



SOCIETY OF AMERICAN LAW TEACHERS

**COMMENT OF THE SOCIETY OF AMERICAN LAW
TEACHERS (SALT) ON PROPOSED REVISIONS TO
DEFINITION 9 AND STANDARD 405**

October 14, 2024

More than forty years ago, the Society of American Law Teachers (SALT) was founded to bring together law teachers nationwide who are dedicated to developing law students into professionals committed to serving and advancing justice. As this Council aptly recognized in its Memorandum regarding Notice and Comment on Definition 9 and Standard 405, the ability to achieve this outcome depends on having a faculty with sufficient security of position to “explore, teach, advocate for social justice, participate in faculty governance, and publish controversial ideas without fear.” (August 28 Council Memorandum at p. 2.) We write to concur with the Council because its pending proposed revisions to Definition 9 and Standard 405 significantly advance this goal.

More than ten years ago, the Council considered the very question now before it – whether and if so what kind of security of position is necessary to ensuring a quality legal education. SALT wrote then that all aspects of the law school mission – teaching, scholarship, and service to the school, the community, and the profession – are vitally important for legal education. Instruction and scholarly development in experiential learning, including clinics, field placements, and legal writing, and in academic success are as integral to the mission of all law schools as are traditional instruction and scholarly development in legal doctrine and theory. The Council at that time concluded that “clinical faculty members” (a category not defined in the standards) should have at minimum a tenure-like form of security of position, but did not extend this protection to those categorized by their law schools as “legal writing” or academic success faculty.

It appears that, with its proposed revisions to Definition 9 – which is now, as the Council notes, a “functional” definition – and Standard 405, the Council intends to close this gap. As the revisions are written, all employees of a law school who “devote substantially all working time during the academic year to responsibilities described in Standard 404(a)” are “full-time faculty.” The responsibilities described in Standard 404(a) are, in sum, teaching, advising, assessing, scholarship, and service.

We are aware that many people who are full-time employees of law schools and are involved in legal writing, field placements, and academic success are categorized by their law schools not as faculty but as “staff.” Some of these professionals are indeed staff whose main responsibilities are administrative. These positions do not fall under the definition of full-time faculty. But many others teach and write full time, meet the definition of full-time faculty, and merit the protections of Standard 405.

We find the Council’s “Explanation of Revisions” puzzling on this point and others. (August 28 Council Memorandum at p. 2.) After noting that the revisions contain a “requirement that the director or supervisor of the academic success, bar preparation, field placement, and legal writing programs have tenure or a form of security of position reasonably similar to tenure,” the Memorandum goes on to state that “[t]his requirement does not necessitate transforming a staff position into a faculty position[.]” We find the impetus for this statement to be obscure.

It is self-evident that that nothing in proposed Standard 405 requires that a staff position be transformed into a faculty position. But together with Definition 9 and Standard 404, it does require that those people who “devote substantially all working time” to teaching and other functions of full-time faculty must – for all the reasons the Council cites in support of its revisions to Standard 405 – be categorized as such and afforded the protections of security of position. A position meeting the “faculty” position is not transformed into a “staff” position by an institution’s expedient use of titles.

We are aware of law school colleagues who teach externship-related classes, advise and assess students, write, and make substantial service contributions, who should be considered members of the full-time faculty but are not. These colleagues need the academic freedom that Standard 405 protects.

We are similarly aware of academic support professionals in law schools who are designated by their institutions as full-time staff, sometimes with part-time faculty designations such as lecturer or adjunct. This is common even as they teach full loads of credit-bearing courses, including not only academic and bar success courses but other courses including first-year required courses. The statement submitted on behalf of the Association of Academic Support Educators documents the extent of this problem and its disparate impact on the diversity and inclusion of law school faculty. Under the language of the proposed revisions, people holding such positions are “functionally” faculty members, not staff, and as such are entitled to do their work without fear of unjust dismissal.

Legal writing teachers have profound and foundational educational responsibilities to law students in their first year and beyond. Some programs are staffed by temporary fellows, visitors, or adjuncts, and the director of their programs should certainly be a legal writing professional with security of position. But other programs are taught by professionals who are permanent law school employees. Their ability to innovate, experiment, write about, and advance their mission requires the same academic freedom – and security of position – as any other member of a law school faculty.

Learning doctrine alone will not ensure that law students become competent professionals; teachers of doctrine should not be the only ones privileged with the academic freedom it takes to do their jobs well. As written, the proposed revisions to Definition 9 and Standard 405 are a step forward in legal education, helping to ensure that law schools deliver to students the learning they need to ably serve justice and clients. We trust that, despite the puzzling language in the “Explanation” in the Memorandum, we do not misread the Standard, and that it means what it says.

We therefore urge the Council to adopt the proposed revisions and are willing to help in any way we can to implement them.