

SPECIAL REPORT
of the
RULES COMMITTEE
concerning
THE OMBUDS OFFICE

Presented at the
429th Regular Meeting of the Faculty Senate
November 17, 1988

COMMITTEE MEMBERSHIP

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In 1969, the Faculty Senate recommended the establishment of the office of the University Ombudsperson (Senate Document 69-023). The campus recommendation was revised by the Trustees the following fall, and the governing document is no T70-025. Since the time of its inception, the office and its duties have grown to such an extent that many of the original considerations are no longer applicable. The position has become increasingly important in the grievance procedure for a number of the members of the academic community, and the original attitudes which established it as a "casual" and informal process have now been long since superseded.

In April of 1988, the Chancellor requested that the Faculty Senate review the legislation, suggesting that the term be "open," as were many other positions on campus, and that the appointment be made by the Chancellor. The Rules Committee considered the matter and submitted a proposal to the Senate for consideration at the meeting of May 19, 1988. The proposal, Senate Document 88-058, was referred back to the committee.

The Rules Committee's proposal did not take into account Senate Document 86-008, presented at the meeting of the Faculty Senate on October 17, 1985, which sought to change the length of appointment from two to three years, authorized the term of the present incumbent to be extended two years and substituted the word "Chancellor" for the word "President" in the original document. The first motion (to change the term) was defeated, and a substitute motion to allow three two-year terms passed. In addition, at the meeting last spring, some senators indicated that a fixed term would be preferred. At the 428th meeting of the Senate (Nov. 3, 1988), the first draft of this document was again referred back to committee which was charged with including classified personnel in the reappointment and review process. This version, 89-011A, includes that change. The words "*and one member of the classified staff chosen in an election in which all classified employees are eligible to vote. The Secretary of the Faculty Senate shall be responsible for conducting this election in cooperation with appropriate members of the administration*" have been added to both the section on appointment and term of office. Although seemingly cumbersome, it is felt that there is enough latitude in the manner of the election in that the Secretary can work with the administration to generate mailing lists and nominees.

If approved, this document would result in the replacement of Senate Document 69-023 (revised 1976, '82, '85). The recommendation would then go to the campus administration, which in turn would submit it to the Trustees for approval. A summary of the changes follows.

MOVED: That the Faculty Senate approve the changes in Senate Document 69-023 (T70-025),
08-89 which governs the University Ombuds Office as expressed in Senate Document 89-011A.

Summary of Changes recommended:

I. Delete the following from II. Appointment:

“If circumstances warrant, a student co-ombudsman may be appointed and an appropriate salary established. Only students enrolled on a full-time basis at the University shall be eligible for this position. If a student is appointed, his/her jurisdiction shall be determined solely by himself/herself and the ombudsman.”

II. Change appointment procedures (Also in II. Appointment):

OLD:

“The Ombudsman shall be appointed by the President/Chancellor of the University upon recommendation of a joint selection committee consisting of three faculty members appointed by the Secretary of the Faculty Senate, two undergraduate students appointed by the President of the Student Senate, one graduate student appointed by the President of the Graduate Student Senate, one member of the professional non-academic staff appointed by the Speaker of PAUMA, and the Dean of Students.”

PROPOSED:

“The Ombudsperson shall be appointed by the Chancellor of the Amherst campus upon recommendation of an ad hoc committee consisting of three faculty members appointed by the Faculty Senate, one undergraduate student appointed by the Student Government Association, one graduate student appointed by the Graduate Student Senate, a professional employee appointed by PAUMA, and one member of the classified staff chosen in an election in which all classified employees are eligible to vote. The Secretary of the Faculty Senate shall be responsible for conducting this election in cooperation with appropriate members of the administration. The selection committee shall elect its own chair.”

III. Concerns the term of office.

OLD:

“The Ombudsman shall be appointed for a term of two years. In case of a vacancy in the office, a successor shall be appointed to serve a two-year term commencing upon the date of his/her appointment. No Ombudsperson may serve more than three consecutive terms in office.”
(as revised on the floor in October, 1985)

“The Ombudsman shall be removed only upon a two-thirds (2/3) vote by the Faculty Senate, Student Senate, and the Graduate Student Senate, each meeting and voting separately.”

PROPOSED:

“The Ombudsperson shall be appointed for a term of three years and may be reappointed on the recommendation of an ad hoc review committee consisting of three faculty members appointed by the Faculty Senate, one undergraduate student appointed by the SGA, one graduate student appointed by the Graduate Student Senate, a professional employee appointed by PAUMA, and one member of the classified staff chosen in an election in which all classified employees are eligible to vote. The Secretary of the Faculty Senate shall be responsible for conducting this election in cooperation with

appropriate members of the administration. The review committee shall elect its own chair. This committee shall review the performance of the Ombudsperson and the Ombuds Office and make its recommendation to the Chancellor three months prior to the expiration of the Ombudsperson's term."

"The Chancellor may reappoint the Ombudsperson for a second term provided that a majority of the members of the review committee so recommend. Reappointment beyond a second term shall be made only on a recommendation supported by at least five of the seven members of the review committee. The Ombudsperson may be removed from office by the Chancellor only upon recommendation of the review committee."

(New Document, contrasted with 69-023 (old wording in italics))

I. TITLE.

There shall be appointed an officer of the University of Massachusetts at Amherst to be known as the Ombudsperson.

There shall be one or more Ombudsman at the UMA.

II. APPOINTMENT

The Ombudsperson shall be a faculty member of the University of Massachusetts at Amherst, a person of the highest integrity who is knowledgeable about academic life. The position of Ombudsperson shall be full-time, except that the faculty member holding the position may perform one-third of normal faculty duties.

The Ombudsperson shall be appointed by the Chancellor of the Amherst campus in accordance with a recommendation of an ad hoc committee consisting of three faculty members appointed by the Faculty Senate, one undergraduate student appointed by the SGA, one graduate student appointed by the Graduate Student Senate, a professional employee appointed by PAUMA, and one member of the classified staff chosen in an election in which all classified employees are eligible to vote. The Secretary of the Faculty Senate shall be responsible for conducting this election in cooperation with appropriate members of the administration. The selection committee shall elect its own chair.

The Ombudsman shall be appointed by the President/Chancellor of the University upon recommendation of a joint selection committee consisting of three faculty members appointed by the Secretary of the Faculty Senate, two undergraduate students appointed by the President of the Student Senate, one graduate student appointed by the President of the Graduate Student Senate, one member of the professional non-academic staff appointed by the Speaker of PAUMA, and the Dean of Students. The Ombudsman shall be a faculty member at the University and shall receive appropriate released time from other duties to enable him/her to adequately perform his/her functions. If circumstances warrant, a student co-ombudsman may be appointed and an appropriate salary established. Only students enrolled on a full-time basis at the University shall be eligible for this position. If a student is appointed, his/her jurisdiction shall be determined solely by himself/herself and the ombudsman.

The Ombudsperson shall be appointed for a term of three years and may be reappointed in accordance with the recommendation of an ad hoc review committee consisting of three faculty members appointed by the Faculty Senate, one undergraduate student appointed by the SGA, one graduate student appointed by the Graduate Student Senate, a professional employee appointed by PAUMA, and one member of the classified staff chosen in an election in which all classified employees are eligible to vote. The Secretary of the Faculty Senate shall be responsible for conducting this election in cooperation with appropriate members of the administration. The review committee shall elect its own chair. This committee shall review the performance of the Ombudsperson and the Ombuds Office and make its recommendation to the Chancellor three months prior to the expiration of the Ombudsperson's term.

“The Ombudsperson shall be appointed for a term of two years. In case of a vacancy in the office, a successor shall be appointed to serve a two-year term commencing upon the date of his/her appointment. No Ombudsperson may serve more than three consecutive terms in office.”

The Chancellor may reappoint the Ombudsperson for a second term provided that a majority of the members of the review committee so recommend. Reappointment beyond a second term shall be made only on a recommendation supported by at least five of the seven members of the review committee. The Ombudsperson may be removed from office by the Chancellor only upon recommendation of the review committee.

The Ombudsperson shall be removed only upon a two-thirds (2/3) vote by the Faculty Senate, Student Senate, and the Graduate Student Senate, each meeting and voting separately.

III. STAFF

The Ombudsperson shall be provided with appropriate staff and services to carry out the function of the position. Such resources shall be allocated on the basis of parity with comparable administrative/academic units.

The Ombudsman shall be provided with the necessary staff and services to enable him/her to fulfill his/her function.

IV. FUNCTIONS

The functions of the Ombudsperson shall be to assist petitioners to revolve conflicts and/or to achieve appropriate settlement of grievances. These functions may be exercised by the Ombudsperson notwithstanding any provision that purports to make any decision, recommendation, action, or omission unreviewable.

The function of the Ombudsman shall be to assist any petitioner in the procurement of a just settlement of a grievance. All members of the University community are expected to cooperate with the Ombudsman in the discharge of his/her duties.

The Ombudsperson shall have access to all records, files, and information necessary to the proper fulfillment of these functions, except for legally privileged records, or those that are confidential by established medical ethics. Any person whose consent is required to remove a privilege or confidentiality may authorize the Ombudsperson in writing to have access to any documents so privileged.

V. PROCEDURES

Every complaint by a petitioner to the Ombudsperson shall be submitted in writing.

Every complaint or grievance by a petitioner to the Ombudsman shall be submitted in writing.

If it appears that under existing channels there is an adequate remedy or right of appeal, or if it appears that, any further action is unnecessary the Ombudsperson may decline to pursue the matter further.

If in the course of his/her duties it appears to the Ombudsman that under existing channels there is an adequate remedy or right of appeal, or if it appears that, having regard to all the circumstances of the case, any further action is unnecessary, he/she may in his/her discretion refuse to pursue the matter further.

The Ombudsperson may decide not to investigate, or not to further investigate, any complaint if it relates to a decision, recommendation, act, or omission that the complainant knew about for more than twelve months before submitting the complaint. If the Ombudsperson decides that the complaint is frivolous, vexatious, or not made in good faith, or that the complainant has no sufficient personal interest in the subject matter of the complaint, the Ombudsperson may decline to pursue the matter.

If in his/her opinion the subject matter of the complaint is frivolous, or vexatious, or is not made in good faith, or the complainant has no sufficient personal interest in the subject matter of the complaint, the Ombudsman shall not be required to investigate the complaint.

Whenever the Ombudsperson decides not to investigate or further investigate a complaint, he or she shall inform the complainant of that decision and shall state reasons therefore in writing.

In any case where the Ombudsman decides not to investigate or further investigate a complaint, he/she shall inform the complainant of the decision and shall state his/her reasons therefore in writing.

Every investigation by the Ombudsperson shall be conducted with due respect for the privacy and reputation of others. *(No change)*

No person shall be entitled as of right to be heard by the Ombudsperson, except that before any report is issued, persons or organizations adversely affected by such report must have been afforded an opportunity to be heard. *(No change)*

VI. REPORTS (unchanged except where indicated by italics)

The Ombudsperson shall issue a report in every case where investigation indicates that the decision, act, or omission which was the subject matter of the investigation:

The Ombudsman shall issue a report in every case where after making an investigation, he/she is of the opinion that the decision, act, or omission which was the subject matter of the investigation:

- a) **Appears to have been contrary to written rules; or**
- b) **Was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with any rule that is unreasonable, unjust, oppressive, or improperly discriminatory; or**
- c) **Was based wholly or partly on a mistake of fact or of interpretation of rules.**

The Ombudsperson may recommend that:

- a) **The matter be referred to the appropriate authority for further consideration; or**
- b) **An omission be rectified; or**
- c) **A decision be cancelled or changed; or**
- d) **Any practice on which the decision, act, or omission was based be altered; or**
- e) **Any rule on which the decision, act, or omission was based should be reconsidered; or**
- f) **Reasons be given for a decision; or**
- g) **Other appropriate steps be taken.**

The Ombudsperson shall make such reports to the appropriate person or organization. In any case, the Ombudsperson may request the person or organization involved to report within a specified time the steps that it proposes to take to implement the re commendation.

If within a reasonable time after the report is issued, no appropriate action is taken, the Ombudsperson may send a copy of the report and recommendations to the Chancellor of the Amherst Campus *and to the Faculty Senate.*

The Ombudsperson shall in any case inform the complainant of the results of the investigation and the recommendations.

The Ombudsperson shall submit an annual report to the Faculty Senate and the Chancellor on the general functioning of the office. In addition, the Ombuds Office may submit other reports as necessary.

The Ombudsman shall submit a written report at the beginning of May of each year to the Faculty, Graduate Student, and Student Senates, to the President of the University, and to the Board of Trustees of the University on the general functioning of his/her office. Copies of this report shall be made available for general distribution. In addition, from time to time he/she shall issue such other reports as he/she may determine necessary.