

American Bar Association
Section of Legal Education and Admissions to the Bar
Standards Review Committee

Security of Position, Academic Freedom
and Attract and Retain Faculty

DRAFT FOR April 2011 Meeting

Redlined to current Standards

Standard 206. DEAN

(c) Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty ~~with tenure~~ with the rights and protections accorded to other members of the full time faculty under Standard 405.

Standard 405. PROFESSIONAL ENVIRONMENT

(a) A law school shall establish and maintain conditions that are adequate to attract and retain a competent full-time faculty and to maintain a part time faculty sufficient to accomplish its mission.

(b) A law school shall have an established and announced policy that provides protection for the academic freedom of its full time faculty in exercising their teaching responsibilities, including those related to client representation in clinical programs, and in pursuing their research activities, governance responsibilities, and law school related public service activities, and provide similar protections, as applicable, for part-time faculty. ~~with respect to academic freedom and tenure of which Appendix 1 herein is an example but is not obligatory.~~

(c) ~~A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.~~

(c) A law school shall have an announced and written comprehensive system for evaluating candidates for promotion, termination and, if applicable, tenure and renewal of contracts or other forms of security of position.

(d) ~~A law school shall afford legal writing teachers such security of position and~~

~~other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction as required by Standard 302(a)(3), and (2) safeguard academic freedom.~~

(d) A law school shall have a policy that provides for participation of all full time faculty in the governance of the school.

Interpretation 405-1. A system of tenure earning rights, while not required, can be an effective method of attracting and retaining a competent full time faculty. For full-time faculty positions that do not include the possibility of a tenured appointment, the law school bears the burden of showing that it has established sufficient conditions to attract and retain competent faculty in those positions. In assessing whether the school has met that burden, the following should be considered: evidence of turnover in full time faculty members, history of successful hiring of full time faculty members, evidence of a system that permits full time faculty members in those positions to be appointed with long-term, presumptively renewable contracts, evidence of full-time faculty members ability to participate in governance of the law school, and evidence of other perquisites similar to tenured faculty, such as participation in faculty development and support programs.

Interpretation 405-2. A system of tenure earning rights, while not required, can be an effective method of protecting faculty members' academic freedom. For full-time faculty positions in the law school that do not carry traditional tenure, the law school bears the burden of establishing that it provides sufficient protection for academic freedom. A school may meet its burden by presenting evidence of its, or its university's, explicit acceptance of the protections articulated in the 1940 AAUP Statement of Principles on Academic Freedom and Tenure and its 1970 Interpretive Comments and an established procedure involving a representative group of faculty to review the performance of those faculty for appointment, renewal of contracts of appointment, and termination that effectively protects academic freedom involving the faculty, or a subset thereof.

Interpretation 405-3. The law school's written policy with respect to the protection of the academic freedom of its full time faculty members should provide procedures to ensure that its policy is followed, including rules that prohibit the non-renewal, denial of promotion, or loss of a faculty position unless a representative group of faculty agree that the determination is not a violation of academic freedom and that offer the affected faculty member the opportunity to present any claims to the faculty making that determination.

Interpretation 405-1

~~*A fixed limit on the percent of a law faculty that may hold tenure under any circumstances violates the Standards.*~~

Interpretation 405-2

~~*A law faculty as professionals should not be required to be a part of the general university bargaining unit.*~~

Interpretation 405-3

A law school shall have a comprehensive system for evaluating candidates for promotion and tenure or other forms of security of position, including written criteria and procedures that are made available to the faculty. [moved to new 405(c)]

Interpretation 405-4

A law school not a part of a university in considering and deciding on appointment, termination, promotion, and tenure of faculty members should have procedures that contain the same principles of fairness and due process that should be employed by a law school that is part of a university. If the dean and faculty have made a recommendation that is unfavorable to a candidate, the candidate should be given an opportunity to appeal to the president, chairman, or governing board.

Interpretation 405-5

If the dean and faculty have determined the question of responsibility for examination schedules and the schedule has been announced by the authority responsible for it, it is not a violation of academic freedom for a member of the law faculty to be required to adhere to the schedule.

Interpretation 405-6

A form of security of position reasonably similar to tenure includes a separate tenure track or a program of renewable long term contracts. Under a separate tenure track, a full time clinical faculty member, after a probationary period reasonably similar to that for other full time faculty, may be granted tenure. After tenure is granted, the faculty member may be terminated only for good cause, including termination or material modification of the entire clinical program.

A program of renewable long term contracts shall provide that, after a probationary period reasonably similar to that for other full time faculty, during which the clinical faculty member may be employed on short term contracts, the services of a faculty member in a clinical program may be either terminated or continued by the granting of a long term renewable contract. For the purposes of this Interpretation, "long term contract" means at least a five year contract that is presumptively renewable or other arrangement sufficient to ensure academic freedom. During the initial long term contract or any renewal period, the contract may be terminated for good cause, including termination or material modification of the entire clinical program.

Interpretation 405-7

In determining if the members of the full time clinical faculty meet standards and obligations reasonably similar to those provided for other full time faculty, competence in the areas of teaching and scholarly research and writing should be judged in terms of the responsibilities of clinical faculty. A law school should develop criteria for retention, promotion, and security of employment of full time clinical faculty.

Interpretation 405-8

A law school shall afford to full time clinical faculty members participation in faculty

meetings, committees, and other aspects of law school governance in a manner reasonably similar to other full-time faculty members. This Interpretation does not apply to those persons referred to in the last sentence of Standard 405(c).

Interpretation 405-9

Subsection (d) of this Standard does not preclude the use of short-term contracts for legal writing teachers, nor does it preclude law schools from offering fellowship programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experience.

Standard 603. DIRECTOR OF THE LAW LIBRARY

- (a) A law library shall be administered by a full-time director whose principal responsibility is the management of the law library.**
- (b) The selection and retention of the director of the law library shall be determined by the law school.**
- (c) A director of a law library ~~should have a law degree and a degree in library or information science~~ shall have the requisite skills, education and experience to provide leadership to the law school's information resource needs and shall have a sound knowledge of and experience in library administration, library technology, and issues involving legal research and legal education.**
- (d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment ~~with security of faculty position~~ with the rights and protections accorded to other members of the full-time faculty under Standard 405.**

Interpretation 603-1

The director of the law library is responsible for all aspects of the management of the law library including budgeting, staff, collections, services and facilities.

Interpretation 603-2

The dean and faculty of the law school shall select the director of the law library.

Interpretation 603-3

The granting of faculty appointment to the director of the law library under this Standard normally is a tenure or tenure-track appointment. If a director is granted tenure, this tenure is not in the administrative position of director.

Interpretation 603-4

It is not a violation of Standard 603(a) for the director of the law library also to have other administrative or teaching responsibilities, provided sufficient resources and staff support are available to ensure effective management of library operations.

Standard 405. PROFESSIONAL ENVIRONMENT

(a) A law school shall attract and retain a competent full-time faculty sufficient to comply with the Standards and to accomplish its mission.

(b) A law school shall afford all full-time faculty a form of security of position sufficient to ensure academic freedom and meaningful participation in law school governance, and shall have a written comprehensive system for evaluating candidates for all positions for renewal, promotion and termination.

(c) A law school shall not discriminate in its provision of security of position or other rights and privileges of faculty membership for its full-time faculty based on a faculty member's field of study or method of teaching.

(d) A law school shall have a written policy for the protection of academic freedom of its faculty members and procedures to ensure that its policy is enforced. The policy shall provide protection for the academic freedom of all full-time faculty in exercising their teaching responsibilities, and in pursuing their research activities, governance responsibilities, and law school related public service activities, and provide similar protections, as appropriate, for part-time faculty.

Interpretation 405-1. Forms of security of position sufficient to ensure academic freedom include: (a) tenure; (b) programmatic tenure that may be terminated only for good cause after a probationary period reasonably similar to that for tenure-track faculty members; or (c) a program of renewable long-term contracts that are at least five years in duration and either presumptively renewable or nonrenewable only for good cause after a probationary period reasonably similar to that for tenure-track faculty members. During probationary periods, faculty may be employed on short-term contracts.

Interpretation 405-2. Meaningful participation in law school governance shall include faculty participation in decisions affecting the mission and direction of the law school, including academic matters such as curriculum, academic standards, and methods of instruction, and participation in the appointment, renewal, promotion, and termination of members of the faculty. If a school affords tenure only to some of its full-time faculty members, the school shall afford its other faculty members participation in law school governance equal to that afforded the tenured or tenure-track faculty. However, this Standard does not preclude a school from limiting the voting rights of faculty members on appointments, retention, promotion and tenure (or granting of security of position) outside their field of study or method of teaching.

Interpretation 405-3. If a law school employs full-time faculty with more than one form of security of position, it shall not allocate those positions based solely on the faculty member's field of study or method of teaching. Distinctions in security of position between faculty in

different law school programs should be shown to advance educational quality or the mission of the law school.

Interpretation 405-4. This Standard does not preclude a limited number of fixed, short-term appointments in a law school program predominantly staffed by full-time faculty members or within an experimental program of limited duration.

Interpretation 405-5. This Standard does not preclude a law school from offering fellowship or visiting assistant professor programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experience.

Interpretation 405-6. A law school may demonstrate its compliance with the principles of academic freedom by presenting evidence of its, or its university's, explicit acceptance of the protections of the 1940 AAUP Statement of Principles on Academic Freedom and Tenure and its 1970 Interpretive Comments. In ensuring that the law school's written policy on academic freedom is enforced, the written policy should include procedures that prohibit the non-renewal, denial of promotion, or loss of a faculty position unless a representative group of faculty determines that the decision does not implicate academic freedom and that offer the affected faculty member the opportunity to present any claims to the faculty making that determination.