



July 8, 2016

John B. King, Jr., Secretary
U.S. Department of Education
Lyndon Baines Johnson
Department of Education Building
400 Maryland Ave, SW
Washington, DC 20202

RE: Correction - The Handbook for Campus Safety and Security Reporting - 2016 Edition

Dear Dr. King:

I am writing as President of the International Ombudsman Association (IOA), the largest international association of professional organizational ombudsman (ombuds) practitioners in the world, representing over 700 members from the United States and internationally. I am writing on behalf of the many hundreds of organizational ombudsmen working in the educational context who practice to our IOA Standards of Practice. (Please note that the practices of classical, legislative, and some other ombuds differ from those of organizational ombuds practicing to IOA standards.)

Members of our academic sector have brought to my attention and to the attention of the IOA Board of Directors a serious misrepresentation of the role of the organizational ombuds in the recently updated version of the U.S. Department of Education's publication entitled, "The Handbook for Campus Safety and Security Reporting - 2016 Edition." On page 4-3, the document states the following:

Examples of individuals (outside of a police or security department) who generally meet the criteria for being campus security authorities include

...

an ombudsperson (including student ombudspersons)[.]

We find that this new addition to the Handbook reflects a curious departure from the Department's position in its previous Handbook and is not supported by any research or additional evidence beyond the apparent misunderstanding of the role of a university (or other organizational) ombuds and the significant limits to that role. The IOA's *Standards of Practice*¹

¹http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/IOA_Standards_of_Practice_Oct09.pdf

and *Code of Ethics*² promote excellence in the practice of organizational ombuds work, and promulgate four foundational principles that ground ombuds best practices:

- ***Independence.*** The ombuds operates independently from other organizational entities and holds no other position within the organization that might give rise to an actual or perceived conflict of interest. The ombuds exercises sole discretion over its office operations, staff, and budget.
- ***Neutrality and Impartiality.*** The ombuds advocates for fair and equitable processes but remains unaligned with any individual.
- ***Confidentiality.*** The ombuds does not disclose any information brought to its office without the permission of the individual who has confided in the office. The only exception to this commitment to confidentiality is in the event that the ombuds learns of an imminent risk of serious harm to any person and there is no other reasonable option but to disclose the confidence.
- ***Informality.*** The ombuds serves as an off-the-record resource, and has no authority to make binding decisions, mandate policies, conduct formal investigations, or adjudicate issues for the organization.

These principles are not just espoused theoretically by the IOA, but are embraced and implemented within the actual practice of the ombuds programs in the higher education context. Consider the following excerpts from an actual ombuds charter³ in place within an AAU flagship university, as one example of how carefully the role, and more importantly the limits to the role, of the university ombuds is defined:

- **“Independence (including Reporting Structure).** The Ombuds shall be, in appearance and in actuality, free from interference and undue influence from anyone in the University. Although the Ombuds is an employee of the University, the Ombuds reports directly to the University President and is not aligned with any particular department or unit. The Ombuds has a limited management function in overseeing the staff of the Ombuds Program but is not considered to be part of University management or administration ...
- **“Receiving notice for the University.** Communication to the Ombuds does not constitute notice to the University. The Ombuds and the Ombuds Program

² http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/Code_Ethics_1-07.pdf

³ See, e.g. the University of Oregon Ombuds Program Charter at: <http://ombuds.uoregon.edu/program-charter>

staff are not authorized to accept notice of discrimination or reports of crimes, including allegations that may be perceived to be violations of laws, regulations or policies, including but not limited to sexual harassment, discrimination, issues covered by whistleblower policies or laws, or incidents subject to reporting under the Clery Act. The Ombuds and the Ombuds Program staff have no authority to take action to redress prohibited discrimination, nor the duty to report it or any other misconduct pursuant to the University's reporting policy.

- **“Formal processes and investigations.** The Ombuds will not conduct formal investigations of any kind. The Ombuds also will not participate willingly in the substance of any formal dispute processes, outside agency complaints, or lawsuits, either on behalf of a visitor or on behalf of the University. The Ombuds will not reach formal conclusions about the merits of a concern or endorse specific approaches or policy changes.
- **“Adjudication.** The Ombuds will not have the authority to adjudicate, impose remedies or sanctions, or to enforce or change University policies or rules.”

An additional example of how the IOA principles can be found in actual application includes the entire University of California system, the largest complex of public universities in the nation, which operates ombuds programs on seven major campuses as well as ombuds programs for three of the nation's premier national scientific laboratories (Lawrence Livermore National Laboratory, Lawrence Berkeley Laboratory and Los Alamos National Laboratory). All of these programs embrace the University of California's Declaration of Best Practices for University of California Ombuds, which extends and interprets the IOA Code of Ethics and Standards of Practice expressly for application in the context of higher education. Like the IOA standards and other examples, this Best Practices document also includes clear provisions requiring that the university ombuds remain independent of the University management structure, and strictly limits the university ombuds authority to managing its own program. The Best Practices document provides that “University of California Ombuds shall not have the authority to adjudicate, impose remedies or sanctions, or to enforce or changes policies or rules.”

Finally, the IOA recently commissioned comprehensive legal research on this topic and the related topic of the ombuds role and limits with respect to Title IX. The legal research conducted by one of the nation's leading law firms, WilmerHale, which specializes in higher education issues, clearly and conclusively determined that, based on current legal requirements, ombuds programs practicing to IOA standards do NOT fit the criteria to be considered campus security authorities. The legal memorandum concludes:

“CSAs include: (1) a campus police or security department; (2) any other individual responsible for campus security, such as an individual who is responsible for monitoring entrance into institutional property; (3) any individual or organization specified in an institution's statement of campus security policy as an individual or organization to

which students and employees should report criminal offenses; and (4) an official of an institution who has significant responsibility for student and campus activities, such as student housing, student discipline, and campus judicial proceedings.

“Under normal conditions, ombuds do not play any of the roles enumerated above. *First*, ombuds are not part of any police or campus security department and are not otherwise responsible for campus security. *Second*, colleges and universities generally do not designate them as individuals to whom criminal offenses should be reported—and certainly have no obligation to do so. *Third*, an ombuds is not “an official of an institution who has significant responsibility for student and campus activities.” Indeed, for Clery Act purposes an ombuds is not even “an official of an institution,” which DOE defines as “any person who has the authority and the duty to take action or respond to particular issues *on behalf of the institution*.” Rather, ombuds are independent and offer assistance to campus community members upon request only, do not act as campus administrators (*e.g.*, Dean of Students, Director of Athletics, Residential Life Coordinator, etc.), do not offer or replace any formal channels of grievance or dispute resolution, and cannot adjudicate any dispute or disciplinary matter.”

Thus, you can see from an examination of these principles, the designation of an ombuds as a “campus security authority” is entirely incompatible with the best practices of the ombuds profession and incompatible with the Department of Education’s own definition of a “campus official.” Indeed, this designation is inappropriate for a number of reasons, including the following:

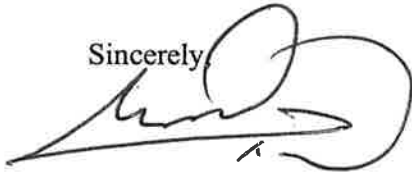
- Ombuds are not part of any police or campus security department and are not otherwise responsible for campus security.
- Colleges and universities generally do not designate ombuds as individuals to whom criminal offenses should be reported, and have no obligation to do so.
- An ombuds neither is an official of an institution, nor does the ombuds have any significant responsibility for student and campus activities.
- For Clery Act purposes, an ombuds is not even “an official of an institution,” which your department defines as “any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.”⁴ Rather, ombuds are independent and offer assistance to campus community members upon request only, do not act as campus administrators (*e.g.*, dean of students, director of athletics, residential life coordinator, etc.), do not offer or replace any formal channels of grievance or dispute resolution, and cannot adjudicate any dispute or disciplinary matter. Indeed, the ombuds role is similar to physicians and counselors in that we are unlikely to have significant responsibility for student and campus activities, and they were therefore referenced in your last commentary as unlikely to be CSA’s.

⁴ U.S. Department of Education, “The Handbook for Campus Safety and Security Reporting,” 74 (Feb. 2011).

If campus ombuds continue to be included in the list of individuals that generally meet the criteria for being campus security authorities in this and future handbooks, this inclusion will create confusion among campus officials. The purpose of the handbook, as stated on page 1-4, is to “assist in understanding and meeting the various HEA requirements...and intended for use by department program reviewers who are responsible for evaluating an institution’s compliance with the requirements.”⁵ Thus, a program reviewer, upon seeing the inclusion of ombuds as generally designated CSA’s would be under the wrong impression. It is also crucial to note that in the prior edition of the handbook, issued in 2011, page 75 of the handbook which lists individuals who meet the criteria for being CSA’s, ombuds were not listed then.⁶

I have attached to this letter copies of the sources cited herein. We would be delighted to answer any questions and to further explain the role and the limitations of the organizational ombuds, and the value our profession brings to organizations we serve. We welcome the opportunity to engage as a stakeholder in further discussions regarding the organizational ombuds unique role in promoting institutional safety. *At this time, however, we ask that any suggestion that an ombudsperson is a designated a campus security authority be stricken from the referenced Handbook as soon as possible and that any other materials making such an assertion also be corrected.*

Sincerely,



Mauricio Ramos
President

cc:

Lynn Mahaffie, Deputy Assistant Secretary for Policy, Planning, and Innovation
Office of Postsecondary Education

Gail McLarnon, Senior Director, Policy Development, Analysis and Accreditation Service

Attachment:

WilmerHale Legal Memorandum; *Campus Ombuds as Confidential Resource for Purposes of Title IX and Clery Act Reporting*

⁵ U.S. Department of Education, “The Handbook for Campus Safety and Security Reporting,” 1-4 (June 2016).

⁶ U.S. Department of Education, “The Handbook for Campus Safety and Security Reporting,” 75 (Feb. 2011)