From: Jeff Zabel, Chair, Grievance Panel  
Date: August 29, 2016  
Re: Defining the Ombudsperson Position at Tufts

Currently, the Bylaws of the Faculty of Arts, Sciences and Engineering state the following:

A faculty ombudsperson chosen annually by the Grievance Panel from among its members in their third year shall have the power to hear faculty grievances informally and confidentially.

Given that Grievance Panel members serve 3-year terms, this implies that, under normal circumstances, the Ombudsperson serves only one year. Recent Ombudspersons have become painfully aware of the fact that they are untrained and relatively inadequate for a position of such considerable importance and sensitivity. They would like to see the Ombudsperson serve for a longer period so that he/she gains competence from experience. They also suggest that the Ombudsperson receive some professional training.

As a point of reference, the last Ombudsperson, Steve Hirsch, heard two cases during his one-year tenure and before that, Sabina Vaught heard approximately 10 cases in her two-year tenure as Ombudsperson. These resulted in subsequent meetings with the Deans to discuss the cases anonymously, multiple follow-ups with faculty members who brought their cases to the Ombudsperson, and attending a meeting as a witness.

The Grievance Panel has been discussing alternative ways of defining the Ombudsperson position at Tufts. First, the committee has expressed unanimous support for extending the term for Grievance Panel members to 5 years, extending the term of the Ombudsperson to 3 years, and extend the eligibility to serve as Ombudsperson to Grievance Panel members beginning in their second year. These changes would allow the person filling the Ombudsperson position to gain important experience so as to provide improved support for faculty who wish to discuss their issues/problems.

From the “legal” definition of an Ombudsperson:

The goal of the ombudsperson is to assist the communication between the public and the government and help create solutions to problems that arise between the two parties, rather than punishing the wrongdoer.

and

Ombudsperson confidentiality is important to the success of the office. If either party in a dispute believes that her concerns are not heard in confidence, communication with the ombudsperson will decline and the possibility of resolving a problem will also decline. Generally, communication with an ombudsperson is confidential. However, an ombudsperson is not required to maintain confidentiality regarding criminal behavior or conduct that threatens employee safety or company assets.
This makes it clear that the ombudsperson confidentiality is important issue. The Ombudsperson position at Tufts does not allow for any level of confidentiality. This can potentially make it less likely that faculty will consult the Ombudsperson about sensitive/personal issues. Along with Lili Palacios-Baldwin, Tufts Associate General Counsel and Jill Zellmer, Director of the Office of Equal Opportunity, we have discussed the possibility of providing the Ombudsperson with “policy” confidentiality. This is not as strong as “statutory” confidentiality as it requires reporting to OEO about crimes brought up in discussions with faculty members and disclosure to the OEO about general “climate” issues. See below for more details on “policy” confidentiality.

**Ombudsperson Options:**

1. 3-year term for Grievance Panel member with policy confidentiality and provide formal training
   - Many universities have an ombudsperson office. If we had such, the ombudsperson could collaborate with them. That could be a going forward recommendation that would also help with grad students and post docs.
   - Would the University be willing to pay for formal training?

2. Retired faculty member with policy confidentiality and provide formal training
   - The advantage of such a position is that the retired faculty member will have a lot of knowledge about the workings of the University, can gain important experience in the position over time, can give the position more visibility, and can potentially devote more time to the position than a full-time faculty member. This person would be compensated for this position.
     - Establishing such a position would be in consultation with the Deans
     - It is not clear to whom this person would report. It should not be someone in the administration as the administration it often the counter-party in problems brought to the Ombudsperson by faculty members.

3. Professional Ombudsperson who could serve the whole university
   - Again, it is not clear to whom this person would report. It should not be someone in the administration as the administration it often the counter-party in problems brought to the Ombudsperson by faculty members.
Providing formal training for the Ombudsperson

There is an International Association of Ombudspersons (International Obmbudsman Association) that offers training:


The most recent course was held in mid-July in Newport Beach CA for a week and cost between $1500 and $2000 depending on association membership and advance payment.

From the AAUP (Gregory F. Scholtz, Associate Secretary and Director, Department of Academic Freedom, Tenure, and Governance):

The AAUP would of course be concerned that such a person, especially if he or she participates in academic procedures, be conversant in the principles and procedural standards recommended by the AAUP and set forth in our numerous policy documents, the key ones of which are contained in the AAUP’s Redbook: https://www.aaup.org/reports-publications/publications/redbook. Some training on these Redbook documents is available at our Summer Institute. This year’s is occurring right now at Portland State University. The site of next year’s event is yet to be determined. Your new ombudsperson is welcome to attend.

Policy Confidentiality

The following is from Lili Palacios-Baldwin

There is no “legal” definition of policy confidentiality. It is a term we use here at Tufts to describe a concept that came from the President’s Task Force on Sexual Assault (Obama). https://www.notalone.gov/assets/report.pdf (see the hyper link to the Confidentiality Protocol on page 12 of the guidance). Advocates in this area have been arguing for years (and some schools, too) that certain folks at a university should be permitted to have limited confidentiality – beyond those folks that have statutory confidentiality (i.e., health counselors). The Task Force Guidance provides that certain employees, so long as specified clearly to students can maintain confidentiality but have to report certain crime related information. Without this limited confidentiality on matters involving sexual misconduct, persons who do not otherwise have stator confidential roles, would be “responsible employees” under the law and would therefore be required to report discrimination (including sexual misconduct) to the university. Failure to do so could result in personal and institutional liability, and disciplinary action as appropriate.

Although the President’s guidance is NOT law and there is no law that exists yet that provides for this confidentiality we made the decision to adopt this concept and largely, the recommended protocol. (Massachusetts is working on some legislation now but its unclear when/if it will come to be). You can find that on page 23 of the Tufts Sexual Misconduct Policy but I have pasted the
relevant provisions below. You will see that we have designated two positions currently as policy confidential and they are described as “limited confidential” in the policy.

NOTE: The concept of policy confidential has only been extended in the above manner and only to cases involving sexual misconduct. There is no basis to apply it in the context of research compliance/misconduct matters or matters involving other misconduct and/or crimes. So it’s a very limited tool. Arguably, for other types of discrimination, it would also be inapplicable. In short – this is not a complete cover – at all.

Here’s the section from our policy:

FROM SEXUAL MISCONDUCT POLICY/TUFTS
There are several options on campus for individuals to discuss an incident of sexual misconduct:

1. Confidential Resources
Confidential resources include medical providers, mental health providers, rape crisis counselors and ordained clergy, all of whom have privileged confidentiality that is recognized by law. These individuals will maintain the confidentiality of a complainant/victim/survivor’s disclosures unless (i) they are given permission to share information by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order.

2. Limited Confidential Resource
Information about available resources and interim measures can be obtained from the Sexual Misconduct Resource Specialist (SMRS), Nandi Bynoe at Nandi.Bynoe@tufts.edu and 617.627.5712 or by confidential email appointment at https://www.vcita.com/v/01a6d47d48d0bb58/online_scheduling#/services. An individual need not disclose any information or personal details to access information from the SMRS. The SMRS will maintain a complainant/victim/survivor’s disclosures as confidential unless: (i) she is given permission to share information by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order. Because the SMRS does not have statutorily defined confidentiality, her records may be subpoenaed in civil or criminal litigation and/or subject to search warrant. Also, while the SMRS will otherwise keep the details of a complainant/victim/survivor’s confidential information, the SMRS is required by law (as a “Campus Security Authority” or CSA) to provide information to OEO and TUPD about policy violations that are also crimes, including crimes of sexual violence. However, the SMRS can fulfill that obligation without disclosing identifying information of the complainant/victim/survivor.