



INTERNATIONAL
OMBUDSMAN
ASSOCIATION

How an Organizational Ombuds Program Can Help a University
Mitigate Risk

ACTUAL OMBUDS EXAMPLES

URMIA Virtual Central Region Presentation
May 28, 2020

Surfacing an Issue and Resolving a Dispute that Easily Could Have Resulted in Expensive Litigation and Reputational Damage

The visitor was a long-time university employee whose daughter had just entered her freshman year at the same institution and had been going through new student orientation. During the daughter's first weekend on campus, she attended a fraternity party with a group of friends. While there, she drifted away from her friends, and after a few drinks of "punch" found herself dizzy, drunk, and surrounded by a group of boys. Two of them forced her into a bedroom and sexually assaulted her. After a few minutes, because the boys were more intoxicated than she, she was able to get out of the room and run back to her dorm. She was deeply embarrassed and didn't want to tell her friends what happened. The next day she decided to call her parents and told them what happened. Not wanting to risk ever running into the boys again, or to have this first week episode haunt her for four years on campus, she told her parents she wanted to transfer to her second-choice school. Her parents promptly got her medical treatment to ensure that she was physically alright and scheduled her an appointment with her therapist to discuss the incident.

Ordinarily, the Office of Student Life Services posts monitors at all on campus parties (which must be registered in advance) to ensure that there is no underage drinking and that party participants behave appropriately and safely. The placement of these monitors has resulted in a significant reduction of incidents of injuries, bad behavior, and other problems that had historically occurred at fraternity parties. In this instance, although the party had been registered, no monitors had been assigned due to a scheduling error on the part of the Student Life office.

When the parent came to the ombuds office, he was aware of the university policy requiring pre-registration of these events and the assignment of monitors. In the case of the party his daughter attended, he also had learned that although the party had been registered, no monitors had been assigned as was required. He stated that he understood and respected his daughter's decision to transfer and stated that he did not want to make trouble for the University, even though he also stated that the incident very likely could have been prevented. The main concern that brought him to the ombuds office was that if his daughter were to transfer to another college, she would lose the tuition benefit he was entitled to receive from the university (full tuition for four years, but not transferrable to any other institution). He wanted the university to compensate him to the extent of the tuition for four years at the new school. Otherwise, he said, the only other option would be for his daughter and him to bring suit against the university. With the father/employee's permission, the ombuds contacted the Risk Management office for a consultation.

Because the girl's father met first with the ombuds, the ombuds was able to work with Risk Management to quickly resolve the issue with the university agreeing to cover the tuition costs at the new school. Because of this resolution, both the family and the university avoided litigation which could have been costly to both sides, but which posed a real risk of loss to the university in light of the absence of a monitor at the event. In addition, potential reputation damaging publicity was avoided on both sides and good relations with a long-standing employee preserved.

Identifying, Surfacing, and Correcting a Potentially Serious Hazard

The visitor was a staff member who was concerned because the visitor had observed that a studio available over the years to students to use power tools to build art installations and theatre scenery had become very loosely supervised. Historically, full time staff had been responsible for supervising the studio, and the studio had regular hours and had been carefully locked it up when the supervisor was not present. The visitor stated that in the last year the full-time supervisor had retired and was replaced with student supervisors. The visitor thought that the student supervisors had been trained but that the studio doors were often left open, apparently as favors to accommodate students' schedules, and that students were often alone in the studio without supervision.

The visitor decided to visit the ombuds office after becoming aware of an accident at another university where a student had been hurt by a power tool in a similar studio. The visitor had not been able to determine who was currently in charge of the studio and did want to get anyone in trouble. The visitor was not directly involved in the studio but was concerned about using the ethical tip line because they didn't know how it worked and didn't trust that it was really confidential. Those were the stated reasons for going to the ombuds office rather than somewhere else to raise this concern.

In the course of their conversation, the ombuds and visitor come up with several options:

- The visitor could go online and use the confidential ethics and compliance reporting system (or print it out and put it in campus mail)
- The visitor could go to Environmental Health and Safety and let them know
- They could figure out which department has oversight of the studio and let them know
- With permission from the visitor, the ombuds could do any of the above and relay the information while not disclosing the identity of the person who brought the issue to the attention of the ombuds

The visitor requested that the ombuds go to Environmental Health and Safety and let them know of the concern without saying where the information came from and the ombuds agreed to do so.

EHS and the ombuds had a good working relationship from previous matters, and EHS was very welcoming of the information and the situation was remedied quickly without repercussions for any individual.

An Ombuds Helps an Institution Avoid a Potential Class Action Lawsuit

A female professional staff member contacted the ombuds office with concerns over actions by the predominantly male staff in her group. She had only been at the institution for a few years but was highly educated and at the cutting edge of her scientific field. She had also received high ratings as an employee. She related that she and other women in her group had experienced demeaning, disrespectful, and dishonest treatment by the male professional staff in her group. She thought one of the worst offenders was her former mentor, who was also a highly valued staff member responsible for bringing in millions of dollars of new business. She and other female scientists and technical staff had been ignoring the demeaning behavior by him and the other male colleagues because they needed his skill and research projects.

The female staff member also mentioned an episode six months earlier in which a male staff member had created a dangerous condition in the lab with only women present. While the incident had been investigated and the male staff member transferred to another group, a verbal threat on her life had been made to her to prevent her from speaking about the episode. That event clearly had traumatized her, and she had not reported the threat. Since that time, however, she had been keeping a record of the incidents and comments. In addition, the women in the group had been advising potential new recruits to the institution that they could not recommend working at the institution.

The ombuds discussed various options with her on several occasions. During this time, the staff member urged other women in her group also to speak with the ombuds. The ombuds thought that the facts outlined by the women created a real possibility of a class action lawsuit against the institution and was trying to find a way to help get the issue to senior management. While most of the women insisted on anonymity, two of the women with whom the ombuds spoke were willing to speak about their concerns with management.

The ombuds helped coordinate a meeting between those two women and the CEO of the institution. As a result of those conversations, an investigation was undertaken to deal with the issues in that group. In addition, senior management engaged workplace consultants to work with staff throughout the institution to raise awareness and deal with gender related communication and interaction.

Saving a Life and Saving a Career

A graduate student and her faculty advisor developed an intimate relationship. After several months, the graduate student tried to break off the relationship, but the faculty advisor began threatening the student that she would not graduate. In addition, the faculty advisor had planned an out-of-state trip and was demanding that the student share his hotel room. It was at this point that the graduate student contacted the ombuds office. She was at the point of ending her career and taking her own life.

In light of the student's fragile condition, the ombuds concluded that there was an imminent threat of serious harm and made limited disclosures to get the student to the counseling office for mental health counseling. After her condition stabilized, the ombuds discussed options she might use to deal with her advisor. The option selected by the student was to give the ombuds permission to contact the administration about the advisor. Since the ombuds also had received other complaints about the same advisor, the ombuds was able to indicate that concerns had been expressed about the advisor by students though no other details were provided.

The administration conducted its own investigation and determined that there was merit to the concerns that had been revealed. As a result, the faculty member was stripped of all advisor assignments. Since all of his advisees were reassigned to other advisors, neither this graduate student nor any of the other students who had complained about the advisor were singled out. Once this episode was behind her, the student went on to graduate and is now a highly recognized scholar in her field.

The Ombuds Helps a Student and Helps Preserve Evidence of Wrongdoing

A student employee came to the ombuds office to describe a situation that she had gotten herself into and did not know how to handle. She wanted to discuss what to do confidentially with the ombuds before taking any action.

The problem arose in connection with her job in the campus housing office. Her manager told her when she started work that his mother was sick and could not afford food or medicine, so he wanted to add 6 hours each week to her timesheet and assured her that she would still be paid for the 8 hours a week that she in fact worked but that she would give him back the extra money so he could give it to his mother. The student agreed to this, and they operated under this arrangement for several months. When she received her W-2 form, however, she realized that not only would she owe taxes on the extra money, her earnings were so high that she would no longer be eligible for her scholarship.

The ombuds advised the student to turn herself in to the dean's office, but they also discussed options on how to deal with the misconduct of the manager. The ombuds was aware of the need to preserve evidence, an issue that had not occurred to the student. They agreed that, even before the student went to the dean, the ombuds and the student would go to the senior vice president in charge of student life. Because of the ombuds' knowledge of the university, the ombuds felt that going to the most senior level first was the best way to proceed and was able to arrange for such a meeting. The senior vice president immediately arranged for HR and security to gather the necessary information in a professional and discrete manner before alerting the manager involved. The ombuds had been concerned that a less thorough or easily noticed investigation might have been done if the matter had been reported at a lower level.

Only after this was accomplished did the student report the incident to the dean and deal with her own situation. Since the university had already obtained the incriminating documentation on the manager, there was no risk that he could destroy the evidence or flee. He was subsequently confronted, arrested, and later terminated from employment. The student's assistance led to some leniency in terms of disciplinary action by the university and the financial aid office helped her explore other sources of financial aid, but her W-2 form was not changed, and she was ineligible for her scholarship for the following year.

Breach of Confidentiality Because of Risk of Harm to Others

The ombuds was contacted separately by five different individuals. Each one reported concern about the unusual or troubling behavior of a high-status female employee of the university. Each of the odd behaviors—including sharing a risqué photograph, finding an “accidental” fire in a trash can, keeping a knife in a desk drawer to slice fruit at lunch time, making what might be interpreted as veiled threats in an email—had been investigated by a compliance officer, but in each individual case, there was insufficient evidence for a sanction harsher than a warning. However, when the bystanders discussed their concerns with the ombuds, they were able to provide more context and explain why they felt afraid of this employee. Moreover, the ombuds was the only person in the university who had enough information to “connect the dots” and see a pattern.

In light of the number and type of complaints about serious and inappropriate conduct that had been raised, the ombuds approached the female employee and encouraged her to seek psychiatric help. When she refused, but demonstrated anger, despair, and fascination with violence, the ombuds was concerned that this person may pose an imminent threat of serious harm to herself or to others and that confidentiality could not be maintained. The ombuds disclosed some—but not all—of the information both to the HR director and the general counsel which suggested the seemingly disparate instances might reflect a pattern and that several other employees felt concerns for their personal safety. While the ombuds did not know what the HR director and the general counsel then did to evaluate this information, they subsequently developed a plan to remove the female employee from the university's premises until a satisfactory psychological evaluation had been completed.

Checking out the Process Can be Very Important to Someone Concerned about Confidentiality

The ombuds office was contacted by a woman who said that she was employed by the university but who disclosed neither her name nor the area in which she worked. She said that she was gathering information about what the ombuds office did and did not do, but she was quite thorough: the initial call lasted 45 minutes. This is a fairly typical action by some people who, before doing anything, want to “check out the process.”

A few weeks later, the same woman called again, although the ombuds knew this only by recognizing her voice (and later confirmed it); she made no reference to having spoken to the office before. She scheduled an appointment with the ombuds office but used an assumed name. When she met with the ombuds, she still did not disclose her position or where she worked. Her concerns focused on a number of issues she said she had been having with colleagues and her supervisor, including a general lack of civility and the need for clarification of responsibilities. She said that her issue was that her supervisor was not engaged and not managing staffing problems. The ombuds provided coaching for her and gave her options on how she could address the issues.

Approximately a month later, she returned for another discussion with the ombuds. They discussed how things had been going and strategized other options for her. More coaching was provided, and she left again to address her issues on her own. When she returned again approximately a month after that, the ombuds assumed it was for another debriefing and further guidance, but at this point the woman revealed that all of the prior discussions had not been on the “real issue” and that she had resolved all of the other matters. Not until this discussion did she disclose that she was a post- doctoral graduate student working in a lab under the direction of a primary investigator (PI), who was well known both in their particular specialized field and at the university as a major researcher and senior faculty member. In addition, only at this point did she disclose that from the beginning, the true issue was this PI’s sexual harassment of her. She admitted that she had raised all the other issues to see if the ombuds really knew what the ombuds was talking about, appreciated the political realities of her position, and was “truly confidential.”

She said that she had gone through the extended “checking out the process” period because she was extremely concerned at how vulnerable her position was. The PI was eminent in his field and had the power to make or break her career. She was clear that she did not want to engage any formal process, but she wanted the harassment to stop. After long discussions on a few occasions about various options, she finally decided that she would attempt to leave his lab and find another one. In the research world, this approach can be very problematic on many levels, especially if the PI of the lab being left attempts to prevent someone from transitioning to another lab or poisons the person’s reputation. To address this issue, she asked the ombuds to speak with the PI to see if he would consent to her departure. The ombuds agreed to do so and then had a confidential, informal, neutral and frank conversation with the PI

and helped him realize that it was in everyone's best interest for him to embrace her leaving his lab as a great opportunity for her "intellectual and professional development." He agreed and she found a new lab where she flourished.

Cooperation Between Audit and the Ombuds Office

Internal audit received a report that a member of the research and development staff of 20 had been conducting a personal real estate business from his office computer. Two auditors arrived at the department one morning. They announced to the entire department that they were there to conduct an audit and then began at the office on the south end of the corridor.

An employee in the department, who may or may not have been the whistle-blower, realized that the office of the person with the personal business was on the north end and that the auditors would not get there for several hours, giving the employee plenty of time to erase files. He immediately called the ombuds to describe the situation and gave only the office number of the suspected employee. He never disclosed who he was or any other individual information. It then took the ombuds less than a minute to reach the chief of audit to relay the information. The chief of audit then immediately called the auditors in the field to inform them that they should begin in office number 20 at the north end of the corridor.

The audit discovered evidence of the employee's personal business on the organization's computer. Both the audit chief and the ombuds felt that the cooperation between internal audit and the ombuds worked well. Doubtless the employee making the call would agree.