

May 1, 2007

Dan J. Freehling  
Deputy Consultant on Legal Education  
ABA Section of Legal Education and Admissions to the Bar  
American Bar Association  
321 N. Clark Street  
Chicago, IL 60610

Dear Mr. Freehling,

We submit this letter for consideration at the Standards Review Committee meeting that will take place on May 16, 2007, in San Francisco. Specifically, we write to reiterate our position that Interpretation 405-6 requires that all long-term contracts for clinical faculty must be at least five years in length. In addition, these contracts must be presumptively renewable. As CLEA President Paulette J. Williams emphasized in her letter of March 5, 2007 to the Section, "the contract must be five years in length to be a long-term contract."

CLEA's position is that Interpretation 405-6 is clear on its face, as well as in context. Quite simply, 405(c) was written to protect and enhance clinical faculty. As the drafters of 405(c) understood in great detail, clinical faculty have been viewed and treated as second-class citizens within their law schools, as they often had no job security past short-term contracts (which in many instances were one-year contracts) and no governance rights. 405(c) was written against this backdrop, and aimed to give clinical faculty a status that is reasonably similar to tenure. In this context, "reasonably similar" pertains to job security, academic freedom and governance.

The plain language of 405(c) states, in part, that "[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." Interpretation 405-6 was written to give teeth to this standard's job security protections. The Interpretation states "[a] form of security of position reasonably similar to tenure includes a separate tenure track or a program of renewable long-term contracts." It then defines a long-term contract as one that is "at least a five-year contract that is presumptively renewable or other arrangement sufficient to ensure academic freedom." Lastly, it explains that a long-term contract "may be terminated for good cause." Despite its plain language, however, Interpretation 405-6 has been read and interpreted incorrectly, as evidenced by the Accreditation Committee's decision in the Northwestern

University matter. As we have stated previously, that decision – which held that a one-year contract is a long-term contract – strips 405(c) of its intended purpose and is wholly inconsistent with the plain language of 405(c) and 405-6. Rather, CLEA’s position – that a long-term contract must be five-years in length, must be presumptively renewable, and can be terminated only upon good cause – finds comfort in the plain language of 405(c) and 405-6. In essence, “five years” means five years and “presumptively renewable” means that the contract must be renewed except when there is a finding of good cause.

Moreover, properly read, all clinical teachers – not just those on long-term contracts – must have protection of academic freedom under Interpretation 405-6. Indeed, this interpretation applies the academic freedom protections afforded to non-clinical faculty in 405(b) to clinical faculty. It requires at least an opportunity to have a binding determination of issues of violation of academic freedom raised by the non-renewal of clinical faculty contracts. Thus, the provision in 405-6 should properly be read to guarantee academic freedom especially for clinical teachers even if it is excluded from the Standards. [Question – Do we need the last half of this sentence, beginning with “even”?]

The majority of the Accreditation Committee’s failure to carefully review the language of Interpretation 405-6 was exacerbated by its faulty fact finding. Northwestern University made clear that the decision of its Academic Freedom Committee is advisory only and not binding. The Committee’s recommendations have been disregarded by the University in other cases. The two examples of protection of academic freedom given by Northwestern were accomplished by other actions and not as the result of this process. So the Accreditation Committee has applied Interpretation 405-6 to mean that academic freedom is ensured by an advisory process that only permits one to air academic freedom concerns.

The other area where the Accreditation Committee misunderstood the facts pertained to governance rights of clinicians at Northwestern. The Committee ruled that clinicians have no right to vote at faculty meetings because the Committee mistakenly concluded that the **only** issues voted upon at those meetings were personnel decisions about non-clinical faculty. But Northwestern University had previously informed the Accreditation Committee that the faculty also voted on curricular and major program changes. The Accreditation Committee’s action would have been different if it was based on these actual facts. So now governance reasonably similar to other full time faculty members means that clinical faculty can be prohibited from voting on all matters at Northwestern. This includes the appointment and promotion of clinical faculty as well as those personnel decisions for academic faculty. Interpretation 405-8 does not allow exclusion of clinical faculty from voting on any and all matters including curriculum and major program changes.

CLEA urges an interpretation that is clear on its face and comports with the protections established in 405(c). We believe that Interpretation 405-6, as written, satisfies this standard. Therefore, we request that Interpretation 405-6 be enforced as per its plain language; that a long-term contract is one that is at least five-years in length and

automatically renewable unless there is a finding good cause. We also ask this Committee to reconsider the Northwestern matters noted above and address: 1) whether Northwestern's one-year contracts are short-term contracts; 2) whether the Northwestern academic freedom procedures **actually ensure** academic freedom in practice and 3) whether Northwestern's clinical teachers' governance rights are violated under Interpretation 405-8 because they are not being allowed to vote on any matters.

Please find enclosed Paulette J. Williams letter to the ABA Section of Legal Education and Admissions to the Bar, dated March 5, 2007, and CLEA's Memorandum to the Council on Legal Education and Admissions to the Bar, dated June 16, 2005. Both documents illustrate CLEA's position on this issue, both when Interpretation 405-6 was being drafted, and when it was being applied.

We are not addressing in this letter the importance of clinical legal education or the justifications for Standard 405(c), as we have addressed those issues previously. However, if this Committee deems it necessary and desirable, we will gladly do so.

We thank the Standards Review Committee in advance for its consideration of these vital issues.

Sincerely,

Michael Pinard  
CLEA Vice-President