

**CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA)  
MAY 2010 TOWN HALL TALKING POINTS ON  
AMERICAN BAR ASSOCIATION REVIEW OF ACCREDITATION STANDARD 405**

The ABA's Section on Legal Education and Admissions to the Bar is considering changes to Accreditation Standard 405(c) on security of position for full-time clinical faculty, which will be presented to the Section's Council after public comment and then to the ABA House of Delegates for approval or rejection.

The American Association of Law Deans (ALDA) has proposed eliminating all standards relating to the terms and conditions of faculty employment or at least no longer requiring schools to treat clinical faculty "reasonably similar" to other full-time faculty.

The need to provide security of position for clinical faculty as an important means to further the advancement of legal education has been recognized by the ABA since at least the 1980 ABA/AALS "Clinical Legal Education" report calling for accreditation standards to provide security of position to clinical faculty.

In 1984, the ABA first addressed security of position for clinical faculty by stating in Std. 405 that a school "should" afford clinical faculty "a form of security of position reasonably similar to tenure."

In 1996, after finding that schools were still denying clinical faculty appropriate status and participation in governance, the ABA rejected calls to deregulate the status of clinical teachers and instead amended Std. 405(c) to require (i.e., "shall") schools to treat clinical faculty reasonably similar to full-time tenured faculty.

In 1999 and 2004, the ABA Council rejected proposals from its Standards Review Committee to remove provisions on tenure or delete or weaken Std. 405(c), not even submitting those proposals for public comment.

If schools are to fulfill their mandate to educate competent practitioners and advance the profession, clinical faculty must be located together with doctrinal teachers at the core of law school faculties

Security of position for clinical faculty is important for legal education as these faculty have been at the forefront of innovations in legal education over the last quarter century.

Innovation in legal education and ensuring that students are adequately prepared for the ethical, effective practice of law will be impeded by marginalizing the segment of the legal academy that has been responsible for much of the recent original thinking on the education of lawyers.

Any proposal that would permit the consignment of some faculty members to at-will employment while tenuring others will inevitably cause many schools to locate clinical faculty at the margins and will further segregate faculty who teach the clinical curriculum into unequal and lesser professional status.

Involvement of clinical faculty in governance is particularly important because these faculty members have a substantial role in helping achieve the ABA's objective of "prepar[ing] . . . students for . . . effective and responsible participation in the legal profession."

With the attention to curricular change occasioned by the Carnegie Foundation and Best Practices Reports, the need for integrating clinical perspectives into school curriculum deliberations is especially compelling. As the Carnegie Report concluded, schools "need to give the teaching of practice a valued place in the legal curriculum."

Such integration is unlikely to occur in schools that do not afford clinical teachers a substantial role in governance and the freedom to speak up about curricular matters.

If a participant in debates about the direction of a school is dependent upon the favor of others to retain employment (as are teachers on renewable appointments), the professor lacks the full freedom to advocate for

institutional change, particularly if the issues are strongly contested.

There is a history of efforts to interfere in law clinic case and client decisions and to limit the professional decisions of clinical faculty. Thus, security of position is particularly important for clinical teachers since they supervise students in matters that can be controversial and that challenge powerful institutions and interests.

The Society of American Law Teachers argues that any change is likely to disproportionately impact women - while 37% of all law faculty are female, over 50% of clinical faculty are women. Even under existing protections, women are less likely to have security of position and status than their male colleagues - although they make up only 34% of law professors, 60% of faculty on contracts (renewable and short-term) are women. There is no reliable data on the likely impact on people of color, but the possible disproportionate impact should be examined.

Any diminution of security of position will make it difficult for law schools to hire the best qualified clinical faculty, who would be unwilling to leave secure employment for non-secure employment.

Two ABA special committees that looked at the issue of security of position came to no consensus and made no recommendation regarding changes to existing Std. 405(c). A 2007 ABA Accreditation Task Force did find:

A mechanism is needed for faculty to be able to discuss controversial topics and insult powerful interests without risking careers and there is a credible argument that there is a particularized need to afford explicit, concrete academic freedom protection for clinical faculty given the long history of attempts at interference.

It seems highly doubtful that having a major part of faculty at-will employees would promote the ABA's goals of a sound program of legal education, academic freedom, and a well-qualified faculty.

A 2008 ABA Special Committee on Security of Position similarly stated:

Security of position is crucial to the guarantees of academic freedom as faculty would not be able to exercise primary responsibility for such matters as curriculum if they were simply at-will employees.

“It is highly doubtful that any comprehensive curricular reform can occur or that faculty governance can develop in a system where there is no security of position.”

Neither the 1915 nor 1940 AAUP statement on academic freedom “says or implies that it might be permissible to discriminate among fields of study by allocating more academic freedom to some and less to others.”

“Addressing academic freedom in the Standards is important because, as a system of resolving disputes, law is by nature contentious and thus the academic freedom of law faculty may be more at risk in general than the academic freedom of faculty in other parts of the university.”

Documented threats to law clinic faculty “demonstrate the clear need for a form of tenure-like security and academic freedom” for clinical faculty.

It was noted that the current rules on clinical faculty status evolved because the earlier, general Standards language had excluded many faculty, causing problems in some schools. Only through precise rules for clinical faculty has it been possible to force some schools to move forward in their skills programs.

A question is “whether legal education has now reached a point of recognizing the value of all faculty in ensuring a quality program so that the ABA no longer needs precise rule protections” to ensure the security of position and governance rights of clinical faculty.

No ABA study has ever recommended that the protections afforded clinical faculty in Std. 405(c) be abandoned.