

OPM Subcommittee Executive Summary of the TLH Contract and Key Issues

Cori Brewster, Bill Grigsby, Nancy Knowles, and Kevin Roy, 24 Oct. 2019

Executive Summary of the TLH Contract

Contract Body: Wiley and EOU agree to exchange OPM services for seven years, effective May 24, 2019, at a [redacted] percentage of tuition revenues for “contract students,” all students enrolled in “contract programs” listed in Exhibit C. One goal of the partnership is increasing EOU’s online enrollments from 836 to 5,000 in ten years, and failure to grow to 1,443 by Dec. 2022 is reason to terminate the agreement. Further grounds for termination include EOU’s failure to deliver any promised programs in Exhibit C, with programs defined as requirements leading to credential. Among the contract’s assumptions is that only two parties are affected (Wiley and EOU), with EOU “retain[ing] sole control over its online content and instruction” and the two parties agreeing to indemnify one another against third-party legal action.

Exhibit A: Wiley will provide marketing, market research, enrollment management, retention services (including student satisfaction surveys and social networking sites), and, in consultation with deans, consulting to “align with best practices in online instruction.” In addition, Wiley will manage EOU’s online brand, including a website for the online environment resembling EOU’s, and will identify a variety of market research-based techniques to identify program opportunities (one of which involves ‘department stakeholder meetings and interviews’). EOU will make acceptance decisions based on information furnished by Wiley’s recruiting process. Success appears to be predicated on increasing enrollment and employment potential rather than on faculty disciplinary expertise and curricular development.

Exhibit B establishes EOU responsibilities and standard operating principles in administration, marketing, enrollment, retention, and programs and state authorization, including delivering thirteen new [programs](#) (listed in Exhibit C) that have not yet been vetted by faculty or approved through shared governance channels at institutional or state levels.

This section also addresses faculty training and “onboarding,” “systematic improvement plans for all existing programs, including a projective continual improvement plan for all new online courses,” and standardized LMS (course management system) roles and “expectations that allow for scale.” If EOU is not meeting retention benchmarks, instructional designers will review individual courses and make recommendations for “enhancing [. . .] the student experience” to be implemented “as deemed appropriate by Program faculty and staff.” The contract does not specify whether such review is triggered by course retention rates, programmatic retention rates, or institutional retention rates but states that an “SOP will be collaboratively developed to determine appropriate retention indicators for review and action.”

Exhibit C lists “contract programs” with a minimum of 30% course content online and new programs that EOU has promised to launch. Programs slated for a Winter 2020 launch have already been approved.

Exhibit D indicates that Wiley will provide minimal financial aid services before transferring students to EOU's Financial Aid Office, with a set of legal expectations.

Exhibit E lists the financial aid services provided by Wiley.

Exhibit F outlines the Partner Plus Program, which provides a 10% tuition discount (or equivalent scholarship) to any "contract students" supported by a partnering corporation.

Key Issues in the TLH Contract

- I. *What claims on faculty intellectual property are implied?* Although EOU administration assured stakeholders that TLH will have "view only," i.e. read only, privileges in Canvas shells, one of the contract assumptions is that EOU owns online content and instruction and has the right to give Wiley access, including "syllabi or pedagogic materials." However, faculty and students own online content that cannot be filtered from other "eContent." There are no limitations on the extent to which Wiley can commingle eContent authored by faculty and students as part of additional agreements or contracts with other entities. eContent includes data, which is also commingled intellectual property. Wiley and EOU have agreed to hold one another harmless in any third-party lawsuit, which would include faculty and student claims regarding infringement of intellectual property law.
- II. *Do faculty control the curriculum?* Exhibit C has promised Wiley 13 new [programs](#) outside the institutional and state curriculum process, and EOU rights within the contract are predicated upon delivering promised programs. This appears to be a direct violation of EOU's governing documents, including Board Statement No. 2 on Delegation of Authority, Board Statement No. 10 on Shared Governance, and the EOU Constitution.

The contract includes a job title "course writer." What will their qualifications be, who will select them, and how will their courses be identified? Will programs control which of their courses are written by outsiders?

In addition to apparently undermining the curriculum process and potentially inserting non-program personnel into the course-design process, Wiley will have broad powers to affect teaching:

- Wiley will make instructional recommendations "in consultation with the Deans and program representatives." Does "program representatives" mean chairs? What powers are being afforded them in this process? What criteria will be used? How much pressure will be exerted on faculty to make changes based on Wiley recommendations? How will these recommendations interface with the personnel process?
- If EOU does not meet to-be-agreed upon "retention indicators" (are these course, program, or institution?), Wiley will receive "review access" to individual courses, resulting in written recommendations "for institutional review and implementation as deemed appropriate by Program faculty and staff." At what level will the "institutional review" occur? What criteria will be used? How much pressure will be exerted on faculty to make changes based on

Wiley recommendations? How will these recommendations interface with the personnel process?

- The contract mandates that EOU provide online faculty with expectations for “success and timeliness” and “course updates.” Who will define these, and how will they be imposed? What processes will be invoked if faculty do not meet expectations? How will these expectations interface with existing personnel processes?
- The contract mandates that EOU “design a systematic improvement plan for all existing programs [not just “contract programs”], including a projective continual improvement plan for all new online courses and programs.” Who will do this, based on what criteria, and how will program expertise be involved? How will this plan interface with existing program assessment?
- The contract requires EOU to “socialize standard Learning Management System (“LMS”) roles.” What does this mean?
- The contract requires EOU to “standardize syllabi and LMS expectations that allow for scale.” What does this mean?

EOU is required to provide Wiley with login reports. Will they include faculty logins?

III. *Has administration granted Wiley policy making discretion that supplants shared governance (other than curriculum)?* The contract indicates Wiley will engage department stakeholders in ‘gap analysis’ and recommend “policy changes that will best position EOU for success.” What kinds of policies might be recommended? What is their definition of ‘gap analysis?’ Can administration assure the campus community that any policy recommendations coming from a for-profit entity will be discussed and decided on through the appropriate channels of shared governance?

IV. *How does the contract affect statutory and customary expectations of confidentiality, surveillance, privacy, and academic freedom?*

Confidential information: Student confidential information is protected by FERPA. What personnel information is part of the “confidential information” each party promises to keep confidential? Conversely if ‘Personal Data’ are stripped of identifiers, would they then be available to TLH to inform their algorithms?

Surveillance, privacy, and effect on academic freedom: Wiley personnel will have access to Canvas shells, based on which they will recommend course “improvements.” Such surveillance may have a chilling effect on student-faculty interactions and on faculty academic freedom to address disciplinary content in the way they see fit. Additionally, there’s no express protection of faculty data associated with personnel processes: what assurances exist that any unannounced evaluation of faculty cannot be used in review? How will course surveillance be regulated and documented? What is the process for notifying faculty and students that their courses are being unobtrusively monitored by third parties? Do individual faculty and students have rights to consent to or to refuse unobtrusive third party intrusion?

V. *Wiley’s marketing and retention efforts: Will programs have a say in how they’re being marketed, and whether marketing drives curriculum development or vice versa? What risk exists*

that academic freedom is supplanted by Wiley's retention formula based on standardized courses and 3rd party student satisfaction surveys (which may facilitate rapid enrollment growth, but run counter to EOU culture as 'Oregon's Rural University' and the personal working relationships valued by students and faculty)?

Issues related to marketing and recruitment: The contract provides no indication that marketing will be connected with programs marketed, or that it will reflect meaningful input from faculty who know those programs and students best.

All contact with prospective "contract students" will run through Wiley. What happens if a prospective contract student contacts or wants to talk with a faculty member?

Market research: Wiley will conduct market research, but there is no process specified for how that translates into discussions about curriculum development, presumably still controlled by faculty. Of particular concern are the "satisfaction surveys," designed and administered by Wiley and occurring outside personnel and institutional assessment processes. Where "satisfaction" substitutes for learning and academic quality, academic freedom and programs are at risk. Data might also be drawn from social media maintained by Wiley for "contract students."

Another concern is use of "employment-listing aggregators" which may skew resources toward fields of study leading to easily identifiable careers (demand for nurses results in more nursing programs), which contradicts current job-market theory about broad training and the need for graduates to prepare for the possibility of multiple career changes in their working lives.

Are Wiley 'Enrollment Counselors' de facto academic advisors? Despite the rhetoric used throughout the contract process separating "Online Enrollment Counselors" (OCs) from academic advisors, Wiley representatives have indicated that OCs will retain new students through major and first-term course selection, moving new students to academic advisors in Week 2 of their first term. This indicates that Wiley employees will be handling advising at a key moment affecting the flow of students into programs and student success in enrolling in correct courses during their first term of study (while also identifying six 'entry points' during the year for 'contract students'), often a problem for transfer students and students entering lock-step programs. Hasty decisions invariably will produce some percentage of transfer students making mid-course program changes, delaying what appears to be the primary goal: efficient degree completion.