



# The State Bar of California

---

## **OPEN SESSION**

### **AGENDA ITEM O-403**

**APRIL 2020**

### **COMMITTEE OF BAR EXAMINERS**

**DATE:** April 23, 2021

**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**

Since March 2020, The Committee of Bar Examiners (Committee) has allowed unaccredited and accredited fixed-facility law schools to teach some or all of their classes via synchronous online technology through a blanket waiver that is set to expire on August 31, 2021.

Staff recommends that the waiver be extended through December 31, 2021, with notice provided to schools to submit individual temporary or permanent major change requestions to continue to teach classes online after that date.

---

### **BACKGROUND**

In March 2020, after the [Governor of the State of California issued a stay at home order](#) to residents of California, the Committee granted a waiver through August 31, 2020, later extended through August 31, 2021, to both accredited and unaccredited fixed-facility law schools to allow them to teach classes online via synchronous means as needed in order to comply with public health guidelines related to the COVID-19 pandemic.

Typically, an unaccredited law school chooses a specific teaching modality or location, whether fixed facility, correspondence or distance, and files its own individual major change request to change its teaching modality, "notify[ing] the Committee and obtain[ing] its approval before making the change" and explaining in detail any effect the change might have on the law school's compliance with the rules. (Unaccredited Law School Rule 4.245, 4.246)

While accredited law schools teaching fixed facility programs may already offer up to twelve credits of distance learning as part of the JD degree under the current rules, they are required to seek a major change and advance permission to increase the number of distance credits taught to some number above twelve 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)

“[A] law school may request that the committee waive any rule,” if good cause is shown and the law school can demonstrate that it will otherwise remain in compliance. (Accredited Rule 4.109, Unaccredited Rule 4.208)

The Committee examined an initial request from a law school in March 2020, along with significant public comment from other law schools, and concluded that a general waiver was needed, with similar issues facing each fixed-facility school. One school in particular, and other law schools in general detailed how a transition could occur on an emergency basis while maintaining all other elements of compliance, and the committee agreed. In order to test its theory, the Committee has required all fixed facility law schools utilizing the waiver to report quarterly since that time. These reports, reviewed as a whole, demonstrate that the law schools have maintained compliance and continued to operate in all but one instance, in which Pacific West Law School chose to close temporarily.

At its June 2020 Committee meeting, when the Committee extended the initial waiver from August 31, 2020 to August 31, 2021, the Committee asked staff to advise the Committee whether a further extension would be appropriate due to public health circumstances.

## **DISCUSSION**

In preparing this memorandum for the Committee, Staff reviewed state and federal guidance, plans issued by other California institutions of higher learning, the quarterly updates provided by law schools utilizing the Committee’s waiver, and feedback collected at the Committee of State Bar Accredited and Registered Schools (CSBARS) meeting in December, 2020.

Overall, the state is moving cautiously toward reopening in the coming months. California has been conservative throughout the pandemic, ordering the nation’s first stay-at-home order. Recently, California Governor Gavin Newsom indicated that the state may exit the tier system of restrictions by June 15, provide that there are enough vaccines available for those 16 years of age and older and hospitalizations remain low and stable. (“[California plans to lift virus restrictions in June if certain benchmarks are met](#),” [nytimes.com](#), Apr 6, 2021) There are plans to keep a mask mandate in place for the foreseeable future and restrictions on gatherings of more than 5,000 people at least until fall 2021. (Id.)

[The Center for Disease Control’s Guidance for Colleges, Universities and Higher Learning](#), issued in December 2020, with further clarifications issues in March 2021, provides guidance for those institutions of higher learning that wish to begin the transition back to in-person learning.

Locally, California college and university campuses plan a careful return to in-person learning in the fall.

In January 2021 the University system first announced its plan to return to campus as much as possible in Fall 2021. (["UC Plans for Fall 2021 In-Person Instruction Across its 10 Campuses,"](https://www.universityofcalifornia.edu/press-room) universityofcalifornia.edu/press-room, Jan 11, 2021) While the UC system plans to begin the fall with a quarantine period to compensate for travel to campus, the return to in-person class is expected to be the default, according to Chancellor Carol Christ. (["UC Berkeley Announces In-Person Classes as Default for Fall 2021,"](https://www.dailycal.org) dailycal.org, Mar 16, 2021)

The California State system also announced in advance of its application deadline that its campuses would return to in-person instruction in fall 2021. (["Cal State announces plans for fall 2021 reopening of its 23 campuses,"](https://www.latimes.com) latimes.com, Dec 9, 2020) For example, Cal State Fullerton's President Fram Virjee announced on March 15 that the school anticipates a primarily in-person fall 2021 semester. (["CSUF anticipates 60% to 70% of fall 2021 classes to be in-person,"](https://www.dailytitan.com) dailytitan.com, Mar 22, 2021)

California Community Colleges Chancellor Eloy Ortiz Oakley intends that community colleges will return to its pre-pandemic level of teaching 80 percent of classes in the classroom, though some flexibility and a hybrid approach may be necessary. (["California Community Colleges Chancellor Addresses Fall 2021 Plans,"](https://www.viewpointsonline.org) viewpointsonline.org, Mar 26, 2021)

Approximately 65 percent of law schools approved by the Council of the Section on Legal Education and Admissions to the Bar of the American Bar Association have been teaching classes in hybrid or online format to date. (["Distance Education Variance Modifications and Extensions to Spring 2021,"](https://www.americanbar.org) americanbar.org, Dec 2, 2020) A process has been set up for these law schools to request extensions for the fall if they so choose, or they may return to offering in-person classes.

With that said, most universities expect significant modifications to be necessary, including initial quarantine periods, frequent testing, mask wearing, and online delivery for the largest classes. (["Colleges and Universities Plan for Normal-ish Campus Life in the Fall,"](https://www.californiahealthline.org) CaliforniaHealthline.org, Apr 5, 2021) "We believe that higher education generally will be able to resume a kind of normal activity in the fall of '21, and by that I mean students in classrooms and in the residence halls, others on campus, and things generally open," said Van Orman, USC's chief health officer. "But it will not look like the fall of 2019, before the pandemic. That will take a while." (Id.)

In reviewing the quarterly reports of the unaccredited and accredited law schools and feedback from the law schools utilizing the waiver, these schools seek the flexibility to offer classes on campus in full or in hybrid mode, either by class or by student. Some schools also indicated that the generally part-time faculty at these schools also prefer to have the flexibility to teach remotely as the pandemic resolves.

While enough evidence exists to suggest that it is appropriate to begin a transition, in an abundance of caution, it may be appropriate to extend the waiver one more time through

December 31, 2021, to provide time for law schools to create their transition plans or request further temporary or permanent authority to teach online using the major change process. The law schools have consistently considered it a privilege to use the waiver and have tried to ensure good experiences for students during the pandemic.

The law schools should, however, continue to monitor the situation and make plans to return to the classroom in 2022 or file major change requests seeking temporary or permanent changes to reflect their planned teaching modality going forward, if the schools wish to consider something other than a change to teaching in fixed-facility classrooms under the terms of the applicable rules.

It is recommended that quarterly reports be continued and that any law school seeking to file a temporary or permanent major change for the period after December 31, 2021 should do so as soon as possible and no later than November 15, 2021, in order to provide the Committee with time to review the requests at its December 2021 meeting on an emergency basis.

### **FISCAL/PERSONNEL IMPACT**

Staff will continue to monitor the quarterly reports and other relevant conditions.

### **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**

It is recommended that the Committee extend the deadline on its waiver allowing all accredited and unaccredited fixed facility law schools to continue teaching classes via online synchronous delivery by four months through December 31, 2021.

Those law schools utilizing the waiver should continue to provide quarterly reports on the current schedule: May 15, 2021; August 15, 2021; and November 15, 2021 along with the law school's Annual Report.

Those law schools that intend to temporarily or permanently continue to teach online beyond the current limits of the rules applicable to their current fixed facility programs after that date

should file major change requests as soon as possible and no later than October 1, 2021 to allow for uninterrupted operation to their preferred teaching modality.

Consistent with the Committee's guidance in March 2020, extended in June 2020, classes should be synchronous, and the law schools should provide technical and academic support to assist students as needed in a manner appropriate to the format selected. Law schools should provide clear and timely communication to students regarding the law school's curriculum and planned teaching modality, and further provide timely updates if plans change. (Accredited Guideline 2.7, Unaccredited Guideline 2.9)

## **PROPOSED MOTION**

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

**MOVE**, that that accredited and unaccredited fixed-facility law schools in California may teach JD classes via online synchronous delivery through December 31, 2021 under this general waiver granted by the Committee of Bar Examiners. Unaccredited law schools utilizing the waiver 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 May 15, 2021; August 15, 2021; and November 15, 2021 (along with the Annual Report) advising of the law school's changes made or continued pursuant to this waiver and documenting the communications provided to both current and prospective and enrolled students regarding the law school's course offerings and resources. Law schools that do not plan to return to full fixed-facility classroom teaching by January 1, 2022 should file standard major change requests seeking continued temporary or permanent major changes as soon as possible and no later than October 1, 2021.