

ALWD

ASSOCIATION OF LEGAL WRITING DIRECTORS

January 15, 2013

Professor Jeffrey E. Lewis
Dean Emeritus and Professor of Law
Chair, Standards Review Committee
ABA Section of Legal Education and Admissions to the Bar
St. Louis University School of Law
St. Louis, IL 63108

Barry Currier
Interim Consultant
Office of the Consultant on Legal Education
ABA Section of Legal Education and Admissions to the Bar
321 N. Clark Street, 21st floor
Chicago, IL 60610

Dear Chairman Lewis and Mr. Currier:

We are writing to address the current proposals on Chapter 4 to be discussed at your January 18-19, 2013 meeting. We have sent letters to the Standards Review Committee on October 22, 2010 and December 16, 2011, highlighting the disparate impact that the current version of Standard 405 has on women in the academy. We also proposed changes to Standard 405 in the December 16, 2011 letter. We encourage you to review those letters.

As you are aware, the disparities among types of law faculty under current Standard 405 dramatically and disproportionately disadvantage women who teach legal writing. The gender distribution for legal writing professors is 72% women and 28% men,¹ while the gender distribution for those full-time faculty who are tenured or on tenure-track is 34% women and 66% men.² Our proposals are designed to correct this inequality.

We have carefully reviewed the three proposals posted for consideration at the upcoming

¹ See *The 2012 ALWD/LWI Annual Survey*, found at <http://www.alwd.org/surveys/2004-2012.html>.

² *The ABA Report on Law Faculty by Gender and Ethnicity for 2011-12* shows that there are 2199 women who are tenured or on tenure-track while the total full-time faculty who are tenured or on tenure-track is 6306. The ABA report can be found at http://www.americanbar.org/groups/legal_education/resources/statistics.html. AALS also has annual reports on the gender distribution of full-time faculty, but their most recent report is from 2009. That report shows that 62% of all full-time faculty are male and 38% are female. The AALS Statistical Reports on Law Faculty can be found at http://www.aals.org/resources_statistical.php.

meeting. While Alternative C comes closest to the proposals ALWD supports, it would no longer require law schools to have a system of tenure or its equivalent. Nor would Alternative B, which appears to be the same proposal the Standards Review Committee discussed two years ago that generated so much controversy about the issue of tenure.

Of the three alternatives, the only one that continues to require a system of tenure or its equivalent is Alternative A. Unfortunately, that alternative also retains the current language of Standard 405(d), which is inconsistent with federal law, as reflected in Standard 211, which requires non-discrimination and “equality of opportunity in legal education, including employment of faculty.”

ALWD continues to support proposed language that would ensure equal opportunity and employment conditions for women, minorities, and others in the legal academy without respect to their field of teaching. The following is the language from our earlier proposal that focuses on equal employment in the academy:

- A law school shall not discriminate in its provision of security of position, academic freedom, governance rights, or other rights and privileges of full-time faculty membership based on a faculty member's field of study or method of teaching. *ALWD Proposed Standard 405(d)*
- This Standard does not preclude a limited number of fixed, short-term appointments predominantly staffed by full-time faculty members, nor does it preclude a law school from offering fellowship or visiting assistant professor programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experiences of limited duration, **so long as short-term appointments are not limited to particular fields of study or methods of teaching.** *ALWD Proposed Standard 405(e)*
- A law school shall have a written policy and procedures that protect the academic freedom of its full-time faculty in (1) exercising their teaching responsibilities, including those related to client representation in clinical programs, (2) pursuing their scholarship and research activities, and (3) engaging in law school related public service activities. **Academic freedom includes meaningful participation in law school governance.** *ALWD Proposed Standard 405(b)*
- For the purposes of this Standard, "meaningful participation in law school governance" means voting rights in faculty meetings, committees, and other aspects of law school governance involving matters such as mission and direction of the law school, including academic matters such as appointments, curriculum, academic standards, and methods of instruction, in a manner reasonably similar to other full-time faculty members. With respect to decisions concerning retention, promotion, or grant of tenure, this Interpretation does not preclude a law school from restricting or withholding governance rights of faculty members junior to the person who is being considered for retention, promotion, or tenure. This Interpretation does not apply to those persons referred to in Standard 405(e). *ALWD Proposed Interpretation 405-7*

The November 1, 2012 letter from SALT to the Standards Review Committee supports our efforts to correct the inequality in the academy, stating:

[A]rtificial distinctions between doctrinal, clinical and legal writing faculty—a two-tiered system of protection that provides “tenure” to some and “reasonably similar” protections to others—undermines the legal education mission. Such artificial distinctions marginalize the faculty, programs and disciplines relegated to the “reasonably similar” status and create unnecessary and harmful hierarchies within the academy that adversely affects the quality of legal education. As far as possible, all faculty deserve to be treated the same with respect to the standards governing access to tenure rather than being classified separately according to whether they are doctrinal, clinical, or legal writing faculty.

Although not part of Standard 405, we also want to offer a suggestion that is related to Chapter 4. We propose adding a provision to Standard 509(b) that requires schools to enumerate the percent of full-time and part-time professors teaching each required subject. This proposal is in line with your efforts to make law schools more transparent and will provide consumers with detailed information on who is teaching the courses each law school considers essential to its mission.

We hope that the committee will consider our proposals and the principles set forth in SALT's letter. Please let me know if you have any questions.

Very truly yours,



Anthony Niedwiecki
ALWD President