

# AAUP

American Association of University Professors

---

*Academic Freedom for a Free Society*

June 27, 2011

VIA U.S. MAIL AND FACSIMILE (202.453.6012)

Ms. Russlynn Ali  
Assistant Secretary for Civil Rights  
Office for Civil Rights  
United States Department of Education  
Lyndon Baines Johnson Department of Education Building  
400 Maryland Avenue SW  
Washington, District of Columbia 20202-1100

Dear Assistant Secretary Ali:

Since its founding in 1915, the American Association of University Professors has served the common good by promoting sound academic standards in higher education. In cooperation with other higher-education organizations, the AAUP developed the policies and procedures on academic freedom, tenure, and governance that have become normative in American colleges and universities.

My purpose in writing is to convey our Association's concern with respect to the following passage in your office's "Dear Colleague" letter of April 4, 2011:

Thus, in order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Our Association's interest in this mandate of the preponderance of the evidence standard of proof stems from our longstanding commitment to basic principles of academic freedom and tenure, as enunciated in the foundational 1940 *Statement of Principles on Academic Freedom and Tenure* (enclosed), developed jointly by the AAUP and the Association of American Colleges (now the

Ms. Russlynn Ali

June 27, 2011

Page 2

Association of American Colleges and Universities) and endorsed by more than 200 scholarly and educational organizations.

AAUP-supported standards for dismissal of faculty members derived from the 1940 *Statement* are set forth in Regulation 5 of our widely adopted *Recommended Institutional Regulations on Academic Freedom and Tenure* (enclosed), first issued in 1957. Regulation 5c(8) provides that, in dismissal cases, “[t]he burden proof that adequate cause exists rests with the institution and will be satisfied only by *clear and convincing evidence* in the record considered as a whole” (emphasis added).

Since charges of sexual harassment against faculty members often lead to disciplinary sanctions, including dismissal, a preponderance of the evidence standard could result in a faculty member’s being dismissed for cause based on a lower standard of proof than what we consider necessary to protect academic freedom and tenure. We believe that the widespread adoption of the preponderance of the evidence standard for dismissal in cases involving charges of sexual harassment would tend to erode the due-process protections for academic freedom.

In a May 5 letter, our colleagues at the Foundation for Individual Rights in Education wrote to urge, among other things, that the Office of Civil Rights of the U.S. Department of Education rescind its mandate of the preponderance-of-the-evidence standard. Our request regarding cases of potential dismissal is the same.

Sincerely,



Gregory F. Scholtz

Associate Secretary and Director

Department of Academic Freedom, Tenure, and Governance

Enclosures (via U.S. mail)

cc: Mr. William Creeley, Director of Legal and Public Advocacy, Foundation for Individual Rights in Education