



The State Bar of California

OPEN SESSION AGENDA ITEM O-401 JUNE 2020 COMMITTEE OF BAR EXAMINERS

DATE: June 19, 2020

TO: Members, Committee of Bar Examiners

FROM: Natalie Leonard, Principal Program Analyst

SUBJECT: Action on Extension of Temporary Waiver for Fixed Facility Schools to Teach Classes Online Due to the COVID-19 Crisis

EXECUTIVE SUMMARY

On March 30, 2020, the Committee of Bar Examiners (Committee) issued a temporary waiver allowing both unaccredited and accredited fixed facility law schools the flexibility to replace some or all of in class teaching in the JD program with virtual classroom teaching, retroactive to March 9 and continuing through August 31, 2020.

It is proposed that the Committee extend this waiver allowing fixed facility schools to deliver all classes online for the full academic year through August 31, 2021 in light of the continued and evolving situation related to COVID-19.

BACKGROUND

Effective March 20, 2020, the [Governor of the State of California issued a stay at home order](#) to residents of California. Schools around the state at all levels switched their classroom teaching to online instruction on short notice. The Committee granted a waiver through August 31, 2020 to both accredited and unaccredited fixed facility law schools to teach classes online in response to these circumstances.

While “[a] law school may request that the committee waive any rule,” the Committee’s broad waiver allowed schools to respond quickly without filing a series of identical individual requests. (Accredited Rule 4.109, Unaccredited Rule 4.208)

Typically, in order to make such a change, an unaccredited fixed facility school would follow the major change process and “notify the Committee and obtain its approval before making the change” and explain in detail any effect the change might have on the law school’s compliance with the rules. (Unaccredited Law School rule 4.245) Changing the modality of course delivery or the location of class offerings is considered a major change. (Unaccredited Law School Rules 4.246 (A), (E), (F)). Accredited law schools may already offer up to twelve credits of distance learning as part of the JD degree. However, to offer additional credits online, accredited law schools would similarly be required to use the major change process to seek advance permission according to Committee guidance adopted in June 2019. (Accredited Law School Rules 4.164; 4.165(A), (E); Accredited Law School Guideline 6.5, Committee Meeting, 6/21/19, Action on Item O-402)

At the April Committee meeting, it was indicated that the Committee would continue to be apprised of the situation in case additional waivers were needed. Circumstances suggest that an extension of the waiver should be considered for the upcoming academic year.

[The Center for Disease Control’s Guidance for Colleges, Universities and Higher Learning](#) was updated recently to provide institutions of higher learning (IHE) with guidelines to be used in consultation with the local community. Specific guidance for schools includes physical distancing in classroom setups, and distance education. It also recommends telework where possible for faculty and staff, and, when onsite, implementing comprehensive policies of onsite screening, self-isolation in cases of exposure or potential infection, a reporting system consistent with student and staff privacy, and appropriate leave of absence programs to allow staff and students those who are exposed, ill or infected to stay at home. “I would hope to get to some degree of real normality within a year or so. But I don’t think it’s this winter or fall,” opined Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases. (Fauci Says ‘Real Normality’ Unlikely For A Year As U.S. Continues Pandemic Slog, Forbes.com, June 14, 2020).

In February 2020, the American Bar Association issued a Guidance Memorandum permitting ABA approved law schools to deliver their classes online on an emergency basis for the spring 2020 semester. On May 15, the Council on the Section of Legal Education approved a Rule Change confirming that “[t]he Council is authorized to adopt emergency policies and procedures in response to extraordinary circumstances in which compliance with the Standards would create or constitute extreme hardship for multiple law schools.” (Proposed ABA Rule 2(b)) This rule will be submitted to the ABA House of Delegates for final adoption in August.

California’s public school systems are preparing for a mix of largely hybrid and online classes in the fall.

The University of California’s President, Janet Napolitano, announced that “most if not all of our campuses will operate in some kind of hybrid mode” that will include implementation of screen, testing, contact tracing, universal masking measures, physical distancing, and plans for quarantining and isolating those who contract the virus. (California Board of Regents Meeting, 5/20/20)

The California State University's Chancellor, Timothy White, announced that the California State University system will hold most fall classrooms online and leave classrooms closed. ("Cal State is First Large Public University To Announce It Won't Open Campuses In The Fall," Forbes.com, 5/12/20)

Speaking at the May meeting of the California Community Colleges Board of Governors meeting, California Community College Chancellor Eloy Ortiz Oakley indicated that "[a]s we transition to the fall, many of our colleges have already announced that they're going fully online in the fall. I encourage them to continue to do so. I fully believe that that will be the most relevant way for us to continue to reach our students and to do it in a way that commits to maintaining equity for our students." ("California Community Chancellor Endorses Going Online This Fall," calmatters.org, 5/18/20)

State Superintendent of Schools Tony Thurmond said he expects "a mix of in-person and distance learning with fewer children in classes, hallways and other common areas" and "[s]tudents will likely wear masks, as will teachers and staff." (SF Chronicle, "California Educators: Expect 'Hybrid' Classrooms in the Fall," USNews.com, 5/20/20)

A number of schools around the world have already committed to presenting their full academic year online, including Cambridge University. (Cambridge Will Hold Lectures Online Next Year, New York Times, 5/19/20) At Harvard, Dean of the Harvard Graduate School of Education Bridget T. Long described the school's decision to go online for the full 2020-2021 academic year because "in addition to the strong likelihood of intermittent periods of quarantine, we expect distancing measures will need to be in place through the entire academic year to continue to mitigate the spread of the virus. This scenario presents many challenges and likely multiple interruptions to an on-campus program, which would result in a severely altered experience that could compromise the HGSE learning experience." (Six Harvard Graduate Schools to Conduct Classes Online in Fall 2020, thecrimson.com, June 3, 2020)

DISCUSSION

Both accredited and unaccredited law schools have contacted the State Bar or provided public comment to the Committee seeking permission for fixed facility schools to continue to teach online for the upcoming academic school year.

When the Committee considers a waiver, a school must clearly show that the law school otherwise complies with the applicable rules. At the March 30, 2020 Committee meeting it was determined that this change was not expected to otherwise affect schools' compliance. Since that time, the fixed facility schools have self-reported to the State Bar information regarding their transitions to online programs and communications to students regarding the programs; no schools have self-identified any issues, and no student complaints have been received regarding the transitions. Schools have self-reported consistent attendance and technical stability for the online classes. Therefore, it continues to appear that sufficient grounds exist to conclude that an extension of this waiver will not otherwise impact any law school's compliance with the applicable rules. Although typically major change requests are

made and decided upon individually, with each school making an individual request and the Committee considering each on its own merits and justifications, the Committee has the authority under the waiver provisions to extend this waiver for all accredited and unaccredited fixed facility schools without individual showings.

While the Rules and Guidelines already contain a process to allow schools to seek changes individually, there are advantages to considering the consistent extension of this waiver for all accredited and unaccredited law schools for the full academic year. Providing a general waiver through August 31, 2021 will give schools consistent, dependable permission to respond appropriately and quickly.

If the waiver were only extended for the Fall semester, with an understanding that it could be further extended by the Committee before the start of the Spring semester, then this would impose challenges, expenses, and disruption for these schools that could otherwise be avoided if schools were able to plan ahead for a full year of online classes. Due to the small size of the schools, limited flexibility of time, and the unique demands on the faculty and student population, the schools would need to make significant investments in order to hold fixed facility classes at this time. Many of the schools are small and may have one or just a few classrooms, so the law schools would have to cut class size dramatically or secure additional space in order to engage in physical distancing. Staggering class schedules is not a meaningful option for these schools because students are already working during the day and caring for families on the weekends, leaving little time over which to stagger the classes. A semester-by-semester extension might also create issues with faculty retention, since most faculty at these law schools teach part-time and might enjoy teaching as an optional activity, but not at the risk of teaching in a classroom. Finally, students are required to attend at least eighty percent of class sessions under Committee Guidelines, and they might simply abandon or delay their legal education if they were not sure whether they could take remote classes for the full academic year. These students are largely mid-career students who are also raising families or caregiving, and holding full time jobs, on an ordinary basis; now, they are also dealing potential COVID-19 exposure or infection, as well as home schooling responsibilities and jobs lost or adjusted due to the COVID crisis, so additional flexibility is required versus students at the start of their careers who may not experience these additional challenges as often.

This period of temporary flexibility, applied equally to all schools for a full academic year, will provide fixed facility schools with the certainty they need to describe their offerings accurately to prospective and returning students and plan efficiently, and will provide students with the information they need to evaluate whether they will be able to start or continue their legal education at this time.

The Committee may wish to issue an Updated Guidance Memorandum to all law schools regarding this waiver. (Attachment A)

FISCAL/PERSONNEL IMPACT

Staff will monitor progress reports from the schools

AMENDMENTS TO RULES OF THE STATE BAR

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

RECOMMENDATIONS

Given the unique challenges accredited and unaccredited fixed facility schools are facing in response to COVID-19, it is recommended that the Committee extend its waiver to August 31, 2021, allowing all accredited and unaccredited fixed facility law schools to continue teaching classes via online delivery.

Consistent with the Committee's guidance in March 2020, law schools should continue to choose synchronous classes whenever possible, and to provide technical and academic support to assist students as needed. Law schools should provide clear and timely communication to students regarding the law school's curriculum and any changes needed to accommodate continued online class delivery. (Accredited Guideline 2.7, Unaccredited Guideline 2.9)

If any changes should be made to the grading scheme, schools are reminded to do so in compliance with applicable rules and guidelines, including limitations on the use of pass-fail grading. This portion of the waiver was not requested for extension by the schools, and many schools did not adopt that option in the first place. Unaccredited law schools are limited as to the total amount of pass-fail grades that can be offered, while accredited law schools may offer a pass-fail option for courses that are not Bar-tested subjects. (e.g., Accredited Guideline 2.7(A)(2), Unaccredited Guideline 2.9(B)(2))

Fixed facility law schools moving classes online pursuant to this waiver should file quarterly letters updating the State Bar on the school's plans, progress and issues related to the delivery of online classes; the letters should be filed by August 15, 2020, November 15, 2020, February 15, 2021, and May 15, 2021.

PROPOSED MOTION

Should the Committee of Bar Examiners agree with staff recommendations, the following motion should be made:

MOVE, that that accredited and unaccredited law schools in California may teach JD classes via online delivery through August 31, 2021, choosing synchronous options when possible, due to the health circumstances facing the state. Unaccredited law schools must continue meet the requirements set forth in California Business & Professions Code section 6060(e). Law schools should provide written notice to the State Bar on a quarterly basis by August 15, 2020, November 15, 2020, February 15, 2021, and May 15, 2021 to advise of any changes made or continued pursuant to this waiver. The attached Guidance Memorandum should be distributed to all accredited and unaccredited law schools to inform them of their rights and responsibilities under this waiver.

ATTACHMENT(S) LIST

- A. Proposed Guidance Memo to California Accredited and Registered, Unaccredited Law Schools



The State Bar *of California*

OPEN SESSION O-401 ATTACHMENT JUNE 2020 COMMITTEE OF BAR EXAMINERS

DATE: June 19, 2020

TO: All California Accredited and Unaccredited Law Schools

FROM: The Committee of Bar Examiners

SUBJECT: Extension of Waiver Allowing Temporary Transition to Online Classes at Accredited and Unaccredited Law Schools to Address Circumstances Related to COVID-19

At its meeting on June 19, 2020, the Committee of Bar Examiners extended the general waiver allowing both accredited and unaccredited law schools to transfer classes to online delivery through August 31, 2021, due to the circumstances related to COVID-19.

The State Bar is aware that the State of [California has declared a state of emergency with respect to COVID-19](#), and the [Centers for Disease Control](#) and the [World Health Organization](#) continue to update their communications with pertinent information. Effective March 20, 2020, [California Governor Gavin Newsom ordered all people in California to stay at home to the extent possible, and to practice social distancing in all outings. The Governor and various cities and counties have also banned or limited gatherings to prevent the risk of exposure to COVID-19.](#)

The Committee encourages law schools to safeguard the health and safety of students, faculty, staff, and community, while making best efforts to avoid disruption to their JD programs.

[Accredited Law School Rule 4.109 and Unaccredited Law School Rule 4.208](#) allow schools to apply for waivers to temporarily alter or suspend compliance with a Rule or Guideline on a temporary basis. Certain fast-evolving and serious emergencies such as the one before us, however, may require quick decisions, and resort to such a process may not be possible. To assist the schools, the Committee grants permission to accredited and unaccredited law schools through August 31, 2021 to transition fixed facility classes to online delivery, encouraging synchronous delivery when possible, coupled with appropriate academic and technical support.

Such changes may require a school to make reasonable alteration of syllabi to adapt to online delivery, including adding, changing, or deleting assignments, reconfiguring examinations, and, at the discretion of the school, potentially changing the weighting of grading components, while continuing to provide meaningful feedback to students. These changes must be made in compliance with the Rules and Guidelines applicable to the school including limitations on the use of pass-fail grading.

When taking action under this waiver, unaccredited law schools must also ensure that their JD programs continue to comply with all aspects of [California Business & Professions Code section 6060\(e\)](#) in order to qualify their students to take the Bar Examination.

Law schools must provide clear, written notice to affected students and staff as to their rights, expectations and responsibilities under any changed policy, procedure or syllabus. This guidance should be provided in advance whenever possible, or as soon as possible after implementation. Any changes should be made in compliance with the Rules and Guidelines applicable to the school.

While schools are not required to file waiver or major change requests to transition to online class delivery during this period, they are directed to provide notice via letter to the State Bar as soon as possible of action taken, as well as copies of communications to students regarding the changes and should do so quarterly by August 15, 2020, November 15, 2020, February 15, 2021 and May 15, 2021.

The Committee, through staff, is available to address questions regarding this guidance. Schools may also seek additional waiver or change requests under standard process and timing, which the Committee will consider under its standard process.

The Committee acknowledges and appreciates the efforts of each accredited and registered law school to protect its students, staff, and community while delivering an effective, affordable JD curriculum in challenging times.