The Association of Academic Support Educators supports the ABA Council on Legal Education (“the Council”) in its efforts to address the challenging issues facing law schools today. However, we, the members of the Association of Academic Support Educators, are deeply concerned about the proposed changes by the Council to ABA Standard 405, which would abolish the requirement that ABA-accredited schools maintain a system of tenure, including a form of security of position for full-time clinical faculty and legal writing teachers. While education legal reform is paramount, the elimination of tenure is unlikely to achieve such reform. Further, rather than proposing to liberalize and/or eliminate the current requirement that ABA-accredited law schools maintain a system of tenure for faculty, the Council should propose to mandate law schools to afford all faculty, including academic support faculty, tenure or some “comparable security of position reasonable to tenure.” Job security encourages innovation and experimentation; security for a greater number of people encourages greater innovation and experimentation.

By way of background, law school academic support programs developed over 20 years ago in an effort to ensure all students better absorbed the material presented in law school, and to increase diversity in the law school classroom and, ultimately, in the profession by encouraging the academic success of all students. Currently, academic support programs serve as resources for all students as they adapt to the law school experience; for other faculty members as faculty alter their teaching to more effectively reach students; and for graduates as they prepare to sit for their bar examinations. Indeed, many schools have attempted to respond to some of the criticisms leveled at legal education by creating or strengthening their academic support programs.

Academic support is somewhat unique, as our field encompasses a variety of staffing models, including professionals classified as administrators, adjuncts, short-term and long-term contracts, as well as tenured and tenure-track faculty.
While we do not have recent survey data, according to the 2011 National ASP Survey Results, only 16 schools of the 133 schools reporting indicated having at least one tenured or tenure-track academic support faculty, while 28 schools indicated at least one academic support faculty member on a long-term contract. These numbers suggest that the majority of our members may well lack any sort of security of position. And, at the law schools where academic support faculty have any type of security of position, they have been among the last to receive it, behind clinical faculty by many years, and legal writing faculty by several years.

The type of research, innovation, and experimentation in which academic support faculty regularly engage warrants a form of security of position similar to tenure. Academic support faculty research and develop various teaching methodologies and theories of learning to improve student learning, particularly for diverse student populations. Our scholarship is largely non-traditional, focusing on matters of pedagogy, best practices in teaching, and student wellness, rather than doctrinal matters. Notwithstanding, our scholarship often calls for the legal academy to adopt unorthodox practices and controversial policies to improve student learning and to increase access to otherwise underrepresented populations. Based on the results of our research and innovations, academic support faculty need the security of position to evaluate current law school practices and to boldly champion change to other faculty and administrators for improvement where necessary.

The Council’s proposal supposes that lack of tenured status for all faculty will allow for greater freedom in hiring and firing of underperforming faculty. However, it is just that flexibility that will have the greatest chilling effect on academic support faculty—the worry that a teaching experiment may prove ineffective and thus result in a firing will chill experimentation entirely, effectively freezing law schools in place. Academic support faculty and doctrinal faculty need the freedom to experiment, innovate, and research various teaching methodologies.

Indeed, the current system, lacking in security of position for many academic support faculty, already allows law schools to put primary responsibility for bar passage on academic support faculty, rather than encouraging law schools to integrate the skills and experiences necessary for first-time bar passage across the curriculum. The evaluation of academic support faculty without security of position is slowly degenerating into a single-minded question: how well did the academic support faculty perform in relationship to first-time bar passage? If first-time bar passage becomes the primary metric for evaluating the performance of academic support faculty, the academy risks academic support faculty becoming narrowly focused on bar exam passage— even “teaching to the test”—and abandoning pedagogy and scholarship in exchange for job security.

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1 AASE plans to create and administer another survey in 2014 which should reach more schools and compile more accurate data regarding job titles and duties, as well as job security.
Because security of position must be assured before innovation can be achieved, we respectfully oppose the Council’s recommendations.

Submitted on behalf of the Association of Academic Support Educators by

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and

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