

December 8, 2020

**Mary Lu Bilek**

City University of New York School of Law  
2 Court Square  
Long Island City, NY 11101

Dear Dean Bilek,

On December 7th, the City University of New York emailed the Presidents of all of its Colleges giving them the option to extend the Spring 2020 Special COVID-19 Flexible Grading Policy (Spring 2020 CR/NC Policy) to the Fall 2020 semester. The previous decision by CUNY Central to have a mandatory grading policy should not be changed. However, if the policy must be amended it should be amended to an optional pass/fail policy (“Opt-In”), rather than a mandatory pass/fail policy (“P/F”). Another semester of P/F will negatively impact the students and in due time will show that it is not in their best interests as law students and future graduates.

CUNY Law should abide by the decision of CUNY Central at the beginning of the semester declaring that a P/F system cannot be extended to the Fall 2020 semester. As will be discussed below, students relied on that decision when it was made as final, and there has been no change in circumstances or new factors that warrant a different decision. Additionally, the P/F system should not be extended because 1) P/F is a breach of the contract students signed when they enrolled in CUNY Law; and 2) P/F severely hinders students from obtaining jobs post-graduation. We, as CUNY Law students, request the right to choose the outcome of our own legal careers, by implementing an Opt-In grading system where students may choose whether they wish to receive letter grades or P/F.

**I. STUDENTS RELIED ON THE DECISION THAT THE SCHOOL’S P/F POLICY WOULD NOT BE EXTENDED TO THE FALL 2020 SEMESTER.**

At the beginning of the semester, José Luis Cruz, the Executive Vice Chancellor and University Provost, sent a letter to Dean Bilek with the decision to not extend the School of Law’s special P/F policy to the Fall 2020 semester. In particular, the letter stated:

“While I applaud the participatory process that led to the faculty vote, I regret to inform you that the discretion afforded by the Board to the Chancellor — under the March 30 “Special COVID-19 Grading Policy” — to extend the School of Law’s special P/F policy cannot be exercised in support of the vote, inasmuch a review of the policy reveals that said discretion was predicated on the policy “comport[ing] with norms of legal education” that were in effect at the time but have changed as we head into the Fall term. Similarly, please note that the current New York re-opening public health policies, led to not extending into the fall semester the “Special Covid-19 Credit/No-Credit Policy” approved by the Board for all CUNY colleges other than the School of Law and School of Medicine.”

Dean Bilek then forwarded this letter to the entire student body. Thus, we all went into the semester with the expectation that we would be receiving letter grades. We relied on this decision as final, and adjusted our lives accordingly. We were not made aware that this decision might be changed at a later date, and this is to our detriment. If students knew beforehand that this decision would again be up for debate, a number of students would have chosen to transfer, as evidenced by the students who already chose to transfer when P/F was adopted for the Spring 2020 semester. Now, for those students who relied on this decision as permanent, the option to transfer to another law school for a legitimate degree is off the table. Inequity is on full display for those students who have paid for an illegitimate degree, in addition to now having no way of transferring out since many schools, including CUNY Law do not transfer P/F courses.

## **II. THERE IS NO “STATE OF EMERGENCY”.**

Members of the student body argue that the need to again force the P/F policy onto unwitting students for the Fall 2020 and Spring 2021 semesters is due to “emergency”, however this argument fails to address that the current state of the pandemic is not news per se. When the decision to implement traditional grading was established this past August, the entire country, including the State of New York Department of Health, were already privy to CDC COVID-19

data which projected a rise in cases in the fourth quarter of the year.<sup>1</sup> The current situation is not nearly as unforeseen as those who fail to accurately assess the circumstances would believe. There are no new or additional facts to consider, and the newly surfaced deliberation posed to force CUNY Law into implementing the damaging P/F policy is ultimately baseless and a waste of both school resources and time.

### **III. EVEN IF THE ORIGINAL POLICY MUST BE AMENDED, THE ONLY VIABLE ALTERNATIVE IS AN OPT-IN SYSTEM.**

A decision to implement P/F does not support equity among students, however equity cannot truly exist unless there is freedom of choice for all students. Opt-In allows students the choice between letters grades or P/F, while P/F mandates a specific, restricted outcome. CUNY Law cannot impose another semester of P/F as such an oversimplified grading system breaches the school's duty to students who rely on letter grades to become hired attorneys. CUNY Law's Career Planning Office presented on the different types of grading policies, concluding that P/F for an additional semester will make CUNY Law graduates appear less competent to potential employers. There are two primary reasons why CUNY Law cannot implement P/F for the Fall 2020 semester: 1) P/F is a breach of the contract students signed when they enrolled in CUNY Law; and 2) P/F severely hinders students from obtaining jobs post-graduation.

#### **A. P/F IS A BREACH OF THE CONTRACT STUDENTS SIGNED WHEN THEY ENROLLED IN CUNY LAW.**

A mandatory P/F system directly infringes the terms both CUNY Law and students have agreed upon. As with any contract, there was an offer, where all students were offered admission prior to enrollment. Students accepted that offer when they enrolled and gave consideration by paying tuition. The ability to be graded on performance is clearly included under the initial terms of the contract, a term that was material to the decision to enroll as it is material to gaining employment after graduation.<sup>2</sup> Of course, when students enrolled in 2018 and 2019 there was not the factor of the pandemic. However, the sudden need for a P/F system is no longer applicable. Therefore, an amendment to the contract allowing Opt-In grading is a more appropriate response as opposed to P/F. Had the school advised prospective students that they would not be graded for

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<sup>1</sup> CDC- Centers for Disease Control and Prevention: Novel Coronavirus Reports

<sup>2</sup> *CUNY School of Law Handbook*, Section V Grading and Evaluations, Pg. 32-40,

[https://www.law.cuny.edu/wp-content/uploads/media-assets/student\\_handbook\\_2019-20\\_09182019.pdf](https://www.law.cuny.edu/wp-content/uploads/media-assets/student_handbook_2019-20_09182019.pdf).

multiple semesters, while other law schools are awarding letter grades, a considerable amount of students would have chosen not to enroll.

Students spend a great deal of money on tuition to attend CUNY Law (or take loans placing them in debt). Tuition was even raised this year, and what will they have to show for it once they graduate? Their degree might be considered illegitimate with P/F on it for two, potentially three, semesters. Why are they spending money to go to a school for a degree that will potentially not yield a job? Transferring would seem to be the only viable option for some students, allowing for them to obtain a legitimate degree at another law school with a more accepted grading system. However, as CUNY Law made the decision for a P/F grading system at such a late date, transferring is no longer a viable option as most law school transfer deadlines have already passed. Furthermore, transferring for the Spring 2021 semester is not an option considering most schools, including CUNY Law, do not transfer P/F courses. Inequity is on full display for those students who are now paying for an illegitimate degree, in addition to having no way of transferring out.

**B. P/F SEVERELY HINDERS STUDENTS FROM OBTAINING JOBS POST-GRADUATION.**

Law school grades are essential to future employers in determining the credentials of graduates seeking employment. If almost half of a graduate's transcript consists of mere Ps or Fs, it is difficult, almost impossible, for the employer to evaluate the graduate's competency. More importantly, nearly every other law school in New York State has returned to traditional letter grading systems, and CUNY Law students will inevitably be compared against students from other law schools. CUNY Law graduates will be detrimentally disadvantaged if they are once again deprived of obtaining the letter grades they earn in law school. It is outrageous any school would enact a policy which damages students' opportunities for employment.

CUNY Law argues that grades are meaningless in the public interest sector, however, if grades are truly meaningless, there would be no need for a push to move to a P/F system. Additionally, even if that were true, not all CUNY Law graduates will work in the legal services field. Some will work at civil rights firms, others will pursue government employment, and still others will work to diversify more commercial aspects of law. These students will be penalized by a P/F system, which is inherently unfair. We recognize that not all students at CUNY Law will be hurt by the P/F system, but many students' job prospects will be diminished absent the

opportunity to obtain letter grades. Students of color will be particularly harmed by P/F, considering grades are often the deciding factor for people of color in securing post-graduate employment. Once again, it is clear that inequity is on full display under a mandatory P/F system.

Those arguing for P/F assert that it is in furtherance of the school's mission "in service of human needs", but in reality that is not true. P/F works against this mission in two ways. First, employers will be unable to evaluate a student's ability to interact and engage with the doctrine they have learned in school, the same doctrine that guides lawyers to serve the needs of their clients. Second, the students themselves will not be able to measure their own progress, which will have a detrimental effect on their ability to help their clients. To fulfill the true service of human needs, both students and employers require a structured grading system that accurately describes the students' proficiency in law. P/F is in direct opposition to CUNY Law's mission because students will be negatively impacted in their job search, which is precisely how they exercise their ability to help their clients.

Some CUNY Law students have been misled to believe that an Opt-In system will deem those who have chosen P/F as unfavorable to employers, as opposed to those who have chosen letter grades. However, this is inaccurate, as employers have no means to compare CUNY Law students against each other on the basis of their chosen grading system. Additionally, if these few students believe that the Opt-In system would lead to a disproportionate treatment by potential employers, then they must also accept that imposing P/F on all students harms all CUNY Law graduates seeking employment. The harm will be amplified by graduates from other law schools who will obtain letter grades and therefore hold an advantage. The hypocritical reasoning supporting CUNY Law's position of supporting a P/F system for the Fall 2020 semester is not valid when the decision has such a detrimental effect on the future of students.

## **CONCLUSION**

The elected grading policy for the Fall 2020 semester was a mandatory traditional grading system. Students relied on the policy when starting the Fall semester and did not anticipate the system changing. Additionally, there is no state of emergency, as the current state of COVID-19 was predicted by the CDC. Lastly, even if the original grading policy must be amended, the alternative can be an Opt-In system. P/F unjustifiably and unreasonably harms students. The circumstances of the pandemic, which influenced CUNY Law to implement P/F in

the Spring 2020 semester, are anticipated to continue into the Spring 2021 semester. Therefore, it is highly probable the harmful P/F policy will extend to a third semester, which would amount to half of a full-time-law-student's legal education. As explained above, the implementation of a P/F system breaches the contract students and CUNY Law agreed to upon enrollment. Many students are relying on grades to distinguish themselves for employment. Additionally, CUNY Law's Career Planning Office has established that employment opportunities will be hindered by a mandatory P/F policy. In consideration of the foregoing reasons, we respectfully request the administration deny a mandatory P/F grading system and allow for an Opt-In system that lets students have the opportunity to receive grades.

Kind regards,


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*& all CUNY students who would rather remain anonymous.*