



August 18, 2011

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 Ave SW
Washington, DC 20202-1100

Dear Assistant Secretary Ali:

We write in reference to the “Dear Colleague” letter of April 4, 2011, and to applaud your efforts to address systemic gender inequalities in the US educational system. By instructing educational institutions to develop clear procedures to address sexual harassment and violence, the Office of Civil Rights is helping to create a more equitable environment for women. As an organization, the AAUP has long sought to address gender inequity in the profession, and we see “Dear Colleague” as a positive step in this work.

Sexual harassment and sexual violence are not only women’s issues. Too often addressing sexual harassment is seen only as a means of protecting women. As professors, we are concerned with addressing systemic gender inequities by educating both men and women about fairness and justice. By educating men and women on our campuses about sexual harassment and sexual violence, and by educating every member of our campus communities—from the Board of Trustees to students—we will create a level playing field for all. “Dear Colleague” is a necessary and welcome step forward in this process. In particular, the assertions that all parties be notified of the outcome of a complaint and that institutional action be “reasonably prompt” are crucial to addressing gender inequity.

While we strongly support the bulk of “Dear Colleague,” share your commitment to “providing all students with an educational environment freed from discrimination,” and agree that “the sexual harassment of students, including sexual violence, interferes with students’ right to receive an education,” we are concerned about two areas where academic freedom may potentially be violated. The first concern is the “preponderance of evidence” standard, and the second is the potential violation of academic freedom for those who teach courses with sexuality or sexual content.

Given the seriousness of accusations of harassment and sexual violence and the potential for accusations, even false ones, to ruin a faculty member’s career, we believe that the

“clear and convincing” standard of evidence is more appropriate than the “preponderance of evidence” standard. Our colleague Gregory Scholtz, Associate Secretary and Director of AAUP’s Department of Academic Freedom, Tenure, and Governance, articulated this to you in his June 27th, 2011, letter:

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 evidence standard for dismissal in cases involving charges of sexual harassment would tend to erode the due-process protections for academic freedom.

We echo his concerns. While clear policy statements and timely responses are key for both the complainant and the accused, preserving a higher standard of proof is vital in achieving fair and just treatment for all. We urge you to reconsider “the preponderance of evidence” standard.

We strongly agree with and support the statements from “Dear Colleague” that “schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to identify and report sexual harassment and violence” (6). However, the AAUP’s “Sexual Harassment: Suggested Policy and Procedures for Handling Complaints” (1995, copy enclosed) provides the following guidelines:

Such speech or conduct is reasonably regarded as offensive and substantially impairs the academic or work opportunity of students, colleagues, or co-workers. If it takes place in the teaching context, it must also be persistent, pervasive, and not germane to the subject matter. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.

Effective training must differentiate between appropriate course content and harassment. No policy should inhibit intellectual inquiry. Courses like “The Literature of HIV/AIDS,” “Human Sexuality,” and gender studies courses that directly address sex and sexuality can make some students uncomfortable. Even a first-year writing class that discusses a topic like female genital mutilation or other controversial topic can create discomfort. Any training for faculty, staff, and students should explain the differences between educational content, harassment, and “hostile environments,” and a faculty member’s professional

judgment must be protected. Women's studies and gender studies programs have long worked to improve campus culture by teaching about issues of systemic gender inequity, sex, and sexuality. "Dear Colleague" should encourage discussion of topics like sexual harassment both in and outside of the curriculum, but acknowledge that what might be offensive or uncomfortable to some students may also be necessary for their education.

Addressing sexual harassment, discrimination, and violence on our campuses is essential in creating a safe environment for all. By promoting equity and justice on college campuses, "Dear Colleague" contributes to a long conversation on gender equity that extends from classrooms to playing fields, from dorms to faculty offices. We hope that the Office of Civil Rights continues this dialogue in order to create equity for all in our lifetime.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann E. Green". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ann E. Green
Chair
Committee on Women in the Academic Profession
American Association of University Professors

A handwritten signature in black ink, appearing to read "Cary Nelson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Cary Nelson
President
American Association of University Professors