

The City University of New York

CUNY SCHOOL OF LAW

Law in the Service of Human Needs

CUNY Law Faculty and Administration,

“Law in the Service of Human Needs.” This is our school motto, our ethos, a guiding principle that frames our legal education and motivates our students, faculty, and staff to do and be better human beings, to work in the service of people our socio-political systems have failed.

Right now, our community is struggling to navigate an emergent and unprecedented crisis. The challenges this crisis has caused are not distributed equally. It’s CUNY Law students, many of whom [come from historically oppressed communities](#), who will be disproportionately affected. In response to this, we are asking that CUNY Law administration put the needs of its student body first at this time.

Our Call to Action: CUNY Law Must Adopt a Universal Grading System

The student body is advocating for all grading this semester at CUNY School of Law to be shifted to a **universal grading system**, where students receive a universal pass if they demonstrate a good-faith commitment to learning throughout the semester. This is a flexible standard given the particularity of our individual experiences at this time.

We stand firmly together in demanding that nobody be penalized for academically underperforming during this crisis. We reject any system that incorporates tiered grading on the grounds that it: 1) negatively impacts students who opt for a pass instead of a tiered grade; and 2) that it sows division among us at a time when we need unity and collective strength. We also advocate that any student unable to complete the semester be accommodated in a way that does not incur any additional costs to their legal education **and that students on academic probation be entitled to special protection, in any adopted grading model.**

With these demands we implore that CUNY be guided by the principles surrounding its historical origins-- CUNY’s mission is to “[provide] a quality, accessible education, regardless of background or means.” CUNY Law, specifically, emerged as the first public service oriented law school, touting the importance of the “[transformation of] the teaching, learning, and practice of law to include those it has excluded, marginalized, and oppressed”. Our commitment to these mission statements can be measured by how we respond in times of crisis, and how we confront the new challenges that we face as an institution.

A Universal Grading System, Not a Pass/Fail (Whether Optional or Not) Best Addresses Student and University Needs*

The following questions borrow from [our colleagues at Yale Law](#), who are also advocating for a more equitable grading system on their campus. This message is one of solidarity with them, and other students who are pushing for similar policies:

- **What does a universal grading system mean?**

Under a universal grading system, every student would complete their course requirements—including take exams, submit papers, and complete all assignments—and receive the same grade, a “UP,” or Universal Pass. This grading system will create uniformity for all students across the law school regardless of their circumstances during this difficult time, **while simultaneously providing institutional protections for students on academic probation, as a means of establishing equity.**

The school would create a new grade “UP.” A note will be added to each student’s transcript for the Spring 2020 semester explaining that universal grading was adopted after Law School operations and student learning were significantly disrupted by the COVID-19 outbreak.

There is precedent for this plan. Stanford Law made [third quarter classes and exams “universal pass”](#) to account for the disparate impact that this crisis has on members of their student body.

Columbia Law School has implemented a [mandatory Credit/Fail](#) grading system that applies to all first and upper year J.D. and LL.M. students. While there remains the possibility to fail a class, a Professor would have to petition to do so. We see this system as a good step, as it seems to be largely a de facto UP system, but urge CUNY Law to recognize the need for an explicit UP grading system.

- **Why adopt a universal grading system?**

Students are currently operating under extraordinary circumstances. Some students have had to step in to care for vulnerable family members, or take on an extra job to provide for their families. Others are struggling to find stable internet access, housing, and healthcare after leaving New York. There are many Part-Time students who are currently dealing with the loss of a job, filing for unemployment, transitioning to working from home, in addition to the various challenges all students are facing. Students with physical disabilities and those with compromised immune systems may be subject to substantial health risks. Students with learning disabilities may struggle to adapt to distance learning and all students will likely struggle with their mental wellness during this anxiety-ridden time, especially those with pre-existing mental illnesses. These students are facing extremely challenging circumstances.

One way to support them is for the school to state that students should focus on learning—not their grades—during this difficult time. This policy helps make CUNY more equitable.

- **Why not allow students to opt-in?**

A universal grading system is necessary to ensure equity across the law school. An opt-in system allows comparatively privileged students—who have the resources to focus solely or primarily on school—to gain an advantage over students who do not have this same luxury.

Additionally, an opt-in system introduces a signaling function to employers—specifically, employers may view students who opted in for grades more favorably than students who did not, or may draw negative inferences about students' social circumstances due to their decision to opt-out. This undoubted signaling function may cause students to feel pressured to opt-in despite their dire circumstances, and therefore undermine the purpose of any disaster policy that is enacted.

- **How does a universal grading system differ from mandatory Credit/Fail?**

Other schools have already made the move to Credit/Fail. Cornell Law has instituted an S/U grading system and waived all letter grade requirements/maximums. Similarly, Berkeley Law and Boston College Law have instituted a mandatory credit/no credit system.

Unfortunately, these responses do not go far enough towards addressing equity concerns. Under a Credit/Fail system, students are still at risk of receiving a grade of F or failing. Under our proposed system, every student who completes course requirements would receive a UP.

- **What about students in a situation where they won't even be able to pass their classes?**

In an international crisis, every student's top priority should be their safety and health. Resource limitations, broadband access, and external stressors will make completing this semester almost impossible for many. With UP, no student is penalized for factors out of their control. Every student who turns in their coursework will pass their courses and receive credit towards their degree and bar admission requirements.

- **What about CUNY Law's accreditation?**

Too often we see the issue of CUNY Law's accreditation deployed as a wedge to undermine efforts to make CUNY a more just, equitable place. We recognize that all of our careers are dependent upon CUNY's standing in the eyes of the American Bar Association (ABA). That said, we find it difficult to imagine that adopting a UP system in the midst of a global pandemic will be considered by the ABA, outside of the scope of our current social, political, economic, and environmental realities.

We look to the [Managing Director's Guidance Memo](#), issued by the ABA in February 2020, for clarity. The memo reads, "Standard 107(a)(1) provides for variances from the requirements of the Standards "in extraordinary circumstances in which compliance ... would create or constitute extreme hardship for the law school and/or its students.'" There appears a superficial tension between that hardship, and basic requirements for completing an academic degree, mandated by the ABA. The memo further outlines the basic framework of a J.D. degree program, as:

- the academic work required by Standard 303(a),
- the amount of work required for a "credit" [Standard 310],
- the credits required for graduation [Standard 311(a)],
- the credit hours of regularly scheduled classroom sessions or direct faculty instruction discussed in Int. 311-1 and 311-2, and
- the requirements of Standard 314 regarding assessment of student learning

These requirements are not compromised by a UP system, wherein students would continue to complete work, attend class, take exams, engage in classroom discussion, and receive the meaningful feedback from professors required by Standard 314.

- **What will drive students to complete their coursework for the semester?**

CUNY Law students are committed to our legal education. We recognize fully that we are here to develop the tools and skills that we will carry with us, as we effectuate our mission of making the world a better, more just, place. "Opting-out" of learning, would be a betrayal of our dedication to working in the public interest. We are driven by justice, to rectify socio-political wrongs. To those ends, we are driven towards learning as much as we can, so that when we begin to confront systems of injustice, we have every available tool in our legal arsenal. That is why we have come to CUNY-- to learn what we can from faculty and staff committed to social justice. Adopting a UP system would be a huge opportunity for teaching and learning. It would teach us, the student body, the value of equity.

Additionally, many 2L and 3L students are working with clients in the "real world." For our upperclassmen, not completing coursework would have real and tangible impacts on people's lives. These impacts would be exacerbated by crises. To suggest that we, as a student body wholly committed to social justice, would shirk these civic duties, would be to misunderstand the motives of our community, as a whole.

We'd like to draw your attention to a passage from [this article](#), written by a Yale Law student. It reads:

"Some students, especially those vying for graduate school, have argued they have worked too hard this semester not to receive letter grades. But none of us anticipated that a deadly global pandemic would sweep across the U.S., forcing us all to flee campus. We took on a full course load, then worked multiple student jobs to support

loved ones back home. Not implementing the Universal Pass policy will put many students in jeopardy because of pandemic conditions beyond any of our control. Arguing that we need grades to validate this semester's work prioritizes some students' futures over that of every vulnerable student. We have worked hard, too."

This language resonates here at CUNY Law, particularly given our public interest orientation. We are the preeminent public interest legal institution in the United States. We are an institution dedicated to the health, safety, and integrity of our surrounding communities. In our work, we strive to address systems of oppression that preclude legitimate access to our legal and political systems. We do not pride ourselves on grades, but on justice. Justice here requires dismantling these arbitrary markers of student success, and acknowledging that the success of all students at this time, is predicated upon all of our safety.

A Universal Grading System Equitably Responds to the Unprecedented Circumstances the Greater New York Community Faces

Governor Cuomo has indicated that the [number of daily infections is not expected to peak until May at the earliest](#), and that daily infections will increase exponentially until then. The CUNY community lives in the NYC area, the epicenter of the outbreak in the US. Our healthcare system is already on the verge of collapse: [NYC hospitals are recycling lifesaving masks](#) because they are operating under the assumptions that: 1) they will run out of masks and 2) that their frontline health care workers are already exposed.

We should be operating under the same assumptions: that our student body is exposed and are imminently running out of the resources necessary to adequately perform. We must assume that at least some of our classmates will become ill, and that some of those will require hospitalization. We must also assume that many of our family members will get sick, that many of those will require hospitalization, and that some will die. Tragically, these assumptions don't rest on a hypothetical "worst case scenario," this is simply reality. We must also operate under the assumption that the impact of this imminent humanitarian catastrophe will be spread VERY unevenly among the student body.

We must also consider the effect of this virus on our professors' lives. CUNY Law's diverse faculty includes many people within the high-risk population. This, combined with similar inequitable impacts students face, and the challenge of transitioning to fully online teaching will certainly have a negative impact on their ability to teach at our usual high standards. The faculty and staff's response has been incredible, however, there is no question that this ad hoc transition to distance learning will lead to a much less effective teaching and learning environment. Therefore, the usual grading mechanisms must be changed for the sake of the students and the professors alike.

Only a few of us will experience the deaths of loved ones. Only a few of us will have to care for sick family members. Only a few of us will be hospitalized. Only a few of us will have to provide

childcare to family members who are dismissed from school. Only a few of us will have to financially support unemployed family members. Only a few of us will experience job insecurity (in particular part-time students). Others still, will experience several, or all, of these traumas. How does one measure the academic impact of a hospitalization? Or the death of a parent? How do we operationally define the “impact” of coronavirus on an individual basis? How will we determine who has faced “enough” to excuse academic underperformance?

We implore you to not allow our pleas ring hollow as they reverberate against the walls of ivory towers that house the hypocrisy of an institution that prides itself on its dedication to CUNITY. CUNITY today means accounting for all student needs in the midst of a crisis. CUNITY means a commitment to honoring the material realities of our student body. CUNITY means adapting to changing circumstances in a way that acknowledges and appreciates the disparate impacts that crisis can have on our famously diverse community.

CUNITY means a universal grading system.

In Solidarity,

CUNY Law Students

#CUNITY#UniversalPass#switchitUP#CUNYUP

* **UPDATE:** The Washington Post has [published an article](#) by Columbia University English Professor, Jenny Davidson entitled, “Forget distance learning. Just give every college student an automatic A.” We, writers of this petition, agree with the sentiments of this piece and acknowledge that an A/A- system could serve to benefit many members of our academic community. While our call to action remains the adoption of a universal pass system, this option is the floor, not the ceiling, with regard to what any university should champion during this global pandemic.
