

## Cato's Roger Pilon on OCR and its Threat to Student Due Process

May 13, 2011

by [Peter Bonilla](#)

[Roger Pilon](#), Vice President of Legal Affairs for the Cato Institute, [takes a keen interest](#) in the latest dictates from the Department of Education's Office for Civil Rights (OCR) at the *Cato @ Liberty* blog. FIRE has provided [copious commentary](#) on the [grave threats](#) to student due process and free speech rights emanating from OCR's April 4 "Dear Colleague" letter, which, among other things, mandates that sexually based offenses—including violent crimes—be adjudicated by universities using a "preponderance of the evidence" standard that falls far lower than the standard courts would use to address criminal sexual offenses. Pilon sees this as symptomatic of a regulatory bureaucracy that he believes has assumed more and more of the federal government's lawmaking responsibilities over the years.

In this vein, Pilon notes FIRE's recent open letter to OCR, highlighting the deficiencies in the latter's April 4 letter:

Thus [we now learn](#) from the Foundation for Individual Rights in Education ([FIRE](#)) - a fine organization dedicated to defending students and faculty caught in the jaws of higher education's obsession with political correctness - that just last month the United States Department of Education's Office for Civil Rights (OCR), all on its own, issued regulations requiring that colleges and universities receiving federal funding must employ not the beyond-a-reasonable-doubt standard, nor even the clear-and-convincing-evidence standard, but the low preponderance-of-the-evidence standard (a 50.01 percent, "more likely than not," evidentiary burden) when adjudicating student complaints concerning sexual harassment or sexual violence. Institutions that fail to comply face federal investigation and the loss of federal funding.

It's well understood, of course, that allegations of sexual crime involve difficult proof issues. Given that, FIRE's [open letter](#) to OCR's assistant secretary points out that Supreme Court precedent argues strongly against using the preponderance-of-the-evidence standard in campus hearings concerning allegations of sexual harassment and sexual violence.

Aside from our free speech and due process concerns, Pilon notes FIRE's observation that numerous universities—including Brandeis, Yale, Stanford, and UMass Amherst, as well as the University of Virginia—have reflexively made changes to the due process they afford students in accordance with OCR's mandate, a sign of the very real authority OCR wields over nearly all American universities and, by association, their students.

FIRE appreciates Pilon's attention to this crucial issue. Do read his full entry, as well as [FIRE's letter to OCR](#) and the additional writings on this topic by our legal experts [Will Creeley](#), [Azhar Majeed](#), [Erica Goldberg](#), [Samantha Harris](#), and [Ari Cohn](#).