Best Practices for Protecting Security of Position for 405(c) Faculty

Introduction: In developing ABA Accreditation Standard 405(c), the American Bar Association (ABA) sought to protect clinical faculty members. While Standard 405(c) applies explicitly to clinical faculty, many law schools have chosen to place legal writing faculty on 405(c) status and have benefitted from doing so.[1] Because safeguarding the academic freedom and security of position of clinical faculty members was the intent of the regulations, law schools must affirmatively demonstrate that they are meeting the requirements set forth in the Standard. Faculty who have 405(c) status must typically meet standards for promotion and retention similar to those applied to tenure-line faculty.[2] For faculty members who have met those standards, 405(c) obligates law schools to provide 405(c) faculty members substantive and procedural protections similar to those afforded tenured faculty.

Specifically, the ABA Accreditation Standards provide 405(c) faculty with security of position "reasonably similar" to tenure. Safeguarding security of position for tenured faculty is often tied to the American Association of University Professors (AAUP) Recommended Institutional Regulations on Academic Freedom and Tenure.[3] Therefore, the

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[1] Under a prior version of the ABA Accreditation Standards, law schools were subject to a minimum ratio between students and full-time faculty, and full-time faculty were those holding 405(c) or higher status. So, placing legal writing faculty on 405(c) status improved the student/faculty ratios and, for that and other reasons, many law schools placed legal writing faculty on 405(c) status. *See* Melissa H. Weresh, *Form and Substance: Standards for Promotion and Retention of Legal Writing Faculty on Clinical Tenure Track*, 37 Golden Gate U. L. Rev. 281, 291 (2007). *See also* ALWD/LWI Annual Survey of Legal Writing Programs, Question 65 (noting number of schools providing 405(c) status to writing faculty) available at http://lwionline.org/uploads/FileUpload/2014SurveyReportFinal.pdf. Thus, once a law school has placed faculty on 405(c) status and has communicated that status to the ABA in site accreditation reports, the school is obligated to comply with both the spirit of 405(c) and the corresponding contract terms regardless of whether the faculty member teaches clinical or legal writing courses.

[2] ABA Accreditation Standard 405(c) provides: "A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members."

[3] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure, available at http://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure.

As normative expressions, the 1940 Statement of Principles on Academic Freedom and Tenure and related declarations act as private constitutional or contractual agreements at many academic institutions. For example, a typical faculty handbook will include the following statement:

AAUP recommendations establish the type of guidelines law schools can use to demonstrate they have provided 405(c) faculty with requisite substantive and procedural protections associated with security of position. This essay outlines the AAUP standards applicable to tenure and explains the best practices that schools should therefore provide for faculty members with 405(c) status.

ABA Accreditation Standard 405(c) requires that a "law school [] afford [] 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."[4] Under 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."[5] A "'long-term contract' means at least a five-year contract that is presumptively renewable or other arrangement sufficient to ensure academic freedom."[6] For purposes of both a separate tenure track or presumptively renewable, long-term contract, a faculty member holding such tenure or long-term contract "may be terminated only for good cause, including termination or material modification of the entire clinical program."[7]

Remedies for failure to provide these protections may range from informal grievance procedures provided by academic institutions; administrative proceedings under federal statutes such as Title VII and Title IX (both of which prohibit discrimination in employment); and legal remedies including claims under Title VII, Title IX, the ADEA, and contractual theories of liability such as breach of contract, unjust enrichment, and justifiable reliance.[8] To the extent that failure to adequately safeguard security of position may expose law

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> [The university] is committed to academic freedom, for only with such freedom will the members of the University who teach and learn be able to benefit society by judgments and criticisms which might otherwise be withheld because of fear of offending a dominant social group or a transient social attitude

Mark L. Adams, *The Quest for Tenure: Job Security and Academic Freedom*, 56 Cath. U. L. Rev. 67, 73 (2006).

[4] ABA Standard 405(c) (emphasis added).

[5] ABA Standard 405(c), Interpretation 405-6.

[6] ABA Standard 405(c), Interpretation 405-6.

[7] ABA Standard 405(c), Interpretation 405-6.

[8] *See e.g.* Ann C. McGinley, *Discrimination in Our Midst: Law Schools' Potential Liability for Employment Practices,* 14 UCLA Women's L.J. 1, 5 (2005) (focusing on liability under Title VII and explaining that the "concentration of women in the lower levels of law faculty hierarchies makes law schools vulnerable ethically and practically"). McGinley asserts, "Although many readers may be surprised that conditions similar to those in their own law schools may expose the law schools to liability for sex discrimination, it is important for administrators, professors and students to recognize the potential liability law schools face if the status quo continues." *Id*. at 6.

schools to liability, it is important to identify processes and protections afforded the significant number of law faculty in the country who have security of position "reasonably similar to" tenure.

The AAUP recommendations authorize dismissal of a tenured faculty member for cause, in the case of financial exigency, or in the case of discontinuance of a program or department for educational reasons. Notably, the AAUP guidelines even provide relatively rigorous protections for part-time faculty[9] and graduate student employees.[10] Because the ABA standards link security of position for 405(c) faculty to *tenure*,[11] the processes and procedures outlined in the AAUP tenure recommendations provide the requisite security for tenured faculty and therefore provide the best guidance for the processes and procedures earned by faculty with security of position reasonably similar to tenure.

A. For-Cause Dismissal:

Tenured faculty members can be terminated for cause.[12] Because of the strong security of position protections afforded tenured faculty, the AAUP guidelines provide significant procedural protections to an affected faculty member whose position is being considered for termination due to cause.

1. *Substantive Protections*: The guidelines provide that "[a]dequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American

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[9] *See e.g.* AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 13, available at http://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure.

[10] *See e.g.* AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 14, available at http://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure. It is noteworthy that even academic staff members who do not fall within part-time or graduate student categories are entitled to be "provided with a statement of reasons and an opportunity to be heard before a duly constituted committee." AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 15.

[11] Because the standards for promotion and retention for full-time faculty with 405(c) faculty are typically similar to those applicable to tenured faculty, the protections afforded 405(c) should be greater than those for part-time or graduate students. Further, consistent with the "reasonably similar to tenure" language of the ABA Accreditation Standards, should mimic those afforded tenured faculty.

[12] "Adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens." AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 5(a).

citizens."[13] "In general, cause has been found to exist based on professional incompetence, illegal activity, or sexual harassment, which may involve illegal activity or a violation of university policies. An employee's actions that are illegal or violate university policy provide a clearer case for cause to dismiss than one based on incompetence."[14]

2. *Procedural Protections:* "Dismissal of a faculty member with continuous tenure, or with a special or probationary appointment before the end of the specified term, will be preceded by (1) discussions between the faculty member and appropriate administrative officers looking toward a mutual settlement; (2) informal inquiry by the duly elected faculty committee [insert name of committee], which may, if it fails to effect an adjustment, determine whether in its opinion dismissal proceedings should be undertaken, without its opinion being binding upon the president; (3) a statement of charges, framed with reasonable particularity by the president or the president's delegate."[15]

The affected faculty member has a right to a hearing.[16] "The burden of proof that adequate cause exists rests with the institution and will be satisfied only by clear and convincing evidence in the record considered as a whole."[17] During the proceedings the faculty member is "permitted to have an academic adviser and counsel of the faculty member's choice,"[18] shall be "afforded an opportunity to obtain necessary witnesses and documentary or other evidence,"[19] and will "have the right to confront and cross-examine all witnesses."[20]

3. *Best Practices for 405(c) Faculty*: To the extent they have earned security of position "reasonably similar to tenure," faculty whose positions are governed by 405(c) are entitled to the same protections afforded tenured faculty in the case of for cause dismissal. There is no sound rationale for a lesser substantive standard of the cause associated with dismissal for this category of faculty. Moreover, fairness and consistency with the "reasonably similar" language suggests that a similar process be afforded these faculty members for full consideration of such contemplated dismissal.

B. <u>Financial Exigency:</u>

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[13] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 5(a).
[14] Adams, *supra* note __ at 75-76 (citations omitted).
[15] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 5(b).
[16] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 5(c). "A dismissal, as defined in Regulation 5a, will be preceded by a statement of charges, and the individual concerned will have the right to be heard initially by the elected faculty hearing committee . . . Members deeming themselves disqualified for bias or interest will remove themselves from the case, either at the request of a party or on their own initiative."
[17] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 5(c)(8).
[18] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 5(c)(5).
[19] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 5(c)(10).
[20] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 5(c)(11).

The AAUP guidelines authorize termination of faculty with tenure in the case of financial exigency. As expected due to the strong protections afforded by tenure, there are relatively rigorous guidelines an institution must adhere to in order to activate this form of dismissal. [21]

1. *Substantive Protections*: First, the institution must make a determination of a "demonstrably bona fide financial exigency, i.e., a severe financial crisis that fundamentally compromises the academic integrity of the institution as a whole and that cannot be alleviated by less drastic means."[22] Faculty involvement is contemplated for both the determination that a financial exigency exists, and a determination of how best to allocate resources to respond to such an exigency. The guidelines recommend that there "be an elected faculty governance body, or a body designated by a collective bargaining agreement, that participates in the decision that a condition of financial exigency exists or is imminent and that all feasible alternatives to termination of appointments have been pursued . . ."[23]

Importantly, '[b]efore any proposals for program discontinuance on grounds of financial exigency are made, the faculty or an appropriate faculty body will have opportunity to render an assessment in writing of the institution's financial condition."[24] Faculty members are entitled to review detailed financial and programmatic information, including "at least five years of audited financial statements, current and following-year budgets, and detailed cash-flow estimates for future years; [and] detailed program, department, and administrative-unit budgets."[25]

In terms of determining how to allocate resources to respond to a bona fide financial exigency, faculty should consider alternatives to the termination of faculty with tenure *or* tenure-like[26] security of position, "including expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred-compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration."[27] To the extent that the regulations note that the financial exigency provisions apply to "appointment[s] with

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[21] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4. The guidelines emphasize the nature of this determination, "Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur *under extraordinary circumstances* because of a demonstrably bona fide financial exigency . . ." *Id*. (emphasis added).
[22] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(1).
[23] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(1).
[24] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(2).
[25] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(2)(i), (ii).
[26] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(1).
[27] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(1).

continuous tenure, *or of a probationary or special appointment before the end of the specified term*,"[28] any determination of termination of a 405(c) faculty member should require consideration of the listed alternatives. In terms of making determinations to terminate faculty, "[j]udgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action, as well as of faculty status."[29] Moreover, to the extent that impacted faculty members are entitled to severance in accordance with AAUP guidelines,[30] such determinations should take into account the financial impact of such severance.

2. *Procedural Protections*: In the event the faculty or appropriate body determines that terminations for financial exigency are warranted, "[f]aculty members in a program being considered for discontinuance because of financial exigency will promptly be informed of this activity in writing and provided at least thirty days in which to respond to it. Tenured, tenure-track, and contingent faculty members will be informed and invited to respond."[31] Prior to termination "the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution."[32] Affected faculty members are entitled to a full hearing before a faculty committee.

> The issues in this hearing may include the following:
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> (i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.
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> (ii) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.
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> (iii) Whether the criteria are being properly applied in the individual case.[33]

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[28] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(1) (emphasis added).
[29] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(1).
[30] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(6) (noting that, "[i]n all cases of termination of appointment because of financial exigency, the faculty member concerned will be given notice or severance salary" in accordance with the guidelines).
[31] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(2)(iii).
[32] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(5).
[33] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(3)(i-iii).

With respect to challenging such an action, an affected faculty member can assert that individuals with less security have been inappropriately protected, emphasizing the guidelines' requirement that "[t]he appointment of a faculty member with tenure [or tenure-like security] will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result."[34] The affected faculty member may also challenge any action by the institution to add faculty or replace the dismissed faculty member, citing guidelines that preclude such action.[35]

3. *Best Practices for 405(c) Faculty*: To the extent that the ABA Standards require security of position "reasonably similar to tenure," faculty with 405(c) status are entitled to similar considerations for dismissal for financial exigency. Law schools should be required to make the same type of showing of bona fide financial exigency, and faculty should be involved in the consideration of 405(c) faculty termination. Specifically, law faculties should be required to demonstrate consideration of alternatives "including expenditure of one-time money or reserves as bridge funding, furloughs, pay cuts, deferred-compensation plans, early-retirement packages, deferral of nonessential capital expenditures, and cuts to noneducational programs and services, including expenses for administration."[36] Moreover, in order to give full meaning to the "reasonably similar to tenure" language of the standards, "the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution,"[37] and ""[t]he appointment of a faculty member with tenure [or tenure-like security] will not be terminated in favor of retaining a faculty member without tenure."[38]

C. <u>Discontinuance of Program or Department for Educational Reasons</u>

AAUP Guidelines similarly allow an institution to terminate tenured faculty members in the case of a discontinuance of a program for educational reasons. As with termination for financial exigency, the strong security of position protections afforded tenured faculty obligate the institution to demonstrate the existence of educational considerations

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[34] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(4).
[35] "If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments, except in extraordinary circumstances where a serious distortion in the academic program would otherwise result." AAUP guidelines 4(c)(4). Moreover, "[i]n all cases of termination of appointment because of financial exigency, the place of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and at least thirty days in which to accept or decline it." AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(7).
[36] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(7).
[37] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(5).
[38] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(c)(4) (excepting "extraordinary circumstances where a serious distortion of the academic program would otherwise result").

warranting the discontinuance of the program or department, and the efforts made by the institution to relocate affected faculty members in lieu of termination.

1. *Substantive Protections*: In the case of dismissal of a tenured faculty member for a "bona fide formal discontinuance of a program or department of instruction,"[39] the institution must demonstrate that "the decision to discontinue formally a program or department of instruction [] [is] based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof."[40] However, "'[e]ducational considerations' do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance."[41] Moreover, "[a]cademic programs cannot be defined ad hoc, at any size; programs must be recognized academic units that existed prior to the decision to discontinue them. The term 'program' should designate a related cluster of credit-bearing courses that constitute a coherent body of study within a discipline or set of related disciplines."[42]

Prior to dismissal for discontinuance of a program for educational considerations, an institution must consider placing the impacted faculty member elsewhere within the institution. Specifically, "[b]efore the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered."[43]

2. *Procedural Protections:* "Faculty members in a program being considered for discontinuance for educational considerations will promptly be informed of this activity in

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[39] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(d).
[40] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(d)(1).
[41] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(d)(1).
[42] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(d)(2) (emphasizing that "[w]hen feasible, the term should designate a department or similar administrative unit that offers majors and minors").
[43] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(d)(3). The regulations note, "When an institution proposes to discontinue a program or department of instruction based essentially on educational considerations, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected." *Id*. Further, "If no position is available within the institution, with or without retraining, the faculty member's appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty mem-ber's length of past and potential service." *Id*.

writing and provided at least thirty days in which to respond to it."[44] Impacted faculty members are entitled to protest a determination of termination or relocation and, in such a case, have a right to a full hearing.[45]

3. *Best Practices for 405(c) Faculty*: In order to ensure that 405(c) faculty are protected in a manner "reasonably similar" to faculty with tenure, similar considerations must be demonstrated in the event an institution seeks to dismiss 405(c) faculty for educationally-driven, programmatic discontinuances. As an initial matter, existing programs[46] must be evaluated based on educational considerations, which should be defined to exclude "cyclical or temporary variations in enrollment."[47] Any decision to discontinue a program "must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance."[48] If a law school determined to discontinue an existing clinic, it would therefore be obligated to demonstrate that the discontinuance of the clinic enhances the educational mission of the law school and that it made efforts to place clinicians from the discontinued clinic in other suitable positions. To the extent that the ABA standards require law schools to provide legal writing instruction in the first year,[49] the standards appear to prohibit a "bona fide formal discontinuance of a program or department of instruction"[50] involving first year legal writing. The ABA Standards, read in conjunction with the tenure recommendations of the AAUP, would therefore prohibit the termination for discontinuance of a program of legal writing faculty teaching the required first year course who are on 405(c) track, including but not limited to those faculty who have earned 405(c) status.

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[44] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(d)(2).
[45] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure (d)(4). The regulations indicate, "The issues in such a hearing may include the institution's failure to satisfy any of the conditions specified in Regulation 4d. In the hearing, a faculty determination that a program or department is to be discontin-ued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration." *Id*.
[46] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(d)(2) (noting that "Academic programs cannot be defined ad hoc, at any size; programs must be recognized academic units that existed prior to the decision to discontinue them").
[47] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure (d)(1).
[48] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(d)(1).
[49] Standard 303(a) provides:

> A law school shall offer a curriculum that requires each student to satisfactorily complete at least
> the following:
> (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised . . .

[50] AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 4(d).

Conclusion: Faculty members who hold 405(c) status must satisfy standards for promotion and retention similar to those required of tenured faculty[51] and the ABA Accreditation standards require that they be afforded protections reasonably similar to those afforded tenured faculty.[52] The AAUP Recommended Institutional Regulations on Academic Freedom and Tenure outline fair and principled substantive and procedural protections that explicitly apply to tenured faculty. Given the "reasonably similar" language of 405(c), they provide the template for fair and reasonable protections for faculty who hold 405(c) status.[53]

> Finally, the AAUP recommended regulations provide
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> [a]ll members of the faculty, *whether tenured or not*, are entitled to academic freedom [and] … protection against illegal or unconstitutional discrimination by the institution, or discrimination on a basis not demonstrably related to the faculty member's professional performance, including but not limited to race, sex, religion, national origin, age, disability, marital status, or sexual orientation.[54]

To the extent that the majority of American law faculty members who hold 405(c) status are women,[55] law schools must carefully safeguard the security of position earned by this

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[51] ABA Accreditation Standard 405(c) (indicating "A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members").

[52] ABA Accreditation Standard 405(c) (indicating "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").

[53] To the extent that 405(c) faculty hold presumptively renewable contracts, a law school that seeks to terminate 405(c) faculty bears the burden of proof to establish that the protections afforded those faculty are reasonably similar to those outlined in the AAUP recommendations. ABA Accreditation Standard 405(c), Interpretation 405-6 (indicating "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").

[54] The AAUP Recommended Institutional Regulations on Academic Freedom and Tenure 9 (emphasis added).

[55] While it is difficult to determine exact figures, approximately 70% of legal writing faculty members are female and many of these faculty hold 405(c) status. *See, e.g.* ALWD/LWI Survey, available at http://lwionline.org/uploads/FileUpload/2014SurveyReportFinal.pdf. Question 65 indicates that the majority of legal writing faculty members are employed on long-term contracts and many of those are classified as 405(c) and Question 71 indicates that 69% percent of legal writing faculty members are female. The percentage of women in clinical faculty positions has actually risen from 55.75% in 2008 to 63% in 2014. Center for the Study of Applied Legal Education, THE 2013-14 SURVEY OF APPLIED LEGAL EDUCATION 39

category of faculty and outlined in the ABA Accreditation Standards and AAUP Recommended Institutional Regulations on Academic Freedom and Tenure.[56]

(2014) and THE 2007-08 SURVEY OF APPLIED LEGAL EDUCATION 29 (2008), both available at http://www.csale.org/results.html. *See also*
American Bar Association, Section of Legal Education and Admissions to the Bar, *Law School Faculty and Staff by Ethnicity and Gender* (2013) (indicating that in 2013, women comprised 41% of full-time law faculty and only 36% of tenure or tenure-track faculty) [hereafter 2013 ABA REPORT], available at
http://www.americanbar.org/groups/legal_education/resources/statistics.html (last visited March 4, 2015).

[56] *See* potential remedies for impacted faculty outlined in note __ *infra*.