

Constituents Comments for FA18-01
Proposal for and Ombudsperson
November 15, 2018

Response to proposal for the creation of the Office of University Ombudsperson submitted to SGOC by Faculty Senate

Submitted by: Stephanie Lott, Title IX & Institutional Equity Coordinator

Submitted date: November 14, 2018

I. Date: Friday, October 5, 2018

II. Sponsoring Constituent: Arkansas State University Faculty Senate

III. Statement of Issue:

The Faculty Senate of Arkansas State University voted to propose the creation of the Office of University Ombudsperson. This office would promote a climate of accountability, fairness, and respect by providing all members of Arkansas State University with a confidential, impartial, informal, and independent resource for problem resolution.

IV. Rationale for Proposal

The Office of University Ombudsperson will serve as dispute mediator and advisor to individuals seeking assistance in university related conflicts between colleagues, peers, administrators, units, or other entities affiliated with Arkansas State University or System.

V. Type of Review: Full

1. *This proposed policy should not apply to other ASU System campuses* as noted in the “Rational for Proposal” – “The Office of University Ombudsperson will serve as dispute mediator and advisor to individuals seeking assistance in university related conflicts between colleagues, peers, administrators, units, or other entities affiliated with **Arkansas State University or System.**” The nature of the proposed office & position is that it serves the Jonesboro campus. This position and office would not be applicable to other ASU System campuses due to the employee structural differences and inner workings of those campuses. Each campus has a separate HR department and Title IX Coordinator. This position cannot legally be applicable for other campuses within the ASU System.

2. *Who would be responsible for appointing the University Ombudsperson and to whom would this position report?* This is left out of the proposal but is a key factor in the nature of the position and responsibilities it would hold.

3. The introduction of the proposal states, “**The Office is open to all members of that community who wish to discuss problems or issues within the University in a safe and confidential environment.**” *This position or process cannot and will not be allowed to affect reporting at the institution level due to federal mandates.* This position would still be obligated to report acts of

child maltreatment as a state employee and any incident which falls under the purview of Title IX to the Title IX Coordinator, including complaints reported by visitors to our campus. Title IX does not care where, Title IX cares who. As long as either involved party is affiliated with Arkansas State University in any capacity, we are federally obligated to complete a fair, thorough, and unbiased investigation in accordance with University procedures and the law. Further, the rhetoric used regarding “safe” and “confidential” are inherently problematic. The proposal suggests quite strongly that a safe and confidential resource to aid persons in resolving issues, complaints, or disputes does not already exist. The proposal has, and perhaps unintentionally, the effect of stating that Human Resources and other similarly positioned offices on our campus are not safe and confidential.

4. *In section 1. Independence under Guiding Principles*, the proposal reads, “The Office exercises sole discretion regarding whether and how to act regarding a visitor’s concerns or a trend consisting of multiple concerns over time.” This statement is in direct conflict with the federal law. Specifically it conflicts with the obligations placed upon Arkansas State University, the Title IX & Institutional Equity Coordinator, Office of Student Conduct personnel, and additional staff within Human Resources whose purview aligns with accountability and policy violation(s) at Arkansas State University. No office should be above any other on this campus with regard to mandatory reporting obligations. Sole discretion is a slippery slope which could lead to unreported and unaddressed incidents. None of us on this campus can afford opportunities where such discretion has the reasonable intent and/or effect on the rest of the university community and its visitors. Furthermore, the Office cannot use sole discretion regarding a visitor’s complaints as that could be in direct conflict with the obligations set forth the University and Title IX Coordinator regarding federal reporting. Title IX applies to actions of a school or college regardless of where they occur, including those that take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere off campus. This directly implicates visitors and this Office cannot use sole discretion in how to address these types of complaints received by visitors.

5. *In section 1. Independence under Guiding Principles*, the proposal reads, “The Office may also initiate informal inquiries into matters that come to its attention without having received a specific complaint” Earlier in the proposal under the Introduction section, the proposal reads, “The Office of the University Ombudsperson will not replace or supersede existing university grievance, complaint, or appeals procedures.” The aforementioned statements are in direct conflict with one another. If the mission of the person/Office is to be a resource, then it ought to be a true resource. An informal inquiry is still an inquiry, which is the duty of currently existing offices and processes.

6. *In section 1. Independence under Guiding Principles*, the proposal states, “The Office shall have adequate space and administrative and budget support.” That is a policy proposal for which Dr. Len Frey, Vice Chancellor for Finance & Administration, among others, would need to be consulted on regarding University funding. I would submit that the utilization of University resources (monetary and employee) to fulfill a new Office/mission which already exists on our campus is irresponsible.

7. **Under section 3. Confidentiality**, the proposal states, "...holds all communication with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality." The proposal also states within the same section, "Personally identifiable documents are not preserved and informal notes are routinely destroyed. Communications between the Office of University Ombudsperson and others are considered privileged ... Thus, even with the permission of the visitor, Ombudspersons will not disclose confidential documents or testify, attend, or otherwise participate in formal University proceedings." These two aforementioned statements could be in direct violation of FOIA (Freedom of Information Act) requirements. Under FOIA, the Office may not have the option to adhere to such standards and, in many cases, may not have a choice as to whether to produce records or not. Keep in mind that under FOIA, all documents held by public entities, like Arkansas State University, are presumed to be open to the public.

8. Under section 4. Informality, the proposal states, "It [Office] does not make binding decisions or mandate policies for the University. It is not authorized to accept legal notice of claims against the University." Decisions is a synonym for 'findings,' something this proposal stated in the Introduction that would not be within its purview. Additionally, it is recommended "legal notice" be changed to "legal process."

General Comments:

It is not an Office which has the authority or jurisdiction to inherit the responsibilities of employees and processes which already exist. The entire proposal of the office and its mission aim to be a subset of a Human Resources Department. Based on that piece alone, this proposal is inherently problematic for a multitude of reasons. If the persons in favor of a proposal such as this believe that the Office is a "neutral advocate for fair and consistent treatment," then they must believe that does not already exist on our campus. On the contrary, the employees of Human Resources and the department itself already provide this resource. If a person or persons take issue with the service the department provides, I would love to invite them to share those concerns and have an open discussion regarding them as I have not been apprised of any thus far. In fact, the very nature of the office is that it provides campus resources to all persons employed at Arkansas State University. The implication in the proposal that there is not a currently existing safe or confidential process on our campus is dangerous rhetoric for all persons who otherwise view Human Resources for what it is, a neutral and unbiased office on our campus comprised of staff who work tirelessly to provide assistance to those in need. It also suggests to those persons and to all future employees who might interact with our office that they cannot and should not entrust in us their concerns because we are incapable of addressing them without a conflict of interest. The answer to dissatisfaction is not the creation of a new process/Office; rather, it is direct and open communication. Myself and my colleagues would defend our processes to any person.

As colleagues engaged in daily work within the realm of Higher Education, we are challenged every day to believe in our processes and trust them. We are challenged to communicate when we disagree and to listen harder than we otherwise would especially when we disagree. But the creation of a new position/Office is not a cure-all for doubt in University employees or practices

by a few members of our community who have otherwise never communicated their displeasure with our currently existing, unbiased, fair, thorough, and legal University processes performed by trained and qualified staff who care.

As the Title IX & Institutional Equity Coordinator for Arkansas State University, as this proposal is currently written, I am opposed to this proposal for all aforementioned reasons. Ultimately, this proposal asks us to adopt a policy which would put us in legal jeopardy as an institution.

My best,

Stephanie Lott

(It is requested by the commenting party that all comments contained in this document be read verbatim).

From: Loretta N. McGregor
Sent: Monday, November 12, 2018 8:55 AM
To: Carl Cates <ccates@astate.edu>
Subject: RE: Ombudsperson

Thanks Carl,

The intent was for it to be an external person with legal experience. Probably attorney or professional conflict resolution mediator. The details were left unaddressed so the Chancellor could have some flexibility in identify and hiring the individual.

Regards,
LNM

Office Hours for Spring 2018

Monday 2:00-2:50 pm

Tuesday: 2:00-2:50 pm

Wednesday: 10:00-10:50 am; 3:00-4:50 pm

Thursday: 10:00-11:50 am

From: Carl Cates
Sent: Monday, November 12, 2018 8:53 AM
To: Loretta N. McGregor <lmcgregor@astate.edu>
Cc: Angela Daniels <angelad@astate.edu>
Subject: Ombudsperson

The ADC failed to support the proposal at this time.

The deans present wanted to see more information about whether this would be an external hire or if someone would be identified internally. What training would be required? How does it figure into workload? How is the ombudsperson fitted into the structure of the university?

I am available if you need additional information about these points.

Carl M. Cates
Dean, College of Liberal Arts and Communication
Arkansas State University

Shared Governance Proposal Voting

Reviewing Group: Chairs Council

Proposal Name: University Ombudsperson

This is the: First vote

Group Comments/Questions: Members of Chairs Council had several questions (below), and discussed if such a position was necessary.

- What is the credentials/training of an ombudsperson?
- What qualifies a person to serve in this role?
- Is the position compensated?
- Who will hire an ombudsperson?
- Will this be a special position, meaning this individual will do nothing but ombudsmandry?
- Who will be their immediate supervisor?
- Where will they be housed?
- Will this position preempt existing HR processes?
- The wording of current SGOC document indicates the person in this role would have no formal authority, and thus would result in yet another “layer” in what is often already cumbersome processes.
- Is there a need and/or demand for such a position? It seems there is structure currently in place that serves an similar role, and thus there is no benefit to duplicate roles. If necessary, it would be more appropriate to revise current policies/procedures as necessary, rather than creating a new position which would operate in parallel fashion to what currently exists.