Comment by the Association of American Law Schools on Proposed Revision to ABA Standard 403(a)

We write as the Executive Committee of the Association of American Law Schools to express our opposition to the proposed revision to ABA Standard 403(a). The proposal would eliminate any restriction on using part-time faculty to teach after the first year of law school. In fact, as written, the new version of Standard 403(a) would permit more than two-thirds of all law school instruction to be provided by part-time faculty.

Full-time faculty are essential to providing quality professional legal education. Part-time law teachers enrich the curriculum, to be sure. Nonetheless, they cannot substitute for the focus of full-time faculty on teaching, availability to students, curriculum design and assessment, scholarship, and sustained engagement for educating professionals for the multiple roles they will play as lawyers and leaders.

A key distinction between ABA accredited and unaccredited law schools has been the role of full-time faculty. ABA accreditation has carried with it an imprimatur of quality that state supreme courts rely on. If the proposed change is enacted, this difference will erode, accompanied by a corresponding diminution in the significance of accreditation, and of quality in legal education.

The accreditation standards of other professions explicitly recognize the centrality of full-time faculty to quality professional education, examples of which are attached in Appendix I.

We, of course, share the desire to facilitate innovations in legal education, especially those that will help law schools reduce their costs, but we respectfully suggest that not everything that is less expensive should be considered an “innovation.” Some changes are cheaper because they produce lower quality.
Appendix I: Examples of Accreditation Standards Relating to Full-Time Academic Staffing

A. The Association to Advance Collegiate Schools of Business (AACSB) Accreditation Standards provide as follows:

- “Normally, participating faculty members will deliver at least 75 percent of the school's teaching (whether measured by credit hours, contact hours, or another metric appropriate to the school).” (Standard 5) (Emphasis added)

- The term “participating faculty member” is distinguished from a “supporting faculty member.”
  - A “participating faculty member” is one who “actively and deeply engages in the activities of the school in matters beyond direct teaching responsibilities. Such matters might include policy decisions, advising, research, and service commitments…Normally, the school considers participating faculty members to be long-term members of the faculty regardless of whether or not their appointments are of a full-time or part-time nature, whether or not their position with the school is considered the faculty member’s principal employment, and whether or not the school has tenure policies.”
  - A “supporting faculty member” is one who “does not, as a rule, participate in the intellectual or operational life of the school beyond the direct performance of teaching responsibilities. Usually, a supporting faculty member does not have deliberative or involvement rights on faculty issues, membership on faculty committees, or assigned responsibilities beyond direct teaching functions (e.g., classroom and office hours). Normally, a supporting faculty member’s appointment is on an ad hoc basis—for one term or one academic year without the expectation of continuation—and is exclusively for teaching responsibilities.”

B. The Liaison Committee on Medication Education Standards for Accreditation of Medical Education Programs Leading to the MD Degree provide as follows:

- “Mechanisms for Faculty Participation. A medical school ensures that there are effective mechanisms in place for direct faculty participation in decision-making related to the medical education program, including opportunities for faculty participation in discussions about, and the establishment of, policies and procedures for the program, as appropriate.” (Standard 1.3)
• "Affiliation Agreements. In the relationship between a medical school and its clinical affiliates, the educational program for all medical students remains under the control of the medical school’s faculty, as specified in written affiliation agreements that define the responsibilities of each party related to the medical education program. Written agreements are necessary with clinical affiliates that are used regularly for required clinical experiences; such agreements may also be warranted with other clinical facilities that have a significant role in the clinical education program. Such agreements provide for, at a minimum the following…. The primacy of the medical education program’s authority over academic affairs and the education/assessment of medical students….The role of the medical school in the appointment and assignment of faculty members with responsibility for medical student teaching.” (Standard 1.4)

• “A medical school has in place a sufficient cohort of faculty members with the qualifications and time required to deliver the medical curriculum and to meet the other needs and fulfill the other missions of the institution.” (Standard 4.1) (emphasis added)

• “The faculty of a medical school demonstrate a commitment to continuing scholarly productivity that is characteristic of an institution of higher learning.” (Standard 4.2) (emphasis added)

• “A medical school ensures that faculty members with appropriate knowledge and expertise set standards of achievement in each required learning experience in the medical education program.” (Standard 9.6)

• “A medical school ensures that supervision of medical student learning experiences is provided throughout required clerkships by members of the school’s faculty.” (Standard 9.2)

C. The Council on Education for Public Health (CEPH) Accreditation Criteria for Schools of Public Health provide as follows:

• “Faculty and Other Resources. The school shall have personnel and other resources adequate to fulfill its stated mission and goals, and its instructional, research and service objectives.” (Section 1.7) (emphasis added)

• “A critical mass of faculty is necessary to support each of the five core concentration areas required of all schools of public health (as defined in Criterion 2.1). Achieving critical mass requires at least five primary faculty who are trained and experienced in the discipline for each core concentration area that offers a doctoral degree. For core areas not offering a doctoral degree, the school should have a minimum of three primary faculty plus two full-time equivalent (FTE) faculty. No more than five individuals may

3 Available at: https://ceph.org/assets/SPH-Criteria-2011.pdf
comprise one FTE. Primary faculty in a school are those who are full-time university faculty with 100% appointments to the school of public health. Primary faculty can include those who have appointments in a department or division of the school or in a research or service center that is housed within the school or controlled by the dean. Primary faculty in a school may hold any category of faculty classification and rank that is appropriate within that context, but teaching and mentoring students must be a fundamental component of primary faculty’s expectations. Full-time research-track faculty who contribute to teaching and mentoring students constitute primary faculty.” (Interpretation to Section 1.7)

D. The Council of the American Library Association (ALA) Standards for Accreditation of Master’s Programs in Library and Information Studies⁴ provide as follows:

- “The program has a faculty capable of accomplishing program objectives. Full-time faculty members (tenured/tenure-track and non-tenure-track) are qualified for appointment to the graduate faculty within the parent institution. The full-time faculty are sufficient in number and in diversity of specialties to carry out the major share of the teaching, research, and service activities required for the program, wherever and however delivered. Part-time faculty, when appointed, balance and complement the competencies of the full-time tenured/tenure-track and non-tenure-track faculty and are integral to the program. Particularly in the teaching of specialties that are not represented in the expertise of the full-time faculty, part-time faculty enrich the quality and diversity of the program. (Standard III.1) (emphasis added)

E. The Network of Schools of Public Policy, Affairs and Administration (NASPAA) Accreditation Standards⁵ provide that:

- “Faculty Governance: An adequate faculty nucleus—at least five (5) full-time faculty members or their equivalent—will exercise substantial determining influence for the governance and implementation of the program.” (Standard 2.2)

- “Because program faculty members have deep knowledge of their program and a commitment to participatory processes, they should play a significant role in the governance and execution of the program. A program faculty member is defined as one whose participation in the governance and delivery of the program is functionally equivalent to that of a full-time faculty member in the program, commensurate with the rank of his or her appointment.” (Rationale for Standard 2.2)

⁴ Available at: http://www.ala.org/educationcareers/sites/ala.org.educationcareers/files/content/standards/Standards_2015_adopted_02-02-15.pdf
⁵ Available at: https://naspaaaccreditation.files.wordpress.com/2015/02/naspaa-accreditation-standards.pdf
F. The New England Association of Schools and Colleges: Commission on Institutions of Higher Education (CIHE) Standards for Accreditation provides as follows:

- “The institution avoids undue dependence on part-time faculty, adjuncts, and graduate assistants to conduct classroom instruction. Institutions that employ a significant proportion of part-time, adjunct, clinical or temporary faculty assure their appropriate integration into the department and institution and provide opportunities for faculty development.” (Standard 5.8) (emphasis added)

- “Institutions offering graduate degrees have an adequate staff of full-time faculty in areas appropriate to the degree offered. Faculty responsible for graduate programs are sufficient by credentials, experience, number, and time commitment for the successful accomplishment of program objectives and program improvement. The scholarly expectations of faculty exceed those expected for faculty working at the undergraduate level. Research-oriented graduate programs have a preponderance of active research scholars on their faculties. Professionally-oriented programs include faculty who are experienced professionals making scholarly contributions to the development of the field.” (Standard 4.22)

G. The Northwest Commission on Colleges and Universities (NCCU) Standards and Policies provide as follows:

- “Institutions offering graduate degrees have appropriate full-time faculty in areas appropriate to the degree offered and whose main activity lies with the institution. Such faculty are related by training and research to the disciplines in which they teach and supervise research.” (Standard 2.E.3)

- “Small graduate programs ordinarily require the participation of several full-time faculty whose responsibilities include a major commitment to graduate education.” (Standard 2.E.4)

- “In the delivery of off-campus programs, full-time faculty whose responsibilities include a major commitment to graduate education provide physical presence and participation in the planning, delivery, and assessment of the programs.” (Standard 2.E.5)

- “The institution that offers the doctoral degree has a core of full-time faculty active in graduate education at its main campus and at each off-campus location where doctoral programs are offered.” (Standard 2.E.6)

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6 Available at: https://cihe.neasc.org/standards-policies/standards-accreditation/standards-effective-july-1-2016
7 Available at: http://www.nwccu.org/Standards%20and%20Policies/Standard%20Two.htm