



**OPEN SESSION
AGENDA ITEM O-410
DECEMBER 2021
COMMITTEE OF BAR EXAMINERS**

DATE: December 3, 2021

TO: Members, Committee of Bar Examiners

FROM: Natalie Leonard, Principal Program Analyst, Office of Admissions

SUBJECT: Action on Waiver – Lincoln Law School of San Jose – Teach Classes Online Temporarily

EXECUTIVE SUMMARY

Lincoln Law School of San Jose (Lincoln San Jose) has filed a waiver request seeking the Committee of Bar Examiners' (Committee) approval to teach classes online through June 30, 2022. (Attachment A.)

BACKGROUND

Lincoln Law School of San Jose is an accredited law school located in San Jose, California. The law school was last inspected in 2018 and found to be compliant.

According to its 2021 Annual Report, the law school enrolls 79 students in its JD program. Its Minimum, Cumulative, Five Year Bar Exam Pass Rate (MPR) trend for the most recent four years is: 2018 MPR 56.1 percent; 2019 PR 44.1 percent, 2020 MPR 31.5 percent; and 2021 MPR 36.5 percent. The law school is currently on probation with the opportunity to raise its MPR to meet or exceed the minimum value of 40 percent by July 2021. The law school's July 2021 bar exam pass rate was 13.3 percent, while the overall bar exam pass rate was 53 percent.

Since March 2020, Lincoln Law School of San Jose has been teaching classes online under the Committee's general waiver allowing fixed facility law schools to teach online. The law school seeks a waiver to continue to do so through June 30, 2022, the end of its academic year.

The Committee's general waiver for fixed-facility law schools to teach classes online that has been in place since March 30, 2020 will expire on December 31, 2021. The Committee requested that fixed-facility schools who saw a pandemic-related need to teach classes online beyond that date should file individual waiver requests, as the law school has done here.

Under Rule 4.109, "[a] law school may request that the Committee waive any rule. The request must clearly show that the law school otherwise complies with these rules . . . and a waiver is temporary."

DISCUSSION

The law school has been able to teach classes online throughout the pandemic and it seeks permission to continue to do so for an additional semester through June 30, 2022.

The law school identified the current public health conditions and uncertainty around school, work and caregiving resulting from the situation. The law school also indicated that many of its classes are year-long classes and the students are familiar with attending online at this point, so the law school hopes to continue with the same type of course delivery for the remainder of the year.

Lack of sufficient student engagement has been identified in a factor relating to the law school's noncompliant MPR, as discussed in prior filings with the Committee. As a result, the Committee may wish to emphasize that the law school should carefully take steps to encourage and monitor student engagement in order to improve bar exam outcomes, no matter which teaching modality is selected.

Nevertheless, the law school has demonstrated that it has a system to provide online class delivery for a limited period of time in response to the pandemic, while otherwise maintaining compliance in many ways. The law school is encouraged to continue to pursue compliance with the MPR. The law school's responsibilities and obligations under its probationary order are clear, and the law school indicates that this is the method that will best help it carry out its mission.

FISCAL/PERSONNEL IMPACT

None

RECOMMENDATION

It is recommended that the Committee of Bar Examiners receives, files and grants Lincoln Law School of San Jose's request for waiver to teach classes online through June 2022.

PROPOSED MOTION

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

MOVE, that the Committee of Bar Examiners receives, files and grants Lincoln Law School of San Jose's request for waiver to teach classes online through June 30, 2022.

ATTACHMENT LIST

- A.** Lincoln Law School of San Jose – Request for Waiver

October 1, 2021

Committee of Bar Examiners
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Request for Temporary Extension of Covid-Related Waiver for Remote Instruction

Members of the Committee:

Pursuant to Rule 4.109 of the Accredited Law School Rules, Lincoln Law School of San Jose hereby requests an extension of the Committee's temporary Covid-19 waiver allowing remote instruction to the end of the academic year (June 2022).

Introduction.

Lincoln has been an accredited fixed-facility school located in Santa Clara County, California since 1993.

In March of 2020, our County and the State of California declared a state of emergency with respect to the Covid-19 pandemic. Californians were ordered to stay home, and indoor gatherings in Santa Clara County were banned.

As schools and other businesses scrambled to figure out how to manage through a constant barrage of orders and changing guidance from State and County health departments, in May of 2020 the Committee of Bar Examiners approved a Waiver Allowing Temporary Transition to Online Classes at Accredited and Unaccredited Law Schools to Address Circumstances Related to Covid 19 (the "Waiver"). On June 19, 2020, the Waiver was extended through August 31, 2021. This allowed schools which were forced to pivot to online instruction at the beginning of the school year to continue with the same method of instruction through the end of the academic year.

In May of 2021, State and County restrictions began to ease, and Lincoln began to plan for return to in-person instruction in the Fall. Faculty prepared syllabi with the understanding that students would be in the classroom. However, by mid-summer, there were reports of the "Delta variant" of the Covid-19 virus, and indoor mask mandates returned, even for vaccinated persons. The County's largest employers announced that they would be extending their work-from-home policies through at least January of 2022, and many have extended that time again through the summer of 2022.

Faculty and students who, just weeks before, had been anxious to return to the classroom were no longer willing to expose themselves and their families to the reportedly highly contagious Delta variant. By the time classes started, there were three first year students who appeared on campus, and all faculty were forced to amend their syllabi to accommodate another fully online semester. Thankfully, the Committee had already announced that it would extend the Waiver through December 31, 2021.

The majority of courses at Lincoln are full year courses. Once started pursuant to syllabi and grading appropriate for online instruction, it would be difficult for faculty, and confusing for the students, to realign the second half of those courses in the second half of the school year for on-site instruction.

In addition, the circumstances that precipitated the shift to online instruction at the beginning of the school year have not changed. Indoor mask mandates have not been lifted. Many local employers are

not requiring employees to return to work or are amending their return-to-work policies to provide for significant flexibility. New vaccine mandates also may make it harder to bring students and faculty to the school. As the push for students to return to on-site public schools continues, students and professors who are parents are having to juggle children being kept home not only because of actual Covid-positive cases but also because of colds and flus which have similar symptoms. If a Covid-positive case occurs, there are additional home quarantines which will prevent or make it difficult for Lincoln students and faculty to attend in person.

Requiring Lincoln students and faculty to be on-site in the face of these continuing and unpredictable disruptions (when absences cannot be avoided, but cannot be excused), may cause significant interruption of students' legal education. Law students who miss more than 3 classes in the Spring semester will not receive a grade for the entire full-year course and will thereby lose the work completed in the Fall. Sacrificing a full-year class due to unavoidable absences in the context of a very compact four-year curriculum would be a considerable hardship on students.

It is for these reasons that Lincoln Law School of San Jose requests an extension of the Waiver through the end of the 2021-22 school year – to provide faculty with continuity in their method of instruction for full year courses, and to provide students with the flexibility they still need to deal with the vicissitudes of a virus and accompanying health orders over which they have no control.

Rule 4.109.

Pursuant to Rule 4.109(A) of the Accredited Law School Rules, a law school may request that the Committee waive any rule. The request must clearly show that the law school otherwise complies with these rules.

Rule 4.160(E) requires an accredited law school to maintain a sound program of legal education. Guideline 6.5 of the Guidelines for Accredited Law School Rules sets forth some of the requirements for a sound program of legal education. In particular, Guideline 6.5(A) requires that a program of instruction leading to conferral of a juris doctor degree include at least 1200 hours of verified academic engagement.

Pursuant to Guideline 6.5(B), such academic engagement may be offered through any of the following means: (a) student attendance in a physical classroom; (b) student participation in a synchronous or asynchronous curriculum offered through distance-learning technology; or (c) a combination of academic engagement offered through (a) and (c).

Guideline 6.5(C) requires regular and punctual attendance in not less than eighty percent of the academic engagement in regularly scheduled class hours.

Lincoln Law School of San Jose is an accredited fixed-facility school. Before the pandemic, classes were offered on-site from 6:40 to 9:30 weekday evenings. Lincoln has received the acquiescence of the Committee in offering fully online professional degrees specializing in Intellectual Property law. However, Lincoln has not submitted a Major Change Request pursuant to Rule 4.165 of the Accredited Law School Rules to provide a hybrid or fully online Juris Doctor degree. Lincoln students are therefore limited to 12 units of online instruction.

As noted above, requiring Lincoln students to appear physically in Lincoln classrooms for at least eighty percent of the classes during a time when health orders issued by the County of Santa Clara require

lengthy quarantine periods whenever potential exposure to Covid-19 at work or at a student's work or at a child's school is reported could sometimes make appearance in person at Lincoln's facility impossible. These quarantine requirements and potential exposures are entirely out of the students' control, so to interrupt their program of education as a consequence of their required compliance with legal mandates seems both improper and unnecessary.

In March of 2020, Lincoln, like so many other schools, transitioned its entire curriculum to a synchronous online modality. Students still attend classes from 6:40 to 9:30pm on weekday evenings. But they do so by Zoom from the safety of their own homes, and under circumstances that provide them the freedom care for others in their households. The Lincoln administration was able to remotely proctor both midterms in December and final exams in Spring without disruption. Student outcomes under such circumstances were equivalent to those of prior years.

This year Lincoln was able to invest in additional technologies designed to enhance the hybrid classroom experience, such that classes could be held on site, while student who, for some or all of the reasons set forth above, were unable to attend, could be seen and heard. In class assignments were posted on the Canvas platform so that student both in class and on Zoom could see, manipulate, and discuss documents simultaneously. Additional technologies allowed remote students to view the classroom white board, and larger in-class monitors allowed classroom professors to see the faces of remote students without having to look down at their computer screens.

With all of the adjustments made to provide a better remote experience for students under pandemic restrictions, and with the professors having improved on the Zoom experience for classroom assignment based on their experiences last year, Lincoln believes that the quality of its curriculum and expected student outcomes would not be adversely affected by an extension of the Waiver to allow the students and professors some peace of mind in knowing that they will be able to continue with the same system of synchronous remote instruction through the remainder of the academic year.

Lincoln submits its petition as a request for an extension of the Waiver, rather than as a Major Change Request because Lincoln does not at this time seek to "institute [or make permanent] a new division" or "offer [] any new program in law study." It simply seeks a temporary acquiescence to the continuation of the successful synchronous online instruction instituted in response to local Covid-19 mandates, since the Covid-19 mandates are continuing, and Lincoln students seek peace of mind that their program of instruction will not be interrupted by potential absences resulting from required compliance with local quarantine and other health-related orders.

Compliance with all other Rules.

Rule 4.109(A) of the Accredited Law School Rules, requires that a request for waiver clearly show that the law school otherwise complies with the Rules.

Lincoln Law School of San Jose's last State Bar site inspection was in 2018, at which time it was found to be in substantial compliance with all of the Rules and Guidelines for Accredited Law Schools. An update as to Lincoln's compliance with the Standards for Accredited Law Schools found in Rule 4.160 is as follows:

(A) Lawful Operation. The law school must operate in compliance with all applicable federal, state, and local laws and regulations. *Lincoln continues to operate in compliance with all applicable laws.*

(B) Integrity. The law school must demonstrate integrity in all of its programs, operations, and other affairs. *Lincoln communicates openly and honestly with its students regarding its programs and operations, including posting its required disclosures, and additional data regarding student outcomes on its website.*

(C) Governance. The law school must be governed, organized, and administered so as to provide a sound educational program. *Lincoln's Board of Trustees is provided with monthly reports regarding financial, operational, and academic matters, and its Strategic Goals are focused on financial stability and student success.*

(D) Dean and Faculty. The law school must have at each campus, including any approved branch campus, a competent dean, a qualified administrator, an adequate administrative staff and a competent faculty that devote adequate time to administration, instruction and student counseling. *Lincoln has only one campus, at which there is a full time dean, and several additional full time administrators and faculty attending to the needs of students and faculty.*

(E) Educational Program. The law school must maintain a sound program of legal education. *Lincoln's graduates continue to occupy positions of leadership in matters of local and state government, County Bar Association leadership, and community activism made possible by the sound program of legal education provided by Lincoln. Lincoln continues to collect data on student achievement, and to improve its curriculum year over year to provide students with additional opportunities for success and improvement.*

(F) Competency Training. The law school must require that each student enrolled in its Juris Doctor Degree program satisfactorily complete a minimum of six semester units (or their equivalent) of course work designed to teach practice-based skills and competency training. Such competency training must teach and develop those skills needed by a licensed attorney to practice law in an ethical and competent manner. *Lincoln's required curriculum includes in excess of 6 units of practice-based competency training.*

(G) Scholastic Standards. The law school must maintain sound scholastic standards and must as soon as possible identify and disqualify those students who lack the capability to satisfactorily complete the law school's J.D. degree program. *Lincoln's Academic Standards Committee reviews student progress at the end of each semester, and reviews the soundness and effectiveness of its policies and procedures at least annually based on data collected from student and faculty surveys, as well as formative and summative examinations.*

(H) Admissions. The law school must maintain a sound admissions policy. The law school must not admit any student who is obviously unqualified or who does not appear to have a reasonable prospect of completing the degree program. *Lincoln has an Admissions Committee that reviews applicant*

qualifications. The Committee also reviews its policies and practices at least annually based admissions data and student outcomes.

(I) Multiple locations. Accreditation is granted to a law school as an institution. If a law school receives approval to open a branch campus or a satellite campus, the branch or satellite campus must be operated in compliance with the Standards and Guidelines, subject to all site specific operational requirements and any waivers approved by the Committee. The new campus must be in substantial compliance with the Standards and all operational requirements no less than one month prior to the start of classes, and in full compliance within two years. The Dean of the law school will certify the substantial compliance of each new branch or satellite campus, by a letter to the Committee, no later than 30 days prior to the start of classes. If a law school conducts seminars or classes other than at its principal facility, satellite or branch campuses, the seminars and classes must be conducted in compliance with the Standards, except the Library Standard. *Lincoln has only one location.*

(J) Library. The law school must maintain a library consistent with the minimum requirements set by the Committee. *Lincoln provides students access to electronic research materials.*

(K) Physical Resources. The law school must have physical resources and an infrastructure adequate for its programs and operations offered at each campus. *Lincoln's facility provides six classrooms, a resources room, and a library, as well as a kitchen and administrative offices.*

(L) Financial Resources. The law school must have adequate present and anticipated financial resources to support its programs and operations. *Lincoln maintains several months of operating capital in reserve, and its books, records, and financial practices are audited annually.*

(M) Records. The law school must maintain adequate records of its programs and operations. *Lincoln maintains records both in physical form, and electronically.*

(N) Minimum, Cumulative Bar Pass Rate. The law school must maintain a minimum, cumulative bar examination pass rate as determined and used by the Committee in the evaluation of the qualitative soundness of a law school's program of legal education. The minimum, cumulative bar examination pass rate for a law school with one or more branch campus is to be calculated and reported as the combined rate of all such campuses. *Lincoln's current Bar Pass Rate is below the required minimum. However, Lincoln has raised its pass rate by 6 points in the past year, and anticipates that it will exceed the minimum pass rate during the next reporting period, to be verified in July of 2022.*

(O) Consistent with sound educational policy and these rules, a law school must operate in accordance with policies and procedures that comply with the Constitutions and all applicable laws of both the United States and the State of California so as to provide both equality of opportunity and to prohibit

unlawful discrimination. *Lincoln maintains and enforces policies that assure both equal opportunity to prohibit discrimination.*

(P) Compliance with Committee requirements. The law school must demonstrate its compliance with these rules by submitting required reports and otherwise complying with the rules. *Lincoln timely submits annual reports and other documentation as requested by the Committee.*

Conclusion.

During a recent webinar, the Western Association of Senior Colleges and Universities Commission ("WASC") announced that it would extend existing waivers allowing fixed facility schools to deliver some or all of their instruction via online modalities until 180 days after the national government lifts its Covid-19 related restrictions. The procedure for requesting such extensions will be a simple form, and approvals are expected to be granted as a matter of course. It was noted that schools have reported a significant amount of faculty burnout related to changing modalities, and that there remains an amount of uncertainty and anxiety associated with returning to in-person instruction, with one university administrator noting that 80% of its students preferred to have classes remain online.

Lincoln implores the Committee to similarly recognize the need to allow professors and students in diverse communities additional time to ease back into in-person instruction while pandemic related orders remain in place, and requests that the Committee approve a waiver allowing for the temporary continuation of Lincoln's transition to synchronous online classes to address circumstances related to Covid 19 through the end of Lincoln's Academic Year on June 30, 2022.

Sincerely,

A handwritten signature in black ink that reads "Laura Palazzolo". The signature is written in a cursive, flowing style.

Laura
Palazzolo
Dean