



**EO 12866 Meeting
Nondiscrimination on the Basis of Sex in Education Programs or Activities
Receiving Federal Financial Assistance
RIN: 1870-AA16**

Comments of the International Ombuds Association

Thank you for the opportunity to provide comments about the role of Organizational Ombuds as it relates to any proposed Title IX Amendments.

There are three main points we want to raise to OIRA and the Department of Education (ED):

1. Clarify and explain the role of Organizational Ombuds in the campus safety landscape;
2. Provide insight as to why Organizational Ombuds should not be classified as *officials with authority to institute corrective measures* for compliance with Title IX; and
3. Allow campus leaders to designate Organizational Ombuds who practice to industry standards to be confidential resources, supportive of the purposes of Title IX and the needs of their respective constituencies.

The Role of Organizational Ombuds in the Campus Safety Landscape:

The International Ombuds Association is a professional association committed to supporting Organizational Ombuds worldwide. At the most fundamental level, an Organizational Ombuds is one who assists individuals and groups in managing conflicts and raising concerns in service of a highly effective and healthy organization.

There is great deal of misunderstanding about what Organizational Ombuds do and whether they can be classified as officials *with authority to institute corrective measures* for Title IX purposes - or related – whether they can be classified as campus security authorities for Clery Act purposes. Most campuses have established an Organizational Ombuds program to be a confidential, informal, impartial, and independent option for students, faculty, or staff (depending on the university's goals). The campus itself develops either a charter or a policy to address and guide the role of the Ombuds in its system.

Pursuant to these office charters and/or policy, Organizational Ombuds, and their programs, have very specific ways they practice: the programs are intentionally designed to be Independent, confidential, and impartial. They are also intentionally set up to be informal programs and

complement a more formal option for students and faculty to report discrimination, sexual harassment, and sexual abuse – namely, the Title IX Office.

Why Organizational Ombuds are not officials with authority to institute corrective measures for compliance with Title IX:

Because Organizational Ombuds are confidential and informal, they also have no decision-making authority or responsibility. Specifically:

- They do not manage students, staff, or faculty in *any* capacity;
- They do not participate in any evaluative, disciplinary, legal, or administrative proceedings related to concerns brought to the Ombuds' attention;
- They are not authorized to make business and policy decisions or conduct formal investigations on behalf of the organization; and
- They are not an agent of the organization for purposes of receiving notice of claims against the organization and are not authorized to be a formal reporting channel for the organization on matters brought to the Organizational Ombuds' attention except when specifically and expressly mandated by law.

By contrast, some higher education institutions rely on faculty or other staff to serve as an ombuds in addition to their other duties. A common application is asking an existing professor to also serve as a faculty ombuds for their department. These are what are called dual role or collateral ombuds and by the nature of the other hats they wear for the organization, they *may* be officials with responsibility. Clumping all types of ombuds together and assuming they all are officials with the responsibility to take corrective action deprives campuses of the ability to support people who are not prepared to invoke formal processes and deprives campuses of the ability to identify potential sexual harassment and discrimination issues that would not come to light except through an confidential ombuds engagement.

Current law allows campus leaders to designate Organizational Ombuds who practice to industry standards to be confidential resources, supportive of the purposes of Title IX and the needs of their respective constituencies:

The law allows the post-secondary system to develop and design its own system based on its various programs and services to address campus security, and further allows the system to do the proper fact-specific inquiry: to examine resources such as ombuds to determine whether, given how such ombudspersons work within a particular recipient's system, such ombudspersons are or are not officials with authority to take corrective measures.

However, currently, the ED and Title IX consultants train and encourage campus authorities to classify **ALL** ombuds as those who should report and have the authority to impact decision-making regardless of any assessment. By providing this guidance, they take away the analysis required by current law. And because the ED is also an enforcer and can levy significant fines on a post-secondary system, schools are in a position of deferring to their blanket classification which perpetuates the misunderstanding.

Having an Organizational Ombuds act in any capacity as a reporter will have a chilling effect on utilization; having this informal option does not hide reportable activities, it facilitates greater utilization of the formal channels.

Summary:

There is widespread misunderstanding about what Organizational Ombuds do and what other ombuds do. This results in the inaccurate classification of ALL ombuds as those who are responsible employees in a campus safety system.

Given this misunderstanding, we appreciate a fact-specific inquiry to analyze whether an ombuds may have a reporting requirement if they perform other roles for the institution beyond ombuds services. An analysis consistent with the regulation and a full consideration of how full-time ombuds working in higher education practice will clarify that an Organizational Ombuds has no decision-making authority or responsibility in the system, and that is intentional. The process for analysis must be supported by ED.

Because of this widespread misclassification, we ask that any proposed amendments to Title IX regulations, departmental guidance and training clarify that institutions who employ Organizational Ombuds who practice to industry standards may lawfully exempt their ombuds from any reporting requirements. These Organizational Ombuds are an essential part of campus safety and must be specifically named as confidential. This exemption from any reporting requirements allows optimal utilization and will facilitate greater utilization of proper and formal Title IX resources.

For more information, please contact Ellen Miller at emiller@ombudsassociation.org