

Report of the Purdue University Global Concord Law School Working Group



February 15, 2023

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Introduction

Purdue University has submitted a comprehensive and thorough package of materials in support of its request that Indiana allow graduates of the Concord Law School at Purdue University Global (“Concord”) to take the Indiana bar exam. Although Concord is accredited by the State Bar of California, it is not eligible for ABA accreditation because for among other reasons, it is a completely online law school. In conjunction with its request, Purdue has drafted narrowly tailored proposed amendments to the Rules of Admission and Discipline that will allow graduates of non-ABA accredited, Indiana-based online law schools approved by a state, regional, or national accrediting agency to sit for the Indiana bar exam. Concord is currently the only law school that falls within this category.

Purdue not only touts the quality of Concord’s academic programs, but also asserts that approval of the rule amendments will enhance access to an affordable legal education for Indiana residents. By allowing graduates of Concord Law School to sit for our state’s bar exam, Purdue contends that Indiana will create more opportunities for vast numbers of Hoosiers who do not live near or have the flexibility to attend a campus-based part-time law school. Purdue also argues that expanding legal-education opportunities for those whom a traditional, in-person legal education is not a viable option may increase the availability of legal services in underserved communities throughout the state.

Following preliminary consideration of Purdue’s request, the Supreme Court established the Purdue University Global Concord Law School Working Group to evaluate the matter and report back to the Court with its findings and recommendations.

After hours of witness testimony and debate, the Working Group was unable to reach consensus on Purdue’s proposal. We, however, were able to reach relative agreement on the pros and cons of allowing Concord Law J.D. graduates to practice law in Indiana after passing the bar and fulfilling Indiana’s character and fitness requirements.

This report contains a summary of the Group’s findings, including the above-mentioned pros and cons, along with a series of recommended proposals that the Court may want to adopt as a condition to approving the request.

Respectfully Submitted,

Hon. Nancy H. Vaidik
Working Group Chair

Members of the Working Group

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Description of the Process

The Supreme Court established the Purdue University Global Concord Law School Working Group to evaluate Purdue's request that graduates of its law school be eligible to sit for the Indiana bar examination.

Over the past six months, the Working Group held three in-person meetings and three remote Zoom meetings. The in-person meetings took place in the Supreme Court conference room in the Statehouse after public notice and with public access. The Working Group invited a broad cross-section of presenters to appear and share their views. The Working Group thanks the following individuals who briefed the Working Group and provided valuable information and insight that it considered in analyzing Purdue's request that graduates of the Concord Law School be allowed to sit for the Indiana bar examination:

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The Status of Online Legal Education

Online legal education has exploded in recent years—especially post pandemic—and is here to stay. Prior to the pandemic, the ABA approved several hybrid online JD Office of Admissions & Continuing Education programs, including online programs at Hamline-Mitchell School of Law, Syracuse University College of Law, and Suffolk University School of Law. Even our own IU McKinney School of Law recently announced a part-time hybrid program. These programs are not fully online and require a varying degree of residency requirements.

Just this past year, St. Mary’s University School of Law in San Antonio, Texas became the first ABA-accredited law school to obtain approval from the ABA to offer a JD program fully online. The program launched in the fall of 2022 and is limited to admitting approximately 25 students per year until at least 2026. In addition, a fast-growing number of ABA law schools are now offering LLM, Masters, and Certificate programs completely online. Because the ABA accredits only JD programs, the schools are not required to obtain ABA approval for these graduate degree programs.

Several sources have noted that online programs are the future of legal education. For example, The Online Jurist, a special online supplement published by the National Jurist, notes that “[t]he Covid-19 pandemic pushed online legal education into the mainstream and solidified it as the future.” Additionally, the Director of The Law School Survey of Student Engagement (LSSSE), which is part of Indiana University’s Center for Postsecondary Research (in the School of Education) devoted to studying the student experience, made the following observation in the LSSE’s 2022 Annual Survey:

Widespread usage of a robust and satisfying form of online legal education is one of the most impressive outcomes to emerge from the shadows of the pandemic. This 2022 LSSSE Annual Report details just how accessible and successful online education has been. **For instance, the vast majority of law students (75% or more) are comfortable with nearly all features of online education, from interacting with faculty and classmates to taking final exams. This comfort leads to excellent learning outcomes, with almost 90% of both online and in-person students agreeing that they are learning to think critically and analytically.** Additionally, students are particularly eager to participate in class discussions and ask questions in online courses, with marked gender inclusivity compared to in-person classes. I was also thrilled to find high rates of overall satisfaction with legal education, which are not only consistent with years past but also equivalent for both online and in-person students.

....

Online education is here to stay. LSSSE data reveal that half (50%) of all law students this past year enrolled in at least one course that was mostly or entirely online. Even after most students, faculty, and staff have returned to campus, various forms of online instruction endure.

The Working Group also interviewed four recent law-school graduates and one current Indiana law student, each of whom had experienced a mixture of in-person and online instruction during their time in law school. Although these interviews generally reinforced the overall preference for in-person instruction, some of the feedback about the online experience was very positive.

Concord Law School’s Place within the Structure of Purdue University

Purdue University established Purdue University Global in 2017. Approximately one year later, in March 2018, Purdue Global purchased Kaplan University, including its Concord Law School. Purdue Global is maintained as a separately accredited entity within the Purdue University system. It is accredited by the United States Department of Education, the Higher Learning Commission, and the Indiana Commission for Higher Education.

About the Law School

Concord Law School was established in 1998 as the nation’s first fully online law school. Over the course of its almost twenty-five-year history, Concord Law School has graduated more than 1,500 students from its part-time JD program and more than 900 students from its non-licensure Executive JD program.

In August 2020, Concord received programmatic accreditation by the Committee of Bar Examiners of the State Bar of California, making the school’s graduates eligible to sit for the California bar examination. Because Concord is not a traditional fixed-facility, brick-and-mortar law school, it is not eligible for ABA accreditation, which prevents its graduates from seeking first admission in every jurisdiction except California. But once a Concord graduate is admitted in California, they are eligible for admission in twenty-one other jurisdictions, with nineteen requiring the applicant to have actively practiced law under their California license for an established period of time.¹ Indiana is not one of those jurisdictions.

According to Concord’s website, the school has a faculty consisting of 8 full-time professors and 23 adjunct professors. These numbers are significantly less than the faculty size at most, if not all, ABA-accredited law schools.

Concord Law promotes legal access to justice. For example, it won the prestigious ABA Louis M. Brown Select Award for Legal Access for being the first online law school to create a legal incubator program. This program gives new lawyers access to mentors, resources, and legal and business training that assist them in both launching and maintaining solo practices in their communities. The emphasis of the legal incubator program is to keep overhead low to facilitate “low bono” services to modest means clients. Concord has also been awarded—by a well-known

¹ In Wisconsin and North Carolina, applicants can be licensed immediately after receiving their California law license. In the remaining 19 jurisdictions, graduates from institutions not accredited by the ABA may apply for admission once the graduated has been licensed in another state and has actively practiced law for some period of time.

global provider of legal publications—the Wolter Kluwers Leading Edge Prize for Educational Innovation.

Concord prides itself for its flexible online format that provides access to law school at a more affordable price for many nontraditional students, including those from historically underrepresented communities. For example, Concord’s total tuition for its fully online, part-time JD program is slightly less than \$50,000. By contrast, the in-state tuition for IU McKinney’s four-year, part-time ABA-accredited JD program, which is reasonable compared to many other ABA-accredited law schools, is nearly \$84,000.

Concord’s five-year cumulative bar examination passage rate for takers of the California bar exam was 53.3% in 2021 and 58.5% in 2022. It should be noted that the cut score on the California bar exam is 14 points higher than the cut score on the Indiana exam (278 instead of 264). Due to this difference, Concord points to studies that suggest its passage rate “would be roughly 10 percentage points higher” if their graduates had instead taken the exam in Indiana.

Concord has about a 50% attrition rate. Although the Working Group learned that this level of attrition is common among fully online programs of all levels, the financial impact on students of such attrition is concerning.

Regarding the quality of Concord’s online content, the Working Group had the opportunity to view both synchronous and asynchronous course content and to utilize formative and summative assessment tools. The Working Group concluded that the quality of both Concord’s content and its methods of delivery are good to excellent. Questions remain, however, about the quality of assessment of law student work, including final examinations, in a 100% online teaching and learning environment.

The Proposed Rule Amendments

Concord proposes revisions to Admission and Discipline Rules 13 (educational qualifications), 6 (admission on foreign license), and 17.1 (admission by transferred UBE score). As proposed, the rule amendments would currently permit only graduates of Concord Law School to apply to sit for the Indiana bar examination.

The proposed rule amendments would permit a person to apply to the Indiana bar if that person graduates from a school meeting the following three criteria:

1. The school is ineligible for ABA accreditation for the reason that it is a fully online program;
2. The school is located in Indiana or is part of a university located in Indiana; and

3. The school is accredited by a state, regional, or national body that accredits law schools.²

The Pros and Cons of the Proposed Rule Amendments

1. PRO: Remote Learning Will Continue to Play an Important Role in Law School Education

Online legal education is here to stay. Law schools, the ABA, and students are on board. The ABA has already provisionally approved St. Mary's University Law School to run an entirely online program—791 students applied for the 27 spots. Indiana can be a leader in the movement to shape what remote learning nationally will look like. The stars have aligned for Indiana to play this role. Purdue is willing to commit resources to this effort, and Concord's Dean, Martin Pritikin, is a big thinker who has committed his career to remote learning and access-to-justice issues. Together Indiana can be ahead of the curve.

2. PRO: Purdue University is a World-Renowned Institution

Purdue University is a major land-grant research university with a world-renowned reputation for academic excellence. It is a member of the prestigious Association of American Universities, whose membership is limited to only sixty-three of the nation's leading research institutions. Because Purdue has an outstanding academic reputation to protect, it is expected to commit significant resources to Concord Law School.

3. PRO: Concord Law School Offers High-Quality Legal Education

After viewing Concord Law School's synchronous and asynchronous course content, the Working Group concludes that the quality of the law school's educational programming is very strong. Long before the pandemic, Concord Law School employed best practices in online education. Indeed, Concord appears in the 2021 Princeton Review's inaugural list of best online J.D. programs.

And while Concord provides an excellent education, a graduate of the law school must still pass Indiana's bar examination before practicing in Indiana. This requirement assures a level of competence for Concord lawyers.

² In its recent analysis on the constitutionality of the proposed rule amendments, Purdue Global seems to suggest an amendment need not include the requirement that the school be accredited by a state, regional, or national body that accredits law schools. That is, the proposed rule amendments presented to the Working Group on February 7, 2023, is substantively different than the proposed rule amendments that the Working Group had been assessing since September. While realizing that the specific language of any potential rule amendments still needs to be addressed in the event the Court approves Concord's request, the Working Group believes that such language ("a body that accredits law schools") must be included in the rule proposal to be considered by the Court. The Indiana Higher Education Commission is not a law-school accreditation body.

4. PRO: Concord Law School is More Affordable

Legal education is not cheap. The cost of law-school tuition has skyrocketed over the past decade. Even the tuition for IU McKinney's part-time JD program, which is reasonable compared to many other law schools, is now nearly \$84,000. By contrast, the tuition for Concord's fully online, part-time JD program is just under \$50,000. Concord Law School's significantly lower tuition rates will make law school accessible for those Hoosiers who may otherwise be unable to afford an ABA-approved law school. Concord students would also not incur additional housing or transportation costs occasioned by a move or a commute.

In addition, if a student has moved (and perhaps moved the student's family) and incurs the substantial debt of even one semester at a traditional law school, it would be very difficult and costly for that person to abandon the course of study. The relatively low cost of Concord Law School allows a person to experience law school but retain the ability to withdraw without potentially devastating financial consequences if that individual ultimately decides not to pursue the study of law.

5. PRO: Concord Law School May Provide Access to Legal Resources in Underserved Areas

As discussed above, the ABA recently authorized St. Mary's University School of Law to offer the first ABA-accredited fully online JD program. In seeking approval for that authorization, St. Mary's cited the need for legal resources in parts of South Texas, particularly the McAllen-Edinburg-Mission metro area. Purdue advances a similar argument in support of its request, noting that Indiana ranks 42nd out of 50 states in terms of attorneys per capita. Hoosiers living in the northwest and northeast parts of the state and the entire southern quarter of the state have no nearby in-state law-school options. And these areas are the ones that tend to have the highest levels of underrepresentation of lawyers.

Currently, Concord graduates have a median age of 43, work full time, and live outside the commuting range for fixed-facility law schools. These statistics increase the likelihood that Concord graduates will remain in those underserved locations after graduation because they have already established a foundation there.

6. PRO: Concord Offers Convenience and Efficiency

Online classes are an efficient way to convey educational content and are highly convenient to students. These benefits were noted by each of the students the Working Group heard from. In addition, online learning often allows the student to spend more time getting familiar with the concepts being taught. Many of the students we heard from reported the benefit of being able to rewatch lectures. Moreover, the flexibility of working on one's own schedule may be the only way some students can acquire a legal education.

7. PRO: For Certain Students, the Type of Education Concord Provides Is Ideal

For a variety of reasons, including geography and cost, many prospective students are unable to

attend a fixed-facility law school in Indiana. By allowing graduates of Concord to sit for the Indiana bar exam, the Court would remove obstacles for these students to seek admission to the Indiana bar.

8. PRO: Concord Law School has a Diverse Student Body and May Increase Diversity of the Indiana Bar

Concord Law School attracts a diverse student body. Nearly 60% of the law school’s students identify as non-white. While the demographics of California differ significantly from Indiana, a more flexible, less expensive avenue to obtain a J.D. degree may increase diversity in the Indiana bar in terms of race and socioeconomic status.

1. CON: The Proposed Rule Change May Not Make a Substantial Impact in Improving the Delivery of Legal Services to Underserved Hoosiers

Concord estimates “30–40 [Indiana resident] enrollments per year, with half of those coming from rural areas.” While the remaining potential students may come from underserved urban areas such as Lake, Porter, Laporte, Allen, or Vanderburg Counties, the number of graduates is small. This estimation coupled with the attrition and bar passage rates, the numbers of lawyers generated may be minimal.

The availability of obtaining a fully online legal education could be just one aspect of addressing the lawyer shortage and the lack of diversity in Indiana’s bench and bar, however this alone will not solve the problem. The committee unanimously agrees much more needs to be done.

2. CON: Potentially Adverse Impact on Bar Passage Rates

The following factors may contribute to lower Indiana bar exam passage rates:

a. Lower Academic Credentials

Concord Law School’s admission standards are not as selective as Indiana’s three ABA-approved law schools. According to Concord, its 2021 entering class has a UGPA profile of 3.5 (75th percentile), 3.1 (50th percentile) and 2.7 (25th percentile). These numbers, according to an analysis of the ABA Standard 509 Reports that ABA law schools must submit annually, are significantly lower than those for Indiana’s three ABA-approved law schools. Even IU McKinney’s 2021 entering class for its part-time program—with a UGPA profile of 3.83 (75th percentile), 3.38 (50th percentile) and 3.01 (25th percentile)—far outpaces Concord Law School’s entering class.

b. Lack of Information Regarding LSAT Scores is a Concern

Concord Law School does not generally require applicants to take the LSAT as a condition of admission; it instead requires every applicant to take a free, 40-question online exam that reflects the format and substance of the LSAT. This is important because performance on the LSAT is likely still the best predictor of performance on the bar exam. A framework created by Professor David Frakt and employed by the organization Law School Transparency assessed the risk of bar exam failure based on LSAT performance. Bar applicants with LSAT scores between 120-144 were found to be at “extreme risk of bar exam failure,” between 145-146 were at “very high risk of bar failure,” and between 147-149 were at “high risk of bar failure.” Only applicants with LSAT scores of 156 and above were considered to be at “minimal risk.” This predictor scale is consistent with pass rates we have seen from applicants who sit for the Indiana bar exam. An LSAT score can provide important information to potential consumers of legal education.

c. Part-Time Students Tend to Perform More Poorly on the Bar Exam

One of Concord Law School’s strengths is its ability to provide a legal education to students who cannot attend law school in-person due to work, family responsibilities, location, military service, physical disabilities, or other reasons. It is also likely, however, that a disproportionate number of these non-traditional students will be unable to take a lengthy period away from work or family responsibilities to study for the bar exam. Data collected both nationally and by IU McKinney shows that students who must work while preparing for the bar exam tend to perform more poorly than their peers who can devote all of their time and energy studying for the test.

d. California-Accredited Law Schools, including Concord Law School Perform More Poorly on the Bar Exam

California-accredited law schools consistently post lower bar passage rates than ABA-accredited schools. For example, on the July 2022 bar exam, 73% of first-time bar examinees from in-state ABA-accredited law schools passed the California bar exam and 69% of first-time bar examinees from out-of-state ABA-accredited law schools passed the California bar exam. The figure was less than half (30%) for first-time test takers from California-accredited law schools. In the most recent published statistics, Concord’s five-year cumulative bar examination passage rate was 53.3% in 2021 and 58.5% in 2022. These figures place Concord in the lower half of the eighteen California accredited law schools. Attached as Appendix A is a statistical breakdown of Concord’s bar exam passage rates from 2003–2022.

3. CON: Lack of Faculty Resources

Concord Law school appears to have significantly fewer faculty resources than Indiana’s three

ABA-approved law schools. Given the heavy reliance on part-time faculty, Concord would not be able to satisfy ABA Standard 402, which requires a law school to “have a full-time faculty to enable the law school to operate in compliance with the Standards and carry out its program of legal educations.” According to Concord’s website, it has a faculty consisting of only 8 full-time professors and 23 adjunct professors. By contrast, according to the ABA Standard 509 Reports, IU Maurer has 53 full-time and 61 part-time faculty members, IU McKinney has 43 full-time and 102 part-time faculty members, and Notre Dame has 58 full-time and 55 part-time faculty members.

4. CON: Less Support for Potentially Vulnerable Students

Community is an important part of legal education. The loss of the law-school community for Concord students could translate into several disadvantages for first generation, historically underrepresented and more introverted or socially inept law students, including less academic support with outlines, study groups, etc., less awareness of and access to internships, externships and employment opportunities, and less frequent interaction with practicing attorneys and judges through law-school networking events which would hamper students in their attempts to build their professional network. Although Concord has online chat rooms, extracurricular programs such as moot court, and online access to faculty, in-person interaction is an important part of the law-school experience.

5. CON: The Indiana Board of Law Examiners Does Not Have the Expertise or Resources to Make Accreditation Decisions

Concord is not an ABA-accredited law school. Indiana has relied on the ABA for accrediting decisions for decades. ABA accreditation ensures quality-controlled education—it has a proven track record. Indiana lacks the resources to oversee a law school as the ABA has.

6. CON: Potential Character-and-Fitness Issues

Although it is unclear how many Concord Law School graduates would eventually apply to sit for the Indiana bar, historically speaking, the graduates of lower tiered ABA-accredited schools composed an outsized percentage of applicants who presented with character-and-fitness issues. The Board of Law Examiners and its staff devote considerable resources to assessing and addressing character-and-fitness issues. Allowing graduates of a non-ABA accredited school to sit for the bar could conceivably require considerable additional work on the part of the BLE and its staff.

7. CON: Potential Legal Challenge

There are potential United States Constitutional issues allowing Indiana-based unaccredited law-school graduates to sit for the Indiana bar examination.

Recommended Preconditions to Any Approval

If the Court is inclined to approve Purdue's request to amend the Rules of Admission and Discipline so that Concord Law School graduates are eligible to sit for the Indiana bar exam, the Working Group recommends that such approval be subject to the following conditions. It is the consensus of the Working Group that these conditions will better ensure that Concord Law School students have a high-quality professional educational experience.

1. The Indiana Supreme Court must be assured that there are no constitutional issues with the implementation of this rule change.
2. Require Concord Law School to change its name to Purdue University Global Law School. This change will maintain Purdue's incentive to devote substantial resources to the law school because its outstanding reputation for academic excellence will be on the line. And Concord would more visibly be seen as "part" of Purdue.
3. Require Concord Law School's approval be provisional for a stated period of time so that the Court and the Office of Admissions and Continuing Education can monitor student outcomes and bar passage rates before the law school is granted permanent approval.
4. Impose a limit of 50 students for each entering class of students intended to practice in Indiana during the period of provisional approval.
5. Require students applying for admission to take the LSAT or another exam that is shown to predict whether a student will pass the bar.
6. Make continued approval of Concord Law School contingent upon a 75% bar passage rate for its graduates who sit for the Indiana bar exam within two years of graduation.
7. Require newly enrolled students who intend to sit for the Indiana bar examination to attend a one-week orientation or instructional session on campus at Purdue University-West Lafayette.
8. Require students who intend to sit for the Indiana bar examination to spend one long weekend annually in residence at Purdue University-West Lafayette.
9. Require a law-school staff member to be dedicated to overseeing an Indiana-based externship program.
10. Require the law school to expand its legal incubator program to include the state of Indiana.
11. Ensure any rule change does not limit any of the three ABA-accredited Indiana law schools from creating their own fully online law-school program should they choose to do so.
12. Ensure that only J.D. graduates are eligible to sit for Indiana's bar exam.

13. Require Purdue University Global to commit to marketing the law school in Indiana's underserved areas and communities, including so-called legal deserts.
14. Require Concord Law School to design a pre-admission, part-time CLEO-like program to assist Indiana's minority, low-income, and educationally disadvantaged students. Concord has applied for a grant from AccessLex to assist with the funding of such a program. Even if the law school does not receive the grant from AccessLex, Purdue University Global should commit to funding such a program.
15. Ensure that students who do not complete the J.D. program and withdraw but successfully complete a certain number of credits are able to earn a paralegal certificate (or something similar) so that they may still be able to secure a paralegal job or other law-related position.
16. Require the law school to provide prospective and current students with a copy of a consumer protection report that is similar to the ABA Standard 509 Form. Attached as Exhibit B is a list of the disclosures required on ABA Standard 509 Form.