

Rutgers University Senate

**Instruction, Curricula and Advising Committee
Report on Charge S-1413**

Charge S-1413 - Selection Process for Software Packages or Services of Significant Instructional

Impact: Using the most recent Pearson contract as a case in point, review the process by which large contracts that have the potential to seriously affect curricular or academic areas of the University are awarded. How are final bidders selected, and by what criteria are choices made? How are specifications determined for components/needs? How do we ensure that faculty preferences and pedagogical priorities are included in the consideration of such packages? Respond to Senate Executive Committee by March 2015.

This charge to the Senate Instruction Curricula and Advising Committee stems from expressed concerns about the process through which major contracts for instructional services or platforms are awarded. Since the Committee was instructed to use the most recent Pearson contract as a case in point, at their January 23rd meeting, ICA met with Richard Novak, Vice President of Continuing Studies. The primary focus of the meeting was the process leading up to, and subsequent awarding and implementation, of the *Managed Online Programs Agreement between Rutgers University and eCollege.com* (the “Pearson Contract.”).

It should be noted that this contract was primarily for administrative support services and management—including marketing, recruitment, and retention--of certain online programs; it was not a software contract *per se*. It is separate from the eCollege contract which is a standard Course Management System (CMS) platform contract.

Background

Originally several Rutgers professional schools were approached by 2U (<http://2u.com/>), an educational technology company that partners with programs at universities to offer a platform, as well as services, for graduate online degree programs. 2U was only interested in the management of specific online degree programs. While nothing came of those overtures, it did lead to internal discussions which eventually resulted in an RFP for the management of new Rutgers online programs.

RFPs that had been developed for these kinds of services at other institutions served as a model for the Rutgers RFP.

The Selection Committee

A committee was put together that consisted of 15 staff, administrators, and faculty from all three campuses that had expertise with different programs and were familiar with best practices in online/hybrid learning. It may have been the largest committee that Purchasing ever used.

Committee membership was approved by Executive Vice President Dick Edwards and also was reviewed by University Counsel who excluded some members based on potential conflict of

interest with potential bidders. Because he managed the eCollege Pearson contract, Rich Novak served as a non-voting member of the committee.

Proposal Review

At this point, Purchasing took charge of the process. The Committee reviewed the twelve proposals received; two did not meet certain benchmarks and were not considered. From the ten remaining, seven vendors were selected to come in and give a presentation on their services and what solutions they would offer to ensure the growth of Rutgers online programs. Two vendors were then brought back for a second round of discussions. The decision was that Pearson be awarded the management contract.

There were then several months of negotiations. While the contract was based on the RFP, items not actually in the RFP were added to the contract in the process of negotiation. The Rutgers negotiating team consisted of Purchasing, David Finegold, who was then the Vice President for Continuing Education, Rich Novak, and the University Attorney.

The completion of negotiations coincided with a new University President. So President Barchi had to be brought up to speed before the contract could be signed. In all, the process took about 22 months.

The Contract

Concerns were subsequently expressed, particularly by the Rutgers New Brunswick Graduate Faculty, about several aspects of the Pearson contract. Specifically there were concerns about intellectual property rights, and about contract language that smacked of censorship and lack of academic freedom. There was also concern about a perceived lack of faculty input.¹

Novak pointed out that the contract is specific in stating that all academic decisions belong to Rutgers. Intellectual property that Pearson brings in they continue to own; intellectual property the Rutgers brings in they continue to own. The contract acknowledges that materials developed by a Rutgers faculty member are owned by that faculty member. This is in line with Rutgers practice and the Rutgers Copyright policy.²

¹ Minutes, Eighty-fourth Meeting of the Faculty of the SAS. December 12 2013.

<<http://sas.rutgers.edu/documents/meetings-schedules-documents-and-minutes/faculty-meeting-minutes/749-sas-faculty-meeting-minutes-12-12-13-draft/file>>

² **50.3.7 COPYRIGHT POLICY. III. OWNERSHIP, RIGHTS, AND RESPONSIBILITIES OF COPYRIGHT**

“This policy reaffirms the faculty’s rights to retain copyright ownership to the scholarly and artistic works they create, such as books, monographs, journal articles, musical compositions, and artwork, in whatever format they are created, print or electronic, without regard to the extent (*sic*) of university resources involved in the creation of these works.

Faculty, teaching assistants, and graduate assistants also own copyright to pedagogical materials, including materials in electronic format or posted to a website, that they develop in the regular course of their teaching duties using resources ordinarily available to all or most faculty members (as described in the section of this policy concerning Use of Substantial University Resources). Copyright to works created by a teaching assistant or graduate assistant at the direction of a faculty member or the university typically will be owned by the faculty

If a faculty member leaves the University, they still own their course materials and are free to use them elsewhere. The materials can be exported from the system and given to the faculty member.

About 10 percent of the online courses—primarily courses being offered as non-credit continuing ed--have been developed as work for hire. In those cases the developers have a standard “work for hire” contract and Rutgers owns the rights to those course materials.

Some faculty have also expressed concern that a third party outside of Rutgers now has ready access to materials developed by Rutgers faculty. However, Novak noted that the reality is that there is much more Rutgers content in the standard course management systems, Sakai, Blackboard, and eCollege, than there currently is in the courses managed under this contract.

Another portion of the contract that has raised concern is section (b) under “Restrictions:”

Rutgers and its authorized users shall not use the LearningStudio to... (b) transmit, display or store infringing, obscene, threatening, indecent, libelous, slanderous, defamatory or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights³

There is concern that this gives Pearson the right to remove materials it deems offensive from a course site, and is a violation of academic freedom. However as Novak pointed out that there is a similar indemnification clause in all technology contracts at Rutgers.⁴

Current Status

There are currently about 15 Rutgers online degree programs being managed by Pearson, with another two or three in the pipeline. These are mostly graduate/professional programs; the first undergraduate program, a BA in Business Administration, was recently approved for the Rutgers Camden Business School. Depending on the semester, there are 1,000-2,000 students enrolled; about 45 percent of the online enrollment consists of on campus Rutgers students.

In the 22 months that it took to complete the initial contract, the market became very competitive and the delay probably did cost Rutgers a competitive advantage. Many of the programs that we

member or the university.” The full policy is available at: <http://policies.rutgers.edu/PDF/Section50/50.3.7-current.pdf>

³ *Managed Online Programs Agreement between Rutgers University and eCollege.com* p.7.

⁴ For example, Blackboard states in their general “Terms of Use”: “You agree that you will not:... (ii) upload, post, e-mail, or otherwise transmit any unlawful, threatening, libelous, harassing, defamatory, vulgar, obscene, pornographic, profane, invasive of another’s privacy, hateful, or ethnically, racially or otherwise objectionable User Content; ...You acknowledge that Blackboard does not pre-screen User Content, but that Blackboard shall have the right (but not the obligation) in its sole discretion to refuse or move any User Content that is available through any Channel. Without limiting the foregoing, Blackboard has the right to remove any User Content or CourseSite™ that violates the TOU or is otherwise objectionable.” <http://www.blackboard.com/Footer/Terms-of-Use.aspx>

began with are niche programs. Some of the multidisciplinary graduate programs that were originally planned have never been implemented as a result of the Graduate School vote to not participate in the Pearson managed program.

There have also been some unanticipated benefits to traditional programs as a result of the marketing for the online programs. For example, since Pearson began marketing the School of Public Affairs and Administration online program, applications for the on campus program have gone up 400 percent.

The University Strategic Planning Near and Long-Term Impact of Instructional Technology Committee

ICA asked Novak about the make-up and work of this Committee. The composition of this committee came out of the President's office. While the committee consists largely of faculty members there is a concern that there are very few representatives from the social sciences or humanities.

This committee <<http://universitystrategy.rutgers.edu/implementation/committee-instructional-technology>> is looking broadly at educational technology and how to enhance the use of technology in the classroom. It is not focused on online courses. The committee issued an interim report <<http://universitystrategy.rutgers.edu/files/webversionitc-interim-report-appendicespdf>> in April 2015.

Other Committees

The COHLIT Advisory Council was the group charged with overseeing and developing guidelines for online initiatives at Rutgers. This committee is currently on hold.

There is a new university-wide committee on accessibility in online and hybrid courses. This committee is working with Disability Services and will be looking at websites, classrooms, etc.

Faculty Participation in Decision-Making

Faculty participation in decision-making in regard to online education in general, and the selection of instructional technology programs and providers in particular, is an area of great concern. In our discussions, Novak pointed out that those Rutgers University staff members engaged in instructional technology work closely with faculty. The annual conference, which now has over 300 attendees, also gives those in IT the opportunity to find out faculty concerns and what they would like to be able to do that is not currently available.

However Committee consensus is that feedback is not really a substitute for having faculty and students involved in the process. There is a sense—justified or not—that those with the greatest stake in the outcome are not part of the discussion; that the process lacks transparency and accountability. This is something that a committee such as the COHLIT Committee might have remedied if they were a group that met regularly and disseminated the results of their discussions. The perceived lack of transparency is an issue; having a committee that consisted

largely of the primary stake-holders for educational technology—the faculty and students—that could focus on pedagogical priorities and the quality of the product would make a difference in how those stake-holders view the process and the result.⁵ More wide-spread stake-holder participation, as well as a different level of communication, might have gone far in alleviating some of the perceptions and reactions that resulted from the Pearson Contract.

⁵ In their discussion on selecting a new Learning Management System, Clayton R. Wright et al point out a number of reasons why a selection and implementation process might fail. Among the factors that might cause the process to fail are the lack of:

- *Organization-wide buy-in*
- *Stakeholder involvement* in the selection process.
- *Congruency with how instructors teach*
- *Recognition of the cultural changes required to achieve success.*
- *Due diligence* by the LMS selection committee to adequately address the needs and concerns of the potential users, verify the information provided by vendors and external experts, and ensure that the selected LMS can actually perform the tasks requested by users.

Clayton R. Wright *et al.*, "Selecting a Learning Management System: Advice from an Academic Perspective," *EDUCAUSE Review*, April 21, 2014. <<http://er.educause.edu/articles/2014/4/selecting-a-learning-management-system-advice-from-an-academic-perspective>>

Recommendations:

Whereas: It is the Committee contention that a standing committee consisting primarily of classroom faculty that would be regularly involved in reviewing issues and initiatives relating to educational technology is key to alleviating current concerns.

Be It Resolved That:

1. A standing committee, consisting primarily of faculty currently using educational technology in classroom instruction, be formed and charged with reviewing issues and initiatives relating to online education and, in the case of educational technology products or services of significant instructional impact, to participate in the process of developing RFPs.
2. The standing committee shall consist of:
 - a. Seven faculty members recommended by the University Senate. The Senate Executive Committee, with input from the Senate Instruction, Curricula and Advising Committee, shall submit names of ten appropriate faculty members to the University Administration who shall select seven to serve on the standing committee.
 - b. Two students currently serving on the Instruction, Curricula and Advising Committee.
 - c. Six members chosen by the University Administration.
 - d. Committee members should be representative of a variety of disciplines and have representatives from all four universities.
3. The standing committee should regularly solicit input on faculty and student concerns with educational technology.
4. Prior to any negotiations on the next online management contract, or other major educational technology application, there should be wide-spread solicitation of input from faculty, students and administrators about their needs and concerns.
5. Prior to an RFP for a major online/educational technology initiative being issued, it should be reviewed by the appropriate Senate committees. Those committees should expedite the review process and respond in a timely manner.
6. When major initiatives are in process, a transparency of communication on the part of the standing committee is critical. Such communication may include things such as the use of blogs, town hall meetings, and focus groups. Final vendor presentations for major online/educational technology initiatives should be open to the university community.