



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM O-400 DECEMBER 2020 COMMITTEE OF BAR EXAMINERS**

**DATE:** December 4, 2020

**TO:** Members, Committee of Bar Examiners

**FROM:** Natalie Leonard, Principal Program Analyst

**SUBJECT:** Consideration of Response to Notice of Noncompliance with Rule 4.160(N) – John F. Kennedy School of Law

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### **EXECUTIVE SUMMARY**

At its August 2020 meeting, the Committee issued a Notice of Noncompliance to John F. Kennedy School of Law (JFK) for failure to maintain a compliant Minimum, Cumulative Five-Year Bar Exam Passage Rate (MPR) of 40 percent or more when the school reported an MPR of 39.7 percent. The Committee also directed the school to provide a response within fifteen days. The law school's response does not dispute the Committee's finding of noncompliance and includes an action plan that would return the school to full compliance in 2021. (Attachment A.)

It is recommended that the Committee proceed to the next step of the Noncompliance process, directing that an inspection be scheduled within sixty days to assist the Committee in determining an appropriate course of action.

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### **BACKGROUND**

All California Accredited Law Schools (accredited law schools) must maintain an MPR of at least 40 percent (See Rule 4.160(N)), calculated using the formula enumerated in guideline 12.1. Accredited law schools report their MPR annually on July 1 each year.

This year, JFK reported an MPR of 39.7 percent. As a result, the Committee of Bar Examiners (Committee) issued a Notice of Noncompliance to JFK (Rule 4.170(A).)

When an accredited law school receives such a notice, "the law school must file a response demonstrating that it is . . . in compliance with these rules, if an accredited law school." (Rule

4.170(B).) After reviewing the law school's response, the Committee must take one of the following actions under Rule 4.170 (B):

*(1) If the Committee deems the response satisfactory, it will notify the law school within thirty days of its consideration of the matter.*

*(2) If the Committee deems the response unsatisfactory, it must schedule an inspection by the Senior Executive within sixty days of its consideration of the matter.*

The purpose of the inspection is to confirm whether: "the accredited law school is in compliance with these rules; or . . . the accredited law school . . . is not in compliance with the rules for specific reasons that warrant probation or termination of accreditation." (Rule 4.171.) Here, however, the school has not disputed the finding of noncompliance. Therefore, the inspection, reviewed along with the school's attached response, will assist the Committee in evaluating whether the law school's plan is likely to lead to future compliance within an acceptable timeframe.

## **DISCUSSION**

Because the law school's response cannot establish the school's compliance, the response must be deemed unsatisfactory, and the Committee must schedule an inspection under rule 4.170(B)(2) above. Though noncompliance is already established, the Committee can use the information gathered through the inspection to help determine the appropriate next steps to monitor the law school's status.

The law school's MPR values over the last three years have been 48.8 percent (2018), 44.4 percent (2019) and 39.7 percent (2020).

JFK's attached written response projects that the school will reverse this decline and return to compliance by the time of the next MPR reporting cycle on July 1, 2021 due to a combination of the newly reduced bar exam cut score and a transition to online class delivery offering more academic support, intermediate feedback, and bar preparation. (Attachment A.)

First, the school noted that the bar exam cut score has been reduced to 1390 effective with the October 2020 bar exam. JFK determined that a number of its students had earned scores above 1390 but below the prior passing scaled score during recent exams, and the law school estimates that these students may pass a bar exam in the near future.

Next, the school discussed its planned merger with Northcentral University in January 2021. As part of the merger, the school will end its fixed facility JD program and move to the online teaching model approved by the Committee at its January 2020 meeting. This model allows for weekly homework and feedback, and incorporates a philosophy called Teaching for Total Engagement, intended to foster engagement between faculty and students when using an online teaching modality. The school believes that the frequent feedback will allow students and professors to better track progress and proactively provide support when needed throughout the student's course of study.

The school will also be making several structural adjustments. These include a new year-long bar preparation class, on-demand academic support, and increased bar exam preparation resources for alumni. The law school is also in the process of evaluating its rules related to admissions, faculty grading, and probation.

Because the law school confirmed that its MPR is not compliant, however, the Committee must find that the law school's response has not satisfied its obligation to demonstrate that the law school is in compliance, and, therefore, the Committee must schedule an inspection within sixty days from the date of this meeting. Given the current pandemic circumstances, a remote telephone or videocall inspection is recommended.

A report of the inspection can be returned to the Committee, along with the law school's next set of bar exam results, which will be available in January 2021.

### **FISCAL/PERSONNEL IMPACT**

None

### **AMENDMENTS TO RULES OF THE STATE BAR**

None

### **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

### **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: None - core business operations

### **RECOMMENDATIONS**

It is recommended that the Committee receive and file JFK's timely response to the Notice of Noncompliance with Rule 4.160(N) served to the school in August 2020 and make a finding that the law school's response is not satisfactory because it does not establish the law school's compliance. It is further recommended that the Committee direct staff to schedule an inspection within 60 days as required by the rules, at which the law school can further discuss its plan and timing to return to compliance, including the evidence upon which it bases its projections.

## **PROPOSED MOTION**

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

**MOVE**, that the Response of John F. Kennedy School of Law to the Notice of Noncompliance with Rule 4.160(N) be received and filed; and that the Committee find that the response is unsatisfactory because it does not establish the law school's compliance with Rule 4.160(N); and

**FURTHER MOVE** that a remote inspection be scheduled within sixty days to determine whether or not the school is in compliance with Rule 4.160(N) and, if not, to allow the school an opportunity to further explain its plans and timing to return to compliance, including the evidence upon which the plans are based. If the school declines to timely participate in an inspection, the Committee will proceed with the information before it.

## **ATTACHMENT LIST**

- A.** John F. Kennedy School of Law Response to Notice of Noncompliance

11355 N. Torrey Pines Road  
La Jolla, CA 92037

September 2, 2020

Re: John F. Kennedy School of Law's Plan to Comply with Rule 4.160(N)

Dear Committee of Bar Examiners,

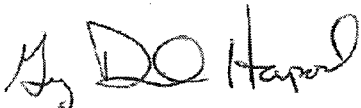
John F. Kennedy University and Northcentral University together present our plan to comply with Rule 4.160(N). This plan was developed as a collaborative effort between the JFK School of Law, which will become the JFK School of Law at Northcentral University on January 1, 2021.

Both institutions are unconditionally committed to improving the academic success of the law students attending JFK School of Law at NCU and to promptly and fully comply with all accreditation standards and regulations, including Rule 4.160(N).

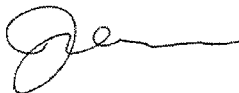
Sincerely,



Lisa S. Hutton, J.D.  
Dean, JFK School of Law



Dr. David Harpool, J.D., Ph.D.  
President, Northcentral University



Dr. John LaNear, J.D., Ph.D.  
Provost and Chief Academic Officer, Northcentral University

## **John F. Kennedy School of Law**

### ***Action Plan to Increase MPR and Maintain Compliance with Rule 4.160(N)***

John F. Kennedy University has been accredited by the Committee of Bar Examiners for the State Bar of California since 1981. This is the first time since Rule 4.160(N) was enacted that JFK's MPR has fallen below the minimum, cumulative bar examination pass rate (MPR) of at least 40%. After the February 2020 administration of the California Bar Examination, John. F. Kennedy's MPR fell from 44%, to 39.7%.

It is worth noting that our cumulative pass rate would have been above 40% if the newly enacted cut score was in place within just the past two years. Looking only at our data from 2018-February 2020, JFK's pass rate would have been 41.7% under the current standard.

We respectfully submit this action plan to raise our MPR and be, once again, in compliance with Rule 4.160 (N).

#### **I. Curricular**

##### ***Redeveloped curriculum with weekly formative assessment and feedback***

On August 31, 2020 JFK School of Law launched its newly developed online JD Program. A primary goal of the online JD Program is to better prepare students with the skills necessary to pass the CA Bar Examination. The program's pedagogy is focused on extensive academic content which includes weekly formative assessment activities with consistent and individualized faculty feedback to increase student learning. Embedded into every week are practice hypotheticals, MBE-style questions with immediate feedback, and several practice exams. Additionally, each doctrine course includes not only casebook reading requirements, but several other instructional sources for students to solidify their understanding of theory and law. This model also allows for targeted and immediate intervention for students struggling with the material.

Requiring students to apply their learning via weekly assessments will prepare them for much greater success on exams in school and ultimately on the bar examination. The extent of formative assessment using bar-style practice hypotheticals and MBE questions embedded throughout each bar-tested course is a different pedagogical model than was utilized in our former, on-ground program.

Specifically, formative assessment activities/exercises were often optional and offered outside the core, bar-tested curriculum. The online model now adopted by JFK requires all students to engage in weekly academic exercises and receive faculty

feedback on their work and understanding of the material, which will strengthen their ability to succeed in law school, and ultimately on the bar examination.

Additionally, the JFK School of Law at NCU uses a pedagogical model called Teaching through Engagement (TTE) to foster learning through faculty-student interactions in the online environment. The goal is for all School of Law students to engage with the material with significant faculty feedback for each student regarding their understanding and application of the material. However, teaching through engagement is more than just grading and giving feedback; it is an active relationship between faculty and student, which will assist students in comprehension and bar readiness skills throughout the JD Program. This guiding philosophy involves understanding who a student is, and tailoring feedback and support to meet them where they are, and getting them to where they want to be – successful while in law school and ultimately prepared to sit for the bar examination.

### ***A full year of extended bar review is now required***

Beginning with the Fall 2020 class, a full-year of extended bar review is required curriculum for all students in their last year of study. These two courses reinforce student learning by a review of doctrine in heavily bar-tested subjects (Contracts, Torts, Evidence, Real Property, Civil Procedure, Constitutional Law, Criminal Law and Criminal Procedure), along with practice essays, MBE's, and the performance exam. Both courses are offered to students enrolled prior to Fall 2020 as electives, and a significant number are taking advantage of this new curricular offering starting this fall, which we expect will increase their chances of success on the bar examination.

Many of our students are non-traditional law students, working full-time and balancing several competing financial, personal, and educational needs. Students find it financially difficult to take time off of work to fully participate in focused bar review preparation through a BarBri type bar review program. A year of required extended bar review in advance of formal bar preparation will significantly increase their readiness to sit for the bar examination, and their chances of success on the bar examination.

## **II. Increased Academic Support**

### ***NCU will offer enhanced academic support to our students***

JFK School of Law will officially become JFK School of Law at NCU on January 1, 2021. Even before we formally transition, and beginning this fall, our academic support services have been enhanced through NCU. J.D. students now have access to 24/7 student support and academic services. NCU has a strong tradition of helping students successfully complete doctoral programs and to qualify for licensing in their respective fields.

While JFK faculty have always supported students, JFK has never provided a dedicated academic support person committed to the unique needs of Juris Doctor students. This will change through NCU, who has recently hired a legal writing coach to focus on law students. The new legal writing coach has a JD, is a licensed attorney, and has experience coaching and tutoring law students in legal writing not just for law school success, but also for preparation to take the bar examination. Additionally, the library resources for students has been strengthened at NCU, with two law librarians on staff to assist and guide students.

### ***Identification of at-risk students***

We are committed to identifying at-risk students early so that we can intervene, support their learning, and prepare them for success on the bar examination. The new online curriculum allows us to assess each student's progress in ways not formally available to us. NCU Academic and Financial Advisors (AFA) monitor student progress throughout each class and make contact with students as soon as they start to fall behind. The AFA works closely with faculty on a weekly basis to identify at-risk students and develop a plan to triage issues. Prior to this fall term, JFK did not have a formal, proactive method to do this.

### **III. Admissions**

We recognize that our admission standards must ensure only those students with adequate academic ability to succeed in law school and on the bar examination are admitted. We have taken a hard, critical look at our admissions process. Below is an overview of the changes we have put into place starting this fall 2020 term.

#### ***Higher Admissions Criteria***

Our Admissions Committee looks at each applicant's profile holistically. While we appreciate that our mission as a California Bar accredited school reflects accepting a certain number of students who may not have high undergraduate GPA's and/or LSAT scores, we do understand that there is a significant correlation between these key indicators and ultimate success on the bar examination. As we launched our online J.D. Program this fall, we have seen a much greater increase in applications, which has allowed us to be more selective and accept more students with higher GPA's and LSAT scores. We are optimistic this upturn in applications, which in turn allows for greater selectivity while balancing our mission of accessibility, will continue as we transition to Northcentral University (NCU) on January 1, 2021.

### **IV. Academic Standards**

Our review of recent grading patterns convinced us that we need to take steps to address two important areas: faculty grading and advancement policies.



## ***Faculty Grading Standards***

JFK uses a uniform grading standard (a grading “curve” which limits the number of high grades and mandates a certain percentage of low grades), but our review showed that it has been applied in an uneven manner with too many exceptions.

Starting now, JFK is initiating faculty workshops specifically to address the grading of final examinations to comply with our published grading criteria and standards. Additionally, starting with this fall term, all faculty who seek a variance from the grading curve policy will present their request to the Academic Standards Committee. The Committee will not permit variations from the grading standards absent *compelling* written justification from faculty.

## ***Limits on Probation***

The Academic Standards Committee reviews the academic standing of students each year. Students who fall below the minimum of 70.00 are disqualified, but permitted to petition for probation. If probation is granted the student has the next academic year to bring themselves back into good standing. Although the Committee often denies probation requests for students who fail to meet the standard, it has been too lenient. To remedy this, the Academic Standards Committee has newly-created policy wherein only students with a cumulative GPA at or above a 68.00 will be allowed to petition for probation and, if approved, advance on probation. For the students granted probation, JFK School of Law at NCU will provide special academic and library support services that have not previously been available at JFK.

## **V. Alumni engagement to improve MPR**

Beginning last May, the full-time faculty and Dean of the School of Law enacted an outreach program targeted at alumni. Those alums who had been previously unsuccessful on the bar examination were offered funding by the University to participate in the BarBri preparation program. Three alumni accepted our offer.

Additionally, all JFK students registered for the October bar examination have been designated to work with one of the full-time faculty on a weekly basis, using the BarBri reporting tool to assess each applicants' progress. Faculty reach out for weekly checkins and mentoring sessions to ensure graduates are keeping up with bar review and staying on track. To date, this new model has worked well and we are optimistic it will result in a higher bar pass rate in October.

JFK is committed to increasing our engagement with students sitting for upcoming bar examinations and, after results, we will assess the success of these current efforts. As we transition to NCU, the School of Law is also considering a staff position specifically dedicated to bar preparedness within the School of Law.

## Conclusion

JFK School of Law is optimistic that, through the use of increased academic supports, specific preparation for the bar through consistent formative assessment and year-long bar preparation, as well as specific interventions designed to support learning, our MPR will rise over the next few years and will return to full compliance with Rule 4.160(N). We have made many changes that we believe will yield much better bar passage outcomes, however, they will take a little time to bear fruit.

It starts with our admissions standards. As noted, we were able to admit a stronger class this fall due to an increase in applicants interested in the online program. Additionally, we have strengthened both our grading processes and our probation standards.

Core to all of this, though, are the curricular changes. As part of our move to become a fully online law school, we engaged in a wholesale redevelopment of our curriculum, grounding those changes in learning science. Including MBE practice questions, essay questions, and writing practice throughout all doctrinal classes (and many non-doctrinal classes) taking advantage of retrieval practice, spaced repetition and enhanced metacognition - all of which lead to increased retention and understanding. See, Schulze, L., *"Using Science to Build Better Learners: One School's Successful Efforts to Raise its Bar Passage Rates in an Era of Decline,"* 68 Journal of Legal Ed. No. 3 (Winter 2019). Regular feedback on these assessments from faculty will also increase student understanding and writing skill.

Through our transition to NCU we have been able to greatly enhance academic support, and for the first time have a legal writing coach dedicated to supporting students in the School of Law.

Finally, for our current students, we have increased engagement with our recent (and not so recent) graduates in an effort to better support their bar exam preparation.

We believe that these changes will improve JFK's bar passage rate, particularly as our new fall 2020 students benefit from three full years of the redeveloped curriculum.

We respectfully request that we are given the time for our efforts to be realized, which will take at least three years to give the students time to graduate and successfully sit for the California Bar Examination.