

...higher education organizations, the AAUP developed its policies and procedures of 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

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

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