

6 December 2012

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Comments on the Contract between Pearson, Inc. and Rutgers University

On 17 September 2012, Rutgers entered into a contract with Pearson, the self-described “world’s leading education company.” The agreement pertains to on-line degree programs, establishing a rubric under which Rutgers should develop such programs and Pearson should manage them. This memo does not take a position with respect to the advisability or quality of on-line teaching as general matter. Rather, I address specifics of the Pearson contract and of the ancillary contracts envisioned between the University and its on-line instructors. Certain clauses – and the overall process by which they were written – make online education much less beneficial than it might otherwise be.

A Rutgers degree of dubious worth

No one can predict the currency of degrees earned fully on-line. Employers may discount them due to prejudice or due to concerns regarding fraud. Virtual instruction cannot avoid the first issue. The question of fraud, however, arises because Rutgers appears to have negotiated ineffectively with Pearson. Pearson only offers one service that Rutgers could not conceivably develop on its own: testing centers distributed nationwide and globally. Each center verifies a student’s identity when he or she takes an exam, screening out hired impersonators. But the contract does not allow Rutgers to use these facilities. Instead, Pearson will provide a product called ExamGuard. As sketched in the contract, this “secure exam delivery functionality ... lock[s] down the operating system on a user’s laptop or desktop computer allowing access only to the online exam” (p. 4). Although effectively hacking the student’s machine, ExamGuard appears to exert no effect on the student’s friend’s computer or on printed course materials. The Rutgers-Pearson firewall works about as well as the Maginot Line. In sum, exams in programs managed by Pearson will operate as both open-book and masquerade-tolerant.

A threat to academic freedom

Up to now, Rutgers has honored the principle of academic freedom: faculty can teach material they choose in the style and with the language they choose. Only hate speech falls outside this guarantee. The Pearson contract, however, prohibits a number of additional forms of speech in the on-line classroom. The document specifically bans “obscene, threatening, indecent, libelous, slanderous, [or] defamatory” content (p. 7). Nowhere does the contract define these terms. One wonders if or how the administration would guide instructors in the avant-garde. Would the films shown in, say, “Sexuality and eroticism in global perspective” (Anthropology 222) pass a decency test? Such ambiguous forms of censorship may well exert a chilling effect on the teaching of subjects ranging from gender to terrorism to banking.

A cheap workforce of course managers

The administration of Rutgers has pursued on-line teaching transparently as a means of raising revenue without raising capital costs. Less evidently, it also appears to be structuring on-line instruction so as minimize added labor costs. The impetus for this shift – towards a secondary staff of course managers – appears to come from Rutgers, rather than from Pearson. The ancillary contract between Rutgers and instructors suggest a two-step process. A tenure-track professor develops the digital materials for an on-line course while teaching it in the first term. Then part-time lecturers or other contingent employees administer the course in subsequent terms. Such a sequence would seem to violate the original instructor’s right to intellectual property, a right acknowledged in the “Draft letter agreement for online course with full-time faculty.” The same document, however, waives that entitlement. “[Y]ou hereby grant to Rutgers,” the document alerts faculty, “... a perpetual, royalty-free license to use Course and all Course materials for its educational purposes ...[T]his license specifically includes the right to have the course taught by others and to modify and/or amend the Course materials ...” (p. 2). The text does not indicate exactly where these legal terms will lead. Undoubtedly, they make possible the employment of a large cadre of course managers – an uncreative workforce disseminating pre-recorded lectures and pre-written exams. If deployed, this clone army would cost little and generate an ever-increasing proportion of the university’s instructional income. The contract anticipates enrollment in excess of 60,000 on-line students (p. 11). What sort of faculty – in what sort of university - would we become?

A university governed corporate-style

The answer to the second part of the question is already becoming clear. In its discussions with Pearson, the administration hardly consulted with faculty or even with deans. Here, Rutgers has operated entirely outside the rubric of faculty governance. The university is capable of acting in a more participatory fashion. Remember Transforming Undergraduate Education, the robustly consultative process of remaking the schools in New Brunswick. In going on-line, however, Rutgers appears to be choosing a different path. Perhaps the administration anticipated the foregoing criticisms. Perhaps, it additionally felt embarrassed about Pearson’s initial 50% cut of revenue – money that might otherwise pay instructors. The university is sharing even more than money with Pearson, Inc. In September, executives and lawyers cemented a corporate partnership, one that leaves less and less space for the Academy we inhabit.