

# C L E A

Clinical Legal Education Association

<http://cleaweb.org>

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*CLEA is the nation's largest association of law teachers, representing over 900 dues-paying faculty at over 180 law schools. CLEA is committed to legal education that trains law students to be competent, ethical practitioners and to promoting access to legal representation. Its membership consists of law professors who teach students in their role as lawyers and who devote their energy and attention to identifying, teaching, and assessing proficiency in the skills and values essential to lawyering.*

July 6, 2011

Donald J. Polden, Dean  
Santa Clara Law School  
Santa Clara University

by email: [dpolden@scu.edu](mailto:dpolden@scu.edu)

Re: Chart Comparing Proposed Revisions to Accreditation Standard 405

Dear Dean Polden:


I write on behalf of the Clinical Legal Education Association (CLEA) to provide the Standards Review Committee with a chart comparing four different proposals for revising Accreditation Standard 405 (see attached "Comparison Chart - Proposed Versions of ABA Accreditation Standard 405").

We are very appreciative of the comparison chart posted yesterday on the Committee's website ("Comparison Analysis: Terms and Conditions of Employment Options") and build upon that chart to include two other proposals - the March 25th proposal by CLEA (attached) and the March 30th proposal from the ABA Special Committee on the Professional Education Continuum (referred to as the Hertz-Wegner committee). Because some members of the Committee have expressed interest in minor revisions to Standard 405, it is important for a comparison chart to include the limited revisions to Standard 405 proposed by CLEA and the ABA Special Committee.

We note that CLEA's March 25th proposal on Standard 405 did not address the status of the dean (Std. 206(c)) or library director (Std. 603(d)). CLEA members have seen the pressures that deans can come under and believe they too need security of position. Also, to the extent that the library director is a member of the faculty, he or she would have the same rights as other full-time faculty under Standard 405 of CLEA's proposal.

We appreciate your consideration of the attached chart and ask that it be promptly distributed to all members of the Committee and posted on the Committee's website.

Sincerely,

  
Ian Weinstein, President *myRRK*

attachments: Comparison Chart - Proposed Versions of ABA Accreditation Standard 405, Prepared  
by the Clinical Legal Education Association (July 6, 2011)  
CLEA Proposed Revised Standard 405 (3/25/11)

cc: Hulett H. Askew, Consultant on Legal Education (by email)  
Charlotte Stretch, Assistant Consultant (by email)

## Comparison Chart - Proposed Versions of ABA Accreditation Standard 405

Prepared by the Clinical Legal Education Association

(July 6, 2011)

	<b>Current Standard 405 Language</b>	<b>SRC Subcommittee Draft (from Apr. 2011 meeting)</b>	<b>SRC Subcommittee Alternative Draft (for July 2011 meeting)</b>	<b>CL EA Proposed Revised Standard 405 (Mar. 25, 2011)</b>	<b>ABA Special Committee on Professional Education Continuum (Mar. 30, 2011)</b>
<b>Academic Freedom</b>	"shall have an announced policy with respect to academic freedom"	more robust language requiring a policy that protects academic freedom for all faculty; creates presumptions from tenure earning positions.	similar to Subcommittee Draft	Same as current Std. 405(b)	Version 1: same as current Std. 405(b)  Version 2: same as current Std. 405(b) but also requires school to extend to all FT faculty protections of academic freedom and security of position that take into account the responsibilities of those faculty members.

<p><b>Security of Position</b></p>	<p>"shall have an announced policy with respect to ... tenure"; "shall afford clinical faculty members a form of security of position reasonably similar to tenure"; "shall afford legal writing teachers such security of position ... as may be necessary to attract and retain and safeguard academic freedom"; with respect to security for clinical faculty, an Interpretation states that if they are not eligible for tenure they must be given renewable long- term contracts (defined as five years in duration, presumptively renewable and terminable only for good cause).</p>	<p>Eliminates any reference to security of position for any faculty members, other than Interpretations stating that a system of tenure earning rights can be an effective method of attracting and retaining, and protecting academic freedom, and that a system of long-term renewable contracts may be evidence a school can point to in demonstrating conditions sufficient to attract and retain. Creates presumption of compliance from tenure earning positions. Refers to tenure, "if applicable".</p>	<p>All FT faculty must have a form of security of position (defined in interpretation as tenure or five year, renewal contracts). In addition, says that any" law school that extends differing forms of security of position to members of its full-time faculty based on their instructional and scholarly roles and responsibilities shall have a written policy defining those roles and responsibilities and specifying how the differences in the forms of security of position promote the school's instructional objectives and mission. A law school that provides tenure only for some members of the faculty shall permit any member of the full time faculty who has a different form of security of position to apply for tenure."</p>	<p>Same as current 405(c) except deleting the word "clinical;" all FT faculty must have tenure or reasonably similar security of position. Amends Int. 405-6 definition of "long-term contract" to reflect 2007 recommendation of Standards Review that it means a contract of at least five years that is presumptively renewable or that includes other provisions, such as a requirement for good cause for nonrenewal, sufficient to ensure academic freedom.</p>	<p>School shall demonstrate that FT faculty have protections relating to security of position (whether in the form of tenure or other type of long-term appointment). Defines "long-term contract" as at least a five-year that is either presumptively renewable or provides alternative structure sufficient to assure academic freedom, ability to attract and retain high-quality faculty, and significant role in governance. If school extends different forms of security of position to faculty with differing instructional and scholarly roles, it shall demonstrate the basis for such distinctions.</p>
<p><b>Governance</b></p>	<p>"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" No language addressing governance roles and responsibilities for all other full time faculty.</p>	<p>Requires a policy that provides for participation of all full-time faculty in governance of the school.</p>	<p>All FT faculty must be afforded meaningful participation in governance, defined in interpretation as including decisions about mission and direction; academic matters; appointment, renewal, promotion and termination.</p>	<p>All FT faculty shall be afforded participation in aspects of governance involving academic matters. Not preclude school from limiting voting rights on appointments and promotion outside faculty member's field of study.</p>	<p>Supports CLEA's proposal on governance.</p>

<b>Appointment Dean</b>	Requires that dean shall be member of faculty with tenure, "except in extraordinary circumstances"	Requires that dean be member of the faculty and, as such, shall have all rights as other faculty (in new 405)	Does not address	Does not address	Retains current Std. 206(c)
<b>Appointment Library Director</b>	Requires that library director shall be member of faculty "with security of faculty position", "except in extraordinary circumstances"; an interpretation states that security of faculty position is "normally" tenure or tenure track.	Requires that library director be a member of law faculty and, as such, shall have all rights as other faculty (in new 405).	Does not address	Does not address	Retains current Std. 603(d)

**CLEA PROPOSED REVISED STANDARD 405  
(3/25/11)**

**Standard 405. PROFESSIONAL ENVIRONMENT**

**(a) A law school shall establish and maintain conditions adequate to attract and retain a competent faculty.**

**(b) A law school shall have an established and announced policy 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 tenure or a form of security of position reasonably similar to tenure, participation in law school governance, and reasonably similar non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members in positions reasonably similar to tenure 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 within a clinical distinct law school program as long as that program is predominantly staffed by full-time faculty members with security of position, or in an experimental program of limited duration.**

~~**(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.**~~

***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.*

***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 sufficient to ensure academic freedom. Under a separate tenure track, a full-time ~~clinical~~ faculty member, after a probationary period reasonably similar to that for other full-time faculty on the tenure-track, 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 on the tenure track, during which the ~~clinical~~ faculty member may be employed on short-term contracts, the services of ~~the 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 a contract of at least a five-year contract that is presumptively renewable or includes other provisions, such as a requirement of good cause for nonrenewal, 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 in positions reasonably similar to tenure 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 the faculty member's field of study or teaching. A law school should develop criteria for retention, promotion, and security of employment of full-time ~~clinical~~ faculty in positions reasonably similar to tenure and provide those faculty members non-compensatory perquisites reasonably similar to those provided other full-time 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 involving academic matters such as curriculum, academic standards, methods of instruction, and faculty appointments and promotions in a manner reasonably similar to other full-time faculty members. This Interpretation does not preclude a law school from determining that faculty members without tenure can have limited voting rights on faculty appointments, retention, promotion, or tenure outside their field of study or teaching. This Interpretation does not apply to those persons referred to in the last sentence of Standard 405(c).*

**Interpretation 405-9**

Subsection (c) ~~(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 or visiting assistant professor programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experience.