



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 20201-100

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 education 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 27<sup>th</sup>, 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 or cause based on a lower standard of proof than what we consider necessary to protect academic freedom and tenure. We believe that the

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judgment must be protected. Women's studies and gender studies programs have worked to improve campus culture by teaching about issues of systemic gender inequality, sex, and sexuality. "Dear Colleague" should encourage discussion of topics like sexual harassment both in and outside of the curriculum, but students are not required to discuss these topics.