-58 (1961).

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.

²⁸ International Ombudsman Association, *IOA Code of Ethics*, <http://www.ombudsassociation.org/About-Us/IOA-Standards-of-Practice-IOA-Best-Practices/Code-of-Ethics.aspx>.

²⁹ 2004 ABA Resolution, *supra* note 4, at 7.

³⁰ *Id.* at 1.

³¹ For more information, visit www.ltombudsman.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

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

● Yes

▲ No

	order to build trust among all constituencies	whether to formally investigate or attempt informal resolution	May vary depending on enabling legislation
Keeps records of individual cases	▲	●	May vary depending on enabling legislation
May issue public findings	▲	●	Typically issues annual reports and may issue reports of findings in individual cases at ombuds discretion
Mandates changes/makes decisions for the entity	▲	▲	●
Advocates for individuals	▲	▲	●
Advocates for fair process	●	●	●

Representative Standards of Practice

All types of ombuds: American Bar Association standards, available at, <http://www.americanbar.org/content/dam/aba/migrated/leadership/2004/dj/115.authcheckdam.pdf>.

Organizational ombuds: International Ombudsman Association standards, available at, <http://www.ombudsassociation.org/About-Us/IOA-Standards-of-Practice-IOA-Best-Practices.aspx>.

Classical ombuds: United States Ombudsman Association standards, available at, <http://www.usombudsman.org/usoa-governmental-ombudsman-standards/>.

● Yes

▲ No

VOLUME 23, NUMBER 1

FALL 2016

DISPUTE RESOLUTION

MAGAZINE

OMBUDS

**A Broader View
of Dispute Resolution**

**In the Private Sector,
Ombuds Office
Is Based on Core Values**

**Reflections of A
Federal Agency Ombuds**



PUBLISHED BY THE AMERICAN BAR ASSOCIATION SECTION OF DISPUTE RESOLUTION

OMBUDS

An Introduction

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 applaud. 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 ■

A Broader View of Dispute Resolution

By Charles L. Howard

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,"¹ 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."² 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.³ As the concept

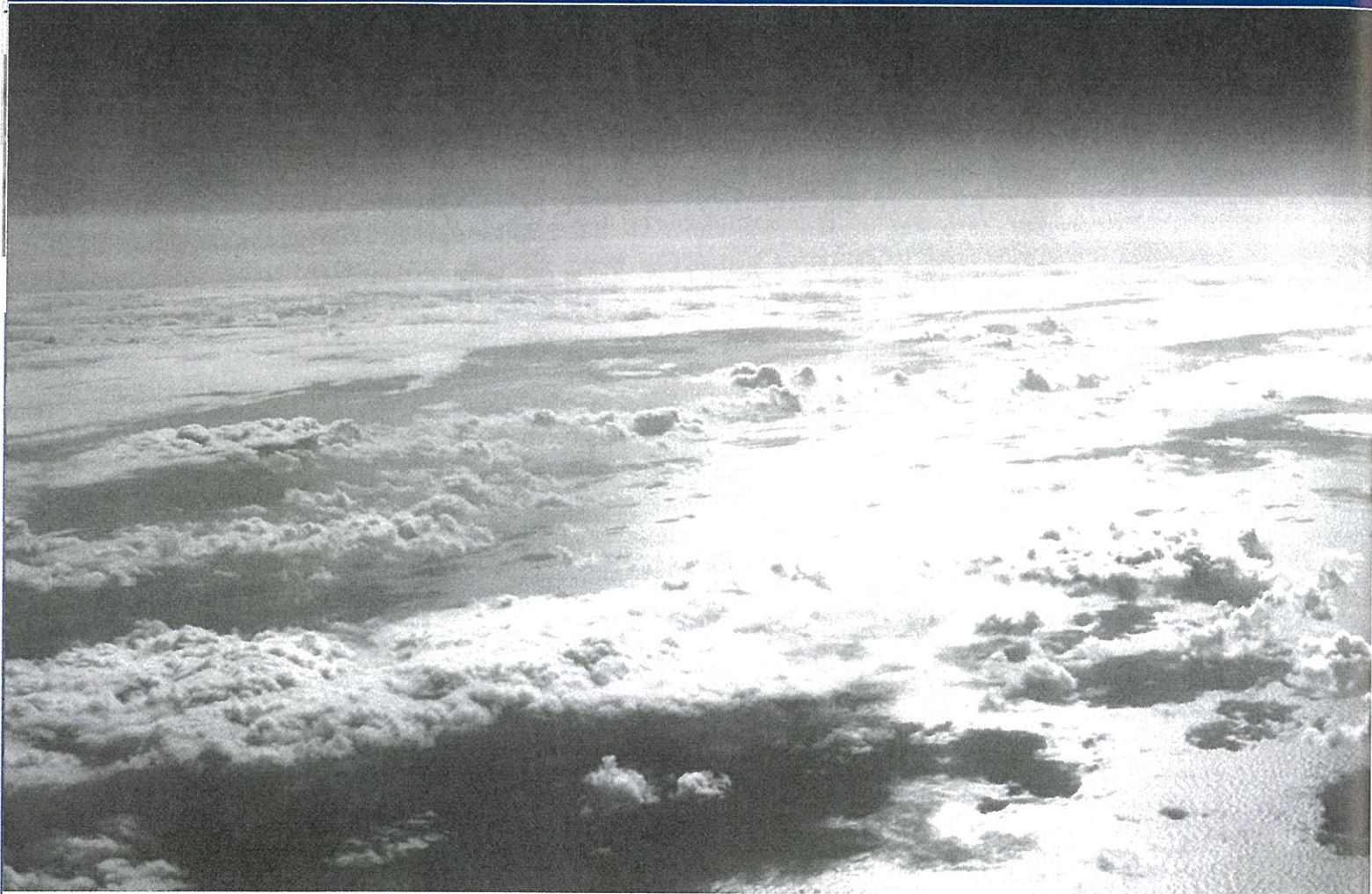
spread throughout Scandinavia in the twentieth century, an ombuds was a lawyer — an investigator and sometimes a prosecutor — whose mandate was to ensure that the government complied with the law.

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*⁴ 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.⁵

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.⁶ 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



Charles ("Chuck") L. Howard is a partner of Shipman & Goodwin LLP in its Hartford, Connecticut, office and the firm's general counsel. He is the Co-chair of the Ombuds Committee of the Dispute Resolution Section and the author of *The Organizational Ombudsman: Origins, Roles, and Operations — A Legal Guide* (2010). He can be reached at choward@goodwin.com.

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.

2 CHARLES L. HOWARD, *THE ORGANIZATIONAL OMBUDSMAN: ORIGINS, ROLES, AND OPERATIONS — A LEGAL GUIDE* 2-3 (2010) (quoting Gerald E. Caiden, *The Institution of Ombudsman*, in *INTERNATIONAL HANDBOOK OF THE OMBUDSMAN: EVOLUTION AND FUNCTION* 9-10 (Gerald E. Caiden ed., 1983)).

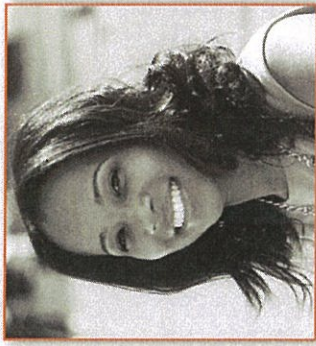
3 *Id.* at 45 n.6.

4 Kenneth Culp Davis, *Ombudsmen in America: Officers to Criticize Administrative Action*, 109 U. PENN. L. REV. 1057, 1057-58 (1961).

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>.

MEET THE OMBUDSMAN JOYANNA SMITH



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.



WHEN TO CONTACT US

You're facing a problem you have not been able to resolve by speaking to the school principal.

Communication between parent and school has broken down.

You don't know where to go for help.

You're having trouble finding the information that you need.

HOW TO CONTACT US

Intake Hotline: 202-741-0886

Staffed 9:30 am to 5:00 pm
Monday - Friday

Online complaint form:
<http://www.sboe.dc.gov/ombudsman>

In-person meetings available
by appointment
(call 202-741-0886 to schedule)

@DCOmbuds

DC Office of the
Ombudsman
for Public Education



Office of the Ombudsman
for Public Education
DC State Board of Education

441 4th St, NW, Suite 723N
Washington, DC 20001 | 202.741.0886
Ombudsman@dc.gov
@DCOmbuds

OUR ROLE

We help parents and students who have questions, concerns, and complaints about the DC public schools and DC public charter schools.

We are independent and impartial in our approach to solving problems. We listen to all parties involved and make recommendations based on the student's best interests.

WHO WE SERVE

All current and prospective DC public school and DC public charter school families.

ISSUES WE HANDLE

Bullying
Harassment
Safety
Transportation
Attendance
Special Education
Suspensions
Expulsions
Truancy
Academic Progress

...and other issues that affect student learning

WHAT OUR OFFICE DOES NOT DO

- » Take personnel action against school staff.
- » Provide legal advice.
- » Intervene when the parties are involved in legal or administrative proceedings.

HOW WE WORK

- » We respond to all complaints within 48 hours.
- » We listen carefully to your concerns and seek to understand them thoroughly.
- » We keep what you tell us confidential unless we have serious concerns about student safety.
- » Depending on the situation, we may:
 - Coach parents and school staff on best practices for communication.
 - Seek additional information and records from the school.
 - Participate in meetings to support effective communication and problem-solving.
 - Facilitate or mediate conversations.
 - Make recommendations for a school to take a particular action, or for school system-wide improvements.

OUR GOALS

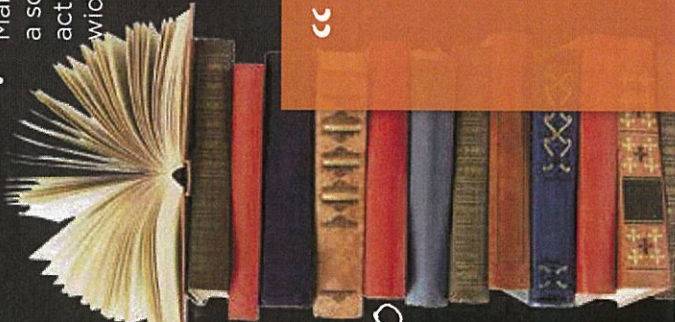
- RESPOND**
to concerns in a timely, caring, and productive manner.
- ENCOURAGE**
effective communication between parents and schools.
- ACT**
as a source of early detection for emerging school system-wide issues.
- CONTRIBUTE**
creative policy solutions by identifying and sharing trends we observe.
- PREVENT**
recurring problems and improve existing processes by contributing suggestions for systemic change.
- REDUCE**
the need for administrative hearings and litigation by facilitating informal resolution of education-related conflicts.

DC Office of the
Ombudsman
for Public Education



“ THE
OMBUDSMAN'S
OFFICE
MADE A BIG
DIFFERENCE
FOR MY FAMILY. ”

L.W., mother of a DCPS
Kindergarten student





STATE BOARD OF EDUCATION

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.

	PREVENTION	DISAGREEMENT	CONFLICT	LEGAL	SYSTEMIC
STAGES OF CONFLICT	Effective processes and good communication reduce the number of conflicts.	There is a disagreement however the conflict has not escalated.	Conflict has escalated beyond the ability of the parties to work toward resolution without assistance.	Formal and legal processes are necessary for resolving the issue and protecting rights.	Conflict that is caused by inadequate policies and procedures.
NATURE OF INTERVENTIONS	Interventions strengthen the abilities of families to navigate the system and advocate for their children.	Third party intervention is focused on providing information and advice to families and individuals to help them address specific issues.	Third party intervention involves informal and informal processes for facilitating communication and problem-solving among involved parties when there is an active conflict.	These interventions are required by law. Many involve decision-making by a third party based on rights under law or policy.	Advocates for change by identifying systemic issues and making recommendations. Provides opportunities for engagement and problem-solving on improved policies and processes.
	<ul style="list-style-type: none"> Resources & Referrals Parent & Student Workshops & Leadership Trainings Coaching on school options General Coaching Self-Advocacy Tools Community Outreach 	<ul style="list-style-type: none"> Effective Communication Tools General Informational Resources & Referrals 	<ul style="list-style-type: none"> Support for families during mediation 	<ul style="list-style-type: none"> State Complaint Due Process Hearing Resolution Session Formal investigations 	<ul style="list-style-type: none"> 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
	<ul style="list-style-type: none"> Early warning system for emerging problems to prevent further escalation Confidential feedback to schools on problematic policies 	<ul style="list-style-type: none"> Case specific coaching Case management Technical assistance to schools 	<ul style="list-style-type: none"> 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 		<ul style="list-style-type: none"> Annual report informed by case-specific trends Technical assistance to schools to improve policies and procedures Address case-informed systemic issues in stakeholder engagements

6

District of Columbia
Office of the Ombudsman for Public Education



2015 ANNUAL REPORT

Joyanna Smith, Ombudsman for Public Education

DC Office of the
Ombudsman
for Public Education



OFFICE OF THE OMBUDSMAN FOR PUBLIC EDUCATION
ANNUAL REPORT 2015

EXECUTIVE SUMMARY	2-3
LETTER FROM THE OMBUDSMAN FOR PUBLIC EDUCATION	4
I. THE OFFICE OF THE OMBUDSMAN FOR PUBLIC EDUCATION	5-7
A. Staff	5
B. What is an Ombudsman?	5
C. Legislative History	5-6
D. Role of the Ombudsman	6
E. Transparency and Accountability	6
F. Our Mission	6
G. Our Vision	6
H. Our Goals	6
I. What We Do	6
J. What We Do Not Do	7
K. Our Case Process - How We Get Results	7
II. STAKEHOLDER ENGAGEMENT AND OUTREACH EFFORTS	8
III. 2015 OMBUDSMAN'S OFFICE DATA	9-13
Who We Serve	9
IV. COMMON COMPLAINT RESOLUTION OUTCOMES	14
V. REPRESENTATIVE ACCOMPLISHMENTS	15
VI. OBSERVATIONS	16-23
A. Special Education	16-18
B. Discipline	18-21
C. Safety/Abuse	21
D. Bullying	21-22
E. Enrollment	22
F. Family Engagement	22-23
VII. 2015 ANNUAL RECOMMENDATIONS	24-25
A. Discipline	24
B. Special Education	24
C. Student Safety	24-25
D. Homeless Students	25
E. Engagement	25
VIII. CONCLUSION – LOOKING AHEAD	26
APPENDIX	27

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.

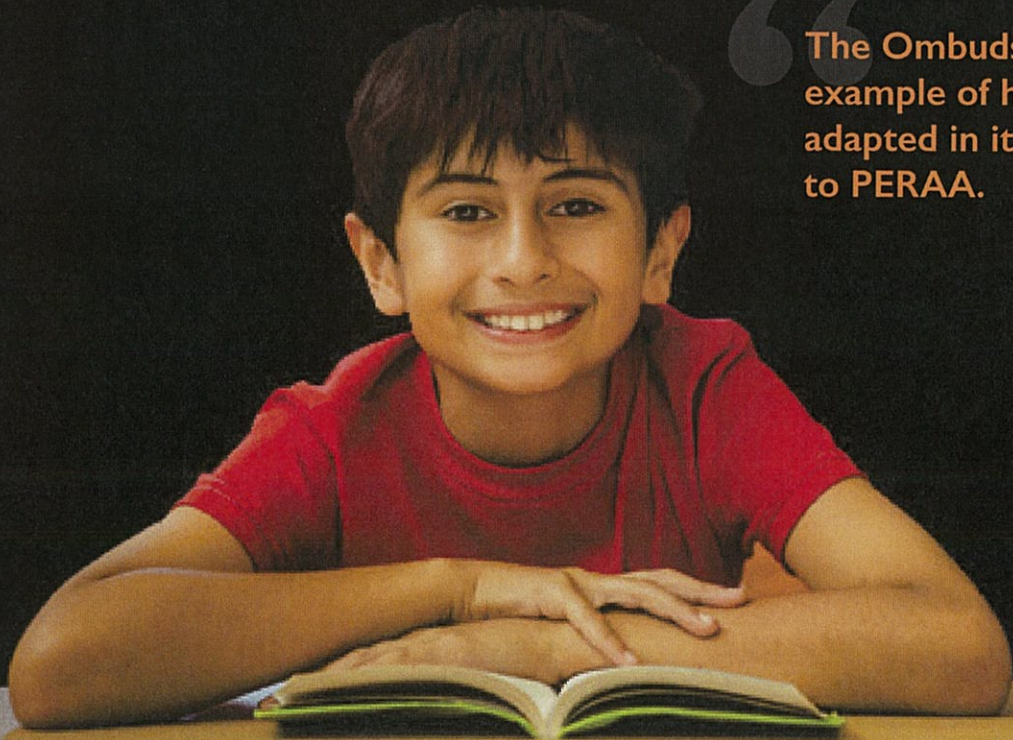
Overview of complaints during School Year 2014-15

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,


Joyanna 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 Tossell, **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.¹ 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.²

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.”³ 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.

¹ D.C. Act 17-38.

² Committee for the Five-Year (2009-2013) Summative Evaluation of the District of Columbia Public Schools. (2015). *An evaluation of the public schools of the District of Columbia: Reform in a changing landscape*. Retrieved from <http://www.nap.edu/catalog/21743/an-evaluation-of-the-public-schools-of-the-district-of-columbia>

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...”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. As an example of our approach, if a party has reached out to the office about a long-term suspension, we typically: 1) identify the applicable discipline policy, 2) review the facts to determine whether the school system is following the appropriate process based on the policy, 3) ensure the long-term suspension did not violate any specific law, 4)

⁴National Research Council. (2011). *A plan for evaluating the District of Columbia's public schools: From impressions to evidence*. Retrieved from <http://www.nap.edu/catalog/13114/a-plan-for-evaluating-the-district-of-columbias-public-schools>

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

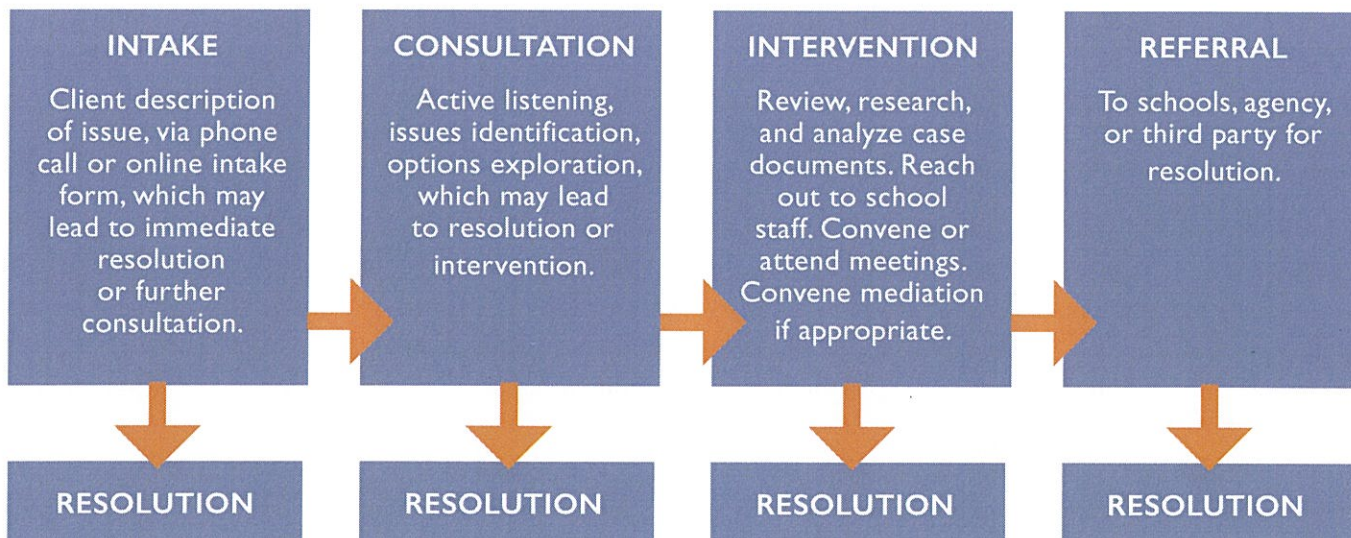
force a school or a Local Education Agency (LEA) to take a specific action.

- 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.

Our Case Process — How We Get Results

The Ombudsman’s case management process⁵ has four (4) steps, though some may repeat:

- 1) Intake 2) Consultation 3) Intervention 4) Resolution/Referral



⁵ Adapted from Washington State Office of the Education Ombudsman. (2011). *Ombudsman resource manual*.

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	Public Charter School Board
Office for Human Rights Bullying Prevention Forum	DC Public Schools (DCPS) Instructional Superintendents
DC National Pan-Hellenic Council Fair	DCPS Office of Specialized Instruction
OSSE Secondary Transition Fair	DCPS Office of the General Counsel
Ward 4 Education Alliance	Office of the State Superintendent of Education (OSSE) Office of Dispute Resolution
DC Action for Children	OSSE Re-Engagement Center
DC Fiscal Policy Institute	DC Department of Human Services
Quality Trust for Individuals with Disabilities	DC Department of Behavioral Health
FamilyVoices of DC	DC Department of Youth Rehabilitation Services
Every Student Every Day Coalition	DC Child and Family Services Agency
Advocates for Justice and Education	Metropolitan Police Department School Safety Division
SchoolTalk	Council for Court Excellence
Homeless Children's Playtime Project	DC Superior Court Family Division
Washington Legal Clinic for the Homeless	DC Alliance for Restorative Practice
Critical Exposure	
DC Special Education Cooperative	
District of Columbia Association for Special Education (DCASE)	

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.



@DCOmbuds

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

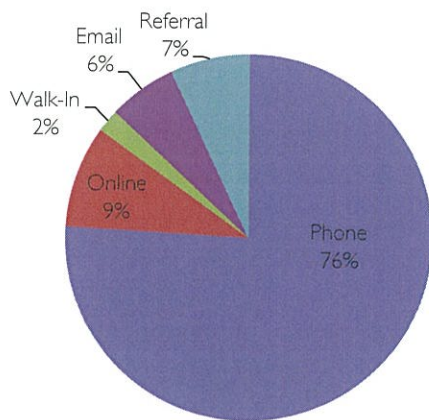
We also **GREATLY INCREASED OUR POSTING RATE**, increasing our overall tweets from **19** tweets in 2014 to **216** tweets so far in 2015.

Section III. 2015 Ombudsman's Office Data

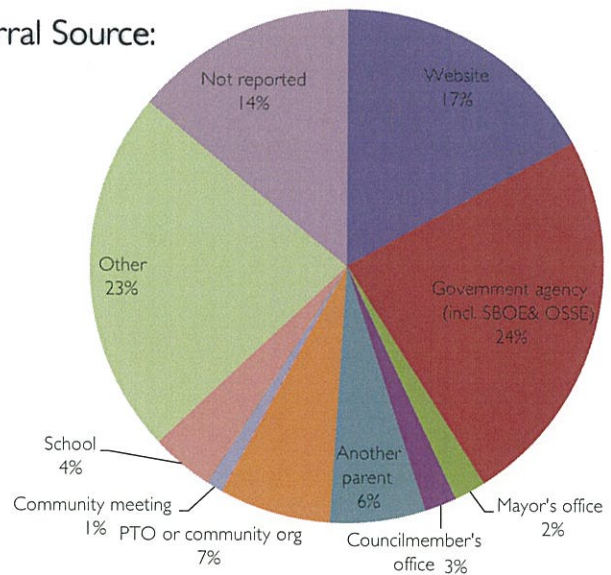
Who We Serve

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:

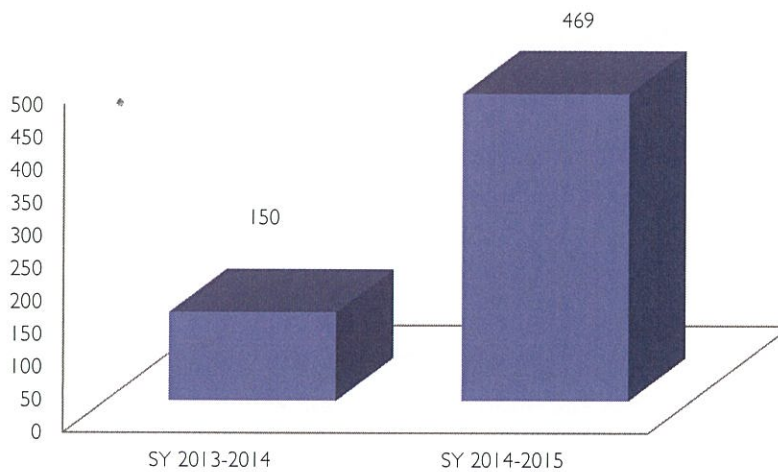


Referral Source:



Complaints by School Year⁶:

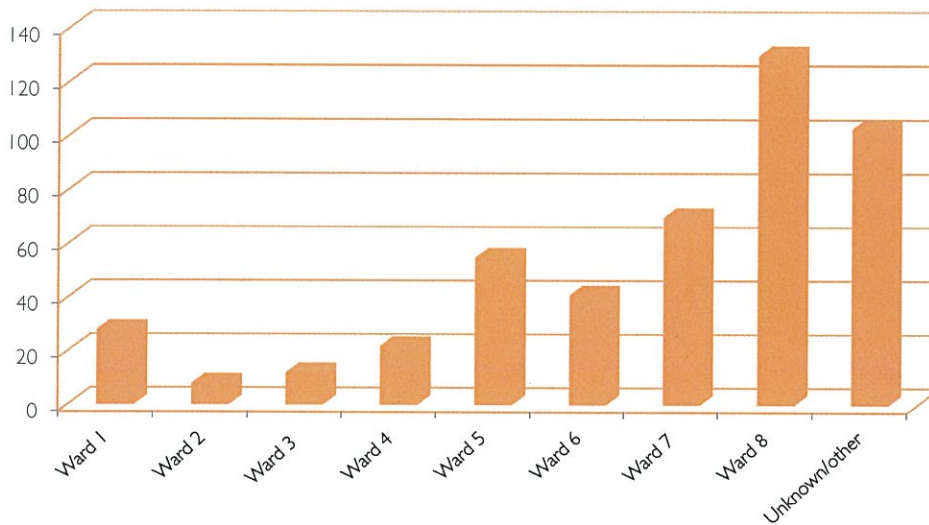
In school year 2014-2015, we received 469 complaints, more than doubling our caseload from last school year.



⁶ 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:

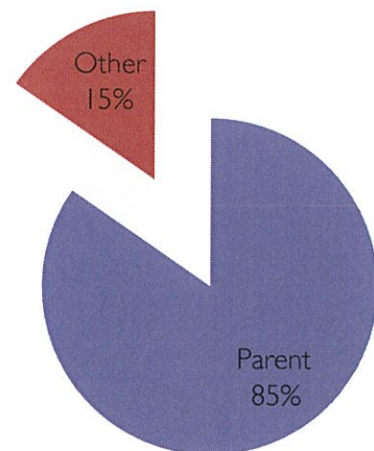
We received complaints from all eight wards. Wards 8, 7, and 5 were the most highly represented.



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.⁷ Note that since we do not require callers to identify their race, 19% of parents chose not to provide that information.



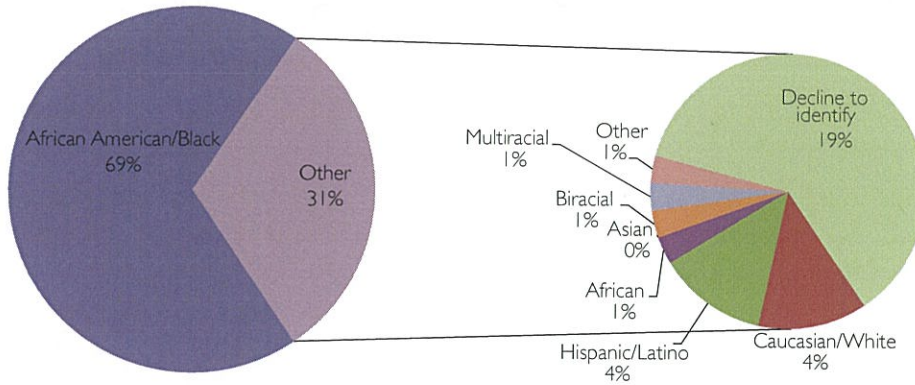
“Before the Ombudsman started talking to the school, they didn’t want to do what my son needed. Because she talked to him, they sent teachers to my house so he could finish the year.”

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

⁷ District of Columbia Public Schools, District of Columbia Public Charter School Board, & Office of the State Superintendent of Education. (2013). *District of Columbia school equity reports*. Retrieved from <http://www.scribd.com/doc/190947805/District-of-Columbia-School-Equity-Reports-2013>

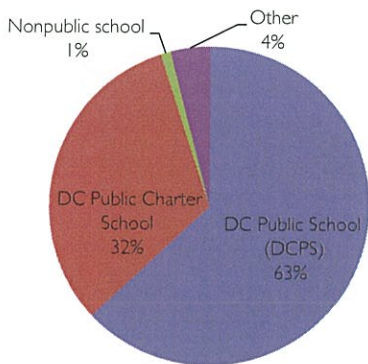
As we consider our reach into non-English speaking populations, our data revealed that eight callers to our office required Spanish translation. In future school years, we plan to expand our outreach in the Spanish-speaking community, as well as with other non or limited-English speakers.

Parent Race:

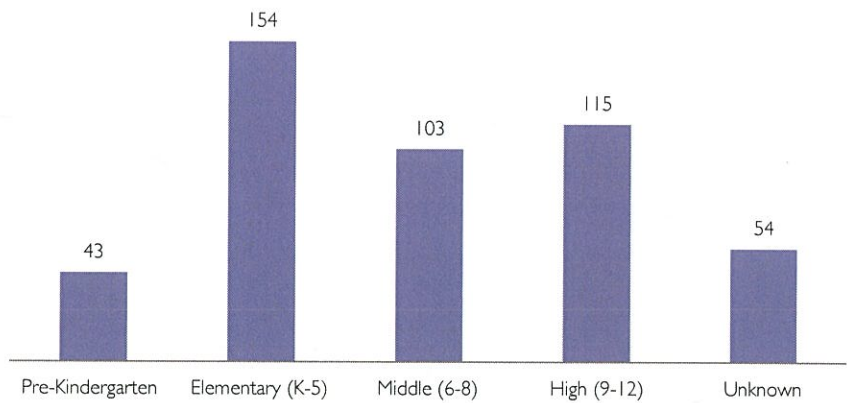


The majority of complaints received involved DCPS schools. We received the most complaints regarding elementary school students followed by high school students.

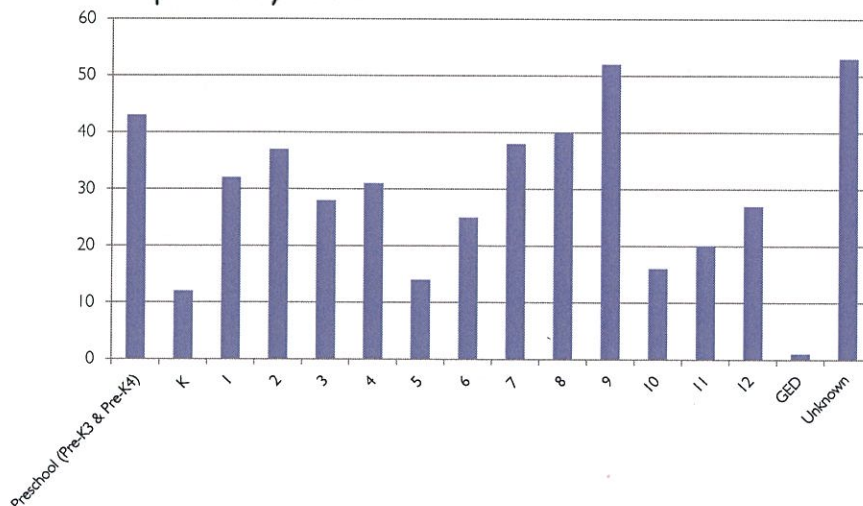
School Type:



Grade Level:



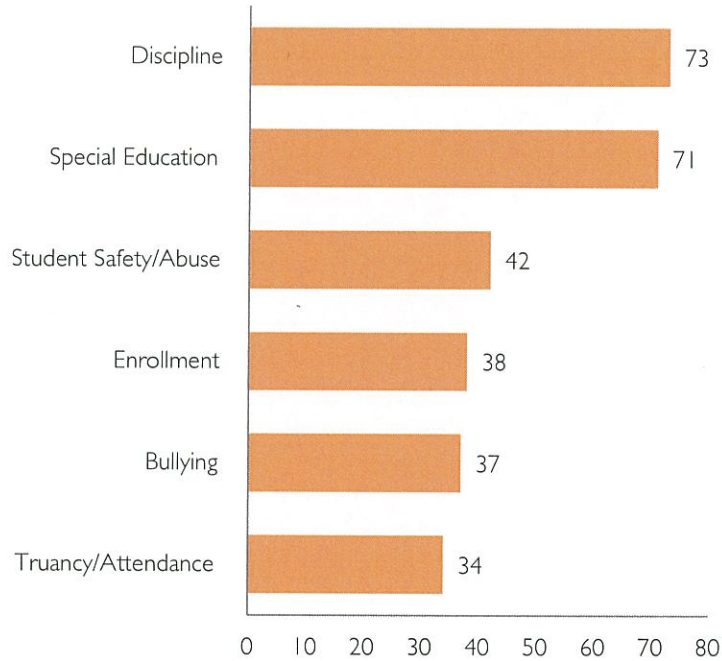
Number of Complaints by Grade:⁸



⁸ 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:

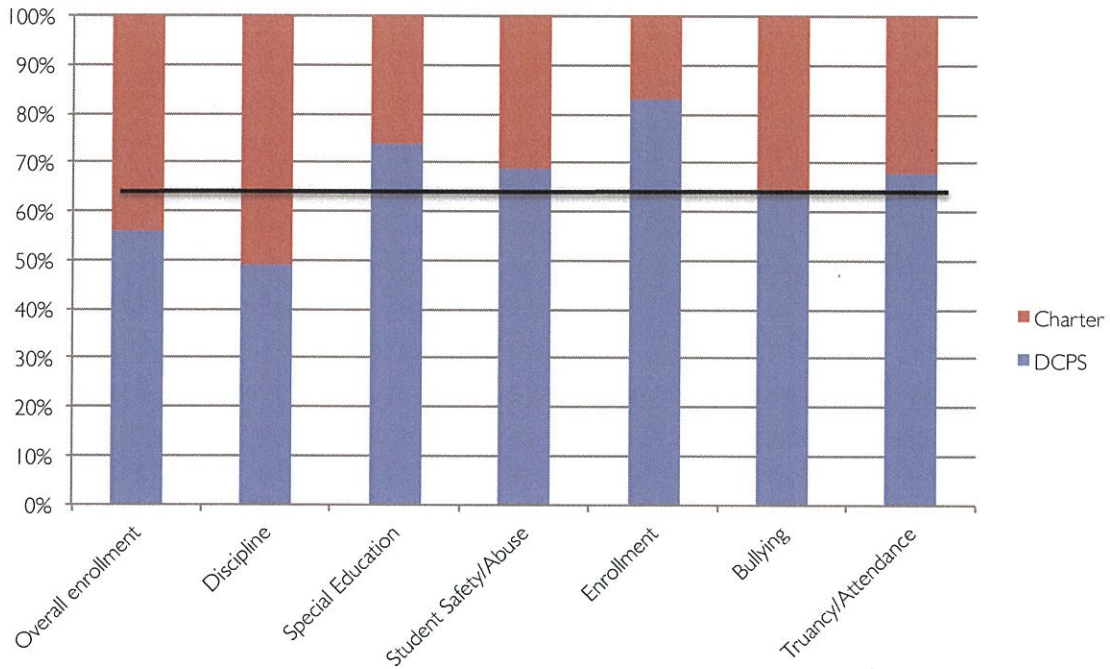


Other Common (n>5) Complaint Types:

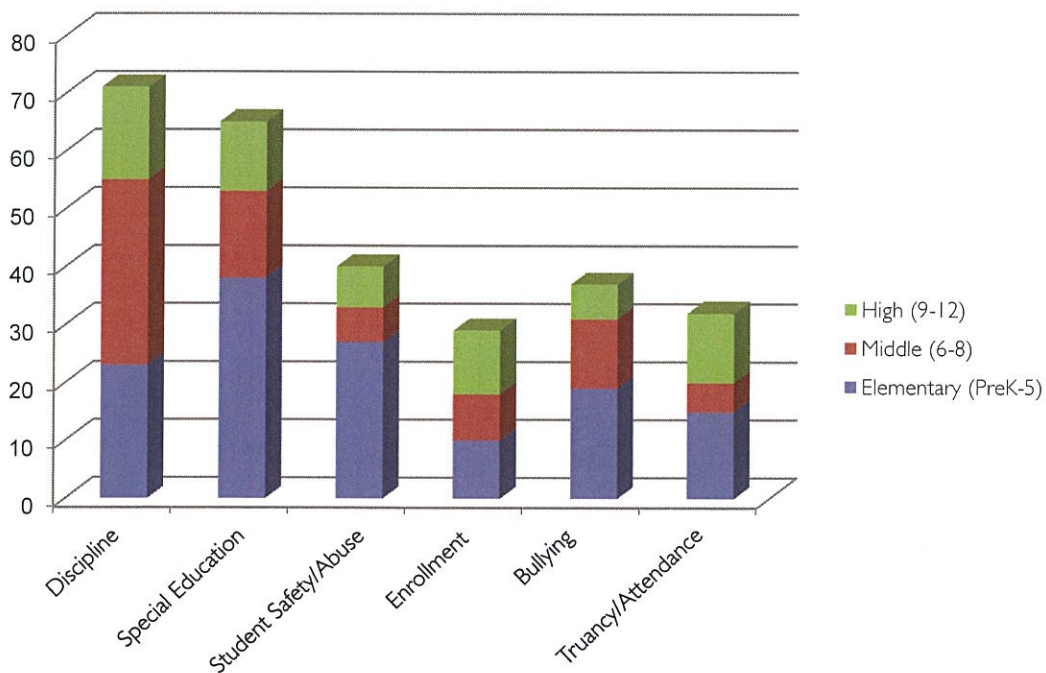


Top Complaints by School Type:

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

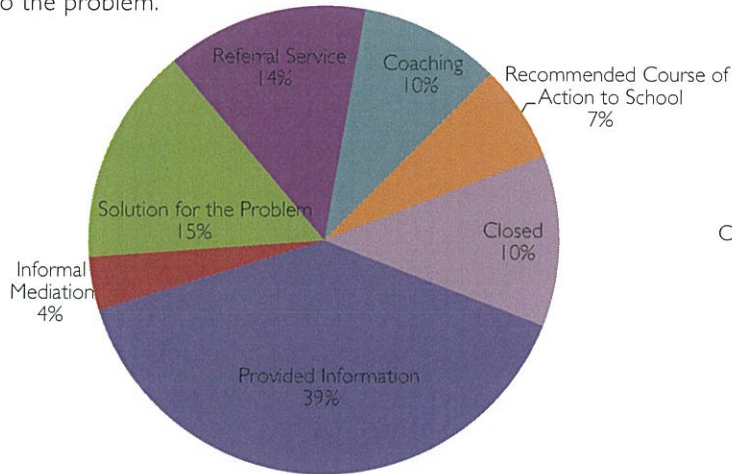


Top Complaints by Grade:

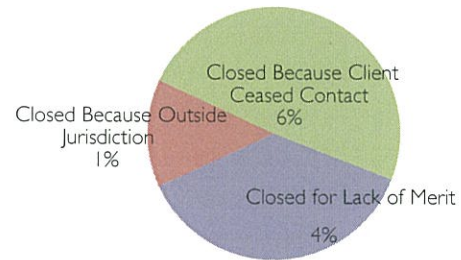


Section IV. Common Complaint Resolution Outcomes

We successfully resolved 88% of our cases, most typically through providing information or intervening with a solution to the problem.

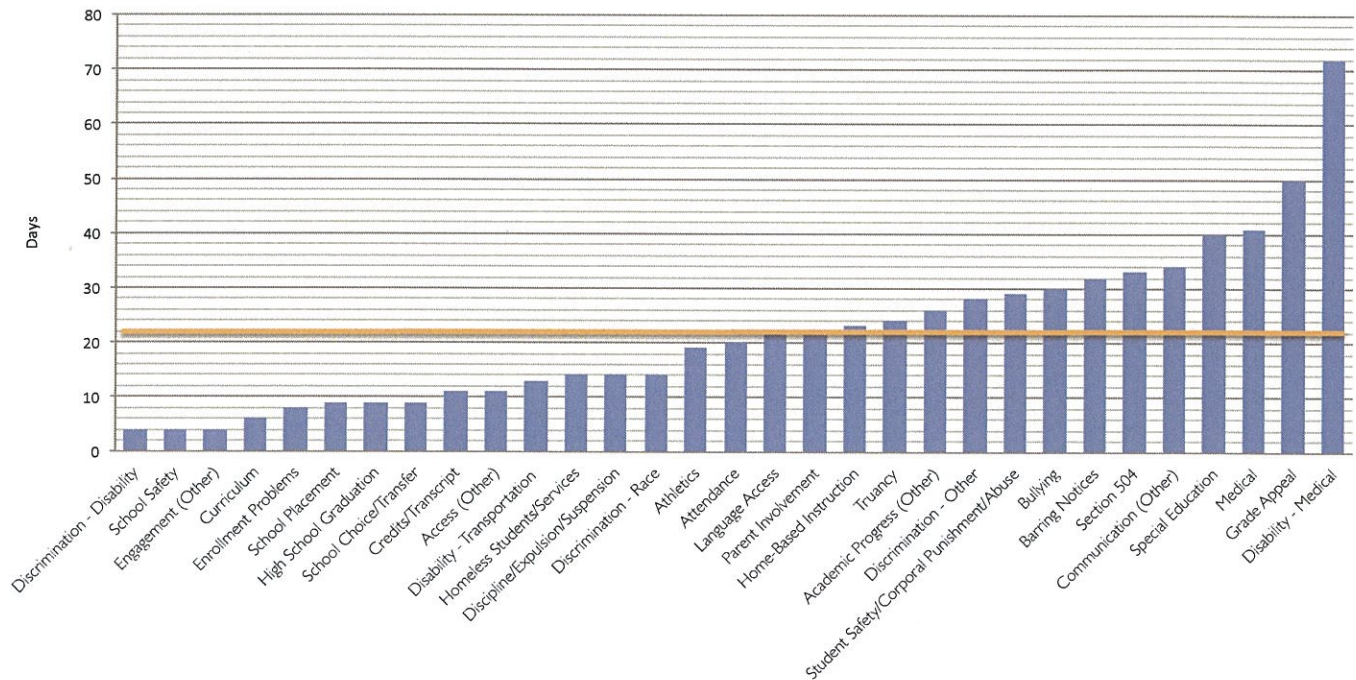


Of the cases we could not resolve, the most common reason was because the client ceased contact with our office.⁹



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

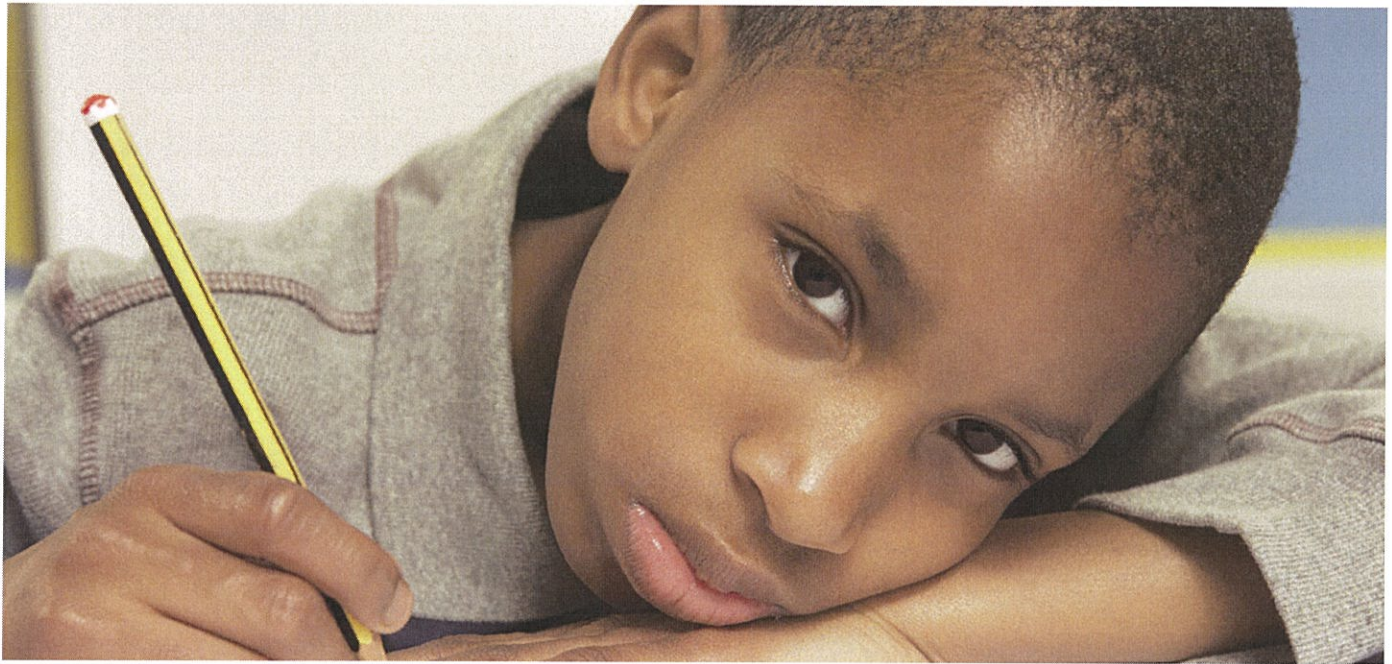
Accomplishments During the 2014-2015 School Year

- ✓ 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.

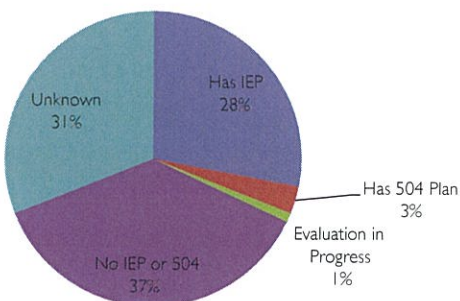
Section VI. Observations



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.¹⁰ 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.

Special education status:



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

- 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.¹¹

The recently-passed Special Education Student Rights Act of 2014¹² 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.¹³ The law also makes clear that parents have the right to observe proposed special education programs.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.¹⁵ This is intended to help parents prepare their questions and feedback.

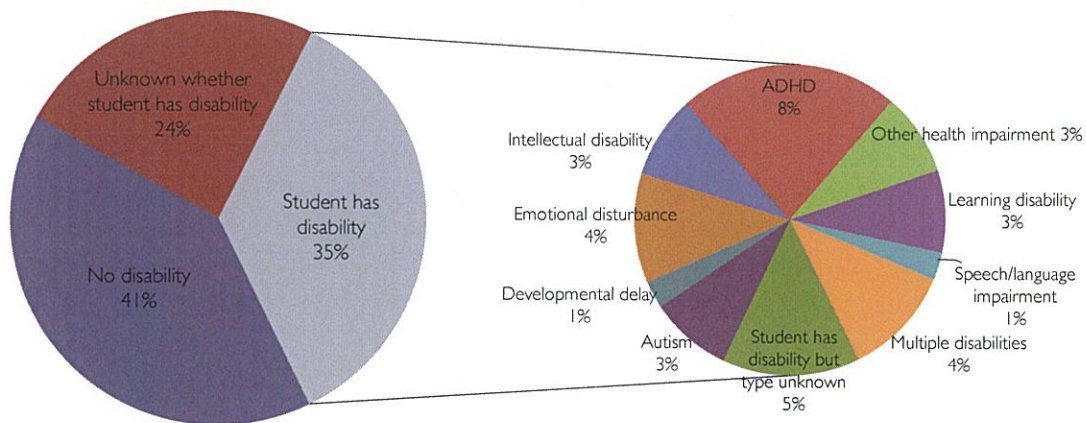
A common theme in calls to our office was that schools had not acted upon oral requests for evaluation. The recently-passed Enhanced Special Education Services Act of 2014 requires schools to accept and document oral requests.¹⁶ We therefore expect that in the upcoming school year, schools will begin 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.

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.¹⁷ DCPS's checklist introduces a number of additional considerations. OSSE policy affirms that there should not be any additional criteria required to qualify

Disability type:



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).

¹² D.C. Act 20-486.

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

¹⁴ D.C. Act 20-486 § 103(5), codified at DC Code § 38-2571.03(5).

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

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

¹⁷ 30 C.F.R. § 330.34(a).

for speech therapy.¹⁸ 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.¹⁹

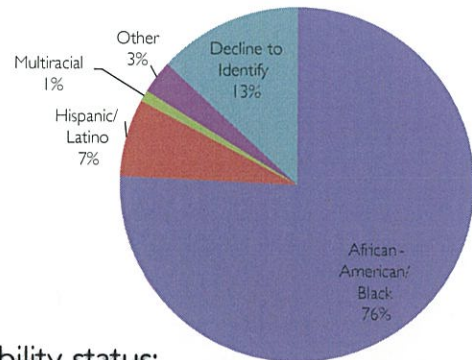
Some of OSSE's policies regarding eligibility for special education are also stricter than federal and local law. In particular, OSSE limits eligibility as a student with an emotional disturbance to students who have not made progress after receiving two scientific research-based interventions.²⁰ While 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

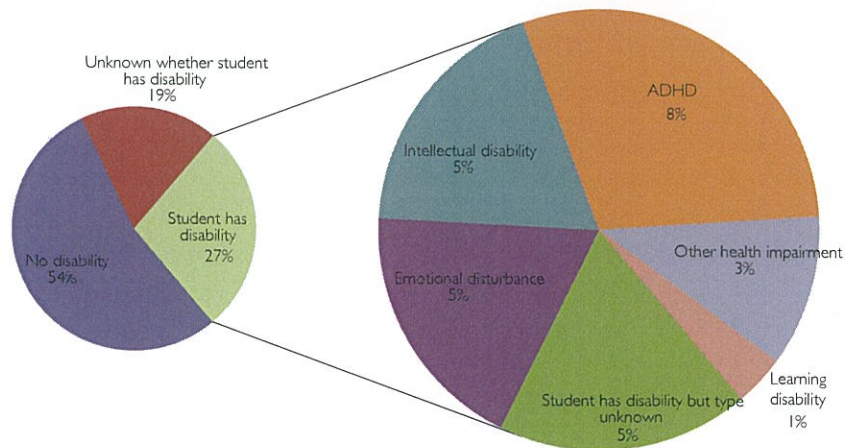
Discipline cases represented our second-largest complaint category. The majority of callers with discipline complaints identified the student's race as African-American. None of the discipline complaints we received self-identified the student's race as white. This data accords with OSSE's data showing that African-American students in DC are nearly six times more likely to be disciplined than white students.²¹ (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.²² 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:



¹⁸ Briggs, K. L., State Superintendent of Education. (2010, January 5). *Related services policy*. Retrieved from <http://osse.dc.gov/publication/related-services-policy-final-january-5-2010>

¹⁹ Briggs, K. L., State Superintendent of Education. (2010, March 22). *Part B initial evaluation/reevaluation policy*. Retrieved from <http://osse.dc.gov/publication/part-b-initial-evaluation-and-reevaluation-policy-final-march-22-2010>

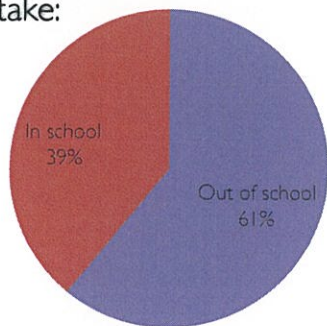
²⁰ Briggs, K. L., State Superintendent of Education. (2010, March 22). *Part B initial evaluation/reevaluation policy*. Retrieved from <http://osse.dc.gov/publication/part-b-initial-evaluation-and-reevaluation-policy-final-march-22-2010>

²¹ District of Columbia Office of the State Superintendent of Education. (n.d.). *Reducing out-of-school suspensions and expulsions in District of Columbia public and public charter schools*. Retrieved from http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/OSSE_REPORT_DISCIPLINARY_G_PAGES.pdf

²² District of Columbia Public Schools, District of Columbia Public Charter School Board, & Office of the State Superintendent of Education. (2013). *District of Columbia school equity reports*. Retrieved from <http://www.scribd.com/doc/190947805/District-of-Columbia-School-Equity-Reports-2013>

that occur well after four school days for DCPS students.²³ 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:



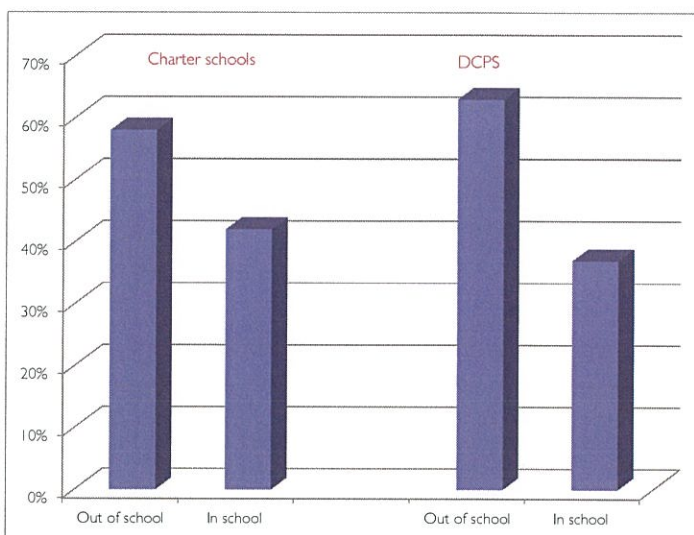
In the majority of the calls we received about suspensions, the student was out of school at the time of the call. Suspended DCPS students were somewhat more likely to be out of school than suspended charter school students. While some of the students who were out of school already had a hearing or other 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.²⁴ 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 25.²⁵

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

²³ 5-B DCMR § 2506.2.

²⁴ 5-B DCMR § 2504.4.

²⁵ National Center for Education Statistics. (2015, August). *National assessment of educational progress: State Profiles* [Fact sheet]. Retrieved September, 2015, from <http://nces.ed.gov/nationsreportcard/states/>

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

²⁶ Council for Court Excellence School Discipline Project Committee. (2015, March). *Equity in school discipline*. Retrieved from http://www.courtexcellence.org/uploads/publications/Equity_in_School_Discipline_Report___FINAL_31115.pdf

²⁷ District of Columbia Public Charter School Board. (2014, September 4). *SY 2013-14 DC Public Charter School Discipline and Attendance Briefing*. Retrieved from <http://s3.documentcloud.org/documents/1283829/public-charter-school-board-report-on.pdf>. DCPS FY14 Performance Oversight Responses Q54

²⁸ Dammann, K. (2015, August 17). *PCSB policy revisions: Discipline plans*. Retrieved from <http://www.livebinders.com/play/play?id=1774741>

²⁹ District of Columbia Public Schools, District of Columbia Public Charter School Board, & Office of the State Superintendent of Education. (2013). *District of Columbia school equity reports*. Retrieved from <http://www.scribd.com/doc/190947805/District-of-Columbia-School-Equity-Reports-2013>

³⁰ U.S. Department of Education. (2014, January). *Guiding principles: A resource guide for improving school climate and discipline, ii*. Retrieved from <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>

International School met its goal of a low suspension rate and no expulsions.³¹ Next Step Public Charter School was also able to significantly reduce³² 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.³³ 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.³⁴ A positive school climate, according to Arne Duncan, U.S. Secretary of Education, "not only minimize[s] unnecessary suspensions and expulsions, but also reduce[s] disorder in the classroom and bolster[s] learning."³⁵

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 regulations³⁶) 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

³¹ Rodberg, S. (2015, July 23 and September 9). [Telephone interview and email]. Principal, DC International

³² Martinez, A. (2015, August 31). [Email correspondence]. Principal, Next Step Public Charter School.

³³ Children's Law Center. (2015, June). *Addressing childhood trauma in DC schools*, 3. Retrieved from <http://www.childrenslawcenter.org/sites/default/files/CLC%20--%20Addressing%20Childhood%20Trauma%20in%20DC%20Schools--June%202015.pdf>

³⁴ Duncan, A. (Presenter). (2014, January 8). *Rethinking school discipline* [Transcript]. Speech presented at The Release of the Joint DOJ-ED School Discipline Guidance Package at The Academies at Frederick Douglass High School, Baltimore, MD. Retrieved from <http://www.ed.gov/news/speeches/rethinking-school-discipline>

³⁵ Duncan, A. (Presenter). (2014, January 8).

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 § 2403.5.

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 Act³⁷ 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.

³⁹ Van Voorhis, F., Maier, M., Epstein, J., Lloyd, C. (2013, October). A focus on literacy and math achievement outcomes and social emotional skills, ES-4. Retrieved from http://www.mdrc.org/sites/default/files/The_Impact_of_Family_Involvement_FR.pdf

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,⁴⁰ stressed the importance of professional development incorporating family engagement skills for children's academic success, families' well-being, schools' performance, and teachers' job satisfaction.⁴¹ Initiatives in DC Public Schools and OSSE demonstrated the positive impact of focusing on parent engagement, supporting results of recent studies. For example, the Flamboyant Foundation's descriptive 2014 DCPS study found a correlation between participation in the Flamboyant initiative, which included structured parent-teacher conferences and home visits, and

higher average DC CAS scores in Flamboyant classrooms than in the non-Flamboyant classrooms.⁴²

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,⁴³ 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.



⁴⁰ Harris Interactive. (2012, March). *The MetLife survey of the American teacher: Teachers, parents and the economy*. Retrieved from <http://files.eric.ed.gov/fulltext/ED530021.pdf>

⁴¹ Caspe, Margaret (2015, August). *Lessons from blended professional learning: The case of family engagement*. *Family Involvement Network of Educators (FINE) Newsletter*, 7(3). Retrieved from <http://www.hfrp.org/publications-resources/browse-our-publications/lessons-from-blended-professional-learning-the-case-of-family-engagement>

⁴² Lalley, T. (2015, August 27 and 31). [Telephone interview by the author]. Chief Communications Officer, Flamboyant Foundation. See also: Sheldon, S., & Hutchins, D. (2014). *The D.C. family engagement partnership: Findings from a descriptive evaluation executive summary*. Retrieved from http://osse.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/FEPPhaseI EvaluationExecutiveSummary2014_0.pdf

⁴³ We understand PCSB is in the process of restructuring this group. Bowden, T. (2013, June 24). *PCSB policy revisions: Parent and alumni leadership*. Retrieved from <http://www.livebinders.com/play/play?id=1774741>

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 Act⁴⁴ 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.

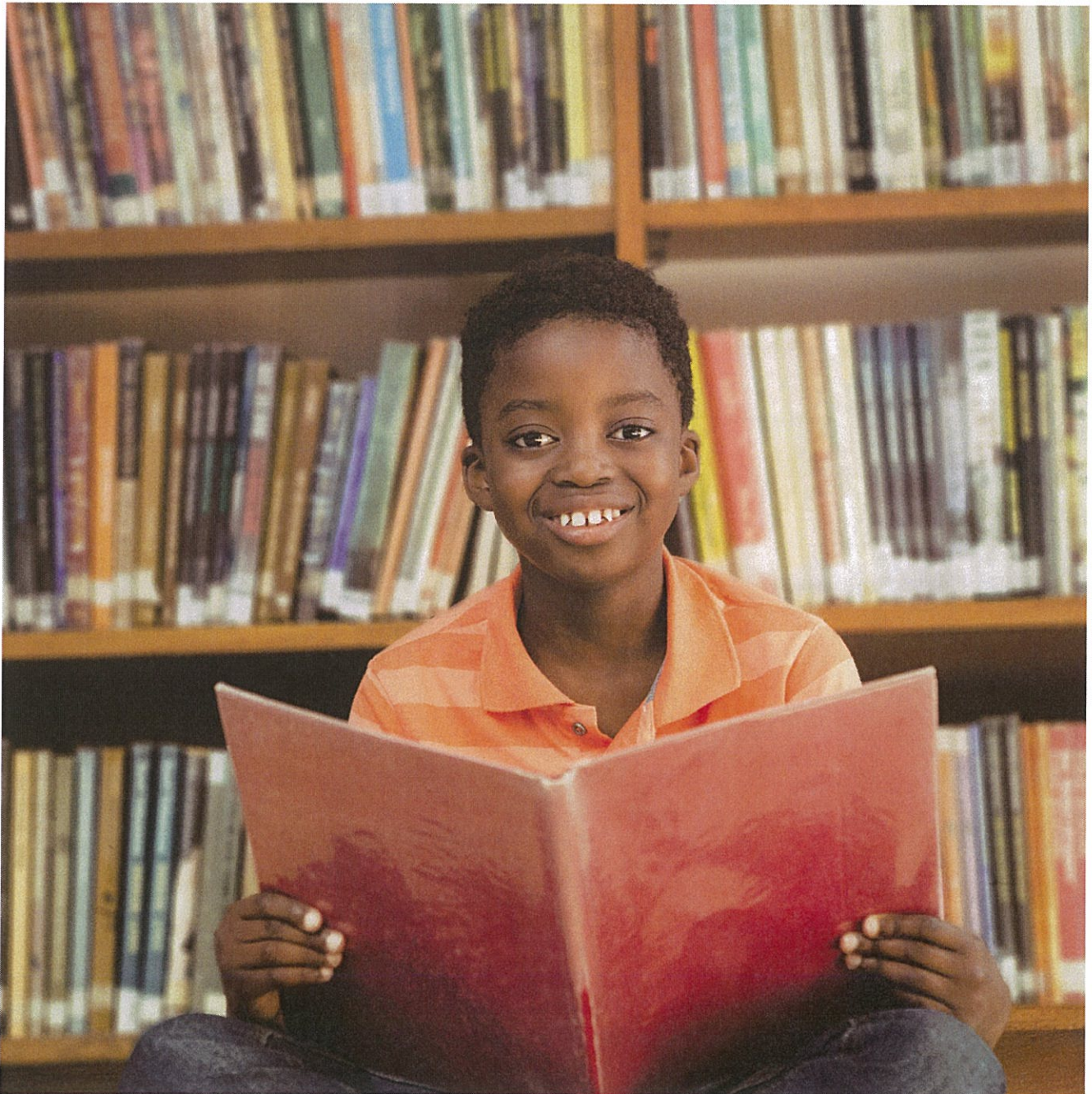
- School staff should treat parents with respect and communicate with them regularly and openly.
- Schools should continue to identify opportunities for parents to be involved in meaningful policy development.
- Parents should be barred from schools as sparingly as possible.
- PCSB should give charter schools guidance about appropriate barring policies and review those policies in their charter approval process and 5 and 10 year reviews.



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!



Appendix

Work Summary for School Year 2014-2015

Complaints received

[three times as many as the previous year]

469 complaints through July 31, 2015

Complaints examined and resolved informally: 88% of the total number of all cases
[informal mediations, meeting facilitations, etc.]

415 cases

Complaints examined and resolved through a formal process

0%

Complaints dismissed as "unfounded"

24 cases (5%)

Complaints pending as of August 1, 2015

16 additional cases were pending as of August 1, 2015

Recommendations made

[to see recommendations made to schools, see the "Representative Accomplishment" section on Page 15]

29 cases (6%)

Recommendations that were followed, to the extent that it can be determined

21 cases (72% of recommendations)

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.

Members of the State Board of Education 2015

PRESIDENT AND WARD 2 REPRESENTATIVE

Jack Jacobson

VICE PRESIDENT AND WARD 7 REPRESENTATIVE

Karen Williams

BOARD REPRESENTATIVES

Ward 1 Laura Wilson Phelan

Ward 2 Jack Jacobson

Ward 3 Ruth Wattenberg

Ward 4 D. Kamili Anderson

Ward 5 Mark Jones

Ward 6 Joe Weedon

Ward 7 Karen Williams

Ward 8 Tierra Jolly

At Large Mary Lord

Student Representatives 2014 - 2015

Betel Asfaha | Brian Contreras





DC Education
OMBUDSMAN

441 4th St, NW, Suite 723N | Washington, DC 20001 | 202.741.0886 | Ombudsman@dc.gov | [@DCOmbuds](https://twitter.com/DCOmbuds)